



DATABASES QUALIFIED FOR CAPITAL ALLOWANCES UNDER SCHEDULE 3 OF THE INCOME TAX ACT 1967

📍 Court of Appeal at Putrajaya

📅 November 19, 2019

🏛️ Tax Litigation Division,
Legal Department of IRBM

————— **DIRECTOR GENERAL OF INCOME TAX v. CBB**

ISSUES

Whether the Respondent ("Bank") is entitled to claim capital allowance ("CA") for capital expenditure incurred by them in acquisition of "core deposit" and "credit card customer's databases" SBB under Schedule 3 of the Income Tax Act 1967 ("ITA").

JUDGES

YA Dato' Umi Kalthum Abdul Majid
YA Datuk Hasnah Dato' Mohammed Hashim
YA Dato' Suraya Othman

REVENUE COUNSELS

Ahmad Isyak Mohd Hassan
Ruzaidah Yaacob
Aqmal Hakim Maula Mema

FACTS

1. Pursuant to a vesting order of the High Court of Malaya, the banking business as well as related assets and liabilities of SBB acquired were transferred to the Bank.
2. Included in the purchase were the core deposit and credit card customers database of SBB ("Databases") and the Databases were recorded as intangible assets, separately from the goodwill arising from the acquisition, in the balance sheet of the Bank for the year ended 31.12.2006.
3. The Respondent disallowed the Bank's claim for CA for capital expenditure incurred by them in acquisition of "core deposit" and "credit card customer's databases" of SSB. The Respondent disallowed the CA claim.

REVENUE'S SUBMISSIONS

1. The purpose of capital allowance is to give allowance on the depreciation value of an asset which depreciate in value over times due to wear and tear of daily usage until the whole value of the assets is totally absorb within 5 to 10 years depending on the types of assets. However, in case of Data –
 - (i) No depreciation of value as there is no wear and tear;
 - (ii) No depreciation in value but rather will keep accumulating over times and if the same method is used, instead of depreciate, the value will keep increasing as the data stored/collected will keep accumulating.

2. The Revenue also submits that the Databases is not an apparatus/tool in the Bank's business and did not qualify as plant. The Databases is data which contains the list of the customers of SBB and the customers includes depositors and debtors with all their details as to the accounts, debt liability, security, collateral and so on. While the data for the credit card customers will contain the name, type of cards, credit limits, outstanding balance, personal information such as address, annual income, employee and so on.
3. The information or data is important for the continuation of the SBB business after been taken over by the Bank. But the fact that it is important does not by itself qualifies the Databases to be plant. The important consideration to qualify as a plant is that it must by itself function as a tool for carrying out the Respondent business.
4. The data does not in any way function as a tool or apparatus in the Respondent business. The Bank does not doing business with the data. The data is a raw data that needs to be processed and analyzed to come with a banking product of the Bank.
5. If data is a plant, there cannot be a different treatment between data which is acquired and the Respondent's own data.

RESPONDENT'S (BANK) SUBMISSIONS

1. The Respondent referred to the Tropiland case where the Court stated that in considering what amount to plant, the specific circumstances of the tax payer's business and the particular industry concerned must be considered.
2. The Bank needs the Data in order to generate income and to come with the new products. The Databases were plant to the Bank business.
3. The Bank has satisfied the test in order to qualify for the CA. The Bank has incurred so much money for the Databases and they acquired it and used it in their business operation to generate income.
4. There are values attached to the data in this modern and digital world. The Bank is doing banking business. Data is something important to the Bank or any company/corporate body/industry business in order to carrying on their

COURT'S DECISION

The Court of Appeal unanimously dismissed the Revenue's appeal and the decision of the SCIT and High Court Judge were upheld.