

Court of Appeal Rules Golf Course And Recreational Facilities Qualify As Plant & Machinery For Capital Allowance

29 September 2025

For more information, please contact:

Datuk D P Naban
naban@rdslawpartners.com

S Saravana Kumar
sara@rdslawpartners.com

Amira Azhar
amira@rdslawpartners.com

Recently, the Court of Appeal unanimously allowed a taxpayer's appeal to claim capital allowance on the RM 141 million capital expenditure incurred to construct a golf course and recreational facilities.

The taxpayer was successfully represented by the firm's Tax, SST & Customs partner, S. Saravana Kumar, together with associates, Yap Wen Hui and Irdina Jailani.

Background

The taxpayer operated a golf and recreational club in Johor. In the year of assessment (YA) 2010, the taxpayer incurred capital expenditure to construct the following items, which are collectively known as the Disputed Items:

- (a) a golf course (which included the drainage system, grass and turfing, land cost, maintenance workshop, buggy charging station, golf bag station, caddies station and other incidental costs)
- (b) swimming pool
- (c) kid's fun pool
- (d) gymnasium
- (e) two tennis courts
- (f) table tennis room
- (g) children playing area
- (h) changing rooms
- (i) towel stations and toilets

- (j) multipurpose rooms
- (k) food & beverage outlets
- (l) reading room
- (m) health centre
- (n) pro shop and sports shop

The Special Commissioners of Income Tax (SCIT) and High Court did not allow the taxpayer's appeal to claim capital allowance on the Disputed Items by relying on the Court of Appeal's decision in *Ketua Pengarah Hasil Dalam Negeri v Resort Poresia Sdn Bhd* (2015) MSTC 30-090, which had previously held that a golf course was a place of business and as such, did not qualify as a plant and machinery.

The High Court in the present appeal also added that only in rare cases where certain buildings or structures were treated as a plant and machinery.

The Revenue's Contention

The Revenue contended that the authorities, which hold that golf courses are not "plant" were not confined to *Resort Poresia*. The Revenue relied on *Shove (Inspector of Taxes) v Lingfield Park (1991) Ltd* [2004] STC 805, where an all-weather track installed at a racecourse was held not to constitute plant. Similarly, in *Family Golf Centres Ltd. v. Thorne* [1998] STC 106, the court accepted that while the greens were essential to the taxpayer's operations, they nonetheless formed part of the golf course as a business premise.

The Revenue further relied on *Ketua Pengarah Hasil Dalam Negeri v MSDC Sdn Bhd* [2001] 1 MLJ 92, where the High Court held that a driving institute's training ground amounted to premises upon which the business was conducted, rather than the taxpayer's "tools of trade". By analogy, the Revenue argued that the Disputed Items in the present appeal were not integral "tools of trade" but instead formed part of the general setting in which the taxpayer's business was carried on.

The Taxpayer's Appeal

The taxpayer contended that the SCIT and High Court erred in failing to apply the liberal and holistic approach established by the Court of Appeal in *Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd* (2013) MSTC 30-054. The taxpayer also submitted that the High Court further erred in failing to consider that apparatus are deemed as plant if they meet the functional test as held in *Tropiland* and also a line of established authorities such as *Infra Quest Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2016) MSTC 30-13.

Furthermore, the decision in *Resort Poresia* could be distinguished on the following basis:

- (a) Firstly, *Resort Poresia* failed to consider or apply the principles established in *Tropiland*.
- (b) Secondly, the later cases on capital allowance including *Infra Quest* did not adopt the restrictive reasoning in *Resort Poresia*.

- (c) The taxpayer also submitted that in *Munby v Furlong (H M Inspector of Taxes)* [1977] 2 All ER 953, it was held that “*plant extends virtually to a man’s tools of trade. It extends to the things which he uses day by day in the exercise of his profession.*” This illustrated that the concept of plant was not confined to traditional machinery or equipment but extended to assets functionally used as part of the taxpayer’s trade. By analogy, the Disputed Items in the present appeal were not mere premises but the very “tools of trade” by which the taxpayer carried on its business of operating a golf and recreational club.
- (d) Thirdly, the facts of *Family Golf Centre and Resort Poresia* were distinguishable as the taxpayers in those appeals only sought to claim capital expenditure primarily on turfing, grass and green. By contrast, the Disputed Items in the present appeal went beyond turfing and grass and included purpose-built facilities such as swimming pools, tennis courts, changing rooms, and pro shops. These assets were essential to the operation of the Taxpayer’s business and fell squarely within the functional test.

It was argued that the correct test for determining whether an item qualifies as “plant” is that formulated in *Yarmouth v France* [1887] 19 QBD 647, namely, “*whatever apparatus is used by a businessman for carrying on his business, which he keeps for permanent employment in his business.*” This formulation expressed in deliberately broad language, was intended to give the term “plant” the widest possible meaning. Accordingly, in applying this test, factors such as the taxpayer’s industry and specific circumstances must be taken into account. A holistic approach was required to ensure that assets functionally integral to the carrying on of the business are recognised as plant.

The taxpayer further contended that the court should assess its business as a whole, rather than by examining each facility in isolation. In *Schofield (HM Inspector of Taxes) v R & H Hall Ltd* [1975] STC 353, for example, silos were treated as plant as they fulfilled a function in the trade.

The Court of Appeal’s Decision

In a unanimous decision, the Court of Appeal held that the disputed items claimed by a taxpayer operating a golf and recreational club qualify as plant for the purpose of capital allowance under Schedule 3 of the ITA.

The court found that the High Court erred in law by failing to consider *Tropiland* and by overlooking the application of the functional test in light of the taxpayer’s industry and business model. The court held that the Disputed Items were purpose-built assets integral to the operation of the taxpayer’s business and therefore fell within the definition of plant under the functional test established in *Yarmouth*.

Commentary

This decision is a welcome development for taxpayers in the recreation and leisure industry. By recognising facilities such as swimming pools, tennis courts, food and beverage outlets, children’s play areas and health centres as plant for the purposes of capital allowances, the Court of Appeal has endorsed a broader and more practical interpretation of the term “plant”. This ensures that businesses in service-based industries, where infrastructure is central to income generation, are not unfairly denied capital allowance.

Equally significant is how the court dealt with earlier authority. In particular, it distinguished *Resort Poresia*, where grass was held not to qualify as plant. This underlines that while the present decision opens the door to a more generous reading of plant, each claim will still depend on its own facts and supporting evidence.

This ruling sends a clear signal that courts are prepared to adopt a holistic and commercially realistic approach when applying provisions relation to capital allowance. By expressly considering the taxpayer's industry and specific circumstances the courts have brought tax law in line with the realities of service-driven businesses.

www.rdslawpartners.com

This publication is for educational and informational purposes only and is not intended and should not be construed as legal advice.

KUALA LUMPUR

Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas 1,
Solaris Dutamas, 50480 Kuala Lumpur

T: +603 6209 5400

F: +603 6209 5411

enquiry@rdslawpartners.com

PENANG

Suite S-21E & F21st Floor, Menara Northam No.
55, Jalan Sultan Ahmad Shah, 10050 Penang

T: +604 370 1122

F: +604 370 5678

generalpg@rdslawpartners.com

JOHOR BAHRU

8-35, Menara Delima Satu, Jalan Forest City 1,
Pulau Satu, 81550 Gelang Patah, Johor Bahru

T: +607 585 6414

F: +607 509 7614

generaljb@rdslawpartners.com