

TR 97/25A2 - Addendum - Income tax: property development: deduction for capital expenditure on construction of income producing capital works, including buildings and structural improvements

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Addendum

Taxation Ruling

Income tax: property development: deduction for capital expenditure on construction of income producing capital works, including buildings and structural improvements

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 97/25 to include ATO Interpretative Decisions ATO ID 2010/41 and ATO ID 2002/626 about farm accommodation expenditure exclusion. These ATO IDs have now been withdrawn.

TR 97/25 is amended as follows:

1. Contents list

Omit the table; substitute:

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2. Paragraph 4

Omit paragraph; substitute:

4. This Ruling replaces Taxation Rulings IT 2397 *Income tax : application of Division 10D where residential buildings used partly for income-producing purposes* and IT 2640 *Income tax: Division 10D - qualifying expenditure* as well as Taxation Determinations TD 92/177 *Income tax: if the construction cost of an eligible building is greater than the sale proceeds of that building, what is the amount of the qualifying expenditure under section 124ZG of the Income Tax Assessment Act 1936?*, TD 93/85 *Income tax: property development: how are indirect costs apportioned for the purposes of calculating depreciation on plant under section 54 of the Income Tax Assessment Act 1936 and a deduction for capital expenditure on certain buildings under Division 10D of Part III of the Act?*, TD 93/105 *Income tax: property development: is voluntary demolition of a building 'destruction' for the purposes of section 124ZK of the Income Tax Assessment Act 1936?*, TD 94/83 *Income tax: property development: who is a 'qualified person' to make an estimate of the actual cost of construction of a building for the purposes of Division 10D of Part III of the Income Tax Assessment Act 1936?*, ATO Interpretative Decisions ATO ID 2002/626 *Income Tax Renovations to a building on a farming property* and ATO ID 2010/41 *Income Tax Capital works: plant - improvements partly used for accommodation of employees*, which are now withdrawn. These documents considered issues involving the amount of the deduction allowable, the consequences of voluntary demolition of a building, the types of person qualified to estimate construction costs and whether capital expenditure on farm accommodation is deductible under Division 43 of the 1997 Act.

3. Paragraph 10

After the paragraph; insert:

Farm accommodation expenditure excluded

10A. Capital expenditure on 'plant' (as defined under section 45-40 of the 1997 Act) is also specifically excluded from being construction expenditure (by paragraph 43-70(2)(e) of the 1997 Act). Plant includes structural improvements on land that is used for agricultural or pastoral operations where that improvement is used for domestic or residential purposes, if it is provided for the accommodation of employees, tenants or sharefarmers engaged in or in connection with agricultural or pastoral activities (paragraph 45-40(1)(f) of the 1997 Act).

10B. Concurrent use of the structural improvements for another purpose (for example, accommodation by the owner of the farm property) does not exclude them from the definition of plant.

10C. As a result, no deduction is allowed for such expenditure under Division 43 of the 1997 Act.

4. Paragraph 20

After the paragraph; insert:

Farm accommodation expenditure excluded

20A. Paragraph 45-40(1)(f) of the 1997 Act specifically includes structural improvements as plant, even though they are used for domestic or residential

purposes, where they are provided for the accommodation of employees, tenants or sharefarmers engaged in or in connection with agricultural or pastoral activities, and the improvements are situated on land used for these activities.

20B. There is no requirement in paragraph 45-40(1)(f) of the 1997 Act that the structural improvements be used solely for the accommodation of employees, tenants or sharefarmers. Therefore, concurrent use of the structural improvements for another purpose does not exclude them from the definition of plant in subsection 45-40(1) of the 1997 Act.

5. Paragraph 31A

After the heading '**Examples**'; insert:

Farm accommodation expenditure excluded

31A. Gavin lives in a residence in the city. However, he also owns a farm and incurs expenditure on structural improvements to a disused cottage on the property. This cottage is to be used for accommodation of his farm employees. Gavin will also occupy the cottage when working on the property, either on his own, or at times when employees are also present in the cottage. As the structural improvements, including the building, are provided for use as accommodation for employees engaged in the agricultural or pastoral operations, they are 'plant' within the definition. The whole of the expenditure on the structural improvements is therefore expenditure on plant and is specifically excluded from deduction under Division 43. This will be the case even if Gavin concurrently uses the cottage when working at the property, either on his own or at a time when employees are also present in the cottage.

This Addendum applies to years commencing both before and after its date of issue.

Commissioner of Taxation
5 July 2017

ATO references

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