TD 97/D3 - Income tax: what type of accommodation units used in a caravan/tourist park business can a taxpayer depreciate under subsection 54(1) of the Income Tax Assessment Act 1936 and what depreciation rates should the taxpayer use?

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Draft Taxation Determination

Income tax: what type of accommodation units used in a caravan/tourist park business can a taxpayer depreciate under subsection 54(1) of the *Income Tax Assessment Act 1936* and what depreciation rates should the taxpayer use?

1. A taxpayer can depreciate accommodation units used in a caravan/tourist park where those units:
   (i) are 'articles' (because they are chattels); and
   (ii) are used, or held ready for use, for the purpose of producing assessable income.

2. 'Plant' and 'articles' have separate meanings for the purposes of subsection 54(1) of the *Income Tax Assessment Act 1936* ('the Act'): (*Quarries Ltd v. FC of T* (1961) 106 CLR 310 at 316; (1961) 8 AITR 383 at 386 (*Quarries Ltd*)). To be depreciable under subsection 54(1), an item must be either an 'article' or 'plant' and must be used for the purpose of producing assessable income or installed ready for that purpose.

3. For the purposes of this Taxation Determination, an item is an 'article' where it is a chattel as opposed to a fixture. An item is 'plant' where its function is to provide the means or apparatus by which a taxpayer produces assessable income, or it is an integral part of the means or apparatus by which a taxpayer produces assessable income. Further, an item is not 'plant' where it merely provides the general setting in which income producing activities are conducted.

When is an accommodation unit a chattel?

4. Whether an accommodation unit is a chattel or a fixture will depend on the circumstances of each case. An accommodation unit is a chattel when it merely rests on land or it is affixed in such a way as to facilitate easy removal, or where the purpose and mode of affixing are for the more complete enjoyment of the unit as a chattel. An intention that a unit remain in one place for a substantial period of time does not, of itself, preclude the unit being a chattel. We consider these units are not structures in the nature of buildings as they are designed or constructed as portable or movable (*Quarries Ltd* at CLR at 316; AITR at 386).

5. However, an accommodation unit fixed to the ground may lose its identity as a chattel and become part of that land, that is, a fixture. A unit is a fixture, *prima facie*, if it cannot be removed or if it has been affixed with the intention that it shall remain in position permanently, or for an indefinite or substantial period and it is securely fixed in such a way that it cannot be detached without substantial injury to the land or the thing itself.

When is an accommodation unit not depreciable?

6. *Prima facie*, an article is not a fixture (*Case S25* 17 TBRD 144 at 150; *Case 50* 13 CTBR (NS) 335 at 341). 'Article' cannot ordinarily be taken to comprehend a structure erected or built *in situ* (*Quarries Ltd* CLR at 316; AITR at 386). Where an accommodation unit ceases to be a chattel and becomes a fixture, it ceases to be an 'article'. Therefore, an accommodation unit that is a fixture will only be depreciable under subsection 54(1) if it can be said to be 'plant'.

7. A fixture is generally not 'plant' where it merely provides the general setting in which income producing activities are conducted (*J Lyons and Co Ltd v. The Attorney General* [1944] 1 ALL ER 477 at 479; quoted with approval by Kitto J in *FC of T v. Broken Hill Pty Co Ltd* (1969) 120 CLR 240; 15 ATD 43) or where it is built into the ground so as to form a static and permanent feature of the place in which a business may be carried on and has no other function than to provide a convenient stand for the performing of work of the business (*Moreton Central Sugar Mill Co Ltd v. FC of T* (1967) 116 CLR 151 at 157; (1967) 10 AITR 420 at 423).

8. We consider, therefore, that an accommodation unit that is a fixture will not constitute 'plant', for the purposes of subsection 54(1), as it merely provides the setting or environment within which a taxpayer conducts income producing activities.

9. Where depreciation is not allowable for accommodation units that are fixtures, deductions may apply under Division 10C of the Act dealing with deductions for capital expenditure on traveller accommodation, or under Division 10D of the Act dealing with deductions for capital expenditure on certain buildings and structural improvements.

What rate should a taxpayer use where the taxpayer is entitled to claim depreciation for accommodation units?

10. Depreciation rates for accommodation units that are mobile caravans, whether used within the confines of a caravan park or not, are set out in the depreciation schedules. We consider these rates also apply to immobile caravans that are articles.

11. We consider that other accommodation units such as relocatable homes and cabins and manufactured homes, where they are 'articles', will have an effective life of 30 years. The broad banded depreciation rates for post-26.2.92 acquisitions and pre-27.2.92 acquisitions are:

	Effective life (years)	Broad banded rate PC (%)	DV (%)
Post-26.2.92	30 or more	7	10
Pre-27.2.92	20 to less than 40	5	7.5
		Broad banded rate + 20% PC (%)	DV (%)
Pre-27.2.92	20 to less than 40	6	9

12. A taxpayer may adopt a different estimate of the effective life of a unit by using the rules laid down in sections 54A, 55 and 56 of the Act. Taxation Ruling IT 2685 outlines the factors to take into account when a taxpayer makes an estimate of the effective life of an item.

Example 1

Jim uses several caravans in his caravan/tourist park business. Some of these are on wheels, while others have the wheels removed and are connected to electricity, sewerage, etc. Jim can depreciate all of these caravans as they merely rest on land or are affixed in such a way as to facilitate easy removal.

Example 2

Mary owns and operates a tourist park. She decides to expand her accommodation facilities and purchases a relocatable manufactured dwelling. The dwelling arrives at the park on the back of two trucks. It has no wheels but has a chassis/frame underneath which is designed to support the unit once it is in location. A crane lifts the two sections into position and workmen bolt the two sections together. Mary would not be able to move the dwelling without the aid of a crane and some dismantling.

Mary may claim depreciation on the dwelling as it is not a fixture. Although it requires a crane to move it, it is designed as a movable dwelling and is not permanently fixed to the ground.

Mary later also considers erecting a kit home in the park. We consider that she would not be able to claim depreciation on this type of home as it is a fixture. In order for Mary to erect the home, she would need to engage a builder and submit plans to the local council. Such a home is fixed to the ground with the intention that it remain there permanently.

Commissioner of Taxation
7 May 1997

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Related Determinations:

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