

(Translation from the original Bahasa Malaysia text)

Public Ruling No. 1/2001

OWNERSHIP OF PLANT AND MACHINERY FOR THE PURPOSE OF CLAIMING CAPITAL ALLOWANCES

1.0 TAX LAW

This Ruling applies in respect of ownership of plant and machinery for the purpose of claiming initial and annual allowances under paragraphs 10 & 15, Schedule 3 to the Income Tax Act, 1967. It is effective from the year of assessment 2000 (current year basis) and subsequent years of assessment.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers the ownership of plant and machinery and its effect on whether a person qualifies to claim capital allowances in respect of that plant and machinery in determining the statutory income from a business of his.

3.0 HOW THE TAX LAW APPLIES

3.1 Deduction for capital allowances

In computing the statutory income from a business, capital allowances under Schedule 3 of the Income Tax Act 1967 [hereinafter referred to as capital allowances and the Act, respectively] are deductible from the adjusted income of that source.

3.2 Conditions for capital allowances

3.2.1 To qualify for initial allowance in respect of plant or machinery for a year of assessment, a person has to satisfy all the following conditions:

- A.he was carrying on a business during the basis period;
- B.he has incurred qualifying plant expenditure in respect of that asset during the basis period;
- C.that asset was used for the purpose of the business; and
- D.at the end of the basis period (or, if the asset was disposed of, at the time of disposal), he was the owner of the asset.

3.2.2 To qualify for **annual allowance** in respect of plant or machinery for a year of assessment, a person has to satisfy all the following conditions:

- A.he was carrying on a business during the basis period;
- B.he had incurred qualifying plant expenditure in respect of that asset;
- C.that asset was used for the purpose of the business; and
- D.at the end of the basis period, he was the owner of the asset and the asset was in use.

3.3 Ownership of the asset

3.3.1 "Ownership" of an asset refers to either legal or beneficial ownership.

3.3.2 While it is normal for an asset to be owned and used by the same person in a business of his, it is also possible that:

- A.the asset is registered in the name of one person (the legal owner) [*see paragraph 4.4 below*] although the qualifying plant expenditure has been incurred by another person (the beneficial owner) [*see paragraph 4.3 below*]; or
- B.the asset is registered in the name of one person (the legal owner)

although the qualifying plant expenditure has been incurred jointly by the legal owner and another person; and

C.the asset is used for the purpose of the business of the legal owner or the business of the beneficial owner.

3.4 Asset owned by and used for the purpose of the business of the same person

A person who is both the beneficial and legal owner of an asset and uses that asset for the purpose of his business is entitled to claim the capital allowances in respect of that asset.

Example

Encik Salleh purchases a van on 21.06.2000 and registers it in his own name. He uses the van in his grocery business, for which accounts are prepared to 31 December every year. As at 31.12.2000, the van is still in use.

In computing the statutory income from his grocery business for year of assessment 2000, Encik Salleh qualifies for capital allowances on the van as he has fulfilled the prescribed conditions [see paragraph 3.2 above]:

A. he was carrying on a business during the basis period;

B. he has incurred qualifying plant expenditure for the purpose of his business;

C.the asset was used for the purpose of his business during the basis period; and

D.at the end of the basis period, he was the owner of the asset and the asset was in use for the purpose of his business .

3.5 Asset used for the purpose of the business of a person but registered in the name of another person

3.5.1 *Asset used for the purpose of the business of the beneficial owner but registered in the name of another person*

Where a person has:

A. incurred the qualifying plant expenditure on the asset; and

B. that asset is used for the purpose of a business of his during the basis period; and

C. the asset was still in use at the end of the basis period; that person (the beneficial owner) is entitled to claim both the initial and annual allowances in respect of that asset, even though he is not the registered owner of the asset.

- Example

Encik Azmi purchases a lorry in basis year 2001 and registers it in the name of Encik Musa. The lorry is used by Encik Azmi in carrying on his transportation business. In computing the statutory income from the business of Encik Azmi for year of assessment 2001, initial and annual allowances may be claimed by him as he has fulfilled the prescribed conditions. Encik Musa is not entitled to claim any of the allowances as he has not incurred the qualifying plant expenditure.

3.5.2 *Asset registered in the name of a person and used for the purpose of the business of more than one beneficial owner*

Where:

A. more than one person has incurred qualifying plant expenditure on an asset;

B. that asset is used for the purpose of a business of each of them during the basis period;

C. the asset was still in use at the end of the basis period; and

D.the asset is registered in the name of only one of the beneficial owners or in the name of some other person;

- each of the beneficial owners of the asset is entitled to claim the capital allowances in respect of that asset in the appropriate proportion as determined by his respective share of the qualifying plant expenditure incurred.

[In such a situation, a statement to the effect that more than one person is claiming the capital allowances in respect of the same asset (together with details of the apportionment) must be made in their respective tax computations.]

Note: The above does not apply to a similar situation which involves a partnership, for which there are specific rules: see the Income Tax (Capital Allowances and Charges) Rules 1969 [P.U.(A) 96/1969].

Example

Brothers Ahmad and Ali, each operating his own restaurant business, together purchase a van costing RM56,000 on 01.09.2001. Ahmad pays RM30,000 and Ali pays RM26,000. The van is registered in Ahmad's name. The van is used in both Ahmad's and Ali's businesses in the basis period for the year of assessment. The accounts of both businesses are closed on 31 December.

Initial and annual allowance should be computed as follows:

		Ahmad		Ali
-	Year of assessment			
-	2001			
-	Qualifying expenditure -	30,00	-	26,000
-	Initial allowance (20%)	6,000	-	5,200 -
-	Annual allowance (20%)	6,000	12,000	5,200 10,400
-	Residual expenditure -	18,000	-	15,600

- For year of assessment 2001, Ahmad can claim capital allowances amounting to RM12,000 and Ali can claim RM10,400 in respect of the van.

3.5.3 Asset registered in the name of, and used for the purpose of the business of, the legal owner but qualifying plant expenditure incurred by another person

Where the qualifying plant expenditure in respect of an asset is incurred by a person (the beneficial owner) but it is registered and used for the purpose of the business of another person (the legal owner), neither the beneficial nor the legal owner is entitled to claim the capital allowances since neither has fulfilled all the

prescribed conditions.

Example

Syarikat X Bhd. purchases a lorry and registers it in the name of its subsidiary company, Syarikat Y Sdn. Bhd.. The lorry is used by Syarikat Y Sdn. Bhd. in carrying on its business.

Neither company qualifies for the capital allowances in respect of the lorry, since:

A.although it has incurred capital expenditure, Syarikat X Bhd. did not incur it for the purpose of its business, nor did it use the asset for the purpose of its business; and

B.although it used the asset for the purpose of its business, Syarikat Y Sdn. Bhd. has not incurred qualifying plant expenditure .

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 "Asset" means plant or machinery used for the purpose of the business on which qualifying plant expenditure has been incurred.

4.2 "Person" includes a company, a co-operative, a club, an association, a Hindu joint family, a trust, an estate under administration, a partnership and an individual.

4.3 "Beneficial owner" means the person who has actually incurred the qualifying plant expenditure on, or who has paid for, the asset and is able to prove such a claim by documentary or other evidence [example: relevant entries made in the books of account of a business, supported by documents such as invoices, vouchers and receipts].

4.4 "Legal owner" means the person in whose name the asset is registered or otherwise recorded [examples : certificate of registration for a motor vehicle; warranty certificate for a machine; etc.].

4.5 "Tax computation" means the working sheets, statements, schedules, calculations and other supporting documents forming the basis upon which an income tax return is made that are required to be submitted together with the return or maintained by the person making the return.

4.6 "Qualifying plant expenditure" means capital expenditure incurred on the

provision, construction or purchase of plant or machinery used for the purpose of a business.

4.7 Any reference to "owner" may also be construed as a reference to "owners" where the context so permits or requires.

4.8 Where a person incurs capital expenditure under a hire purchase agreement on the provision of plant or machinery for the purpose of a business of his, he is regarded as the owner of that plant or machinery

4.9 An asset is "disposed of" if it is sold, discarded or destroyed or it ceased to be used for the purposes of the business.

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