


IT 305 - Division 10 : appropriations by mining companies.

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TAXATION RULING NO. IT 305

DIVISION 10 : APPROPRIATIONS BY MINING COMPANIES.

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APPROPRIATIONS BY
MINING COMPANIES

DIVISION 10
122G

PREAMBLE

This ruling issued to Branch Offices to alleviate uncertainty as to what formal steps a company must take in order to make an appropriation of income, within the meaning of Division 10, for future capital expenditure.

2. The provision that governs this matter is at present in section 122G but the issue seems to be precisely the same as that which arose under the various provisions that were in force during the preceding 50 years.

3. A taxpayer engaged in mining is entitled to a deduction for so much of his income as is 'appropriated' for future capital expenditure in the next succeeding year of income. The law expressly authorises the Commissioner to limit the deduction to amounts that it is likely to spend in this way and any amount unspent is (in effect) added back. As a starting point, this office need only be concerned with bona fide cases. Secondly, it can be assumed that it will never be in a company's interest to claim more than the amount needed to reduce its taxable income to zero. If it plans to spend more than this amount, it will be better off to claim the expenditure in the year in which it is actually incurred.

4. It has been suggested that more than this is required and insistence made for an additional requirement that an appropriation, to be effective, must be made out of the company's net profit, with the result that a company which has a net profit (ascertained according to general accountancy principles) which is less than the taxable income ascertained under the Assessment Act, the deduction that may be claimed for appropriations cannot exceed the net profit. The argument goes further and suggests that, if the company has allocated its profits for some other purpose, it cannot appropriate them for capital expenditure.

RULING

5. Profit is a notional concept - the result of a calculation which determines the net result of a year's operations and, in the case of a company, the amount which may lawfully be returned to the shareholders by way of dividends. A company does not make its capital expenditure out of profits but simply out of its assets.

6. It is quite clear from the history of the mining provisions that the legislature has always been talking of appropriations out of gross income, not appropriations of profits. It has been a departmental practice to concede that, if an appropriation of profits is made as a reserve against the future capital expenditure, this is sufficient evidence that assessable income has been appropriated. This administrative rule cannot be turned around to say that, if there is no such appropriation of profits, the taxpayer cannot claim the deduction. In such cases this office can only look to see whether the statute has been complied with.

7. It is entrenched departmental policy that there is no requirement for the physical tracing of moneys set aside for capital expenditure - the company's income, as it is received, usually loses its identity when it goes into a bank account which is likely to be in overdraft.

8. The concept of 'appropriation' as a purely notional allocation of amounts for particular purposes is well recognised in law (particularly in the rules relating to the appropriation of payments by a debtor who owes more than one amount).

9. Accordingly, it has been decided to accept that there is a valid appropriation of gross income for the purposes of Division 10 when a company makes an unequivocal formal declaration in terms of the statute - for example, in a director's resolution recorded in the minutes - that some specified amount of the income of the year is thereby appropriated for capital expenditure of the prescribed kind during the next succeeding year of income. It will still remain to be determined administratively whether we believe the companies will spend the moneys.

COMMISSIONER OF TAXATION