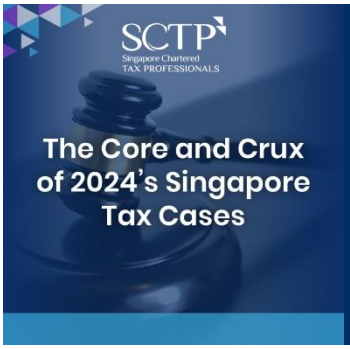

Singapore Tax Cases 2024 (Part 1 of 2)

Key Tax Cases And Implications For Taxpayers

26 March 2025, Wednesday

Facilitated by:
Accredited Tax Advisor (Income Tax) &
Accredited Tax Practitioner (GST) Mr Allen Tan,
Mr Jeremiah Soh, Mr Shawn Joo & Mr Clinston Chiok

KEY TAKEAWAYS

- The High Court clarified that the correct distinction under the ITA is between "plant and machinery" and "buildings and structures", and not between "plant" and "building".
- CAG reinforces the High Court's position in Singapore Cement on the divisibility of assets for income tax purposes
- The High Court clarified that the Court of Appeal in ZF did not in fact endorse the holdings in Schofield, Barclay Curle and Waitaki, that the assets concerned were plants under Section 19A of the ITA

The passing of another year also marked time for the Singapore Chartered Tax Professionals to organise its popular Singapore Tax Cases seminar. The event was facilitated by Accredited Tax Advisor (Income Tax) & Accredited Tax Practitioner (GST) Allen Tan, Principal; Jeremiah Soh, Local Principal; Shawn Joo, Senior Associate; and Clinston Chiok, Associate, from Baker & McKenzie.Wong & Leow.

In the first part of the seminar, the facilitators analysed the recent decision of *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2024] SGHC 281 ("CAG"), where the High Court clarified the factors to determine if an asset is "plant or machinery" or "building or structure" for the purposes of claiming capital allowance under Section 19A of the Income Tax Act (Cap 134, 2008 Rev Ed) (the "ITA").

Plant or Building for Capital Allowance Purposes?

BACKGROUND

The taxpayer is Changi Airport Group (Singapore) Pte Ltd, whose principal activities are to own, develop, manage and provide airport and airport-related facilities and services.

Between Years of Assessment (YAs) 2011 to 2013, the taxpayer incurred capital expenditure in respect of various assets, including (i) two runways, various taxiways, and aprons (collectively, the "RTAs"), and (ii) certain aerodrome equipment, including radar systems, flight information display systems, and aircraft docking guidance systems (collectively, the "Aerodrome Equipment").

Both the taxpayer and the Comptroller of Income Tax (the "Comptroller") agreed that the RTAs were designed to facilitate and ensure the safe landing, taxiing, and take-off of aircraft.

On the basis that the RTAs were "plant" within the meaning of Section 19A of the ITA, the taxpayer made capital allowance claims amounting to $272,575,162 in respect of the capital expenditure incurred on the RTAs across the three YAs.

The Comptroller disagreed that the RTAs were "plant".

Instead, it took the view that the RTAs were a series of "structures" and granted industrial building allowances under Section 16 of the ITA for the RTAs. Capital allowances were however granted for the Aerodrome Equipment.

The Income Tax Board of Review (the "Board") agreed with the Comptroller that the RTAs were a series of "structures" and not "plant" that qualified for capital allowances under Section 19A of the ITA. The taxpayer appealed against the Board's decision.

THE HIGH COURT'S DECISION

Whether The Board Erred in Applying The Factors in ZF

- What is the distinction between a "building" and a "structure"?

The taxpayer submitted that the Board had misapplied the factors laid down by the Singapore Court of Appeal in *ZF v Comptroller of Income Tax* [2010] SGCA 48 ("ZF") by concluding that the RTAs were "structure".

The taxpayer suggested that the key question is whether the asset is more appropriately described as a "plant" or a "building", as there is no distinction between a "building" and a "structure". Since the RTAs do not conform to the idea of buildings that provide shelter, the taxpayer argued that they should be more appropriately described as "plant".

The High Court rejected the taxpayer's arguments and clarified that the correct distinction under the ITA is between "plant and machinery" and "buildings and structures", and not between "plant" and "building".

The High Court also disagreed with the taxpayer that "buildings or structures" should be limited to buildings that provide shelter. While buildings and structures may bear similar characteristics, the plain meaning of the conjunction "or" adopted in Section 16 of the ITA suggests that buildings and structures are different. It was concluded that there was nothing inherently erroneous about the proposition that a "structure" may be distinct from "building".

- Are the RTAs and the Aerodrome Equipment indivisible?

The taxpayer argued that the RTAs and the Aerodrome Equipment were indivisible, on the basis that the Aerodrome Equipment was not designed to work without the RTAs and the RTAs were "core and critical" to the taxpayer's business by performing a critical function in facilitating the safe landing, rollout, take-off, ground movement and high-speed exits of aircraft.

However, it was noted that the assets could not be indivisible since the RTAs were still operational even in the absence of the Aerodrome Equipment. Further, some Aerodrome Equipment were not even physically located on the RTA (with some being housed in buildings several hundred metres away). Accordingly, the High Court agreed with the Board that the RTAs and the Aerodrome Equipment were divisible.

Applicability of Foreign Case Law for Capital Allowance Claims under Section 19A

The taxpayer submitted that the Court of Appeal in *ZF* had endorsed the foreign cases of Schofield, Barclay Curle and Waitaki and the assets concerned in these cases (grain silo, dry dock and cold store) as "plant". On this, the High Court clarified that *ZF* did not in fact endorse the holdings in Schofield, Barclay Curle and Waitaki that the assets concerned were plants under Section 19A of the ITA but, (i) on Waitaki, the Court of Appeal only noted that cold stores could conceivably be characterised as buildings and (ii) the Court of Appeal merely alluded to the similarity in sizes between the assets in the cases of Schofield and Barclay Curle and the dormitories in *ZF*.

Citing its decision in *Singapore Cement Manufacturing Co (Pte) Ltd v Comptroller of Income Tax* [2023] 5 SLR 1099 ("*Singapore Cement*"), the High Court also cautioned against applying the rulings in these foreign cases directly by analogy (for example, concluding that a grain solo is a plant under Singapore Law because *Schofield* held that there were factors which pointed to it being "plant").

While these cases may provide nuances and principles which may assist the court in assessing whether an asset has qualities of "plant", it was noted that the court must be conscious that the ultimate objective of the exercise under Singapore law is to determine whether an asset is more appropriately described as “plant” or “building or structure”. This is a unique exercise central to Singapore’s jurisprudence arising from the rule of mutual exclusivity between capital allowances for “plant or machinery” and “building or structure”.

FOOD FOR THOUGHT

Divisibility of Assets

CAG reinforces the High Court’s position in *Singapore Cement* on the divisibility of assets for income tax purposes – an integrated asset may be differentiated into its constituent components and the function of each component must be analysed to determine whether it qualifies as “plant or machinery” or “building or structure”. Going forward, taxpayers should take this into account when computing capital allowance claims for integrated assets.

Mutual Exclusivity?

In *CAG*, the High Court mentioned at [26] that “… That is a unique exercise, and indeed, central to our jurisprudence because of the rule of **mutual exclusivity** between capital allowances for plant/ machinery and building/ structure” (emphasis added).

Based on this concept of mutual exclusivity for capital allowance claims (which was also mentioned in *Singapore Cement*), an asset which would have qualified for industrial building allowances (under the now phased-out industrial building allowances scheme) will be a building and consequently, it cannot be a plant. This will preclude a claim for capital allowances under Section 19A of the ITA.

It is noted that the concept of mutual exclusivity does not apply to deduction claims under the ITA (for example, an expense may qualify for deduction claims under different sections of the ITA unless specifically prohibited). This will be an interesting area to watch out for in future tax cases.

As new cases arise, taxpayers must adapt to fresh updates and navigate new boundaries.

Conclusion

Stay tuned for Part 2 of our Singapore Tax Cases 2024 article for more insights and developments.

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