TD 97/24 - Income tax: what types of accommodation units used in a caravan/tourist park business can a taxpayer depreciate under section 42-15 of the Income Tax Assessment Act 1997 ('the Act') and what depreciation rates should the taxpayer use?

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Australian Taxation Office

Taxation Determination **TD 97/24**

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: what types of accommodation units used in a caravan/tourist park business can a taxpayer depreciate under section 42-15 of the *Income Tax Assessment Act 1997* ('the Act') 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. 'Articles' is included in the definition of 'plant' in section 42-18 of the Act.

3. For the purposes of this Determination, an item is an 'article' where it is a chattel as opposed to a fixture.

4. Whether an accommodation unit is a chattel or a fixture depends 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. Units that are designed or constructed as portable or movable are not structures in the nature of buildings (*Quarries Ltd v. FC of T* (1961) 106 CLR 310 at 316; (1961) 8 AITR 383 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 unit itself.

6. *Prima facie*, an article is not a fixture (*Case S25* (1966) 17 TBRD 144 at 150; (1965) 13 CTBR (NS) 335 *Case 50* 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'.

7. An item of property that is a fixture (as distinct from an 'article') does not constitute 'plant' under any of the other possible meanings of 'plant' in section 42-18 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). Nor is a fixture 'plant' 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 where it 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. Where depreciation is not allowable for accommodation units that are fixtures, deductions may be available under Division 43 of the Act, which deals with capital expenditure on traveller accommodation and 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?

9. 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. These rates may also be applied to immobile caravans that are articles. The rate for units acquired after 26 February 1992 is generally 20 per cent prime cost method or 30 per cent diminishing value method. Where the units are used in the confines of a caravan park the rates are 17 per cent or 25 per cent respectively.

10. We accept that accommodation units such as relocatable homes or park cabins constructed with chassis, where they are 'articles', have an effective life of 20 years. Other accommodation units such as manufactured homes, where they are 'articles', have an effective life of 30 years.

11. The broad banded depreciation rates for post-26 February 1992 acquisitions and pre-27 February 1992 acquisitions are:

	Effective life (years)	Broad banded rate	
		PC (%)	DV (%)
Post-26-2-92	13 to fewer than 30	13	20
	30 or more	7	10
		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 Division 42 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.

13. Sections 42-15 and 42-18, and Divisions 42 and 43 of the Act, to which this Determination refers, express the same ideas as subsection 54(1), sections 55 and 56, and Division 10D, respectively, of the *Income Tax Assessment Act 1936.*

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 that 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 with the intention that it remain there permanently. We consider that she would not be able to claim depreciation on this type of home as it is a fixture.

Commissioner of Taxation
17 December 1997

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Related Determinations:

Related Rulings: IT 145 (now withdrawn); IT 2685

Subject Ref: depreciation; effective life

Legislative Ref: ITAA97 Div 42; ITAA97 42-15; ITAA97 42-18; ITAA97 Div 43; ITAA36 54(1); ITAA36 55; ITAA36 56; ITAA36 Div 10D

Case Ref: J Lyons and Co Ltd v. The Attorney General [1944] 1 All ER 477; Moreton Central Sugar Mill Co Ltd v. FC of T (1967) 116 CLR 151; (1967) 10 AITR 420; Quarries Ltd v. FC of T (1961) 106 CLR 310; (1961) 8 AITR 383; Case S25 (1966) 17 TBRD 144; (1965) 13 CTBR (NS) 335 Case 50

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