TR 93/D44 - Income tax: general investment allowance - what is a unit of property?

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Draft Taxation Ruling
Income tax: general investment allowance - what is a unit of property?

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What this Ruling is about

1. This Ruling sets out guidelines on what is a unit of property for the purposes of section 82AT of the *Income Tax Assessment Act, 1936,* (ITAA). That section allows a general investment allowance deduction for a unit of eligible property costing $3000 or more. Although the question of what is a unit of property is relevant to both the general investment allowance and depreciation, this Ruling only deals with the former.

Ruling

'Unit of Property'

2. 'Unit of property' is not defined in the ITAA. Whether a particular item is a 'unit of property' is a question of fact and degree which can only be determined in the light of all of the circumstances of the particular case. However, a narrow or technical test should not be applied (*Monier Colourtile Pty Ltd v. F.C. of T.* 84 ATC 4846; (1984) 15 ATR 1256). The relevant function to be considered in this context is the actual function to which the particular taxpayer puts that item, rather than any theoretical function to which the item could be put in other circumstances. The following paragraphs are simply guidelines intended to assist in making this factual determination.

3. An item will generally be considered to be a 'unit of property' if it has one, or more, of the following characteristics :

(a) it is an entity entire in itself, capable of being separately identified or regarded and having a separate function. (e.g. the transportable concrete mixer in *Ready Mixed Concrete (Vic) Pty. Ltd. v F.C. of T.* 69 ATC 4038; (1969) 1 ATR 123.

(b) the item is functionally complete in itself. However, the item need not be self contained or used in isolation. It is not necessary that the item function on its own. It should however, be capable of performing its intended discrete function (*F.C. of T. v Tully Co-operative Sugar Milling Assoc. Ltd.* 83 ATC 4495; (1983) 14 ATR 495).

(c) the item when attached to another unit of property having its own independent function varies the performance of that unit (e.g. Attachments for tractors such as rippers, post hole, diggers, carry alls etc. (*Case M98* 80 ATC 689).

(d) the item itself performs a definable, identifiable function (*Monier Colourtile*).

4. A unit of property need not necessarily be the smallest possible item which can be identified. A unit of property can be made up of a number of components. Several components or parts of an item of plant which work together with other components may be parts of a single functional item. It may be that this larger functional item, rather than the individual components, is the relevant 'unit of property'. The function of each component and the larger composite item should be considered when deciding which is the relevant 'unit of property'. For example, in *Tully's* case, it was the mixed juice pumping station (rather than its component parts such as starters, motors and pumps) which was the relevant 'unit of property'.

5. An item of plant can consist of a number of separate units, each performing a definable and identifiable function. When considered in isolation each of these units might be a separate unit of property. However, where such separate units are integrally linked so as to create a single (larger) unit having its own individual function then that larger integrated unit may be the relevant unit of property. This is a question of fact and degree. For example, a motor car is made up of a number of separate units, the engine, drive shaft etc. However, it is the car that is the relevant unit of property rather than each of the separate units.

6. An item may be considered a 'unit of property' in one factual circumstance but not in another. For example the engine in a new truck is not generally considered to be a 'unit of property'. However, the installation of a new engine in an existing truck which substantially alters the truck's performance may lead to the conclusion

that the new engine is itself a 'unit of property'. Therefore, just because part of an item of plant may ultimately operate in combination or conjunction with other units in order to perform some wider or commercially more 'complete' function does not mean that the item is not a separate 'unit of property' (*Monier Colourtile*). The fact that the item cannot operate on its own and has no commercial utility unless linked or connected to other items does not preclude it from being a separate 'unit of property'.

7. As a general rule, factors such as the mechanical independence of an item, physical separability and whether an item can be acquired separately, tend to indicate that an item may be a separate unit of property. However, these factors are merely indicators and on their own are in no way determinative.

8. Modifications or alterations to existing plant can in certain instances be separate units of property. A modification to an item of plant which :

(a) merely restores the item to its original condition would constitute a repair. Expenditure of this nature does not create a separate unit of property as there has been no substantial alteration to the function or operation of the existing plant.

(b) involves minor alterations to an existing item of plant without changing the overall function or purpose of the item will not be a separate unit of property.

(c) involves restructuring and additions of new parts to the existing item may result in the old plant now being used as part of a substantially new unit of property for a new function (*Tully*).

9. An alteration to an item of existing plant can be so substantial that a new unit has been installed or attached which is capable of standing alone and serving its own purpose (*Case S51* 85 ATC 380).

10. Change to an existing item of plant which simply involves the modification of certain parts of the plant, allowing the same plant to perform additional tasks or even improve its efficiency, is not necessarily considered to install or attach a separate unit of property. Again, as mentioned in the paragraph 8 above, such changes or alterations can be of varying degrees.

11. The purpose intended to be served by the introduction of a general investment allowance should be considered when using the above guidelines. The intention of the general investment allowance is to provide an incentive for investment in certain new plant and articles after 8 February 1993 and before 1 July 1994. Therefore, the purpose of the amendment should not be defeated by applying a

restricted or overly technical interpretation of the legislation. However, it should always be borne in mind that while the legislation obviously intended to provide incentives for investments in certain types of property, it also intended that other types of property should not attract the allowance (e.g. property worth less than $3000) . Thus, any interpretation of the provisions should recognise that there are limitations to the types of property to which the allowance applies.

Date of effect

12. 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).

Explanations

Relevant Legislation

13. The general investment allowance was introduced for eligible plant and equipment costing $3000 or more, acquired or commenced to be constructed after 8 February 1993 and before 1 July 1994 and which is first used, or installed ready for use, before 1 July 1995. The allowance is deductible at the rate of 10 percent per annum in the year the eligible property is first used, and is additional to both depreciation and the development allowance.

14. Although the general investment allowance is additional to and related to depreciation and the development allowance, eligibility under each of these provisions must be considered separately. For example, an item of 'eligible plant' which qualifies for depreciation does not automatically qualify for the general investment allowance as well.
A taxpayer seeking to claim the general investment allowance must check for eligibility separately under section 82AT.

What is 'eligible property'?

15. Subsection 82AQ(1) defines 'eligible property' as plant or articles within the meaning of section 54 and includes earth tanks constructed for the purpose of conserving water for use in carrying on a business of primary production. But 'eligible property' does not

include certain non-plant structural improvements on land used in a business of primary production.

16. A unit of eligible property must satisfy the following conditions in order for the taxpayer to claim a general investment allowance deduction:

- the unit of property must be new (paragraph 82AT(1)(a));
- the capital cost of the unit of property must be $3000 or more (paragraph 82AT(1)(b));
- if the unit of property is acquired by the taxpayer under a contract, it must be entered into after 8 February 1993 and before 1 July 1994; or if the unit of property is constructed by the taxpayer, the construction must have also commenced during that period (paragraph 82AT(1)(c));
- the plant must be first used or installed ready for use before 1 July 1995 (subparagraph 82AT(1)(d)); and
- the unit of property must be used by the taxpayer in Australia, wholly and exclusively for the purposes of producing assessable income (subsection 82AT(1)).

17. A leasing company can qualify for the general investment allowance if the lease:

- is for a period of four years or longer;
- is made to a person who will use the property wholly and exclusively both in Australia and for assessable income-producing purposes; and
- is entered into after 8 February 1993 and before 1 July 1995 and the lessee uses the property, or has it installed ready for use, before 1 July 1995.

Relevant case law - the function test

18. The term 'unit of property' is not defined in the general investment allowance provision. However, the term has been judicially considered in cases dealing with the former investment allowance provisions. The approaches developed by the courts in those cases are also relevant to the new general investment allowance.

19. The Commissioner accepts that the term 'unit of property' is to be construed in a broad and non technical way (*Monier Colourtile*). Therefore, each case needs to be looked at on its own particular facts.

20. Such cases as *Ready Mix Concrete*, *Tully Co-op*, and *Monier Colourtile* make it clear that a separate 'unit of property' is one which

has an identifiable, separate, function. For example, in Monier Colourtile, Lee J. found that:

> "...additional pallets did nothing to alter operation of the system which produced the tiles. The system remained exactly as it was before except that the alteration in the speed of the machine altered the output of the machine. The system ran for the same time and in the same way as before, but at a faster rate and produced more tiles,... The 5150 pallets remained 5150 individual pallets, each one performing its individual function.....The total number of pallets, ie 5150 never took on or performed a function additional to and distinguishable from that of the individual pallets making up that total."

21. Again, in *Monier Colourtile* each of several mobile radio stations, and the base station, were held to be functionally complete and therefore separate units of property. Each had a separate independent existence. The Trial Judge said that even though the base station was useless without one or more mobile station and vice versa, this was no basis for a conclusion that the entirety was to be regarded as one unit. The base station and each of the mobile radios had a function which was separate from each other in the same way that a television set has a separate function even though it cannot effectively operate unless someone is broadcasting a television signal. Therefore, it can be seen that it is not necessary for an item to be capable of independent operation in a practical or commercial sense to qualify as a separate unit of property.

22. A telephone system consisting of a central processing unit and seven interactive handsets was considered to be a single unit of property in *F.C. of T. v. Veterinary Medical and Surgical Supplies Limited* 88 ATC 4642; (1988) 19 ATR 1593. The Court considered that the handsets were an integral part of the telephone system, with no separate function of their own. Pincus J. in reaching his decision said:

> "...where a system is bought as a system intended to function as a whole and each element interacts with at least one other, one should find unity in the function of the whole system, at least where the elements are physically connected."

It must be noted however, that even though the handsets were dependent on the central processing unit for its operation, this factor alone did not lead to the conclusion that the entire system was a single unit of property. The fact that an item cannot operate without the assistance of another item does not necessarily mean that the two items are a single unit of property (see *Tully's Case*, discussed below).

23. In *Tully's Case* Fitzgerald J. said:

> "...there is, ...a unit of property if it is capable of independent existence, not necessarily self contained, e.g., it may require power from an external source, not necessarily separately used, e.g., it may be incorporated into an operating system such as a machine or complex of machinery in a manufacturing process, but capable either of separate function, or of function in conjunction with different parts, or in a different context, from its current user."

24. In *Tully's* case, the crushing mills, juice heaters, effet vessels and other items in a cane processing system were held to be separate units of property. The fact that the system could not effectively process the cane unless they all operated together did not prevent the individual items from being separate units for investment allowance purposes. The Trial Judge said:

> "when one looks to see whether there is a unit, one normally looks to see whether there is a whole something. Whether there is a whole will normally be judged by the intended function or purpose of that which is being looked at."

25. The pumping station in *Tully's* case, which comprised an electric motor, starter and other parts, was held to be a single 'unit of property'. These parts of the station may have, under different circumstances, been regarded as separate units. But the evidence, in this particular case, showed that these components had become an integral part of a (larger) whole, and therefore the pumping station was a single unit of property.

26. Thus whether there is a functionally complete unit or simply a component in a larger system which is the 'unit of property' will be a question of fact and degree which can only be decided by reference to the specific facts in issue. In *Ready Mixed Concrete*, it was held that a transit mixer did not form part of a total vehicle comprising the mixer and the truck. In describing the mixer and the truck as separate units of property, Kitto J. said:

> "Notwithstanding the mode and degree of annexation, the truck and the mixer are functionally separate and independent units of property. The function of the delivery belongs to the truck. The use of the mixer is for mixing, as a step in the production of concrete in the condition required for pouring..."

27. It is not necessary that a unit be functionally operative provided that the item is capable of fulfilling an independent function. For example in *Tully's Case* Lockhart J. gave an example of an assembly line where he said that:

> "...if five parts are installed in an assembly line and all that is needed to render the line operative is a sixth part, but until that

> part is installed no part may function or operate, the functional incompleteness does not necessarily deprive each of the five units of its character as a 'unit of eligible property'...".
>
> However, his Honour also said:
>
> "Yet at other times a 'unit' may not come into being until all components have been assembled. For example, a farm fence is made up of a number of posts and rails or wires. It is difficult to conceive of any 'unit' coming into being until the fence is erected.'

28. In *BP Oil Refinery* (*Bulwer Island) Ltd v. F.C.T.* 92 ATC 4031, one question was whether water coils which where added to a furnace were a separate unit of property. Jenkinson J. found that the coils had a separate function within the overall plant and as such were a 'unit of property'.

29. The issues of physical separability, mechanical independence and the separateness of the purchases are also relevant when considering whether the item has an independent function sufficient for it to be treated as a 'unit of property'. In *Case M98* a tractor, carry all and ripper were each held to be separate units of property. The Board of Review in reaching its decision referred to the two attachments as separate physical objects not mechanically designed and constructed as part of the tractor. The detachability of the attachments was also relevant to the decision as :

> "...the taxpayer might find it desirable to keep the tractor and the ripper, and to sell the carry-all,...and he might sell the tractor and buy a different make of tractor which he thereupon uses with the same ripper and the same carry-all."

30. The question of modifications to an existing unit was considered in *Wangaratta Woollen Mills Ltd v. F.C. of T.* 69 ATC 4095; (1969) 1 ATR 329. An electrical device which enabled the temperature of the liquid in the vats to be raised was fitted to a Fulscope controller. The modification enabled the item to regulate cooling as well as heating. The modification consisted of the addition of a few small pieces of electrical equipment to the controller. Most of the expense related to the workmanship involved in fitting small electrical parts to the controller. Therefore, the modification was not considered to involve the creation, or installation or attachment, of a separate unit of property. McTiernan J. in reaching his decision said :

> "The expenditure was on a modification to an existing unit of property...not an addition. The fact that a proportion of the expenditure is for workmanship and not even additional articles compels me to find that this item of expenditure cannot be the subject of a deduction..."

31. On the other hand, expenditure incurred in modifying a truck from a single drive unit to a bogie drive unit in 29 CTBR (NS) *Case 35* was eligible for the investment allowance. In this case, the modifications included the extension of the chassis and the installation of a lazy axle. The Board of Review concluded that each of these changes would be treated as a separate unit of eligible property provided the cost of each item exceeded the threshold amount. The essential difference between this case and *Wangaratta Woollen Mills* is the nature of these particular alterations. They substantially altered the performance and function of the truck allowing it to carry greater weights.

32. The installation of a new power source which consisted of an engine, fuel tanks etc. in a trawler was held to be a separate unit of property in *Case S51*. The installation of a more highly rated power source enabled the trawler to engage in deep sea fishing. Therefore, the function of the trawler was substantially altered. The power source can be considered as essentially separate from the trawler. This case illustrates the difference between the varying degrees of modifications i.e. one which consists of a minor alteration (not a separate unit of property) and another where the expenditure relates to an addition to an existing item of plant which substantially alters the performance or function of that item (by adding a separate unit of property, or by creating a new unit of property).

Examples

[Note : In relation to each of the following situations, we assume that the contracts entered into for the purchase of eligible plant items and any additions thereof are made by the taxpayers after 8 February 1993 and before 1 July 1994. We also assume that other conditions (as stated in paras 16 and 17) are satisfied and the taxpayers are eligible for the investment allowance.]

Industrial Storage racking

33. The XYZ Corporation purchases a new system of storage racks for use in its warehouse. The entire system is considered to be a separate 'unit of property' as it is an integrated system intended to be used as a single entity. Industrial storage racking is considered to be a permanent fixture. It is generally installed for long term use. The fact that racking systems are capable of being dismantled and reassembled, does not preclude them from being regarded as a single unit of property. Each component is therefore not a separate unit of property. Each complete installation is a single unit and its components

assemble together to form a (whole) unit. (Note - paragraph 82AF(1)(b) excludes a deduction for office shelving and retail display units).

34. If the storage racks support the roof and or the walls of the storage building, only the racks, not the roof or walls, will qualify for the investment allowance deduction.

35. Plant items used in conjunction with the racking systems, such as stacker cranes, fork lifts, computer control modules, etc., are additional, individual units. Pallets manufactured for use with the systems are also regarded as individual units of property.
The above mentioned items vary the performance or function of the racking system. Even though these items are not capable of independent operation, they have their own separate function and are considered to be units of property.

36. The XYZ Corporation subsequently purchases additional racks so as to build a new storage aisle. The new racks are considered to be a single separate unit of property. The new construction is an improvement of a capital nature . On the other hand, a minor extension to lengthen an existing bay will not be considered as a separate unit. It constitutes a repair or modification to an existing unit and therefore is not eligible for the allowance.

Truck and crane

37. Whether a truck and crane are manufactured and sold as a single item or as separate items of plant, they will be considered to be two separate units of property. The truck and the crane are functionally separate and perform independently of each other (*Ready Mixed Concrete*).

38. A construction company purchases, on 31 December 1993, a crane which it installs on the back of a truck which it had purchased on 1 January 1993. The truck would not qualify for the investment allowance as it was acquired prior to the introduction of the allowance. However the crane, which is a separate unit of property would qualify for the allowance as it was purchased during the relevant period.

Replacement of a boat engine

39. 'A' has a boat, the engine of which is in a state of disrepair. 'A' replaces the old engine with a new one which essentially serves the same purpose as the old. There is no substantial alteration in the boat's performance. The new engine is considered to be a part of the existing unit (i.e. boat). The replacement of the engine is not

considered to be the installation or attachment of a separate unit of property.

40. If 'A' replaces the old engine with a new engine which changes the performance, or in any way improves or enhances the functions of the boat, the new engine constitutes a separate unit of property. In *Case S51* 85 ATC 380 the new power unit installed in the fishing trawler was considered to have"... a discrete function or purpose of changing the operational base of the vessel thus varying the performance of the trawling operations in which the vessel owned by this partnership was engaged."

41. The fact that the engine and the boat, when operational, are physically attached to each other does not mean that the two items of plant are necessarily a single unit of property. "The 'degree of annexation' alone is not to be seen as determining that a particular item may not be seen to have the character of a separate unit of property. The question is whether the hull and the power source may be seen to be functionally separate."(*Case S51*)

Computer Systems

42. (a) 'B' sets up a new mainframe computer system with 50 terminals. Twelve months later B purchases another 20 terminals which are connected to the existing mainframe computer. The terminals are linked directly to the mainframe. They do not have a base unit or a separate central processing unit, and are not capable of independent operation.

The installation of the initial system i.e. the mainframe and 50 terminals is considered to be a single unit of property. The terminals are not personal computers (PCs). They do not have a separate function. The terminals are integral to the operation of the new mainframe. In our view, the system must be looked upon as a 'whole'. The terminals and mainframe are components which are linked together to form the functional unit. It is possible that under different circumstances, each terminal could be seen as an individual unit, but in this case, it is clear that these components (terminals) have become an integral part of the computer system.

Each of the additional 20 terminals also qualifies as a separate 'unit of property'. This is because each terminal constitutes an improvement of the existing unit. The mainframe system has been upgraded from a 50 terminal computer system to a 70 terminal computer system. In effect, each new terminal varies the operation of the existing system by allowing greater access. We consider that each of the new

terminals is in a similar position to the individual pallets considered in *Monier Colourtile*.

(b) 'C' buys a PC 'package' which consists of a base unit, monitor, keyboard and a computer mouse. It is considered that where these items are purchased as a single overall package they constitute a single unit of property. The package provides a single integrated system which is intended to function as a whole. However, if the items are purchased separately i.e. not as package, or if they are acquired as replacements or enhancements to an existing PC, each item is a separate unit of property.

The computer mouse is considered to be a part of a unit. In other words, the keyboard and mouse, together form a complete unit. The mouse does not have separate function which is distinctly different from that of the keyboard. The mouse can be viewed as simply modifying the operation of the keyboard. They both perform the same tasks. The mouse merely 'speeds up' the operation of the computer. It does not enable the computer to do anything new. Therefore, it can be seen that a computer mouse is not functionally complete in itself and is not a separate unit of property.

'C' later buys a printer to be used with the PC. The printer will be a separate 'unit of property' as it performs a separate function. It is capable of independent existence and is easily interchangeable. It should also be noted that even if the printer had been acquired by 'C' as part of a PC package, it will still be regarded as a separate unit of property.

(c) 'D' sets up a Local Area Network (LAN), a cable system network which links up ten PCs. One PC has a server and all other PCs in the network share the same software. Users on each of the PCs can access a shared data base, but these computers can also operate independently (i.e. without a server or mainframe). When operating independently, the PCs in this system run on their own software and can be connected directly to a printer.

The network , as a whole, is not a separate 'unit of property'. However, the server is a 'unit of property'. Each of the PCs will be treated in the same way as that set out in the example in paragraph 42(b).

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case references
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- F.C. of T. v Veterinary Medical and Surgical Supplies Limited 88 ATC 4642; (1988) 19 ATR 1593.
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- Ready Mixed concrete (Vic) Pty Ltd v F.C. of T. 69 ATC 4038; (1969) 1 ATR 123
- Wangaratta Woollen Mills Ltd. v F.C. of T. 69 ATC 4095; (1969) 1 ATR 329
- 29 CTBR (NS) Case 35