


***IT 2658 - Income tax: use of units of industrial property for the purpose of producing assessable income***

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## Taxation Ruling

### Income tax: use of units of industrial property for the purpose of producing assessable income

*Income Tax Rulings do not have the force of law. Each decision made by the Australian Taxation Office is made on the merits of each individual case having regard to any relevant Ruling.*

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## What this Ruling is about

1. This Ruling explains the meaning of the words 'has used the unit of industrial property ... for the purpose of producing assessable income' in subsection 124L(1) of the *Income Tax Assessment Act 1936*. It has been issued as a result of the decision of the Administrative Appeals Tribunal in *Case W19*, 89 ATC 228; *AAT Case 4882* (1989) 20 ATR 3272.

2. Division 10B of Part III allows deductions for certain capital expenditure on units of industrial property over their effective life. One of the requirements for allowing deductions is that the owner of the unit of industrial property has, in the year of income or a previous year of income, used it for the purpose of producing assessable income.

## Ruling

3. We accept that the decision in *Case W19*; *AAT Case 4882* is correct. To satisfy the words in subsection 124L(1) 'has used the unit of industrial property ... for the purpose of producing assessable income', it is not necessary to establish a direct nexus between the use of the unit of industrial property and identifiable assessable income (or even a right to assessable income) attributable to that use. Eligibility to claim deductions under Division 10B begins once the unit of industrial property exists and it is put to use with the ultimate object of producing assessable income.

4. Use of a unit of industrial property for the purpose of producing assessable income need not be its predominant, or even a significant, use. Some use for that purpose is all that is necessary. However, if

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the owner of a unit of industrial property obtains a benefit from using it outside Australia, the Commissioner is empowered under section 124Z to reduce any deduction allowable under Division 10B by such amount as he thinks fit. This discretion may be exercised in appropriate cases to reduce the deduction to the extent to which the unit of industrial property is used for purposes other than the production of income subject to Australian tax.

5. Use of a unit of industrial property by an agent, for and on behalf of its owner, is sufficient for Division 10B to apply to the owner and enable a deduction to be allowed.

## Date of effect

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6. This Ruling applies (subject to any limitations imposed by statute) for years of income commencing both before and after the date on which it is issued.

## Explanations

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7. For Division 10B to apply, section 124L requires the owner of a unit of industrial property to have used it (or the invention, work or other subject-matter or design to which it relates) in the year of income concerned or in a previous year of income for the purpose of producing assessable income. For this purpose, a 'unit of industrial property', broadly speaking, means rights possessed by a person as:

- (a) the grantee or proprietor of a patent for an invention; or
- (b) the owner of a copyright; or
- (c) the owner of a registered design; or
- (d) a licensee under such a patent, copyright or design.

8. There are two main elements in this requirement, namely:

- (a) that the owner has used the unit of industrial property; and
- (b) that the purpose of its use is to produce assessable income.

**(a) Whether unit of industrial property has been used**

9. Whether a unit of industrial property has been used is a question of fact that depends on the circumstances of each case. If a unit has not been put to any use, Division 10B does not apply to its owner and no deduction is allowable.

10. For a unit to have been used, it is implicitly required that it first exist; unless a unit of industrial property has come into existence, it cannot have been used by its owner.

**(b) Use for the purpose of producing assessable income**

11. The use of a unit of industrial property may be for the purpose of producing assessable income even though that use does not of itself actually generate or produce assessable income. A direct connection between the use of a unit and some identifiable assessable income (or even a right to assessable income) attributable to that use is not necessary to satisfy the requirement of being 'used ... for the purpose of producing assessable income'.

12. Use of a unit of industrial property for the purpose of producing assessable income need not be its predominant use or even a significant use. It is enough if there is some use of the unit or industrial property for that purpose.

13. A unit of industrial property that is only used for the purpose of producing exempt income, rather than assessable income, does not satisfy the requirements of section 124L.

14. Section 124Z confers a discretion on the Commissioner to reduce a deduction otherwise available under Division 10B by such an amount as he thinks fit if the owner of a unit of industrial property obtains a benefit from its use outside Australia. (An example of this situation is where a patented design is used for the purposes of a business carried on both in Australia and in another country.) This discretion may be exercised in appropriate cases to reduce the deduction to the extent to which the unit of industrial property is used for purposes other than the production of income subject to Australian tax.

**Examples**

15. The following examples illustrate some of the units of industrial property for which the owner may claim deductions for capital expenditure under Division 10B:

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- (a) a film used by its owner in the owner's business:
  - . to promote the owner's image; or
  - . to entertain the owner's clients; or
  - . as an in-house teaching aid (*Case W19; AAT Case 4882*).
  
- (b) a design used by production workers employed by the owner in the manufacture of articles for sale.
  
- (c) a licence under a copyright used by its owner to:
  - . sub-license the use of the copyright for reward; or
  - . train employees to use the copyright.
  
- (d) a licence to use a design used by the licensee to produce articles from the design for the benefit of its employees.

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Division 10B of Part III

*case references*

- Case W19, 89 ATC 228; AAT  
Case 4882 (1989) 20 ATR 3272