

Decision Impact Statement

GHP 104 160 689 PTY LTD

Court Citation(s):

[2014] AATA 515

2014 ATC 10-373

Venue: Administrative Appeals Tribunal**Venue Reference No:** [2014] AATA 515**Judge Name:** President D Kerr**Judgment date:** 29 July 2014

Appeals on foot: No

Decision Outcome: Partly Favourable to the Commissioner

Administrative Treatment (Implication on current Public Rulings and Determinations)

Relevant Rulings/Determinations:

- [Taxation Ruling TR 2013/3: Income tax: research and development tax offsets: feedstock adjustments](#)


Subject References:

Income Taxation

deductions for research and development expenditure

whether expenditure 'feedstock expenditure'

73B(1) of the Income Tax Assessment Act 1936

 The ATO is reviewing the impact of this decision including precedential documents and Law Administration Practice Statements.

Précis

Outlines the ATO's response to this case, which concerned whether certain expenditure was to be disallowed deductibility at the rate of 125% because it was 'feedstock expenditure' within the meaning of former subsection 73B(1) of the *Income Tax Assessment Act 1936* ('ITAA 1936').

Brief Summary of Facts:

GHP 104 160 689 Pty Ltd ('the applicant') carried on the business of mining operations which included certain research and development ('R&D') activities.

In total, seven projects were undertaken in the 2003 to 2007 income years ('the relevant years'). Those projects related to copper concentrator and smelter processes at Mount Isa, zinc-lead concentrator processes at Mount Isa and McArthur River, and copper-gold concentrator processes at the Ernest Henry mine.

The R&D activities involved experimentation with a range of items, including but not limited to mill liners, grinding media, cyclones, rod mills, oxygen and chemical consumables.

The Commissioner disallowed certain claims for deductions at the rate of 125% in the relevant years, contending that they related to 'feedstock expenditure' for the purposes of subsection 73B(1) of the ITAA 1936.

There was some overlap between the activities in the applicant's copper concentrator and its smelter in Mount Isa, in that some of the copper concentrate was subsequently fed into plant trials being conducted in the

smelter. The Commissioner contended that all expenditure incurred in producing copper concentrate which was fed into the smelter comprised 'feedstock expenditure'.

Issues Decided by the Tribunal

1. Whether the disputed expenditure was incurred in acquiring or producing materials or goods 'to be the subject of' processing or transformation for the purposes of the definition of 'feedstock expenditure' in subsection 73B(1) of the ITAA 1936.

2. Whether expenditure incurred in producing copper concentrate which was then fed into the copper smelter constituted 'feedstock expenditure' for the purposes of subsection 73B(1) of the ITAA 1936.

The Tribunal's Decision

The Tribunal decided that the applicant's 'feedstock expenditure' comprised:

- expenditure on acquiring and producing ores to be the subject of concentrator processes
- expenditure on acquiring or producing copper concentrate to be fed into the smelter process, and
- expenditure on oxygen which was inserted into the furnace during the copper blow and in the anode furnace.

The Tribunal decided that the remainder of the disputed expenditure was not incurred in acquiring or producing materials or goods 'to be the subject of processing or transformation' in the applicant's R&D activities.

The Tribunal considered that, as a matter of statutory construction, things acquired **to be the subject of** some process in an activity could not share a common identity with those acquired **to subject them to** that activity. The expression requires a distinction between expenditure on materials or goods **to be the subject of** processing or transformation and expenditure on actions or processes which **thereby subject** those materials or goods to processing or transformation.

In respect of the copper concentrate 'overlap', the Tribunal decided that expenditure incurred in producing copper concentrates to be used in the smelter trials was properly characterised as 'feedstock expenditure' by reason of its relationship to the smelter trials. The words 'to be' in subsection 73B(1) could not be read as meaning one thing for some forms of goods and materials the subject of processing and transformation, and another when there was an overlap.

ATO View of Decision

The ATO accepts the Tribunal's decision and will adopt its reasoning, where applicable, for the purposes of construing the definition of 'feedstock expenditure' in former subsection 73B(1) of the ITAA 1936.

The ATO also considers that the Tribunal's decision is of assistance in interpreting the feedstock adjustment provisions in section 355-465 of the *Income Tax Assessment Act 1997*. The ATO will take the Tribunal's reasoning into account in applying those provisions to analogous cases.

Administrative Treatment

Implications for impacted ATO precedential documents (Public Rulings, Determinations, ATO IDs)

The ATO will consider necessary amendments to Taxation Ruling TR 2013/3: Income tax: research and development tax offsets: feedstock adjustments

Implications for impacted Law Administration Practice Statements

The decision has no impact on Law Administration Practice Statements

Comments

We invite you to advise us if you feel this decision has consequences we have not identified, or if a precedential decision such as a Public Ruling or an ATO ID requires reconsideration or amendment. Please forward your comments to the contact officer by the due date.

Date Issued:	22 December 2014
Due Date:	16 February 2015
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Legislative References:

Income Tax Assessment Act 1936

[s 73B](#)
[s 73B\(1AAA\)](#)
[s 73B\(1\)](#)
[s 73B\(1A\)](#)
[s 73B\(2B\)](#)
[s 73B\(2BA\)](#)
[s 73B\(2C\)](#)
[s 73B\(14\)](#)
[s 73B\(14B\)](#)
[s 73B\(34\)](#)

Income Tax Assessment Act 1997

[s 355-465](#)

Case References:

Alcan (NT) Alumina Pty Ltd v. Commissioner of Territory Revenue (Northern Territory)
(2009) 239 CLR 27
[2009] HCA 41

Australian Education Union v. Department of Education and Children's Services
(2012) 248 CLR 1
[\[2012\] HCA 3](#)

Certain Lloyd's Underwriters v. Cross
(2012) 248 CLR 378
[2012] HCA 56

Commissioner of Taxation v. Consolidated Media Holdings Ltd
(2012) 87 ALJR 98
[2012] HCA 55

Commissioner of Taxation v. Unit Trend Services Pty Ltd
(2013) 87 ALJR 588
[\[2013\] HCA 16](#)

Esso Australia Resources Pty Ltd v. Federal Commissioner of Taxation
(2011) 199 FCR 226
[\[2011\] FCAFC 154](#)

Haoucher v. Minister for Immigration and Ethnic Affairs
[1990] HCA 22
(1990) 169 CLR 648

Project Blue Sky Inc v. Australian Broadcasting Authority

(1998) 194 CLR 355
[1998] HCA 28

Richardson v. Austin
[1911] HCA 28
(1911) 12 CLR 463

Sea Shepherd Australia Ltd v. Federal Commissioner of Taxation
(2013) 212 FCR 252
[2013] FCAFC 68

Taylor v. The Owners - Strata Plan No 11564
(2014) 88 ALJR 473
[2014] HCA 9

XYZ v. Commonwealth
(2006) 227 CLR 532
[2006] HCA 25