TD 92/D217 - Income tax : Division 10AAA Mineral Transport 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 92/D217 - Income tax : Division 10AAA Mineral Transport 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 been finalised by TD 93/52.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax : Division 10AAA Mineral Transport 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.Division 10AAA should be considered in terms of overall use during the year of income. The test does not involve the taxpayer's purpose for the road expenditure.

2.In accordance with section 123A 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 prescribed 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.Should the road not be used primarily and principally for the transport of minerals as referred to in section 123A in a particular year as a result of termination of use for that purpose then no deduction in terms of section 123B would be allowable. The application of subsection 123C(2) would then be appropriate.

5.Deductions could be recommenced in a subsequent year in terms of subsection 123C(6) where the use primarily and principally as referred to in section 123A has been restored.

6. We consider that 'terminated' involves more than a temporary cessation and it is not intended to invoke sub section 123B(2) when only a temporary failure to satisfy subsection 123A(1) 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 the prescribed mining operations. As the road was not considered to have been used during the year 'primarily and principally' for mineral transport in view of the extent of other use, either by the mining company or other users, the conditions of section 123A would not be satisfied.

Commissioner of Taxation
26/11/92

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