

TECHNICAL

Direct Tax

PUBLIC RULING 5/2014 – OWNERSHIP AND USE OF ASSET FOR THE PURPOSE OF CLAIMING CAPITAL ALLOWANCE

Our [e-CTIM TECH-DT 43/2014](#) dated 3 July 2014 on the above Public Ruling refers. The Inland Revenue Board uploaded the above Public Ruling on 1 July 2014. It replaces PR 1/2001 dated 18 January 2001 (“the old Public Ruling”).

The objective of the Public Ruling is to explain the ownership and use of asset and the effect on whether a person qualifies to claim capital allowance (CA) in respect of that asset in determining the statutory income from a business of that person.

The following are some basic points relating to CA claims from the new Public Ruling which were also found in the old Public Ruling:

	<i>Ref in PR</i>				
<p>Conditions for claim of CA</p> <p>To be eligible for claim of CA, the following conditions must be satisfied:</p> <table border="1"> <thead> <tr> <th><u>Initial Allowance</u></th><th><u>Annual Allowance</u></th></tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> Claimant was carrying on a business during the basis period (BP); Had incurred qualifying expenditure (QE) during the BP; Was owner of the asset at the end of the BP (or if the asset was disposed of, at the time of disposal). </td><td> <ul style="list-style-type: none"> Claimant was carrying on a business during the BP; Had incurred QE <i>during the BP*</i>; The asset was used for the purpose of the business; He was owner of the asset at the end of the BP and the asset was in use. <p><i>* Para 15, Schedule 3 of the Income Tax Act 1967 indicates that annual allowance is available “where a person has.... incurred qualifying plant expenditure <u>in relation to an asset</u>..”.</i></p> </td></tr> </tbody> </table>	<u>Initial Allowance</u>	<u>Annual Allowance</u>	<ul style="list-style-type: none"> Claimant was carrying on a business during the basis period (BP); Had incurred qualifying expenditure (QE) during the BP; Was owner of the asset at the end of the BP (or if the asset was disposed of, at the time of disposal). 	<ul style="list-style-type: none"> Claimant was carrying on a business during the BP; Had incurred QE <i>during the BP*</i>; The asset was used for the purpose of the business; He was owner of the asset at the end of the BP and the asset was in use. <p><i>* Para 15, Schedule 3 of the Income Tax Act 1967 indicates that annual allowance is available “where a person has.... incurred qualifying plant expenditure <u>in relation to an asset</u>..”.</i></p>	5.
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<p>Ownership of Asset</p> <p>Ownership may refer to legal ownership or beneficial ownership.</p> <ul style="list-style-type: none"> Legal owner refers to the person whose name is registered or documented as proof of ownership. Beneficial owner refers to the person who actually incurred/ made payment for QE on the asset (Supporting documents are required as proof.) <p>Examples 2 to 8 illustrate instances where the legal owner or the beneficial owner is entitled to claim CA.</p>	6 Ex. 1 Ex. 2 to Ex. 8				
<p>Jointly owned assets</p> <p>Where more than one person has incurred QE on an asset and other conditions for</p>	7 Ex. 9				

claim of CA are met, each of the beneficial owners is entitled to claim CA in respect of that asset in the appropriate portion based on his share of QE incurred.	
Partnership assets The assets of a partnership are jointly owned by all the partners. Where conditions of eligibility are met, all partners are beneficial owners and are entitled to claim CA. CA is computed based on QE incurred. Allocation of CA to partners is based on 2 situations as follows: <ol style="list-style-type: none"> 1. Allocated amongst partners based on their profit sharing ratios if the asset is used in the business and QE is incurred by all partners at the end of a BP; 2. Allocated amongst those who are partners at the end of the BP according to their profit sharing ratios if there are changes of partners in the partnership and the business continues as an on-going business. 	8 Ex.10 to Ex.13

The following topics from this Public Ruling are not found in the old Public Ruling:

Limited Liability Partnership asset <ul style="list-style-type: none"> • An LLP is entitled to claim CA under schedule 3 of the Income Tax Act 1967 (ITA). • If there is a change of partners in an LLP, the change does not affect the business of the LLP. 	9 Ex. 14 to 16.
Hire purchase (HP) assets <ul style="list-style-type: none"> • For purposes of CA, the hirer is deemed to be the owner of the asset. He is the beneficial owner (having incurred QE) and is entitled to claim CA if the asset is used for the purpose of the business. He is the legal owner when the last installment is paid. • Deposit and capital repayments are QE. Initial allowance (IA) and annual allowance (AA) are computed as follows: <ul style="list-style-type: none"> - IA is computed based on QE incurred each year throughout the HP period; - AA is based on cumulative QE incurred throughout the HP period. • QE for a HP asset refers to capital expenditure actually incurred/ paid by the hirer. 	10 Ex.17 Ex.18
Asset under Islamic financing <ul style="list-style-type: none"> • For CA purposes, the hirer is the beneficial owner as he has incurred the QE and is entitled to claim CA if the asset is used for the purposes of the business from the date of the rental agreement (Ijarah). • There is no element of interest in Islamic financing. Thus the expense (in lieu of interest) incurred by the hirer is given the same tax treatment as interest on conventional HP and is deducted against gross income in arriving at adjusted income of the hirer. • The financing in accordance with Syariah principles involves the lease or disposal of an asset, but these transactions are deemed not to take place pursuant to section 2(8) of the ITA. 	10 Ex.19 Ex. 20
Refinancing <ul style="list-style-type: none"> • If CA has been claimed on an asset and then it is refinanced through a HP arrangement, the hirer is allowed to continue his claim on the CA based on 	10 Ex. 21 and Ex. 22

residual expenditure of the asset, provided the hirer still uses the asset in the business.	
Leased asset <ul style="list-style-type: none"> For a lease transaction, a finance lease and an operating lease are both accorded the same tax treatment. A lease transaction involves the acquisition of an asset by the lessor to be leased to the lessee via a leasing agreement. As such the lessor, as the legal and beneficial owner, is entitled to claim CA as he has incurred QE on the asset which is used in his (leasing) business. However, if a lease transaction is deemed to be a sale transaction pursuant to Regulation 4 of the Income Tax Leasing Regulations 1986, it will constitute an outright sale. The lessee can claim CA on the leased asset. 	11 11.1 11.3 11.5 & 11.6 Ex. 23 & 24
Business trust (BT) asset <ul style="list-style-type: none"> For income tax purposes, a BT is defined as a company in the ITA. A BT is entitled to claim CA under Schedule 3 of the ITA in ascertaining statutory income. 	12 Ex. 25
Use of Asset <ul style="list-style-type: none"> If an asset is used wholly in the business, the owner is entitled to claim the full amount of CA if he has incurred QE and he used the asset for the purpose of carrying on his business, or where the asset is "temporarily disused" [subject to conditions specified in sub-paragraph 13.1(b)(i) and (ii)] However, if the asset ceases to be ready for use or its disuse is no longer considered as temporary, the asset is deemed to have been disposed of <u>at the beginning of the period of disuse</u>. CA would be withdrawn and computation of balancing charge or balancing allowance would be made. If an asset is used in both business and non-business activities, the owner is entitled to claim a portion of the CA which is computed by apportioning the full amount of QE on a reasonable basis between business and non-business usage. If an asset is used in more than one business, the owner is entitled to claim a portion of the CA for each of his business. A reasonable apportionment of use of the asset amongst the businesses must be ascertained. If an asset is not used in a business [but used for other purposes which are listed in sub-paragraph 13.4(a) to (d)] the owner is not allowed to claim CA on the asset. If an asset is used to manufacture products for the business of the beneficial owner, the beneficial owner is entitled to claim CA although the asset is registered in the name of another person (legal owner) to produce the products of the beneficial owner, subject to conditions specified in sub-paragraph 13.5 (a) to (e). 	13 13.1 Ex. 26 13.2 Ex. 27 13.3 Ex. 28 and Ex. 29 13.4 13.5 Ex. 30 & 31
Assets classified as Held For Sale (HFS) <ul style="list-style-type: none"> An asset which is classified as HFS does not qualify for CA as the asset is intended to be sold and not used for purposes of the business. If an asset classified as HFS is reclassified as plant, property and equipment, and used again in the business, QE for the purpose of CA claim is the market 	14 14.1 14.2

value (fair value) of the asset on the date the asset is reclassified.	
<ul style="list-style-type: none">For further explanation on tax treatment of asset HFS, please refer to the <u>Guidelines for Income Tax Treatment of Malaysian Financial Reporting Standards (MFRS) 5 – Non Current Assets Held For Sale and Discontinued Operations.</u>	

Members can refer to the Public Ruling at the websites of the [Institute](#) and the [IRB](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any concern or comments you may have on the above public ruling.

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