

TR 2017/1 - Addendum - Income tax: deductions for mining and petroleum exploration expenditure

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Addendum

Taxation Ruling

Income tax: deductions for mining and petroleum exploration expenditure

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2017/1 to clarify the Commissioner's view on the ordinary meaning of 'exploration or prospecting' in the context of Division 40 of the *Income Tax Assessment Act 1997*.

TR 2017/1 is amended as follows:

1. Preamble

Omit the preamble; substitute:

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

2. Paragraph 1

Omit footnote 1.

3. Paragraph 2

(a) After 'within its ordinary meaning', insert 'in the context of subsection 40-730(4) of the ITAA 1997'.

(b) Omit 'subsection 40-730(4)'; substitute 'paragraphs 40-730(4)(a) to (d) of the ITAA 1997'.

4. Paragraph 3

After 'section 40-80', insert 'of the ITAA 1997'.

5. Paragraph 4

(a) Omit the wording of the paragraph; substitute:

This Ruling does not deal with what constitutes 'use' of a mining, quarrying or prospecting right, nor whether such use is 'for EorP'. However, some matters considered in this Ruling, such as the practical effect of subsection 40-730(3) of the ITAA 1997, the definition of EorP in subsection 40-730(4) of the ITAA 1997, and the scope of the exclusions in subsection 40-730(2) of the ITAA 1997 for operations in

the course of working a mining property or petroleum field, or development drilling for petroleum, will be relevant for the application of section 40-80 of the ITAA 1997.

- (b) After the paragraph, insert new paragraph 4A:

4A. All further legislative references in this Ruling are to the ITAA 1997, unless otherwise indicated.

6. Paragraph 11

Omit the wording of the paragraph; substitute:

Whether expenditure incurred before a decision to mine will satisfy the legislative requirements for an immediate deduction under section 8-1 or subsection 40-730(1) depends on the facts and circumstances and the specific legislative requirements. However, it is emphasised that certain expenditure incurred while the project is still being evaluated will *not* satisfy the tests for an immediate deduction under section 8-1 or subsection 40-730(1), such as:

- the cost of long-lead assets, and
- the cost of early development activities such as detailed executable engineering and design work commissioned for the purpose of planning the proposed development from which project assets can be designed or constructed – that is, design work going beyond the level of detail required to evaluate the economic feasibility of the project.

7. Paragraph 13

Omit ‘income earning’; substitute ‘income-earning’.

8. Paragraph 14

- (a) Omit ‘income earning’; substitute ‘income-earning’.

- (b) Omit the wording of footnote 5; substitute:

See, for example, *Esso Australia Resources Ltd (formerly Esso Exploration & Production Australia Inc) v The Commissioner of Taxation of the Commonwealth of Australia* [1998] FCA 851 (*Esso Australia Resources*).

9. Paragraph 16

Omit the wording of footnote 6; substitute:

Sun Newspapers Limited v Federal Commissioner of Taxation [1938] HCA 73; 61 CLR 337 at [359], per Dixon J.

10. Paragraph 17

Omit the wording of footnote 7; substitute:

British Insulated and Helsby Cables Ltd v Atherton [1926] AC 205 at [213–214].

11. Paragraph 18

Omit the wording of footnote 8; substitute:

Commissioner of Taxation v Ampol Exploration Ltd [1986] FCA 554 (*Ampol Exploration*); 13 FCR 545 at [562], per Lockhart J.

12. Paragraph 21

(a) Omit the wording of the first dot point; substitute:

- the character of the advantage sought¹⁰ (its lasting qualities may also be relevant here¹¹)

(b) Omit the wording of footnote 9; substitute:

Sun Newspapers Limited v Federal Commissioner of Taxation [1938] HCA 73; 61 CLR 337 at [363], per Dixon J.

(c) Omit the wording of footnote 10; substitute:

GP International Pipecoaters Pty Ltd v Federal Commissioner of Taxation [1990] HCA 25; 170 CLR 124.

(d) In footnote 11, omit 'v. *Atherton* [1926] AC 205'; substitute 'v *Atherton* [1926] AC 205.'.

13. Paragraph 24

(a) After 'for example', insert a comma.

(b) Omit the wording of footnote 12; substitute:

Goodman Fielder Wattie Ltd v Commissioner of Taxation [1991] FCA 264 (*Goodman Fielder Wattie*); 29 FCR 376 at [390], per Hill J.

14. Paragraph 26

(a) Omit the wording of the heading; substitute '**Section 8-1 – apportionment**'.

(b) Omit the wording of footnote 13; substitute:

See *Ronpibon Tin NL and Tongkah Compound NL v Federal Commissioner of Taxation* [1949] HCA 15 (*Ronpibon Tin*).

(c) Omit the wording of footnote 14; substitute:

See *Goodman Fielder Wattie* 29 FCR 376 at [394–395], per Hill J.

15. Paragraph 30

In footnote 16, after 'For example', insert a comma.

16. Paragraph 32

After 'for example', insert a comma.

17. Paragraph 35

Omit ‘. That’; substitute ‘having regard to the context and history of the subsection. In the context of subsection 40-730(4), that’.

18. Paragraph 37

- (a) After ‘ordinary meaning’, insert ‘in the context of subsection 40-730(4)’.
- (b) After ‘legislative description’, insert a comma.
- (c) Omit ‘those words.’; substitute ‘those words, in the context of subsection 40-730(4).’.

19. Paragraph 38

After ‘ordinary meaning’, insert ‘in the context of subsection 40-730(4)’.

20. Paragraph 42

Omit the wording of footnote 19; substitute:

Federal Commissioner of Taxation v Broken Hill Pty Co Ltd [1968] HCA 16 (*Broken Hill*); 120 CLR 240 at [245–246], per Kitto J.

21. Paragraph 43

Omit the wording of footnote 20; substitute:

Broken Hill 120 CLR 240 at [245–246], per Kitto J.

22. Paragraph 44

Omit the wording of footnote 21; substitute:

Broken Hill 120 CLR 240 at [271], per Barwick CJ, McTiernan and Menzies JJ.

23. Paragraph 46

- (a) Omit ‘license’; substitute ‘licence’.
- (b) Omit the wording of footnote 22; substitute:
Mitsui & Co (Australia) Ltd v Commissioner of Taxation [2012] FCAFC 109; 205 FCR 523 at [526].

24. Paragraph 50

Omit ‘or is, or is part of,’; substitute ‘in the context of subsection 40-730(4), or is (or is part of)’.

25. Paragraph 51

- (a) After 'a conclusion.²³', insert 'The factors include:'.
- (b) Omit the dot points; substitute:
- details relating to the mining property, such as
 - whether there is a commitment by the miner to extend or expand the mine
 - the nature of the mine, and operations being conducted on the property
 - whether the mine and the operations connected with that mine extend across a number of mining tenements
 - the history of the property, including whether extensions or expansions of an existing mine have been considered, or are planned to be considered
 - how the existing mine is defined in documentation, such as the mine plan and mine development plan
 - whether mine plans recognise or contemplate an extension or expansion
 - what other strategies exist for possible further extension or expansion of the property
 - what tenements and rights are involved, including any applications for tenements and rights, and whether the details available in relation to the tenements and rights support the view that an actual extension of an existing mine is occurring, or that there is merely the possibility of an extension subject to finding minerals and satisfactory economic feasibility of mining
 - the state of knowledge about the mineralisation and economic feasibility of mining in relation to the mining property
 - the nature of the activity being considered and its degree of connection with the existing mining property, including
 - the objective purpose and effect of the activity, and whether the activity is directed to exploration for minerals or development of a mining property
 - the relationship of the activity to the knowledge of the area and assessments of the potential for mining in the area
 - what the activity is expected to add to the existing knowledge of the area
 - whether it is known that a resource exists, but insufficient information is held to allow a determination of whether mining should or could occur (whether as a separate operation, or with an existing mine)

- whether the activity relates to the obtaining of access or better access to known areas of mineralisation on or around the existing mine
- whether the activity informs how existing activities will continue, or expand
- whether the activity relates to how an extension would proceed as opposed to consideration of whether it should or could proceed
- whether the activities relate to any prior, existing or contemplated plans for an extension or expansion
- what the strength of the connection is between the activity and an actual extension that is happening
- the proximity of the activity to the existing mine or mining property
- whether the activity transcends both the existing mine site and the area of possible extension, or whether it is a discrete activity in relation to that area
- whether the activity relates to a different ore body or seam from the one currently being mined
- expenditure commitments in relation to the activity – whether they assist in determining the nature of the activity (that is, whether they suggest genuine exploration or feasibility studies rather than development)
- public statements made to the market or shareholders about the activity, and statements made to regulators in relation to the activity (the context of such statements needs to be fully understood to determine the weight that can be given to the statements – for example, if it is not known whether particular considerations may result in an extension to an existing mine or the development of a separate mine, a statement that there may be an extension should not carry much weight)
- where the activity relates to the economic feasibility of mining, the fact that facilities and services associated with an existing mine (for example, for extraction or processing) may be utilised in some way in the proposal being assessed, does not mean that the proposal is necessarily an operation in the course of working the mining property.

26. Paragraph 53

- (a) After 'recover petroleum)', insert a comma.
- (b) Omit 'or is, or is part of,'; substitute 'in the context of subsection 40-730(4), or is (or is part of)'.

27. Paragraph 54

Omit 'MPQI'; substitute 'MQPI'.

28. Paragraph 56

Omit 'income earning'; substitute 'income-earning'.

29. Paragraph 57

Omit 'build upon Example 1'; substitute 'of this Ruling build upon Example 1 of this Ruling'.

30. Paragraph 58

Omit the dot points; substitute:

- *undertake geological and geophysical surveys*
- *develop geological models and interpret geological data*
- *negotiate contracts with third-party suppliers that will facilitate the exploration activities (for example, supply of drill rigs, support vessels, port or supply leases)*
- *drill three exploration wells (two of which are unsuccessful).*

31. Paragraph 59

- (a) Omit '#'; substitute 'number'.
- (b) Omit 'CO₂', insert 'carbon dioxide'.

32. Paragraph 61

- (a) After 'exploration', insert 'in the context of subsection 40-730(4)'.
- (b) In footnote 24, after the second instance of 'for example', insert a comma.

33. Paragraph 62

After 'Example 1', insert 'of this Ruling'.

34. Paragraph 65

Omit '10MTPA LNG plant'; substitute 'LNG production plant, with a production capacity of 10 million tonnes per annum,'.

35. Paragraph 67

Omit 'Example 1 and 2'; substitute 'Examples 1 and 2 of this Ruling'.

36. Paragraph 68

Omit 'Basis of Design'; substitute 'basis of design'.

37. Paragraph 69

Omit '*Front End Engineering and Design*'; substitute '*front end engineering and design*'.

38. Paragraph 73

After '*Examples 1 to 3*', insert '*of this Ruling*'.

39. Paragraph 79

After '*Examples 1 to 4*', insert '*of this Ruling*'.

40. Paragraph 80

Omit '+/-'; substitute ', *plus or minus*'.

41. Paragraph 84

After '*Examples 1 to 5*', insert '*of this Ruling*'.

42. Paragraph 88

After '*Examples 1 to 6*', insert '*of this Ruling*'.

43. Paragraph 92

After '*Examples 1 to 7*', insert '*of this Ruling*'.

44. Paragraph 97

- (a) After the first instance of '*Mining Co*', omit the full stop.
- (b) Omit '*the Board*'; substitute ', *the board*'.

45. Paragraph 107

After '*exploration*', insert '*in the context of subsection 40-730(4)*'.

46. Paragraph 108

After '*ordinary sense*', insert '*in the context of subsection 40-730(4)*'.

47. Paragraph 109

- (a) After '*company*', insert a comma.
- (b) After '*prior drilling*', insert a comma.

48. Paragraph 110

After '*deductible under subsection 40-730(1)*', insert a comma.

49. Paragraph 115

After '*exploration*', insert '*in the context of subsection 40-730(4)*'.

50. Paragraph 117, 122, 126 and 129

After '*Example 15*', insert '*of this Ruling*'.

51. Paragraph 119

(a) After '*work*', insert a comma.

(b) Omit '*geological surveys are*'; substitute '*geological surveys, is*'.

52. Paragraph 123

After '*12 months*', insert a comma.

53. Paragraph 140

After '*coal seam gas*', insert a comma.

54. Paragraph 142

After '*work*', insert a comma.

55. Paragraph 144

Omit the wording of the paragraph; substitute:

This Ruling applies to years of income commencing both before and after its date of issue, subject to the commencement and application provisions of each amending Act or Regulation to which it refers.

56. Paragraph 147

(a) Omit the wording of the paragraph; substitute:

In *Commissioner of Taxation v Bargwanna*²⁵, Edmonds J explained that concessions such as those given to the mining industry, such as that for EorP, are to be given a liberal, rather than a narrow, construction and application²⁶:

28. It can be accepted that where Parliament has enacted legislation to encourage a particular activity, for example, legislation which gives particular concessions to the mining or petroleum industries, the legislation must be construed so as to promote Parliament's purpose and not so as to detract from that purpose: *Totalizator Agency Board v. Commissioner of Taxation* (1996) 69 FCR 311 at 323A per Hill J, with whom Tamberlin J and Sundberg J agreed. Thus an exemption which exists for the purpose of encouraging, rewarding or protecting

some class of activity is to be given a liberal rather than a narrow construction and application: see *Commissioner of Taxation v. Reynolds Australia Alumina Ltd* (1987) 18 FCR 29 at 35 per Beaumont J and at 46 – 47 per Burchett J; *Diethelm Manufacturing Pty Ltd v. Commissioner of Taxation* (1993) 44 FCR 450 at 457 per French J.

- (b) Omit the wording of footnote 25; substitute:
[2009] FCA 620.
- (c) Omit the wording of footnote 26; substitute:
[2009] FCA 620 at [28], per Edmonds J.

57. Paragraph 149

- (a) Omit 'in 1947, section 123AA of the *Income Tax Assessment Act 1936* (ITAA 1936)'; substitute 'into the *Income Tax Assessment Act 1936* in 1947, former section 123AA (section 123AA)'.
- (b) Omit the second instance of 'ITAA 1936'; substitute '*Income Tax Assessment Act 1936* (ITAA 1936)',.
- (c) Omit '4 year'; substitute '4-year'.

58. Paragraph 153

- (a) Omit 'as defined'; substitute ', as defined,'.
- (b) After 'for example', insert a comma.

59. Paragraph 158

After 'for example', insert a comma.

60. Paragraph 161

- (a) Omit '*Mines Ltd v. Federal*'; substitute '*Mines Ltd v Federal*'.
- (b) Omit the wording of footnote 28; substitute:
[1954] HCA 53; 92 CLR 483.
- (c) After 'observed', insert new footnote 28A:
^{28A.} 92 CLR 483 at [490].
- (d) Omit ' of 'development''; substitute ' of "development" ...'.
- (e) Omit footnote 29.

61. Paragraph 164

After 'For example', insert a comma.

62. Paragraph 165

Omit the wording of the quote; substitute:

- (1) You can **deduct** from your assessable income any loss or outgoing to the extent that:

- (a) it is incurred in gaining or producing your assessable income; or
- (b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.

Note: Division 35 prevents losses from non-commercial business activities that may contribute to a tax loss being offset against other assessable income.

- (2) However, you cannot deduct a loss or outgoing under this section to the extent that:
- (a) it is a loss or outgoing of capital, or of a capital nature ...

63. Paragraph 168

- (a) Omit '*Federal*'.
- (b) Omit the wording of footnote 30; substitute:
[1990] FCA 496.

64. Paragraph 169

- (a) After '*Paper Ltd v*', omit the full stop.
- (b) In footnote 31, omit '(1976)'.
- (c) In footnote 32, after 'NZSC 91' insert a full stop.

65. Paragraph 171

- (a) Omit the wording of footnote 33; substitute:
Ronpibon Tin 78 CLR 47 at [56].
- (b) Omit the wording of footnote 34; substitute:
Ampol Exploration 13 FCR 545 at [558], per Lockhart J.

66. Paragraph 172

- (a) Omit the wording of footnote 35; substitute:
Ampol Exploration 13 FCR 545 at [558], per Lockhart J.
- (b) Omit the wording of footnote 36; substitute:
Ronpibon Tin 78 CLR 47 at [56].
- (c) Omit '*Magna Alloys and Research Pty Ltd v. Federal Commissioner of Taxation*'; substitute '*Magna Alloys & Research Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia*^{37A}'.
- (d) Omit the wording of footnote 37; substitute:
[1980] FCA 180.
- (e) After 'the requirement as', insert new footnote 37A:
^{37A} 80 ATC 4542 at [4559].

- (f) In the quote, omit 'sec.'; substitute '[section]'.
- (g) Omit footnote 38.

67. Paragraph 173

Omit 'income earning'; substitute 'income-earning'.

68. Paragraph 178

Omit the wording of footnote 39; substitute:

Ampol Exploration 13 FCR 545 at [559], per Lockhart J.

69. Paragraph 179

Omit the wording of footnote 40; substitute:

Ampol Exploration 13 FCR 545 at [559], per Lockhart J.

70. Paragraph 180

Omit the wording of footnote 41; substitute:

Ampol Exploration 13 FCR 545 at [578].

71. Paragraph 181

- (a) After 'Lockhart J said', insert new footnote 41A:

^{41A} *Ampol Exploration* 13 FCR 545 at [560–561].

- (b) Omit the wording of the quote; substitute:

... The characterisation of the expenditure, and, therefore, of the outgoing which it represents, is to be discerned from the business activities of the taxpayer generally and its role as the prospecting arm of the Ampol group in the Chinese project in particular. The understanding between the Boards of Ampol and the taxpayer, ... that a benefit, in the form at least of some payment to the taxpayer in the nature of reward or profit, would accrue to it, requires that the question of deductibility should be approached in a practical fashion. The whole of the relevant expenditure was incurred in the course of the carrying on of the taxpayer's business of petroleum exploration.

- (c) Omit footnote 42.

72. Paragraph 182

Omit the wording of footnote 43; substitute:

Esso Australia Resources 84 FCR 541 at [551].

73. Paragraph 183

- (a) Omit the wording of footnote 44; substitute:

See *Esso Australia Resources Ltd (formerly ESSO Exploration and Production Australia Incorporated) v Commissioner of Taxation of the Commonwealth of Australia* [1997] FCA 353.

- (b) Omit the wording of footnote 45; substitute:

Esso Australia Resources 84 FCR 541 at [551].

74. Paragraph 184

Omit the wording of footnote 46; substitute:

See *Softwood Pulp* 76 ATC 4439 at [4451]; *Goodman Fielder Wattie* 91 ATC 4438 at [4448]; *Esso Australia Resources* 98 ATC 4768 at [4781–4782], and *Case 62/94* 94 ATC 520; *AAT Case 9871* 29 ATR 1208.

75. Paragraph 185

Omit the wording of footnote 47; substitute:

See *Griffin Coal* 90 ATC 4870 at [4887–4888].

76. Paragraph 186

- (a) Omit ‘income earning’; substitute ‘income-earning’.

- (b) Omit the wording of footnote 48; substitute:

Esso Australia Resources 84 FCR 541 at [558].

77. Paragraph 187

Omit the wording of footnote 49; substitute:

See, for example, *Esso Australia Resources* 98 ATC 4768 at [4782], *Softwood Pulp* 76 ATC 4439 at [4450–4451].

78. Paragraph 190

Omit the wording of footnote 50; substitute:

13 FCR 545 at [562], per Lockhart J.

79. Paragraph 191

- (a) Omit the wording of footnote 51; substitute:

See *John Fairfax & Sons Pty Ltd v Federal Commissioner of Taxation* [1959] HCA 4; 101 CLR 30 at [49], per Menzies J.

- (b) Omit the wording of footnote 52; substitute:

See *Spassked Pty Limited v Commissioner of Taxation* [2003] FCAFC 282; 136 FCR 441 at [463–464], per Hill and Lander JJ; *Goodman Fielder Wattie* 29 FCR 376 at [390], per Hill J,

citing Dixon J in *Hallstroms Pty Ltd v Federal Commissioner of Taxation*. See also *Ronpibon Tin* 78 CLR 47 at [57] which underscores this proposition:

... it is both sufficient and necessary that the occasion of the loss or outgoing should be found in whatever is productive of the assessable income or, if none be produced, would be expected to produce assessable income.

80. Paragraph 193

- (a) Omit '*Hallstroms Pty Ltd v. Commissioner of Taxation*'; substitute '*Hallstroms Pty Ltd v Federal Commissioner of Taxation*'.
- (b) Omit the wording of footnote 53; substitute:
[1946] HCA 34; 72 CLR 634.
- (c) Omit the wording of footnote 54; substitute:
Hallstroms 72 CLR 634 at [648].
- (d) After 'expenditure as follows', insert new footnote 54A:
^{54A.} *Hallstroms* 72 CLR 634 at [647].
- (e) In the quote, omit 'the contrast'; substitute '... the contrast'.
- (f) In the quote, omit 'organisation'; substitute 'organization'.
- (g) Omit footnote 55.

81. Paragraph 194

- (a) Omit the wording of footnote 56; substitute:
[1953] HCA 68; 89 CLR 428.
- (b) After '(CML) that', insert new footnote 56A:
^{56A.} *CML* 89 CLR 428 at [454].
- (c) In the quote, after 'Is what', insert 'it'.
- (d) Omit footnote 57.

82. Paragraph 196

- (a) Omit the wording of footnote 59; substitute:
Ampol Exploration 13 FCR 545 at [561].
- (b) Omit the wording of footnote 61; substitute:
Ampol Exploration 13 FCR 545 at [577].

83. Paragraph 197

- (a) After 'exploration and prospecting', insert (emphasis added)^{61A}.
- (b) After 'exploration and prospecting (emphasis added)', insert new footnote 61A:
^{61A} *Ampol Exploration* 13 FCR 545 at [560].

- (c) In the quote, omit 'Exploration or prospecting activities (e.g. geological, geophysical or geochemical surveys and appraisal digging) are the kind of activities in which a prospecting company engages if petroleum is to be found.'; substitute:
... Exploration or prospecting activities (for example, geological, geophysical or geochemical surveys and appraisal digging) are the kinds of activities in which a prospecting company engages if petroleum is to be found.
- (d) In the quote, omit '(emphasis added)'.
- (e) Omit footnote 62.

84. Paragraph 199

Omit the wording of footnote 63; substitute:

Ampol Exploration 13 FCR 545 at [568].

85. Paragraph 203

- (a) Omit the wording of footnote 64; substitute:
See Goodman Fielder Wattie 29 FCR 376 at [390].
- (b) Omit the wording of footnote 65; substitute:
See Goodman Fielder Wattie 29 FCR 376 at [390].

86. Paragraph 204

Omit 'judgements'; substitute 'judgments'.

87. Paragraph 205

Omit the wording of footnote 66; substitute:

Griffin Coal 90 ATC 4870 at [4888].

88. Paragraph 206

- (a) Omit the wording of footnote 67; substitute:
Griffin Coal 90 ATC 4870 at [4888].
- (b) Omit the wording of footnote 68; substitute:
Griffin Coal 90 ATC 4870 at [4888].
- (c) Omit the wording of footnote 69; substitute:
See Griffin Coal Mining Co Ltd v Commissioner of Taxation [1989] FCA 426 (*Griffin Coal at first Instance*); 89 ATC 4745 at [4760], per Lee J.

89. Paragraph 207

- (a) After 'expenditure was capital in nature as', insert new footnote 69A:

^{69A} *See Griffin Coal at first Instance* 89 ATC 4745 at [4760].

- (b) Omit footnote 70.

90. Paragraph 208

- (a) Omit the wording of footnote 71; substitute:
See Griffin Coal 90 ATC 4870 at [4877].
- (b) After ‘concluded it was not capital in nature as’, insert new footnote 71A:
Griffin Coal 90 ATC 4870 at [4872].
- (c) Omit footnote 72.

91. Paragraph 209

Omit the wording of footnote 73; substitute:
Griffin Coal 90 ATC 4870 at [4871].

92. Paragraph 210

Omit ‘decision making’; substitute ‘decision-making’.

93. Paragraph 212

Omit the wording of footnote 74; substitute:
Trustpower at [3] and [71].

94. Paragraph 214

Omit the wording of footnote 75; substitute:
Ampol Exploration 13 FCR 545 at [562].

95. Paragraph 220

Omit the wording of footnote 77; substitute:
Griffin Coal at first Instance 89 ATC 4745 at [4760], per Lee J.

96. Paragraph 223

- (a) Omit the wording of footnote 78; substitute:
See Softwood Pulp 76 ATC 4439 at [4453–4454], per Menhennitt J.
- (b) Omit the wording of footnote 79; substitute:
See Griffin Coal at first Instance 89 ATC 4745 at [4760], per Lee J.

97. Paragraph 224

(a) Omit the wording of footnote 80; substitute:

78 CLR 47 at [59].

(b) Omit the wording of footnote 81; substitute:

See also *Goodman Fielder Wattie* 29 FCR 376 at [394–395], per Hill J.

98. Paragraph 229

Omit the wording of footnote 83; substitute:

See, for example, *Commissioner of Taxation of the Commonwealth of Australia v Mount Isa Mines Ltd* [1991] FCA 59; *Robe River Mining Co. Pty Ltd v The Commissioner of Taxation* [1989] FCA 334; 21 FCR 1 at [12] and *QCT Resources Ltd v Commissioner of Taxation* [1997] FCA 405; 97 ATC 4432 at [4441].

99. Paragraph 231

Omit the wording of footnote 84; substitute:

See, for example, section 155A of the *Mining Act 1978* (WA).

100. Paragraph 233

Omit '*Co. v. Federal Commissioner*'; substitute '*Co v Commissioner*'.

101. Paragraph 235

Omit the wording of footnote 86; substitute:

Contrast the approach taken in *Esso Australia Resources Pty Ltd v Commissioner of Taxation* [2012] FCAFC 5. However, the statutory context of the PRRT is very different to income tax, being a 'project based tax' and at the time of the decision the relevant deductible expenditure provision required a payment liable to be made in carrying on or providing the operations facilities or other things comprising the project.

102. Paragraph 241

Omit '8 ,1'; substitute '8-1'.

103. Paragraph 244

Omit 'an R&D'; substitute 'a research and development'.

104. Paragraph 247

After 'natural meaning', insert 'having regard to the context and history of the subsection'.

105. Paragraph 248

Omit 'in over time'; substitute 'in, over time,'.

106. Paragraph 249

- (a) Omit the wording of the paragraph (including footnotes 91 to 94); substitute:

In *Commissioner of Taxation v Shell Energy Holdings Australia Limited*^{94A} (*Shell*), it was found by reference to different dictionary definitions that the ordinary meaning of 'exploration' and 'explore' could in one sense be limited to activities directed to the discovery of petroleum, while in another sense could also encompass activities conducted to evaluate the feasibility of recovering petroleum.^{94B} Given this difference, the Court did not find that the interpretation of the relevant Petroleum Acts^{94C} was greatly assisted by the ordinary dictionary meanings of those terms.^{94D} Ultimately, it was held that the meaning of 'exploration' and 'explore' in the context of the Petroleum Acts was intended to encompass activities directed to evaluating commercial viability based on a consideration of the wider regulatory framework, including the international law position, and the legislative history.^{94E} In considering this, the Court had regard to the sovereignty conferred in the Commonwealth in respect of the seabed^{94F}, and that there be a consistent regulatory prohibition covering each stage of an offshore petroleum project so that no lacuna might arise in the activities requiring authorisation under the Petroleum Acts.^{94G}

- (b) After '*Australia Limited*', insert new footnote 94A:

^{94A}. [2022] FCAFC 2.

- (c) After 'recovering petroleum.', insert new footnote 94B:

^{94B}. *Shell* at [18] and [29–31].

- (d) After 'relevant Petroleum Acts', insert new footnote 94C:

^{94C}. The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and *Petroleum (Submerged Lands) Act 1982* (WA).

- (e) After 'those terms.', insert new footnote 94D:

^{94D}. *Shell* at [31].

- (f) After 'legislative history.', insert new footnote 94E:

^{94E}. *Shell* at [5] and [34].

- (g) After 'of the seabed', insert new footnote 94F:

^{94F}. *Shell* at [33].

- (h) After 'the Petroleum Acts.', insert new footnote 94G:

^{94G}. *Shell* at [51].

- (i) After the paragraph, insert new paragraph 249A:

249A. This can be contrasted with the decision in *ZZGN and Commissioner of Taxation*^{94H} (*ZZGN*), in which it was held after extensive consideration of the legislative history, purpose and context of the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA 1987)^{94I} that the meaning of exploration was limited to the discovery and identification of the existence, extent and nature of petroleum and includes searching in order to discover the resource, as well as the process of ascertaining the size of the discovery and appraising its physical

characteristics.^{94J} This meaning was also held to be consistent with the ordinary meaning of that word found by reference to dictionary definitions.^{94K}

- (j) After ‘ZZGN and Commissioner of Taxation’, insert new footnote 94H:

^{94H} [2013] AATA 351.

- (k) After ‘(PRRTAA 1987)’, insert new footnote 94I:

^{94I} ZZGN at [251–282] and [312].

- (l) After ‘characteristics.’, insert new footnote 94J:

^{94J} ZZGN at [317] and [322]. This view of exploration is also expressed at paragraph 4 of Taxation Ruling TR 2014/9 *Petroleum resource rent tax: what does ‘involved in or in connection with exploration for petroleum’ mean?*

- (m) After ‘definitions.’, insert new footnote 94K:

^{94K} ZZGN at [312].

107. Paragraph 250

- (a) Omit ‘ordinary meaning of ‘exploration’ outlined in the above paragraph is’; substitute ‘findings of the Administrative Appeals Tribunal in ZZGN about the meaning of ‘exploration’ are’.
- (b) Omit ‘for the purposes’; substitute ‘in the context’.

108. Paragraph 251

- (a) Omit ‘The ordinary meaning also includes’; substitute ‘This ordinary meaning also includes’.
- (b) After ‘For example’, insert a comma.
- (c) After ‘within the ordinary meaning’, insert ‘in the context of subsection 40-730(4)’.
- (d) After the paragraph, insert new paragraph 251A:

251A. The history of subsection 40-730(4), in particular the inclusion of paragraph (c), supports this conclusion. It indicates that the precursor to the current paragraph was originally introduced in 1997^{94L} to align the law with the Commissioner’s long-standing administrative approach (see Taxation Ruling IT 2642 *Income tax: mining exploration and prospecting expenditure*)^{94M} of treating certain feasibility studies as exploration or prospecting.^{94N} By inserting the words that appeared in subparagraph (c) of that definition, parliament recognised that they were not part of the ordinary meaning of the words ‘exploration or prospecting’ in the context of subsection 40-730(4). If they had been, there would have been no need for their inclusion.

- (e) After ‘introduced in 1997’, insert new footnote 94L:

^{94L} As former paragraph 330-20(1)(c).

- (f) After ‘*prospecting expenditure*’, insert new footnote 94M:

^{94M} See also paragraph 49 of TR 98/23.

- (g) After ‘feasibility studies as exploration or prospecting.’, insert new footnote 94N:

^{94N} The EM to the Income Tax Assessment Bill 1996, the Income Tax (Consequential Amendments) Bill 1996 and the Income Tax (Transitional Provisions) Bill 1996 at page 115.

109. Paragraph 252

- (a) After 'meaning of exploration or prospecting', insert 'in the context of subsection 40-730(4)'.
- (b) After 'meets the legislative description', insert a comma.
- (c) After 'those words', insert 'in the context of subsection 40-730(4)'.

110. Paragraph 253

After 'exploration or prospecting', insert 'in the context of subsection 40-730(4)'.

111. Paragraph 254

- (a) After the first instance of 'ordinary meaning', insert 'in the context of subsection 40-730(4)'.
- (b) After 'of subsection 40-730(4)', insert a comma.
- (c) After the second instance of 'ordinary meaning', insert 'in the context of subsection 40-730(4)'.

112. Paragraph 256

After 'exploration', insert 'in the context of subsection 40-730(4)'.

113. Paragraph 257

- (a) After 'In ZZGN', insert a comma.
- (b) Omit the wording of footnote 96; substitute:
See ZZGN at [315].
- (c) Omit the wording of footnote 97; substitute:
See ZZGN at [322].
- (d) After 'prospecting', insert 'in the context of subsection 40-730(4)'.

114. Paragraph 258

- (a) Omit:

The history of paragraph 40-730(4)(c) supports this conclusion. It indicates that the precursor to the current paragraph was originally introduced in 1997⁹⁸ to align the law with the Commissioner's longstanding administrative approach which had never been narrow in its application (see Taxation Ruling IT 2642) of treating certain feasibility studies as exploration or prospecting.
- (b) Omit footnote 98.

115. Paragraph 261

Omit 'economic/commercial'; substitute 'economic or commercial'.

116. Paragraph 264

Omit 'subsection 40-730(4)(c)'; substitute 'paragraph 40-730(4)(c)'.

117. Paragraph 270

After 'however', insert a comma.

118. Paragraph 279

In footnote 101 omit 'for'; substitute 'to the'.

119. Paragraph 280

In footnotes 102 and 103, omit 'for'; substitute 'to the'.

120. Paragraph 281

In footnotes 104 and 105, omit 'for'; substitute 'to the'.

121. Paragraph 282

In footnote 106, omit 'for'; substitute 'to the'.

122. Paragraph 285

Omit the wording of footnote 107; substitute:

See *Broken Hill* 120 CLR 240 at [245], per Kitto J.

123. Paragraph 287

- (a) After '*Broken Hill*', insert a comma.
- (b) After 'for example', insert a comma.
- (c) Omit the wording of footnote 108; substitute:
Broken Hill 120 CLR 240 at [245–246].

124. Paragraph 288

- (a) After '*Income Tax and Social Services Contribution Assessment Act 1936-1964*', insert new footnote 109A:

^{109A} *Broken Hill* 120 CLR 240 at [271], per Barwick CJ, McTiernan and Menzies JJ.

- (b) In the quote, omit 'of 'mining' to'; substitute 'of "mining" to'.
- (c) Omit footnote 110.

125. Paragraph 289

- (a) Omit '*Parker v. Federal Commissioner of Taxation*¹¹¹'; substitute '*Parker v Federal Commissioner of Taxation*¹¹¹ (*Parker*)'.
- (b) Omit the wording of footnote 111; substitute:
[1953] HCA 80; 90 CLR 489.

126. Paragraph 290

- (a) After 'his conclusion', insert a comma.
- (b) Omit the wording of footnote 113; substitute:
Parker 90 CLR 489 at [494].
- (c) After 'also said', insert '(emphasis added)^{113A}'.
- (d) After 'also said (emphasis added)', insert new footnote 113A:
^{113A.} *Parker* 90 CLR 489 at [493].
- (e) Omit the wording of the quote; substitute:
The word "working" has, I think, a definite meaning in its application to "mining property". It describes the *working of the thing itself*—not the revolution of the machinery upon it nor the chemical treatment of residues brought upon it. We are not *dealing with a case where from the raising of the ore to the extraction by every available means of the maximum gold content a series of processes is pursued in the working of the mining property in order to win the gold from the soil*.
- (f) Omit footnote 114.

127. Paragraph 292

- (a) After 'said that', insert '(emphasis added)^{114A}'.
- (b) After 'said that (emphasis added)', insert new footnote 114A:
^{114A.} *Parker* 90 CLR 489 at [498].
- (c) Omit the wording of the quote; substitute:
... The expression "the working of a mining property... for the purposes of obtaining gold", it seems to me, denotes the exploitation of the soil for the purpose of the recovery of gold. This is not equivalent to the operation of a plant established for the treatment of tailings brought from mining properties, though of course, that operation might well constitute, in appropriate circumstances, one incident in the working of a mining property. *No doubt all processes designed for the purposes of recovering gold may be employed in the working of a mining property as I understand that expression; but it is equally true that some of these processes may be employed commercially and quite independently of the working of a mining property ...*
- (d) Omit footnote 115.

128. Paragraph 294

- (a) Omit '*Wade v. NSW Rutile Mining Co Pty Ltd*'; substitute '*Wade v New South Wales Rutile Mining Co Pty Ltd*'.
- (b) Omit the wording of footnote 116; substitute:
[1969] HCA 28.

129. Paragraph 295

- (a) After 'of 'mining operations'', insert '(emphasis added)^{117A}'.
- (b) After 'mining operations (emphasis added)', insert new footnote 117A:
^{117A} *Broken Hill* 120 CLR 240 at [244–245].
- (c) Omit the wording of the quote; substitute:
This expression is wider than "the working of a mining property". It embraces not only the extraction of mineral from the soil, but also all operations pertaining to mining Thus it comprehends more than mining in the narrow sense which imports the detaching of lumps of material from the position in which in a state of nature they form part of the soil. It extends to any work done on a mineral-bearing property in preparation for or as ancillary to the actual winning of the mineral (as distinguished from work for the purpose of ascertaining whether it is worthwhile to undertake mining at all)
- (d) Omit footnote 118.

130. Paragraph 297

After 'that is', insert a comma.

131. Paragraph 298

In the heading, omit '**operations**'; substitute '**Operations**'.

132. Paragraph 299

- (a) Omit the wording of footnote 119; substitute:
See Amalgamated Zinc (De Bavay's) Limited v Federal Commissioner of Taxation [1935] HCA 81; 54 CLR 295 at [309], per Dixon J.
- (b) Omit the wording of footnote 120; substitute:
Such as *Ronpibon Tin* 78 CLR 47 at [57].

133. Paragraph 300

After 'for example', insert a comma.

134. Paragraph 304

- (a) After '*Mount Isa Mines*', insert a comma.
- (b) Omit 'section 122 of the ITAA 1936'; substitute 'former section 122 of the *Income Tax Assessment Act 1936–1949*'.
- (c) After 'observed', insert new footnote 120A:
^{120A} *Mount Isa Mines* 92 CLR 483 at [489].
- (d) Omit footnote 121.

135. Paragraph 307

- (a) After 'illustrate the issue', insert new footnote 121A:
^{121A} *Mount Isa Mines* 92 CLR 483 at [489].
- (b) In the quote, omit 'of 'development'....'; substitute 'of "development" ... '.
- (c) Omit footnote 122.
- (d) In footnote 123, after 'exploration', insert 'in the context of subsection 40-730(4)'.

136. Paragraph 308

- (a) Omit 'mine) then it'; substitute 'mine), it'.
- (b) Omit 'sense or is, or is part of,'; substitute 'sense in the context of subsection 40-730(4), or is (or is part of)'.

137. Paragraph 310

After 'progressively (for example', insert a comma.

138. Paragraph 312

After 'paragraph 51', insert 'of this Ruling'.

139. Paragraph 314

- (a) Omit 'petroleum) then it'; substitute 'petroleum), it'.
- (b) Omit 'sense or is, or is part of,'; substitute 'sense in the context of subsection 40-730(4), or is (or is part of)'.

140. Paragraph 316

- (a) Omit 'Nature and character of advantage sought rather than whether asset obtained (or not obtained)'; substitute 'Nature or character of advantage sought rather than whether asset obtained (or not obtained)'.
- (b) Omit 'Apportionment section 8-1'; substitute 'Section 8-1 – apportionment'.
- (c) Omit 'Example 3 – evaluation of preferred alternative (including FEED)'; substitute 'Example 3 – evaluation of preferred alternative (including front end engineering and design)'.
- (d) Omit 'Example 5 – preparing cost estimates, assurance and FID support package'; substitute 'Example 5 – preparing cost estimates, assurance and Final Investment Decision support package'.
- (e) Omit '*operations in the course of working a mining property*'; substitute '*Operations in the course of working a mining property*'.

This Addendum applies to years of income commencing both before and after its date of issue.

Commissioner of Taxation

11 March 2026

ATO references

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