


STD 95/10 - Machinery for use in the excavation or movement of earth, rock or natural deposits in the soil.

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Sales Tax Determination

Title: **Machinery for use in the excavation or movement of earth, rock or natural deposits in the soil.**

Background

The sales tax law provides an exemption for machinery used by contractors mainly in carrying out *earth-moving* contracts for local councils and certain government departments or authorities, whose own use of the machinery would be exempt.

The Australian Taxation Office (ATO) has received a number of requests from contractors regarding the types of machinery that may qualify for exemption. Many of these requests involve the view that all road making activities are *earth-moving*.

This determination sets out the ATO view on the activities that amount to *earth-moving* and gives examples of machinery that may qualify for exemption.

Issue

What activities involve *earth-moving* for the purposes of *item 37 of Schedule 1 to the Sales Tax (Exemptions and Classifications) Act 1992*?

Decision

The following activities involve the excavation or movement of earth, rock and natural deposits in the soil and are therefore *earth-moving*:

- excavation and digging
- grading and scraping
- spreading or compacting of earth
- consolidating earth
- spreading or compacting of blue metal and gravel
- compacting stone base of roads laid over earth base
- earth drilling

Machinery used mainly in these activities under a contract to a government or local council body will qualify for exemption under *item 37*.

Exemption will not apply to:

- road vehicles used to transport or deliver earth or rock;
- machinery used to move manufactured materials such as bitumen, asphalt or similar mixes; and
- machinery which displaces or moves earth incidentally to the principal function of the machine.

This determination extends the basis for exemption previously adopted in *Sales Tax Ruling ST 2321*. As a result, road rollers used to compact the stone base of roads laid over an earth base and chipperspreaders may now qualify for exemption. It affirms the view that the material being moved or spread does not have to be naturally occurring at the site of the works.

Accordingly, *Sales Tax Ruling ST 2321* along with all private rulings that are inconsistent with this determination are withdrawn.

Date of effect

This determination is effective immediately. It applies to the sales tax legislation that came into effect on 1 January 1993 and similar provisions under the previous sales tax legislation.

Reasons

There is no general exemption for *earth-moving* machinery used for business or industrial purposes.

However, *item 37 of Schedule 1 to the Sales Tax (Exemptions and Classifications) Act 1992* exempts:

We have based our decision on the following legislative provisions:

Items 37, 64, 126 and 127 of Schedule 1 to the Sales Tax (Exemptions and Classifications) Act 1992

(1) Machinery, implements or apparatus (other than general-purpose road vehicles or parts for those vehicles) for use by a person mainly in earth-moving in the course of carrying out contracts for a body whose own use of the machinery or equipment would be covered by item 64, 126 or 127.

(2) In this Item, 'earth-moving' means the excavation or movement of earth, rock or natural deposits in the soil.

A critical requirement is that machinery must be used mainly in *earth-moving* which is the excavation or movement of earth, rock and natural deposits in the soil.

Earth-moving would include earth drilling, general digging, grading and scraping of the ground, building dams, tunnels, trenches and other works associated with the construction of roads. There is no requirement that the material being moved or spread is naturally occurring at the site of the works. Therefore, the spreading or movement, during the construction of roads, of blue metal and gravel that has been brought onto site from another geographical location would qualify as *earth-moving*. Similarly, a chippers which spreads an even layer of blue metal and gravel brought onto site, would qualify for exemption.

Examples of the types of machinery which may qualify for exemption are earth drillers, backhoes, chippers, excavators, face shovels, front end loaders, rammers used for consolidating earth, road graders, road rollers for use in compacting earth and stone base, scoops, scrapers and sheepsfoot rollers.

The exemption does not extend to all situations where there may be some movement or displacement of earth incidental to the principal function of the machinery. For example, the displacement of earth as a pile is driven into the ground by a pile driver is incidental to the operation of the machinery. The pile driving machinery is not used mainly for *earth-moving* and would not be exempt under *item 37* even if it was used in a government or local council contract.

Similarly, machinery used to move manufactured materials would not involve *earth-moving* as there is no movement of earth, rock or natural deposits in the soil. This would include bitumen spraying machinery, hot mix spreading units, road rollers used to compact hot mix and other asphalt and similar mixes, machinery used to lay concrete roads and water spraying machinery.

Road vehicles used to transport or deliver earth or rock are specifically excluded from exemption by the subitem and exemption does not apply to machinery used mainly on private excavation work, such as building private roads or the digging of foundations for private buildings.

Communication of the Decision

This determination has been made available for publication by the sales tax publishing houses and will be mailed directly to sellers of road construction machinery who are registered with the ATO.

Commissioner of Taxation

11 October 1995

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Related Determinations:

Related Rulings: *ST 2173; ST 2211; ST 2299; ST 2321 (Taxation Ruling ST 2321 is now withdrawn.)
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Subject Ref: *Machinery for use in the excavation or movement of earth, rock or natural deposits in the soil.*

Legislative Ref: *Items 37, 64, 126 and 127 of Schedule 1 to the Sales Tax (Exemptions and Classifications) Act 1992*

Case Ref:
