IT 2192 - Income tax : investment allowance - plant used for amusement or recreation purposes

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TAXATION RULING NO. IT 2192

INCOME TAX : INVESTMENT ALLOWANCE - PLANT USED FOR AMUSEMENT OR RECREATION PURPOSES

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1199394	INVESTMENT ALLOWANCE PLANT OR ARTICLES FOR USE IN AMUSEMENT OR RECREATION	82AF

OTHER RULINGS ON TOPIC IT 59, IT 61

PREAMBLE Sub-section 82AF(2) of the Income Tax Assessment Act excludes certain types of plant and articles from eligibility for investment allowance deduction. In particular paragraph (f) of the sub-section which was operative prior to 1 October 1980 provided that "plant or articles for use in, or primarily or principally in connection with amusement or recreation" were ineligible for investment allowance deduction.

2. Although paragraph 82AF(2)(f) is no longer operative the question may still arise in assessments issued in respect of years prior to the repeal of the paragraph whether a particular unit of property is "for use in, or primarily and principally in connection with amusement or recreation".

3. It had been the view of this office that paragraph 82AF(2)(f) applied whenever plant or articles were acquired for use for amusement or recreation purposes. In other words, it was the intended use of the plant or articles which determined eligibility for investment allowance deduction.

4. This approach was rejected by the Federal Court in two cases decided in 1982, W. Smith v. FCT 82 ATC 4240 : 13 ATR 115 and Hamilton Island Enterprises Pty. Ltd. v. F.C. of T. 82 ATC 4302 : 13 ATR 220. In both cases the Federal Court expressed the view that the intended use of the relevant plant and articles was not the decisive factor in determining whether they were for use in connection with amusement or recreation - what was decisive was the nature or inherent quality of the relevant plant or articles. To put it another way, the paragraph would apply only to plant or articles which were specifically designed for amusement or recreation purposes.

5. Because the Court found for the Commissioner in the two cases referred to it was not possible to challenge the views expressed in relation to paragraph 82AF(2)(f). However,

the matter arose again recently in FCT v. Kearney 85 ATC 4183 : 16 ATR 351 where the Federal Court unanimously affirmed the views expressed in the earlier two cases.

RULING

6. The decision of the Federal Court has been accepted and should be applied in similar circumstances. In determining whether plant or articles are for use in or primarily and principally in connexion with amusement or recreation the physical nature of the relevant item rather than its actual use by the taxpayer is the relevant criterion. If the physical features of the item are such that it is not peculiarly suited for use in connection with amusement or recreation but is equally adapted to a use for some other purpose the investment allowance should not be denied on the basis that paragraph 82AF(2)(f) applies.

COMMISSIONER OF TAXATION
30 August 1985

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