


IT 32 - Investment allowance - disposal of interest in partnership within 12 months of acquisition

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TAXATION RULING NO. IT 32

INVESTMENT ALLOWANCE : DISPOSAL OF INTEREST IN
PARTNERSHIP WITHIN 12 MONTHS OF ACQUISITION

F.O.I. EMBARGO: May be released

REF

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SUBJECT REFS:

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DISPOSAL OF INTEREST
IN PARTNERSHIP
INVESTMENT ALLOWANCE

82AJ(1)

PREAMBLE

A Board of Review considered the taxation treatment of the disposal of a partnership interest within 12 months of its acquisition.

RULING

2. The Board, in deciding to allow the taxpayer's objection, did not decide the substantive issue of the reference, namely, whether section 82AJ(1) operates to recoup a deduction for the investment allowance in a situation where the unit of eligible property has been taken by a partner who retired from the partnership within 12 months of the acquisition of the property. The question to be answered was whether the taxpayer, who continued as a partner in the reconstituted partnership, had disposed of the whole or a part of his interest in the partnership or in the property taken by the retiring partners. The view held by this office was that the taxpayer did dispose of such an interest and that view has not been altered as a result of the comments made by the Board in this case.

3. In deciding against the Commissioner, the Board seized upon a procedural error made in the determination of the taxpayer's share of the net income of the partnership. What occurred in this case was that the appropriate amount of the recoupment determined for the purposes of section 82AJ(1) was applied to reduce the deduction otherwise allowable to the partnership in respect of the investment allowance and thereby to increase the taxpayer's share of the net income of the partnership. However, the section clearly permits the deduction to the partnership but requires the adjustment to be made to the assessable income of the partner. The net result is, of course, the same under either approach.

4. In view of the decision in FC of T v Wade (1951) 84 CLR 105, it is considered that the Board was Wrong in deciding to allow the taxpayer's objection on the grounds of the Commissioner's procedural error. However, because of the relatively small amount of tax involved and the fact that the Board's reasons were delivered orally, an appeal will not be lodged against the

decision.

5. It would be appreciated if you would ensure that your officers are aware of the correct procedure in cases involving adjustments under section 82AJ. Where that section applies and a deduction is allowable or has been allowed to the partnership, the required adjustment is to be made in the partner's assessment by specific inclusion of the relevant amount, and not by adjustment to the share of partnership net income.

COMMISSIONER OF TAXATION