TR 96/D12 - Income tax: depreciation of accommodation units used in caravan or tourist parks, on work sites or in nomadic businesses

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Draft Taxation Ruling

Income tax: depreciation of accommodation units used in caravan or tourist parks, on work sites or in nomadic businesses

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IT 2685

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What this Ruling is about

1. Subsection 54(1) of the *Income Tax Assessment Act 1936* ('the Act') provides that a taxpayer may claim depreciation on any property, being plant or articles owned by the taxpayer and either used by the taxpayer for the purpose of producing assessable income or installed ready for use for that purpose, as an allowable deduction.

Class of person/arrangement

2. This Ruling considers:

(i) whether an accommodation unit used in a caravan or tourist park, on a work site or in a nomadic business is 'plant or articles' for the purposes of subsection 54(1), and therefore, whether depreciation is allowable in respect of that unit;

(ii) whether a taxpayer is entitled to claim depreciation where the taxpayer has paid for and uses an accommodation unit for the purpose of producing assessable income, but does not own the land on which the unit is situated; and

(iii) what rate a taxpayer should use where the taxpayer is entitled to claim depreciation for accommodation units.

Ruling

Is an accommodation unit 'plant or articles' and can a taxpayer claim depreciation in respect of that unit?

When is an item of property 'plant or articles'?

3. Whether an item of property is 'plant or articles' under subsection 54(1) depends on the circumstances of each case. However, for the purposes of this Ruling, an item will constitute 'plant or articles' where it is the means or apparatus by which a taxpayer produces assessable income, or it is an integral part of the means or apparatus by which a taxpayer produces assessable income.

4. Further, an item will not constitute 'plant or articles' where it merely provides the setting or environment within which a taxpayer conducts income producing activities.

Is a building 'plant or articles'?

5. We consider, *prima facie*, that a building is not 'plant or articles'. However, there are limited circumstances where a building can be plant. There are specific provisions in the Act which provide that certain buildings are plant, e.g., subsection 54(2). There are also a limited number of cases where the courts have considered that a building may be plant.

6. Case law has established that, in a manufacturing context, a building, structure or another like item, or parts of it, may constitute plant where it is in the nature of a tool and if the function or purpose of the item is so related to the taxpayer's operations or special that it warrants it being held to be plant.

7. We consider that, for the purposes of section 54, this test is limited to buildings in a manufacturing context and is not applicable to buildings used for purposes other than manufacturing unless provided for elsewhere in the Act.

When is a structure a building?

8. We consider that a structure is a building where it is erected or built *in situ* on foundations such as are usually provided for such structures or buildings. A feature of a building is that its construction results in it being built into the ground so as to form a static and permanent feature of the place in which a taxpayer's business is carried on. It also has no other function than to perform a convenient stand for the performing of work in the operations of a taxpayer. Generally, a building is fixed to the ground, i.e., it cannot be detached from the

ground without substantial injury to either the building or the ground, and the intention is that it remain there permanently.

When is an accommodation unit 'plant or articles'?

9. We consider that an accommodation unit used in a caravan or tourist park, on a worksite or in a nomadic business is 'plant or articles' where it is not a building and it is either the apparatus or the means of earning assessable income, or an integral part of the apparatus or means of earning assessable income.

When is an accommodation unit a building?

10. We consider that an accommodation unit will be a building where it is fixed to the ground and the intention is that it remain there permanently. A unit which is bolted to supports which are permanently fixed to the ground, or which is resting on blocks is not permanently fixed to the ground.

11. Caravans (whether mobile or immobile), relocatable homes such as manufactured homes, mobile or portable sheds and cabins are not buildings. Motel units, fixed cabins, kit homes, non-relocatable accommodation units and other similar dwellings are buildings as they are permanently fixed to the ground.

When is an accommodation unit an integral part of the means or apparatus of earning assessable income?

12. A taxpayer may claim depreciation on an accommodation unit where it is a caravan (whether mobile or immobilised), a relocatable home such as a manufactured home, a mobile or portable shed or cabin used in a caravan or tourist park, on a worksite or in a nomadic business. These units form an integral part of the taxpayer's business when used in these industries.

13. A taxpayer cannot claim depreciation on an accommodation unit such as a motel unit, non-relocatable accommodation unit, fixed cabin, kit home and other similar dwelling. These units are buildings and provide merely the setting in which the taxpayer conducts income producing activities.

Is a taxpayer entitled to claim depreciation where the taxpayer has paid for and uses an accommodation unit for the purpose of producing assessable income, but does not own the land on which the unit is situated?

14. There are cases where a taxpayer has paid for an accommodation unit and uses it to produce assessable income, but does not own the land on which it is situated. Generally, items fixed to another person's land (i.e., fixtures) become the property of the owner of the land. Only the owner of an item can claim depreciation on that item under section 54.

15. Where an accommodation unit is 'plant or articles' under section 54, it will not be a building (see paragraphs 10 and 11 above). Therefore, it will not be a fixture. In these circumstances the taxpayer who has paid for the unit will own, and be able to claim depreciation on, that unit.

What rate should a taxpayer use where the taxpayer is entitled to claim depreciation for accommodation units?

16. Depreciation rates for mobile caravans, whether used within the confines of a caravan park or not, mobile sheds used in a nomadic business and portable sheds used in the building and construction industry, are set out in the depreciation schedules. We consider these rates also apply to mobile caravans.

17. All other accommodation units that can be depreciated under this Ruling, i.e., relocatable homes, cabins and manufactured homes, will have an effective life of 30 years. The broadbanded depreciation rates for post 26-02-92 acquisitions and pre 27-02-92 acquisition are:

	Effective life (years)	Broadbanded rate PC (%)	DV (%)
Post 26-02-92	30 or more	7	10
Pre 27-02-92	20 to less than 40	5	7.5
		Broadbanded rate + 20% PC (%)	DV (%)
Pre 27-02-92	20 to less than 40	6	9

18. A taxpayer may adopt a different estimate of the effective life of a unit by using the rules laid down in sections 54A, 55 and 56 of the Act. Taxation Ruling IT 2685 outlines the factors to take into account when a taxpayer makes an estimate of the effective life of an item.

19. A taxpayer needs to be quite careful when making an estimate of effective life. The taxpayer will need to demonstrate that the conclusion reached was reasonable and contained all relevant information.

Date of effect

20. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Previous Rulings

21. Taxation Ruling IT 145 will be withdrawn on finalisation of this Ruling. To the extent that the principles in IT 145 are still applicable, we have incorporated them in this Ruling.

Explanations

Is an accommodation unit 'plant or articles' and can a taxpayer claim depreciation for that unit?

When is an item of property 'plant or articles'?

22. Depreciation is an allowable deduction under subsection 54(1) of the Act for 'plant or articles' owned by a taxpayer and used, or installed ready for use, for the purpose of producing assessable income. The classic judicial definition of 'plant' was given by Lindley J in *Yarmouth v. France* (1887) 19 QBD 647 at 658, where he stated:

> '[plant] in its ordinary sense ... includes whatever apparatus is used by a business man for carrying on his business, ... all goods and chattels, fixed or moveable, ... which he keeps for permanent employment in his business.'

23. In *J Lyons and Co Ltd v. The Attorney General* [1944] 1 All ER 477 (*Lyons* case) at 479, Uthwatt J expanded on this concept and

stated that if an item merely provides the setting in which income producing activities are conducted, it does not qualify as plant.

24. These principles have been cited with approval by Australian courts in many cases dealing with the question of 'plant or articles': see for example, *Broken Hill Proprietary Co Ltd v. F C of T* (1968) 15 ATD 43; (1967-1969) 120 CLR 240; (1967) 10 AITR 481 (*Broken Hill* case*)*; *Wangaratta Woollen Mills Ltd v. FC of T* 69 ATC 4095; (1969) 119 CLR 1; (1969) 1 ATR 329 (*Wangaratta Woollen Mills* case*)*; and *Macquarie Worsteds Pty Ltd v. FC of T* 74 ATC 4121; (1974) 4 ATR 334 (*Macquarie Worsteds* case).

Is a building 'plant or articles'?

25. Generally, a building is not 'plant or articles'. Case law has established that, in most cases, if a structure is a building it is not capable of being plant.

26. Kitto J in *Moreton Central Sugar Mill Co Ltd v. FC of T* (1967) 116 CLR 151; (1967) 10 AITR 420 said at CLR 157; AITR 423"

> '... [plant] ... has never ... been held and should not now be held, to include a structure built into the ground so as to form a static and permanent feature of the place in which a business may be carried on and having no other function than to provide a convenient stand for the performing of work in the business.'

27. In *Case S25* 17 TBRD 144; *Case 50* 13 CTBR (NS) 335, Mr Davies (Member) considered whether items of property which are fixtures, structures, parts of buildings, etc., are plant. He applied a function test. He said, after considering the judgment of Uthwatt J in the *Lyons* case, at TBRD 148-1 49; CTBR (NS) 340:

> 'One should accept, as a basic concept, that the plant of an organization comprises its production equipment and that the industrial buildings are merely the premises within which that equipment is housed and operated. The idea is easy enough to grasp if one regards land and buildings as permanently situated while business is a transient thing so far as location is concerned. Thus, if a person desires to set up a plant or to move his existing plant to a new location, he may either build a new factory, purchase an existing factory or lease a factory. Having established his plant in the new location, he may again at a later time, see fit to move to a new location. In such event, the productive plant is re-located, but the factory and the permanent improvements on the land remain. This is the basic concept which distinguishes between buildings and plant.'

28. In *Quarries Ltd v. FC of T* (1961) 106 CLR 310; (1961) 8 AITR 383 (*Quarries Ltd* case) Taylor J, at CLR 316; AITR 386 stated that:

> '... "article" cannot ordinarily be taken to comprehend a structure erected or built *in situ* ...'

29. However, there are limited circumstances where a building can be plant for the purposes of subsection 54(1). Subsection 54(2) has extended the definition of plant to include certain buildings. There have also been a limited number of cases where the courts have found that the building in question was plant.

30. In the *Macquarie Worsteds* case, Mahoney J set out a test used by the courts to decide when a building can be plant. He stated, at ATC 4125; ATR 338:

> 'Where the question has been whether buildings, structures or the like, or parts of them, constitute plant, ... [the question is] whether the function performed by the thing is so related to the taxpayer's operations or special that it warrants it being held to be plant.'

31. In the *Wangaratta Woollen Mills* case, McTiernan J considered that a dyehouse used in the process of manufacture was plant. He stated at CLR 10; ATR 335:

> 'I am of the opinion that the plaintiff's dyehouse is "in the nature of a tool" in the trade and does "play a part" itself in the manufacturing process. It is much more than a convenient setting for the plaintiff's operations. It is an essential part in the efficient and economic operation of the plaintiff's business.'

32. Similarly, Kitto J held in the *Broken Hill* case that a building could be plant in the manufacturing context. He stated at CLR 263; AITR 499:

> '... I regard as plant the buildings which are more than convenient housing for working equipment and ... play a part themselves in the manufacturing processes.'

33. The courts have held that it is only in the manufacturing context that a building, structure or another like item, or parts of it, may constitute plant. It is only in this context that the courts have found that a building can be in the nature of a tool and play a part in the taxpayer's operations so integral or special that it warrants it being held to be plant.

When is a structure a building?

34. In *Stevens v. Gourley* (1859) 7 CBNS 99, Byles J stated at 112 that:

> '[it is] absolutely impossible to define the word "building" with any approach to accuracy. One may say of this or that structure, this or that is not a building; but no general definition can be given; and our lexicographers do not attempt it. Without, therefore, presuming to do what others have failed to do, I may venture to suggest, that, by a "building" is usually understood a structure of considerable size, and intended to be permanent, or at least to endure for a considerable time.'

35. In the *Quarries Ltd* case, Taylor J considered whether portable sleeping units used in a nomadic construction business were buildings. He stated at CLR 316; AITR 386:

> '[such] sleeping units, are not structures in the nature of buildings in any ordinary sense of that expression; they were, as appears, designed and constructed as portable or movable equipment for use in connexion with the nomadic type of business ...'

and at CLR 314; AITR 385:

> 'But even if the sleeping units can be said in ordinary parlance to be buildings, it is abundantly clear that they do not, in any sense, constitute structural improvements on land.'

36. Therefore, we consider that a fundamental test as to whether a structure is a building is whether the structure is fixed to the ground and the intention is that it remain there permanently, thereby, constituting a structural improvement to the land.

When is an accommodation unit 'plant or articles'?

37. We consider that we can apply the general tests outlined in paragraphs 22 to 33 above in order to determine whether an accommodation unit is 'plant or articles' under subsection 54(1). Therefore, we consider that an accommodation unit is 'plant or articles' where it is not a building and it is either the apparatus or the means of earning assessable income, or an integral part of the apparatus or means of earning assessable income.

When is an accommodation unit a building?

38. Guidelines on whether accommodation units constitute 'plant or articles' or buildings have emerged from a number of Board of Review and court cases.

39. In *Case C54* 3 TBRD 285; *Case 35* 3 CTBR (NS) 190; and *Case F84* 6 TBRD 480; *Case 92* 5 CTBR (NS) 547, the Board of Review held that caravans were not 'plant or articles'. In *Case C54* at

TBRD 289; *Case 35* at CTBR (NS) 194, Mr J A Nimmo (Member) stated that:

> 'In the present case [the caravan] cabins were, in my opinion, in the nature of small dwellings. Although on a greatly reduced scale, they provided accommodation similar to that provided for the occupants of furnished rooms or small flats.'

Mr Nimmo decided that the caravans were buildings rather than plant.

40. In a dissenting judgment, Mr H H Trebilco (Chairman) at TBRD 481; CTBR (NS) 191, stated that there was no doubt that a caravan used for the purpose of earning assessable income that was attached to a motor vehicle would be regarded as 'plant or articles'. The question was whether such caravan without its undercarriage would have the character of 'plant or articles'. He concluded that it would. Mr Trebilco was also of the view that it did not follow that a caravan was a building simply because one could do similar things in a caravan as one could be done in a small building of similar size.

41. In *FC of T v. Tourapark Pty Ltd* 80 ATC 4229; (1980) 10 ATR 858, the Full Federal Court did not consider the earlier Board cases. The court held that caravans which were placed on concrete blocks and connected to supplies of water and electricity were 'plant or articles' within the meaning of subsection 54(1). Therefore, the Federal Court, like Mr Trebilco, did not consider caravans to be buildings.

42. In the *Quarries Ltd* case, the High Court considered whether portable sleeping units used in a nomadic construction business were plant. Taylor J held that the units in question were not buildings (see paragraph 35 above).

43. In *Case A43* 69 ATC 244; *Case 21* 15 CTBR (NS) 124, the Board of Review considered whether different types of sheds used on a contract site were plant. The first type of sheds was completely portable. They could be readily sectionalised for transport. They either rested by their own weight on the ground or on loose foundations; had their steel frames bolted to hardwood stumps sunk into the ground to give clearance above the ground; or were bolted to a base plate attached to concrete footings containing holding down bolts. The second type of sheds was not portable but they were on site only for the duration of the contract. The company was bound under the contract to remove them after completion of the job. The Board of Review held that the sheds were similar to the sleeping units in the *Quarries Ltd* case and were plant. The Board considered that the fact that the sheds were located temporarily on the site and not permanently was crucial.

44. The courts have held that caravans (whether mobile or immobile) and portable sleeping units and sheds are not buildings. Adopting their reasoning, we consider that other accommodation units such as relocatable cabins and manufactured homes are not buildings where, by their very nature and design they are portable or mobile and do not constitute structural improvements. It is irrelevant that one can do similar things in them as could be done in a small building of similar size.

45. We also consider that, applying the test set out in paragraphs 34 to 36 above, accommodation units such as motel units, fixed cabins, non-relocatable units, kit homes and similar dwellings are buildings. They are not constructed and designed to be portable and they are affixed to the land as structural improvements.

When is an accommodation unit an integral part of the apparatus or means of earning assessable income?

46. In his dissenting judgment in *Case C54*; *Case 35*, Mr H H Trebilco (Chairman) stated at TBRD 482; CTBR (NS) 192 that caravans did not lose their character as chattels even though they were so affixed to the land that they had been absorbed in and become part of the land as a whole. They retained their status as 'apparatus used by [a] business for carrying on [a] business'.

47. In the *Quarries Ltd* case, Taylor J found that the sleeping units were an integral part of the taxpayer's business. He stated, at CLR 317; AITR 387 that:

> '[the taxpayer's] business was of a special character ... it could be carried on only if some accommodation for its employees was provided at each site ... without the units ... it would have been impossible for the taxpayer to carry on its business in the manner which its contractual obligations required.'

48. In *Case A43*; *Case 21* Mr R C Smith (Member) considered whether portable sheds used on a contract site were part of the means or apparatus by which the taxpayer earned its assessable income. He stated, at ATC 245; CTBR (NS) 125:

> 'From their nature their operation may appear to have been a passive one but they were much more than just "setting" in which the operations were carried on. They did, indeed, play an important part in the productive processes of the taxpayer on the respective sites on which they were situated, since without them it would not have been practicable for the taxpayer to carry out the operations necessary for the performance of its contracts.'

49. In that case, Mr R E O'Neill (Member) stated, at ATC 250; CTBR (NS) 131 that these sheds were:

> 'apparatus used by the taxpayer...'

and:

> 'Their special purpose is to facilitate "on site" construction and their positioning on site is pursuant to its contractual obligations.'

He therefore regarded them as plant.

50. We consider that we can also apply the reasoning set out in the above cases to other accommodation units such as portable cabins, transportable or relocatable homes, e.g., manufactured homes. Therefore, where a taxpayer uses these units in a caravan or tourist park, or on worksites or in a nomadic business, we consider that they are an integral part of the means or apparatus by which the taxpayer earns assessable income.

Is a taxpayer entitled to claim depreciation where the taxpayer has paid for and uses an accommodation unit for the purpose of producing assessable income, but does not own the land on which the unit is situated?

51. It is quite common in the caravan/tourist park industry for a taxpayer to run a tourist park on land which is owned by another, e.g., the local council. The taxpayer pays for the accommodation units and places them on the leased land.

52. The law of fixtures provides that where an item is affixed to another person's land that item becomes the property of the owner of the land (see *Australian Provincial Assurance Co Ltd v. Coroneo* (1938) 38 SR (NSW) 700, where Jordan J states at 712 '[a] fixture is a thing once a chattel which has become in law land through having been fixed to land'). This means that, in the context of a tourist park, if an accommodation unit were a fixture it would form part of the property of the owner of the land rather than property of the purchaser of the unit.

53. This issue is not relevant in the context of this Ruling. Whether or not an accommodation unit is 'plant or articles' will depend on whether the unit is a building. If it is a building it is not capable of being 'plant or articles'. In our view in the caravan/tourist park industry a fixture is similarly incapable of being 'plant or articles'. For the purpose of this Ruling, if a unit is not a building it is also not a fixture.

54. Therefore, where a taxpayer has paid for an accommodation unit which constitutes 'plant or articles' and the taxpayer uses that unit to produce assessable income, the taxpayer can claim depreciation on that unit regardless of whether or not that unit is situated on land owned by another taxpayer.

What rate should a taxpayer use where the taxpayer is entitled to claim depreciation for accommodation units?

55. This Ruling does not set depreciation rates for accommodation units that are already covered in the depreciation schedules. These include rates for mobile caravans, whether used within the confines of a caravan park or not, mobile sheds used in a nomadic business and portable sheds used in the building and construction industry.

56. There are no published depreciation rates for other depreciable accommodation units, such as relocatable homes, cabins and manufactured homes. However, Taxation Ruling IT 2685 sets out the factors that a taxpayer needs to consider when estimating the effective life of a depreciable item. These include the potential physical life, the expected circumstances of use by particular taxpayers and predicted obsolescence. Information which the taxpayer could use to make an estimate include the manufacturer's specification and independent engineering information.

57. Whilst these accommodation units are engineered to have a structural life in excess of 50 years, we consider that in the context of use in a caravan or tourist park the effective life is less than 50 years. We consider that, taking into account the extra wear and tear a unit would be subject to in a tourist park, the effective life of relocatable homes, cabins and manufactured homes that are depreciable under this Ruling is 30 years.

Examples

Example 1

58. John Dory purchases a caravan which he decides to rent out to earn some extra income. He leaves the caravan in a tourist park owned and run by Sue May. Sue already has her own caravans in the park.

59. Some of Sue's caravans are in a mobile condition as they still have their wheels attached. Other caravans have had their wheels removed, rendering them immobile.

60. Both Sue and John may claim depreciation on their respective caravans. These caravans are not buildings as they are not permanently fixed to the ground and they are an integral part of the taxpayers' business (see paragraphs 9 and 12 above).

Example 2

61. Fred is the operator of a caravan park. He leases the land on which the park is situated from the local council. Fred purchases a number of mobile cabins for use in his park. He stabilises and supports the movable cabins by steel girders which are themselves concreted into the ground. He then bolts the movable cabins to the steel girders. To improve the look of the cabins he places trellising around the base of the cabins between the cabin floor and ground. He attaches an electricity junction box to the cabins and connects other services, such as sewerage and water.

62. Fred may claim depreciation on these cabins. They are not buildings. Despite the fact that Fred has attached services to the cabins, they are not permanently fixed. They are an integral part of Fred's business (see paragraphs 9,12, 14 and 15 above.) However, the supporting structures and connections may be in the nature of structural improvements and would need to be considered separately.

Example 3

63. Mary owns and operates a tourist park. She decides to expand her accommodation facilities and purchases a relocatable manufactured dwelling. The dwelling arrives at the park on the back of two trucks. It has no wheels but has a chassis/frame underneath which is designed to support the unit once it is in location. A crane lifts the two sections into position and workmen bolt the two sections together. Mary would not be able to move the dwelling without the aid of a crane and some dismantling.

64. Mary may claim depreciation on the dwelling as it is not a building. Although it requires a crane to move it, it is designed as a movable dwelling and is not permanently fixed to the ground. It is also an integral part of Mary's business (see paragraphs 9 and 12 above.)

65. Mary later also considers erecting a kit home in the park. We consider that she would not be able to claim depreciation on this type of home as it is a building. In order for Mary to erect the home, she would need to engage a builder and submit plans to the local council. Such a home is fixed to the ground with the intention that it remain there permanently (see paragraph 11 above.)

Example 4

66. Acme Construction Co has a number of contracts to build roads around the country. At each site, Acme places caravans, portable sheds and a relocatable dwelling such as a manufactured home. These units provide sleeping and eating accommodation for the workers who undertake the work under the contracts.

67. We consider that Acme can claim depreciation on the accommodation units used by the workers on site. They are not buildings and are the apparatus or the means by which Acme earns income at each site (see paragraphs 9 and 12 above).

Your comments

68. If you wish to comment on this Draft Ruling, please send your comments by: 12 July 1996

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