

IT 73 - Investment allowance - leased plant - order form

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TAXATION RULING NO. IT 73

INVESTMENT ALLOWANCE - LEASED PLANT - ORDER FORM

F.O.I. EMBARGO: May be released

REF

H.O. REF: 78/3350 F11

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED: 14.04.78

F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1101527

LEASED PLANT

82AB(2) (a)

ORDER FORM

82AD

INVESTMENT ALLOWANCE

OTHER RULINGS ON TOPIC

IT 75

FACTS

Representations were made concerning the method adopted by a leasing company for ordering property which is to be leased, particularly where the property is ordered before 1 July 1978 but a lease agreement is not entered into until after that date.

The arrangement may be summarized as follows -

1. Company X places an order for specific goods with a supplier and then approaches the leasing company to negotiate lease terms which are mutually acceptable.
2. The leasing company after making a favourable credit decision places a substituted order with the supplier conditional upon the execution of lease documentation by company X and guarantors.
3. The leasing company receives invoices from supplier made out in its name.
4. When property is ready for delivery lease documentation is executed.
5. The leasing company pays the supplier, title flows to the leasing company and goods are delivered to company X.

There would be a significant number of transactions where property is ordered before 1 July 1978 without the lease documentation having been executed at that date. The "Supply Order - No Invoice" form used in these transactions is reproduced below.

" SUPPLY ORDER - NO INVOICE

We have approved the following lease application and accordingly wish to order the following goods on the conditions

specified below:

Proposed Lessee:

Address:

Goods:

Cost Price of New/Used Goods:

Please send us immediately your invoice in confirmation of the order detailing serial and other identification numbers, addressed to (the leasing company) at the above address (NOT TO THE LESSEE).

Conditions of Order

1. This is a conditional order and NOT AN AUTHORITY TO DELIVER.
2. Only upon execution by proposed Lessee and any guarantors of all required lease documents to our satisfaction will this order become unconditional and will our delivery instructions and/or our payment cheque be issued. Otherwise this order will lapse.
3. No liability is accepted unless and until our delivery instruction or payment cheque is issued."

RULING

The form styled "Supply Order - No Invoice" would constitute a contract for the purposes of section 82AB(2) (a) on receipt of the supplier's invoice by the leasing company. If this occurs before 1 July 1978 the leasing company will be entitled to the investment allowance at the 40 per cent rate provided the property is first used or installed ready for use before 1 July 1979. As the leasing company passes on the benefit under the terms of section 82AD, the lessee would be entitled to claim the investment allowance deduction at the 40 per cent rate.

The decision may be extended to other leasing companies which are found to operate in an identical manner.

COMMISSIONER OF TAXATION