IT 2078 - Division 10AAA - deduction for expenditure on public roads and railways

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TAXATION RULING NO. IT 2078

DIVISION 10AAA - DEDUCTION FOR EXPENDITURE ON PUBLIC ROADS & RAILWAYS

F.O.I. EMBARGO: May be released

REF H.O. REF: J43/86 P2 F 1-19 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED: 02.02.84

F.O.I. INDEX DETAIL REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1078557	ALLOWABLE CAPITAL EXPENDITURE	122A
	TRANSPORT OF CERTAIN MINERALS	123A
	EXPENDITURE ON CONSTRUCTION UPGRADING AND MAINTENANCE OF ROADS AND RAILWAYS.	

FACTS It is not uncommon for companies engaged in mining operations to be required by relevant Government authorities to contribute to the costs of constructing, upgrading, maintaining etc public roads and railways in the vicinity of the mining site and which may service the mining operations.

RULING 2. In appropriate circumstances it is accepted that the cost of constructing or upgrading a public road or railway which provides access to the site of mining operations, or making a contribution to another person in respect of costs so incurred, may qualify for inclusion in allowable capital expenditure for the purposes of Divisions 10 and 10AA of the Income Tax Assessment Act. Where the public road or railway is used primarily and principally for the transport of the product of the mining operations away from the mine site, the cost of construction or upgrading the public road or railway would be eligible for deduction under Division 10AAA of the Income Tax Assessment Act.

3. Two cases which have come to the attention of this Office illustrate the different income tax consequences that may attach to expenditure on the costs of constructing etc public roads and railways depending upon the particular circumstances.

4. In the first case the company was required, as part of the terms of being granted a mining lease over a particular area for the purpose of commencing mining operations in that area, to make a contribution to the relevant Government authority for the upgrading of the existing regional road system in the general area of the proposed mining site. The regional road system did not solely provide access to the mining site nor was it to be used primarily and principally for the transport of the product of the mining operations away from the mine site. The

contribution towards the cost of upgrading the regional road system was in recognition of the damage that would be caused to the system by the increase in traffic arising out of the conduct of the mining operations.

5. It was decided in this Office that the contribution did not qualify for deduction under either Division 10 or Division 10AAA or under any provision in the Income Tax Assessment Act. The character of the contribution was considered to be a payment necessary to establish the mining operations, similar to the payments to holders of land intended for mining operations which were the subject of consideration in Utah Development v F.C. of T. 75 ATC 4103: 5 ATR 334. In that case the Court held that the payments did not constitute expenditure in carrying on prescribed mining operations within the meaning of sub-paragraph 122A(1)(a) of the Income Tax Assessment Act - they were merely preparatory to, or a prerequisite of, the carrying on of such operations.

6. In the second case a company incurred expenditure on the reconstruction of a minor public road which was used primarily and principally by the company's trucks to transport coal from the mine to the nearest main road and thence to the shipping centre. It was accepted that the expenditure which was admittedly of a capital nature, qualified for deduction in terms of Division 10AAA.

7. The circumstances of the latter case provide a timely opportunity to re-iterate the scope of Division 10AAA. The operative provision is section 123A and it provides that capital expenditure on the specified transport facilities will be eligible for the special deduction provided by the Division where the following conditions are met:-

(a) the expenditure has been incurred on or after 1 July 1961;

(b) the expenditure has been incurred on, or by way of contribution to capital expenditure by another person on, the specified transport facilities;

(c) the specified transport facilities have been constructed or acquired for use primarily and principally for the transport of minerals obtained from carrying on by any person of prescribed mining operations or processed materials produced from such minerals other than transport wholly within the site of prescribed mining operations;

(d) the specified transport facilities are to be used in carrying on a business for the purpose of gaining assessable income.

8. The section does not require that the expenditure on transport facilities be incurred by the mine owner who is producing the minerals or products of the minerals transported. It extends to a situation where another person may, for example,

incur expenditure on the construction of a railway and use the railway in a business for the purpose of producing assessable income by charging others for the use of railway. Provided the railway is used by the others primarily and principally for the purposes required by the section, the expenditure would qualify for deduction under Division 10AAA.

9. It is the use of the specified transport facilities for the required purposes in a business for the purposes of producing assessable income which is fundamental to the operation of section 123A. In many instances the specified transport facilities are owned and operated by Government authorities. The fact that a Government authority may not use a transport facility to produce assessable income, i.e. because it is exempt from tax, does not prevent a person who, either directly or by way of contribution to expenditure of a Government authority, incurs capital expenditure on the construction of a specified transport facility which is to be owned and operated by a Government authority, from obtaining the benefit of Division 10AAA. Provided the transport facility is of the type specified, is used for the required purposes by the person incurring the expenditure in business for the purpose of gaining or producing assessable income, section 123A will apply.

COMMISSIONER OF TAXATION
12 April 1984<