IT 2278 - Income tax : investment allowance : partner using privately owned property in partnership business

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TAXATION RULING NO. IT 2278

INCOME TAX : INVESTMENT ALLOWANCE : PARTNER USING PRIVATELY OWNED PROPERTY IN PARTNERSHIP BUSINESS

F.O.I. EMBARGO: May be released

REF H.O. REF: 84/5528-7 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1077875	INVESTMENT ALLOWANCE	82AA
	- RIGHTS TO USE	82AG
	- PARTNERSHIP	82AH

OTHER RULINGS ON TOPIC: IT 69

PREAMBLE Subdivision B of Part 3 of the Income Tax Assessment Act, incorporating sections 82AA to 82AQ, provides for what is known as an investment allowance deduction. Primarily, the subdivision applies to capital expenditure on eligible property acquired or constructed by a taxpayer for use by the taxpayer wholly and exclusively in Australia for the purpose of producing assessable income. Among other situations the subdivision does not apply where property, which otherwise meets the requirements of the subdivision, is used by a taxpayer for the purposes of producing assessable income by the granting to other persons of rights to use the property, see sub-sub-paragraph 82AA(1)(a)(ii)(C).

FACTS 2. The question has arisen whether the owner of a unit of eligible property is entitled to an investment allowance deduction in respect of the expenditure on the property in circumstances where the property is used in a partnership business in which the owner is a partner. In the particular circumstances the property did not become part of the assets of the partnership - ownership remained at all times with the owner. The particular question is whether the use in the partnership business represents a use by the owner for the purpose of producing assessable income by the granting to other persons of rights to use the property so as to preclude any investment allowance deduction in respect of the expenditure on the property.

RULING 3. Subdivision B of Part 3 recognizes the treatment of partnerships for income tax purposes. Capital expenditure on eligible property acquired by partnerships can qualify for investment allowance deduction. Although the present situation is not specifically dealt with in the subdivision it is not uncommon for partners to permit privately owned property to be used in the partnership business. Property of a partner so used would satisfy the primary requirement of being for use by the

partner wholly and exclusively in Australia for the purpose of producing assessable income. It is not considered to be excluded from the subdivision as the granting to other persons of rights to use the property because there is not any assessable income directly flowing from the decision by a partner to use the privately owned property in the partnership business, i.e. there is not any amount payable for the use of the property.

4. The situation is essentially different from that in W.A. Hughes Pty. Ltd. v FCT; 81 ATC 4317; 11 ATR 900. In that case eligible property owned by a parent company was used in a partnership of subsidiary companies - the parent was not a partner. Each year the partnership paid the parent company an amount for the hire and running expenses of the eligible property. Assessable income flowed directly from the granting by the parent company to the partnership of the right to use the eligible property.

COMMISSIONER OF TAXATION
27 March 1986

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