

IT 2161 - Income tax : investment allowance : use of plant outside Australia

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TAXATION RULING NO. IT 2161

INCOME TAX : INVESTMENT ALLOWANCE : USE OF PLANT
OUTSIDE AUSTRALIA

F.O.I. EMBARGO: May be released

REF	H.O. REF: 84/2043-2	F.46-47	DATE OF EFFECT: Immediate
	81/4149	F.4	
	80/3839	F.16,18	DATE ORIG.
	80/3235	F.18,43,52,74	MEMO ISSUED: 11/10/84
	80/1681	F.28-29	
	78/625	F.4	
	77/3631	F.4	
	77/3263	F.2	
	77/3115	F.24	

B.O. REF:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1174735	INVESTMENT ALLOWANCE	82AA(a) 82AG 82AH

OTHER RULINGS ON TOPIC: IT 58, IT 68, IT 77, IT 358

PREAMBLE

From time to time this office is asked whether a particular use of a new unit of eligible property outside Australia would jeopardise a claim for investment allowance deduction. The topic has been the subject of earlier Taxation Rulings, IT 58, 68, 77 and 358. This Ruling gives details of further situations which have come to the notice of this office and the advice which has been given in respect of them.

2. By way of background it is appropriate to reiterate that the investment allowance deduction provisions require that, apart from eligible Australian trading ships as defined in section 57AM, a relevant unit of eligible property must be acquired for use wholly and exclusively in Australia. If the property is used outside Australia within 12 months of its first use the investment allowance deduction is withdrawn. Furthermore, the investment allowance deduction is forfeited if, after the expiration of 12 months, the property is used outside Australia and the Commissioner of Taxation is satisfied that, when the plant was acquired, the taxpayer intended to use it outside Australia.

3. It has been accepted, however, that a limited use of eligible property outside Australia where that use is attributable to some emergency situation or other unforeseen event should be disregarded in determining whether there was a use outside Australia sufficient to warrant the withdrawal of the investment allowance deduction. In these circumstances,

however, preservation of the deduction has been conditional on any income derived from the use of the property outside Australia being liable to Australian income tax. This has been necessary to ensure that the property is not used for a purpose other than for the purpose of producing assessable income.

RULING

4. A ship (which is not an eligible Australian ship) was constructed overseas and imported into Australia as a new vessel. It was intended to service the off-shore oil and gas exploration industry off the coast of Australia. The ship was used continuously for this purpose in the first six months after delivery. Then a period occurred when there was no work for the vessel and, rather than leave the ship idle, the owner chartered it to tow another vessel from Australia to a foreign port. The charter took less than one month. Advice was given that the use made of the vessel in these circumstances would not result in the forfeiture of the investment allowance deduction provided that there was no other use of the vessel outside Australia during the first 12 months of use.

5. A resident Australian shipping company purchased a cargo carrying vessel for the purpose of providing shipping and transport services in the northern Australian coastal trade and to and from a number of Asian countries. The ship's base of operations was an Australian port, its crew Australian and all of its cargo either collected or discharged at an Australian port. The ship is not an eligible Australian trading ship. The advice was given that the investment allowance deduction would not be available in respect of the ship because it was always intended that it would be used outside Australia.

6. An airline company took delivery of aircraft which were intended for use on domestic airline services in Australia. The company was subsequently approached with a proposal for the use of the aircraft on occasional scheduled flights outside Australia. Advice was given that the investment allowance would be withdrawn if the aircraft were used outside Australia in these circumstances - the proposal envisaged that the occasional scheduled flights outside Australia would become part of the company's operations.

7. An airline company enquired whether an isolated and temporary use by a foreign airline of one of its aircraft as a replacement for an unserviceable aircraft of the foreign airline would jeopardise an investment allowance deduction otherwise available. In the event that the aircraft was so used it would operate on a Pacific Island route for a day or longer. This limited and unforeseen use of the aircraft outside Australia would not jeopardise the investment allowance deduction provided that the use of the aircraft in these circumstances did not continue so as to become a regular pattern of its operation.

8. A company owned and operated an aircraft in its charter business in Australia. Another company proposed to charter the aircraft to give demonstrations of its capability to a non-resident. The proposal involved the aircraft being flown for one week on stated air routes outside Australia. Because of

the isolated nature of the arrangement advice was given that the investment allowance deduction otherwise available would not be withdrawn.

9. A company purchased a new aircraft to take advantage of marketing opportunities in Australia, nearby Pacific Islands and in Papua New Guinea. The company was advised that, if the aircraft was used outside Australia in the manner intended, an investment allowance deduction would not be available.

10. A company purchased an aircraft for use within Australia. Subsequently it had occasion to consider the possibility of using the aircraft outside Australia in a number of circumstances. One involved a flight to New Zealand during an industrial dispute to collect an urgently required piece of equipment. Then followed a possible charter of the aircraft for use in another country for a period of three weeks. Another situation involved the use of the aircraft as a replacement aircraft in an overseas country. The company was advised that, although the unforeseen nature of the flight to New Zealand could be accepted as not leading to the withdrawal of the investment allowance deduction, the use of the aircraft outside Australia in the other circumstances would lead to the withdrawal of the investment allowance deduction.

COMMISSIONER OF TAXATION
15 May 1985

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