

Practice Note: No. 16 – 12 March 1993

Income Tax: Deduction in terms of section 12c of the Income Tax Act (the Act) in respect of certain foundations or supporting structures

1. Section 11(e) of the Act contains (in paragraph (iiA) of the proviso) a provision allowing a deduction to be granted under that section in respect of certain foundations or supporting structures which have been designed to support specific pieces of machinery, etc. Because there is no corresponding provision in section 12C of the Act, the argument has been put forward that such foundations or structures cannot qualify for the deduction under that section.
2. The reason for the abovementioned provision in section 11(e) is to be found in paragraph (ii) of the proviso, which places a general prohibition on the granting of a deduction in respect of structures or works of a permanent nature. Section 12C, however, contains no such prohibition on a deduction in respect of such structures or works of a permanent nature. On the contrary, it is settled law that the expression "plant", as used in section 12C, can include permanent structures. See, for example, *Blue Circle Cement Ltd v CIR* 1984 (2) SA 764 (A), 46 SATC 21, in which the following dictum of Lindley, LJ, in the English case of *Yarmouth v France* (1887) 19 QBD 647 is cited with approval:

There is no definition of plant in the Act: but, in its ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business, not his stock-in-trade which he buys or makes for sale; but all goods and chattles, fixed or movable, live or dead, which he keeps for permanent employment in his business.

3. Having, therefore, established that foundations can constitute plant, the main test to be met under section 12C is thus whether it is used directly in the manner envisaged in this section. As a general rule, where the machinery mounted on the foundation qualifies for the deduction, so too will the foundation.

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