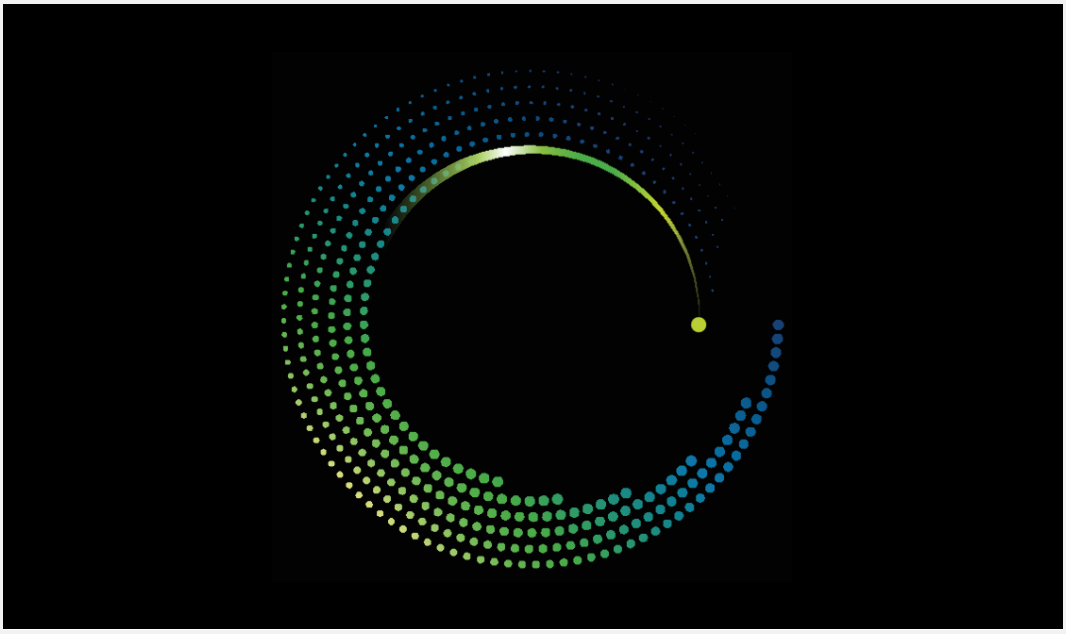

Tax Bytes

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Greetings from your Tax & Legal team at Deloitte Singapore.

We are pleased to update you on the following:

GEY v CIT [2022] SGITBR – Definition of plant under the Income Tax Act 1947

The Income Tax Board of Review (the Board) has recently published its decision in GEY v Comptroller of Income Tax [2022] SGITBR 1 on 26 August 2022.

Overview of the issue

GEY (the Appellant) is in the business of importing cement for distribution and sale to concrete suppliers. In 2013, GEY commenced construction of a new silo (the Silo) for the purpose of storing and distributing a new type of cement. The construction of the Silo was completed in 2015.

GEY sought to claim accelerated capital allowances under Section 19A of the Singapore Income Tax Act (ITA) on expenditure incurred to construct the Silo. The issue for the Board to ascertain is whether the Silo is regarded as “plant” for the purposes of Section 19A.

Applicable law

The Board agreed that the applicable legal principles for determining whether an asset is a "plant" or a "building or structure" was established by the Singapore Court of Appeal case of *ZF v Comptroller of Income Tax [2010] SGCA 48*. Broadly, these principles are:

a. There is a basic distinction between "plant" and buildings, i.e., the two asset classes are mutually exclusive. Where an asset possesses the features of both, the question is whether the asset can be more appropriately described as "plant" or as a building.

b. "Plant" consists of an apparatus that is utilised for carrying on the trade or business concerned.

c. A building consists of a permanent structure or part of a permanent structure that houses the trade or business.

d. The following factors are helpful in distinguishing between a "building or structure" or "plant":

    i. The exact operational role of which the asset plays in the taxpayer's business.
    ii. The physical nature and characteristics of the asset.
    iii. Whether the asset concerned is intended only to be temporarily located.
    iv. Where it appears that the asset, although not a building proper as such, is nevertheless inextricably connected with a building, in which case it should be regarded as part of the building for income tax purposes.

Findings

Having considered the facts of this case and submissions made, the Board concluded that the Silo should more appropriately be characterised as a "building or structure" rather than "plant" as the physical characteristics of the Silo more closely resembled that of a "building or structure". The Silo was constructed in the form of a large reinforced concrete structure that required reinforced concrete foundation works and this, in the Board's view, clearly reflects the Silo's permanent nature. In addition, the Board formed the view that the Silo is not meant to be temporarily located and is an inextricable part of the group of buildings (the Silo was built next to other cement silos belonging to GEY that were constructed in the 1990s) in which the taxpayer conducts its trade.

Other ancillary matters concluded by the Board include:

- The primary function of the Silo is that of providing storage space for cement and the Silo does not play an "operational" role in GEY's business; and

- GEY regarded prior silos to be "buildings or structures" qualifying for industrial building allowance claims, a position that it still maintains. The Board considers the tax treatment of the old silos to be correct. Given that the old silos and the newly constructed silo in question are materially similar, the Silo should also be regarded as a "building or structure" and not "plant".

Deloitte Singapore's view

Post ZF and GEY, it should be clear that the primary test for determining whether capital allowances should be granted on an asset is whether that asset is more appropriately classified as a "building" or as "plant". The operational role of the asset vis-à-vis the taxpayer's business is important since capital allowances are granted on "the provision of machinery or plant for the purposes of that trade…" However, resolving the building/plant dichotomy is of fundamental importance. This is because a purpose-built structure does not cease to be a structure and become plant simply because it is purpose-built and assumes an operational role in a particular trading activity.

Although the approach taken by GEY in its appeal to the Board has been to regard the entire Silo as "plant", it is possible to delineate the Silo into discrete assets such as the silo walls, an "inverted cone", "pigeon house and bag filters" just to name a few. In this regard, the Board stated that it was not asked to consider whether discrete parts of the Silo would be considered as "plant", leaving open the possibility that some parts (but not the integrated whole which makes up the Silo) of the Silo may qualify as "plant". In addition, the IRAS was prepared to grant capital allowances on certain mechanical and electrical equipment housed within the Silo as well as installation costs for such equipment, provided, among others, that such equipment are not "inextricably connected with the Silo structure".

Viewed in totality, Singapore's approach on granting capital allowances to very large assets may, at its broadest, be likened to a Matryoshka or "nesting doll" concept. The outer most doll would likely be regarded as a "building" since it serves as storage or 'housing' for the inner dolls. Stretching the analogy further, it does not matter that the outer most doll is, well, shaped like a doll for the explicit purpose of housing within it smaller dolls. One should recall that a purpose-built structure does not cease to be a structure and become "plant" simply because it is purpose-built and assume an operational role in a particular trading activity. Inner dolls may potentially be regarded as "plant" since the storage/housing function is assumed by the outer most doll, provided that each inner doll serves "an operational role" in the taxpayer's trade and does not itself resemble a building or form an inseparable part of a building.

Taxpayers may feel aggrieved that there is a need to delineate "building" and "non-building" elements within a large asset. In *CIR v Waitaki*, it was held that insulation panels installed within a cold store, the panels comprising a polystyrene block sandwiched between steel layers, should be regarded as "plant". Although there was no need for the New Zealand Court of Appeal to decide whether the entire cold store should be regarded as "plant", as obiter all three judges held that the cold store itself should be regarded as "plant", reasoning on the one hand that "a piecemeal approach" to treat a structure as a sum of its individual components as "totally unreal", and on the other considering that the chilling process, which is the essential purpose of a cold store, calls for a "particular kind of equipment placed in a particular kind of structure, the whole functioning as an entity".

Be that as it may, Singapore's legislation appears to favor a "sum of its parts" approach, where a large asset may be bifurcated into "building" and "non-building" parts, with the "non-building" parts potentially qualifying as "plant" if they satisfy the requirements, such as having an operational role in the taxpayer's business. By virtue of its size, large assets would almost certainly incorporate components that provide physical security as well as protection

from the elements, and when applying a “sum of its parts” approach it is likely that such components do not qualify as “plant”.

Contacts

Should you have any comments or questions arising from this newsletter, please contact anyone listed below or any member of the Singapore Tax & Legal team.

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