IT 69 - Investment allowance - hire of plant

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This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 69

INVESTMENT ALLOWANCE - HIRE OF PLANT

F.O.I. EMBARGO: May be released

REF N.O. REF: 76/545 F90 DATE OF EFFECT:

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1100404	HIRED PLANT LEASED PLANT INVESTMENT ALLOWANCE	82AA

PREAMBLE A hire association requested, on behalf of its members, advice relating to the investment allowance provisions on equipment on hire to casual or occasional users. The particular questions posed were:-

1. Does the investment allowance apply to "operated" equipment on hire e.g. a bulldozer or a backhoe, which may sometimes be operated on contract and sometimes on hourly or daily hire?

2. If so, when is a piece of equipment deemed to be operated e.g., if an air compressor were hired with an operator, would that operator need to start and stop it, or would he need to stand beside it all days?

3. If an employee of a company takes a piece of equipment on which the investment allowance has been claimed home for his own use, would that mean forfeiting the allowances? e.g., a carrying company allowing a driver to use of its trucks to moves house or a bus operator who allows a bus to be used for a church picnic free of charge.

4. It is quite common practice for a group of farmers to jointly purchase an expensive piece of agricultural equipment for their shared use - would this qualify?

5. It is is quite common for a building contractor to allow his sub-contractors to use some of his equipment - say his hoist for them to lift their materials, sometime charging and sometimes not - would such a hoist qualify for the investment allowance?

6. A crane operator who mostly hires his crane with his own operator will quite often allow the person for whom he is working to operate the crane after hours or at weekends. Would this crane qualify for the investment allowance?

7. Many contractors of all types let their equipment out on hire when they do not need it themselves. If such contractors were to get the investment allowance while our members who are hiring in competition which them do not it would be most be most unfair as the contractor would have a distinct competitive advantage. While technically he may not be entitled to claim the investment allowance in practice it would be very difficult for you to policy this. How can our members be protected from being so disadvantaged?

8. If our members, rather than hire particular items of equipment were to contract to supply what that equipment produces, would that equipment qualify for the investment allowance? e.g. instead of "Hiring an Air Compressor" one could "Supply 28,000 cubic feet of air".

RULING

2. The allowance does not apply in respect of expenditure incurred in acquiring plant that is to be hired to casual or occasional users. The concession is available only in relation to owner-operated eligible plant or eligible plant held, by a taxpayer who is operation it, under a hiring or leasing agreement for a term of 4 years or more with a "leasing company" as defined in the relevant provisions of the income tax law.

3. As a general statement, it can be said that firms deriving income from the day-to-day hiring of plant and equipment are not entitled to investment allowance deductions in respect of such plant and equipment.

4. However, a firm that provides services or performs a contract with a customer involving the use by it of eligible plant that it owns or holds under a long term hiring may qualify for the investment allowance. Such plant, where operated by an employee or member of the firm concerned, will attract the investment allowance provided the basic conditions of the tax concession are satisfied, regardless of whether payments to be made by the customer for the services rendered are calculated in a job basis or at hourly or daily rates. In an arrangement of his kind, which is, of course, quite different from a simple hiring of plant, the firm, and not its customer, would be actually using the plant in performing the contract or rendering the services.

5. In relation to the specific questions asked, the following comments were provided.

6. In relation to question 1 and 2, it will be a question of fact whether the firm that owns the plant is itself using or operating the plant in providing services for or fulfilling contracts with its customers. A specialised piece of equipment such as a large mobile crane would normally be operated solely on a contract basis by the crane hire firm that owned it. On the other hand, items of plant such as tractors, bulldozers, compressors, etc. would generally be hired out under

arrangements in which the hirer would be responsible to operate the plant. As mentioned above, the hiring of plant under arrangements of this latter kind would be outside the scope of the investment allowance.

7. In relation to question 4, where a group of farmers or other taxpayers jointly purchased plant for their shared or common use - but not for hire to other taxpayers - there is no reason why the investment allowance should not be available to them, provided the basic condition of eligibility are satisfied.

8. In the situation referred to in question 7 the plant owned by a contractor that was let on casual hire at the times when the items were not required by the contractor for his own purposes would not be eligible for investment allowance. It is a condition of the allowance that where eligible plant is owned by a taxpayer (other than a leasing company) no person other than the owner be granted rights to use it.

9. Questions 3, and 5 and 6 may be concerned with largely hypothetical situations, some involving the private use by employees of plant and equipment owned by firms using the plant for business purposes. Any significant use of plant for private purposes that comes to notice could result in the loss of investment allowance to the firm concerned.

10. It was not fully understood what is meant by question 8. If a hire firm was to carry on business in the same way as it does at present, but was to purport to supply compressed air or electricity to the hires of its compressors or generators, it would seem that the arrangement would still be one in which plant was being hired and thus ineligible for the investment allowance. If, on the other hand, the hire firm was to change the nature of its present business, the question whether plant that it itself owned and operated in that business could qualify for investment allowance deductions would depend on the facts of the paricular situation.

COMMISSIONER OF TAXATION