

STD 98/D1 - Title: Goods becoming an 'integral part of property' for the purposes of Item 192?



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Draft Sales Tax Determination

Title: Goods becoming an 'integral part of property' for the purposes of Item 192

Background

Under the sales tax law, an exemption is provided for goods for use by a person where the goods become *an integral part of property*. In these circumstances, the property for the purpose of Item 192 must be:

- owned by an always-exempt person;¹
- held under lease by an always-exempt person; or
- being constructed, improved or otherwise prepared for ownership by an always-exempt person.

A question has arisen over whether the expression *integral part of property* includes all items attached to property, or alternatively, merely covers goods used in the construction of the shell of a building.

This Determination sets out the Australian Taxation Office (ATO) view of the meaning of the phrase *integral part of property* in Item 192 of Schedule 1 to the *Sales Tax (Exemptions & Classifications) Act 1992*. This Determination does not apply to the use of the term 'integral part' in other parts of that Act or the *Sales Tax Assessment Act 1992*.

Issue

In what circumstances do goods for use by a person in the manner described in Item 192 become an *integral part of property* for the purposes of that Item?

¹ 'Always-exempt person' means a person whose use of goods of whatever kind is always covered by an exemption Item, regardless of the way in which the goods are used by the person: see section 5 of the *Sales Tax Assessment Act 1992*.

Decision

Goods become an *integral part of property* for the purposes of Item 192 if they are used in the construction of the property or are attached to the property so as to become fixtures.

Date of effect

This Determination will be effective immediately upon its release in final form. It will replace any previous public or private rulings to the extent that they are inconsistent with this Determination.

Reasons

The language and context of Item 192 specifically require the goods to be used so as to become an integral part of property (typically a building) for the exemption to apply.

In a case heard in the High Court under the *Sales Tax (Exemptions and Classifications) Act 1935*, it was found that not all articles intended to be attached to buildings become an integral part of the building. In reaching its conclusion, the Court observed:

'Obviously these words ["...wrought into or attached to so as to form part of, buildings or other fixtures"] cannot properly be applied to every article which is intended to be affixed to the fabric of a building so as to be held in a position which is suitable for its convenient use. ... No one would ever think of such a thing, I am sure, except after the building was completed, and as a matter rather of furnishing and equipping the household than of adding to the building as a building. ... The degree, manner and object of the attachment are not such that there can properly be said to be an integration of the Rack with the building. The building supports the Rack, it is true, but the attachment is slight, easily terminated, and irrelevant to any function of the fabric.'²

Goods used in the construction of the shell of a building are part of the property and are not considered fixtures or chattels. In these circumstances, the goods are an integral part of the property and may be exempt from sales tax.

In *Boswell v. Crucible Steel Company of America* [1925] 1 KB 119, Atkin LJ stated at 123:

² *DFC of T v. Academy Plastics Pty Ltd* (1956) High Court of Australia, unreported, 22 March 1956.

'A fixture, as that term is used in connection with a house, means something which has been affixed to the freehold as accessory to the house. It does not include things which were made part of the house itself in the course of its construction. ... As these windows were part of the original structure, representing the walls of the house, so that without them there would be nothing that could be described as a warehouse at all, they cannot come under the head of landlord's fixtures. If they could, every brick used in the building would be a landlord's fixture.'

However, where the goods are not used as part of the construction of a building, the goods may, nevertheless, be exempt from sales tax. The goods must be fixtures attached to property owned, leased,³ being constructed, improved or prepared for ownership by the always-exempt person.⁴

Doctrine of fixtures

The doctrine of fixtures determines when and in which circumstances goods attached to land lose their identity as goods and merge with the land.⁵

The modern test of whether a chattel has become a fixture is based on the judgment of Blackburn J in *Holland v. Hodgson* (1872) LR 7 CP 328 where he said at 334:

'There is no doubt that the general maxim of the law is, that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention, viz., the degree of annexation and the object of the annexation.'

In looking at the degree of attachment there are two relevant legal presumptions. Firstly, a chattel attached to the land other than by its own weight (for example, by screws or bolts) is *prima facie* a fixture.⁶ This presumption applies even if the degree of attachment is very slight. The greater the degree of attachment, the stronger the presumption appears to be.⁷

³ Subparagraph 192(1)(b)(i)

⁴ Subparagraph 192(1)(b)(ii)

⁵ Refer to AJ Bradbrook, SV MacCallum and AP Moore, *Australian Real Property Law* (2nd ed, LBC, Melbourne, 1997) 15-1.

⁶ See, e.g., *Jordan v. May* [1947] KB 427; *Yallingup Beach Caravan Park v. Valuer-General* (1994) 11 SR (WA) 355.

⁷ *Spyer v. Phillipson* [1931] 2 Ch 183.

Secondly, a chattel attached only by its own weight is *prima facie* not a fixture even if it has become embedded in the soil.⁸ Where a chattel is not otherwise affixed and is kept in position by its own weight, the party asserting that the chattel is a fixture carries the burden of rebutting the presumption that it is not a fixture.⁹

This test is not of itself conclusive in determining whether a chattel has become a fixture.¹⁰

Determining the purpose or object of the attachment involves an examination of whether the item was attached to the land with the intent to remain in position permanently or for an indefinite or substantial period (which suggests a fixture) or whether it was attached with the intent to remain in position only for some temporary purpose (which suggests a chattel).¹¹ However, although particular significance is usually attached to the degree and object of affixation, '...no particular factor necessarily has primacy and every case depends on its own facts.'¹²

In *Case 11/97 97 ATC 173*, Senior Member Block of the Administrative Appeals Tribunal used what he referred to as the 'completeness' test to determine whether or not an item was part of the fabric of a residential dwelling for the purposes of section 54 of the *Income Tax Assessment Act 1936*. Under this test, an item is considered to be part of the fabric of a rental dwelling if, upon the item's removal, the dwelling to which it was attached can no longer be regarded as a complete entity for the income-earning purposes it served.

It is the ATO's considered view that the 'completeness' test should not be viewed as an alternative test. Rather, it is merely another factor for consideration in determining whether or not an item is a fixture.

Tenant's fixtures

It has been suggested that where an always-exempt person or the person's subcontractor attaches a tenant's fixture then a sales tax exemption should apply. The ATO does not accept this view.

⁸ *Hamp and Another v. Bygrave and Another* (1983) 266 EG 720; *Australian Provincial Co Ltd v. Coroneo* (1938) 38 SR (NSW) 700 (FC)

⁹ *Australian Provincial Assurance Co Ltd v. Coroneo* (1938) 38 SR (NSW) 700 at 712-713

¹⁰ Refer JG Tooher, BM Dwyer and GL. *The Introduction to Property Law* (3rd ed, Butterworths, Melbourne, 1997) 7

¹¹ See *Australian Provincial Assurance Co Ltd v. Coroneo* (1938) 38 ST (NSW) 700 at 712-713

¹² *Eon Metals NL v. Commissioner of State Taxation (WA)* 91 ATC 4841 at 4845 per Ipp J

Where fixtures are attached by a tenant to leased land, those items become part of the land. They become an integral part of the property. The ownership of tenant's fixtures strictly lies with the owner of the land.

However, a tenant retains a right to remove those fixtures attached for trade, domestic or ornamental (or, to a limited extent, agricultural¹³) purposes, provided there is no agreement to the contrary and the fixtures are severable from the property without materially damaging the property or destroying the fixture.¹⁴

Also, a tenant's right to remove tenant's fixtures is lost once the lease has terminated, unless the lease holds otherwise.¹⁵

A tenant's right to remove tenant's fixtures is sufficient to deem the tenant the owner of the asset for depreciation purposes. The right to remove is described at paragraph 3 of Taxation Ruling IT 175 as '... an equitable or a real and valuable interest sufficient to regard the improvements as being "owned" by him [the tenant] for purposes of section 54.'

Similarly, for the purposes of Item 192, tenants are regarded as the owners of tenant's fixtures by virtue of their right to remove them.

Trade fixtures have been held, on the facts of the particular case, to include petrol pumps installed at a garage,¹⁶ engines and boilers,¹⁷ shelves and counters,¹⁸ a milking plant with oil engine and accessories,¹⁹ the fittings of a public house,²⁰ and shrubs planted by a market gardener.²¹

Ornamental and domestic fixtures have been held to include ranges and ovens,²² ornamental chimney pieces,²³ panelling²⁴ and blinds.²⁵

¹³ There is state legislation that enables certain farmers to remove agricultural fixtures, subject to certain landlord rights (see, for example, section 21 of the *Agricultural Holdings Act 1941 (NSW)*)

¹⁴ *Geita Sebea v. The Territory of Papua* (1941) 67 CLR 544 at 554 per Starke J

¹⁵ *Geita Sebea v. The Territory of Papua* (1941) 67 CLR 544 at 553 per Starke J; at 558 per Williams J

¹⁶ *Smith v. City Petroleum Co Ltd* (1940) 1 All ER 260

¹⁷ *Climie v. Wood* (1869) LR 4 Ex 328

¹⁸ *Harding v. National Insurance Co* (1871) 2 AJR 67

¹⁹ *Booth v. Goodwin* (1923) NZLR 703

²⁰ *Elliot v. Bishop* (1854) 156 ER 534

²¹ *Wardall v. Usher* (1841) 3 Scott NR 508

²² *Winn v. Ingilby, Bart and Hauxwell* (1822) 106 ER 1319

²³ *Leach v. Thomas* (1835) 173 ER 145

²⁴ *Spyer v. Phillipson* (1931) 2 Ch 183

²⁵ *Colegrave v. Dias Santos* (1823) 107 ER 311

If an item is a tenant's fixture, then the tenant's right to remove it prevents it from being classed as an integral part of property. Therefore, no sales tax exemption is available under Item 192.

**Communication
of the Decision**

This Determination has been made available for publication by the sales tax publishing houses and will be provided to interested persons upon request.

Your comments

If you wish to comment on this draft Sales Tax Determination, please send your comments by 17 April 1998 to:

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Commissioner of Taxation

4 March 1998

FOI Index Detail:

Related Determinations:

Related Rulings:

Subject Ref: always-exempt person; chattels; exemptions; fixtures; integral part of property; Item 192; sales tax; Schedule 1; tenants

Legislative Ref: STAA 5; ST(E&C) Item 192 Schedule 1; ST(E&C) 192(1)(b)(i) Schedule 1; ST(E&C) 192(1)(b)(ii) Schedule 1

Case Ref: Australian Provincial Assurance Co Ltd v. Coroneo (1938) 38 SR(NSW) 700; Booth v. Goodwin (1923) NZLR 703; Boswell v. Crucible Steel Company of America [1925] 1 KB 119; Climie v. Wood (1869) LR 4 Ex 328; Colegrave v. Dias Santos (1823) 107 ER 311; DFC of T v. Academy Plastics Pty Ltd (1956) High Court of Australia, unreported, 22 March 1956; Elliot v. Bishop (1854) 156 ER 534; Eon Metals NL v. Commissioner of State Taxation (WA) 91 ATC 4841; Geita Sebea & Ors v. The Territory of Papua (1941) 67 CLR 544; Hamp and Another v. Bygrave and Another (1983) 266 EG 720; Harding v. National Insurance Co (1871) 2 AJR 67; Holland v. Hodgson (1872) LR 7 CP 328; Jordan v. May [1947] KB 427; Leach v. Thomas (1835) 173 ER 145; Smith v. City Petroleum Co Ltd [1940] 1 All ER 260; Spyer v. Phillipson [1931] 2 Ch 183; Warda ll v. Usher (1841) 3 Scott NR 508; Winn v. Ingilby, Bart and Hauxwell (1822) 106 ER 1319; Yallingup Beach Caravan Park v. Valuer-General (1994) 11 SR (WA) 355; Case 11/97 97 ATC 173

ATO Ref: NAT 97/3986-6

ISSN 1323 - 7209