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Abstract

Accounting and taxation systems are considered as two coexisting institutional practices which claim to be neutral and to function for the benefit of society. These claims are examined with reference to the natural resources industry and the treatment of rehabilitation costs in Australia, as the impact of this industry, both economic and environmental, is significant. By comparing the practice of accounting in financial reporting and in taxation, the use of calculative and representational practices is exposed to identify contradictions, conflicts and disparities.

Keywords

community, serve, privileged, legitimize, interests, systems, rehabilitation, accounting, taxation, do, sites, mining

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Rehabilitation Of Mining Sites:
Do Taxation And Accounting Systems Legitimize The Privileged Or Serve Community Interests?

By

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This is a working paper and we welcome feedback and comments. Please do not quote without permission from the authors.

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REHABILITATION OF MINING SITES: DO TAX AND ACCOUNTING SYSTEMS LEGITIMIZE THE PRIVILEGED OR SERVE COMMUNITY INTERESTS?

ABSTRACT

Accounting and taxation systems are considered as two coexisting institutional practices which claim to be neutral and to function for the benefit of society. These claims are examined with reference to the natural resources industry and the treatment of rehabilitation costs in Australia, as the impact of this industry, both economic and environmental, is significant. By comparing the practice of accounting in financial reporting and in taxation, the use of calculative and representational practices is exposed to identify contradictions, conflicts and disparities. We challenge whether the impact of these practices to influence environmentally responsible behaviour by this industry deflects attention away from the environmental impact caused by their operations. Further, we question whether a special tax deduction for the natural resources industry provides a benefit for all members of society

when it amounts to revenue foregone. Similarly, when the accounting standard for extractive industries allows for future estimated restoration costs to become part of the costs of production (and therefore costs of inventory and cost of goods sold) we question who benefits from these devices. The role of privileged interest groups and their capacity to influence and be influenced is reconsidered with respect to the overall objectives of accounting and taxation systems. We conclude that their coexistence as independent systems undermines their potential to serve society. Instead, we argue that these institutional practices serve to legitimate and obfuscate their role in perpetuating the privileges, powers and impact on the society in which they claim to serve.

INTRODUCTION

This paper explores both accounting standards and the taxation provisions with respect to the treatment of rehabilitation costs of mining entities. The roles of accounting standards and taxation provisions are considered with respect to the institutional structures which create them. In this way, the claims that these institutions are independent systems functioning for society's benefit will be challenged. We have chosen to investigate an aspect of the natural resources industry because of the significant economic contribution the industry makes to Australia. Of course, the operations of this industry cannot occur without disrupting the environment. Accordingly, the taxation system has granted concessions in relation to rehabilitation expenses incurred thereby encouraging environmental responsibility (see Stoianoff 2002). In a similar vein, the accounting standards incorporate restoration costs, that is, rehabilitation expenses, irrespective of whether they are incurred or merely anticipated. We will argue that these coexisting systems should not be considered in isolation of each other simply because they appear to function independently of each other.

The Australian Federal Government has used taxation policy to influence corporate behaviour, an example being in relation to natural resources industries and environmental responsibility. In particular, rehabilitation related activities and expenditure incurred thereon has attracted a special tax deduction since July 1991. As with all allowable deductions there is a requirement that this expenditure be incurred and not merely anticipated. However, this requirement is ignored in accounting standards as it is not expected that accounting be consistent with taxation principles. The accounting treatment allows for anticipated restoration costs, not only incurred costs, to be incorporated. Hence, future estimated rehabilitation expenses are taken into account even when these are not allowed as taxation deductions. This difference in treatment between tax and accounting is not unusual but rather an accepted practice. We wish to bring to attention that this difference in treatment rests on differences due to timing and the nature of the expenditure. However, we argue that this difference is not merely an inadvertent incongruence but rather an integral feature of these institutional practices.

We utilise Miller's (1994) discussion of accounting as a social and institutional practice to demonstrate accounting's ability to have "transformative capacity" (Miller 1994 p 2) through financial reporting in annual reports and taxation returns. This paper offers an overview of the relevant tax provisions in order to demonstrate the "calculative apparatus" (Miller 1994, p 3) to create, sustain and influence transformative action. Then an analysis of the relevant accounting standard is provided to highlight another calculative apparatus of another institution that has the capacity to transform the behaviour of mining entities, the community and ultimately society. The two systems of accounting and taxation are reconsidered as two coexisting institutions that function independently of each other. It will be demonstrated that these two institutions provide different calculative practices to represent the same activities and this will be used to challenge the claims of objectivity of both systems. Do these systems serve society as they claim or merely perpetuate and legitimate the privilege of some sectors of the society at the expense of others?

TAXATION PROVISIONS: CALCULATIVE PRACTICES

The taxation provisions to be discussed below reflect the complexity of the calculative practices which institutions undertake to enable transformative action (Miller 1994). These occur in two ways. Firstly, the provisions constitute practices by the taxation system to influence mining companies to undertake rehabilitation activities, thereby enabling transformative action. The second way is that mining companies, through the legal system, influence the tax system to accommodate them in their objectives to increase shareholders' earnings, that is, to reduce tax liability. The taxation system as an institution mediates transformative action which ultimately facilitates shareholder earnings. How and whether this serves society will be addressed later.

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Background to the Taxation Provisions

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The specific recognition of environmental expenditure in the Australian income tax system did not occur until 1991. The natural resources industry was one of the major beneficiaries of the new taxation policy designed to encourage environmental responsibility (Stoianoff 2002). The new legislation was comprised in Division 10AB of the Income Tax Assessment Act 1936 (ITAA36), and included a special deduction for current or capital expenditure incurred on rehabilitation-related activities on or after 1 July 1991.[i] The introduction of the Income Tax Assessment Act 1997 (ITAA97) sought to simplify and restructure the complicated legislation found in ITAA36. Accordingly, the rehabilitation provisions were streamlined into the new SubDiv. 330-I, comprising sections 330-435 to 330-455 ITAA97. However, post the Ralph Review of Business Taxes[ii], a uniform system of Capital Allowances has replaced the separate rehabilitation expenditure provisions originally found in the mining division of the ITAA97. Now, Division 40 ITAA97, provides for a collective approach to capital allowances effective from 1 July 2001. Specifically, SubDiv 40-H of the ITAA97 deals with the concessions associated with mining rehabilitation expenses[iii] and these new provisions are said to "somewhat simplify the legislation and make it more logical" (Commonwealth, 2001, p 79) rather than change their substance. Accordingly, this paper describes the operation of the ITAA36 provisions and the pre- 1 July 2001 ITAA97 provisions for the purposes of exploring the incongruities of the tax/accounting interface (see Stoianoff 2002).

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Prior to 1 July 1991, expenditure incurred in relation to the rehabilitation of a mining site would not have been deductible under the general deduction provisions, section 51(1) of the ITAA36, as a result of the lack of nexus between the expenditure and the income earning activity. Mining operations are deemed to mark the income earning activity and as rehabilitation generally does not take place until cessation of such operations then expenditure for such rehabilitation falls into the "capital" category and therefore not deductible. On the other hand, where the site has been progressively rehabilitated during the course of the mining operations, then the general deduction provisions[iv] would render the expenditure deductible unless treated as capital in nature.[v] This distinction between capital expenditure and non-capital expenditure is rendered irrelevant for the purposes of the rehabilitation concessions.

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Refining of the Provisions

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To qualify for the concessions pertaining to mining site rehabilitation expenditure, Stoianoff notes that "the site being rehabilitated must have been used for general mining, petroleum mining or quarrying operations or for exploration or prospecting activities" (2002, p 140). Section 124BA ITAA36 operated for the period ending 30 June 1997, while section 330-435 ITAA97 was the operative provision for the period 1 July 1997 to 1 July 2001. The current operative provision is section 40-735 ITAA97, effective since 1 July 2001.

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Expanding the Definition of Rehabilitation

Expenditure[vi] incurred in respect of "rehabilitation-related activities" (ITAA36),

"rehabilitation" (ITAA97 pre- 1 July 2001) or "mining site rehabilitation" (ITAA97 post- 1 July 2001) is deductible in the relevant year of income. However, Stoianoff points out that "the operation of section 124BA was limited in that if there was an overlap with the deductions available under Divisions 10 and 10AA (general mining concessions), then sections 122N and 124AN operated making the expenditure subject to Divisions 10 and 10AA" (2002, p 141). The ITAA97 counterpart slightly broadened this concept taking into consideration whether there was "another purpose" to the expenditure and thereby enabling an apportionment to take place.[vii] Also, Stoianoff (2002) notes that the restrictions on the operation of the general deduction provisions apply equally to the operative rehabilitation provisions whether ITAA36[viii] or ITAA97.[ix]

The concept of "rehabilitation" progressed with the movement from ITAA36 to ITAA97. The definition of "rehabilitation-related activity", found in section 124BB ITAA36, referred to the "restoration of a site in which the taxpayer conducted extractive activities or ancillary activities to, or to a reasonable approximation of, the pre-mining condition of the site". Subsequently, section 330-440(1) ITAA97 defined "rehabilitation" as being "an act of restoring or rehabilitating a site or part of a site to, or to a reasonable approximation of, its pre-mining condition". This differed from the ITAA36 counterpart in that ITAA97 acknowledged even "part of a site" for rehabilitation purposes. [x] This same theme of apparent reduced environmental responsibility enables the acknowledgment of partly restoring or rehabilitating the site as "rehabilitation" for the purposes of SubDiv 330-I: see section 330-440(2) ITAA97. However, in both the ITAA36 and the ITAA97, rehabilitation must be in relation to the site upon which the taxpayer conducted the relevant extractive activities, namely, eligible mining or quarrying operations; or conducted exploration or prospecting or conducted ancillary activities.[xi]

Restricting the Definition of Rehabilitation

The legislation shows that the concept of rehabilitating the mining site is synonymous with the concept of restoring the site.[xii] Stoianoff points out that there is an implicit restriction, therefore, in what can be deductible as rehabilitation expenditure. She uses an analogy with the tax treatment of repairs to illustrate this:

> any enhancement of the site or further development of the site to make it fit for a different purpose would not constitute a "restoration". Exclusions from deductibility found under both ITAA36 and ITAA97 include expenditures that go beyond mere restoration of the site or have an effective life significantly longer than the year of income. The result is that the expenses incurred would not be deductible under section 124BA(1) or section 330-435(1). This is reminiscent of the distinction between deductible repairs pursuant to section 53 ITAA36, now section 25-10(1) ITAA97, and capital improvements. In determining whether something is a repair or improvement one must consider the functionality of the original premises, plant or equipment and compare it to the functionality after the work has been done. If there is a restoration of the premises, plant or equipment to its original functionality and not to a "greater" functionality then we have a repair. If the functionality is somehow changed or better, then we have a capital improvement which is not deductible. The same analysis seems to apply to the restoration of a site to its pre-mining condition (Stoianoff 2002 p 142).

Limits on the deduction available

Section 124BC ITAA36 operated to limit the deductions available pursuant to section 124BA ITAA36. Stoianoff notes that these limitations were carried through into ITAA97 at section 330-450 and disqualify deductions for:

- any expenses incurred in the acquiring of land;
- any expenses incurred in the construction of buildings or other structures;

- any bonds or securities given for the performance of rehabilitation-related activities;
- any expenses incurred in providing housing and welfare for employees engaged in rehabilitating the site;
- expenditure in relation to plant or articles for which the normal depreciation provisions [xiii] would apply (Stoianoff 2001 pp 142-143).

However, as an exception to these limitations levees and dams necessary for rehabilitation are deductible. Hence, in the case of levees and dams, although they would constitute an improvement, and certainly were not there before the mining activity, the outlay can be treated as a restoration expense for which the entity can claim a tax deduction. Is not a levee or dam a significant change to the pre-existing mine site condition? One may well ask why this apparent inconsistency was explicitly allowed, when so much effort was put into identifying limitations to the restoration deductions. It is this kind of inconsistency which provides ample challenge to the claims of objectivity by the taxation system.

Compare now the treatment of buildings existing on the mining site prior to mining operations. The pre-mining condition of the site does not include such buildings, accordingly, the restoration of such buildings would not be deductible.[xiv] Stoianoff provides the example of a pre-existing farmhouse, noting “the expense involved in the rebuilding of a farmhouse or other farm buildings would not be deductible under section 124BA nor section 330-450. Division 10 AB ITAA36, was only concerned with the restoration of the land, as is SubDiv 330-I ITAA97” (Stoianoff, 2001, p 143). The same holds true in relation to the provision of housing or welfare facilities for those employees engaged in the rehabilitation.[xv]

General Deductions or Special Provisions

A further limitation to the operation of section 124BA relates to the Australian Tax Office (ATO) policy to avoid the possibility of double deductions. Specifically, where expenditures would have been eligible for a general depreciation deduction, section 124BC(3) ensured that the operation of section 124BA did not extend to those expenditures and provide a double deduction. Section 330-450 (3) ITAA97 adopted this limitation. Accordingly, the general depreciation provision is deemed to apply in preference to the specific rehabilitation provision. However, for the general depreciation provision to have applied, section 54 ITAA36 required that the plant or article be used for the purpose of producing assessable income. Clearly, once mining operations finished and rehabilitation commenced the necessary income earning activities also ceased. Stoianoff points out that “[s]ection 124BF ITAA36 stepped in at this point to deem the use of any property by a taxpayer for rehabilitation-related activities on or after 1 July 1991 to be a use of the property for the purpose of producing assessable income” (Stoianoff, 2001, p 143). Section 330-455 ITAA97 adopted the same treatment, thereby enabling access to provisions that allowed a deduction for property where the use of that property was for the purpose of producing assessable income[xvi]. Hence even when the general deduction provisions did not *prima facie* apply, these specific rehabilitation provisions provided the necessary mechanisms to enable a deduction.

An integral part of the licences associated with the extractive industries is the requirement of a bond or security for the performance of rehabilitation to mining sites.[xvii] As only the expenditure actually incurred in the rehabilitation process is capable of deduction, the rehabilitation provisions do not permit a deduction for such bonds or securities even if they are forfeited by the taxpayer.[xviii] It will be shown later that this treatment is not strictly adhered to by accounting procedures which are allowed in the accounting standard for extractive industries, especially with respect to restoration costs.

It is not unreasonable that such conditions, details and treatments are confusing. Miller suggested that “professionals provide rules and procedures for taking activities out of the realm of ‘moral mysteries’,

and bringing them within the realm of impersonal techniques" (Miller 1994, p 10). In this way, the illogical, now supported by institutional mechanisms (provisions), move from being perceived as subjective to being perceived as objective, thereby affording legitimacy to the process and indeed the outcomes.

BENEFITS FOR SOCIETY/COMMUNITY OR PRIVILEGING THE PRIVILEGED?

Tax breaks or concessions, such as those granted to the natural resources industry, acknowledge the special circumstances of classes of taxpayers in the community. At the same time these tax concessions are implemented in order to influence taxpayer behaviour. Stoianoff reinforces the social, economic and political role of taxation in society, noting that "taxation has been and can be used to influence or modify aspects of social behaviour and to provide benefits to the society as a whole" (Stoianoff 2001, p 127). However, Waincymer (1993) points out that a social benefit must be a benefit for all members of the society jointly and accordingly a taxation system is required to prevent any "free riders" reaping the benefits without contribution. How, then, does a special deduction for the natural resources industry provide a benefit for all members of society when it amounts to revenue foregone?

This brings us to the concept of tax expenditures. Also referred to as tax concessions, tax expenditures are functionally equivalent to direct spending programs and are supposed to be designed to ultimately provide benefits to society. This is achieved by influencing decisions about the allocation of resources between sectors[xix]. This 'deliberate' influence goes against one of the fundamental premises of the Australian tax system, namely, neutrality. The assumption behind neutrality is that the best persons to make consumption and investment choices are individual consumers and investors and not government (Krever 1993). The tax system is supposed to be neutral in effect, neither encouraging nor discouraging the consumption of particular services or commodities or investment in particular activities (Krever 1993). Miller noted that "(e)ven if this objectivity and neutrality is questionable and always open to dispute, the elegance of the single figure provides a legitimacy that, at least in certain Western societies, seems difficult to disrupt or disturb" (1994, p 3). That is, the calculation of restoration costs gives rise to a succinct number, which masks the various assumptions upon which its veracity relies. Hence, the tax system as an institutional system having the capacity to enforce and/or encourage transformative activity by its very nature cannot be considered neutral, because it is ideologically and politically informed. This lack of neutrality is not necessarily a criticism. However, the quest to sustain the rhetoric of neutrality can undermine the purpose that neutrality is sought, that is, it can deliberately or inadvertently privilege a class of citizens at the expense of another class of citizens.

Further, even if the objectives of the tax system can be accepted as neutral, one would have to concede neutrality is often foregone whenever the government believes that "the free market is unlikely to produce the optimum social returns" (Krever 1993 p 3). Indeed, the notion of a free market is imbued with ideological subtext (Tinker et al 1982) and the legitimacy afforded these Western notions is imbedded in economic discourse which has linguistic currency. Krever (1993) points out that the evaluation of such intervention programs requires the identification of the deviation from the neutral tax, the establishment of the goals behind the concession, and the comparison with alternative government instruments that might accomplish the same ends.

So why has the Australian Federal Government considered it appropriate to ignore neutrality and provide the natural resources industry with a special deduction for otherwise non-deductible rehabilitation expenses? In other words, what is the objective of the concession? Who benefits: companies, shareholders, employees, communities, the environment, current generations or future generations? If shareholders represent the only sector to benefit, can the accounting or tax institutions claim they have served the community or society overall? Does one sector benefit at the expense of another? If this is this case, who decides which sector benefits and which one does not? Is the sector

which does not benefit empowered to challenge this inequity? Can the privileged recognise the role that institutions play to enable and sustain their privilege? Clearly there are many questions that this topic can raise.

Certainly, the natural resources industry has provided benefits to the Australian economy as major exporters. But the concession is surely not simply a reward for contributing to the economy, or is it? Much of the concessions provided to the natural resources industries have related to the special circumstances of mining and exploration, namely, the large initial capital expenditure and limited life span of a mine or mining venture (Hart and Sekhon 1996). Further, these industries have a direct effect on the environment by the very nature of their income earning activities. It could be argued that the use of tax concessions for rehabilitation related activities have the objective of enhancing the environmental responsibility of the natural resources sector and thereby provide a social benefit.

And perhaps the "reality" lies in the shortcomings of the tax system to adequately deal with business expenses in the natural resources sector. Before the introduction of the provisions allowing deductibility of rehabilitation expenditure, such expenses were unlikely to qualify for deduction under the general or other provisions of the ITAA36. Only non-capital rehabilitation expenses incurred during the course of mining activities, that is, progressive site rehabilitation, could be eligible as ordinary working expenses and therefore deductible. All other capital expenses in rehabilitating the site were not deductible.[xx] Further, and more likely the case, rehabilitation would take place after mining activities ceased, that is, after the income-earning activities ceased. Accordingly, expenditure for rehabilitation purposes incurred at this time would not be deductible as there would no longer be a nexus with the production of assessable income.[xxi]

So why would a mining entity choose to incur the expense of rehabilitating the mine site?
The effect of the rehabilitation concession partly compensates the mining entity for the impositions or requirements of the relevant State environmental law. Licences for exploration and mining rights are generally granted to mining entities by the relevant State or Territory Government, with the understanding that the entities have an obligation to rehabilitate. This is accompanied by the payment of a bond or security to the relevant state government or department. If the mining entity does not rehabilitate the site it forfeits the bond or it may be penalised. No deduction is available for the outlay of the bond at the time that it is paid, nor if it is forfeited. If the bond forfeited, or fine incurred is less than the cost of restoration, it could be argued that it is more "rational" for the mining entity not to be environmentally responsible. Similarly no deduction is available if the mining entity is penalised for not rehabilitating the site. This treatment of the bond and/or penalty is still applicable. But prior to 1 July 1991, no deduction was available for the cost of complying with the requirement of rehabilitating the mine site, either. In other words, the mining entity would have to weigh up its options, being: to go to the expense and effort of rehabilitating the mine site, or, just to forfeit the bond. Accordingly, it can be argued that by providing a deduction for otherwise non-deductible rehabilitation expenditure, it was expected that industry would allocate necessary resources toward environmentally responsible behaviour. This is an example of what Miller (1994) called transformative capacity of institutions. The clear departure from the general rules of deductibility may be taken to suggest that the perceived social returns for such tax expenditures outweigh the neutrality objective of taxation. Or do they? If taxation law is used to support environmental law by encouraging environmentally responsible behaviour, then could it be argued that this influences good citizenship? Funnell and Cooper noted that "citizenship carries with it a broad range of privileges and responsibilities, of which the consumption of goods and services is only a small part" (1998 p 40). Is the restoration effort such that it constitutes a social benefit, for which the society (through the state) is willing to forego revenue? In other words, does allowing a tax concession which results in taxation revenue foregone, justify the social benefit of the rehabilitation effort?

From a tax perspective, rehabilitation expenses which are incurred after mining activities cease, do not constitute a deduction under the general provisions of deductibility, but require a specific provision to be created for a deduction to be allowed. From an accounting perspective, these

rehabilitation expenses at the end of the mining activity are meant to be accounted for as cost of production and hence cost of inventory and eventually as cost of goods sold. Therefore, the estimated future costs of restoration (that is, rehabilitation), required by accounting standards, but which are explicitly excluded from a tax deduction (unless they have been incurred in the relevant year of income) can become incorporated in the accounts long before the costs are incurred. The following section explains the accounting treatment.

THE ACCOUNTING STANDARDS: ANOTHER CALCULATIVE PRACTICE

The industry specific accounting standard AASB 1022 'Accounting for the Extractive Industries' is mandatory and was issued in October 1989. In AASB 1022, paragraph .40 states:

> (w)here there is an expectation that an area of interest will be restored:
>
> (a) the cost of restoration work necessitated by exploration, evaluation or development activities prior to commencement of production shall be provided for at the time of such activities and shall form part of the cost of the respective phase(s) of operations;
>
> (b) the cost of restoration work necessitated by any activities after the commencement of production shall be provided for during production and shall be treated as cost of production; and
>
> (c) in determining the amount to be provided in any one financial period, the balance of the provision for restoration costs, after charging against it actual costs incurred to date, shall be reassessed in the light of expected further costs (Parker 2001 p 847).

Restoration costs are also mentioned in paragraph (xv) of the commentary in AASB 1022. It states:

> *"It is frequently a condition of a permit to engage in extractive operations, that the area covered by the permit be restored after the cessation of operations. In any case, it may be policy of the company involved in the operations to carry out such restoration even if there is no legal obligation to do so. Restoration costs that it is expected will be incurred are provided for as part of the cost of the exploration, evaluation, development, construction or production phases that give rise to the need for restoration"* (Parker 2001 p 851).

In other words, the estimated future costs of restoration become part of the cost of inventory (whilst at the same time recognising a provision). Therefore, when the ore etc is recognised for sale, its corresponding cost of goods sold would include a portion of the future, estimated restoration cost, even though it is not yet incurred for a tax law purpose.

Since then, the Urgent Issues Group of Australia issued in August 1995, Abstract 4 'Disclosure of Accounting Policies for Restoration Obligations in the Extractive Industries' applying to reporting entities in the extractive industries for reporting periods ending on or after 6 October 1995. This Abstract addresses the disclosure of the liability of restoration costs. Although paragraphs .70 and .71 of AASB 1022 refer to disclosures in the accounts and group accounts, they do not explicitly address the disclosures of liabilities. Since the Standard AASB1022 is silent on this issue, Abstract 4 takes effect. The following detail is required by Abstract 4:

> (t)he timing of the recognition of the restoration obligation; a description of the amount of the restoration obligation; a description of the basis on which restoration costs have been determined; whether restoration costs have been determined on a discounted basis or not; and whether estimates are on a prospective or retrospective basis (Parker and Porter 2001, p 246).

The liability need not correspond to an actual invoice but can be a reasonable estimate of the cost that will probably be incurred at a later date. Strictly speaking the liability disclosed in the annual reports need not have been incurred for tax purposes. Hence, there is a difference between accounting and taxation as to how "incurred" is interpreted. The accounting perspective is more notional, whilst the taxation perspective requires a transaction of the kind that gives rise to an invoice.

AASB 1022 considers accounting treatment of restoration costs before and after production has commenced. If production has commenced then the restoration costs become part of the cost of production, and are included in the cost of inventory as saleable ore is produced. Hence, the costs of restorations will be included in the assets of the balance sheet or Statement of Financial Position. When this is sold, the restoration costs move out of the balance sheet and become part of cost of goods sold, so that they are reflected in the Statement of Financial Performance. There are also mechanisms to account for restoration costs which are related to the pre-production phases, which include exploration, evaluation, development or construction. The restoration costs associated with these phases are written off as expenses of the period. Hence, these restoration costs are included in the Statement of Financial Performance and have the effect of increasing expenses and therefore reducing profits.

However, if the pre-production phases indicate a successful outcome then the development and exploration costs are carried forward and are included as assets in the balance sheet (or Statement of Financial Position). As production occurs, these carried forward costs are amortised against revenue, that is, they are taken out of the balance sheet and become expenses against revenues during the period that production does occur. It is not always possible to determine whether the area of interest will give rise to a viable site. If this is the case during the exploration and evaluation phases, then these costs, including restoration costs, whether actually incurred or anticipated, are carried forward and amortised when production does occur.

The key points to note from these accounting treatments is that the accounting standard does not make a distinction between restoration costs which are actually incurred or estimated. The particular calculative practice of AASB 1022 provided on 30 October 1989, rests in whether production has actually commenced. This determines whether the restoration costs are included as expenses and find their way into the Statement of Financial Performance, or, whether they are included as assets and find their way in the Statement of Financial Position. Each statement has its own representational practices to which shareholders and other uses may respond. The response has been referred to as transformational action, for example, by buying shares or selling shares, the distribution of capital resources in the economy is influenced.

As well as providing information for such resource allocation decisions, it could also be considered that social benefits are also objectives of annual financial reporting. According to the Statement of Accounting Concepts 2 (SAC2) paragraph 12:

> Reporting entities control resources and influence members of the community through providing goods and services, levying prices, charges, rates and taxes, and acquiring and investing resources. The community interest is best served if scarce resources controlled by reporting entities are allocated to those entities which will use them in the most efficient and effective manner in providing goods and services (Parker 2001 p 16).

This objective of general purpose financial reporting is congruent with the notion that the free market produces the optimum social returns. In other words, community interest referred to in SAC2 could be considered to overlap with social returns. However, do accounting and taxation reporting systems serve society, in general, different sectors within society, or serve the same sector? At one level, we could argue that it is not unreasonable to expect that the accounting system and the tax system would be consistent or at least congruent. However, there is a range of evidence, which suggests that both systems accept the inconsistencies and/or incongruities that exist between each other.

The first compelling evidence of this apparent acceptance is that the accounting profession had developed a standard which explicitly recognised that there are a number of differences between accounting principles and taxation principles of revenue and expense recognition. On 30 October 1989, the accounting standard ASRB 1020: Accounting for Income Tax (Tax-effect Accounting) was approved to take effect for financial years ending on or after 31 December 1989. This standard identified differences between taxable income and accounting profits and categorised them into permanent differences and timing differences. Since then, a "new improved" version of this standard has been released, being AASB 1020 "INCOME TAXES", which identifies "assessable temporary

differences" and "deductible temporary differences", whilst permanent differences are no longer relevant. This "new" AASB 1020 "represents a fundamental departure from the previous rules for accounting for taxes" (Deegan, 2002 p 504) as there has been a change on the basis on which the differences are determined[xxii]. These temporary differences lead to deferred tax assets or can lead to deferred tax liabilities. Therefore, "(t)emporary differences arise because of differences between the *carrying amount* of an asset, and its *tax base*" (Deegan 2002 p 511).

All this means that the new AASB 1020 has changed the calculative practices of differences between tax and accounting, and accordingly has changed how and where these differences are represented in the financial reports. The change of rules for accounting for taxes demonstrates the calculative practices that can be used by the accounting profession to affect the representational means by which entities report to their shareholders. In turn, these rules, and changes in rules have a transformative capacity since the "reality" they create can "alter the way in which it can be thought about and acted upon" (Miller 1994 p 2). For example, the kinds of decisions about resource distributions, represented by shareholdings (and dividends) are affected by the changes in calculative practices. Miller argues that "accounting creates a particular realm of economic calculation of which judgements can be made, actions taken or justified, policies devised, and disputes generated and adjudicated" (Miller 1994 p 4). Hence, calculative practices created and invoked by the accounting profession, through its institutional structures (for example, the Australian Accounting Standards Board) legitimate the transformational action by and for whom such institutions exist.

Deegan noted that "it is possible for a firm that has large *accounting profits* as disclosed in its statement of financial performance to pay little or no tax. While this can be perfectly legitimate, it has, at times, created political problems for particular organisations" (2002, p 504). In other words, the rules may create or sustain inconsistencies between the accounting and taxation systems. As long as there are rules supported by another system, then the resultant inconsistencies are legitimate, or valid. Hence accounting systems and tax systems offer rationale to enable abstract notions to be knowable (Miller 1994) even if the calculations are "quite complex" as it takes "a very sophisticated reader of the financial reports to be able to understand … what the calculated number actually represents" (Deegan 2002 p 527). That is, these institutions claim to represent society's interests, when it is only one sector of society, the holders and providers of capital, which are considered. However, it is not just shareholders who are making decisions, instead employees, members of communities affected by the mining operations as well as current and future generations of society, can be included. Whether these sectors of society have "sophisticated knowledge" or access to this "knowable" knowledge is generally not a consideration. Therefore, it can be said that the taxation system and the accounting system serve those who provide capital and hence legitimate the benefits of associated with their privileges.

This paper demonstrates a particular case where inconsistencies between accounting and tax exist, and instead of assuming that this is merely incidental, we argue that the inconsistency depends on these institutions being independent of each other. In this way, the systems by necessity represent different "realities" of an entity and their community or society. By not seeking congruence, one does not have to evaluate the assumptions or scrutinize the calculative practices which give rise to the differences. Instead, it is a means by which institutions can perpetuate and sustain themselves, and in this case, each other. That is accounting standards and taxation systems are inter-dependent, and are a part of a larger system which is an "instrinsic and constitutive component of the government of economic life" (Miller 1994 p 29). The significance of this rests with the considerable contribution the mining industry makes to the Australian economy and the Australian community's expectation of environmental responsibility on the part of the mining industry. Which sector is prioritised? Who or what is privileged? We posit that by keeping tax and accounting systems incongruent, rather than complementary, enables companies to appear socially responsible to one class of citizens, while financially benefiting for the environmental destruction they cause in the first place.

CONCLUSION

Accounting allows for future estimated expenditure which has not been incurred to be accounted for in periods prior to the activity of the restoration (usually at the end of the mine's economic life). This allows for a particular construction of reality. That is, a particular accounting practice is invoked through accounting standards which allows a particular financial representation, to which shareholders respond. Simultaneously, another set of calculative practices, this time allowed by the taxation system, can be invoked to create another set of representational practices. These representations are legitimated by the claims to transformative capacity, of the kind which presents the mining entities, which created the environmental destruction, to appear as if they are fulfilling their environmental responsibilities. In turn, these entities can be said to have fulfilled their social obligations and hence be good corporate citizens. Whether social benefits can be had by all is questionable and certainly the validity of such claims needs to be challenged. The company, accounting standards and the taxation system (the state) act seemingly independently to privilege a particular class of citizen (providers of capital), while at the same time claim to be acting for the benefit of all society. We conclude, that the independence of these institutions, whilst creating duplication, conflict and additional burdens for compliance, act to obfuscate their role in perpetuating the privileges, powers and impact on the society in which they claim to serve.

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[i] Sections 124B to 124BF ITAA36

[ii] This review was conducted on behalf of the Federal Government, the report of which was delivered in 1999, resulting in major business and taxation reforms which were introduced from the end of 1999.

[iii] The main provision offering the deduction is now section 40-735, replacing the pre- 1 July 2001 provision, section 330-435.

[iv] Either s.51(1) ITAA36 or its counterpart s. 8-1 ITAA97.

[v] Consider also *Mount Isa Mines Ltd* case 21 ATR 1294; 91 ATC 4154 (Fed Ct); 92 ATC 4755 (High Ct)

[vi] Incurred by the taxpayer on or after 1 July 1991 and includes both current and capital expenditure.

[vii] See section 330-435(1) and section 8-1(1) ITAA97.

[viii] Section 124BA (1).

[ix] Section 330-435(2)

[x] Restoration of part of a site is also allowed under the new SubDiv 40-H ITAA97.

[xi] All of which are separately defined in ITAA97.

[xii] See Section 124B which expressly includes rehabilitating the site in the definition of restoring the site.

[xiii] Section 54 ITAA36, Div. 42 ITAA97

[xiv] Section 124BC(1)(c) ITAA36, section 330-450(1)(b) ITAA97.

[xv] Section 124BC(2) ITAA36, section 330-450(2) ITAA97.

[xvi] However, there is a restriction to the scope of this provision, see section 124BF (2).

[xvii] These are usually required before a mining or exploration right is granted by the relevant State or Territory Government.

[xviii] Section 124BC (1)(d) ITAA36, section 330-450(1)(c) ITAA97.

[xix] *Reform of the Australian Tax System, Draft White Paper*, AGPS, Canberra, 1985, para. 1.15

[xx] For a discussion on capital expenditure see *FCT v Mount Isa Mines Pty Ltd* (1991) 21 ATR 1294; 91 ATC 4154.

[xxi] See *Amalgamated Zinc (De Bavay's) Limited v FCT* (1935) 54 CLR 295.

[xxii] The new AASB 1020 uses a balance sheet approach. It is not the intention of this paper to analyse this standard other than to use it to exemplify calculative practices.

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