

IT 31 - Investment allowance - structural improvements - plant structures

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TAXATION RULING NO. IT 31

INVESTMENT ALLOWANCE - STRUCTURAL IMPROVEMENTS - PLANT
STRUCTURES

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PREAMBLE Representations received from a number of quarters necessitated a review of practices which appear to have arisen in the consideration of claims for investment allowance deduction in respect of capital expenditure on plant structures in the manufacturing, industrial or mining industries.

2. The particular question which arises is the extent to which plant structures are disqualified from the investment allowance deduction as structural improvements within the meaning of section 82AE of the Income Tax Assessment Act.

RULING 3. A literal reading of section 82AE would suggest that all structural improvements, apart from the exceptions specified in the section, would not be eligible for the investment allowance deduction. The section must be read, however, in the context of the investment allowance provisions as a whole and in the light of earlier investment allowance provisions relating to manufacturing and primary production plant.

4. At the forefront of the interpretation of section 82AE is section 82AB which authorises a deduction in respect of the acquisition or construction by a taxpayer of a new unit of eligible property. The term "construction" is defined to include manufacture and this inclusive definition indicates that the deduction was to be available in respect of eligible property, i.e., plant or articles, not only manufactured by a taxpayer but also built, erected, fitted together, etc. by him.

5. In essence section 82AE has its origin in section 62AB(3)(a) of the earlier investment allowance provisions which excluded from deduction buildings, wharves, fences, dams, earth tanks, bores, wells or other structural improvements used in carrying on a business of primary production. It is of significance that section 62AA which provided a special deduction for investment

in manufacturing plant does not have any exclusion in respect of structural improvements.

6. In a Press Release of 26 January 1976 the then Treasurer stated that the purpose of section 82AE was to exclude from the investment allowance certain structural improvements, e.g., wharves and jetties and primary producers' boundary fencing, employees' cottages, machinery and shearing sheds and stables. There was no suggestion that the exclusion was intended to be any wider than this.

7. Consistently with the intention of the legislation it was stated in a memorandum from this office of 15 October 1976, H.O. Ref. 76/3587, that it is not the view of this office that section 82AE applies generally to exclude from the investment allowance deduction expenditure incurred in the construction of plant comprised wholly or in part of structures whether or not the plant structures are affixed to the land.

8. If structures for use in industries other than primary production are not to qualify as eligible property for investment allowance purposes it will be on more general principles and not in reliance on section 82AE, i.e., because the structures do not qualify as plant or articles within the meaning of section 54. Where structures do qualify as plant or articles within the meaning of section 54 they will also qualify as eligible property for investment allowance purposes.

9. In the circumstances there are no grounds for the approach which seems to have arisen in some offices that anything which resembles a structure or any part of a structure made of concrete or principally concrete does not qualify as eligible property because of section 82AE. If a structure is properly characterised as plant it will be eligible property for investment allowance purposes whatever its appearance or composition.

10. In determining what structures are plant, particularly where major manufacturing, industrial and mining complexes are involved, regard should be had to Head Office memorandum J63/4 of 1 March 1972 and the attachment thereto, viz. memorandum dated 28 February 1972 to the Crown solicitor concerning an appeal to the Full High Court in *FC of T v ICI Australia Limited* (1972) 127 CLR 529. In the Head Office memorandum of 1 March 1972 it was stated:

2. 'In *The Broken Hill Proprietary Co Ltd v FCT*, (1967) 120 CLR 240, Kitto J. gave the following explanation with regard to the meaning of the word "plant" in section 122, and this is no doubt a reasonably accurate statement of the way in which the courts would interpret the conception of "plant" as it is used in the depreciation provisions. At p.247, his Honour said:-

'As to the meaning of the word "plant", it is sufficient at this point to refer to a line of

English decisions from *Yarmouth v France* (1887) 19 Q.B.D. 647, at p.658, to *J. Lyons & Co Ltd v Attorney-General* (1944) 1 Ch. 281, at p.287, and *Jarrold v John Good & Sons Ltd.* (1963) 1 W.L.R. 214, and to say that in my opinion, in accordance with the exposition to be found in these cases, the word as used in s.122(1) includes every chattel or fixture which is kept for use in the carrying on of the mining operations, not being (in case of a building) merely in the nature of a general setting in which a part of those operations are carried on.'

11. At p.263 his Honour went on to say that he was of the opinion that most of the structures in question were in the nature of plant. He regarded as plant the buildings which were more than convenient housing for working equipment and (considered as a whole, without treating as separate subjects for consideration the iron roofing and cladding of buildings where the main structural members are specially adapted to the needs of the processes to be carried on inside) played a part themselves in the manufacturing process, e.g., the holding bay for the basic oxygen steel making installation as well as the very specialised building which because of its inbuilt equipment forms part of that installation.

12. The memorandum of 28 February 1972 to the Crown Solicitor stated at paragraph 42 that:-

42. '..... the Commissioner now accepts that, in major manufacturing complexes, where there is a massive collection of machinery housed in its own specially designed structure, the point can readily be reached where the whole structure is plant for depreciation purposes. the structure is treated as depreciable if it can be shown that the structure goes far beyond merely housing the machinery and is completely integrated with it, supporting it and making its functioning possible.

43. Depreciation is not allowed in full on the typical, open plan factory hall with an overhead gantry crane which houses a number of machines or machine tools, but here a compromise - not necessarily reconcilable with principle - is usually negotiated. A proportion of the cost of the building - estimated as that part of the cost which is attributable to the support of the travelling crane and special features, such as heavy industrial flooring - is regarded as subject to depreciation.'

13. A typical example of a structure which qualifies as plant and which is accepted as not being disqualified from the investment allowance deduction by section 82AE is a sinter plant which was referred to in the memorandum from this office of 15 October 1976 in para 7 above. The sinter plant consisted of steel uprights and cross members which were essential to support

items of plant at varying heights and at varying spaces from other items of plant. It is an illustration of structure where, to the words of Kitto J. the foundations and main structure members are specially adapted to meet the needs of the process carried on in the structure. Another example of a structure which has been accepted as plant is the N.S.S.C. pulp mill.

14. Where a structure qualifies as wholly plant it is accepted that the concrete foundations or footings in which the uprights of the structures are embedded also qualify as plant. It is a fact that the concrete foundations, etc. in plant structures are specially designed and constructed to withstand what would otherwise be detrimental effects produced by the operations or processes carried on inside the structures, e.g., vibration, pressure, heat, etc. Similarly the cost of excavating for foundations for wholly plant structures should be accepted as part of the cost of the plant, cf. I.R. Commrs. v. Barclay, Curle & Co. Ltd. (1969) 45 TC 221 : see also CITCM 830., para 162. General site preparation, however, e.g., land levelling, land forming, etc. would not constitute part of the cost of the plant.

15. In those cases where a structure is accepted as being wholly in the nature of plant there may be some doubt whether ground level concrete walkways or flooring and external cladding should be treated as part of the plant. In the generality of cases the structures which will be accepted as wholly plant will cost many millions of dollars. Experience has shown that in these cases the expenditure on ground level flooring and external cladding is insignificant in relation to the whole. Accordingly it has been the practice in this office to accept the expenditure as part of the cost of the plant.

16. In many cases the conclusion will be reached that only part of a structure or building qualifies as plant. A typical example is that referred to earlier in para 12, i.e., the open plan factory hall with an overhead gantry crane which houses a number of machines or machine tools. In such cases it will be a question of arriving at a figure which can be said to fairly represent the cost of plant items. This problem was considered in memorandum from this office of 30 September 1964, H.O. Ref. J63/215 Pt.3, under the heading "Buildings Integral with Plant" and relevant extracts are repeated here:

'Because section 54 provides for a deduction for depreciation "..... of any property, being plant, or articles", the principle behind paragraphs 48 and 49 of the I.T.O. is that depreciation is allowed on the whole or part of a building when plant and building become so integrated that "plant" includes the whole or part of the building.

In the application of the paragraphs referred to, the basic principle to be observed is that contained in the last sentence of paragraph 48, viz:

'Buildings form integral parts of plant, wholly or in part,

when, and to the extent that, the structures are absolutely essential to the support of the working plant.'

It is only when the extent to which the structure is absolutely essential to the support has been ascertained, that any calculation as per paragraph 49 is made.

In succeeding paragraphs the application of this basic principle to buildings or parts of a building will be outlined. It will be appreciated that exceptional cases will arise in which some unusual type of manufacturing process, or other special facts, may necessitate a departure from a general ruling. The general rulings should be to apply however to the majority of cases coming under notice.

Floors

The added costs of strengthening to carry particular items of plant is depreciable, provided that the part of the floor strengthened can be regarded as a plant bed or foundation for plant. Generally, however, no part of the cost of floors of uniform thickness should be depreciated.

Gantry Housing

The cost of additional height of walls or roof to house a gantry should not be treated as depreciable cost of building integral with the gantry.

Roofing

The cost of strengthening at particular points to support plant, for example cranes, hoists, etc., should be treated as depreciable cost. The cost of general strengthening of a roof should not be allowed as depreciable.

Walls

Walls become integral with plant at points where they are strengthened specially to support plant. The quantum of depreciable cost is the extra cost of the strengthening of any such walls. The mere attachment of plant to walls is insufficient to establish that any part of the walls is integral with that plant.

Footings foundations, piers and columns

Where walls, floors or roofs have been strengthened to support plant, additional strengthening of footings, foundations, piers or columns may be necessary also.

The cost of any associated excavation work, if details are known, should not be treated as depreciable cost.'

17. The exclusion of the cost of any associated excavation work from the depreciation calculation is explicable by reason of the fact that the excavation work in these cases generally relates

to the building content, which is non-depreciable, rather than to the plant content. If it is established in any case that part of the excavation is necessary for the operation of particular items of plant, the costs may be taken into account for depreciation purposes as part of the cost of the plant.

18. In CITCM 830, in dealing with this matter in relation to section 62AA, it was stated at para 159 that, where buildings form an integral part of plant, their cost may, as is the practice in relation to depreciation allowance, be admitted for the purpose of the investment allowance to the extent that they are integral with the plant. That advice still applies. To the extent that a building or structure does not have a plant function or is not integral with plant it is not necessary to rely on section 82AE to exclude it from the investment allowance - it is excluded because it is not plant within the meaning of section 54.

COMMISSIONER OF TAXATION