

# *Tax Bulletin*

## ZF v Comptroller of Income Tax

*In this issue, we provide  
an update on the case  
of ZF v Comptroller of  
Income Tax  
[2010] SGCA 48*

January 2011

---

## The case of *ZF v Comptroller of Income Tax* [2010] SGCA 48

After almost two years of arguing the matter before the courts, the issue of whether pre-fabricated dormitories constitute plant within the meaning of Section 19 and 19A of the Income Tax Act (the “Act”) was finally resolved on 15 December 2010. The Singapore Court of Appeal reversed the earlier decision reached by the High Court and found for the taxpayer. In handing down this decision, the court laid down certain guiding principles as to how one determines whether an asset qualifies as “plant” for the purposes of the Act. Although not a landmark case in terms of subject-matter, it should give hope to other taxpayers who are in dispute over capital allowance claims that all is not lost.

### Overview of the case

The facts of the case are as follows:

- The Building and Construction Authority had leased a site in an industrial estate to C Pte Ltd. C Pte Ltd later awarded a contract to design, build and operate workers’ dormitories to another company, Z Pte Ltd. Z Pte Ltd wanted a professional team to take care of the whole project. It found a partner, F Pte Ltd. Together, they incorporated ZF Pte Ltd (ZF), the appellant in this case. ZF’s task (and principal business) was to build and operate workers’ dormitories at the leased site.
- The lease agreement between C Pte Ltd and the Building and Construction Authority provided that the lease was to last three years. The Building and Construction Authority could, at its discretion, extend the lease for a three-year term, plus a further three years subject to prescribed terms. This gave a maximum duration of nine years at the same site. The same agreement also stated, among other things, that the leased site was to be vacated within 90 days of any notice being given by the Building and Construction Authority.
- Given the short-term nature of the lease and the 90-day notice period for vacating, it would have made no commercial sense to build dormitories made of bricks and mortar. Instead, ZF constructed dormitories using portable and demountable pre-fabricated structures. These structures could be dismantled pretty easily at short notice, and at minimal cost.
- The total installation costs were about \$3.75m for which there was non-qualifying cost (for capital allowance purposes) of \$1.1m. In short, ZF claimed capital allowances of \$2.65m (in Year of Assessment 2004), on the basis that the dormitories constituted “plant” under the Act.
- The Comptroller of Income Tax (the “Comptroller”) disallowed the claim. ZF then appealed to the Income Tax Board of Review. Dismissing the appeal, the Board found that ZF’s business was to provide accommodation to workers and that the running of this business did not require portable or demountable dormitories. Further, the dormitories were found to be premises providing shelter to the workers. The Board therefore concluded that the dormitories

were not “plant” for capital allowance purposes. ZF’s appeal to the High Court was similarly dismissed.

## What the Court of Appeal said

Under the Act, a person carrying on a business may claim capital allowances on capital expenditure incurred on “machinery or plant for the purposes of that trade”.

As can be surmised, the Comptroller’s argument was that the dormitories were not plant. Rather, the dormitories functioned as business premises and the fact that pre-fabricated materials were used made them purpose-built buildings.

ZF, on the other hand, contended that its business was more than the mere provision of accommodation. Seen in the round and in light of its full business cycle, its business included the dismantling and reinstallation of the dormitories at different sites. That the dormitories were demountable and portable were additional functions which made them plant.

### The plant/building distinction – the various tests

Andrew Phang JA delivered the judgment. As is his usual style, he went through the legislative history and [mostly United Kingdom (UK)] precedents on capital allowances before summarising the guiding principles in this field.

Reviewing the numerous UK cases on what constitutes plant, he was of the view that the terms “setting” and “premises” detracted from the main issue ie, whether an asset is plant. We are reminded that the Act is concerned with the distinction between “plant” and buildings; any other terms used are simply descriptions used to guide the court in arriving at a decision and it is unfortunate that the same term could have different connotations in different cases.

Phang JA also noted the different tests applied ie, the business use test, the premises test, and the functional test. Again, he was of the view that such tests are not particularly helpful. There remained only one key test and this was a natural extension of his point made earlier about the plant/building distinction: is the item in question being utilised for the purposes of the trade as “plant” or as a building.

### What constitutes a building

The discussion then moved on to what constitutes a building. In those cases where it is not immediately clear whether the large asset constitutes a building, one has to ask the extent to which the asset acted as equipment in the taxpayer’s business. One also has to consider the following:

- physical nature and characteristics of the asset: the more it resembles a conventional building, the less likely it is plant;

- intention of the taxpayer: if the asset is meant to be located temporarily at a certain spot and is to be moved from place to place, the asset is less likely to constitute a building;
- parts of a building proper: if it is inextricably connected with a building, it can be considered part of the building for capital allowance purposes.

A few examples were given to illustrate as to what might or might not constitute “buildings”. A site office made of brick and mortar would be considered a building. So would wooden sheds and storehouses located permanently at a site though made of less durable materials. Tents used for accommodation, however, will be plant.

### **The decision**

After a lengthy discourse and applying the principles distilled, it was held that the portable dormitories qualified as “plant” within the meaning of the Act. ZF’s business was to provide accommodation on a temporary basis. It was therefore necessary for the purposes of its trade that the dormitories be portable or demountable. In fact, the dormitories were said to constitute the very tools for ZF to carry out its business. In arriving at this decision, heavy reliance was placed on ZF’s intention of not having permanent structures given the circumstances surrounding the lease.

### **Questions raised by the case**

Some of the illustrations given therein should be helpful to taxpayers though it remains to be seen how the Comptroller will react to such claims. For instance, it is stated in the IRAS’s circular entitled *Machinery and Plant: Section 19/19A of the Income Tax Act*<sup>1</sup> that movable or demountable partitions, except those functioning as walls or ceilings, can be considered as plant<sup>2</sup>. Yet Phang JA gave no such caveat when commenting on movable partitions qualifying as plant.

*“...[M]ovable partitions in a shophouse or office would also be “plant” even if their sole purpose was simply to exist as part of the premises because they cannot be said to physically resemble buildings or structures in any way, nor would they be sufficiently connected with the shophouse or office to form an inextricable part of the building.”<sup>3</sup>*

One other interesting notion is that parts of the judgment appear to suggest that temporary sheds erected at sites and used as offices, stores, workshops, toilets, etc, can be considered “plant”. While the point being made was that the items in the Australian case under discussion<sup>4</sup> were of a temporary nature<sup>5</sup> – the taxpayer’s business comprised the manufacturing and on-site erection of power plants – Phang JA did not dispute the end result, ie such sheds or containers

---

1 Published on 1 July 2009.

2 See #27, Annex B of the IRAS circular mentioned above.

3 Paragraph 66(b) of the judgment.

4 Case A43 (1969) 69 ATC 244

5 Paragraphs 62 and 63 of the judgment.

qualify as plant. If indeed the correct reading, this does fly in the face of what is now found in the IRAS's circular – portable items that form part of the setting eg container office, portable toilet are shown as examples of items that are not considered to be plant.<sup>6</sup> With the handing down of this judgment, the IRAS should now review its position and issue an updated circular.

While this particular point is a development in favour of the taxpayer, it is important to set the issue in its proper context; the nature of the taxpayer's business must be such that it requires the asset concerned to be portable.

This brings us to one particular concern, and this is that the case seems to have put inadequate emphasis on having to focus on what the trade of the taxpayer is. For it is only when that is settled that one can determine if the particular asset is plant for the purposes of the trade. An example is the court's illustration above of a tent qualifying as plant. While it has been commented in the case that tents used for accommodation are "definitely 'plant'"<sup>7</sup>, we should bear in mind that the tents must be used for the purposes of the trade before capital allowances will be allowed. So if an accounting firm were to buy tents to be used by its auditor team during the audit peak season for overnight accommodation, it is doubtful whether the capital allowance claim would be allowed. Similarly, while a painting can be plant in some cases, capital allowances will usually be denied unless part of the person's business is to project a certain sort of ambience eg a hotelier.

### **How does it affect you?**

A businessman may be tempted to ask how much of an impact this decision will have on his business or capital allowance claims. On the face of it, the answer would be not much, unless one happens to be in a similar business to that of ZF. Even then, at least two groups of taxpayers could be direct beneficiaries of this case and may wish to consider revising their capital allowance claims if they have not already done so: circus operators and mobile amusement park operators.<sup>8</sup>

Building contractors could also benefit by taking a closer look as to which assets within its list could potentially qualify as plant. To apply this case, the critical point is that the business requires rather frequent movements of say, its office, changing rooms, toilets, etc, from place to place. If a contractor is engaged to build condominium blocks at a certain spot, it would be difficult to argue that the business requires its site office to be moved regularly.

The issue of whether an asset is plant for income tax purposes has historically been a vexing one. It has prompted the appearance of a multitude of tests (eg business use test, premises test) that have, over time, complicated the matter further. This decision is therefore to be welcomed for the clear principles laid out, especially in exorcising the ghosts of the different tests. It would, however, be imprudent to think that the principles will make the answering of future questions any simpler.

---

<sup>6</sup> See #11 in Annex C of the IRAS circular mentioned above.

<sup>7</sup> Paragraph 66(e) of the judgment.

<sup>8</sup> In relation to tents, portable make-up rooms, costumes rooms, etc.

## Get in touch

### Contact us

If you would like to discuss any of the issues considered in this bulletin, please speak to your usual PwC contact or contact our team:

---

#### Corporate Tax

Alan Ross	alan.ross@sg.pwc.com	+65 6236 7578
Sunil Agarwal	sunil.agarwal@sg.pwc.com	+65 6236 3798
Paul Cornelius	paul.cornelius@sg.pwc.com	+65 6236 3718
Paula Eastwood	paula.eastwood@sg.pwc.com	+65 6236 3648
Abhijit Ghosh	abhijit.ghosh@sg.pwc.com	+65 6236 3888
Jenny Goh	jenny.goh@sg.pwc.com	+65 6236 3638
Ho Mui Peng	mui.peng.ho@sg.pwc.com	+65 6236 3838
Anuj Kagalwala	anuj.kagalwala@sg.pwc.com	+65 6236 3822
Paul Lau	paul.st.lau@sg.pwc.com	+65 6236 3733
Lennon Lee	lennon.kl.lee@sg.pwc.com	+65 6236 3728
Elaine Ng	elaine.ng@sg.pwc.com	+65 6236 3627
David Sandison	david.sandison@sg.pwc.com	+65 6236 3675
Peter Tan	peter.tan@sg.pwc.com	+65 6236 3668
Teo Wee Hwee	wee.hwee.teo@sg.pwc.com	+65 6236 7618
Yip Yoke Har	yoke.har.yip@sg.pwc.com	+65 6236 3938

#### Corporate Tax Compliance Services

Nicole Fung	nicole.fung@sg.pwc.com	+65 6236 3618
-------------	------------------------	---------------

#### Indirect Tax

Koh Soo How	soo.how.koh@sg.pwc.com	+65 6236 3600
-------------	------------------------	---------------

#### Transfer Pricing

Matthew Andrew	matthew.andrew@sg.pwc.com	+65 6236 3608
Nicole Fung	nicole.fung@sg.pwc.com	+65 6236 3618
Paul Lau	paul.st.lau@sg.pwc.com	+65 6236 3733

#### Mergers & Acquisitions

Chris Woo	chris.woo@sg.pwc.com	+65 6236 3688
-----------	----------------------	---------------

#### About PricewaterhouseCoopers Services LLP

PwC is one of the largest providers of professional tax services in Singapore. Our tax professionals and directors help individuals, businesses, both public and private organisations, with tax strategy, planning and compliance. From financial services, treasury, fund management, mergers and acquisitions, intellectual property, international tax planning (inbound and outbound) and Goods and Services Tax (GST) to transfer pricing, our tax professionals will provide you with the ideal tax solution. Visit our website at [www.pwc.com/sg/tax](http://www.pwc.com/sg/tax)

[www.pwc.com/sg/tax](http://www.pwc.com/sg/tax)



© 2011 PricewaterhouseCoopers Services LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Services LLP, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.

These notes are designed to keep clients up to date with tax developments and do not constitute professional advice. They are of a general nature only and are not intended to be comprehensive. Readers are therefore advised that before acting on any matter arising from these notes, they should discuss their particular situation with the Firm. No liability can be accepted for any action taken as result of reading the notes without prior consultation with regard to all relevant factors.