



TD 92/176 - Income tax: can an election under: (a) subsection 122J(4BA) (general mining), or (b) subsection 122JF(3) (quarrying operations), or (c) subsection 124AH(4AA) (petroleum operations), apply to part only of the actual exploration or prospecting expenditure incurred in the year of income?

 This cover sheet is provided for information only. It does not form part of *TD 92/176 - Income tax: can an election under: (a) subsection 122J(4BA) (general mining), or (b) subsection 122JF(3) (quarrying operations), or (c) subsection 124AH(4AA) (petroleum operations), apply to part only of the actual exploration or prospecting expenditure incurred in the year of income?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 22 October 1992

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA 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, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: can an election under:

**(a) subsection 122J(4BA) (general mining), or
(b) subsection 122JF(3) (quarrying operations), or
(c) subsection 124AH(4AA) (petroleum operations),
apply to part only of the actual exploration or prospecting
expenditure incurred in the year of income?**

1. No. If a taxpayer makes an election under subsection 122J(4BA), 122JF(3) or 124AH(4AA) of the Income Tax Assessment Act, the election must apply to all of the actual expenditure incurred in the year of income. The taxpayer cannot limit the election to part only of the actual expenditure incurred.

General Mining

2. Expenditure incurred by a taxpayer in the year of income on exploration or prospecting for minerals obtainable by prescribed mining operations is deductible under subsection 122J(1). The amount of the deduction allowable in respect of expenditure incurred after 21 August 1984 is limited by subsection 122J(4B) so that a carry forward loss is not created or increased. Subsection 122J(4C) provides that any expenditure which exceeds the amount of the deduction allowable under section 122J is carried forward and is deemed to be incurred by the taxpayer in the first subsequent year in which the taxpayer derives assessable income (deemed expenditure).

3. Under subsection 122J(4BA), a taxpayer can elect that the limit in subsection 122J(4B) shall not apply in relation to "actual expenditure" incurred in the year of income. Actual expenditure is defined in paragraph 122J(4BC)(a) to mean expenditure incurred during the year of income on exploration or prospecting for minerals obtainable by prescribed mining operations that is not deemed expenditure. If a taxpayer makes the election, the actual expenditure incurred in the year of income is deductible by the taxpayer. There is no warrant for reading the words "actual expenditure" in subsection 122J(4BA) as meaning anything other than all of the expenditure described above.

4. The effect of making an election is that the actual expenditure incurred in the year of income is fully deductible in that year as well as a proportion of any deemed expenditure available for deduction. The proportion of deemed expenditure which is deductible is calculated according to the formula in paragraph 122J(4BB)(d). The remaining amount is carried forward as deemed expenditure under subsection 122J(4C).

Quarrying and Petroleum Operations

5. Similar limiting and election provisions are contained in the provisions concerning quarrying and petroleum operations. As with the provisions relating to general mining, and for the same reasons as set out above, a taxpayer cannot limit an election under subsection 122JF(3) or subsection 124AH(4AA) to part only of the actual exploration or prospecting expenditure incurred in the year of income in conducting quarrying or petroleum operations.

Example:

Holding Co. Pty Ltd (Holding) is considering selling its wholly owned subsidiary, Sub Pty Ltd (Sub). In the year of income Sub derives no income but actually incurs \$5,000,000 on exploration or prospecting expenditure. Holding has a net income of \$300,000 and would like Sub to make a subsection 122J(4BA) election to create a loss sufficient to absorb the net income by transfer under section 80G. The potential buyer prefers that Sub carries forward deemed expenditure rather than section 79E or Section 80 losses. Sub cannot make a subsection 122J(4BA) election for only \$300,000. If it makes an election, it must be in respect of the total amount of \$5,000,000.

Commissioner of Taxation

22/10/92

FOI INDEX DETAIL: Reference No. I 1213504

Previous Draft No. TD 92/D105

Subject Ref: exploration expenditure; mining; petroleum operations; prospecting expenditure; quarrying;

Legislative Ref: ITAA 122J(1); ITAA 122J(4B); ITAA 122J(4BA); ITAA 122J(4BB); ITAA 122J(4BC); ITAA 122J(4C); ITAA 122JF(3); ITAA 124AH(4AA)

Case Ref:

ATO Ref: CNN J36/355

ISSN 1038 - 3158