26. REVENUE AND TAX LAW

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I. Introduction

26.1 The Supreme Court delivered three decisions in 2025 that had some relevance to revenue law:

Tax type	General Division of the High Court	Appellate Division of the High Court
Income tax	1	1
Miscellaneous	1	–

26.2 The income tax case decided by the General Division of the High Court ("General Division") involved the tax treatment of debt securities (also known as notes) that had undergone changes due to a scheme of arrangement.

26.3 The other income tax case decided by the Appellate Division of the High Court ("Appellate Division") dealt with the issue of whether airport runways, taxiways and aprons ("RTA") should be treated as "plant" within the meaning of s 19 of the Income Tax Act.[1]

26.4 The miscellaneous case decided by the Family Division of the High Court is a decision on the division of matrimonial assets where a point about a gift tax exemption was discussed in passing.

1 Cap 134, 2008 Rev Ed.

II. Income tax

A. Whether tax treatment of notes as qualifying debt securities remained applicable when the notes were restructured due to scheme of arrangement

26.5 In the General Division decision of *Modernland Overseas Pte Ltd v Comptroller of Income Tax*[2] ("*Modernland*"), the court heard two applications together. The applicants were Modernland Overseas Pte Ltd ("MOPL") and JGC Ventures Pte Ltd ("JGC"). MOPL and JGC were in turn owned by an Indonesian-incorporated public company listed on the Indonesia Stock Exchange.[3]

26.6 The applicants were special purpose vehicles set up for the purpose of issuing bonds and notes in Singapore. Two notes were issued: one by MOPL in April 2017 for the principal amount of US$240m and another by JGC in August 2018 for the principal amount of US$150m. Both notes were "qualifying debt securities" ("QDS") within the meaning of the Income Tax Act 1947[4] so that any interest, discount income, prepayment fee, redemption premium or break cost on these notes would be exempt from withholding tax in Singapore when paid by the issuers to noteholders who were not tax residents in Singapore.[5]

26.7 However, due to interest payment defaults, there was a scheme of arrangement proposed to the noteholders (as creditors) that was in turn approved by them. The result was that the terms of both notes issued by MOPL and JGC were altered. The applicants then sought a ruling from the Comptroller of Income Tax ("CIT") to confirm that the notes as amended would remain qualified as QDS. Before the General Division, the applicants referred to the notes with alterations as "Amended Notes". They argued that the notes, though amended, were the "same" debt instruments for the purposes of the QDS scheme.[6] The CIT disagreed

2 [2025] SGHC 239.

3 *Modernland Overseas Pte Ltd v Comptroller of Income Tax* [2025] SGHC 239 at [1].

4 2020 Rev Ed.

5 *Modernland Overseas Pte Ltd v Comptroller of Income Tax* [2025] SGHC 239 at [2]–[3].

6 *Modernland Overseas Pte Ltd v Comptroller of Income Tax* [2025] SGHC 239 at [6]. For general information relating to the qualifying debt securities scheme, see Paul Lau & Tan Kay Kheng, "Capital Market Transactions" in *The Law and Practice of Singapore Income Tax* vol I (Pok Soy Yoong, Ng Keat Seng & Steven M Timms eds) (LexisNexis, 2nd Ed, 2013) at paras 19.57–19.73. The cited paras should be read subject to changes made to the statutory provisions since 2013. These changes are not material to the facts of *Modernland Overseas Pte Ltd v Comptroller of Income Tax* [2025] SGHC 239.

with the applicants and ruled that the Amended Notes were not the same instruments.[7]

26.8 Dissatisfied with the CIT's ruling, the applicants sought the court's ruling on the matter via declaratory relief pursuant to ss 45 and 45A of the Income Tax Act 1947.[8] In the event, Choo Han Teck J dismissed the applications and refused to grant declaratory relief.[9]

26.9 Citing the relevant terms of the scheme of arrangement by which the Amended Notes were issued, Choo J ruled that the express terms showed that the notes that were QDS were clearly cancelled, with the noteholders releasing the applicants (as issuers) from claims under the original notes when the Amended Notes came into effect.[10] The applicants' argument that the cancellation was only a mechanism and not an actual cancellation was rejected by the court in view of the clear wording of the Amended Notes. Neither did the court accept the applicants' argument that a "purposive interpretation" of the QDS scheme would apply where there was a presupposition that the original notes were amended and not cancelled.[11]

26.10 The applicants had accepted that the new notes (though characterised by them as notes that were amended rather than cancelled) did not qualify as QDS if they were assessed independently.[12] The ruling in *Modernland* appears to be a straightforward one, once the court found that the original notes were not merely amended but cancelled. Legal significance ought then to be given to the effect of the cancellation and the issuance of new notes, even though the purpose of the latter being a restructuring of the former was obvious on the facts. As a general comment, the tax treatment of a concluded transaction may change if one or more steps are then made to change the terms of the transaction. If there is a wholesale change, as the court ruled that there was on the facts (*ie*, from the original to the new notes), the tax treatment for the new notes must be reanalysed and not presumed to be the same as that for the original transaction.

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7 *Modernland Overseas Pte Ltd v Comptroller of Income Tax* [2025] SGHC 239 at [4]–[6].
8 2020 Rev Ed.
9 *Modernland Overseas Pte Ltd v Comptroller of Income Tax* [2025] SGHC 239 at [7]–[8].
10 *Modernland Overseas Pte Ltd v Comptroller of Income Tax* [2025] SGHC 239 at [8]–[9].
11 *Modernland Overseas Pte Ltd v Comptroller of Income Tax* [2025] SGHC 239 at [10]–[11].
12 *Modernland Overseas Pte Ltd v Comptroller of Income Tax* [2025] SGHC 239 at [6].

26.11 One possible question is this: Would the tax treatment as QDS remain unaffected if the original notes were simply amended rather than cancelled, to achieve (if possible) the same effects as new notes except for the effect of cancellation?[13] This would not be a change of form only as it must preserve the QDS status of the notes despite the changes made to them. It remains to be seen whether or not the CIT or the court would take a different perspective from that held in *Modernland*.

B. Whether airport runways, taxiways and aprons should be treated as "plant" or structures

26.12 In the Appellate Division decision of *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax*[14] ("*Changi Airport Group (AD)*"), the central question stated by the court at the outset was whether an airport operator could claim capital allowances for expenditure incurred in respect of its runways, taxiways and aprons, with the heart of the question lying in "the enduring tension" between what constitutes "plant" for the purposes of a trade and what falls outside the statutory boundaries of allowable capital expenditure.[15]

26.13 At first instance, the Income Tax Board of Review ("ITBR") ruled that the RTA were not "plant", and its decision was upheld by the General Division.[16] The taxpayer then filed an appeal to the Appellate Division which was dismissed. In short, the taxpayer was unsuccessful in its claims that the expenditure incurred in respect of the RTA could be claimed as capital allowances under the Income Tax Act.[17]

26.14 As mentioned in last year's review, this was the second case coming before the General Division where the characterisation of assets as "plant" was being disputed, more than a decade after the seminal

13 Apart from tax considerations, there would be other legal and business considerations that may make it unfeasible to avoid the issuance of new notes. If unfeasible, the question posed here would not arise for consideration.

14 [2025] 2 SLR 56. This was an appeal from the decision of the General Division of the High Court in *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 4 SLR 862: see the review of that decision in Tan Kay Kheng, "Revenue and Tax Law" (2024) 25 SAL Ann Rev 769 at paras 26.3–26.9. In the interest of disclosure, the author was the lead counsel for the appellant before the General Division of the High Court (as well as the Income Tax Board of Review), but not before the Appellate Division of the High Court.

15 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [1].

16 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 4 SLR 862.

17 Cap 134, 2008 Rev Ed.

decision of the Court of Appeal in *ZF v Comptroller of Income Tax*[18] ("*ZF*"). The first case was *Singapore Cement Manufacturing Co (Pte) Ltd v Comptroller of Income Tax*[19] ("*Singapore Cement Manufacturing*"). The Appellate Division's judgment in *Changi Airport Group (AD)* is hence an important one, for its consideration of *ZF* and how *ZF* may apply to other factual scenarios.

26.15 In brief, on applying the legal principles to the facts in the case, the Appellate Division held that the conclusion by the ITBR and the General Division that the RTA were not "plant" but structures was a reasonable one.[20] The court characterised the two main issues as follows:[21]

> (a) "whether the RTA should be assessed in isolation or whether they should be considered together with the Aerodrome Equipment[22] such that both groups of assets formed a single, integrated unit (which the appellant referred to as the Integrated RTA) for the purposes of the inquiry to follow" ("Divisibility Issue"); and
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> (b) "whether the RTA (or the Integrated RTA) are or are not 'plant'" ("Plant Issue").

26.16 The appellant had also framed a final argument based on policy grounds.[23]

26.17 On the Divisibility Issue, the court held that the RTA and Aerodrome Equipment should be evaluated separately and not as a single integrated asset, with the observation that the RTA could function "independently (even if not optimally) without the Aerodrome

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18 [2011] 1 SLR 1044. See a review of this case in Tan Kay Kheng & Leonard Goh, "Revenue and Tax Law" (2010) 11 SAL Ann Rev 534 at paras 22.42–22.54.

19 [2023] 5 SLR 1099. See a review of this case in Tan Kay Kheng, "Revenue and Tax Law" (2023) 24 SAL Ann Rev 786 at paras 26.3–26.11.

20 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [3]. For the facts, see *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [5]–[10], and Tan Kay Kheng, "Revenue and Tax Law" (2024) 25 SAL Ann Rev 769 at para 26.5.

21 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [24].

22 The collective term "Aerodrome Equipment" referred to "specialised systems and sub-systems equipment including the airfield lighting system, the instrument landing system, signs, the aircraft docking guidance system, ground movement detectors and radars, and the foreign object detection system": see *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [6].

23 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [22]. The court ultimately rejected this argument: see *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [59]–[63].

Equipment".[24] As the RTA and Aerodrome Equipment served distinct purposes, they were not "sufficiently physically or functionally integrated" to be considered as an integrated asset.[25]

26.18 On the Plant Issue, there was no dispute that the determination of this issue rested on the four factors listed in *ZF*, namely:[26]

> (a) the exact operational role which the asset plays in the taxpayer's business;
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> (b) the physical nature and characteristics of the asset;
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> (c) the intended permanence (or temporariness) of the asset; and
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> (d) the asset's connection to buildings.

26.19 The Appellate Division held in turn that the RTA operated as surfaces for aircraft movement, that the physical characteristics of the RTA and the size, shape, durability and materials used to construct them were more similar to pavement structures such as roads, and that the durability of the materials showed that the RTA were designed for permanence.[27] The last factor relating to the RTA's connection to the terminal buildings did not arise for consideration as both parties accepted that there was no connection.[28] The court therefore concluded that the ITBR and the General Division were correct in finding that the factors in *ZF* weighted in favour of the RTA being classified as "structures" rather than "plant".[29]

26.20 A few observations may be made in light of *Changi Airport Group (AD).*

(1) New factual scenarios

26.21 The Appellate Division's judgment is important for its consideration and application of the Court of Appeal's decision in *ZF* to new factual scenarios. The court reiterated the point made in *ZF* that

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24 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [44].
25 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [44].
26 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [50], read with [34].
27 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [50]–[56].
28 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [57].
29 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [58].

in the final analysis, much will depend on the precise factual matrix and context concerned. However, it also noted that while analogies and parallels may be drawn from other decided cases (including foreign cases), the court must be sensitive to the specific facts and circumstances of each case.[30]

26.22 While the factors in *ZF* cannot be disputed, since the Court of Appeal decision is binding on the lower courts and the ITBR, future disputes can be expected to be primarily factual in nature like in this case.

26.23 It remains to be seen whether, in a future case, a taxpayer may seek to challenge the factors set out in *ZF* on the basis that they are not comprehensive and additional factors or nuances should be stated, or that the factors should be applied more liberally (rather than too strictly) in the sense of allowing an asset to be "plant". It bears reiteration that an application of the factors is not a matter of exact science. The underlying policy of capital allowances is the recognition that capital expenditure is significant in commercial terms and bears a direct connection to the carrying on of a trade or business. As capital allowances relate to legitimate business costs, the distinction between capital allowances and income deductions, while entrenched in tax law, often does not fit business and commercial realities.

(2) Case for legislative changes

26.24 The appellant attempted to argue on policy grounds (relating to the change of law in phasing out industrial building allowances in 2010 and replacing them with a new land intensification allowance) that it should not be an "unintended victim of a general legislative reform agenda" and that the courts should address the impact by allowing the appeal.[31] However, the Appellate Division disagreed with the argument that the courts may qualify the extent of the legislative changes, and held that any changes to deal with a situation such as in this case – where the appellant, as an airport operator, could suffer a competitive disadvantage *vis-à-vis* other foreign airports – should be initiated by Parliament itself.[32]

26.25 In light of the recent case law developments from *Singapore Cement Manufacturing* to *Changi Airport Group (AD)*, it appears timely for the relevant authorities to inquire into further changes that may be

30 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [37].

31 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [59], read with [60].

32 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [61].

made to allow capital allowances for more (including new) situations. These would be situations where the capital expenditure is clearly part and parcel (and usually a necessary element) of the design of the business operations, with importance attaching to sectors where cutting-edge assets are being built. Characterising the asset as "plant" or otherwise may increasingly be an approach that is out of line with current business world realities. It would not be appropriate to leave intact "the enduring tension"[33] that often surfaces in the classification of an asset as "plant" or otherwise. The legislative position can be improved to reduce this tension.

(3) Significance of Income Tax Board of Review decisions

26.26 The Appellate Division reiterated the position that in tax appeals, though they are by way of rehearing, the court extends deference to the ITBR where findings of fact are concerned. The test is whether "no reasonable body of members constituting an [ITBR] could have reached the findings reached by the Board".[34] The focus is not on the decision of the judge who heard the appeal from the ITBR, but on the ITBR as the primary trier of fact.[35]

26.27 The practical significance of this approach for tax appeals is that for questions relating to whether an asset is "plant", the inquiry (as seen earlier) is into the precise factual matrix and context concerned in the case at hand. This means that the decision of the ITBR is practically final, unless the party challenging the decision can show that no reasonable body of members constituting an ITBR could have reached the same findings. Yet it is not always a straightforward factual analysis for the ITBR, since earlier case law (both local and foreign – and there are numerous precedent cases) would still be relevant even if they are only considered as analogies and parallels.

III. Miscellaneous

26.28 The decision of the Family Division of the High Court in *XRM v XRN*[36] dealt with a division of matrimonial assets following an interim judgment granting a divorce. The assets included some 8,000 Apple

33 As characterised by the Appellate Division: see *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [1].

34 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [26].

35 *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [26]–[29].

36 [2025] SGHCF 55.

shares which the wife asserted was a gift from the husband, while the husband asserted that the shares were given to the wife for the purpose of "tax planning" and that he had not renounced his beneficial interest in them.[37]

26.29 The court found that there was evidence that the husband was relying on some "gift tax exemption"[38] in giving the shares to the wife and that, on balance, the shares were not for her benefit. However, there would not be a resulting trust in favour of the husband since it "would have arisen incidentally as a consequence of an illegal purpose, namely, to deceive the tax authorities".[39] The shares were therefore counted towards the wife's direct contributions.

26.30 In arguing for an asset that was asserted to be for tax planning that was founded on an illegal purpose, that of deceiving the tax authorities, a party such as the husband may have exposed himself to the possibility of a tax audit or inquiry by the relevant tax authorities. Serious legal consequences, including criminal prosecution and heavy penalties, may follow if the tax authorities should take the view that there was tax evasion.

37 *XRM v XRN* [2025] SGHCF 55 at [20].
38 *XRM v XRN* [2025] SGHCF 55 at [21]–[22].
39 *XRM v XRN* [2025] SGHCF 55 at [21]–[22].