

e-CTIM TECH-DT 22/2018

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TO ALL MEMBERS

TECHNICAL

Direct Taxation

PUBLIC RULING NO. 1/2018 – DISPOSAL OF PLANT AND MACHINERY PART II – CONTROLLED SALES

This [Public Ruling \(PR\)](#) is dated 26 February 2018.

Objective (paragraph 1)

The objective is to explain the meaning of “control” for a company and a partnership and the income tax treatment on disposal and the acquisition of plant and machinery between parties that are related in terms of control.

The following is a summary of the contents of the PR:

Paragraph #	Heading and Summary
2	Relevant Provisions of the Law This PR is mainly based on paragraphs 38 to 40 of the Income Tax Act 1967 (ITA), (hereinafter referred to as “control sale provisions” (CSP)) and the Income Tax (Capital Allowances and Charges) Rules, 1969 (“the Rules”)
3	Interpretation Provides the meanings of words used in this PR. (Meanings of words underlined below are found in this paragraph.)
4	Introduction - The disposal of an <u>asset</u> on which initial allowance (IA) and annual allowance (AA) have been claimed and allowed (or could have been allowed) is subject to control provision if – (a) the acquirer of the asset has <u>control</u> over the disposer; (b) the disposer has control over the acquirer; (c) some other person has control over both the acquirer and disposer; (d) the disposal is effected in consequence of a scheme of reconstruction or amalgamation of companies, or (e) the disposal is effected by way of a settlement or gift or by devolution of the property in the asset upon death; However, CSP only apply if the disposer has claimed capital allowances (CA) on the asset <u>disposed</u> of and the disposal took place under one of the above situations, and the asset was in use in the acquirer’s business at the end of the basis period (BP) for a year of assessment (YA).

		<p>- When a disposal is treated as a controlled sale, the sale and the purchase price are disregarded and no balancing allowance / charge (BA/ BC) is imposed on the disposer. The acquirer is deemed to have incurred <u>qualifying expenditure</u> (QE) on the deemed date of acquisition (see para. 5)</p>
5		<p>Tax Treatment</p> <p>Whether CSP apply to a disposal and an acquisition of an asset between related parties depends on the facts of the case, and the onus of proof of the existence (or otherwise) of control lies with the taxpayer (company/ partnership).</p> <p>The following applies to a disposal subject to control: (Refer to examples found in the PR.)</p>
	5.1	<p><i>Date of disposal</i></p> <p>The disposal is deemed to have taken place on the first day of the disposer's final period (FDDFP), (Example 1)</p> <p>- "The disposer's final period" is the BP for the YA of a disposer which coincides with the first YA for which an acquirer is eligible to claim CA if the asset is used for the purpose of the acquirer's business. The 3 steps to determining this is explained in para. 5.1.2. (Example 2)</p>
	5.2	<p><i>Disposal price</i></p> <p>The disposal price is deemed to be equal to the <u>residual expenditure</u> (RE) of the disposer. The actual disposal price of the asset is disregarded. (Example 3)</p>
	5.3	<p><i>Qualifying expenditure</i></p> <p>QE incurred by the acquirer is deemed to be equal to the RE of the disposer. Capital expenditure incurred on the asset is disregarded.</p> <p>- The acquirer is deemed to have incurred QE on the FDDFP. (Example 4)</p> <p>- If the disposer incurred QE (purchased assets) on or after the FDDFP, the QE is deemed to have been incurred by the acquirer on the same date i.e. the date QE was incurred by the disposer. (Example 5)</p> <p>- If the actual date of disposal of the asset is earlier than the FDDFP, the asset is deemed to be owned and in use by the disposer at the end of the BP immediately preceding the FDDFP. (Example 6)</p> <p>- If an asset is acquired by an acquirer (Acquirer 1) in a controlled sale situation, and the asset is then sold to another acquirer (Acquirer 2) in a normal sale (not subject to control), the computation of BA/ BC in the second disposal for the second disposer (who is also Acquirer 1) must take into account CA which has been given to the first disposer. CA allowed to the first disposer is deemed to have been</p>

	<p>allowed to Acquirer 1 under a controlled sale. (Example 7)</p> <p>- If an asset is not used in the acquirer's business after its acquisition under a controlled sale, para. 39 of Sch. 3 of the ITA is not applicable, and a controlled sale (under para. 38) is seen not to have taken place. The sale is deemed to be a normal sale and the disposer is subject to BC/ BA computations. (Example 8)</p>
6	<p>Controlled Sale of Assets as a Result of Death</p> <p>CSP apply when an asset used in the business of a deceased is transferred to the business of a recipient under the terms of a will. (Example 9)</p>
7	<p>Controlled Sale of Partnership Assets</p> <p>CSP apply when partnership assets are disposed of by a partner to an acquirer that is subject to control under the situations referred to in para. 4.1 of this PR. (Examples 10 and 11)</p>
8	<p>Disposal of Assets Within Two Years</p> <p>Para. 71 of Sch. 3 of the ITA does not apply to the disposal of assets where a disposal is subject to CSP. (Example 12 and 13)</p>

Members may read the PR in full at the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the [PR No. 1/2018](#) so that we may raise them to the LHDNM.

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