


# ***IT 168 - Chimney stacks - depreciation and investment allowance***

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TAXATION RULING NO. IT 168

CHIMNEY STACKS - DEPRECIATION AND INVESTMENT ALLOWANCE

F.O.I. EMBARGO: May be released

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	PLANT	54
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	DEPRECIATION	

PREAMBLE This ruling issued as a result of a number of claims coming under notice that doubt existed regarding the question whether the depreciation and the investment allowance provisions may be applied to chimney stacks, particularly those constructed for use in modern manufacturing complexes.

2. This doubt probably persists because of the nature of the prescriptions in ITO 1217 which, with the exception of chimney stacks in certain industries specifically prescribed (e.g., brick, tile, gas), may be construed (page 13) as imposing a blanket prohibition against administratively treating other chimneys as "plant".

FACTS

3. Regarded historically, when industries were far less diversified and complex, there was justification, perhaps, for such a broad prohibition in the Order since, apart from the industries specified, it was easier to conceive as general proposition other chimneys being normally integrated with buildings as such and, therefore, precluded from allowance.

4. However, there no longer appears warrant for such a broad assumption in the light of modern industrial developments generally and the widened application of the depreciation provisions which has emerged from such decisions as Quarries Ltd v FC of T, (1961) 106 CLR 310; Jarrold v John Good and Sons Ltd, 40 TC 681 and those of the Boards of Review in, 13 TBRD Case N75, 11 CTBR(NS) Case 37; 11 TBRD Case L19, 9 CTBR(NS) Case 65 and 15 TBRD Case Q7, 11 CTBR(NS) Case 101.

5. The entry on page 13 of the Order appears to have relied for authority on the United Kingdom case of Nutley and Finn (1894) 94 WN 64, in which it was decided that a chimney stack used solely for the purpose of discharging fumes and smoke from a furnace and boiler and which could be removed without injury to the brewery was not "plant".

6. However, the report of this case suggests that Kekewich J.

was reluctant to give a wide meaning to "plant" supported by earlier authority (cf. Lindely L.J.: Yarmouth v France (1887) 19 QBD at P.685) and the issue appears to have been decided primarily on the basis that the chimney in that case did not constitute "machinery". The strength of this judgment is thought to be weakened by the proposition stated by Donovan L.J. in Jarrold v John Good and Sons Ltd., viz., that while it may be difficult to prove that certain assets are "machinery" it may be much simpler to prove that they are "plant".

RULING

7. In any event, judged in the light of more recent decisions, the consensus of opinion would now appear to favour the view that a very substantial number of chimney stacks, whether regarded as entireties or not, which have a more positive and complex function in modern manufacturing operations of controlling draughts (e.g., to blast furnaces, etc.) or of removing or diffusing pressure or noxious gases resulting from those operations may now be more readily regarded as "plant" in a section 54 context.

8. While, clearly, it cannot be taken that all chimney stacks would necessarily qualify as "plant" for depreciation and investment allowance purposes, the facts of the particular case should be sufficient to indicate whether a prima facie case exists for deduction of one or both of these allowances. Of course, the exclusion must still remain in respect of chimney stacks which form integral parts of buildings as such.

9. As regards the appropriate rate of depreciation, this would again basically depend upon the facts of the particular case, although present information would suggest that, generally, a reasonable life estimate in the case of concrete structures would not be less than 50 years. For example, in the case of a 650 ft. concrete chimney stack (accepted as "plant") erected for a refining and smelting company for use in conjunction with that company's sinter, furnace and converter plants, an estimated life of 50 years was adopted.

10. The modern trend is apparently towards the construction of outer shells of concrete rather than brick. In the case of the stack referred to in the previous paragraph, it was claimed that preventative measures against corrosion of inner linings could still be regarded as being in the experimental stages in Australia. It was also said that brick chimney stacks built up their own protection against corrosion, through soot, etc. being deposited on the inner walls, and would generally have a longer life due to different pressures.

11. However, it is not considered that there is sufficient evidence to establish that the effective life of these concrete structures would be less than that of comparable brick chimneys. As 1TO No.1217 presently prescribes generally a 1% prime cost rate in respect of concrete structures integral with plant, a 2% prime cost rate does not appear unreasonable in the circumstances and this should be adopted as the general rate for concrete stacks in heavy industry.

COMMISSIONER OF TAXATION