

# ***TR 2020/2 - Income tax: deductions for expenditure on environmental protection activities***

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⚠ There is a Compendium for this document: **TR 2020/2EC** .



## Taxation Ruling

### Income tax: deductions for expenditure on environmental protection activities

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#### **❶ Relying on this Ruling**

This publication (excluding appendix) 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.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

#### **Summary – what this Ruling is about**

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1. Subsection 40-755(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)<sup>1</sup> allows an immediate deduction for expenditure you incur for the sole or dominant purpose of carrying on environmental protection activities.<sup>2</sup>
2. This Ruling explains:
  - what are ‘environmental protection activities’
  - when expenditure is incurred for the ‘sole or dominant purpose’ of carrying on those activities
  - limits on the amount you can deduct, and
  - assessability of recouped expenditure on environmental protection activities.

## Ruling

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### **What are environmental protection activities?**

3. ‘Environmental protection activities’ are activities carried on by or for you<sup>3</sup>:
  - to prevent, fight or remedy pollution
    - resulting, or likely to result, from your earning activity

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<sup>1</sup> All legislative references are to the ITAA 1997 unless otherwise indicated.

<sup>2</sup> Whether this expenditure is deductible under any other provision of the taxation laws is outside the scope of this Ruling.

<sup>3</sup> Subsection 40-755(2).

- of or from the site of your earning activity
- of or from a site where an entity was carrying on any business that you have acquired and carry on substantially unchanged as your earning activity, and
- to treat, clean up, remove or store waste
  - resulting, or likely to result, from your earning activity
  - on or from the site of your earning activity
  - on or from a site where an entity was carrying on any business that you have acquired and carry on substantially unchanged as your earning activity.

4. The term 'activities' is not defined and takes its ordinary, natural meaning of 'specific deeds or actions'.<sup>4</sup>

### **Pollution**

5. The term 'pollution' is not defined and takes its ordinary, natural meaning, shaped by the statutory context in which it appears.

6. Pollution is contamination by the direct or indirect introduction of substances (physical or gaseous), noise (for example, vibrations) or energy (for example, radiation) which has harmful or poisonous effects on the environment.<sup>5</sup>

7. Pollution does not include all adverse environmental changes, such as visual or aesthetic effects which are merely unattractive or unappealing in appearance.<sup>6</sup>

8. There is nothing in the wording of section 40-755 to indicate the meaning of 'pollution' should extend beyond its ordinary meaning for the purpose of this provision.<sup>7</sup>

9. The time for determining whether there is pollution, or whether pollution is likely to result, is when you incur expenditure on the activity undertaken to prevent, fight or remedy it. Therefore, pollution

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<sup>4</sup> Macmillan Publishers Australia, *The Macquarie Dictionary* online, [macquariedictionary.com.au](http://macquariedictionary.com.au), viewed 2 June 2020, definition of 'activity'.

<sup>5</sup> Oxford University Press, *Oxford Dictionary* online, [lexico.com](http://lexico.com), viewed 2 June 2020, definition of 'pollution', and Chapter 7 of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 5) 1992 (EM); refer to commentary on former section 82BM of the *Income Tax Assessment Act 1936* (ITAA 1936) which was the predecessor to subsection 40-755(2).

<sup>6</sup> Chapter 7 of the EM. It was held in *Palos Verdes Estates Pty Ltd v Carbon* [1991] WASC 115 that the ordinary meaning of pollution was 'physically impure foul or filthy' and did not include the mere alteration to the environment by clearing land of trees and vegetation, and cutting through sand dunes.

<sup>7</sup> Some state environmental protection legislation defines pollution to extend beyond its ordinary meaning in that particular statutory context. For example, the *Clean Waters Act 1970* (NSW).

may encompass substances which were not previously considered harmful or poisonous but now are, such as asbestos and chlorofluorocarbons (commonly referred to as CFCs).<sup>8</sup>

#### *Preventing, fighting or remedying pollution*

10. The phrase 'preventing, fighting or remedying pollution'<sup>9</sup> includes a range of activities undertaken to avoid, stop or minimise pollution or remedial steps taken to reverse its effects.

11. The activities must themselves amount to 'preventing, fighting or remedying' pollution. Therefore, there must be a close and direct connection between an activity and actual or likely pollution.

12. Such activities may include identifying and testing for actual or likely pollution. Where there may be actual or likely pollution (for example, asbestos is suspected), and testing is required to identify the existence and/or extent of the actual or likely pollution, the testing activity is considered to be integral to the undertaking of the environmental protection activity, even if pollution is not found.

13. However, it is not enough that an activity:

- may be beneficial to the environment in a general sense
- may enable you (or someone else) to start preventing, fighting or remedying pollution at a future, unspecified time, or
- has an incidental effect of preventing, fighting or remedying pollution.

#### **Waste**

14. The term 'waste' is not defined and takes its ordinary, natural meaning, shaped by the statutory context in which it appears. It includes anything left over or superfluous, such as excess material and by-products, which is not of use for the work at hand.<sup>10</sup>

#### *Treating, cleaning up, removing or storing waste*

15. The phrase 'treating, cleaning up, removing or storing waste'<sup>11</sup> includes a range of activities directed to resource recovery, recycling, reclamation, and direct reuse or alternative uses of waste at any stage of an industrial process.<sup>12</sup> It also includes any means of

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<sup>8</sup> Chapter 7 of the EM.

<sup>9</sup> Paragraph 40-755(2)(a).

<sup>10</sup> Macmillan Publishers Australia, *The Macquarie Dictionary* online, [macquariedictionary.com.au](http://macquariedictionary.com.au), viewed 2 June 2020, definition of 'waste'.

<sup>11</sup> Paragraph 40-755(2)(b).

<sup>12</sup> Chapter 7 of the EM.

disposing of waste such as landfill, storage, chemical conversion and incineration.<sup>13</sup>

16. The activities must themselves amount to ‘treating, cleaning up, removing or storing waste’. Therefore, there must be a close and direct connection between the activity and actual or likely waste. In other words, the activity is only undertaken due to the actual or likely existence of waste. It is not enough that an activity:

- may be beneficial to the environment in a general sense
- may enable you (or someone else) to start treating, cleaning up, removing or storing waste at a future, unspecified time, or
- has an incidental effect of treating, cleaning up, removing or storing waste.

### ***Carried on by or for you***

17. Environmental protection activities must be ‘carried on by or for you’. An activity is carried on ‘for you’ if another entity carries it out on your behalf, or for your benefit.

18. An environmental protection activity is carried on for your benefit where the law requires you to make the activity happen, but you arrange for another entity to perform it. However, you still need to incur the expenditure yourself in order to be eligible for a deduction (see Examples 1 and 2 of this Ruling).

### ***Necessary connection between pollution or waste and ‘your earning activity’***

19. The pollution or waste must:

- result, or be likely to result, from your earning activity
- be of or from the site of your earning activity or
- be of or from a site where an entity was carrying on a business you have acquired and you carry on the business substantially unchanged as your earning activity.

### ***Your earning activity***

20. The phrase ‘your earning activity’ means an activity you carried on, carry on, or propose to carry on for the purpose, or purposes, of<sup>14</sup>:

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<sup>13</sup> Chapter 7 of the EM.

<sup>14</sup> Subsection 40-755(3).

- producing assessable income for an income year (except a net capital gain)
- exploration or prospecting<sup>15</sup>, or
- mining site rehabilitation.<sup>16</sup>

21. Where your earning activity has the dual purpose of producing a net capital gain and other assessable income, you will satisfy the earning activity requirement provided your income earning purpose is not merely incidental to your purpose of producing a net capital gain.

22. You may be able to deduct expenditure incurred before commencing your proposed earning activity. For example, you may be able to deduct the cost of removing pollutants from the site of your proposed earning activity. You must have the intention of carrying on that proposed earning activity at the time you incur the expenditure.

*Pollution or waste resulting or likely to result from your earning activity*

23. Pollution or waste will be likely to result from your earning activity where it is objectively a probable outcome, consequence or effect of that activity.<sup>17</sup> This will be determined by the facts and circumstances of each case.

*Pollution or waste on or from the site of your earning activity*

24. The pollution or waste may be on or from the site of your earning activity. There is no requirement that the pollution or waste also results from your earning activity. For example, the pollution or waste could be caused by someone else or it could have been present before you engaged in your earning activity on the site (see Example 2 of this Ruling).

25. A deduction is also available where pollution or waste originating from the site of your earning activity has affected another site (see Example 2 of this Ruling).

26. It is not a requirement for you to own the site of your earning activity, or to have owned it in the past.

27. Where your earning activity is the granting of rights to use a site or a similar activity in respect of a site, including leasing, that site is the site of your earning activity.<sup>18</sup> In such circumstances, you do not need to occupy the site to deduct expenditure on environmental protection activities related to that site.

<sup>15</sup> Subsection 40-730(4), meaning of 'exploration or prospecting'.

<sup>16</sup> Subsection 40-735(5), meaning of 'mining site rehabilitation'.

<sup>17</sup> Macmillan Publishers Australia, *The Macquarie Dictionary* online, [macquariedictionary.com.au](http://macquariedictionary.com.au), viewed 2 June 2020, definition of 'result'.

<sup>18</sup> Subsection 40-755(4).

*Pollution or waste on or from a site of an acquired business*

28. Pollution or waste may also be on or from the site of any existing business that you acquire and carry on substantially unchanged as your earning activity.
29. It is not a requirement for you, or the previous occupant of the site, to have owned the site.
30. The phrase 'substantially unchanged' requires the business you carry on to be significantly or essentially the same as it was when it was carried on by the previous owner. It does not need to be exactly the same. Whether the business is substantially unchanged is a question of fact.
31. If multiple businesses are acquired, each business needs to be separately assessed to determine whether it is being carried on substantially unchanged.

**When expenditure is incurred for the 'sole or dominant purpose' of carrying on those activities**

32. To claim a deduction, you must have incurred expenditure for the sole or dominant purpose of carrying on environmental protection activities.
33. When considering if expenditure is incurred for the 'dominant purpose' of carrying on environmental protection activities, the relevant enquiry is whether the ruling, prevailing or most influential purpose<sup>19</sup> of the entity incurring the expenditure is to undertake such activities. The circumstances in which the expenditure is incurred will in most circumstances inform the main purpose for which the expenditure was incurred. For example, the outcome or effect of the expenditure may support an inference as to the purpose. In this way an entity's evidence of purpose may be assessed against and supported by the objective circumstances in which the activity was undertaken.
34. Where you expend a single sum directly to carry on an activity that is an 'environmental protection activity'<sup>20</sup>, your expenditure will satisfy the sole and dominant purpose test and is deductible. Where that activity also achieves another outcome other than protection of the environment (for example, site beautification), the sole or dominant purpose test can still be satisfied notwithstanding that the action taken also happens to result in a further benefit, such as site beautification. This is because the expenditure was, at all times solely directed to carrying on an activity that is an 'environmental protection activity' (see Example 3 of this Ruling).
35. Where you expend a single sum to carry on **multiple** activities (one or more of which are environmental protection activities), the

<sup>19</sup> *Commissioner of Taxation (Cth) v Spotless Services Ltd* [1996] HCA 34.

<sup>20</sup> As defined in subsection 40-755(2), subject to any restrictions in sections 40-760 and 40-765 (see paragraphs 38 to 49 of this Ruling).

amount you can deduct will depend upon whether the incurred expenditure can be specifically allocated to each activity. The High Court decision in *Ronpibon Tin NL v Commissioner of Taxation (Cth)* [1949] HCA 15 (*Ronpibon*), identified two kinds of apportionable expenditure:

- undivided items of expenditure with distinct and severable parts devoted to different objects, where it is possible to divide the expenditure in accordance with the applications which have been made to those objects (first type of *Ronpibon* apportionment) and
- a single outlay or charge which serves multiple objects indifferently, requiring a fair and reasonable basis of apportionment to be adopted (second type of *Ronpibon* apportionment).

36. Section 40-755 does not contain the words ‘to the extent’. However, we consider that the first type of *Ronpibon* apportionment can apply where you incur a single item of expenditure for several activities and you can divide the expenditure in accordance with how the costs were applied between the various activities. For example, unless there is evidence to the contrary, an invoice which itemises components of the expenditure enabling you to identify which components relate to an environmental protection activity will generally be sufficient for substantiation purposes. The cost specifically allocable as expended on carrying on an environmental protection activity satisfies the sole or dominant purpose test and is deductible (see Example 4 of this Ruling).

37. If you are unable to specifically allocate the expenditure among different activities, you apply the sole or dominant purpose test to the entire expenditure. We do not consider that the second type of *Ronpibon* apportionment can apply. Rather, if the ruling, prevailing or most influential purpose of the expenditure was to conduct an environmental protection activity, the entire expenditure is deductible. If not (that is, the environmental protection activity is only a residual or subsidiary purpose of incurring the expenditure) then none of the expenditure is deductible under section 40-755 (see Examples 5 and 6 of this Ruling).

### **Limits on the amount you can deduct**

38. You cannot deduct an amount under section 40-755 for<sup>21</sup>:

- expenditure for acquiring land<sup>22</sup>

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<sup>21</sup> Subsections 40-760(1) and (2).

<sup>22</sup> Paragraph 40-760(1)(a).

- capital expenditure for constructing a building, structure or structural improvement (including an extension, alteration or improvement to any of these)<sup>23</sup>
- a bond or security for performing environmental protection activities<sup>24</sup>
- expenditure to the extent it is incurred in carrying out an activity for environmental impact assessment of your project<sup>25</sup> and
- expenditure to the extent that you can deduct an amount for it under a provision other than Subdivision 40-H.<sup>26</sup>

39. A deduction under section 40-755 is subject to the application of other provisions of the ITAA 1997 (other than Division 8)<sup>27</sup> that prevent or restrict the amount that can be deducted under that Division.

40. An amount of expenditure on environmental protection activities which is entirely excluded by section 40-760 will not be deductible under section 40-755.

41. If an amount of expenditure on environmental protection activities is **partially** excluded by section 40-760:

- You must identify parts of the expenditure distinctly directed at those activities which are excluded and those which are not, and divide that expenditure accordingly.<sup>28</sup> Any expenditure relating to activities which are excluded will not be deductible.
- If it is not possible to dissect and allocate the expenditure to those activities which are excluded, and those which are not (that is, the outlay serves multiple objects indifferently), the entire amount of expenditure will be treated as directed at the exclusion and is not deductible.<sup>29</sup>

<sup>23</sup> Paragraphs 40-760(1)(b) and 40-760(1)(c). Such expenditure may be deductible under Division 43 which applies to capital works or may be included in the fourth element of the cost base or reduced cost base of a capital gains tax asset (subsections 110-25(5) and 110-55(2)).

<sup>24</sup> Paragraph 40-760(1)(d).

<sup>25</sup> Subsection 40-760(2).

<sup>26</sup> Paragraph 40-760(1)(e); a provision outside Subdivision 40-H refers to provisions in the ITAA 1997 and ITAA 1936. For example, the decline in value of a depreciating asset is deductible under subsection 40-730(3) in Subdivision 40-B to the extent it is used for a taxable purpose. Also, a non-capital amount may be deductible as a specific repair deduction under section 25-10 or as a general deduction under section 8-1.

<sup>27</sup> For example, paragraph 8-1(2)(a), which restricts deductibility of capital expenditure under section 8-1, does not apply to section 40-755.

<sup>28</sup> First type of *Ronpibon* apportionment.

<sup>29</sup> We do not consider that the second type of *Ronpibon* apportionment can apply. Therefore, the entire amount is treated as relating to the exclusion.

***Building, structure or structural improvement***

42. You cannot claim an environmental protection deduction for capital expenditure incurred in constructing a building, structure or structural improvement (see Example 7 of this Ruling).<sup>30</sup>

43. However, the exclusion does not apply where the replacement of a pollutant material with a non-pollutant material results in a minor or incidental degree of improvement to a building or structure.

***Extension, alteration or improvement***

44. You cannot claim an environmental protection deduction for capital expenditure for constructing an extension, alteration or improvement to a building, structure or structural improvement.<sup>31</sup>

45. However, the exclusion does not apply where the replacement of a pollutant material with a non-pollutant material results in a minor or incidental degree of alteration or improvement to a building, structure or structural improvement (see Examples 8 and 9 of this Ruling).

***Bond or security***

46. You cannot claim an environmental protection deduction for a bond or security (however described) for performing environmental protection activities.<sup>32</sup>

47. The term 'security' is ordinarily understood as something given or deposited as surety for the fulfilment of a promise or an obligation, the payment of a debt, and so on.<sup>33</sup>

48. Examples of a bond or security for performing environmental protection activities include the types of financial assurance, such as bank guarantees or contributions to a pooled fund, required by state government bodies for the performance of obligations under the relevant environmental laws.

**Non-arm's length transactions**

49. The amount you can deduct is capped at the market value of the activities carried on if the capital expenditure was incurred under an arrangement where at least one other party to that arrangement was not dealing with you at arm's length.<sup>34</sup>

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<sup>30</sup> Paragraph 40-760(1)(b).

<sup>31</sup> Paragraph 40-760(1)(c).

<sup>32</sup> Paragraph 40-760(1)(d).

<sup>33</sup> Macmillan Publishers Australia, *The Macquarie Dictionary* online, [macquariedictionary.com.au](http://macquariedictionary.com.au), viewed 2 June 2020, definition of 'security'.

<sup>34</sup> Section 40-765.

**Assessability of recouped expenditure on environmental protection activities**

50. Your assessable income includes recoupments of expenditure on environmental protection activities for which you were entitled to a deduction.<sup>35</sup>

**Examples****Example 1 – environmental protection activities ‘carried on by or for you’**

51. *MineCo operated a mine for a number of years. MineCo enters into an agreement to sell its mining tenements and assets to BigCo.*

52. *Under the sale agreement, MineCo agrees to pay a lump sum of \$20 million to BigCo to remediate and rehabilitate the tenements. In return, BigCo agrees to indemnify MineCo and assume all current and future liabilities in respect of the mining tenements and land under mining, land and environmental laws.*

53. *Following the sale to BigCo, MineCo does not have any direct involvement in conducting environmental protection activities on the tenements and land. Therefore, the activities are not carried on ‘by’ MineCo. Further, MineCo has no interest in the land and mining tenements and is indemnified against any liabilities to pay for, or perform, such activity after sale. Therefore, any environmental protection activities conducted by BigCo after the sale are not carried on ‘for’ MineCo.*

54. *Consequently, MineCo cannot deduct the lump sum of \$20 million under section 40-755 as any environmental protection activities undertaken are not carried on ‘by or for’ MineCo.*

**Example 2 – pollution or waste on or from the site of your earning activity**

55. *CoalCo and RockCo operate industrial sites on adjoining properties. CoalCo decides to remediate soil and groundwater contamination on its site which occurred as a result of the company’s own activities, and the activities of RockCo (that is, contamination from RockCo’s site has migrated to CoalCo’s site). It is not possible to delineate the individual sources of the contamination.*

56. *If CoalCo pays the entire clean-up cost, it incurs expenditure on an environmental protection activity to clean up contamination on its site. Notwithstanding that it was not the sole source of the entire contamination, it is entitled to deduct the entire expenditure, since it is ‘on’ the site of CoalCo’s earning activity.*

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<sup>35</sup> Subsection 20-20(3).

57. *If CoalCo is reimbursed by RockCo for some of the clean-up costs:*

- *CoalCo deducts the entire expenditure and includes an amount in its assessable income equal to the amount for which its costs were recouped from RockCo<sup>36</sup>*
- *RockCo deducts only the amount that it paid CoalCo for environmental protection activities conducted 'for' it by CoalCo to remediate contamination 'from' the site of its earning activity.*

**Example 3 – sole or dominant purpose: single environmental protection activity**

58. *Angela owns a residential property from which she derives rental income. The property consisted of a house and dilapidated shed in the backyard. Angela sought advice from a building contractor to determine whether the shed should be renovated or removed.*

59. *She was advised to remove the entire shed because it was clad with asbestos cement sheeting which was damaged and releasing asbestos fibres into the air. This could be potentially harmful to Angela's tenants. Angela contracted an asbestos removal company to safely demolish and remove the shed at a cost of \$7,000.*

60. *The demolition and removal of the shed is a capital expense that cannot be claimed under any other income tax provision.<sup>37</sup>*

61. *The demolition and removal of the shed is an environmental protection activity as it was undertaken for the purpose of preventing asbestos pollution. The incidental result of visually improving the backyard by removing the dilapidated shed does not change the primary purpose of the activity, being the prevention of pollution to ensure the safety of Angela's tenants.*

62. *Therefore, the cost of demolishing and removing the shed is expenditure incurred for the dominant purpose of preventing pollution from the site of Angela's rental income-producing activity. Accordingly, Angela can deduct \$7,000 under section 40-755.*

**Example 4 – sole or dominant purpose: single outlay for multiple activities**

63. *Motorway Co is a motorway development company which constructs and operates a roadway in the course of its income-producing activities.*

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<sup>36</sup> Subsection 20-20(3).

<sup>37</sup> If the shed had been replaced, a deduction may have been available under the capital works provisions for the cost of constructing the new shed. However, paragraph 43-70(2)(b) specifically excludes demolition expenses from being construction expenditure for the purposes of the capital works provisions.

64. *Motorway Co engages Cleanup Co to perform the following services:*

- *removing industrial waste from the site*
- *planting vegetation on the site for visual effect.*

65. *Motorway Co pays \$100,000 in relation to these services.*

66. *The removal of industrial waste from the site constitutes an environmental protection activity. However, planting vegetation for visual effect is not an environmental protection activity. Adverse visual and aesthetic effects on the environment do not constitute 'pollution' under its ordinary meaning.*

67. *The invoice from Cleanup Co shows that \$40,000 was for the waste removal service and \$60,000 for planting vegetation. Motorway Co can deduct \$40,000 as an amount that can be identified and specifically allocated to an environmental protection activity (that is, removing waste) and therefore satisfies the sole or dominant purpose test.*

68. *Motorway Co cannot deduct the remaining \$60,000 under section 40-755 because creating a visual effect does not involve an environmental protection activity.*

#### **Example 5 – sole or dominant purpose: single outlay for several purposes**

69. *Olivia owns a commercial investment property with a creek running through the land, adjoining a nearby river. She engages River Co, a landscaping company, to plant vegetation along the side of the creek to prevent the creek banks from eroding and causing sediment, that has been scientifically proven to harm the fish and vegetation native to the waterway, to enter the waterway.*

70. *The vegetation also improves the aesthetics surrounding the creek by beautifying the site.*

71. *Olivia pays \$50,000 in relation to these services. Although part of this expenditure may relate to an environmental protection activity (prevention of erosion which caused pollutants to enter the creek), it is not possible to divide the expenditure between the environmental protection activity and site beautification.*

72. *Consequently, it is necessary to examine the entire item of expenditure to determine if, objectively, the dominant purpose of that expenditure was to conduct an environmental protection activity.*

73. *In this case, River Co's main brief and objective was directed at planting vegetation to prevent erosion that caused pollutants to enter the stream and then the river. The beautification of the site was merely incidental to the main purpose of conducting an environmental protection activity.*

74. *Olivia can deduct her entire outlay under section 40-755 as the expenditure was incurred for the sole or dominant purpose of carrying on an environmental protection activity.*

**Example 6 – sole or dominant purpose: single outlay for several purposes**

75. *Sarah acquired a property to conduct her child care centre business. The site of her proposed business was formerly a motor vehicle service and repair shop. Sarah engaged a contractor to convert the existing car park into a playground. In doing so, the contractor needed to clean up and remove certain oil by-products that had been stored on the site.*

76. *Sarah paid the contractor \$4,000 to perform the job. Although part of this expenditure may relate to an environmental protection activity (removal of oil waste products), it is not possible to divide the expenditure in accordance with how the costs were applied to the environmental protection activity versus the other work performed by the contractor in constructing the playground.*

77. *Consequently, it is necessary to examine the entire item of expenditure to determine if, objectively in the circumstances, the ruling or prevailing purpose of that expenditure was to conduct an environmental protection activity. Here, the contractor was engaged to build the playground for the child care centre. The removal of waste in the course of this task was merely incidental to the main purpose of constructing the playground.*

78. *Sarah cannot claim a deduction under section 40-755 since there is insufficient evidence to show that the expenditure (or any distinct and severable part of the expenditure) was incurred for the sole or dominant purpose of carrying on an environmental protection activity.*

**Example 7 – limit on deductions: single outlay for multiple activities**

79. *Andrew owns and operates a petrol station and a number of fuel storage tanks are located on the property. One of the fuel tanks begins to leak and contaminates the soil with petrol. Andrew hires John for the following activities:*

- *removal of the concrete covering the leaking tank*
- *clearing the soil contaminated by the leaking tank*
- *removal of the leaking tank*
- *installation of a new tank, including plumbing work.*

80. *John provides an itemised invoice to Andrew. Andrew pays a total of \$20,000 comprised of:*

- \$12,000 for the removal of the fuel tank, concrete covering and clearing of the contaminated soil and
- \$8,000 for the installation of the new tank.

81. The removal of the fuel tank, its concrete covering, and the clearance of the contaminated soil, constitutes environmental protection activities (that is, cleaning up and removing waste from the site of Andrew's earning activity). Andrew can deduct \$12,000 under section 40-755 since this is expenditure which can be identified and is specifically allocable to environmental protection activities and therefore satisfies the sole or dominant purpose test.

82. However, the remaining \$8,000 is not deductible under section 40-755. It represents capital expenditure for constructing a structure or structural improvement and is expressly excluded under section 40-760 from the scope of these provisions.<sup>38</sup>

### **Example 8 – limit on deductions: replacing pollutant materials in buildings**

83. Craig owns a commercial rental property from which he derives rental income. The roof of the property was clad with asbestos-reinforced cement sheeting, which is a pollutant material.

84. The asbestos-reinforced cement sheeting was in good condition, but Craig wished to remove it due to the presence of asbestos and the reasonably likely harmful consequence of any asbestos disturbance. Craig engaged a building contractor to remove the original roof and replace it with roofing material of a superior quality.

85. The scope of the environmental protection activities will include all deeds or actions which are necessary to prevent asbestos pollution. This will involve the removal of the asbestos roof but not its replacement.

86. The total cost of the work was quoted by the building contractor as \$20,000. Craig's contractor advised that \$9,000 of this total cost would be for a specialist subcontractor to undertake the asbestos roof removal.

87. Craig can deduct \$9,000 under section 40-755 since this is expenditure which can be identified and specifically allocated to an environmental protection activity (that is, remedying pollution from the site of Craig's earning activity) and therefore satisfies the sole or dominant purpose test.

88. The replacement roof is a capital improvement which is deductible over time under Division 43. Therefore, the \$11,000 cost of the replacement roof is not deductible under section 40-755 since it is a capital improvement excluded under section 40-760.

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<sup>38</sup> Paragraph 40-760(1)(b).

**Example 9 – limit on deductions: replacing pollutant materials in buildings**

89. *James owns a residential rental property from which he derives rental income. He engaged an asbestos surveyor who informed him that the walls were asbestos sheeting, which is a pollutant material.*

90. *James engaged a building contractor to remove the asbestos sheeting and re-sheet the walls with replacement material that was safe but of a similar condition and quality. The total cost of the work was quoted as \$30,000.*

91. *The scope of the environmental protection activities will include all deeds or actions which are necessary to remedy the asbestos pollution. This will involve the removal of the asbestos walls and their replacement with a safer similar material.*

92. *The replacement sheeting of similar quality is not a capital improvement under Division 43 since it is a minor or incidental degree of alteration or improvement. Therefore, the cost of replacing the asbestos sheeting is not excluded under section 40-760.*

93. *The entire \$30,000 cost is deductible under section 40-755 since this is expenditure which can be identified and specifically allocated to an environmental protection activity (that is, remedying pollution from the site of James' earning activity) and therefore satisfies the sole or dominant purpose test.*

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**Date of effect**

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94. This Ruling applies to years of income commencing both before and after the date of issue. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

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**Commissioner of Taxation**  
15 July 2020

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## Appendix – Detailed contents list

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95. The following is a detailed contents list for this Ruling:

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NO: 1-9G56OMT  
ISSN: 2205-6122  
BSL: PW  
ATOlaw topic: Income tax -- Capital allowances -- Immediately deductible expenditure

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