


***TD 94/D45 - Income tax: where an election is made to override the deduction limitation provisions of sections 122DG, 122JE or 124ADG,(a) does the election apply to the whole of the allowable capital expenditure incurred during the year of income to which the election relates, or all deductions allowable in that year, under the relevant provisions of Division 10 Subdivisions A or B or Division 10AA, in respect of allowable capital expenditure? (b) can an election be made in regard to amounts disallowed as excess deductions under subsections 122DG(6), 122JE(5) and 124ADG(6), but deemed to be allowable deductions under subsections 122DG(2), 122JE(1) and 124ADG(2) by the operation of subsections 122DG(7), 122JE(9) and 124ADG(7) respectively?***

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## Draft Taxation Determination

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**Income tax: where an election is made to override the deduction limitation provisions of sections 122DG, 122JE or 124ADG,**

- (a) does the election apply to**
  - . the whole of the allowable capital expenditure incurred during the year of income to which the election relates, or**
  - . all deductions allowable in that year, under the relevant provisions of Division 10 Subdivisions A or B or Division 10AA, in respect of allowable capital expenditure?**
- (b) can an election be made in regard to amounts disallowed as excess deductions under subsections 122DG(6), 122JE(5) and 124ADG(6), but deemed to be allowable deductions under subsections 122DG(2), 122JE(1) and 124ADG(2) by the operation of subsections 122DG(7), 122JE(9) and 124ADG(7) respectively?**

1. (a) The election applies to deductions allowable for the year of election only, not to the whole of the allowable capital expenditure incurred in that year.

(b) An election cannot be made in regard to excess deductions deemed to be allowable by virtue of subsections 122DG(7), 122JE(9) or 124ADG(7).

2. Each of the election provisions above referred to operate in the same way. Pursuant to subsections 122DG(3) (general mining) and 124ADG(3) (petroleum mining), allowable capital expenditure incurred under a contract entered into after 19/7/82 is deductible on a straight line basis over the lesser of 10 years or the life of the mine or field. For quarrying, subsection 122JE(2) provides for allowable capital expenditure incurred after 15/8/89 to be deductible on a straight line basis over the lesser of 20 years or the life of the quarry. This straight line basis means that each year's expenditure forms its own pool of deductions and cannot be joined with the calculation of deductions arising from expenditure of other years even though falling for deduction under the same section, i.e. section 122DG, 122JE or 124ADG, as the case may be.

3. Each of sections 122DG, 122JE and 124ADG also contain provisions limiting the total of all the yearly deduction amounts to the amount of assessable income of that year as remains after deducting all other allowable deductions except those prescribed in subsections 122DG(6), 122JE(5) and 124ADG(6) respectively. The effect of that limitation is that a taxpayer may not create or increase a section 79E or section 80 loss by way of allowable capital expenditure deductions under those subsections unless an election is made.

4. The election provisions enable a taxpayer to elect that the provisions which limit deductions for allowable capital expenditure to net assessable income not apply. The taxpayer may therefore create or increase a section 79E or section 80 loss, which is transferable to other group companies if other conditions, as laid down in section 80G, are satisfied. The elections were introduced to remove any

disadvantage to miners in not being able to utilise mining deductions for the purposes of the group loss provisions.

5. The election provisions are contained in subsections 122DG(6A) and (6B) (general mining), 122JE(6) and (7) (quarrying) and 124ADH(1) to (3) (petroleum mining) respectively. For general mining and petroleum mining the election applies to all allowable capital expenditure incurred in the 1985-86 year of income and subsequent years, while for quarrying it applies to all allowable capital expenditure incurred after 15/8/89. An election, if made, will (for the particular mining category) apply to all pools of deductions applicable to the straight line basis of calculation. A taxpayer cannot elect in relation to some pools of deductions and not others.

6. It has been suggested that, because of the wording of the relevant election provisions, the election is made in respect of all allowable capital expenditure incurred in the year of income to which the election relates, rather than deductions allowable in that year arising from allowable capital expenditure incurred (whether in that year or an earlier year). This is not the case. The election provisions refer to expenditure amounts in relation to a year of income to which the limitation of deduction provisions would otherwise apply. On this basis the election is made in respect of annual deductions only. It would be unjust and unfair for a taxpayer to be required to elect e.g. the next 10 years worth of deductions at the time a proportion of the expenditure is first up for deduction. In years where a taxpayer's income was sufficient to fully absorb all allowable deductions in respect of allowable capital expenditure, it would be impossible to make any election. This would lead to the incongruous result of a taxpayer never being able to utilise any part of that year's expenditure to create or increase a loss for the ensuing 9 years. This is clearly not the intention.

7. Subsections 122DG(7), 122JE(9) and 124ADG(7) each provide for any excess deductions in a year (where no election is made) to be available for immediate deduction in the following year, subject again to sufficient net assessable income remaining to absorb the deductions. Any election made in that following year would not include any of those excess amounts brought forward even though those excess deductions may have arisen in relation to allowable capital expenditure that was incurred in 1985-86 or a later year of income (or after 15/8/89 in respect of quarrying).

8. This is because subsections 122DG(6C), 122JE(8) and 124ADH(4) (which are all expressed in the same terms) each provide that, where a taxpayer has not made an election in the year the excess deductions first arose, the taxpayer may not then in a later year make an election to have the relevant section apply to those excess amounts available for deduction in that later year. This is made clear, for example, in the explanatory memorandum accompanying the introduction of section 122DG which states in regard to subsection 122DG(6C), that 'an election in relation to the allowable capital expenditure of one year cannot be taken to affect the deductibility under section 122DG of expenditure of an earlier year that has not been deducted and in respect of which no election was made'.

## Commissioner of Taxation

5/5/94

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