

# Office of State Revenue

## Petroleum and Gas (Royalty) Regulation 2004

### Position Paper Swap Arrangements

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## Relevant legislation

*Petroleum and Gas (Production and Safety) Act 2004* (PG Act)

*Petroleum and Gas (Royalty) Regulation 2004* (the Regulation)

## Purpose of paper

1. This paper provides the Commissioner of State Revenue's (the Commissioner) determination under section 149 of the Regulation about how chapter 6 of the Regulation applies to swap arrangements for petroleum royalty purposes from 1 October 2020.

## Background

2. From 1 October 2020 petroleum royalty is payable on the volume of liable petroleum produced by a petroleum producer (producer) during a return period that is liable for petroleum royalty. The royalty payable by a producer is dependent on the type of petroleum produced and the basis on which the average sales price for the royalty rate is determined for the producer.
3. For calculating petroleum royalty liability for a producer for a royalty return period, there are therefore three principal matters to be determined:
  - (a) the total liable volume of petroleum produced by the producer during the period
  - (b) the classification of the liable volume of petroleum as domestic gas, supply gas, project gas or liquid petroleum
  - (c) the petroleum royalty rate applicable for each petroleum type.
4. Separate position papers dealing with each of these issues have been issued – *Measurement of petroleum*, *Classification of petroleum* and *Determination of petroleum royalty rates*.
5. Swap arrangements entered into by a producer may be relevant for determining the classification of gas. Swap arrangements may also be relevant for determining the average sales price for petroleum, and therefore the royalty rate applicable for that petroleum.
6. This position paper provides the Commissioner's determination under section 149 of the Regulation about how chapter 6 of the Regulation applies to swap arrangements for determining petroleum royalty liability from 1 October 2020.

## Preliminary issues

7. Unless a contrary intention appears, words and expressions used in this paper have the same meaning as in the PG Act and the Regulation.
8. References to the PG Act and the Regulation are references to that legislation as it will be in force following commencement of the *Royalty Legislation Amendment Act 2020* on 1 October 2020. The *Taxation Administration Act 2001* (the Administration Act) will also apply to the administration of petroleum royalty from that date.

9. In this paper:

- (a) *petroleum type* means each of domestic gas, supply gas, project gas and liquid petroleum
- (b) *relevant sales* means, for each petroleum type, the following sales:

Petroleum type	Relevant sales
Domestic gas	All gas sold in the return period, either directly by the producer or indirectly by the producer through one or more resellers for the producer, to a person who is not an LNG project buyer
Supply gas	All gas sold in the return period, either directly by the producer or indirectly by the producer through one or more resellers for the producer, to a person who is an LNG project buyer
Project gas	All LNG sold in the return period by each member of the LNG project of which the producer is a member (the LNG project)
Liquid petroleum	All oil <sup>1</sup> sold in the return period, either directly by the producer or indirectly by the producer through one or more resellers for the producer

- (c) *relevant sales data* means, for each petroleum type, the following data in relation to relevant sales:

Petroleum type	Relevant sales data
Domestic gas	Where the purchaser is: <ul style="list-style-type: none"> <li>an independent buyer – the volume of gas sold, and the revenue from that sale</li> <li>not an independent buyer – the volume of gas sold</li> </ul>
Supply gas	Where the purchaser is: <ul style="list-style-type: none"> <li>an independent buyer – the volume of gas sold, and the revenue from that sale</li> <li>not an independent buyer – the volume of gas sold</li> </ul>
Project gas	Where the purchaser is: <ul style="list-style-type: none"> <li>a person who is neither a member of the LNG project nor a relevant entity for a member of the LNG project (an unrelated buyer) – the volume of LNG sold, and the revenue from that sale</li> <li>a person who is not an unrelated buyer (i.e. the person is either a member of the LNG project or a relevant entity for a member of the LNG project) – the volume of LNG sold</li> </ul>
Liquid petroleum	Where the purchaser is: <ul style="list-style-type: none"> <li>an independent buyer – the volume of oil sold, and the revenue from that sale</li> <li>not an independent buyer – the volume of oil sold</li> </ul>

- (d) *return period* means a royalty return period as defined in the PG Act, which may be either a financial year or a calendar quarter.<sup>2</sup>

<sup>1</sup> Oil is petroleum in a liquid state, and may include petroleum products such as condensate: s.134 of the Regulation.

<sup>2</sup> Section 148Q of the Regulation

## Legislative framework

10. The PG Act requires a producer to:
  - (a) pay petroleum royalty for petroleum that the producer produces<sup>3</sup>
  - (b) lodge royalty returns in relation to such petroleum.<sup>4</sup>
11. A producer includes:
  - (a) for petroleum produced from a petroleum tenure under the PG Act or the *Petroleum Act 1923* (the 1923 Act)<sup>5</sup>—the petroleum tenure holder who produces it or for whom it is produced
  - (b) for petroleum that is incidental coal seam gas mined under s.318CM of the *Mineral Resources Act 1989*—the coal or oil shale mining lease holder who mines it or for whom it is mined
  - (c) for petroleum that is coal seam gas mined under a mineral hydrocarbon mining lease—the coal or oil shale mining lease holder who mines it or for whom it is mined.<sup>6</sup>
12. A producer also includes a person who has applied to, and been approved by, the Commissioner to be taken to be a producer for petroleum royalty purposes in relation to a stated amount of petroleum produced as part of a particular petroleum operation.<sup>7</sup>
13. Petroleum royalty is calculated, and obligations such as royalty return lodgement are imposed, on the basis of petroleum operations, rather than on the basis of individual wells or petroleum tenures.<sup>8</sup>
14. Petroleum royalty for a petroleum operation is payable on the volume of liable petroleum produced by the producer from that petroleum operation during a return period.<sup>9</sup>
15. A different royalty rate applies for each petroleum type, with the royalty rate being determined each return period. Therefore, the applicable royalty rate for a return period is dependent on the volume of petroleum produced by a producer that is classified as either domestic gas, supply gas, project gas or liquid petroleum. The volume of each petroleum type produced in a return period must be determined for calculating the petroleum royalty payable for all petroleum produced for the period.
16. The royalty rate applying to a particular petroleum type produced during a return period is calculated with reference to the average sales price for that petroleum type for the return period.<sup>10</sup>
17. Section 149 of the Regulation provides that the Commissioner may make a determination about how chapter 6 of the Regulation applies to swap arrangements.

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<sup>3</sup> Section 590(1) of the PG Act

<sup>4</sup> Section 592A(1) of the PG Act

<sup>5</sup> An authority to prospect or a petroleum lease granted under the relevant Act: s.18(3) of the PG Act and s.2 of the 1923 Act (definition of '1923 Act petroleum tenure')

<sup>6</sup> Schedule 2 of the PG Act, definition of 'petroleum producer'

<sup>7</sup> Chapter 6, Part 6 of the Regulation

<sup>8</sup> Lodgement on the basis of petroleum operations is pursuant to an administrative arrangement.

<sup>9</sup> Section 590 of the PG Act

<sup>10</sup> Sections 145 (domestic gas), 148A (supply gas), 148F (project gas) and 148K (liquid petroleum) of the Regulation

18. A swap arrangement is an arrangement entered into between producers to swap rights or obligations in relation to petroleum produced by the producers to the extent the arrangement relates to exchanging the same volume and quality of petroleum in a particular period.<sup>11</sup>
19. A swap arrangement determination may be made about:
  - (a) if the petroleum is gas, whether the gas is to be classified as domestic gas, supply gas or project gas
  - (b) how the average sales price for petroleum is to be worked out.<sup>12</sup>

## Swap arrangements

20. Swap arrangements occur between producers as part of petroleum transportation arrangements. Broadly, these arrangements arise where:
  - Producer A needs to supply petroleum to a customer at a particular location that would require transportation of the petroleum from its production location
  - Producer B also needs to supply petroleum to a customer at a particular location that would also require transportation of the petroleum from its production location
  - rather than actually transporting the required volume of petroleum to their customers from their production locations, Producer A and Producer B enter into an arrangement to swap their volumes of petroleum so that Producer A can then arrange for transportation of its swapped volume to its ultimate customer from Producer B's location, and vice versa.
21. There is generally a price determined for these arrangements, a timeframe specified in which the swaps must occur, and a requirement for payment if the amount of petroleum available to swap in the agreed period is not the amount and quality agreed under the arrangement (swap imbalance).
22. In practice, the transactions forming part of a swap arrangement are treated by producers on a 'look through' basis; that is, the swap parties who take the petroleum are not regarded as the actual end customer for each of the producers. Rather, a sale of the petroleum following the swap transaction is recognised in relation to the identity of the customer and the revenue received.
23. However, in the absence of a determination under section 149 of the Regulation, the sales of petroleum made by each of the producers under a swap arrangement are relevant for determining the following for petroleum royalty liability under chapter 6 of the Regulation:
  - (a) the classification of gas produced by a producer in a return period - any subsequent sale or use of the gas by the swap participants is irrelevant
  - (b) the average sales price of petroleum produced by a producer in a return period - any subsequent sale or use of the petroleum by the swap participants is irrelevant.
24. The Commissioner recognises the role that swap arrangements have for producers in managing petroleum production and supply. Accordingly, for section 149 of the Regulation, the Commissioner determines that, for classifying the gas produced by a producer and for determining how the average sales price of petroleum is worked out, swap arrangements are to be taken into account for petroleum royalty purposes from 1 October 2020 as set out below under *Classification of gas for swap arrangements* and *Royalty rate determination for swap arrangements*.

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<sup>11</sup> Section 149(4) of the Regulation

<sup>12</sup> Section 149(2) of the Regulation

25. To the extent an arrangement is not a swap arrangement for section 149(4) of the Regulation, section 149 of the Regulation does not apply for the volume of petroleum, and chapter 6 of the Regulation applies to the arrangement without modification. This would be the case to the extent there is a swap imbalance for an arrangement that, under the terms and conditions of the arrangement entered into by the producers, requires payment to be made by the producer (swap imbalance producer) as they did not satisfy their obligation to provide the agreed volume of petroleum at the agreed quality in the agreed period.

## Classification of gas for swap arrangements

26. In determining the classification of gas produced by a producer in a return period, the identity of a purchaser of that gas may be relevant for classifying the gas as domestic gas, supply gas or project gas under chapter 6 of the Regulation.
- Petroleum produced by a producer during a return period is domestic gas if it is not supply gas and, during the return period, it is sold or otherwise transferred, either directly by the producer or indirectly by the producer through one or more resellers for the producer, to a person who is not an LNG project buyer.<sup>13</sup>
  - Petroleum produced by a producer during a return period is supply gas if it is not produced by the producer as a member of an LNG project and during the return period it is sold, or otherwise transferred, either directly by the producer or indirectly by the producer through one or more resellers for the producer, to an LNG project buyer.<sup>14</sup>
  - Petroleum produced by a producer during a return period is project gas if it is produced by the producer as a member of an LNG project and it is not domestic gas.<sup>15</sup>
27. For working out the volume of each type of gas produced by a producer during a return period where a swap arrangement applies for the gas in the period, the Commissioner determines that, for section 149 of the Regulation, chapter 6 of the Regulation applies as follows.
- (a) A sale of gas under the swap arrangement is disregarded for classifying the gas produced.
  - (b) If paragraph 27(a) applies, the subsequent sale of the gas in the return period, either directly by the producer or indirectly through a reseller for the producer, is relevant for determining the volume of gas produced that is domestic gas under section 135 of the Regulation, supply gas under section 136 of the Regulation or project gas under section 137 of the Regulation.
28. As noted in paragraph 25, to the extent an arrangement for swapping volumes of gas is not a swap arrangement for section 149(4) of the Regulation, the swap imbalance transaction is relevant for classifying the gas. That is, the position under paragraph 27 does not apply, and the identity of the purchaser of that gas (being the swap imbalance producer) is relevant for determining whether the gas is domestic gas, supply gas or project gas.
29. The existence of a swap arrangement is not relevant for classifying petroleum as liquid petroleum.<sup>16</sup>

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<sup>13</sup> Section 135 of the Regulation

<sup>14</sup> Section 136 of the Regulation

<sup>15</sup> Section 137 of the Regulation

<sup>16</sup> Section 138 of the Regulation. The identity of the purchaser is not relevant.

## Royalty rate determination for swap arrangements

30. The royalty rate applying to a particular petroleum type produced during a return period is calculated with reference to the average sales price for that petroleum type for the return period.<sup>17</sup>
31. For a particular petroleum type for a return period, the average sales price is either:
  - (a) worked out with reference to a formula (the average sales price formula) which takes into account relevant sales data<sup>18</sup>
  - (b) equal to the benchmark price for the petroleum type for the return period.<sup>19</sup>
32. The average sales price formula determines the average sales price for a particular petroleum type produced by a producer during a return period by dividing the total revenue or deemed sales value from all relevant sales for that petroleum type during the period, by the total volume of product (gas, LNG or oil) sold in those sales.
33. As noted in the *Determination of petroleum royalty rates* position paper, as the purpose of using the average sales price formula is to calculate the average sales price based on relevant sales data to determine the applicable royalty rate, there is no requirement for any correlation between the volume of liable petroleum produced in a return period and the volume of product sold (which is only relevant for average sales price calculation purposes).
34. For determining the average sales price of a particular petroleum type produced by a producer during a return period where a swap arrangement applies for the petroleum in the period, the Commissioner determines that, for section 149 of the Regulation, chapter 6 of the Regulation applies as follows.
  - (a) A sale of petroleum under the swap arrangement is disregarded for determining the average sales price of the petroleum produced for the return period.
  - (b) If paragraph 34(a) applies, a subsequent sale of petroleum by the producer, either directly or indirectly through a reseller for the producer, is relevant for determining the average sales price of domestic gas under sections 146 and 147 of the Regulation, supply gas under sections 148B and 148D of the Regulation, and liquid petroleum under sections 148L and 148M of the Regulation.
35. That is, if the average sales price formula applies for the petroleum type for the period, the further sale of the petroleum is a relevant sale, and the relevant sales data to be used for determining the average sales price relates to that further sale.
36. Similarly, it is this further sale of petroleum that is relevant for determining whether the benchmark price must apply for the period rather than the average sales price formula. This will be the case if all relevant sales data for the return period is unavailable or there are no sales to an independent buyer in the period.
37. As noted in paragraph 25, to the extent an arrangement for swapping volumes of petroleum is not a swap arrangement for section 149(4) of the Regulation, the swap imbalance transaction is relevant for determining the average sales price for the petroleum type for the return period. That is, if the average sales price formula applies for the petroleum type for the period, the swap imbalance transaction is a relevant sale, and the relevant sales data to be used for determining the average sales price relates to the swap imbalance transaction. For applying the formula, any amounts that may be regarded as forming part of the price paid for the transaction must be included as revenue e.g. a swap fee.

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<sup>17</sup> Sections 145 (domestic gas), 148A (supply gas), 148F (project gas) and 148K (liquid petroleum) of the Regulation

<sup>18</sup> Sections 146 (domestic gas), 148B (supply gas), 148G (project gas) and 148L (liquid petroleum) of the Regulation

<sup>19</sup> Sections 147 (domestic gas), 148D (supply gas), 148I (project gas) and 148M (liquid petroleum) of the Regulation

38. In relation to project gas produced by a producer during a return period, the average sales price is determined by reference to the LNG sold during the period by all members of the LNG project of which the producer is a member. It is not determined by reference to sales of the gas during the period. Swap arrangements for gas produced by producers who are not members of an LNG project are therefore not relevant for determining the average sales price of project gas.

**Example 1 – Swap arrangement with no imbalance**

ABC Co produces CSG. ABC Co is not a member of an LNG project and is not a relevant entity for DEF Co.

DEF Co produces CSG. DEF Co is a member of an LNG project (DEF LNG Project) and is not a relevant entity for ABC Co

During the March 2021 return period:

- ABC Co produces 800,000 GJ of gas
- DEF Co produces 900,000 GJ of gas
- ABC Co and DEF Co enter into a swap arrangement for 700,000 GJ of gas to be delivered at stated locations during the period. The value of the gas to be swapped is determined as being \$2,800,000
- The full volume of gas subject to the swap arrangement is delivered by ABC Co and DEF Co
- ABC Co sells 750,000 GJ of gas to independent buyers who are not members of an LNG project for \$1,500,000, flares 30,000 GJ and has 20,000 GJ in storage at the end of the period
- DEF Co sells 800,000 GJ of gas to the XYZ LNG Project for \$3,200,000 and has 100,000 GJ in storage at the end of the period
- Members of the DEF LNG Project sell a total of 2,000,000 GJ of LNG for \$12,000,000

For classifying the gas ABC Co produces during the March 2021 return period:

- the 700,000 GJ of gas the subject of the swap arrangement with DEF Co is disregarded
- 800,000 GJ is domestic gas (being 750,000 GJ sold to independent buyers who are not members of an LNG project, 30,000 GJ flared and 20,000 GJ in storage at the end of the period)

For determining the average sales price of the gas produced by ABC Co during the March 2021 return period:

- the revenue of \$2,800,000 relating to the 700,000 GJ of gas the subject of the swap arrangement with DEF Co is disregarded
- using the average sales price formula, the relevant sales data for domestic gas is total revenue of \$1,500,000 and total volume of 750,000 GJ, with the average sales price for domestic gas being \$2/GJ

For classifying the gas DEF Co produces during the March 2021 return period:

- the 700,000 GJ of gas the subject of the swap arrangement with ABC Co is disregarded
- 900,000 GJ is project gas (being the 800,000 GJ of gas sold to the XYZ LNG Project and the 100,000 GJ of gas in storage at the end of the period)

For determining the average sales price of the gas produced by DEF Co during the March 2021 return period:

- the revenue of \$2,800,000 relating to the 700,000 GJ of gas the subject of the swap arrangement with ABC Co is disregarded
- using the average sales price formula, the relevant sales data for project gas is total revenue of \$12,000,000 from LNG sold by the DEF LNG Project and total volume of 2,000,000 GJ of LNG sold by the DEF LNG Project, with the average sales price for project gas being \$6/GJ

## Example 2 – Swap arrangement where imbalance does not require invoicing

The same facts as Example 1 apply except as follows:

ABC Co produces only 700,000 GJ of gas during the March 2021 return period and is only able to supply 650,000 GJ under the swap arrangement entered into with DEF Co.

DEF Co supplies 700,000 GJ of gas to ABC Co as required under the arrangement.

ABC Co has a swap imbalance deficit of 50,000 GJ which the parties agree under the swap arrangement to repay at a future date prior to the swap arrangement coming to an end. If at the end of the swap agreement the imbalance stands, DEF Co will invoice ABC Co for the shortfall at that point in time.

ABC Co sells 650,000 GJ of gas to independent buyers who are not members of an LNG project for \$1,300,000.

For classifying the gas ABC Co produces during the March 2021 return period:

- the swap arrangement with DEF Co is disregarded.
- 700,000 GJ of the gas produced is domestic gas (being 650,000 GJ sold to independent buyers who are not members of an LNG project, 30,000 GJ flared and 20,000 GJ in storage at the end of the period)

For determining the average sales price of the gas produced by ABC Co during the March 2021 return period:

- the revenue of \$2,800,000 relating to the 700,000 GJ of gas the subject of the swap arrangement with ABC Co is disregarded
- using the average sales price formula, the relevant sales data for domestic gas is total revenue of \$1,300,000 and total volume of 650,000 GJ, with the average sales price for domestic gas being \$2/GJ

For classifying the gas DEF Co produces during the March 2021 return period:

- the swap arrangement with ABC Co is disregarded
- 900,000 GJ is project gas (as none is domestic gas)

For determining the average sales price of the gas produced by DEF Co during the March 2021 return period:

- the revenue of \$2,800,000 relating to the 700,000 GJ of gas the subject of the swap arrangement with ABC Co is disregarded
- using the average sales price formula, the relevant sales data for project gas is total revenue of \$12,000,000 from LNG sold by the DEF LNG Project and total volume of 2,000,000 GJ of LNG sold by the DEF LNG Project, with the average sales price for project gas being \$6/GJ

### Example 3 – Swap arrangement where imbalance requires invoicing

The same facts as Example 1 apply except as follows:

ABC Co produces only 100,000 GJ of gas during the March 2021 return period and fails to supply the 700,000 GJ of gas required by the arrangement entered into with DEF Co.

DEF Co supplies 700,000 GJ of gas to ABC Co as required under the arrangement. In accordance with the terms and conditions of the swap arrangement, the entire amount is taken to be a sale by DEF Co to ABC Co.

ABC Co pays the required amount of \$2,800,000 to DEF Co for the swap imbalance.

For classifying the gas ABC Co produces during the March 2021 return period:

- the arrangement with DEF Co is not a swap arrangement
- 100,000 GJ of the gas produced is domestic gas (being 50,000 GJ of gas sold to independent buyers who are not members of an LNG project, 30,000 GJ flared and 20,000 GJ in storage at the end of the period)

For determining the average sales price of the gas produced by ABC Co during the March 2021 return period:

- using the average sales price formula, the relevant sales data for domestic gas is total revenue of \$1,500,000 and total volume of 750,000 GJ, with the average sales price for domestic gas being \$2/GJ

For classifying the gas DEF Co produces during the March 2021 return period:

- the 700,000 GJ of gas the subject of the arrangement with ABC Co is relevant as the arrangement is not a swap arrangement
- 700,000 GJ of gas sold to ABC Co is domestic gas
- the remaining gas produced of 200,000 GJ is project gas (as it is not domestic gas)

For determining the average sales price of the gas produced by DEF Co during the March 2021 return period:

- the revenue of \$2,800,000 and the volume of 700,000 GJ for the gas sold to ABC Co is relevant
- using the average sales price formula, the relevant sales data for domestic gas is total revenue of \$2,800,000 and total volume of 700,000 GJ, with the average sales price for domestic gas being \$4/GJ
- using the average sales price formula, the relevant sales data for project gas is total revenue of \$12,000,000 from LNG sold by the DEF LNG Project and total volume of 2,000,000 GJ of LNG sold by the DEF LNG Project, with the average sales price for project gas being \$6/GJ.