



TR 2019/D3 - Income tax: deductions for expenditure on environmental protection activities

 This cover sheet is provided for information only. It does not form part of *TR 2019/D3 - Income tax: deductions for expenditure on environmental protection activities*

This document has been finalised by TR 2020/2.

 There is a Compendium for this document: **TR 2020/2EC** .



Draft Taxation Ruling

Income tax: deductions for expenditure on environmental protection activities

Contents	Para
PROPOSED LEGALLY BINDING SECTION:	
Summary – what this draft Ruling is about	1
Ruling	3
Examples	50
Date of effect	79
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Your comments</i>	80
Appendix 2:	
<i>Detailed contents list</i>	82

❶ This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Ruling applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if the draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

Summary – what this draft Ruling is about

1. Subsection 40-755(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ allows an immediate deduction for expenditure you incur for the sole or dominant purpose of carrying on environmental protection activities.
2. This draft Ruling² explains:
 - what are 'environmental protection activities'
 - when expenditure is incurred for the 'sole or dominant purpose' of carrying on those activities
 - limits on the amount you can deduct, and
 - assessability of recouped expenditure on environmental protection activities.

¹ All legislative references are to the ITAA 1997 unless otherwise indicated.

² All further references to 'this Ruling' refer to the Ruling as it will read when finalised. Note that this Ruling will not take effect until finalised.

Ruling

What are environmental protection activities?

3. 'Environmental protection activities' are activities carried on by or for you³:

- to prevent, fight or remedy pollution
 - resulting, or likely to result, from your earning activity
 - of or from the site of your earning activity
 - of or from a site where an entity was carrying on any business that you have acquired and carry on substantially unchanged as your earning activity, and
- to treat, clean up, remove or store waste
 - resulting, or likely to result, from your earning activity
 - on or from the site of your earning activity
 - on or from a site where an entity was carrying on any business that you have acquired and carry on substantially unchanged as your earning activity.

4. The term 'activities' is not defined and takes its ordinary, natural meaning of 'specific deeds or actions'.⁴

Pollution

5. The term 'pollution' is not defined and takes its ordinary, natural meaning, shaped by the statutory context in which it appears.

6. Pollution is contamination by the direct or indirect introduction of substances (physical or gaseous), noise (for example, vibrations) or energy (for example, radiation) which have harmful or poisonous effects on the environment.⁵

³ Subsection 40-755(2).

⁴ *The Macquarie Dictionary* [Online], viewed 15 April 2019, www.macquariedictionary.com.au, definition of 'activity'.

⁵ *Oxford Dictionary* [Online], viewed 15 April 2019, <https://en.oxforddictionaries.com/>, definition of 'pollution' and Chapter 7 of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 5) 1992 (EM), (Refer to commentary on former section 82BM of the *Income Tax Assessment Act 1936* (ITAA 1936) which was the predecessor to subsection 40-755(2)).

7. Pollution does not include all adverse environmental changes, such as visual or aesthetic effects which are merely unattractive or unappealing in appearance.⁶

8. There is nothing in the wording of section 40-755 to indicate the meaning of 'pollution' should extend beyond its ordinary meaning for the purpose of this provision.⁷

9. The time for determining whether a substance is pollution is when you incur expenditure on the activity undertaken to prevent, fight or remedy it. Therefore, pollution may encompass substances which were not previously considered harmful or poisonous but now are, such as asbestos and chlorofluorocarbons.⁸

Preventing, fighting or remedying pollution

10. The phrase 'preventing, fighting or remedying pollution'⁹ includes a range of activities undertaken to avoid, stop or minimise pollution or take remedial steps to reverse its effects.

11. The activities must themselves amount to 'preventing, fighting or remedying' pollution. Therefore, there must be a close and direct connection between an activity and actual or potential pollution. In other words, the activity is only undertaken due to the existence or likely existence of pollution. Such activities may include identifying and testing for pollution. However, it is not enough that an activity:

- may be beneficial to the environment in a general sense, or
- may enable you (or someone else) to start preventing, fighting or remedying pollution at a future, unspecified time.

Waste

12. The term 'waste' is not defined and takes its ordinary, natural meaning, shaped by the statutory context in which it appears. It includes anything left over or superfluous, such as excess material and by-products, which is not of use for the work at hand.¹⁰

⁶ Chapter 7 of the EM. It was held in *Palos Verdes Estates Pty Ltd v Carbon* [1991] WASC 115 that the ordinary meaning of pollution was 'physically impure foul or filthy', and did not include the mere alteration to the environment by clearing land of trees and vegetation, and cutting through sand dunes.

⁷ Some State environmental protection legislation defines pollution to extend beyond its ordinary meaning in that particular statutory context. For example, the *Clean Waters Act 1970* (NSW).

⁸ Chapter 7 of the EM.

⁹ Paragraph 40-755(2)(a).

¹⁰ *The Macquarie Dictionary* [Online], viewed 15 April 2019, www.macquariedictionary.com.au, definition of 'waste'.

Treating, cleaning up, removing or storing waste

13. The phrase ‘treating, cleaning up, removing or storing waste’¹¹ includes a range of activities directed to resource recovery, recycling, reclamation, and direct re-use or alternative uses of waste at any stage of an industrial process.¹² It also includes any means of disposing of waste such as landfill, storage, chemical conversion and incineration.¹³

14. The activities must themselves amount to ‘treating, cleaning up, removing or storing waste’. Therefore, there must be a close and direct connection between an activity and actual or potential waste. In other words, the activity is only undertaken due to the existence or likely existence of waste. It is not enough that an activity:

- may be beneficial to the environment in a general sense, or
- may enable you (or someone else) to start preventing, treating, cleaning up, removing or storing waste at a future, unspecified time.

Carried on by or for you

15. Environmental protection activities must be ‘carried on by or for you’. An activity is carried on ‘for you’ if another entity carries it out on your behalf, or for your benefit.

16. An environmental protection activity may be carried on for your benefit where the law requires you to make the activity happen, but you arrange for another entity to perform it. However, you still need to incur the expenditure yourself in order to be eligible for a deduction (see Example 1 of this Ruling).

Necessary connection between pollution or waste and ‘your earning activity’

17. The pollution or waste must:

- result, or be likely to result, from your earning activity
- be of or from the site of your earning activity, or
- be of or from a site where an entity was carrying on a business you have acquired, and you carry on the business substantially unchanged as your earning activity.

¹¹ Paragraph 40-755(2)(b).

¹² Chapter 7 of the EM.

¹³ Chapter 7 of the EM.

Your earning activity

18. The phrase ‘your earning activity’ means an activity you carried on, carry on, or propose to carry on for the purpose, or purposes, of¹⁴:

- producing assessable income for an income year (except a net capital gain)
- exploration or prospecting¹⁵, or
- mining site rehabilitation.¹⁶

19. Where your earning activity has the dual purpose of producing a net capital gain and other assessable income, you will satisfy the earning activity requirement provided your income earning purpose is not merely incidental to your purpose of producing a net capital gain.

20. You may be able to deduct expenditure incurred before commencing your proposed earning activity. For example, you may be able to deduct the cost of removing pollutants from the site of your proposed earning activity. You must have the intention of carrying on that proposed earning activity at the time you incur the expenditure.

Pollution or waste resulting or likely to result from your earning activity

21. Pollution or waste will be likely to result from your earning activity where it is a probable outcome, consequence or effect of that activity.¹⁷ The pollution or waste need only be **a** result of your earning activity, not **the** result. Therefore, the pollution or waste does not need to be the direct and only consequence of the earning activity.¹⁸ This will be determined by the facts and circumstances of each case.

Pollution or waste on or from the site of your earning activity

22. The pollution or waste may be on or from the site of your earning activity. There is no requirement that the pollution or waste also results from your earning activity. For example, the pollution or waste could be caused by someone else or it could have been present before you engaged in your earning activity on the site.

¹⁴ Subsection 40-755(3).

¹⁵ Subsection 40-730(4), meaning of ‘exploration or prospecting’.

¹⁶ Subsection 40-735(5), meaning of ‘mining site rehabilitation’.

¹⁷ *The Macquarie Dictionary* [Online], viewed 15 April 2019, www.macquariedictionary.com.au, definition of ‘result’.

¹⁸ See 12.14 (‘result of’) in Pearce, DC, Geddes, RS 2014, *Statutory Interpretation in Australia*, 8th edn, LexisNexis Butterworths, Australia, citing *Allianz Australia Insurance Limited v GSF Australia Pty Limited* [2005] HCA 26; considered further in *Nominal Defendant v GLG Australia Pty Limited* [2006] HCA 11.

23. A deduction is also available where pollution or waste originating from the site of your earning activity has affected another site.
24. It is not a requirement for you to own the site of your earning activity, or to have owned it in the past.
25. Where your earning activity is the granting of rights to use a site or a similar activity in respect of a site, including leasing, that site is the site of your earning activity.¹⁹ In such circumstances, you do not need to occupy the site to deduct expenditure on environmental protection activities related to that site.

Pollution or waste on or from a site of an acquired business

26. Pollution or waste may also be on or from the site of any existing business that you acquire and carry on substantially unchanged as your earning activity.
27. It is not enough that the previous occupant of the site used the site to earn assessable income, for example as a rental property held as a passive investment. The occupant's business must have been carried out on or from the site.
28. It is not a requirement for you, or the previous occupant of the site, to have owned the site.
29. The phrase 'substantially unchanged' requires the business you carry on to be significantly or essentially the same as it was when it was carried on by the previous owner. It does not need to be exactly the same. Whether the business is substantially unchanged is a question of fact.
30. If multiple businesses are acquired, each business needs to be separately assessed to determine whether it is being carried on substantially unchanged.

When expenditure is incurred for the 'sole or dominant purpose' of carrying on those activities

31. To claim a deduction, you must have incurred expenditure for the sole or dominant purpose of carrying on environmental protection activities.
32. When considering if expenditure is incurred for the 'dominant purpose' of carrying on environmental protection activities, the relevant inquiry is whether the ruling, prevailing or most influential purpose²⁰ of the entity incurring the expenditure is to undertake such activities. The circumstances in which the expenditure is incurred will

¹⁹ Subsection 40-755(4).

²⁰ *Commissioner of Taxation (Cth) v Spotless Services Ltd* [1996] HCA 34.

likely be informative as to the purpose. For example, the outcome or effect of the expenditure may support an inference as to the purpose. In this way an entity's evidence of purpose may be assessed against and supported by the objective circumstances in which the activity was undertaken.

33. Where you expend a single sum directly to carry on an activity that is an 'environmental protection activity'²¹, your expenditure will satisfy the sole and dominant purpose test and is deductible. Where that activity also achieves another outcome other than protection of the environment (for example, site beautification), the sole or dominant purpose test will still be satisfied since the expenditure was incurred on carrying on an activity that is an 'environmental protection activity' (see Example 2 of this Ruling).

34. Where you expend a single sum to carry on **multiple** activities (one or more of which are environmental protection activities), the amount you can deduct will depend upon whether the incurred expenditure can be specifically allocated amongst each activity. The High Court decision in *Ronpibon Tin v Commissioner of Taxation (Cth)* [1949] HCA 15 (*Ronpibon*), identified two kinds of apportionable expenditure:

- undivided items of expenditure with distinct and severable parts devoted to different objects, where it is possible to divide the expenditure in accordance with the applications which have been made to those objects (first type of *Ronpibon* apportionment), and
- a single outlay or charge which serves multiple objects indifferently, requiring a fair and reasonable basis of apportionment to be adopted (second type of *Ronpibon* apportionment).

35. Section 40-755 does not contain the words 'to the extent'. However, we consider that the first type of *Ronpibon* apportionment can apply where you incur a single item of expenditure for several activities and you can divide the expenditure in accordance with the applications which have been made to those activities. For example, unless there is evidence to the contrary, an invoice which itemises which component of the expenditure is incurred for carrying on an environmental protection activity will generally be sufficient for substantiation purposes. The cost specifically allocable as expended on carrying on an environmental protection activity satisfies the sole or dominant purpose test and is deductible (see Example 3 of this Ruling).

36. If you are unable to specifically allocate the expenditure among different activities, you apply the sole or dominant purpose test to the entire expenditure. We do not consider that the second

²¹ As defined in subsection 40-755(2), subject to any restrictions in sections 40-760 and 40-765 (see paragraphs 37 to 48 of this Ruling).

type of *Ronpibon* apportionment can apply. Rather, if the ruling, prevailing or most influential purpose of the expenditure was to conduct an environmental protection activity, the entire expenditure is deductible. If not (that is, the environmental protection activity is only a residual or subsidiary purpose of incurring the expenditure) then none of the expenditure is deductible under section 40-755 (see Example 4 of this Ruling).

Limits on the amount you can deduct

37. You cannot claim a deduction under section 40-755 for²²:

- expenditure for acquiring land²³
- capital expenditure for constructing a building, structure or structural improvement (including an extension, alteration or improvement to any of these)²⁴
- a bond or security for performing environmental protection activities²⁵
- expenditure to the extent it is incurred in carrying out an activity for environmental impact assessment of your project²⁶, and
- expenditure to the extent that you can deduct an amount for it under a provision other than Subdivision 40-H.²⁷

38. A deduction under section 40-755 is subject to the application of other provisions of the ITAA 1997 (other than Division 8)²⁸ that prevent or restrict the amount that can be deducted under that Division.²⁹

²² Subsections 40-760(1) and (2).

²³ Paragraph 40-760(1)(a).

²⁴ Paragraphs 40-760(1)(b) and 40-760(1)(c). Such expenditure may be deductible under Division 43 which applies to capital works or may be included in the fourth element of the cost base or reduced cost base of a capital gains tax asset (subsections 110-25(5) and 110-55(2)).

²⁵ Paragraph 40-760(1)(d).

²⁶ Subsection 40-760(2).

²⁷ Paragraph 40-760(1)(e); a provision outside Subdivision 40-H refers to provisions in the ITAA 1997 and ITAA 1936. For example, the decline in value of a depreciating asset is deductible under subsection 40-730(3) in Subdivision 40-B to the extent it is used for a taxable purpose. Also, a non-capital amount may be deductible as a specific repair deduction under section 25-10 or as a general deduction under section 8-1.

²⁸ For example, paragraph 8-1(2)(a), which restricts deductibility of capital expenditure under section 8-1, does not apply to section 40-755.

²⁹ Subsection 40-760(3). For instance, an amount incurred for environmental protection activities would not be deductible to the extent that it is also an amount payable by way of penalty for the purposes of section 26-5.

39. An amount of expenditure on environmental protection activities which is entirely covered by a section 40-760 exclusion will not be deductible.

40. If an amount of expenditure on environmental protection activities is **partially** covered by a section 40-760 exclusion:

- You must identify parts of the expenditure distinctly devoted to those activities which are covered by an exclusion, and those which are not, and divide that expenditure accordingly.³⁰ Any expenditure relating to activities covered by an exclusion will not be deductible.
- If it is not possible to dissect and allocate the expenditure to those activities which are covered by an exclusion, and those which are not (that is, the outlay serves multiple objects indifferently), the entire amount of expenditure will be treated as relating to the exclusion and is not deductible.³¹

Building, structure or structural improvement

41. You cannot claim an environmental protection deduction for capital expenditure incurred in constructing a building, structure or structural improvement (see Example 5 of this Ruling).³²

42. However, the exclusion does not apply where the replacement of a pollutant material with a non-pollutant material results in a minor or incidental degree of improvement to a building or structure.

Extension, alteration or improvement

43. You cannot claim an environmental protection deduction for capital expenditure for constructing an extension, alteration or improvement to a building, structure or structural improvement.³³

44. However, the exclusion does not apply where the replacement of a pollutant material with a non-pollutant material results in a minor or incidental degree of alteration or improvement to a building, structure or structural improvement (see Example 6 of this Ruling).

³⁰ First type of *Ronpibon* apportionment.

³¹ We do not consider that the second type of *Ronpibon* apportionment can apply. Therefore, the entire amount is treated as relating to the exclusion.

³² Paragraph 40-760(1)(b).

³³ Paragraph 40-760(1)(c).

Bond or security

45. You cannot claim an environmental protection deduction for a bond or security (however described) for performing environmental protection activities.³⁴

46. The term 'security' is ordinarily understood as something given or deposited as surety for the fulfilment of a promise or an obligation, the payment of a debt, and so on.³⁵

47. Examples of a bond or security for performing environmental protection activities include the types of financial assurance, such as bank guarantees or contributions to a pooled fund, required by State government bodies for the performance of obligations under the relevant environmental laws.

Non-arm's length transactions

48. The amount you can deduct is capped at the market value of what you incurred the capital expenditure for where you were not dealing with another party to the transaction at arm's length.³⁶

Assessability of recouped expenditure on environmental protection activities

49. You are assessable on recoupments of expenditure on environmental protection activities for which you were entitled to a deduction.³⁷

Examples

Example 1 – environmental protection activities carried on 'by or for you'

50. *MineCo operated a mine for a number of years. MineCo enters into an agreement to sell its mining tenements and assets to BigCo.*

51. *Under the sale agreement, MineCo agrees to pay a lump sum of \$20 million to BigCo to remediate and rehabilitate the tenements. In return, BigCo agrees to indemnify MineCo and assume all current and future liabilities in respect of the mining tenements and land under mining, land and environmental laws.*

³⁴ Paragraph 40-760(1)(d).

³⁵ *The Macquarie Dictionary* [Online], viewed 15 April 2019, www.macquariedictionary.com.au, definition of 'security'.

³⁶ Section 40-765.

³⁷ Subsection 20-20(3).

52. *Following the sale to BigCo, MineCo does not have any direct involvement in conducting environmental protection activities on the tenements and land. Therefore, the activities are not carried on ‘by’ MineCo. Further, MineCo has no interest in the land or mining tenements and is indemnified against any liabilities to pay for, or perform, such activity after sale. Therefore, any environmental protection activities conducted by BigCo after the sale are not carried on ‘for’ MineCo.*

53. *Consequently, MineCo cannot deduct the lump sum of \$20 million under section 40-755 as any environmental protection activities undertaken are not carried on ‘by or for’ MineCo.*

Example 2 – sole or dominant purpose: single environmental protection activity

54. *Angela owns a residential property from which she derives rental income. The property consisted of a house and dilapidated shed in the backyard. Angela sought advice from a building contractor to determine whether the shed should be renovated or removed.*

55. *She was advised to remove the entire shed because it was clad with asbestos cement sheeting which was damaged and releasing asbestos fibres into the air. This could be potentially harmful to Angela’s tenants. Angela contracted an asbestos removal company to safely demolish and remove the shed at a cost of \$7,000.*

56. *The demolition and removal of the shed is a capital expense that cannot be claimed under any other income tax provision.³⁸*

57. *The demolition and removal of the shed is an ‘environmental protection activity’ as it was undertaken for the purpose of preventing asbestos pollution. The incidental result of visually improving the backyard by removing the dilapidated shed does not change the primary purpose of the activity, being the prevention of pollution to ensure the safety of Angela’s tenants.*

58. *Therefore, the cost of demolishing and removing the shed is expenditure incurred for the dominant purpose of preventing pollution from the site of Angela’s rental income producing activity. Accordingly, Angela can deduct \$7,000 under section 40-755.*

³⁸ If the shed had been replaced, a deduction may have been available under the capital works provisions for the cost of constructing the new shed. However, paragraph 43-70(2)(b) specifically excludes demolition expenses from being construction expenditure for the purposes of the capital works provisions.

Example 3 – sole or dominant purpose: single outlay for multiple activities

59. *Motorway Co is a motorway development company which constructed and operated a roadway in the course of its income-producing activities.*

60. *Motorway Co engages Cleanup Co to perform the following services:*

- *removing industrial waste from the site*
- *planting vegetation on the site for visual effect and to prevent erosion.*

61. *Motorway Co pays \$100,000 in relation to these services.*

62. *The removal of industrial waste from the site constitutes an environmental protection activity. However, planting vegetation for visual effect and to prevent erosion is not an environmental protection activity. Adverse visual and aesthetic effects on the environment do not constitute ‘pollution’ under its ordinary meaning.*

63. *The invoice from Cleanup Co shows that \$40,000 was for the waste removal service and \$60,000 for planting vegetation. Motorway Co can deduct \$40,000 as an amount that can be identified and specifically allocated to an environmental protection activity (that is, removing waste) and therefore satisfies the sole or dominant purpose test.*

64. *Motorway Co cannot deduct the remaining \$60,000 under section 40-755 because creating a visual effect and preventing erosion does not involve an environmental protection activity.*

Example 4 – sole or dominant purpose: single outlay for several purposes

65. *Sarah acquires a property to conduct her daycare business. The site of her proposed business was formerly a motor vehicle service and repair shop. Sarah engaged a contractor to convert the existing carpark into a playground. In doing so, the contractor needed to clean up and fill in a pit containing used oil by-products.*

66. *Sarah paid the contractor \$4,000 to perform the job. Although part of this expenditure may relate to an environmental protection activity (removal of oil waste products), it is not possible to divide the expenditure in accordance with the applications that have been made to the environmental protection activity and the other work performed by the contractor in constructing the playground.*

67. *Consequently, it is necessary to examine the entire item of expenditure to determine if, objectively, the ruling, or prevailing purpose of that expenditure was to conduct an environmental protection activity. Here, the contractor was engaged to build the playground for the childcare centre. The removal of waste in the*

course of this task was merely incidental to the main purpose of developing the playground.

68. *Sarah cannot claim a deduction under section 40-755 since it cannot be demonstrated that the expenditure (or any distinct and severable part of the expenditure) was incurred for the sole or dominant purpose of carrying on an environmental protection activity.*

Example 5 – limit on deductions: single outlay for multiple activities

69. *Andrew owns and operates a petrol station and a number of fuel storage tanks are located on the property. One of the fuel tanks begins to leak and contaminates the soil with petrol. Andrew hires John for the following activities:*

- *removal of the concrete covering the leaking tank*
- *clearing the soil contaminated by the leaking tank*
- *removal of the leaking tank*
- *installation of a new tank including plumbing work.*

70. *John provides an itemised invoice to Andrew. Andrew pays a total of \$20,000 comprised of:*

- *\$12,000 for the removal of the fuel tank, concrete covering and clearing the contaminated soil, and*
- *\$8,000 for the installation of the new tank.*

71. *The removal of the fuel tank and its concrete covering, and clearing the contaminated soil, constitutes environmental protection activities (that is, cleaning up and removing waste from the site of Andrew's earning activity). Andrew can deduct \$12,000 under section 40-755 since this is expenditure which can be identified and is specifically allocable to environmental protection activities and therefore satisfies the sole or dominant purpose test.*

72. *However, the remaining \$8,000 is not deductible under section 40-755. It represents capital expenditure for constructing a structure or structural improvement and is expressly excluded from the scope of these provisions.³⁹*

Example 6 – limit on deductions: replacing pollutant materials in buildings

73. *Craig owns a commercial rental property from which he derives rental income. The roof of the property was clad with asbestos reinforced cement sheeting which is a pollutant material.*

³⁹ Paragraph 40-760(1)(b).

TR 2019/D3

74. *The asbestos-reinforced cement sheeting is in good condition, but Craig wishes to remove it. Craig engaged a building contractor to remove the original roof and replace it with alloy-coated metal roofing of superior quality.*

75. *The scope of the environmental protection activities will include all deeds or actions which are necessary to remedy the asbestos pollution. This will involve the removal of the asbestos roof but not its replacement.*

76. *The total cost of the work was quoted by the building contractor as \$20,000. Craig's contractor advised that \$9,000 of this total cost would be for a specialist subcontractor to undertake the asbestos roof removal.*

77. *Craig can deduct \$9,000 under section 40-755 since this is expenditure which can be identified and specifically allocated to an environmental protection activity (that is, remedying pollution from the site of Craig's earning activity) and therefore satisfies the sole or dominant purpose test.*

78. *The replacement roof is a capital improvement which is deductible over time under Division 43. Therefore, the \$11,000 cost of the replacement roof is not deductible under section 40-755 since it is a capital improvement excluded under section 40-760.*

Date of effect

79. When the final Ruling is issued, it is proposed to apply both before and after its date of issue. However, the Ruling will not apply to you to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Commissioner of Taxation

17 April 2019

Appendix 1 – Your comments

80. You are invited to comment on this draft Ruling. Please forward your comments to the contact officer by the due date.

81. A compendium of comments is prepared for the consideration of the relevant Public Advice and Guidance Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments, and
- be published on **ato.gov.au**.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: **17 May 2019**

Contact officer details have been removed following publication of the final ruling.

Appendix 2 – Detailed contents list

82. The following is a detailed contents list for this draft Ruling:

	Paragraph
Summary – what this draft Ruling is about	1
Ruling	3
What are environmental protection activities?	3
<i>Pollution</i>	5
<i>Preventing, fighting or remedying pollution</i>	10
<i>Waste</i>	12
<i>Treating, cleaning up, removing or storing waste</i>	13
<i>Carried on by or for you</i>	15
<i>Necessary connection between pollution or waste and ‘your earning activity’</i>	17
<i>Your earning activity</i>	18
<i>Pollution or waste resulting or likely to result from your earning activity</i>	21
<i>Pollution or waste on or from the site of your earning activity</i>	22
<i>Pollution or waste on or from a site of an acquired business</i>	26
When expenditure is incurred for the ‘sole or dominant purpose’ of carrying on environmental protection activities	31
Limits on the amount you can deduct	37
<i>Building, structure or structural improvement</i>	41
<i>Extension, alteration or improvement</i>	43
<i>Bond or security</i>	45
Non-arm’s length transactions	48
Assessability of recouped expenditure on environmental protection activities	49
Examples	50
Example 1 – environmental protection activities carried on ‘by or for you’	50
Example 2 – sole or dominant purpose: single environmental protection activity	54
Example 3 – sole or dominant purpose: single outlay for multiple activities	59

Example 4- sole or dominant purpose: single outlay for several purposes	65
Example 5 – limit on deductions: single outlay for multiple activities	69
Example 6 – limit on deductions: replacing pollutant materials in buildings	73
Date of effect	79
Appendix 1 – Your comments	80
Appendix 2 – Detailed contents list	82

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 97/23; TR 2005/4;
TR 2006/10; TR 2008/6

Legislative references:

- ITAA 1936
- ITAA 1936 82BM
- ITAA 1997
- ITAA 1997 Div 8
- ITAA 1997 8-1
- ITAA 1997 8–1(2)(a)
- ITAA 1997 20-20(3)
- ITAA 1997 25-10
- ITAA 1997 26-5
- ITAA 1997 Subdiv 40–B
- ITAA 1997 Subdiv 40-H
- ITAA 1997 40–730(3)
- ITAA 1997 40-730(4)
- ITAA 1997 40-735(4)
- ITAA 1997 40–735(5)
- ITAA 1997 40-755
- ITAA 1997 40-755(1)
- ITAA 1997 40-755(2)
- ITAA 1997 40-755(2)(a)
- ITAA 1997 40-755(2)(b)
- ITAA 1997 40-755(3)
- ITAA 1997 40-755(4)
- ITAA 1997 40-760
- ITAA 1997 40–760(1)
- ITAA 1997 40-760(1)(a)
- ITAA 1997 40-760(1)(b)
- ITAA 1997 40-760(1)(c)
- ITAA 1997 40-760(1)(d)
- ITAA 1997 40-760(1)(e)
- ITAA 1997 40-760(2)
- ITAA 1997 40-760(3)
- ITAA 1997 40-765

- ITAA 1997 Div 43
- ITAA 1997 43–70(2)(b)
- ITAA 1997 110-25(5)
- ITAA 1997 110-55(2)

Cases relied on:

- Allianz Australia Insurance Ltd v GSF Australia Pty Ltd [2005] HCA 26; (2005) 221 CLR 568; (2005) 215 ALR 385
- Federal Commissioner of Taxation v Spotless Services Ltd [1996] HCA 34; (1996) 186 CLR 404; 96 ATC 5201; (1996) 34 ATR 183
- Nominal Defendant v GLG Australia Pty Ltd [2006] HCA 11; (2006) 228 CLR 529; (2006) 225 ALR 643
- Palos Verdes Estates Pty Ltd v Carbon (1991) 72 LGRA 414; (1991) 6 WAR 223
- Ronpibon Tin NL v Federal Commissioner of Taxation [1949] HCA 15; (1949) 78 CLR 47; [1949] ALR 785

Other references:

- Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 5) 1992
- Pearce, DC, Geddes, RS 2014, Statutory Interpretation in Australia, 8th edn, LexisNexis Butterworths, Australia
- Macquarie Dictionary Online
- Oxford Dictionary Online

ATO references

NO: 1-9G56OMT

ISSN: 2205-6122

BSL: PW

ATOlaw topic: Income tax ~~ Capital allowances ~~ Immediately deductible expenditure

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).