

IT 98 - Investment allowance on bulk carrier ships - leveraged lease arrangement



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TAXATION RULING NO. IT 98

INVESTMENT ALLOWANCE ON BULK CARRIER SHIPS - LEVERAGED
LEASE ARRANGEMENT

F.O.I. EMBARGO: May be released

REF

H.O. REF: J137/22/1 P3 F264

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED: 09.03.82

F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1071090

LEASE - DEFINITION

SUBDIVISION B OF

DISPOSAL OF PLANT - AT ARMS

DIVISION 3

LENGTH

82AA

DISPOSAL OF PLANT - WITHIN

82AG

12 MONTHS

82AQ

INVESTMENT ALLOWANCE

CHARTER PARTY - WHETHER A LEASE

FACTS

2. Consideration was given to the application of the investment allowance provisions to the situation where an Australian shipping company ('Y'), had contracted with an overseas entity for the construction and delivery of 2 coal-fired mineral carriers. The company proposed, inter alia, upon delivery of the carriers to sell them to 'Nominee' Pty Ltd which was to act as nominee on behalf of a partnership of 2 equity participants. Ownership and leasing, of the vessels would be the sole function of 'Nominee'.

3. Each vessel was intended to be dedicated to the carriage of minerals or other bulk cargo for an Australian mining company ('X') between ports on the Australian coast and would be specifically constructed for that purpose.

4. On acceptance of delivery of the vessels by 'Nominee', a charter party (Head Charter) in respect of each vessel would be entered into between 'Nominee' and a subsidiary company ('Z'). Each of the charters is for a period of 15 years and contains certain option rights. Simultaneously with each Head Charter, a time charter party in respect of each vessel was entered into between 'Z' and 'X' for a period of 15 years. A ship management agreement was also entered into between the 2 companies for the same period whereby 'Z' agreed to crew, store, insure, maintain and operate each vessel.

5. In giving a ruling, this office was requested to confirm:-

- (a) each charter party between 'Nominee' and 'Z' is a long term lease agreement entered into by the equity participants in the course of carrying on business in Australia and was so entered into at arms length for the purposes of Subdivision B of Division 3, Part III of the Act; and

- (b) neither the time charter party, nor the ship management agreement between 'Z' and 'X' constitutes, either separately or together, a contract or agreement entered into by 'Z' with another person for the use of the relevant vessel by that person within the meaning of sections 82AG(3) or 82AG(4) of the Act.

RULING 6. In respect of this specific fact situation it was ruled that:

- 1. The Head Charter would be accepted as a lease for the purposes of the Income Tax Assessment Act 1936 (the Act).
- 2. The equity participant partnership would be accepted as a partnership for the purposes of the Act.
- 3. Each vessel would constitute a unit of eligible property for the purposes of Subdivision B of Division 3, Part III of the Act,

and that the provisions of sections 82AG(3) and 82AG(4) would have no application to the time charter party or the ship management agreement.

COMMISSIONER OF TAXATION