IT 96 - Investment allowance - aircraft

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TAXATION RULING NO. IT 96

INVESTMENT ALLOWANCE - AIRCRAFT

F.O.I. EMBARGO: May be released

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I 1100979	AIRCRAFT PILOT TRAINING INVESTMENT ALLOWANCE	82AA

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

FACTS Two cases were considered where aircraft, which otherwise qualified for the investment allowance, were used for training purposes.

CASE 1:

A taxpayer company purchased an aircraft which was piloted by the managing director. It was desired that the managing director undergo a course of training in instrument flying which would permit him to fly the aircraft in all weather conditions thus avoiding delays which would otherwise occur as a result of bad weather. The course of training was to be undertaken in the company's aircraft.

CASE 2:

A medical practitioner purchased an aircraft for use in his position with the Victorian Academy for General Practice. From the date of purchase the aircraft was used for training purposes to enable the taxpayer to obtain the necessary licence to operate the aircraft.

2. It was necessary to consider whether each of the aircraft was "for use by the taxpayer wholly and exclusively.....for the purpose of producing assessable income...." as required by section 82AA.

RULING 3. In reaching the decision to concede the investment allowance in each case, consideration was given to the expression "for use" which was judicially considered in a sales tax case, DFC of T v Lincoln Industrial Cleaners Pty. Ltd., 75 ATC 4208; 5 ATR 558. In the course of his decision Sheppard J. referred to an earlier decision of the High Court in Randwick Municipal Council v. Rutledge (1959) 102 CLR 54 and quoted a passage from the judgment of Windeyer J. c.f.pp. 4212 - 4213.

Part of the passage reads:-

> "...an exemption from rating based upon use of occupation for a particular purpose or in a particular manner can only apply when the property is so used that it can properly be described as used for that purpose or in that manner, any other user being merely incidental, or at least not inconsistent with such main user."

4. The same approach should be adopted for section 82AA - a use wholly and exclusively for producing assessable income would include all use of the relevant property that is incidental to the use of the property for the purpose of producing assessable income.

5. It will, of course, be a question in each particular case whether the particular use is incidental in this way but in each of the cases outlined above it was accepted that the particular use was so incidental. It was considered that this concept was clearly satisfied in the circumstances of Case 1 i.e. where an employer-owner of an aeroplane, for the purposes of upgrading or expanding its use of the aeroplane, used it to enable an employee-pilot to upgrade his licence to a standard which would facilitate that upgraded or extended business use of the aeroplane.

6. As regards Case 2, the use of a plane by its owner in obtaining or upgrading a licence would not be regarded as cause for the loss of the investment allowance if all that is being done is for the purpose of enabling the taxpayer to make the best use of the property (aeroplane) for business purposes, i.e. to obtain a licence to fly it for business purposes or to upgrade an existing licence to fly it in all conditions. Consideration would be given to withdrawal of the allowance if any appreciable use was made of the plane for the purpose, for example, of becoming licensed to fly a different type of aircraft or of obtaining a commercial licence.

COMMISSIONER OF TAXATION