

Breaking New Ground: Landmark Decisions on Reinvestment Allowance and Capital Allowance

Date	Venue	Event Code	Time
3 October 2013	Ramada Plaza Hotel, Malacca	WS/077	9.00am to 5.00pm
17 October 2013	Seri Pacific Hotel, Kuala Lumpur	WS/078	
22 October 2013	Impiana Hotel, Ipoh	WS/079	
24 October 2013	Grand Paragon, Johor Bahru	WS/080	
31 October 2013	Traders Hotel, Penang	WS/081	
21 November 2013	Sutera Harbour, Kota Kinabalu	WS/082	
22 November 2013	Four Points Sheraton, Kuching	WS/083	

Reinvestment allowance is a common tax incentive claimed by companies involved in the manufacturing sector on the capital expenditure incurred on a qualifying project under Schedule 7A of the Income Tax Act 1967. In the recent landmark decision of *Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturing Sdn Bhd* (Civil Appeal No.: W-01-429-11), the Court of Appeal upheld that reinvestment allowance is not only restricted to capital expenditure incurred on production areas but also extends to non-production areas, such as surau, lift lobby, warehouse, staircase, office spaces, toilets, research and development room, meeting room and “void area” for installation of crane. The taxpayer was also allowed to claim reinvestment allowance on the capitalised interest expenditure during the construction of the factory. The effect of this decision has effectively set aside the Inland Revenue Board’s practice of only confining reinvestment allowance claims to the production areas of a taxpayer’s business.

In the capital allowance arena, *Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd* (2013) MSTC 30-054 is a recent landmark decision of the Court of Appeal which unanimously affirmed the decision of the High Court that a purpose-built multi-storey car park was a “plant” within the meaning of Schedule 3 of the Income Tax Act 1967 and qualified for capital allowance. The determination of whether an asset is a “plant” for the purposes of claiming qualifying plant expenditure under Paragraph 2(1) of Schedule 3 of the Act received much clarity and elucidation from the Tropiland case.

Cases of reinvestment allowance

- *Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturing Sdn Bhd* (Civil Appeal No.: W-01-429-11)
- *RR v Ketua Pengarah Hasil Dalam Negeri* (2013) MSTC 10-042
- *Ketua Pengarah Hasil Dalam Negeri v F(M) Sdn Bhd* (Rayuan Sivil No.: R2-14-9-09/2012)
- *OCI Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2013) MSTC 10-045

Cases of capital allowance

- *OCI Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2013) MSTC 10-045
- *Saujana Hotel Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2011) MSTC 30-022
- *Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd* (2013) MSTC 30-054
- *Yarmouth v France* [1887] 19 QBD 647
- *Wimpy International v Warland* [1989] BTC 58
- *Lingfield Park (1991) Ltd v Shore* (HM Inspector of Taxes) [2004] CA 89
- *J. Lyons & Co Ltd v Attorney General* [1944] 1 Ch 281
- *Commissioners of Inland Revenue v Scottish Newcastle Breweries Ltd* [1982] 2 All ER 230
- *Benson (Inspector of Taxes) v Yard Arm Club Ltd* [1979] STC 266
- *Wangaratta Woollen Mills Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1969] 119 CLR 1
- *Commissioners of Inland Revenue v Barclay Curle & Co Ltd* [1969] 1 All ER 732
- *Schofield (HM Inspector of Taxes) v R&H Hall Ltd* 49 TC 538
- *Commissioner of Inland Revenue v Waitaki International Ltd* [1990] 3 NZLR 27
- *O’Srianain (Inspector of Taxes) v Lakeview Ltd* 3 ITR 219

Speakers’ profiles:

Siti Fatimah Mohd Shahrom and **Ashley Lee** are lawyers with Lee Hishammuddin Allen & Gledhill’s Taxation and Private Clients Practice Group, ranked as a Tier 1 practice by Legal 500. Alongside Datuk D.P. Naban and S. Saravana Kumar, the team has appeared in benchmark litigations with a sizeable volume of wins in tax disputes. Legal 500 describes the team as being ‘committed’, ‘sound in knowledge’, ‘amiable’ and always ‘well prepared’. They are top choices for major government-linked companies, telecommunications companies, investment banks and even accounting firms seeking representation against decisions and penalties imposed by the Inland Revenue Board. Siti is a co-author of *Malaysia Singapore Tax Cases Digest*, a publication of CCH Asia, in addition to authoring numerous tax articles and regularly appears as a speaker for talks and seminars organised by accounting firms, trade associations and professional bodies.



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