IT 2398 - Income tax: depreciation of co-owned property

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TAXATION RULING NO. IT 2398

INCOME TAX : DEPRECIATION OF CO-OWNED PROPERTY

F.O.I. EMBARGO: May be released

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PREAMBLE Sub-section 54(1) of the Income Tax Assessment Act allows an income tax deduction in respect of depreciation of plant or articles owned by a taxpayer and used by him during the year of income for the purpose of producing assessable income. The question has arisen whether the sub-section operates only where a taxpayer has full and complete ownership of the property or whether it also operates where a taxpayer is a joint or co-owner of the property. In a typical situation, for instance, two taxpayers may each have a 50% interest in an item of plant, e.g. a tractor, each may use the plant independently for the purpose of producing assessable income and each may seek an income tax deduction in respect of depreciation of the item of plant.

2. The question has been referred to in a number of Taxation Board of Review decisions without the matter being finally resolved. In two decisions reported as Case Q7, 15 TBRD 14, Case 101, 11 CTBR (NS) 587; and Case G58, 75 ATC 423, Case 28, 20 CTBR (NS) 306, Taxation Board of Review No.1 took the view that the word 'owned' in sub-section 54(1) is used in a popular rather than a technical or legal sense. In other words, sub-section 54(1) does not require total ownership of the plant. On the other hand, in Case M72, 80 ATC 497, Case 47, 24 CTBR (NS) 401, the majority of a differently constituted Taxation Board of Review No.1 was inclined to the view that sole ownership was required before a taxpayer was entitled to a deduction for depreciation under sub-section 54(1).

3. More recently in Case R49, 84 ATC 387, Case 104, 27 CTBR (NS) 836, Taxation Board of Review No.3 considered it critical to determine whether the parties had created a joint tenancy or a tenancy in common. If the property was held by the owners as tenants in common the claim for depreciation would fail. In the particular case it was held that a motor vehicle was owned by a husband and wife as joint tenants and a claim by the wife for an income tax deduction for depreciation on the motor vehicle was upheld.

RULING 4. The depreciation provisions of the income tax law are intended to provide an income tax deduction for the loss or

diminution in value of an item of plant or an article to the extent that the loss or diminution in value arises from the wear and tear caused by the use of the plant or article for the purpose of producing assessable income. The amount of depreciation allowable as an income tax deduction is based on the investment that a taxpayer has in the plant or article and the deduction otherwise allowable is limited to the extent to which the plant or article is used by the taxpayer to derive assessable income.

5. It has been the practice of this office to give to the term 'owned' in sub-section 54(1) its ordinary non-technical meaning. Notwithstanding the observations made in the various Taxation Board of Review decisions referred to in paragraphs 2 and 3 above it is proposed to continue the practice. This means that where plant or articles are jointly owned, whether by joint tenants or by tenants in common, the joint owners may be allowed income tax deductions for depreciation on their interests in the plant or articles.

6. Where plant or articles are jointly or co-owned but not used by the owners in partnership the amount of depreciation allowable to each co-owner will be determined according to their respective interests in the plant or articles and the use which is made of the plant or articles. For example, where, in a year of income, A and B co-own plant costing $5000 which is wholly used by each for the purpose of producing assessable income each will be allowed an income tax deduction for depreciation based on a depreciated value of $2,500.

7. Where either or both co-owners use the plant or articles partly for the purposes of producing assessable income the amount of depreciation allowable to each as an income tax deduction will be determined having regard to section 61 of the Income Tax Assessment Act, i.e. only that part of the depreciation attributable to the production of assessable income is to be allowed as an income tax deduction. Where, for instance, A uses the plant or articles, 50% for producing assessable income and 50% for private purposes, an income tax deduction for 50% of the depreciation otherwise allowable on the depreciated value of A's ownership would be allowable to A.

8. In cases where a co-owner does not use the plant or articles at all for the purpose of producing assessable income an income tax deduction for depreciation will not be allowable to that co-owner. There must be some income producing use of the plant or articles for depreciation to be allowed as an income tax deduction.

9. This Ruling does not affect plant or articles owned by partners and used in a partnership business. Where plant is owned and used in partnership to derive partnership assessable income depreciation of the plant or articles (calculated in accordance with sections 54 to 62) is allowable as an income tax deduction in the calculation of the net income of the partnership.

COMMISSIONER OF TAXATION
7 May 1987