TR 2004/D3 - Income tax: plant in residential rental properties

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Draft Taxation Ruling

Income tax: plant in residential rental properties

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Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the ***Taxation Administration Act 1953****. It is only final Taxation Rulings that represent authoritative statements by the Australian Taxation Office.*

What this Ruling is about

Class of person/arrangement

1. This Ruling sets out the Commissioner's view on the extent to which there is plant in a residential rental property. This issue is relevant in determining whether a deduction is available under either Division 40 (for depreciating assets) or Division 43 (for capital works) of the *Income Tax Assessment Act 1997* (ITAA 1997).[1]

2. In this Ruling the term 'residential rental property' means a house, an apartment, a unit or a flat, leased as residential accommodation.

3. In this Ruling the term 'residential rental property' does not include:

- an hotel, a motel, a resort or a similar property providing short-term accommodation (or a part of one of those properties); and
- a caravan, houseboat or other mobile home.

Date of effect

4. It is proposed that when the final Ruling is issued, it will apply both before and after its date of issue. However, taxpayers determining, prior to the withdrawal of IT 242, whether an item described in that Ruling is plant may rely on IT 242 if it is more favourable than this Ruling. Further, the final Ruling will not apply to taxpayers to the extent that it conflicts with the terms of settlement of

[1] All legislative references are to the *Income Tax Assessment Act 1997* unless otherwise stated.

a dispute agreed to before the date of issue of the final Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Previous Rulings

5. Income Tax Ruling IT 242 is withdrawn on and from the date of issue of this Draft Ruling.

Legislative Background

6. Deductions for capital expenditure on assets associated with residential rental properties will generally only be available under either:

(a) Division 40 (for depreciating assets); or

(b) Division 43 (for capital works).

Depreciating assets

7. Division 40 contains the rules for the uniform capital allowance system which applies to most depreciating assets, including plant. Broadly speaking, Division 40 provides a deduction for the decline in value of depreciating assets. Division 40 generally allows a deduction for the cost of a depreciating asset based on its effective life. Relevantly for residential rental properties, an immediate deduction for certain non-business depreciating assets costing $300 or less[2] or a deduction under the low-value pools provisions[3] may be available if Division 40 applies.

8. However, Division 40 does not apply to capital works for which a deduction is available under Division 43 or would be available under Division 43 but for the capital works being started before a particular day or used for a relevant purpose.[4]

Capital works

9. Division 43 provides a deduction for construction expenditure on capital works (including buildings) used for residential accommodation if the construction of the capital works commenced after 17 July 1985 and the capital works are used to produce assessable income. The rate of deduction is 2.5% of the capital expenditure able to be deducted.[5] However, construction expenditure

[2] See subsection 40-80(2).
[3] See Subdivision 40-E.
[4] Subsection 40-45(2).
[5] A rate of 4% was available for residential accommodation begun to be constructed between 18 July 1985 and 15 September 1987 (inclusive).

excludes expenditure on plant.[6] Therefore, a deduction for expenditure on plant is not available under Division 43.

10. Division 43 applies to capital works that are buildings or structural improvements and to extensions, alterations or improvements to those buildings or structural improvements. If an item in a residential rental property is capital works then generally a deduction will not be available under Division 40 unless the item is both plant and a depreciating asset and the other conditions of Division 40 are met.

Ruling

Ordinary meaning of plant

11. A residential rental property is invariably the setting of the landlord's rental income earning activities and not within the ordinary meaning of plant. Similarly an item that forms part of those premises is part of that setting and not within the ordinary meaning of plant.

12. It is a question of fact and degree as to whether an item forms part of the premises. The following are relevant matters to consider when determining that question:

- whether the item appears visually to retain a separate identity;
- the degree of permanence with which it has been attached;
- the incompleteness of the structure without it; and
- the extent to which it was intended to be permanent or whether it was likely to be replaced within a relatively short period.

13. Where an item does not form part of the premises it will come within the ordinary meaning of plant where the function performed by the thing is so related to the particular landlord's rental income earning activities or special that it warrants it being held to be plant. Such an occasion is likely to be rare in the context of a residential rental property.

Extended meaning of plant – Articles

14. An item cannot be an article if it is a structure erected or built on, or into, land.

15. An item may be an article even though it is attached to the premises.

16. However, an item that forms part of the premises is not an article.

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[6] Paragraph 43-70(2)(e).

Extended meaning of plant – Machinery

17. Machinery is plant whether or not it forms an integral part of a building or is a part of the setting of the landlord's rental income earning activities.

18. The process of determining whether something is machinery in the context of the definition of plant involves:

- identifying the relevant thing (unit) or things (units) based on a consideration of functionality; and
- then deciding whether that thing or each of those things comes within the ordinary meaning of machinery.

19. The ordinary meaning of machinery includes devices, such as computers and microprocessors, which utilise in various processes minute amounts of energy in the form of electrical impulses.

20. The ordinary meaning of machinery also includes heating appliances, such as stoves, cooktops, ovens and hot water services.

21. The ordinary meaning of machinery does not include anything that is merely a reservoir or conduit, such as ducting, piping or wiring, although connected with something that is machinery. In other words, if the ducting, piping or wiring forms part of a unit that is a machine then it is machinery, but if it is merely connected to, but not part of, a unit that is a machine then it is not machinery.

Explanation

Plant

22. As mentioned in paragraph 10, the result of the relationship between Division 40 and Division 43 is that a deduction under Division 40 will not be available for a capital works item in a residential rental property unless the item is both plant and a depreciating asset and the other conditions of Division 40 are met.

23. For the purposes of the ITAA 1997, 'plant' has the meaning given by section 45-40.[7] That inclusive definition is identical in effect to the definition of plant in former section 42-18 and expresses the same ideas as the definition of plant contained in subsection 54(2) of the *Income Tax Assessment Act 1936* (ITAA 1936) (except that 'articles' were then separate from plant rather than included in the definition of plant as they are now).

[7] Subsection 995-1(1).

24. Although there have been no Australian court decisions on the extent to which there is plant in a residential rental property, there have been a number of decisions by the Administrative Appeals Tribunal (AAT) on the issue. It is necessary, therefore, to consider the application to the present context of the general principles on the meaning of plant set out in court decisions, and to consider those AAT decisions.

25. In the context of a residential rental property, the relevant aspects of the definition of plant are:

- the ordinary meaning of plant;
- articles; and
- machinery.

The ordinary meaning of plant

26. Since plant is defined in an inclusive manner, plant has its ordinary meaning as well as including the items listed in the definition. Over the years that 'ordinary meaning' has gradually diverged from its natural or dictionary meaning.[8]

27. Many of the issues as to the ordinary meaning of plant in the present context centre around whether a residential rental property is, or whether what could loosely be described as the fixtures and fittings commonly included as part of a residential rental property are, plant.

28. That which is merely the 'setting' for the particular taxpayer's income earning activities is not within the ordinary meaning of plant.[9] Whether 'buildings, structures or the like, or parts of them'[10] that are more than merely 'setting' come within the ordinary meaning of plant depends upon 'whether the function performed by the thing [the building, structure, or part of it] is so related to the taxpayer's operations or special that it warrants it being held to be plant.'[11]

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[8] *IRC v. Scottish Newcastle Breweries Ltd* [1982] 2 All ER 230 at 232 (*Scottish Newcastle Breweries*), per Lord Wilberforce.

[9] *Wangaratta Woollen Mills Ltd v. Federal Commissioner of Taxation* (1969) 119 CLR 1 at 10; 69 ATC 4095 at 4101; (1970) 1 ATR 329 at 335 (*Wangaratta Woollen Mills*); *Imperial Chemical Industries of Australia and New Zealand Ltd v. Federal Commissioner of Taxation* (1970) 120 CLR 396 at 398-399; 70 ATC 4024 at 4025-4026; (1970) 1 ATR 450 at 451-452 (*ICI*).

[10] *Macquarie Worsteds Pty Ltd v. FC of T* 74 ATC 4121 at 4125; (1974) 4 ATR 334 at 338.

[11] *Macquarie Worsteds Pty Ltd v. FC of T* 74 ATC 4121 at 4125; (1974) 4 ATR 334 at 338. Followed in *Carpentaria Transport Pty Ltd v. FC of T* 90 ATC 4590 at 4592; (1990) 21 ATR 513 at 514.

29. 'In the context of residential income-producing properties, the distinction between that which is 'setting' and that which is 'plant' remains valid: a residential unit [or house, flat, etc] will not ordinarily fall within the exceptional circumstances referred to'[12] in the previous paragraph. Thus, 'the starting point … is that a residential property will almost invariably (in the absence of exceptional circumstances) be the setting of the income-producing operations and will therefore not be 'plant'.'[13] 'That which forms a 'part of the fabric' of the property, in a metaphorical sense, or in other words, that which is an 'integral part of the structure of the premises' is therefore also not plant … It is to be regarded as a *part* of the 'setting' of the income earning activity.'[14]

30. A passage from *ICI*,[15] which included references to 'the purpose, in other words, is to make the building a complete building' and 'the construction of the building as a building of the general type to which it belongs would be incomplete without them', has been taken to establish a 'completeness test'.[16] However, as Lord Wilberforce in *Cole Brothers Ltd v. Phillips (Inspector of Taxes)*[17] pointed out,[18] the statements in that passage from *ICI* are not statements of law, but are findings of fact. Thus, whether a structure is incomplete without the relevant item is not of itself a test to determine whether the item forms part of the structure.

31. The English cases on the ordinary meaning of plant do, however, suggest that the question of incompleteness of the structure without the relevant item is a relevant consideration when determining whether the item forms part of the structure. In *Scottish Newcastle Breweries*[19] Lord Lowry[20] made the distinction between something that is part of the premises and something that merely embellishes them.[21] In *Wimpy International Ltd & Anor v. Warland (Inspector of Taxes)*[22] Hoffman J[23] considered that the question whether something had become part of the premises was not 'the same as whether it has

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[12] *Case 11/97* 97 ATC 173 at 178; *AAT Case 11,655*; (1997) 35 ATR 1022 at 1027. Followed in *Woodward v. FC of T* 2003 ATC 2001 at 2004; (2003) 51 ATR 1115 at 1118-1119.
[13] *Case 11/97* 97 ATC 173 at 179; *AAT Case 11,655*; (1997) 35 ATR 1022 at 1028. Followed in *Woodward v. FC of T* 2003 ATC 2001 at 2004; (2003) 51 ATR 1115 at 1118-1119.
[14] *Case 11/97* 97 ATC 173 at 184; *AAT Case 11,655*; (1997) 35 ATR 1022 at 1034. Followed in *Woodward v. FC of T* 2003 ATC 2001 at 2004; (2003) 51 ATR 1115 at 1118-1119.
[15] (1970) 120 CLR 396 at 398-399; 70 ATC 4024 at 4025-4026; (1970) 1 ATR 450 at 451-452.
[16] *Case 11/97* 97 ATC 173 at 183; *AAT Case 11,655*; (1997) 35 ATR 1022 at 1033. Followed in *Woodward v. FC of T* 2003 ATC 2001 at 2004; (2003) 51 ATR 1115 at 1118-1119.
[17] [1982] 2 All ER 247.
[18] [1982] 2 All ER 247 at 255.
[19] [1982] 2 All ER 230.
[20] With whom Lord Salmon, Lord Fraser of Tullybelton and Lord Bridge of Harwich agreed.
[21] [1982] 2 All ER 230 at 238.
[22] [1988] STC 149.
[23] Now Lord Hoffman of the House of Lords.

become part of the realty for the purposes of the law of real property or a fixture for the purposes of the law of landlord and tenant.'[24] That view accords with the Australian cases which clearly indicate that fixtures may be plant.[25] Further, Hoffman J usefully provided guidance as to some relevant matters to be considered to determine the question of fact and degree as to whether an item forms part of the premises or retains a separate identity. These are:

- whether the item appears visually to retain a separate identity;
- the degree of permanence with which it has been attached;
- the incompleteness of the structure without it; and
- the extent to which it was intended to be permanent or whether it was likely to be replaced within a relatively short period.[26]

No one of those factors is necessarily conclusive and the relative importance of each will vary depending on the nature of the item.

32. Where the item does not form part of the premises it will come within the ordinary meaning of plant where, as set out in paragraph 28, the function performed by the item is so related to the particular taxpayer's income-earning activities or special that it warrants it being held to be plant. It is considered that such an occasion is likely to be rare in the context of a residential rental property. This is because there is unlikely to be the required close relationship between the function performed by the item and the particular landlord's rental income earning activities.

33. Passages from leading cases such as *Wangaratta Woollen Mills* and *ICI* demonstrate the closeness of the relationship that must exist between the function performed by an item and the particular taxpayer's income-earning activities for the item to be plant.

34. In *Wangaratta Woollen Mills* McTiernan J said:

> 'The complex ventilation system including the cavity wall does more than merely clear the atmosphere. Its structure is an active tool in preventing spoiling of material, and in enabling the operatives to carry out their tasks. *It would be completely unnecessary in almost every other industry and quite useless to any buyer except a dyer*.'[27] [Emphasis added]

[24] [1988] STC 149 at 173.
[25] See *Pearce v. FC of T* 89 ATC 4064; (1988) 20 ATR 113; *Negative Instruments Pty Ltd v. FC of T (No. 2)* 94 ATC 4813; (1994) 29 ATR 429; and *Case 11/97* 97 ATC 173; *AAT Case 11,655*; (1997) 35 ATR 1022.
[26] [1988] STC 149 at 173.
[27] (1969) 119 CLR 1 at 10; 69 ATC 4095 at 4101; (1970) 1 ATR 329 at 335.

35. In *ICI* Kitto J said:

> 'The truth is that the ceilings with which we are concerned do nothing for the appellant's business that they would not do for the business of any other occupier.'[28]

36. It has been suggested that there will be the necessary relationship between the function performed by the item and the particular landlord's rental income earning activities if the item performs a function which is sufficiently related to the provision of the leased residence.[29] However, in the Commissioner's view the test formulated in these words may not sufficiently express the necessary relationship between the function performed by the item and the particular landlord's rental income earning activities. Such a test would seem to require a far less close relationship between the function performed by the item and the particular landlord's rental income earning activities than cases such as *Wangaratta Woollen Mills* and *ICI* suggest must exist for the item to be plant.

Extended meaning of plant – Articles

37. It is considered that the AAT in *Case 11/97* correctly summarised the principles relating to the meaning of 'articles' in the present context as follows:

(a) 'An item may qualify for a depreciation deduction, even if it is not 'plant', if the item can be regarded as an 'article' for the purposes of s 54: *Quarries Ltd v. FCT* (1961) 106 CLR 310. The word 'article' is also not defined in the *Income Tax Assessment Act*, but it has been given a very wide meaning in the cases. Thus Taylor J said in *Quarries Ltd v. FCT* (1961) 106 CLR 310 at 316:

> I see no reason for denying to the word 'article' the comprehensive meaning which it normally bears or for thinking that it was not used in the section by way of extension [to the word 'plant'].

(b) And Mason J (as he then was) said in *FCT v. Faichney* (1972) 129 CLR 38 at 43; 3 ATR 435 at 440:

> The word 'article' according to the Shorter Oxford Dictionary bears the meaning 'a piece of goods or property'. The word would, I think, according to its normal and ordinary meaning include a carpet or curtain, a desk and a bookshelf.

(c) However, an item cannot be an 'article' if it is a structure attached to land. Per Taylor J in *Quarries Ltd v. FCT* (1961) 106 CLR 310 at 316:

> Of course, 'article' cannot ordinarily be taken to comprehend a structure erected or built in situ ...

[28] (1970) 120 CLR 396 at 398; 70 ATC 4024 at 4025; (1970) 1 ATR 450 at 451.
[29] *Case 11/97* 97 ATC 173 at 184; *AAT Case 11,655*; (1997) 35 ATR 1022 at 1034.

(d) The same would apply if the item were regarded as an integral part or the 'fabric' of such a structure. So much appears from Kitto J in *Imperial Chemicals Industries of Australia and New Zealand Ltd v. Federal Commissioner of Taxation* (1970) 120 CLR 396; 1 ATR 450, where his Honour said in relation to false ceilings found to be part of the structure of the building (at CLR 398; ATR 451):

In my opinion, while they are in position they are plainly not 'articles'.

This is not to say, however, that an item simply attached to a building will not qualify as 'articles': the carpet held to be an 'article' in *FCT v. Faichney* (1972) 129 CLR 38; 3 ATR 435 was more than likely in some way attached, though it was clearly not an integral part of the home there under consideration.

Thus, as a finding that an item is part of the 'fabric' of a structure (where the structure is itself the 'setting' of the taxpayer's operations), will result in it being held to not be 'plant'; such a finding will also preclude any characterisation of the item as 'articles'.'[30]

Extended meaning of plant – Machinery

38. Machinery is plant whether or not it forms an integral part of a building or is a part of the setting of the particular taxpayer's income-earning activities.[31]

39. The process of determining whether something is 'machinery' in the context of the definition of plant involves:

- identifying the relevant thing (unit) or things (units) based on a consideration of functionality; and
- then deciding whether that thing or each of those things comes within the ordinary meaning of 'machinery'.

Identifying the relevant thing(s) or unit(s)

40. The requirement to identify a 'unit' of plant dates back to the beginning of the ITAA 1936.[32] A similar requirement to identify the relevant depreciating asset or assets continues today.[33] Since machinery is included in plant and references to plant refer to units of

[30] 97 ATC 173 at 184-185; *AAT Case 11,655*; (1997) 35 ATR 1022 at 1034-1035.
[31] *Carpentaria Transport Pty Ltd v. FC of T* 90 ATC 4590 at 4593; (1990) 21 ATR 513 at 515.
[32] See the concept of 'unit of property' in sections 55 and 56 of the ITAA 1936 as originally enacted.
[33] See subsection 40-30(4).

plant,[34] it follows that the first step in determining whether something is machinery is to identify the relevant thing (unit) that is, or things (units) that are, the subject of that determination.

41. A similar process of reasoning seems to have been adopted in another context in 1995 when it was said:

> 'A length of hydraulic tubing in itself may not be a machine but once it forms an integral part of a diesel engine, it can properly be regarded as 'machinery'. I accept Telecom's point that whether or not one might regard wire cables and optic fibres as machines in themselves, they can properly be regarded as 'machinery' if they are constituent parts of some larger entity which is a machine.'[35]

42. Similarly, the determination as to whether an item in a residential rental property is machinery is likely to involve consideration of whether a particular item is itself a unit, part of a larger unit or whether its components are separate units. Taxation Ruling TR 94/11 and the cases referred to in that ruling explain that a determination of this nature is a question of fact and degree which can only be determined in the light of all of the circumstances of the particular case.[36] That ruling and those cases also provide guidelines (relating to functionality) that are intended to assist in making that factual determination.[37]

Determining whether the relevant thing(s) or unit(s) are machinery

43. In 1919 it was said:

> 'The word 'machinery' has no definite legal meaning and … the general rule is, in dealing with matters relating to the general public, that statutes are presumed to use words in their popular sense … The Ratings Act is such a statute, and, as there is no context to suggest any other meaning, the term 'machinery' ought to be treated as having been used therein in its popular sense.'[38]

44. Similarly, there is nothing to indicate that machinery, in the context of the definition of plant, was intended to have other than its ordinary meaning.

45. It was also said in that 1919 case that machinery in its popular sense:

> 'means primarily a number of machines, taken collectively, and a machine in its popular sense is a piece of mechanism which, by means of its inter-related parts, serves to utilise or apply power, but does not include anything that is merely a reservoir or conduit,

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[34] See for example the former section 42-19.
[35] *Telecom Auckland Ltd v. Auckland City Council* [1995] 3 NZLR 489 at 502, per Fisher J.
[36] The same principle is also embodied in subsection 40-30(4) in the context of identifying depreciating assets.
[37] See particularly paragraphs 3 to 7 of that ruling.
[38] *Auckland City Corporation v. Auckland Gas Co Ltd* [1919] NZLR 561 at 586, per Sim J.

> although connected with something which is without doubt a machine.'[39]

46. It was therefore concluded in that case that the mains laid and used for supplying gas were not parts of a machine or properly included under the term machinery.

47. Similarly, in 1949 it was said:

> 'it would be using the word 'machinery' in a figurative or metaphorical sense, and not in an ordinary or popular sense, to describe as machinery the means by which [energy or matter] is so made available or conveyed, where that means itself contains no element of motion or action.'[40]

48. Thus, the ordinary meaning of machinery does not include anything that is merely a reservoir or conduit, such as ducting, piping or wiring, although connected with something that is machinery. In other words, if the ducting, piping or wiring forms part of a unit that is a machine then it is machinery, but if it is merely connected to, but not part of, a unit that is a machine then it is not machinery.

49. The *Australian Concise Oxford Dictionary*, 4th edn, 2004, relevantly defines machinery as:

1. machines collectively.
2. the components of a machine; a mechanism.

and machine as:

1. an apparatus using or applying mechanical power, having several parts each with a definite function and together performing certain kinds of work.
2. a particular kind of machine, esp. a vehicle, a piece of electrical or electronic apparatus, a computer, etc.
3. an instrument that transmits a force or directs its application.

50. Similarly, *The Macquarie Dictionary*, 3rd edn, 1999, relevantly defines machinery as:

1. machines or mechanical apparatus.
2. the parts of a machine, collectively: *the machinery of a watch*.

and machine as:

1. an apparatus consisting of interrelated parts with separate functions, which is used in the performance of some kind of work: *a sewing machine.*
2. a mechanical apparatus or contrivance; a mechanism.

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[39] *Auckland City Corporation v. Auckland Gas Co Ltd* [1919] NZLR 561 at 586, per Sim J.
[40] *Hutt Valley Electric Power Board v. Lower Hutt City Corporation* [1949] NZLR 611 at 636-637, per Hutchinson J.

3. something operated by a mechanical apparatus, as a motor vehicle, a bicycle, or an aeroplane.

4. *Mechanics*

   a. a device which transmits and modifies force or motion.

   b. simple machines, the six (sometimes more) elementary mechanisms, that is, the lever, wheel and axle, pulley, screw, wedge, and inclined plane.

51. In 1992 it was said that the modern ordinary meaning of machinery and machine indicates that machines, and therefore machinery, include devices that do not involve the application of mechanical power but instead 'utilise in various processes minute amounts of energy, in the form of electrical impulses' (for example, computers and microprocessors).[41]

52. In that 1992 case it was also said:

> 'It is even easier to characterise as machinery items such as hot drink dispensers and appliances for heating food or drinks or for cooking. In each case, energy in the form of heat is transferred to some substance which, at the outset, is of a lower temperature. The temperature of that substance is thus raised. The heat source may be an electrical element, or the combustion of some gas or solid fuel. It may even be energy derived from solar light or heat.'[42]

53. Thus, it was said in that case, a boiler ('in which hot gases, heated by a furnace, are brought into close proximity to water, and energy in the form of heat is passed through a conductive material, to raise the temperature of the water and vaporise it')[43] is machinery.

54. In the context of a residential rental property, these comments about heating appliances indicate that items such as stoves, cooktops, ovens and hot water services are machinery.

Alternative view

55. It has been suggested that a residential rental property is not the setting of the landlord's rental income earning activities in that the landlord earns income from leasing the property to another rather than conducting any income earning activity on the property.

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[41] *Toyota Tsusho Australia Pty Ltd & Anor v. Collector of Customs* (unreported, Federal Court, No VG113 of 1991, 14 May 1992), per Gray J at paragraph 4.
[42] *Toyota Tsusho Australia Pty Ltd & Anor v. Collector of Customs* (unreported, Federal Court, No VG113 of 1991, 14 May 1992), per Gray J at paragraph 4.
[43] *Toyota Tsusho Australia Pty Ltd & Anor v. Collector of Customs* (unreported, Federal Court, No VG113 of 1991, 14 May 1992), per Gray J at paragraph 6.

56. We do not accept this view for several reasons. First, the AAT[44] has clearly held on several occasions that a residential rental property is invariably the setting of the landlord's rental income earning activities. Secondly, no such distinction between the activity of leasing a property and conducting an income earning activity on a property is made in the cases[45] dealing with the question whether buildings, structures or the like, or parts of them are plant. Thirdly, acceptance of the alternative view would give rise to a nonsensical result. That is, a taxpayer who earns income from leasing a residential rental property to another could be entitled to greater decline in value deductions for the property than the same taxpayer would be entitled to if they instead lived in the property and conducted an income earning activity on the property.

Examples

57. The following are examples of the application of the views in this Ruling (particularly the factors set out in paragraph 31 to be considered when determining whether an item is part of the premises) to several items typically found in a residential rental property.

Example 1

58. Kitchen cupboards form part of the premises and therefore are part of the setting of the landlord's rental income earning activities and so not within the ordinary meaning of plant. Kitchen cupboards form part of the premises as they are fixed to the premises, intended to remain in place indefinitely and are necessary to complete the premises. Any separate visual identity is outweighed by the other factors. Since kitchen cupboards form part of the premises they are also not articles.

Example 2

59. Insulation batts form part of the premises and therefore are part of the setting of the landlord's rental income earning activities and so not within the ordinary meaning of plant. Insulation batts form part of the premises, although they are generally not fixed to the premises, as they are intended to remain in place indefinitely, lose their separate visual identity and add to the completeness of the premises. Since insulation batts form part of the premises they are also not articles.

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[44] *Case 11/97* 97 ATC 173 at 179; *AAT Case 11,655*; (1997) 35 ATR 1022 at 1028. Followed in *Woodward v. FC of T* 2003 ATC 2001 at 2004; (2003) 51 ATR 1115 at 1118-1119.

[45] See paragraph 28.

Example 3

60. A 'built-in' wardrobe, whether it be the type built-in to an alcove shaped wall or the type labelled 'built-in' by the manufacturer because its side panels create the appearance of a wardrobe which is created out of the walls of the property,[46] forms part of the premises and therefore is part of the setting of the landlord's rental income earning activities and so not within the ordinary meaning of plant. Built-in wardrobes form part of the premises as they are fixed to the premises, intended to remain in place indefinitely, do not retain a separate visual identity and add to the completeness of the premises. Since built-in wardrobes form part of the premises they are also not articles.

Example 4

61. In a ducted (built-in) vacuum system inlet valves are installed in various locations throughout the home. Those valves are connected via tubing installed in the walls to a power unit (essentially a motor) located in an out-of-the way location such as a garage. A hose attached to the brush unit (the vacuum head and rod) is plugged into one of the inlets to begin vacuuming.

62. The power unit is machinery and is therefore plant. The hose and brush unit are articles and therefore plant. The tubing installed in the walls is not machinery as it is merely a conduit, although it is connected to the power unit which is machinery.

63. We do not accept an alternative view that the hose, brush unit, tubing and power unit are together a single unit of machinery because they operate together to perform the function of vacuuming.

64. The tubing forms part of the premises and therefore is part of the setting of the landlord's rental income earning activities and so not within the ordinary meaning of plant. The tubing forms part of the premises as it is fixed to the premises, intended to remain in place indefinitely and loses any separate visual identity. Those factors outweigh the fact that the premises are probably not incomplete without the tubing. Since the tubing forms part of the premises it is also not an article.

65. Since the power unit, hose and brush unit in this example are plant, deductions for their decline in value may be available under Division 40.

66. Since the kitchen cupboards, insulation batts, built-in wardrobes and tubing in the examples are not plant, deductions for their decline in value are not available under Division 40, but deductions may be available under Division 43.

[46] See the description of these two types of 'built-in' wardrobes in *Case 11/97* 97 ATC 173 at 186; *AAT Case 11,655*; (1997) 35 ATR 1022 at 1036.

Your comments

67. We invite you to comment on this draft Taxation Ruling. Please forward your comments to the contact officer by the due date.

Due date: **13 August 2004**
Contact officer: **Ken Walker**
E-mail address: **ken.walker@ato.gov.au**
Telephone: **07 3213 6657**
Facsimile: **07 3213 5007**
Address: **PO Box 9990**
Brisbane 4001

Detailed contents list

68. Below is a detailed contents list for this draft Taxation Ruling:

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Commissioner of Taxation
28 June 2004

Previous Rulings/Determinations:
IT 242

Related Rulings/Determinations:
TR 92/20; TR 94/11

Subject references:
- articles
- capital allowances
- capital works
- depreciating asset
- machinery
- plant

Legislative references:
- ITAA 1936 54(2)
- ITAA 1936 55
- ITAA 1936 56
- ITAA 1997 Div 40
- ITAA 1997 40-30(4)
- ITAA 1997 40-45(2)
- ITAA 1997 40-80(2)
- ITAA 1997 Subdiv 40-E
- ITAA 1997 42-18
- ITAA 1997 42-19
- ITAA 1997 Div 43
- ITAA 1997 43-70(2)(e)
- ITAA 1997 45-40
- ITAA 1997 995-1(1)
- TAA 1953 Pt IVAAA

Case references:
- Auckland City Corporation v. Auckland Gas Co Ltd [1919] NZLR 561
- Carpentaria Transport Pty Ltd v. FC of T 90 ATC 4590; (1990) 21 ATR 513
- Case 11/97 97 ATC 173; AAT Case 11,655; (1997) 35 ATR 1022
- Cole Brothers Ltd v. Phillips (Inspector of Taxes) [1982] 2 All ER 247
- FC of T v.Faichney (1972) 129 CLR 38; 3 ATR 435
- Hutt Valley Electric Power Board v. Lower Hutt City Corporation [1949] NZLR 611
- Imperial Chemical Industries of Australia and New Zealand Ltd v. Federal Commissioner of Taxation (1970) 120 CLR 396; 70 ATC 4024; (1970) 1 ATR 450
- IRC v. Scottish Newcastle Breweries Ltd [1982] 2 All ER 230
- Macquarie Worsteds Pty Ltd v. FC of T 74 ATC 4121; (1974) 4 ATR 334
- Negative Instruments Pty Ltd v. FC of T (No. 2) 94 ATC 4813; (1994) 29 ATR 429
- Pearce v. FC of T 89 ATC 4064; (1988) 20 ATR 113
- Quarries Ltd v. FC of T (1961) 106 CLR 310
- Telecom Auckland Ltd v. Auckland City Council [1995] 3 NZLR 489
- Toyota Tsusho Australia Pty Ltd & Anor v. Collector of Customs (unreported, Federal Court, No VG113 of 1991, 14 May 1992)
- Wangaratta Woollen Mills Ltd v. Federal Commissioner of Taxation (1969) 119 CLR 1; 69 ATC 4095; (1970) 1 ATR 329

- Wimpy International Ltd & Anor v. Warland (Inspector of Taxes) [1988] STC 149
- Woodward v. FC of T 2003 ATC 2001; (2003) 51 ATR 1115

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