

IT 2387 - INCOME TAX : LOSSES INCURRED IN DERIVING EXEMPT INCOME

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TAXATION RULING NO. IT 2387

INCOME TAX : LOSSES INCURRED IN DERIVING EXEMPT INCOME

F.O.I. EMBARGO: May be released

REF

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210634	EXEMPT LOSSES	23(o)
	GOLD MINING OPERATIONS	77
		Div. 10

PREAMBLE

Section 77 of the Income Tax Assessment Act authorises an income tax deduction in a year of income for a loss incurred in carrying on an exempt business. An exempt business is one whose income is exempt from income tax. A gold mining business, the income of which is exempt from tax under paragraph 23(o), is an exempt business for the purposes of section 77.

2. In determining the extent of a loss incurred by an exempt business sub-section 77(2) requires that "no deduction may be made which would not have been an allowable deduction if the income (if any) had been assessable income".

3. An inquiry was recently directed to this Office in relation to the deductions allowable to a gold mining company in terms of section 77. Advice was sought whether the deductions allowable are limited to amounts which fall under the general deduction provisions of the Act, e.g. section 51, or do they also include the special income tax deductions which are allowable under Divisions 10 and 10AAA in respect of capital expenditure incurred by general mining companies.

RULING

4. For the purposes of determining the loss incurred by an exempt business section 77 requires an assumption to be made. The assumption is that the exempt income is to be regarded as assessable income. From the assumed assessable income there are to be deducted all the income tax deductions appropriate to the activities by which the assessable income is produced. It follows, therefore, in calculating a loss incurred by a gold mining business for the purposes of section 77, income tax deductions provided in Divisions 10 and 10AAA are to be taken into account.

5. Although the deduction allowable under section 77 ceased to be available after the year of income ended 30 June 1983 the section still has a sphere of operation up to and including the year ended 30 June 1986. The section requires that, where, in a year of income, a taxpayer derives a profit from an exempt business and the year of income is within three years of an income tax deduction being allowed for a loss

incurred in the exempt business, the profit is to be included in the assessable income for the year of income. The profit of an exempt business should be calculated in the same manner as a loss of an exempt business is calculated, i.e. by subtracting from the assumed assessable income the income tax deductions appropriate to the income producing activity.

COMMISSIONER OF TAXATION
26 March 1987