TD 93/52 - Income tax: Subdivision 330-H Transport Capital Expenditure: use of road primarily and principally for transport of minerals. Does this refer to the use by all and sundry of the road in question or solely to use by the taxpayer?

This cover sheet is provided for information only. It does not form part of *TD 93/52 - Income tax: Subdivision 330-H Transport Capital Expenditure: use of road primarily and principally for transport of minerals. Does this refer to the use by all and sundry of the road in question or solely to use by the taxpayer?*

This document has changed over time. This is a consolidated version of the ruling which was published on *2 July 1997*

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

Taxation Determination

Income tax: Subdivision 330-H Transport Capital Expenditure: use of road primarily and principally for transport of minerals. Does this refer to the use by all and sundry of the road in question or solely to use by the taxpayer?

1. Subdivision 330-H should be considered in terms of overall use by all users during the year of income. The test does not involve the taxpayer's purpose for the road expenditure.

2. In accordance with sections 330-370 and 330-385, it is a requirement that the road is for use primarily and principally for the transport of minerals obtained from the carrying on by any person of eligible mining operations or of processed materials produced from such minerals.

3. Those minerals should be transported in the carrying on of a business for the purpose of gaining or producing assessable income.

4. If the road is not used primarily and principally for the transport of minerals as referred to in sections 330-370 and 330-385 in a particular year, as a result of termination of use for that purpose, then no deduction in terms of section 330-395 would be allowable. The application of sections 330-480 and 330-485 would then be appropriate.

5. Deductions could be recommenced in a subsequent year in terms of section 330-405 where the use primarily and principally as referred to in sections 330-370 and 330-385 has been restored.

6. We consider that 'terminated' involves more than a temporary cessation. Section 330-400 is not intended to apply when only a temporary failure to satisfy sections 330-370 and 330-385 has occurred.

Example

At the direction of the relevant Government authorities, a mining company has been required to outlay $1 million specifically for the purpose of upgrading an existing road to accomodate heavy trucks necessary for the transport of minerals from its eligible mining operations. Should the road not be used primarily and principally for mineral transport in view of the extent of other use by both the mining company and other users, the conditions of sections 330-370 and 330-385 would not be satisfied. TD 93/53 explains how to determine the extent of road use for mineral transport.

NOTE: Provisions of the *Income Tax Assessment Act 1997* ('the new Act'), to which this Determination refers, express the same ideas as provisions of the *Income Tax Assessment Act 1936* ('the old Act'). The following table cross references the provisions of the new Act to the corresponding provisions of the old Act.

New Act	Old Act
Subdivision 330-H	Division 10AAA
Sections 330-370 and 330-385	Section 123A
Sections 330-370 and 330-485	Subsection 123A(1)
Section 330-395	Section 123B
Section 330-400	Subsection 123B(2)
Sections 330-480 and 330-485	Subsection 123C(2)
Section 330-405	Subsection 123C(6)

Commissioner of Taxation
25/3/93

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