

TD 94/D7 - Income tax: what is the treatment of expenditure incurred by a mining company on the removal of overburden in open-cut mining?

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Draft Taxation Determination

Income tax: what is the treatment of expenditure incurred by a mining company on the removal of overburden in open-cut mining?

1. For the purposes of this Draft Taxation Determination, overburden means soil, rock etc. naturally occurring above an ore body or mineral deposit. The open-cut method of mining involves the removal of all of the overburden. This contrasts with underground mining where a shaft is sunk.
2. A distinction is drawn between:
 - the initial removal of overburden to create an open pit (the initial cut); and
 - the subsequent removal of overburden as a continuous process in the recovery of minerals.

Initial removal of overburden

3. Expenditure incurred on the initial removal of overburden to create an open pit is capital in nature and is not an immediately allowable deduction under subsection 51(1). Instead, such expenditure qualifies as allowable capital expenditure under section 122A, which is evenly deductible over the lesser of the estimated number of years in the life of the mine or 10 years.
4. The initial removal of overburden to access an ore body is analogous to the sinking of a mine shaft to gain access to ore. The Courts have held that expenditure on sinking a mine shaft in this circumstance is capital in nature: *Mount Isa Mines v FCT*; *Bonner v Basset Mines*; *Coltness Iron v Black*. Allowable capital expenditure includes expenditure incurred in preparing a site for the purposes of carrying on mining operations. The initial removal of overburden, like the sinking of a mine-shaft, is considered to be part of the process of preparing a mine-site.
5. If there is more than one pit on the same mine, expenditure on the initial cut to open each separate pit will be capital, as is the case for expenditure on each separate mine shaft on the same mine. This is the case even if a great number and variety of pits are worked on the one mine: *Addie v Solicitor of Inland Revenue*; *Coltness Iron v Black*.

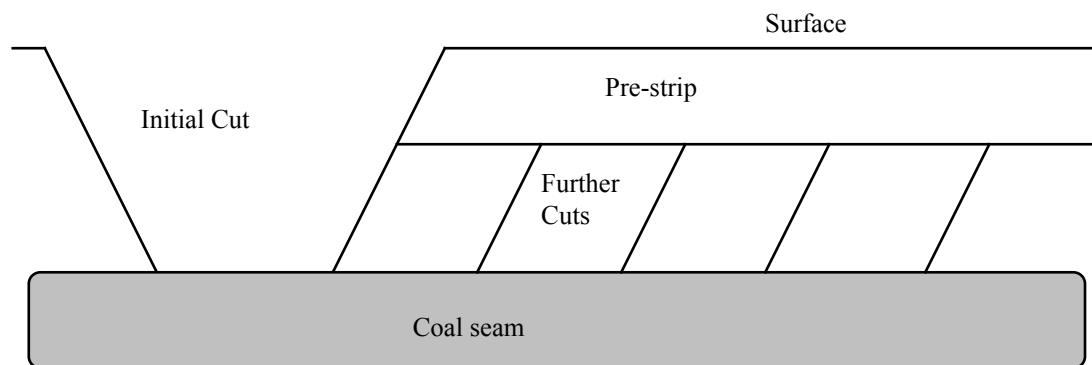
6. In some circumstances, expenditure on the initial removal of overburden may be revenue and not capital in nature. This would be the case, for example, when the deposit of ore is small and quickly exhausted (within one or two years) or the layer of overburden above the deposit is very shallow: *Coltness Iron v Black*; *Bonner v Basset Mines*.

Subsequent removal of overburden

7. Expenditure on the removal of overburden as a continuous process of recovering minerals after the initial cut is considered to be revenue in nature and is an allowable deduction under subsection 51(1) in the year that it is incurred.

8. In some forms of open-cut mining, for example, horizontal strip-mining, removal of overburden takes place in two stages. Expenditure on pre-stripping of overburden, that is, expenditure on the continuous or periodic removal of overburden in advance of immediate needs, is revenue in nature where it is subsequent to the initial cut.

Example: Strip coal mining - Initial cut and pre-strip for overburden removal



The cost of the initial cut qualifies as allowable capital expenditure under section 122A. This includes the cost of any pre-stripping required as part of the initial cut.

The cost of subsequent pre-stripping and cuts to remove overburden is revenue expenditure, deductible under subsection 51(1).

Commissioner of Taxation

27/1/94

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Related Determinations:

Related Rulings: CITCM 700

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Legislative Ref: ITAA 51(1), 122A

Case Ref: FC of T v Mount Isa Mines Ltd (1991) 91 ATC 4154, 21 ATR 1294; Bonner v Basset Mines Ltd (1912) 6 TC 146; Coltness Iron Co v Black (1881) 1 TC 287; Addie & Sons v Solicitor of Inland Revenue (1875) 1 TC 1

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