IT 2383 - Income tax: investment allowance - grant of rights to use a fishing vessel

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TAXATION RULING NO. IT 2383

INCOME TAX INVESTMENT ALLOWANCE -
GRANT OF RIGHTS TO USE A FISHING VESSEL

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210450	INVESTMENT ALLOWANCE - GRANT OF RIGHTS TO USE	82AA 82AG(1)(b)

OTHER RULING ON TOPIC IT 69 IT 2278

PREAMBLE In Bass v F.C. of T 86 ATC 4457; 17 ATR 770, the Supreme Court of Western Australia (Pidgeon J.), considered whether a taxpayer had granted rights to use a fishing vessel to another person thus rendering the vessel ineligible for a deduction for investment allowance. This was the taxpayer's appeal from the decision of Taxation Board of Review No.2 reported as Case S87, 85 ATC 631.

FACTS 2. At all relevant times the taxpayer was a cray fisherman.

3. In the year ended 30 June 1978 the taxpayer took delivery of two fishing boats which had been constructed for him. He skippered one boat and an investment allowance deduction was allowed in respect of this vessel. In respect of the other he entered into a "60:40 arrangement" with one F whereby F would skipper the second boat and receive 60% of the proceeds of the catch and be responsible for certain expenses. The taxpayer would receive 40% of the proceeds of the catch and be responsible for other expenses. Investment allowance claimed in respect of the second boat was disallowed and this was the subject of the appeal.

4. The taxpayer based his appeal to the Supreme Court on the ground that, contrary to the decision of the Board of Review, the taxpayer had not granted to F a right to use the vessel in terms of paragraph 82AG(1)(b) of the Income Tax Assessment Act. The basis of the taxpayer's submission was that F was under the direct control of the taxpayer and operated the vessel on his orders. Before the Supreme Court the taxpayer abandoned his argument to the Board that F was an employee.

5. To determine the question the Court examined the evidence to see what were the terms of the oral contract in respect of the boat. In deciding that F was in control of the vessel, Pidgeon J relied on the finding that the terms of

thecontract were such that the taxpayer could not give a stipulation as to where F was to fish (in the sense that the taxpayer could not specify the precise position where pots were to be dropped) that F was bound to comply with if it was against his better judgment as a fisherman. His Honour approved the Board's remarks that, although F was bound to comply with the taxpayer's directions in such matters as the general area in which fishing was to take place and maintenance of the boat in clean and workmanlike condition, his position was little different from any other skipper who, in charge of a fishing vessel at sea, went about his task diligently and professionally while complying with fishing regulations.

6. Pidgeon J concluded that F had the right to use the vessel to acquire fish, that the principles in Tourapark Pty Ltd v. F.C. of T 149 CLR 176 applied and that the Board of Review was correct in its decision.

7. The taxpayer applied for leave from the Federal Court (out of time) for an extension of time in which to file and serve a notice of appeal from the decision of the Supreme Court. The application was, however, refused.

RULING

8. The effect of the Court's decision is that present practice in relation to the construction of paragraph 82AG(1)(b) on the granting by taxpayers of rights to use eligible property in terms of sub-section 82AA(1) should continue. It should be noted that the Court took the view that, if the concept of "the right of use" is otherwise created, the fact that use of the property is confined to a limited area and the fact that the taxpayer owning the property reserves the right to enter and inspect the property and to insist that operation of the property complies with local regulations does not mean that the taxpayer has not granted to another person rights to use the property.

COMMISSIONER OF TAXATION
22 JANUARY 1987