

GCN v Comptroller of Income Tax [2020] SGITBR 2



Background

This is a Board of Review case on the determination of Residue of Expenditure (ROE) under Section 13A(11) of Singapore Income Tax Act (the Act).

The taxpayer, GCN, is a Singapore incorporated company whose shipping income was exempted under Section 13A of the Act. In 2010, the taxpayer was found to have engaged in activities prohibited under the Merchant Shipping Act (Cap.179) and as a result had to de-register two ships from the Singapore Registry of Ships by 26 August 2010.

With the de-registration, the tax exemption under Section 13A would no longer apply and the capital allowances for the Year of Assessment 2011 and subsequent years of assessment would have to be determined based on ROE for each ship.

ROE is essentially the remaining balance of the cost of the ship that qualifies for capital allowances claim, after the notional capital allowances have been deducted from the cost, for the period when the ship was in the Singapore Registry of Ships. The taxpayer in this case argued that the notional capital allowances should not include the initial allowance, which has the effect of increasing the ROE (which is available for the capital allowances claim over the remaining usable life of the ship).

On the other hand, the Comptroller of Income Tax (CIT) argued that the notional capital allowances to be deducted from the cost, should include the initial allowance, which has the effect of reducing the ROE.

The difference in the estimated tax amounts to more than S\$1.2 million for Years of Assessment 2011 to 2013, and more than S\$800,000 in future years for the remaining usable life of the two ships.



Issue

The issue in dispute is whether it is a must to include the 20% initial allowance in calculating Section 19 notional capital allowances for purposes of arriving at the ROE.

Taxpayer's basis

In calculating the notional allowance, the taxpayer accounted for the annual allowance but not the 20% initial allowance. The basis for doing so is that, under Section 19(1), initial allowance shall be granted to the taxpayer only "*on due claim*", but there was no such claim made by the taxpayer during the relevant assessment year that the capital expenditure was incurred.

Section 13A(11) provides that capital allowances are to be taken into account "*notwithstanding that no claim for such allowances was made*".

However, the provision should not result in depriving the taxpayer of the option of claiming Section 19 initial allowance only on due claim as is usually available to taxpayers under ordinary circumstances.

CIT's basis

The CIT took the view that, Section 13A(11) needs to be applied based on the literal reading of the provision "*notwithstanding that no claim for such allowances was made*."

Therefore, both initial allowance and annual allowances under Section 19 must be taken into account in determining the ROE of the ships.



Relevant sections of the Act

The case discussed several sections of the Act, in particular the following sections:-

Section 13A(11) which stipulates that where "*a ship ceases to be a Singapore ship the income derived from the operation of which is exempt under this section, the capital allowances in respect of that ship....shall be calculated on the residue of expenditure or reducing value of the assets after taking into account the capital allowances provided for in sections 16, 17, 18, 18B, 18C, 19, 19A, 20, 21 and 22..... notwithstanding that no claim for such allowances was made.*" (emphasis added)

Section 13A(12) provides that Section 13A(11) "*shall have effect notwithstanding any other provisions of this Act*".

Section 19(1) provides that "*Where a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of that trade, profession or business, there shall be made to him, on due claim for the year of assessment in the basis period for which the expenditure is incurred an allowance, to be known as an "initial allowance", equal to one-fifth of that expenditure or such other allowance as may be prescribed either generally or for any person or class of persons in respect of any machinery or plant or class of machinery or plant.*" (emphasis added)

Decision

The Board held that literal reading of Section 13A(11) needs to be applied. The provision "*notwithstanding that no claim for such allowances was made*" should be read to mean all capital allowances under Section 19, including initial allowance and annual allowances, have to be included in ascertaining ROE of the ships; and that this is regardless of whether they have been claimed by the taxpayer. Further, the Board held that Section 13A(12) has the effect of negating the words "on due claim" in Section 19(1) such that Section 13A(11) has its intended effect.

Our Comments



This is an interesting case which will have wider implications and the following issues came to mind:

1 With reference to the phrase “*notwithstanding that no claim for such allowances was made*” in Section 13A(11), what do the words “*such allowances*” refer to? The crux of the matter is whether they refer to **both** the initial allowance and annual allowance under Section 19 or whether the claim of the annual allowance under Section 19 for ascertaining the ROE, would suffice for the purposes of Section 13A(11)?

2 The Board held that Section 13A(11) needs to be read literally and that Section 13A(12) has the effect of negating the words “*on due claim*” under Section 19(1) such that Section 13A(11) has its intended effect. What exactly is the intended effect of Section 13A(11)? Will a purposive interpretation of the provision taking into account its legislative history, give rise to a different outcome from that based on literal reading of the provision as adopted by the Board?

3 Should Section 13A(11), which was introduced in 1975 as an enhanced incentive, be interpreted in such a manner as to put the shipowner back to the pre-1975 tax position where he would only have claimed the annual allowance?

The practice of slowing down the capital allowances claim over a period, by claiming annual allowances under Section 19 and not by way of the initial allowance, still applies to most, if not all, of

the companies presently enjoying tax incentives for which the capital allowances are mandatorily deducted, such as:

- Section 13S (exemption of income of shipping investment enterprise);
- Section 43I (concessionary rate of tax for offshore leasing of machinery and plant);
- Section 43Y (concessionary rate of tax for leasing of aircraft and aircraft engines);
- Section 43ZA (concessionary rate of tax for container investment enterprise);
- Section 43ZE (concessionary rate of tax for ship broking and forward freight agreement trading);
- Section 43ZF (concessionary rate of tax for shipping-related support services).

In the relevant provisions for those schemes where the capital allowances are mandatorily deducted, the material phrase is “*notwithstanding that no claim for such allowances has been made*” (emphasis added), which differs slightly from the Section 13A(11) phrase which reads “*notwithstanding that no claim for such allowances was made*” (emphasis added).

Subject to any further appeal of the case, the decision in this case has wider implications on companies granted with tax incentives. It would be important to have clarity over how mandatory capital allowances claims should be ascertained. This is also especially important for the shipping industry where re-flagging of vessels is a common practice.

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