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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TAXATION LAWS AMENDMENT BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments to be moved on behalf of the Government)

[This Supplementary Explanatory Memorandum replaces the one circulated on 24 March 1992]

(Circulated by the authority of the Treasurer, the Hon J. Dawkins M.P.)

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General Outline and Financial Impact of the Amendments

The amendments will amend Taxation Laws Amendment Bill 1992 [originally introduced into Parliament on 19 December 1991 as Taxation Laws Amendment Bill (No.4) 1991] to:

Dividend rebate for company beneficiaries

- allow the intercorporate dividend rebate to a company that receives income attributable to dividends either directly from a trust or partnership, or indirectly through one or more interposed trusts or partnerships; and

- change the date on which the amendments relating to private company dividends received by corporate unit trusts and public unit trusts that are taxed as companies apply to the date on which the Bill receives Royal Assent.

Deferral of deductions for trading stock purchases involving prepayments

- ensure that there is not an unintended mismatch of expenditure on stock intended to be used as trading stock and income derived in relation to the disposal of the stock before the stock becomes trading stock on hand.

Depreciation

- correct a technical deficiency in the proposed new definition of effective life for depreciable plant in relation to second-hand plant; and

- provide an option for taxpayers to adopt the Commissioner's published depreciation rates in lieu of those based on the proposed new effective life rules.

Rehabilitation of mining, quarrying and petroleum sites

- allow taxpayers deductions for the rehabilitation of sites where they have conducted certain ancillary activities to their mining, quarrying or petroleum operations. The cost of these ancillary activities is deductible under the specific mining provisions.

Widely distributed finance shares

- make a technical correction to ensure that all paragraphs of the public company test for widely distributed finance shares under the foreign source income measures are consistent; ie.75% or more.

Financial Impact

The amendments to the depreciation measures make it certain that the law will be consistent with the Government's announced intentions and will have no impact on the revenue.

The amendments to the remaining measures will have no impact on the revenue.

Summary of proposed amendments

Amendments to the Bill are to be moved on behalf of the Government relating to:

- allowing the intercorporate dividend rebate to a company that is the beneficial owner of shares that are registered in the name of a trustee;
- the deferral of deductions for trading stock purchases involving prepayments measures;
- the calculation of the effective life of second-hand plant for depreciation purposes;
- an option for taxpayers to adopt depreciation rates published by the Commissioner of Taxation;
- the allowance of deductions for the rehabilitation of sites where a taxpayer has conducted certain ancillary activities to their mining, quarrying or petroleum operations; and
- the widely distributed finance share measures.

Dividend rebate for company beneficiaries

The effect of the amendments to the intercorporate dividend rebate provisions is that a company will be entitled to a rebate under sections 46 and 46A of the Principal Act on distributions of income attributable to dividends from a trust or partnership.

Deferral of deductions for trading stock purchases involving prepayments

This amendment will ensure that there is not an unintended mismatch of expenditure on stock intended to be used as trading stock and income derived in relation to the disposal of the stock before the stock becomes trading stock on hand.

Depreciation

Second-hand depreciable plant

The proposed change will ensure that the effective life of plant is always calculated as if the plant were new. While the life of second-hand plant is usually calculated on this basis, the amendment corrects an anomaly under which some second-hand plant would have an effective life calculated differently.

Commissioner's published depreciation rates

Under this amendment, taxpayers will be permitted to adopt rates of depreciation published by the Commissioner of Taxation in lieu of self-assessed rates, even where those rates are more generous than self-assessed rates.

Rehabilitation of mining, quarrying and petroleum sites

The proposed amendment will extend deductions for mine site rehabilitation to the sites of some activities which are not themselves exploration, prospecting, mining, quarrying or petroleum operations. These ancillary activities are among those given the same treatment as exploration, prospecting, mining, quarrying or petroleum operations under the mining provisions. They do not include providing housing or welfare facilities, or related works.

Petroleum miners, other miners and quarriers will benefit from the amendments.

Widely distributed finance shares

This amendment is to correct a technical deficiency in the Bill.

Notes on the proposed amendments

Dividend rebate for company beneficiaries

Amendments (1), (2), (3), (4) and (18) relate to this measure.

Clause 10 of the Bill proposes the insertion of new section 45Z into the Principal Act to modify the application of sections 46 to 46F of the Principal Act where the shares on which a dividend is paid:

- are beneficially owned by a company but the registered holder of the shares is a trustee; or
- are held by a partnership in which a company is a partner.

The first amendment will amend proposed subsection 45Z(1) of the Bill so that a company that is absolutely entitled as against the trustee to the shares on which the dividend is paid will not be entitled to the intercorporate dividend rebate on those dividends if it is acting as a trustee. ***[Clause 10 - new paragraph 45Z(1)(aa)]***

The second amendment will amend new section 45Z so that a rebate will be allowable under section 46 or 46A to a company that derives income from a trust or partnership, whether directly or indirectly through a series of trusts or partnerships, that is attributable to a dividend, and the company is not absolutely entitled to the shares on which the dividend is paid. The rebate will not be available if the company is deriving the share of trust or partnership income as a trustee. ***[Clause 10 - new subsection 45Z(1A)]***

The proposed subsection 45Z(1A) will modify the application of sections 46 to 46F where a company that is a unitholder in a unit trust, a joint holder of units in a unit trust or a beneficiary in a trust, including a discretionary trust, receives income that is attributable to a dividend, whether received directly by the trust or partnership, or indirectly through a series of interposed trusts or partnerships.

The third amendment will amend proposed subsection 45Z(2) of the Bill so that the rebate will not be available to a company that is acting as a trustee in relation to dividends received as a partner in a partnership. ***[Clause 10 - new paragraph 45Z(2)(aa)]***

The fourth amendment will insert two new subsections into new section 45Z.

New subsection 45Z(3) will apply where a company receives income attributable to a dividend from a partnership through a trustee and the company is not acting as a trustee. The effect of new subsection (3) is that a rebate will be allowable under section 46 or 46A to a company that derives income from a partnership, whether directly or indirectly through a series of trusts or partnerships, where that income is attributable to a dividend. For example, if a partnership holds units in a unit trust and one of the partners is the trustee of a trust in which a company is a beneficiary, the company will be entitled to the intercorporate dividend rebate on income attributable to its share of the dividends received by the partnership. ***[Clause 10 - new subsection 45Z(3)]***

Proposed subsections 45Z(1), (1A), (2) and (3) will deny the intercorporate dividend rebate to a company that receives dividends or income attributable to a dividend in a trustee capacity. (See earlier notes.) However, they will not apply to the trustees of corporate unit trusts and public trading trusts that are taxed as companies (Divisions 6B and 6C). ***[Clause 10 - new subsection 45Z(4)]***

Corporate unit trusts and public trading trusts

Sections 102L and 102T of the Principal Act provide that dividends received by corporate unit trusts and public trading trusts that are taxed as companies (Divisions 6B and 6C) are entitled to the rebate on the same basis as other companies. Subclauses 31(1) and 31(2) of the Bill contain minor amendments to sections 102L and 102T of the Principal Act to overcome a deficiency in the present law. The effect of subclause 63(11) of the Bill is that these amendments would apply retrospectively.

The eighteenth amendment will ensure that the application of the amendments to subsections 102L and 102T will be wholly prospective and apply from the date on which the Bill receives Royal Assent. ***[Subclause 63(11)]***

Entitlement of company beneficiaries to rebate

The effect of new subsections 45Z(1A) and (3) will be that a rebate will be allowable under section 46 or 46A on a company's share of trust or partnership income that is attributable to a dividend as if:

- the company was the registered shareholder in the company paying the dividend. Thus, for the purposes of sections 46 to 46F inclusive, the company is the shareholder; ***[New paragraphs 45Z(1A)(d) and 45Z(3)(d)]***

- the income attributable to the dividend was paid directly to the company and not to the trustee or partnership; ***[New paragraphs 45Z(1A)(e) and 45Z(3)(e)]***

- the amount of the dividend paid to the company was equal to the amount of the company's share of the net income of the trust or partnership that is attributable to the dividend actually paid to the first trust or partnership in a chain; ***[New paragraphs 45Z(1A)(f) and 45Z(3)(f)]***

- where the company has an interest in the shares on which the dividend was paid, the company's interest in the share was the share on which the dividend was paid. The effect of deeming this to be the case is that in determining when and whether the share was acquired or disposed of by the company for the purposes of sections 46 to 46F, the matter will be determined by reference to when the company acquired or disposed of its interest in the share; ***[New paragraphs 45Z(1A)(g) and 45Z(3)(g)]***

  where the company does not have an interest in the shares on which the dividends were paid, for example the company is a beneficiary in a discretionary trust,

the company had an interest in the share on which the dividend was paid. The company will be deemed to have acquired its deemed interest in the share when the share was acquired by the trustee; ***[New paragraphs 45Z(1A)(h) and 45Z(3)(h)]***

- the year of income in which the income attributable to dividends is included in the assessable income of the company, was the year of income in which the dividend was (indirectly) "paid" to the company. The effect of these paragraphs is that a rebate will be allowable under subsection 46(2) or 46A(5) to the company in its assessment for the year of income in which the trust or partnership distribution containing the income attributable to the dividend is included in the company's assessable income; ***[New paragraphs 45Z(1A)(i) and 45Z(3)(i)]***

- the date on which the dividend was paid to the company was the date on which the dividend was paid to the trustee or partnership or if, applicable, to the first trustee or partnership in the chain. Where the rebate depends on the dividend having been paid after a particular time, the relevant particular time will be the day the dividend was actually paid to the first trustee or partnership or if, applicable, to the first trustee or partnership in the chain; ***[New paragraphs 45Z(1A)(j) and 45Z(3)(j)]***

- the share was issued to the company at the time it was issued to the trustee or partnership. For example, in determining whether an issue of shares is one to which section 46C or 46D applies, the day the shares were issued is the day they were actually issued to the trustee or partnership or if, applicable, to the first trustee or partnership in the chain; ***[New paragraphs 45Z(1A)(k) and 45Z(3)(k)]***

where entitlement to the rebate depends on shares having been issued to another person, as in subparagraph 46D(2)(b)(i), the relevant time was the time the shares were actually issued to the other person; ***[New paragraphs 45Z(1A)(l) and 45Z(3)(l)]***

- factors relating to the payment of a dividend that are taken into account in determining whether the dividend is a debt dividend (for the application of section 46C or 46D), were those that relate to the dividend that was actually paid to the trustee or partnership or if, applicable, to the first trustee or partnership in the chain; ***[New paragraphs 45Z(1A)(m) and 45Z(3)(m)]***

- in determining the extent to which a dividend is paid from particular profits, the dividend to be examined is the dividend actually paid to the trustee or partnership or if, applicable, to the first trustee or partnership in the chain; ***[New paragraphs 45Z(1A)(n) and 45Z(3)(n)]***

- where it is necessary to determine whether the dividend is franked, the dividend was the actual dividend that was paid to the trustee or partnership or if, applicable, to the first trustee or partnership in the chain. These provisions will apply where a private company receives an unfranked dividend from another private company that is not part of the same wholly owned group of companies; ***[New paragraphs 45Z(1A)(o) and 45Z(3)(o)]*** and

- where the date on which the dividend was declared is relevant for entitlement to the rebate, the dividend was declared on the date the dividend that was actually paid to the trustee or partnership or if, applicable, to the first trustee or partnership in the chain, was declared. ***[New paragraphs 45Z(1A)(p) and 45Z(3)(p)]***

New subsections 45Z(1A) and (3) will extend entitlement to the rebate to dividends paid after 17 August 1976. The rebate will not be denied in any assessment that issues on or after the day on which this Bill is introduced into Parliament. Also, a company will not be able to object against an assessment in which the rebate was denied, or obtain an amendment to that assessment, that issued before the day the Bill was introduced. ***[Clause 66]***

Deferral of deductions for trading stock purchases involving prepayments

Amendments 5 and 6 relate to this measure.

Clause 14 of the Bill will insert new subsection 51(2A) to defer deductions under section 51 for expenditure incurred by a person on stock that will become the person's trading stock, until the year of income in which the stock first becomes trading stock on hand of the person. The amendment only applies to stock that will become trading stock.

The amendment will overcome a weakness in the law that allowed for a mismatch of expenditure on trading stock and income from selling the trading stock. The mismatch occurred if, in a year of income, a person paid for stock intended to become trading stock, but that stock did not come on hand as trading stock until a later year of income. The person was able to get a tax deduction under section 51 for the cost of the stock in the year the expenditure was incurred. A compensating adjustment to account for unsold trading stock at the end of the year (which would have effectively deferred the deduction) could not be made in a case like this because the stock was not trading stock on hand at the end of the year. The ability to achieve a mismatch like this allowed people to obtain a tax advantage by bringing forward a tax deduction for trading stock that would not be sold until a later year.

Although the amendment proposed by clause 14 overcomes this deficiency, it could disadvantage a person who disposes of the stock before the year of income in which the stock becomes trading stock on hand. This could happen, for instance, where a person has incurred expenditure in respect of goods on order from a manufacturer and agrees to sell the goods before they are manufactured. The relevant goods become the trading stock on hand of the person when the person has the power to dispose of the actual goods. Under proposed section 51(2A), a deduction for the expenditure on those goods will be deferred until the year of income in which that happens. If the person has derived assessable income in relation to the disposal of the goods in an earlier year of income, there will be a mismatch which is the

opposite of the mismatch that the amendment in clause 14 of the Bill sought to rectify.

To ensure that taxpayers are not disadvantaged, an amendment is proposed to new subsection 51(2A). The subsection will not apply to expenditure incurred on stock that will become trading stock unless some part of the stock has not become trading stock on hand by the end of the year of income in which the expenditure was incurred. Where the subsection does apply, a deduction is to be allowable in respect of each part of the stock, equal to the expenditure attributable to the relevant part, in the first year in which :

- the relevant part of the stock first becomes trading stock on hand; or
- an amount of assessable income is derived in respect of the disposal of the relevant part of the stock.

This means that a deduction for prepaid stock will not be deferred past the time when a person derives assessable income in respect of the disposal of that stock. ***[Clause 15 - new subsection 51(2A)***

Depreciation

Amendments (7), (8), (9), (10), (11), (12), (13) and (16) relate to these measures.

Second-hand depreciable plant

Chapter 1 of the Explanatory Memorandum to the Bill explains the proposed new depreciation arrangements.

Clause 16 of the Bill inserts new section 54A containing the definition of effective life [refer paragraphs 1.19 - 1.39 of the Explanatory Memorandum]. Under that definition, taxpayers estimate the effective life of their depreciable plant on the basis of certain assumptions. Subparagraph 54A(1)(a)(i) makes it clear that second-hand plant is to be treated as if new in estimating effective life.

By comparison, paragraph 54A(1)(b) - dealing with circumstances where a taxpayer reasonably expects to scrap or abandon plant at a later time - is silent about the treatment of second-hand plant for effective life purposes; that is, there is no requirement to treat second-hand plant as if new in estimating effective life. This is unintended and would permit taxpayers in those circumstances to obtain greater depreciation deductions than other owners of second-hand plant.

The amendment

Accordingly, the definition of effective life is to be amended to require owners of second-hand plant who expect to scrap or abandon that plant at a later time to assume that it is new in estimating effective life ***[Amendment 11- paragraph 54A(1)(c); amendments 8 to 10 deal with minor consequential amendments]***

Commissioner's published depreciation rates

Under the present law, the Commissioner of Taxation is required to estimate the effective life of each unit of depreciable plant at the time it is first used for income producing purposes.

As a practical measure, it has been a longstanding practice of the Commissioner of Taxation to publish depreciation rates he considers appropriate for particular classes of depreciable plant. Taxpayers have been able to rely on those published rates but could seek to have the Commissioner vary the rate in respect of specific items in their use.

Under the Bill presently before the Parliament, taxpayers may "self-assess" effective life, and therefore depreciation rates, on the basis of their own particular usage of plant [subsection 54A(1)]. In expectation that many taxpayers would not wish to do this but would prefer to rely on the Commissioner's published rates, it has been made clear that, instead of making their own estimates of effective life, taxpayers could continue to adopt the Commissioner's rates, even where they were more generous than a self assessed rate would be.

The amendment

The depreciation self-assessment measures presently before the Parliament contain no legislative authority for taxpayers to adopt the Commissioner's published depreciation rates. The amendment to the Bill will require the Commissioner of taxation to determine and publish effective lives for depreciable plant which taxpayers may adopt, in lieu of their own estimate, for the purposes of calculating depreciation rates.
[Amendment 7 - paragraph 54A(1)(aa) and amendment 12 - subsections 54A(1A) to (1J) and (1L)]

Commissioner's determination of effective life

The determination will reflect the Commissioner's estimate of the effective life of each class of depreciable property. In some instances, a number of different periods may be determined in respect of a class of property, reflecting different circumstances of use by separate categories of taxpayers, eg. to distinguish the use of passenger motor vehicles as taxis. The determination is to be made and published within 28 days of these amendments becoming law.

If there is a particular class of property not included in the determination, the Commissioner may be requested to

determine a period. A determination must be made within 60 days of the request or, where further information is sought by the Commissioner, within 60 days of the receipt of that information.

Elections to adopt Commissioner's determination

Taxpayers wishing to adopt the Commissioner's periods will generally need to make an irrevocable election within 6 months of the end of the year of income to which the election relates ***[Amendment 12 - subsection 54A(1K)]***

Record keeping

Elections are to be retained for 5 years after the year in which the property is disposed of, lost or destroyed ***[Amendment 16 - subsection 262A(4AE)]***

Application dates

Both of the depreciation changes will apply from the commencement of the new effective life rules, ie. from 1 July 1991 in respect of depreciable plant acquired on or after 13 March 1991.

Technical amendment to mineral transport balancing adjustment rollover relief provisions

Amendment 13 corrects a cross referencing error in proposed subsection 123BBA(2) by replacing a reference to subsection 123F(2A) with a reference to subsection 123F(2).

Section 123BBA specifies the consequences of balancing adjustment rollover relief for disposals of property to which the mineral transport concession has applied (refer page 74 of the Appendix to Chapter 3 of the Explanatory Memorandum to Taxation Laws Amendment Bill (No.4) 1991).

Subsection 123F(2) deals with disposals of mineral transport property where there is some continuity in the ownership of the property both before and after the change in ownership, eg as occurs when a partnership is reconstituted.

It enables the persons who owned the property both before and after the partial change in ownership to jointly elect for balancing adjustment rollover relief to apply the disposal.

The existing reference in subsection 123BBA(2) to subsection 123F(2A) is a reference to the corresponding election provision for disposals of property to which the quarrying transport concession has applied.

Rehabilitation of mining, quarrying and petroleum sites

Amendments (14) and (15) relate to this measure.

Background

Division 10AB allows a deduction for costs incurred on or after 1 July 1991 in rehabilitating mining, quarrying and petroleum sites. The Division was introduced by Taxation Laws Amendment Act (No. 2) 1991.

The Division allows a deduction for rehabilitation of any site on which a taxpayer conducted extractive activities. Those activities are defined so as to include exploration or prospecting, and also prescribed mining operations, eligible quarrying operations, or prescribed petroleum operations. However, other activities are included in the specific mining provisions. Those provisions are Division 10, with Subdivision A covering general mining and Subdivision B dealing with quarrying, and Division 10AA, which applies to petroleum mining. (Petroleum includes gas and other natural hydrocarbons for the purposes of the income tax law.)

Those provisions give immediate deductions for exploration or prospecting expenditure, and deductions for allowable capital expenditure over the life of the mine or quarry or over a fixed period, whichever is less.

Allowable capital expenditure is not confined to expenditure on prescribed mining operations, eligible quarrying operations, or prescribed petroleum operations. It specifically includes some expenditure on certain associated matters. These are of three kinds: certain ancillary activities associated with the general mining, quarrying or petroleum operations themselves; acquiring rights to mine, quarry or prospect, or mining, quarrying or prospecting information; and the provision of housing and welfare facilities for those who work in the mining or quarrying operations or their dependants.

Divisions 10 and 10AA are not intended to give special concessions to miners and quarriers. They are intended to reflect the special features of operations that have a limited life, and must be carried out where the minerals, petroleum or

quarry materials are found. The allowable capital expenditures are those which are most affected by the special circumstances of mining or quarrying operations; some mineral transport facilities are less affected by those circumstances and are dealt with under Division 10AAA, while other expenditures by miners and quarriers are not greatly affected by special considerations and are dealt with in the same way as expenditures of any taxpayer.

In practice, Division 10AB extends to the rehabilitation of many sites of ancillary activities. Miners and quarriers often locate ancillary activities on sites they have explored or prospected, or already mined or quarried, so as not to deny themselves access to any worthwhile reserves. As sites which the taxpayer has explored, prospected, mined or quarried are covered by Division 10AB, such sites may be rehabilitated towards their original condition, and deductions claimed, even though much of the rehabilitation carried out may be needed because of ancillary activities.

However, some ancillary activities of some miners and quarriers are not located on sites they have explored or prospected, or already mined or quarried. Any restoration or rehabilitation of such sites is outside Division 10AB, even though the ancillary activities give rise to the same kind of allowable capital expenditures as mining or quarrying.

These amendments extend deductions under Division 10AB to rehabilitation of sites of ancillary activities under Division 10 or Division 10AA. The amendments do not extend deductions for the acquisition of rights to mine, quarry or prospect, or the acquisition of mining, quarrying or prospecting information, for there is no site to be rehabilitated by reason of that acquisition. Nor do the amendments extend deductions to the site of housing or welfare facilities, if the site is not covered by the other provisions of Division 10AB. Division 10AB specifically denies any deduction for expenditure on housing and welfare in carrying out rehabilitation. And when housing and welfare is provided away from the site of exploration, prospecting, mining, quarrying or ancillary activities its life is less dependent on those activities. After all, housing and welfare facilities may be

provided adjacent to the mine site yet at a considerable distance from it, in some circumstances at a neighbouring town.

Explanation

Capital expenditure on a number of ancillary activities is included in allowable capital expenditure under the mining provisions (subdivision A of Division 10, subdivision B of Division 10 and Division 10AA). When miners or quarriers rehabilitate sites where they have carried on those activities, they will be able to claim deductions under Division 10AB. This will be brought about by defining ancillary activities and eligible building sites in section 124B, and then including the sites where a taxpayer carried on such activities among those which may be rehabilitated by rehabilitation-related activities under section 124BB. In effect, the sites of the activities or things for which a taxpayer can claim deductions under the mining provisions are sites for which the taxpayer can claim deductions of expenditure on rehabilitation-related activities under Division 10AB. The amendments will apply to expenditure incurred on or after 1 July 1991, the date from which Division 10AB first applied.

Ancillary activities

Ancillary activities are those activities which are so much a part of mining, quarrying or petroleum operations that capital expenditure on them is included in the key mining provisions. They don't include acquiring a mining, quarrying or prospecting right or mining, quarrying or prospecting information, for that acquisition itself has no effect on a site. They don't include the provision of housing and welfare, which is also excluded from rehabilitation-related activities.

The amendments specifically include as ancillary activities matters matching the provisions of subdivision A of Division 10 (general mining), subdivision B of Division 10 (quarrying), and Division 10AA (petroleum mining). However, the kind of mineral transport facilities dealt with by Division 10AAA, under which the rate of deductions does not relate to the life of a particular mine or quarry, are not within the meaning of ancillary activities.

For general miners, ancillary activities are defined. They specifically include getting a site ready for mining operations (as in subparagraph 122A(1)(a)(i)). They include providing water, light or power to their mine site, or providing access to or communications with the site (as in subparagraph 122A(1)(a)(iii)). This doesn't include contributing to the cost of delivering those things - where a general miner doesn't deliver them, there is no site of the general miner's activity in providing them, and so no site for which the taxpayer can claim deduction of expenditure on rehabilitation-related activities. Ancillary activities also include treatment (up to and including the concentration, with specific exclusions) of minerals (see paragraph 122A(1)(b)), and any related storage of minerals, before or after treatment (see paragraph 122A(1)(c)). This includes the operation or maintenance of that treatment plant, which is not expressly referred to in the definition. ***[Clause 42]***

For quarriers, ancillary activities specifically include much the same items as for general miners. Again, they include getting a site ready for quarrying operations (see subparagraph 122JC(1)(a)(i)). They include providing water, light or power to the quarry, or providing access to or communications with the quarry (see subparagraph 122JC(1)(a)(ii)). Again, this doesn't include contributing to the cost of delivering those things, as this has no site for which the quarrier can claim deduction of expenditure on rehabilitation-related activities. Ancillary activities also include treatment (up to and including the concentration, but excluding sintering and calcining) of quarry materials (see subparagraph 122JC(1)(b)(i)), and any related storage of minerals before or after treatment (see paragraph 122JC(1)(b)(ii)). This includes the operation or maintenance of that treatment plant, which is not expressly referred to in the definition. ***[Clause 42]***

For petroleum miners, ancillary activities are defined differently. They specifically include providing water, light or power to the mine site, or providing access to or communications with the mine site (see paragraph 124AA(2)(a)). They also specifically include liquefying natural gas the taxpayer has obtained from their mining operations (see paragraph 124AA(2)(aa)). ***[Clause 42]***

The difference in definitions of ancillary activities simply reflects the different drafting of Divisions 10 and 10AA. Ancillary activities are based on those things in addition to exploration, prospecting, mining or quarrying themselves which are the basis of specific deductions under the Divisions. That doesn't mean that possible sites for rehabilitation are widely different for petroleum miners as distinct from quarriers or general miners. The overall intention is simply to ensure that the sites for rehabilitation include the sites of the activities covered by the Divisions, apart from housing and welfare sites.

Eligible building sites

The site of a taxpayer's ancillary activities includes eligible building sites. ***[Clause 43]***

Eligible building sites include the sites of any buildings, other improvements or plant necessary for a taxpayer's mining, quarrying or petroleum operations. However, eligible building sites don't include the sites of housing and welfare. This is meant to show that even if housing and welfare are necessary for a taxpayer's mining, quarrying or petroleum operations this doesn't mean the sites of housing and welfare can as such be the subject of claims for deduction of rehabilitation-related expenditure. ***[Clause 42]***

Some sites of housing and welfare may also be eligible building sites for other reasons - for example, because they were at one time the site of the taxpayer's processing plant. Those sites are still eligible sites; they would not be included merely because they were the sites of housing and welfare, but this does not exclude them.

Similarly, some sites of housing and welfare may also be sites on which the taxpayer conducted exploration, or prospecting, or mining, or quarrying, or ancillary activities. Those sites are still sites for which deductions of rehabilitation-related expenditure can be claimed; they are not included merely because they were the sites of housing and welfare, but this does not exclude them.

The related wording of subdivision A and subdivision B of Division 10 is slightly different from the definition of eligible building site. In addition to buildings or other improvements

necessary for carrying on mining or quarrying operations, the subdivisions specifically refer to buildings for use in the operation or maintenance of treatment plant, and buildings for use in associated storage. However, the sites of those buildings are considered to be covered as the sites of ancillary activities - treatment and associated storage. Most maintenance buildings are considered to be on eligible building sites in any event, as being necessary for the carrying on of quarrying or mining. Certainly, the sites of buildings specifically referred to in the mining provisions, apart from housing and welfare, are within the extended scope of mine site rehabilitation.

Treatment, transport and tailings

General miners, quarriers and petroleum miners may have many activities that are related to their mining or quarrying operations in some way. These can include the further treatment of minerals, quarry materials or petroleum; the transport of those materials, both on the site of mining or quarrying operations and away from that site; and the treatment or storage of tailings and other wastes of their various activities. Yet those activities are not specifically included in ancillary activities, nor are their sites specifically included as eligible building sites.

That doesn't mean that those activities are necessarily excluded from the scope of mine site rehabilitation. First, if they are conducted on a site on which extractive activities or ancillary activities have been carried on, that site can be rehabilitated and the related expenditure claimed under Division 10AB. Second, those activities may often be part of the mining or quarrying operations themselves and so part of extractive activities. Miners and quarriers can be sure that the activities that form part of mining or quarrying operations, capital costs of which are deductible under Division 10 or Division 10AA, will also be activities the site of which is within Division 10AB.

However, these amendments are meant not to add to or alter the tests of subdivisions A and B of Division 10, or of Division 10AA. The things which are included in the mining, quarrying or petroleum provisions only by implication are covered by mine site rehabilitation in the same way.

Example

This is because many of those tests involve questions of fact and degree. For instance, some transport of minerals or quarry materials is part of mining or quarrying operations. Other transport is not, but where it requires capital expenditure on, or contributions to, a facility for use primarily and principally for the transport of minerals, petroleum or quarry materials, that expenditure may be deductible under Division 10AAA over a set period (currently ten years for petroleum and minerals won by mining, twenty years for quarry materials). Other transport is dealt with no differently to transport by any business; so costs may be deductible or depreciable in the ordinary way. No simple test can be laid down for the purposes of mine site rehabilitation to make explicit the tests developed by the courts. Yet these distinctions are familiar to miners and quarriers, and applied by them already.

Widely distributed finance shares

The Seventeenth amendment will make a technical correction to the widely distributed finance share measures contained in the Bill. The amendment will add the words "or more" after "75%" in subparagraph 327A(2)(b)(ii) of the public company test. This will ensure that all paragraphs of the test are consistent. ***[Clause 58 subparagraph 327A(2)(b)(ii)]***

It is clear from the other provisions of paragraph (b) and from the Explanatory Memorandum that the words in the provision should read as "75% or more". As with the widely distributed finance share provisions, this amendment will apply from the date the foreign source income measures commenced - generally 1 July 1990.

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