GEY v Comptroller of Income Tax [2022] SGITBR 1 – Whether cement silo qualifies as a "plant" for capital allowance claim

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In GEY v Comptroller of Income Tax [2022] SGITBR 1 ("GEY"), the Income Tax Board of Review (the Board) held that the cement silo deployed in the taxpayer's business does not qualify as a "plant" for capital allowance claim under Section 19A of the Income Tax Act 1947 (the Act). The Board's decision sheds light on how the legal principles established by the Court of Appeal in ZF v Comptroller of Income Tax [2010] SGCA 48 ("ZF") are to be applied.

Overview of the case

The Appellant is in the business of importation and distribution of cement. In the financial year 2013, the Appellant constructed a new cement silo, which was completed in the financial year 2015. It incurred total construction cost of over $18million and claimed capital allowances under Section 19A of the Act. The Comptroller allowed capital allowance claim on the expenditure incurred on mechanical and electrical equipment of $3,443,890, and was prepared to allow expenditure having a direct nexus with the installation of equipment as well as incidental professional fees directly identified or reasonably allocated to equipment installation, but disallowed the remaining construction costs and professional fees. The Appellant appealed to the Board when both parties could not come to an agreement.

What the Board said

To determine whether an asset constitutes a "plant" or "building or structure", the Board adopted the legal principles established in ZF (involving prefabricated dormitories used as temporary quarters) in its analysis:

(a) <u>There must be a basic distinction between "plant" and "buildings".</u>

In ZF, the Court of Appeal observed that the Act "draws a clear distinction between "plant" and buildings.

The Appellant alleged that ZF approved Schofield v R&H Hall Ltd (1974) 49 TC 538 ("Schofield") and the silos (in Schofield) constituted large apparatus or equipment or machinery. However, the Board highlighted that, unlike the English courts in Schofield and IRC v Barclay, Curle & Co Ltd [1968] 45 TC 221 ("Barclay"), Singapore does not take a broad approach where assets can be classified as both "plant" and "building". The onus therefore

lies on the Appellant to demonstrate that the concrete structure of the silo has more plant-like than building-like features.

(b) A building "consists of a permanent structure or part of a permanent structure that houses the trade or business."

The silo is a large concrete structure secured to the ground with foundation works. It is constructed with permanent materials such as steel and concrete. Also, the Board noted in the Chief Witness's submission that the silo comprised several "built-in structures" that serve as housing for specific equipment or machinery. These support the finding that it is a building.

(c) In addition, the following factors are also helpful to determine whether or not a particular asset is a "plant" or "building":

(i) The operational role of the asset in the taxpayer's business.

The Board found that the silo primarily functioned as a storage for the cement and equipment in the context of the Appellant's business. An asset which performs the role of storage and shelter is more likely a building. The Board also observed that ZF ultimately classified the dormitories as plant because they were temporary and portable. Had they been permanent and fixed, the dormitories would have been classified as "buildings".

(ii) The physical nature and characteristics of the asset.

The silo is constructed in the form of a large concrete structure supported by pile foundations. The fact that it was approved by the Building and Construction Authority (BCA) as additions and alterations work to the Appellant's existing facilities was taken into consideration by the Board.

(iii) Whether the asset concerned is intended only to be temporarily located.

The silo was constructed alongside three existing silos built in the 1990s for which the Appellant claimed and continues to claim Industrial Building Allowances (IBA). In addition, the silo required the approval of BCA in the form of an application for 'Additions and Alterations' to existing silos. As such, the Board was of the view that the silo was not intended to be temporarily located.

On the contrary, the site in ZF on which the dormitories were constructed was on a 3-year lease, and it must be vacated within 90 days of any notice given by BCA. The dormitories in ZF therefore qualified as "plant" and not "building" because they were not permanent structures.

Having considered the facts of the case and these legal principles, the Board held that the silo does not qualify as "plant" for capital allowance claim under Section 19A of the Act. While the Appellant submitted that the Inland Revenue Authority of Singapore (IRAS) e-tax guide 'Machinery and plant: Section 19/19A of the Income Tax Act' endorsed Schofield and the position that grain silos may qualify as plant,[1] the Board clarified that even though the IRAS may have provided examples of assets that qualify as "plant", not every silo will necessarily qualify as "plant".

In arriving at its conclusion, the Board also observed that the Appellant continues to claim IBA on the old silos. For Singapore tax purposes, IBA can only be claimed on an industrial building or structure. While the Appellant represented that the new silo in dispute is similar to the old silos, it continued to claim IBA on the old silos while seeking to claim capital allowances on the new silo. In Singapore, an asset cannot simultaneously be both "plant" and "building". The differing tax treatment between the old and new silos did not help the Appellant's argument.

[1] Paragraph 4.3.1 of the IRAS circular 'Machinery and plant: Section 19/ 19A of the Income Tax Act' updated on 20 April 2011

Key observations

Following from the Board's findings in GEY, it is worthwhile to note that companies should not take the examples of assets that may qualify as plant in the IRAS e-tax guide at face value. It is important to assess the true nature of the asset in the context of the company's business. It is also clear that the legal principles laid out in ZF will be applied to disputes on whether an asset qualifies as "plant" or "building or structure" in Singapore, and the outcome would invariably turn on their application to the facts of each case. Companies need to consider consistency in their tax treatment where relevant to support the intended position.

Contact us

If you would like to discuss any of the issues raised, please get in touch with your usual PwC contact or any of the individuals listed below.

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