IT 95 - Investment allowance - aircraft

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TAXATION RULING NO. IT 95

INVESTMENT ALLOWANCE - AIRCRAFT

F.O.I. EMBARGO: May be released

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OTHER RULINGS ON TOPIC IT's 68, 77, 93, 94, 95

FACTS

Representations were made concerning the eligibility for the investment allowance of an aircraft which would be leased by a group of investors and operated on charter by an established air charter company.

2. A draft agreement between the lessees (the principal) and the charter company (the manager) was submitted and four alternative proposals were made as follows:

(a) Whilst the manager would attend to the day to day business of flying and maintaining the aircraft as well as to marketing the service, the ultimate control of the business would remain with the principal. All letterheads, advertising etc. would indicate that the manager is acting in that capacity for the lessee. Pilots for the aircraft would be employed by the manager.

(b) Same as (a) except that the pilots would be employed by the principal and would in all respects be subject to their direction.

(c) Same as (a) except that neither the existence nor the identity of the principal would be disclosed.

(d) Same as (b) except that neither the existence nor the identity of the principal would be disclosed.

RULING

3. Under the arrangements provided for in the draft agreement the principal would be granting to the manager a right to use the aircraft and under proposals (a) or (c) the investment allowance would not be available.

4. A different view could be taken if the lessees themselves arranged and controlled the charter operations and employed or otherwise contracted for the services of pilots to

fly the aircraft at their specific direction. It was considered, however, that proposals (b) and (d) would probably not achieve that result and it would remain a matter to be determined ultimately on the facts as established at the appropriate time.

5. An alternative arrangement was then proposed whereby the lessees in partnership would operate the air charter business in the partnership name and employ a person or persons actively engaged in the air charter industry to organize and operate the business. On the available information an affirmative answer to this proposal could not be given but it was considered that if it was proposed to "employ" the principals of the charter company which the lessees had intended to retain as manager under the draft Management Agreement, the facts would need to show a realistic employer/employee relationship as distinct from a change in formal documentation that permitted the substance of the original management agreements to stand.

COMMISSIONER OF TAXATION