IT 94 - Investment allowance - aircraft

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TAXATION RULING NO. IT 94

INVESTMENT ALLOWANCE - AIRCRAFT

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1100958	AIRCRAFT MAINTENANCE CONTRACTS CONTRACTED PILOTS CHARTER OPERATIONS DEMONSTRATION USE INVESTMENT ALLOWANCE	82AA

OTHER RULINGS ON TOPIC IT's 68, 77, 93, 95, 96

PREAMBLE

The eligibility for the investment allowance of aircraft used in a variety of situations was considered.

RULING

2. The first situation concerned the possibility of a company entering into maintenance contracts with owners of aircraft. It is considered that the owner of the aircraft would not forfeit entitlement to the investment allowance by reason of contracting with the company to service and maintain the aircraft.

3. The second situation related to the use by a company of its own aircraft for charter work involving the carriage of passengers within Australia. It is confirmed that the carriage of passengers is not seen as giving the passengers a right to use the aircraft within the meaning of the investment allowance provisions.

4. The third situation related to a case where company x purchases an aircraft for use wholly in its own business and uses pilots made available by the vendor company on an annual contract basis. It is understood that, although the pilots would continue their association with the vendor company they would, during the contract period, be working to the directions of company x in the normal running of the aircraft. It is considered there is nothing in this form of arrangement that would cause the loss of the investment allowance.

5. The fourth situation related to a case where company x uses the aircraft in its own business and also engages in some charter work using pilots working for it under contract from the vendor company. Again, it is considered that this use of the aircraft would not disqualify the company from entitlement

to the investment allowance provided it maintains control of the use of the aircraft in carrying out the charter operations.

6. The final situation related to companies owning aircraft engaging either partly or wholly in charter operations that are organised by the vendor company. The particular concern here was whether any distinction would be drawn between a company that invoiced its charter passengers and one that permitted the vendor company to manage the charter operations. In the latter case, the vendor company would bill the passengers and pay a final net figure to the owner of the aircraft periodically.

7. The essential aspect here is the same as that mentioned in relation to the fourth situation - that is, the company that owns the aircraft must use its own pilots and must control the use of the plane in the charter operations. Accordingly, if during the first year after the time the aircraft were first put into service an owner permitted the vendor company to use its plane for charter operations that were arranged and controlled by the vendor, the owner would automatically lose his entitlement to the investment allowance deduction in respect of the acquisition of the aircraft. If the charter arrangement was put into effect after the end of the first year, the question whether the allowance would then be withdrawn would have to be decided on the facts of the individual case.

COMMISSIONER OF TAXATION