
Qualifying Plant Expenditure is not Plant and Machinery

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Introduction

Schedule 3 to the Income Tax Act 1967 (“the Act”) legislates the manner in which capital allowance is computed in relation to a business source. It is given to qualifying plant expenditure or qualifying building expenditure incurred for the purpose of business. In 2008 and 2009, subsidiary legislation in PU(A) 357/2008, 111/2009 have been gazetted to allow the claim of accelerated capital allowance (“ACA”) on plant and machinery. However, PU(A) 111/2009 states that ACA is given to “qualifying plant expenditure” while PU(A) 357/2008 provides that ACA is only given to “plant and machinery”. One may start to wonder whether “qualifying plant expenditure” and “plant and machinery” are indeed the same concept which can be referred to interchangeably or are entirely two different concepts.

ACA is a common tax incentive used by the Government to encourage the taxpayer to incur capital expenditure in particularly advanced technology plant or machinery to replace or supplement the existing machines in order to be more productive, cost efficient and remain competitive. It allows a higher deduction of capital allowance in an assessment year and reduces the statutory income of a business. ACA is legislated by way of gazette order [PU(A)] via the Minister of Finance exercising his power conferred by s 154(1)(b) of the Act to prescribe rules under the Act.

Income Tax (ACA) (Plant and Machinery) Rules 2009 [PU(A) 111/2009]

With effect from YA2009, any person who incurs qualifying plant expenditure on or after March 10, 2009 but not later than December 31, 2010 shall be entitled to claim:

- (a) Initial allowance 20%
- (b) Annual allowance 40%

on the qualifying plant expenditure used in the business.

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Paragraph 2(b) of PU(A) 111/2009 states that:

The rules apply to a person who for the purpose of a business of his incurs *qualifying plant expenditure* under Schedule 3 of the Act on or after 10 March 2009 but not later than 31 December 2010.

Para 2(b) of PU(A) 111/2009 uses the phrase “qualifying plant expenditure” without defining it. Thus one has to fall back on Schedule 3 to the Act for its meaning. Paragraph 2 of Schedule 3 provides that qualifying plant expenditure is capital expenditure incurred on the “provision of machinery or plant” used for the purpose of a business. The case law precedents established the meaning of “plant” to include motor vehicles, office equipment, furniture and fittings besides the plant and machinery.¹ This would mean that the PU(A) 111/2009 would therefore allow the taxpayer to claim ACA on motor vehicles, office equipment, furniture and fittings besides plant and machinery.

In the Income Tax (Qualifying Plant Annual Allowances) Rules 2000 [PU(A) 52/2000], “qualifying plant” has been defined to comprise the following with the prescribed annual allowance rates as follows:

Asset	%
Motor vehicles	20
Heavy Machinery	20
Plant and Machinery	14
Others	10

Relying on this PU(A) 52/2000 and the case law principles, one would conclude that plant and machinery is a subset of qualifying plant expenditure and they not interchangeable concepts. The scope of “qualifying plant expenditure” indeed is wider than plant and machinery. This would further support the fact that PU(A) 111/2009 indeed allows ACA claims on motor vehicles and office equipment.

This ACA however is not given to the taxpayers who are enjoying the following incentives:

- (a) Pioneer Status or Investment Tax Allowance
- (b) Reinvestment Allowance
- (c) Income Tax Exemption by virtue of s 127(3)(b) or s 127(3A)
- (d) PU(A) Orders that prescribe a higher rate of ACA than the existing PU(A) 111/2009.

¹ For a comprehensive discussion on “plant” and the relevant case law, see Choong Kwai Fatt, *Malaysian Taxation – Principles and Practice* 15th Edn (Kuala Lumpur: Infoworld, 2009), pp 284–288.

Income Tax (ACA) (Plant and Machinery) Rules 2008 [PU(A) 357/2008]

This ACA incentive is given to SMI company. A SMI company which incurred capital expenditure on plant and machinery during the YA2009 and YA2010 will be given ACA of 100% as follows:

- (a) Initial allowance 20%
- (b) Annual allowance 80%

on the plant and machinery used in the business.

The objective is to facilitate SMIs to be equipped with advanced technology and relieve their tax burden during this economic downturn. The specific use of the phrase “plant and machinery” in paragraph 2(c) and the long title in PU(A) 357/2008 would mean it would not include industrial building and office equipment (such as furniture, fittings, kitchen utensils etc).

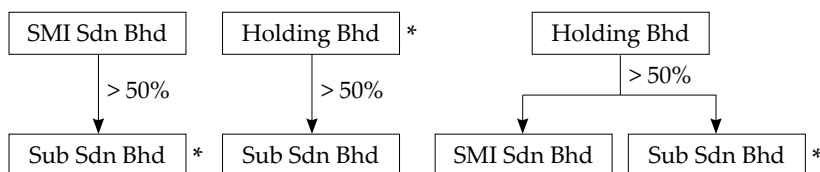
Paragraph 2(c) of PU(A) 357/2008 states

These Rules shall apply to a company which has incurred capital expenditure for the purchase of a plant and machinery in the basis period for a year of assessment from a source consisting of its business for the purpose of that business.

Paragraph 2(c) states in clear terms that ACA is only given to plant and machinery. The issue is whether a motor vehicle is within the ambit of “plant and machinery”. The cases do affirm that motor vehicle is within the ambit of “plant” if not machinery. Since paragraph 2(2) of Schedule 3 to the Act deals specifically with passenger vehicles, this would mean that motor vehicles licensed by the appropriate authority for commercial transportation of goods or passengers such as lorry, van, taxi would qualify for the ACA 100%.

SMI is defined to mean, a company which is:

- (a) incorporated in Malaysia and has a paid up capital in respect of ordinary shares of \leq RM2.5 million at the beginning of basis period for a YA;
- (b) resident in Malaysia; and
- (c) not within a group where the holding or other subsidiary company has a paid up capital in respect of ordinary shares of $>$ RM2.5 million at the beginning of the basis period for a YA.



* Paid up capital $>$ RM2.5 million ordinary shares at the beginning of the basis period for a YA.

The ACA would be withdrawn if such plant and machinery is disposed of within two years of acquisition. Balancing charge of 100% of the plant and machinery cost would be computed.

Re-examine PU(A) 111/2009

The cardinal rule of construction of a statute, or rules framed under a statute such as the PU(A) orders, is to read them literally. That is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning, though it should not be construed so as to impute absurdity to the legislature. The test thus is to see whether the interpretation is sound or not. If it leads to some injustice and/or absurdity, then a need arises to gauge the real and true intention of the legislature. A harmonious construction should be given in order to avoid making one provision of the PU(A) order conflict with the other PU(A) order.

Upon a closer examination of PU(A) 111/2009 and the intention of the legislature, one cannot help but to conclude that the PU(A) 111/2009 is instead given to plant and machinery. Passenger vehicles, office equipment are indeed excluded even though the said PU(A) 111/2009 employs the word "qualifying plant expenditure" in paragraph 2(b). The fundamental rule of interpretation is that a statute has to be expounded according to the intent of Parliament.

PU(A) 111/2009 is legislated following the tax stimulus package announced on May 10, 2009. The purpose is to facilitate the taxpayer to remain competitive by giving tax relief on plant and machinery. It was never meant to include office equipment or passenger vehicles.

The title of the PU(A) 111/2009 is Income Tax (ACA) (Plant and Machinery) Rules 2009 and this is identical to PU(A) 357/2008, entitled Income Tax (ACA) (Plant and Machinery) Rules 2008. The long title would have indicated the main purpose of the enactment. Therefore, the interpretation must be harmonised so that it does not give rise to absurdity.

Conclusion

The application of the ACA can be summarised as follows:

Legislation	Initial	Annual	Scope	Capital Expenditure Incurred
PU(A) 357/2008	20%	80%	Plant, Machinery, Commercial Vehicle	YA2009 to YA2010
PU(A) 111/2009	20%	40%	Plant, Machinery, Commercial Vehicle	10.3.2009 to 31.12.2010