

BFC v Comptroller of Income Tax
[2014] SGCA 39

Case Number : Civil Appeal No 124 of 2013
Decision Date : 25 July 2014
Tribunal/Court : Court of Appeal
Coram : Sundaresh Menon CJ; Chao Hick Tin JA; Andrew Phang Boon Leong JA
Counsel Name(s) : Tan Kay Kheng, Tan Shao Tong, Novella Chan and Jeremiah Soh (WongPartnership LLP) for the appellant; Quek Hui Ling, Jimmy Goh Yak Hong and Michelle Chee Yen Yen (Inland Revenue Authority of Singapore) for the respondent.
Parties : BFC — Comptroller of Income Tax

Revenue Law – Income Taxation – Deduction

[LawNet Editorial Note: The decision from which this appeal arose is reported at [\[2013\] 4 SLR 741.](#)]

25 July 2014

Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This appeal raises the question of the deductibility of certain expenses incurred by a business entity in borrowing money. One of the methods by which a company can borrow money is by issuing bonds. The consideration for this method of borrowing money may take a number of forms, of which there are at least three. The company might pay what is called “interest”. Or it might issue the bonds at a discount, which is to say, at an issue price less than the face value (*ie*, the principal amount) of the bonds. Or it might pay, on redemption, a premium over and above the face value of the bonds (referred to hereafter as a “redemption premium”). From the perspective of the company issuing the bonds, each of these forms of consideration for the loan would understandably be a type of cost or expense incurred in borrowing the money raised from the bond issue.

2 The heart of this appeal concerns the tax treatment of these three types of borrowing costs – interest, discounts and redemption premiums. The appellant, BFC (“the Appellant”), is a company that, in issuing bonds, incurred all three types of borrowing costs. In general terms, the law allows a taxpayer to reduce the quantum of income on which he has to pay income tax by deducting certain of the costs or expenses incurred in producing his income. When the respondent tax authority (“the Respondent”) assessed the quantum of the Appellant’s income which was chargeable with tax, it allowed the deduction of an amount corresponding to a portion of the interest that the Appellant paid on the bonds. However, the Respondent did not allow the deduction of a similar portion of the discounts offered and the redemption premium paid in respect of those bonds.

3 Before us, the Appellant challenges the correctness of the Respondent’s decision to refuse the deduction of any part of the aforesaid discounts and redemption premium, having done so unsuccessfully before the Income Tax Board of Review and in the court below. The Appellant’s essential position is that there should be no difference in the income tax treatment accorded to the three types of borrowing costs which it incurred in issuing the bonds, *viz*, the interest on the one

hand, and the discounts and the redemption premium on the other: deductions should be allowed in respect of the latter just as they were allowed in respect of the former.

The facts

4 The Appellant owns and operates a hotel in the central part of Singapore ("the Hotel"). In 1995, it issued bonds with a face value of \$150m ("the 1995 Bonds"). It issued these bonds at a price of \$149,354,250, being 99.5695% of their face value, meaning that it offered a discount of 0.4305% or \$645,750 to the purchasers of the bonds. The 1995 Bonds were secured bonds maturing in 2000. On maturity, the Appellant was bound to redeem the bonds by paying their face value (*ie*, the principal amount of \$150m), plus a redemption premium of 1.5% of the principal amount or \$2.25m. Until the bonds were redeemed, the Appellant had to pay interest on the principal amount at the rate of 5.625% per annum.

5 In 1996, the Appellant issued another set of bonds ("the 1996 Bonds"). These were unsecured bonds with a face value of \$165m maturing in 2001. It issued these bonds at a price of \$153,317,505, being 92.9197% of their face value, meaning that it offered a discount of 7.0803% or \$11,682,495 to the purchasers of the bonds. No redemption premium was offered on the 1996 Bonds. On maturity, the Appellant's obligation was simply to pay the principal amount of \$165m. In addition to this, interest was payable on the principal amount at the rate of 5.75% per annum.

6 This appeal concerns the Respondent's assessment of the Appellant's taxable income for the Years of Assessment 2001 and 2002. These Years of Assessment correspond to calendar years 2000 and 2001, which saw the maturity and redemption of, respectively, the 1995 Bonds and the 1996 Bonds (collectively referred to hereafter as "the Bonds" where appropriate to the context). Before describing this assessment in any detail, we first set out the law governing the deductions allowed in assessing income tax as this would aid in understanding why the Respondent assessed the Appellant's taxable income in the way that it did.

The law on deductions in the assessment of income tax

7 The legislation in force during the Years of Assessment 2001 and 2002, which is also the applicable statute in this appeal, was the Income Tax Act (Cap 134, 2001 Rev Ed) ("the 2001 Act"). Under s 10(1) of the 2001 Act, income tax is payable "upon the income" of a person in respect of a number of categories of income listed in ss 10(1)(a)–10(1)(g), including gains or profits from a trade or business or from employment. But, the quantum of income on which income tax is payable may be reduced by deductions allowed under other provisions of the 2001 Act. These deductions are allowed only if they fulfil the cumulative criteria of being within the permissive provisions of s 14(1) and outside the prohibitive provisions of s 15(1).

8 The body of s 14(1) contains what is known as a general deduction formula that allows the deduction of "all outgoings and expenses wholly and exclusively incurred" in producing income. In addition to that, the subsections under s 14(1) allow a catalogue of specific deductions. In the present case, the subsection in issue is s 14(1)(a), which allows the deduction of sums "payable by way of *interest* upon any money borrowed" [emphasis added], *provided* the interest is "payable on capital *employed in acquiring the income*" [emphasis added]. Much of the instant appeal concerns the meaning to be given to the legal concept of "interest" in s 14(1)(a) (referred to hereafter as "'interest' for s 14(1)(a) purposes" where appropriate to the context). There is also a set of restrictions on deductibility in s 15(1), and the particular restriction relevant to the present case is that in s 15(1)(c), which prohibits deductions in respect of "any capital withdrawn or any sum employed or intended to be employed as capital except as provided in section 14(1)(h) [s 14(1)(h) is

not applicable in this appeal]". Section 15(1) seems to be an overriding provision because it begins with the words "Notwithstanding the provisions of this Act". But, as will become apparent later, these words do not remove from controversy the relationship between s 14(1)(a) and s 15(1)(c), in particular (for the purposes of this appeal), the question of whether or not s 14(1)(a) is subject to s 15(1)(c). For a proper appreciation of the problem, there is a need for us to set out ss 14(1), 14(1)(a) and 15(1)(c) of the 2001 Act in full:

Deductions allowed

14.—(1) For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Act (referred to in this Part as the income), there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of the income, *including* —

(a) except as provided in this section, any sum payable by way of *interest* upon any money borrowed by that person where the Comptroller [the Respondent in the present case] is satisfied that the interest was payable on capital *employed in acquiring the income*;

...

Deductions not allowed

15.—(1) Notwithstanding the provisions of this Act, for the purpose of ascertaining the income of any person, no deduction shall be allowed in respect of —

...

(c) any capital withdrawn or any sum employed or intended to be employed as capital except as provided in section 14(1)(h);

...

[emphasis added]

9 We should add at this juncture that although the applicable version of the Income Tax Act in this appeal is the 2001 Act, some of the legislative provisions and cases which we will discuss relate to ss 14 and/or 15 of the 1999, the 2004 and the 2008 revised editions of the Income Tax Act. Section 14(1) in each of these revised editions is identical to s 14(1) of the 2001 Act; thus, for convenience, these versions of s 14(1), including s 14(1) of the 2001 Act itself, will be referred to generically as "s 14(1)". Similarly, as s 15(1)(c) of the 2001 Act is identical to the version of s 15(1)(c) in the 1999, the 2004 and the 2008 revised editions of the Income Tax Act, all these versions of s 15(1)(c), including s 15(1)(c) of the 2001 Act itself, will be referred to generically as "s 15(1)(c)". In contrast, s 14(1)(a) of the 2001 Act is identical to the version of s 14(1)(a) in the 1999 and the 2004 revised editions of the Income Tax Act, but *different* from the version of s 14(1)(a) in the 2008 revised edition of that Act. For ease of reference, s 14(1)(a) of the 2001 Act and the version of s 14(1)(a) in the 1999 and the 2004 revised editions of the Income Tax Act will be termed "s 14(1)(a)", while the version of s 14(1)(a) in the 2008 revised edition of the Income Tax Act will be termed "the amended s 14(1)(a)".

The relationship between s 14(1) and s 14(1)(a)

10 We will first say something about the word “including” at the end of the body of s 14(1). In our opinion, read in its proper context, this is “a term of extension and not of restrictive definition”. Putting it another way, it would not be inapt to substitute the word “including” with words such as “and the following” or “as well as the following”. This was the view of Buttrose J in the local High Court case of *MNO v Comptroller of Income Tax* (1961) 27 MLJ 223 at 224, and it is also common ground between the parties in the present case. What this effectively means is that the specific deductions catalogued in ss 14(1)(a)–14(1)(h) of the 2001 Act are not necessarily particular applications of the general deduction formula in the body of s 14(1). On the contrary, the specific deductions may be *wider* than the general deduction formula in the sense that they are *not* subject to the restrictions on deductibility which apply to that formula. For instance, for an expense to be deductible under the general deduction formula, it must have been “wholly and exclusively incurred” in the production of income. But, this requirement does not apply to the specific deductions enumerated in the subsections under s 14(1), including s 14(1)(a).

Capital expenditure

11 Next, we turn to s 15(1)(c). This provision prohibits deductions in respect of “any capital withdrawn or any sum employed or intended to be employed as capital”. In other words, it prohibits deductions in respect of capital expenditure, which is also called “expenditure on capital account”. Capital expenditure is often explained by contrast with revenue expenditure. As *Halsbury’s Laws of Singapore* vol 16(2) (LexisNexis, 2012 Reissue) explains at para 205.095, deductions are permitted in respect of revenue expenditure but not capital expenditure because income tax “subjects only gains of a revenue nature to tax”. This was pithily put by Sir Wilfrid Greene MR in *Commissioners of Inland Revenue v British Salmson Aero Engines, Limited* [1938] 2 KB 482 at 498 thus:

Income tax, as has been said over and over again, is a tax on income. It does not tax capital. As the corollary to that, in ascertaining profits, payments of a capital nature may not be deducted.

12 There is no one definition of “capital expenditure” and “revenue expenditure” that can be of general acceptance. In our view, an adequate working formulation may be found in *Commissioner of Taxes v Nchanga Consolidated Copper Mines Ltd* [1964] AC 948, a decision of the Privy Council on appeal from the Federal Supreme Court of the Federation of Rhodesia and Nyasaland, and it is as follows (at 960). The distinction between capital expenditure and revenue expenditure is that between “the cost of creating, acquiring or enlarging the permanent (which does not mean perpetual) structure of which the income is to be the produce or fruit” on the one hand, and “the cost of earning that income itself or performing the income-earning operations” on the other.

13 Articulated in these broad conceptual terms, the distinction between capital expenditure and revenue expenditure may yet remain obscure. A useful way of attaining a better understanding of this distinction is to look at it in terms of the contrast between the “plant” of a business and its “stock-in-trade” or trading stock (see the speech of Lord Morris of Borth-y-Gest in the House of Lords’ decision in *Regent Oil Co Ltd v Strick (Inspector of Taxes)* [1966] AC 295 (“*Regent Oil*”) at 329G–330B). Plant being a component of the permanent structure of a business, the cost of its purchase is a cost of acquiring or enlarging the permanent structure of the business, and as such, is capital expenditure. In contrast, the cost of purchasing trading stock is revenue expenditure because it is a cost of earning income or performing income-earning operations. Assistance can also be derived from the judgment of Dixon J in the High Court of Australia case of *Sun Newspapers Ltd v Federal Commissioner of Taxation* (1938) 61 CLR 337 (“*Sun Newspapers*”) at 359–360. In the learned judge’s words, the difference between capital expenditure and revenue expenditure “corresponds with” a number of other distinctions, including: (a) that between the “business entity, structure, or organisation” and the “process by which such an organisation operates to obtain regular returns by

means of regular outlay”; and (b) that between the “profit-yielding subject” and the “process of operating it”.

14 To illustrate the capital-revenue distinction by way of a simple example, let us say a company is in the business of manufacturing bags. To operate this business, the company has to acquire at least a building, machinery and raw materials such as leather, zips and buckles. The building and machinery would be considered plant and the cost of acquiring them would be treated as capital expenditure, while the raw materials would be trading stock and the cost of their purchase would count as revenue expenditure. The building and machinery may also be called “capital assets”, a phrase which broadly refers to assets which form the permanent structure of a business. Speaking more generally, as pointed out by Lord Upjohn in *Regent Oil* at 341B, it is “axiomatic” that the purchase price of a piece of real property is capital expenditure, unless the taxpayer in question is a property dealer or developer, in which case the real property will be his stock-in-trade and the cost of acquiring it (including the cost of development, where applicable) will be revenue expenditure. Thus, it is the business of the taxpayer which will determine whether a particular expenditure should be regarded as capital expenditure or revenue expenditure. What is regarded as capital expenditure in one business may not be so regarded in another.

15 Having said that, differentiating between the two kinds of expenditure is not infrequently a matter of considerable difficulty. For instance, the cost of “renewal” of plant is capital expenditure, but the cost of its “maintenance” is revenue expenditure. Indeed, the line between renewal and maintenance may be a fine one, as Dixon J highlighted in *Sun Newspapers* at 360. Various tests have been proposed for determining whether a given item of expenditure is to be regarded as capital or revenue in nature, but none of them are thought to be a panacea. Fortunately, the instant case is not one in which that determination poses any significant challenge, and hence, we need not say more concerning those tests. We would only point out, without further comment, that the various tests were comprehensively discussed by our High Court in *ABD Pte Ltd v Comptroller of Income Tax* [2010] 3 SLR 609 at [43]–[76].

Subsequent amendments to s 14(1)(a)

16 At this juncture, we ought to highlight that s 14(1)(a) (as defined at [9] above) was amended by the Income Tax (Amendment No 2) Act (Act 53 of 2007) with effect from the Year of Assessment 2008 in such a way that had the amended s 14(1)(a) (likewise as defined at [9] above) been applicable to this appeal, it would probably have resolved the issues raised by the parties. The amended s 14(1)(a) is wider: whereas previously, s 14(1)(a) permitted deductions only in respect of sums “payable by way of interest”, the amended s 14(1)(a) now also allows deductions in respect of sums “payable in lieu of interest or for the reduction thereof”. The amended s 14(1)(a) reads as follows:

Deductions allowed

14.—(1) For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Act (referred to in this Part as the income), there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of the income, including —

(a) except as provided in this section—

(i) any sum payable by way of interest; and

(ii) any sum payable in lieu of interest or for the reduction thereof, as may be prescribed by regulations ...

upon any money borrowed by that person where the Comptroller is satisfied that such sum is payable on capital employed in acquiring the income;

...

17 As mentioned earlier, the instant case is governed by s 14(1)(a) because that was the provision in force during the Years of Assessment 2001 and 2002. Accordingly, it is the previous law that we are concerned with, and we do not propose to delve into the hypothetical question of how the instant case would be resolved under the legislative regime introduced by the amended s 14(1)(a).

Various meanings of the word “interest” in s 14(1)(a)

18 It will be apparent by now that the interpretation of “interest” for s 14(1)(a) purposes takes centre stage in this appeal. On the basis of the parties’ contentions, the word “interest” in s 14(1)(a) has two possible meanings. One is that it only covers what was described as “interest” in the documents setting out the Bonds – ie, the interest of 5.625% per annum payable on the 1995 Bonds and the interest of 5.75% per annum payable on the 1996 Bonds – and this is the sense contended for by the Respondent. The second possible meaning, which is also the meaning canvassed by the Appellant, is that “interest” for s 14(1)(a) purposes is broad enough to encompass not only the interest of 5.625% or 5.75% per annum, but also the discounts offered on both of the Bonds (“the Discounts”) and the redemption premium paid on the 1995 Bonds (“the Redemption Premium”). In short, the parties are in agreement that the interest paid on the Bonds (“the Interest”) is “interest” for s 14(1)(a) purposes, but they differ on the question of whether the Discounts and the Redemption Premium are also “interest” in that sense.

The Appellant’s taxable income in the Years of Assessment 2001 and 2002

19 Having set out the background, we move on to the Respondent’s assessment of the Appellant’s taxable income in respect of the Years of Assessment 2001 and 2002. In summary, pursuant to s 14(1)(a), the Respondent allowed the deduction of a portion of the Interest which the Appellant paid. But, it did not allow a corresponding deduction of a similar portion of the Discounts and the Redemption Premium.

20 In respect of the 1995 Bonds, the Respondent accepted that \$35,564,000 of the proceeds received by the Appellant from these bonds (“the 1995 Bond Proceeds”) was used to finance the refurbishment of the Hotel. As a consequence, the Respondent allowed the deduction of the Interest paid by the Appellant on this notional sum of \$35,564,000. The remainder of the 1995 Bond Proceeds was considered by the Respondent to form a mixed pool of funds, part of which was income-producing and part of which was not income-producing. The Respondent allowed the deduction of the Interest attributable to the income-producing part of this mixed pool of funds, using a method known as the “Total Assets Method”.

21 In respect of the 1996 Bonds, the Respondent considered that the entirety of the proceeds from these bonds (“the 1996 Bond Proceeds”) formed a mixed pool of funds, part of which was income-producing and part of which was not. Similarly, the Respondent allowed the deduction of the Interest attributable to the income-producing part of this mixed pool of funds.

The Appellant’s position and the issues arising therefrom

The Appellant's position and the issues arising therefrom

22 The Appellant was dissatisfied with the Respondent's assessment. Its position was, and is, that there should be no difference in the income tax treatment accorded to the various types of borrowing costs that it incurred in issuing the Bonds. The Appellant contends that since it was permitted to deduct a portion of the Interest, it should similarly be allowed to deduct a corresponding portion of the Discounts and the Redemption Premium. Hence, the Appellant seeks the deduction of the following: first, that portion of the Discounts and the Redemption Premium attributable to the \$35,564,000 used for refurbishing the Hotel out of the 1995 Bond Proceeds; second, that portion of the Discounts and the Redemption Premium attributable to the income-producing part of the remainder of the 1995 Bond Proceeds; and third, that portion of the Discounts attributable to the income-producing part of the 1996 Bond Proceeds.

23 The Appellant's case before us is broadly the same as that which it advanced before the judge in the court below ("the Judge"). As a result, the issues that arise for our decision are the same as those before the Judge. There are essentially three issues, each of which concerns a different statutory provision. They are as follows:

(a) First, whether the Discounts and the Redemption Premium are "interest" for s 14(1)(a) purposes and, hence, deductible under s 14(1)(a) ("the s 14(1)(a) issue"). The Appellant contends that they are, and the bulk of its arguments centre on this point.

(b) Second, whether the Discounts and the Redemption Premium are "outgoings and expenses wholly and exclusively incurred" in the production of income and, accordingly, deductible under the general deduction formula in s 14(1) ("the s 14(1) issue"). The Appellant argues that they are.

(c) Third, whether the Discounts and the Redemption Premium are sums "employed or intended to be employed as capital" and, thus, prohibited from deduction by s 15(1)(c) ("the s 15(1)(c) issue"). The Appellant says that they are not.

The decision below

24 The decision of the Judge is reported in *BFC v Comptroller of Income Tax* [2013] 4 SLR 741 ("the Judgment"). On the s 14(1)(a) issue, she held that the Discounts and the Redemption Premium were not "interest" for s 14(1)(a) purposes. She considered that a "fundamental feature" of "interest" was that it "accrue[d] with time" (at [32]), and that a true discount and a true redemption premium were both to be distinguished from "interest" because they did not accrue with time, but were fixed once and for all (at [34]–[35]). She reasoned that the appearance side-by-side of the words "interest" and "discounts" in s 10(1)(d) of the 2001 Act indicated that a difference was envisaged between these two concepts (at [47]). In the present case, the Discounts and the Redemption Premium were "one-off" obligations based on a fixed percentage of the principal loan amounts, and therefore, they were not "interest" for s 14(1)(a) purposes (at [54]). That being so, they were not deductible under s 14(1)(a).

25 On the s 14(1) issue, the Judge held that the Discounts and the Redemption Premium were "outgoings and expenses" within the meaning of s 14(1). This was so despite the Respondent's contention that the Discounts were in the nature of non-receipt, and thus could not be described as "outgoings" or "expenses". The Judge held that there could be outgoings and/or expenses even where there was no actual disbursement of money, provided there was a clear non-contingent legal liability or commitment to disburse the sum in question at some future time. In any event, she reasoned, when the Appellant redeemed the Bonds on maturity, it paid out the full face value of the Bonds

despite having received a reduced consideration for the 1995 Bonds in 1995 and the 1996 Bonds in 1996 respectively (at [65]–[67] of the Judgment). The Judge did not appear to have explicitly considered the subsequent question of whether the Discounts and the Redemption Premium were “wholly and exclusively incurred ... in the production of [the Appellant’s] income”; she seemed to view that question as subsumed under the s 15(1)(c) issue (at [68]–[70]).

26 On the s 15(1)(c) issue, the Judge held that the Discounts and the Redemption Premium were capital expenditure and, hence, prohibited from deduction by s 15(1)(c). Following the Court of Appeal decisions of *T Ltd v Comptroller of Income Tax* [2006] 2 SLR(R) 618 (“*T Ltd*”) and *Comptroller of Income Tax v IA* [2006] 4 SLR(R) 161 (“*IA*”), she held that the classification of the Discounts and the Redemption Premium as capital expenditure or revenue expenditure depended on the purposes of the underlying loans, *ie*, the purposes for which the Bonds were issued. If those purposes were capital in nature, the Discounts and the Redemption Premium would be capital expenditure (at [72]–[74] of the Judgment). She found (at [92]) that there were three purposes for which the Bonds were issued (of which only the second purpose applied to the 1996 Bonds): first, to finance the renovation of the Hotel; second, to refinance the existing borrowings of the Appellant and its subsidiaries; and third, to finance the day-to-day operations of the Appellant’s business. As to the first purpose, she held that this was capital in nature because it concerned the development of a capital asset (at [95]); as to the second purpose, she held that this was likewise capital in nature because the Appellant had not shown that the existing borrowings being refinanced were revenue in nature (at [103]–[104]); and as to the third purpose, she held that this too was capital in nature because the Bonds were not linked to any specific project or transaction that was revenue in nature (at [122]).

Our analysis

Sequence of our analysis

27 Before we proceed with our analysis of the three issues before us, we should explain that the sequence in which we propose to address these issues differs from that adopted by the Judge as well as that adopted by the parties when they presented their respective cases before her and before us. We will take the three issues in the reverse order, with the s 15(1)(c) issue first, followed by the s 14(1) issue, and finally, the s 14(1)(a) issue. We prefer this sequence for two main reasons. One is that our determination of the s 15(1)(c) issue will, as we will show below, make it unnecessary for us to decide the s 14(1) issue. The other is that we would rather leave to the last the s 14(1)(a) issue, which is not only by far the most hotly-contested issue, but also the issue that the Appellant is most likely to succeed on.

The s 15(1)(c) issue: whether the Discounts and the Redemption Premium were capital expenditure

28 To recapitulate, the s 15(1)(c) issue is whether the Discounts and the Redemption Premium were capital expenditure, such that their deduction is prohibited by s 15(1)(c). It will be recalled that the Discounts and the Redemption Premium were, like the Interest, costs incurred by the Appellant in borrowing money by issuing the Bonds. The key proposition of law applicable is that because the Discounts and the Redemption Premium were borrowing costs, their classification as capital expenditure or revenue expenditure depends on the nature of the underlying loans constituted by the Bonds (*ie*, whether the loans were capital or revenue in nature), and the nature of these loans is in turn determined by the purposes for which the Bonds were issued. This proposition is derived from two decisions of this court, namely, *T Ltd* and *IA* (both cited at [26] above).

29 In *T Ltd*, an issue before this court was whether interest which the taxpayer had paid on a loan

was capital expenditure or revenue expenditure. The court observed at [24] that the interest in question was “derivative in nature” in that it “owe[d] its existence to a loan”. Following from this, the court held that whether the interest was capital expenditure or revenue expenditure “depend[ed] on the purpose for which the loan [was] employed”. Moving on to *IA*, this was a case in which an issue arose as to whether certain borrowing costs or expenses incurred by the taxpayer, such as an agency fee payable to the lenders’ agent, were capital expenditure or revenue expenditure. This court endorsed at [15] the principle put forward in *T Ltd* that whether the interest payable on a loan was a capital expense or a revenue expense depended on “the nature of the loan”, which in turn depended on “the *purpose* of the loan itself” [emphasis in original]. The court went on to say that this was “an important *general* principle” [emphasis in original]. Since *IA* was concerned not with payment of interest but with payment of borrowing costs other than interest, what the court must have meant was this. All borrowing costs, of which interest is one, owe their existence to a loan and are thus derivative in nature. Therefore, whether borrowing costs are capital expenditure or revenue expenditure depends on whether the loan in question is capital or revenue in nature.

30 We endorse the proposition of law enunciated in *T Ltd* and *IA*, which accords with first principles. A loan that is capital in nature is one that is taken for the purpose of acquiring or enlarging the permanent structure of a business. The paradigm example of a loan that is capital in nature would be one that is taken for the purpose of purchasing a capital asset, *eg*, a piece of land or machinery. When interest is payable on such a loan, we think the interest should be considered to be part of the overall cost of purchasing the capital asset. Let us say a taxpayer purchases some machinery for \$100,000, and in taking a loan of this amount for that purpose, has to pay interest amounting to \$10,000. It appears to us that the overall cost of the machinery is \$110,000, being the purchase price of \$100,000 plus the interest of \$10,000. The capital asset being a component of the permanent structure of the taxpayer’s business, the interest of \$10,000 is part of the overall cost of acquiring or enlarging that permanent structure and is, for that reason, capital expenditure.

31 What has just been stated is not confined to loans taken for the purpose of purchasing a capital asset. It also applies to any loan that is taken for the purpose of acquiring or enlarging the permanent structure of a business. In other words, it applies to any loan that is capital in nature, for the interest payable on such a loan would be part of the overall cost of acquiring or enlarging the permanent structure of a business and would, for that reason, be capital expenditure. In fact, we can generalise further, for interest is not the only type of borrowing cost that may be incurred on a loan. Let us say agency fees are incurred in taking a loan for the purpose of purchasing a capital asset. Such fees are, like any interest payable on the loan, part of the overall cost of purchasing the capital asset, and are therefore capital expenditure. This logic extends to all types of borrowing costs relating to all loans of a capital nature: any borrowing cost incurred on any loan that is capital in nature would be capital expenditure.

32 Accordingly, in the present case, whether the Discounts and the Redemption Premium were capital expenditure or revenue expenditure depends on whether the Bonds were themselves capital or revenue in nature. The Appellant has in fact conceded that both of the Bonds were entirely capital in nature. This concession appears to us to have been properly made, as we will now explain. Following the analytical framework set out by this court in *IA* at [79], in determining the nature of any loan, the first step is to ask whether “sufficient linkage or relationship” exists between the loan and the main transaction for which the loan was taken. If there is insufficient linkage or relationship (*eg*, where the loan is taken out without any stipulation as to what the loan monies are to be used for), it must be, or must be assumed, that the sole purpose of the loan is to add to the taxpayer’s capital structure, and this would mean that the loan is capital in nature (see also *IA* at [67]). On the other hand, if there is sufficient linkage or relationship between the loan and the main transaction, the second step in the *IA* analytical framework is to ask whether that main transaction is itself of a capital or a

revenue nature. If the main transaction is capital in nature, the loan is likewise capital in nature; but if the main transaction is revenue in nature, the loan is then revenue in nature.

33 It follows that if a taxpayer wishes to show that a loan which he has taken is revenue in nature such that the borrowing costs incurred on that loan are revenue expenditure, he must establish sufficient linkage or relationship between that loan and a main transaction that is revenue in nature. It was suggested in *IA* at [58]–[59] that loans used to acquire trading stock would be regarded as revenue in nature. A clear instance of this is when a taxpayer's arrangements for purchasing trading stock are such that his bank pays the supplier each time a delivery of trading stock is made, with the taxpayer himself then having, say, 90 days to pay his bank. This example is taken from the Federal Court of Australia decision of *Commissioner of Taxation v Hunter Douglas Ltd* (1983) 50 ALR 97 at 110, which was an authority cited in *IA*. A 90-day loan of that sort, being the sole means by which the taxpayer's periodic purchase of trading stock is financed, is plainly revenue in nature because it is inextricably linked to a main transaction of a revenue nature. Thus, borrowing costs incurred on that loan (eg, agency fees or foreign currency losses) would be treated as revenue expenditure. A more ambiguous situation might be one where a taxpayer takes a relatively long-term loan of an amount which is significantly in excess of the purchase price paid for trading stock from time to time – eg, a company that purchases trading stock monthly for \$100,000 takes a loan of \$10m repayable in five years' time. It will be a greater challenge for such a taxpayer to demonstrate sufficient linkage or relationship between the loan and a main transaction of a revenue nature. But, of course, it remains open to him to prove this to the tax authority's satisfaction, and whether or not he succeeds in doing so will turn on the particular circumstances of each case.

34 Returning to the facts of the present case, the Judge made findings (at [86]–[87] and [92] of the Judgment) on what the purposes of the Bonds were (see also [26] above). These findings have not been challenged by the Appellant, and hence, there is no basis for interfering with them. The 1995 Bonds had three purposes (see [35] below), the second of which was the sole purpose of the 1996 Bonds. On the premise that the 1995 Bond Proceeds may be divided into three parts, each of which was applied for one of the three purposes, each of those parts was, in our view, capital in nature. Equally, the 1996 Bonds were capital in nature.

35 The first purpose of the 1995 Bonds was to finance the renovation of the Hotel; as we have said, the sum of \$35,564,000 was set aside out of the 1995 Bond Proceeds for that purpose. It is clear to us that the Hotel was a capital asset, ie, a component of the Appellant's permanent business structure. Thus, the renovation of the Hotel was a transaction of a capital nature. Given that \$35,564,000 of the 1995 Bond Proceeds was linked to a main transaction of a capital nature, that part of the 1995 Bond Proceeds was capital in nature. The second purpose of the 1995 Bonds, and the only purpose of the 1996 Bonds, was to refinance the existing loans of the Appellant and its subsidiaries. Like the Judge at [103] of the Judgment, we think that the critical question is whether the existing loans which were refinanced were themselves capital or revenue in nature. Since there is no indication that those existing loans were linked to a main transaction that was revenue in nature, they must be taken to be capital in nature. It follows that that part of the 1995 Bond Proceeds which was applied towards refinancing existing loans and all of the 1996 Bond Proceeds were likewise capital in nature. Finally, the third purpose of the 1995 Bonds was to finance the day-to-day operations of the Appellant's business. We can conclude that that part of the 1995 Bond Proceeds which was used for this purpose was capital in nature simply because the Appellant has not shown any sufficient linkage or relationship between that part of the 1995 Bond Proceeds and a main transaction of a revenue nature.

36 We pause here to take stock of our analysis thus far. We have reasoned that both of the Bonds were entirely capital in nature. This much, the Appellant has already conceded (see [32] above). It

would seem to follow, on the authority of *IA* read together with *T Ltd*, that all the borrowing costs incurred on the Bonds – ie, the Interest, the Discounts and the Redemption Premium – were capital expenditure. We do think this result follows, but some doubts seem to have been cast on it due to certain comments made by the court in *T Ltd*. Hence, we now turn to consider the relationship between ss 14(1), 14(1)(a) and 15(1)(c).

The relationship between ss 14(1), 14(1)(a) and 15(1)(c)

37 In *T Ltd*, the taxpayer company purchased a piece of land in order to develop a shopping mall on it. The purchase of the land was financed in part by loans on which the company had to pay interest. The question for determination was whether the interest paid was deductible under s 14(1)(a). Before the case came up to this court, it went before Andrew Ang J, whose judgment is reported in *T Ltd v Comptroller of Income Tax* [2005] 4 SLR(R) 285. Ang J and, on appeal, this court both held that the interest was not deductible because it had been incurred prior to the commencement of the company's business. The company's business, it was found, was the letting out of the shopping mall, and hence, its business could not have commenced before a Temporary Occupation Permit ("TOP") was issued in respect of the shopping mall. Since the interest which the company had to pay was incurred prior to the issuance of the TOP, it was incurred prior to the commencement of the company's business, and on that basis alone, the interest was not deductible.

38 Although Ang J and this court agreed that the interest paid by the company was not deductible under s 14(1)(a), they differed on the separate issue of whether the interest was caught by the prohibition on deduction of capital expenditure in s 15(1)(c). Ang J took the view that s 15(1)(c) did not apply to interest: his reasoning on that point is at [51]–[73] of his judgment. This court disagreed. In this court's view, interest paid in respect of a capital purpose was capital expenditure and thus fell within s 15(1)(c) (see *T Ltd* at [20]). This was consistent with s 14(1)(a) because that provision did not allow the deduction of all kinds of interest, but only allowed the deduction of interest that was "payable on capital employed in acquiring the income". Hence, if a loan were "applied towards an accretion of capital", the interest incurred on that loan would not be deductible (see *T Ltd* at [21]). This court added (at [24] of *T Ltd*) that if a loan were used for *developing a capital asset*, the interest payable on that loan would not be deductible; but if the loan were employed in *acquiring income*, the interest on the loan would be deductible under s 14(1)(a). A passage from *Wharf Properties Ltd v Commissioner of Inland Revenue* [1997] AC 505, a decision of the Privy Council on appeal from Hong Kong, was then cited with approval. That passage concludes with the following sentence:

Once the asset has been acquired or created and is producing income, the interest is part of the cost of generating that income and therefore a revenue expense.

39 It seems to us that we can summarise this court's reasoning in *T Ltd* in the following (albeit somewhat unwieldy) proposition. If a loan is taken for the purpose of *purchasing or developing a capital asset*, the interest payable on that loan would be capital expenditure and, thus, not deductible because of s 15(1)(c) – unless and until that capital asset is employed in *acquiring income*, in which event, the interest would be deductible under s 14(1)(a) and would fall outside the prohibition on deduction in s 15(1)(c). We wish to add a clarification to this proposition. We agree that when a loan is taken for the purpose of purchasing or developing a capital asset, the loan is capital in nature, such that the interest payable on it is capital expenditure. We also agree that when the capital asset is employed in acquiring income, the interest payable on the loan becomes deductible under s 14(1)(a). But, we do not agree that the interest payable on the loan becomes revenue expenditure just because the capital asset is employed in acquiring income. Instead, we think that the interest remains capital expenditure such as would ordinarily fall within the ambit of the

prohibition on deduction in s 15(1)(c), except that it is nonetheless rendered deductible under s 14(1)(a) because that provision in effect carves out an exception to s 15(1)(c).

40 We have already explained why it is that when a loan is taken for the purpose of purchasing a capital asset, any borrowing costs, including interest, incurred on that loan would be capital expenditure. In our view, the reasoning holds true whether or not the capital asset is employed in acquiring income. It may be that the capital asset is a piece of land that requires a number of years to be developed into a shopping mall and so will not be employed in acquiring income for the moment. Or it may be that the capital asset is machinery that will begin manufacturing goods for sale right from the day it is installed in the taxpayer's factory, such that it is employed in acquiring income from the outset. In the first scenario, any interest payable on the loan is part of the overall cost of purchasing the piece of land. In the second scenario, any interest payable is similarly part of the overall cost of purchasing the machinery. Hence, in either scenario, the nature of the interest payable on the loan is the same: it is capital expenditure.

41 On general principles, therefore, all borrowing costs incurred on a loan that is capital in nature constitute capital expenditure and – *unless the exception in s 14(1)(a) applies* – would *not* be deductible by reason of the prohibition on deduction in s 15(1)(c). The exception created by s 14(1)(a) is that any sum payable by way of interest is deductible so long as the Comptroller of Income Tax is satisfied that such interest “was payable on capital employed in acquiring the income”. Also by virtue of s 14(1)(a), the law makes a distinction between interest and other types of borrowing costs, as the latter are not excepted from the application of s 15(1)(c). The effect of s 14(1)(a) is that if some “direct link” (see *Andermatt Investments Pte Ltd v Comptroller of Income Tax* [1995] 2 SLR(R) 866 (“*Andermatt*”) at [27]) is established between the taxpayer's income and a loan of a capital nature on which interest is incurred, the interest payable on the loan is deductible even though it is capital expenditure. We ought to add that the explicit reference to “capital” in s 14(1)(a) is crucial. There is, in contrast, no similar expression in the general deduction formula in s 14(1), and hence, that general formula remains subject to the prohibition on deduction of capital expenditure set out in s 15(1)(c).

42 To reiterate, we have found, and the Appellant has also conceded, that both of the Bonds were capital in nature. Thus, all the borrowing costs incurred on the Bonds – viz, the Interest, the Discounts and the Redemption Premium – were capital expenditure. It is not disputed that the Interest is “interest” for s 14(1)(a) purposes. Accordingly, the Interest may be deducted notwithstanding its being capital expenditure, and indeed, the Respondent allowed the deduction of that portion of the Interest which, by its estimation, was attributable to the income-producing parts of the 1995 Bond Proceeds and the 1996 Bond Proceeds (see [20]–[21] above). It is, however, a point of disagreement whether the Discounts and the Redemption Premium are also “interest” for s 14(1)(a) purposes, but leaving aside that question (ie, the s 14(1)(a) issue) for the moment, the Appellant also argues that the Discounts and the Redemption Premium are deductible by virtue of the general deduction formula in s 14(1). That argument must fail. Even if the Discounts and the Redemption Premium fall within s 14(1), their deduction is prohibited by s 15(1)(c) because they are capital expenditure and – *unlike* the specific deduction provision in s 14(1)(a) – the general deduction formula in s 14(1) is subject to s 15(1)(c).

The s 14(1) issue: whether the Discounts and the Redemption Premium were wholly and exclusively incurred in the production of income

43 Given all that has been said above, there is no need for us to decide the s 14(1) issue. That is to say, there is no need for us to decide whether the Discounts and the Redemption Premium were outgoings and expenses incurred in the production of the Appellant's income, and if they were,

whether they were “wholly and exclusively” thus incurred. On the “wholly and exclusively” point in particular, we heard almost no argument at all, and for that reason, we venture no comment on it. We would, however, record our agreement with the Judge’s view (at [65]–[66] of the Judgment) that the Discounts and the Redemption Premium were “outgoings and expenses” within the meaning of that phrase in s 14(1). We would also point out that in *IA*, this court discussed at [95]–[100] what the test should be for determining whether outgoings and expenses were incurred in the production of a taxpayer’s income. The test which this court ultimately preferred was a wide one: it was wide enough that on the facts of that case, certain expenses were held to have been incurred in the production of the taxpayer’s income simply because they increased the taxpayer’s overall profitability. In any event, suffice it for us to reiterate that even if it is shown that the Discounts and the Redemption Premium completely satisfy the general deduction formula in s 14(1), their deduction still cannot be permitted because of s 15(1)(c).

The s 14(1)(a) issue: whether the Discounts and the Redemption Premium are “interest” for s 14(1)(a) purposes

44 Although the Discounts and the Redemption Premium are capital expenses, they might nevertheless be deductible if they constitute “interest” for s 14(1)(a) purposes. Thus, it comes as no surprise to us that the s 14(1)(a) issue is the key point of contention between the parties. It is to this issue that we now turn.

45 The Appellant’s core contention is that “interest” for s 14(1)(a) purposes can and should be given the broad meaning of “compensation for the use of money”. Thus interpreted, the word “interest” in s 14(1)(a) would encompass any consideration flowing from a borrower to a lender for a loan, and would, in the present case, include not only the Interest, but also the Discounts and the Redemption Premium. That, according to the Appellant, is how commercial men will look at a loan constituted by a bond issue. As the Appellant sees it, both the borrower (*viz*, the company issuing the bonds) and the lenders (*viz*, the purchasers of the bonds) in such a scenario are concerned with one question only: what is *the difference* between the amount of money lent by the lenders and the amount of money ultimately repaid by the borrower? To the borrower, that difference would be the total cost of the borrowing. To the lenders, that difference would be the gains which they make out of purchasing the bonds. In the instant case, the Appellant argues, that difference is made up of the Interest as well as the Discounts and the Redemption Premium; hence, to commercial men, all three forms of consideration for the loans constituted by the Bonds are indistinguishable.

46 During oral arguments, counsel for the Appellant acknowledged that his definition of “interest” for s 14(1)(a) purposes might require further refinement. This came about when he was asked whether payment by a borrower to a lender of an asset other than money would be “interest” for s 14(1)(a) purposes, and he replied in the negative. Thus, it appears to us that the Appellant is saying that “interest” as used in s 14(1)(a) should be defined as any and all monetary consideration flowing from a borrower to a lender for a loan of, specifically, money. While we accept that it is possible to interpret “interest” for s 14(1)(a) purposes in the wide manner which the Appellant urges us to adopt, we are not persuaded that we should do so simply because commercial men do not consider that there is any difference in substance between the various forms which monetary consideration for a loan can take. Instead, it is the legislative scheme which is decisive.

47 As a matter of construction, a less liberal interpretation of the word “interest” in s 14(1)(a) than that propounded by the Appellant would, in our view, be more appropriate for two reasons. First, as the body of s 14(1) already contains a general deduction formula which is expressed in very broad terms, there is no justification to adopt an expansive approach in interpreting the specific deductions spelt out in the subsections which follow that general deduction formula. Second, when a word is

used multiple times in a statute, that word should be consistently construed in the same manner each time it occurs, unless its context clearly suggests otherwise (see F A R Bennion, *Bennion on Statutory Interpretation: A Code* (LexisNexis, 5th Ed, 2008) at p 1160). This presumption was recognised in *Yusen Air & Sea Service (S) Pte Ltd v Changi International Airport Services Pte Ltd* [1999] 3 SLR(R) 95 at [60] and *Public Prosecutor v Ng Guan Hup* [2009] 4 SLR(R) 314 at [31], albeit that in those two cases, the emphasis was on the rebuttable nature of the presumption. In the present case, we see no reason to rebut this presumption. The word "interest" appears not only in s 14(1)(a), but also in many other places within the 2001 Act. We earlier referred to s 10(1)(d), a provision relating to chargeable income, where "interest" is referred to in addition to "discounts". If Parliament had intended that "discounts" and "interest" should mean the same thing or that "discounts" should come within the meaning of "interest", it could have defined "interest" to include "discounts". It would have been simpler for Parliament to provide that "discounts" offered on the issue of a financial instrument should be treated as falling within the meaning of "interest". Given that Parliament has chosen not to do so, it should follow, as a matter of logic and good sense, that the two terms must necessarily mean different things.

48 In this regard, we note that the Appellant argues that giving a narrow meaning to "interest" for s 14(1)(a) purposes would unduly confine the scope of other provisions of the 2001 Act. In this regard, the Appellant refers to s 10(1)(d), which provides that income tax is payable upon all income earned in respect of "dividends, interest or discounts". The Appellant submits that from the perspective of the purchasers of the Bonds, their profits from purchasing the Bonds comprise the Interest as well as the Discounts and the Redemption Premium. All of that, the Appellant says, should be subject to income tax; yet, if a narrow meaning is given to "interest" for s 14(1)(a) purposes, then s 10(1)(d) would be circumscribed such that only the Interest would be subject to income tax. We do not understand the logic of this argument; neither do we think this concern is valid. First, since s 10(1)(d) refers to "discounts", the Discounts enjoyed by the purchasers of the Bonds would be chargeable with income tax. We are not persuaded that the word "discounts" in s 10(1)(d) refers only to discounts in specific discounting transactions (eg, the discounting of a bill of exchange), and excludes discounts offered to purchasers of bonds in a bond issue. It seems to us that "discounts" as used in s 10(1)(d) is broad enough to include discounts offered in bond issues, such as the Discounts in the present case. As regards the Redemption Premium, the Appellant seems to have overlooked the catch-all provision – viz, s 10(1)(g) – which makes "any gains or profits of an income nature not falling within any of the [provisions in ss 10(1)(a)–10(1)(f)]" liable to income tax. There can be no doubt that if, in a particular case, the interest, discount or redemption premium in question is shown to be of an income nature, it would be liable to income tax. Indeed, even if a new term were to be coined to describe a gain of an income nature, that gain would be caught by s 10(1)(g).

49 Thus, in our judgment, it is neither necessary nor desirable to adopt a wide interpretation of "interest" for s 14(1)(a) purposes. In the court below, the Judge thought (at [32] of the Judgment) that the "fundamental feature" of "interest" was that it "accrue[d] with time". There was some argument before us as to what "accrue[d] with time" means, but we think there is no doubt in what the Judge intended to say. Her view was simply that a definitive feature of "interest" was that its total amount would depend on the duration of the loan. Putting it another way, monetary consideration for a loan is "interest" only in so far as the amount of consideration payable depends on the duration of the period for which the loaned money is in the borrower's hands.

50 We think that the Judge is correct. Although the Appellant and the Respondent referred, in the main, to different authorities for the definition of "interest", there is one authority that both of them relied on, namely, the High Court case of *Chng Gim Huat v Public Prosecutor* [2000] 2 SLR(R) 360. There, Yong Pung How CJ said at [36] that the "essence" of "interest" was "compensation for the deprivation [of] the use or delayed payment of money by another" (the word "of" in square brackets

appears as "for" in the report, but from the context, it is probably a typographical error). We agree.

51 It seems to us that the basic idea embedded in the words of Yong CJ is this. Money in a person's hands can be used to earn more money. When a loan is extended by a lender to a borrower, money moves out of the lender's hands. Had the money remained in the lender's hands, he could have used it to earn more money. But, by reason of the loan, the lender can no longer use that money to earn more money, at least for as long as that money remains out of his hands, and "interest" is what the borrower pays the lender to compensate him for that notional loss. All this was elegantly expressed by Lord Wright in the House of Lords decision of *Riches v Westminster Bank Limited* [1947] AC 390, where his Lordship said (at 400) that interest "may be regarded either as representing the profit [a lender] might have made if he had had the use of the money, or conversely the loss he suffered because he had not that use".

52 Given that this is the basic idea behind the legal concept of "interest", it follows that for a payment (other than repayment) in respect of a loan to constitute "interest" for s 14(1)(a) purposes, the amount of that payment should depend on the length or duration of the loan. The more prolonged the period for which the loaned money remains out of the lender's hands, the greater is the notional loss which the law assumes the lender suffers, and, accordingly, the higher should be the amount of compensation for that notional loss. However, we should make it clear, *vis-à-vis* a sum described as "interest", that while the amount payable should depend on the duration of the loan in order for the sum to fall within the legal concept of "interest", it is not an essential or invariable feature of "interest" that it must be paid on a periodic basis. There is no particular periodic interval at which payment of interest must be made. Payment of interest can take place monthly or half-yearly or yearly, and can even take the form of a single lump sum payment, be it at the time the lender extends the loan or at the time the borrower makes repayment or, for that matter, at any other time.

53 Returning to the facts of the present case, it is clear that the Discounts and the Redemption Premium were one-off costs, the amount of which did not depend on the duration of the period for which the Bonds remained unredeemed. That was what the Judge concluded at [54] of the Judgment and we agree with her. In the trust deed setting out the terms governing the 1995 Bonds, it was stated that should the Appellant fail to redeem the bonds on maturity, interest would continue to run at the rate of 5.625% per annum until the Appellant redeemed the bonds. The terms and conditions governing the 1996 Bonds provided that if the bonds fell to be redeemed before maturity by reason of the occurrence of any event of default, interest would be payable up to the date of that early redemption but not beyond. In this way, the quantum of the Interest that the Appellant had to pay hinged on the period of time for which the proceeds of the Bonds remained in the Appellant's hands and out of the hands of the purchasers of the Bonds. In contrast, neither early nor late redemption of the Bonds would have made any difference to the quantum of the Discounts and the Redemption Premium.

54 We accept that in the final analysis, it is a matter of substance and not form whether a payment is or is not "interest" for s 14(1)(a) purposes. Hence, a payment that is called a "discount" or a "redemption premium" may yet properly fall within the scope of "interest" as used in s 14(1)(a).

55 That said, where a financial instrument uses different terms to expressly differentiate between the different kinds of payments to be made in return for a loan, it would be reasonable to infer that the parties intended the nature of each kind of payment to correspond to the term ascribed to it. It would do violence to the wording of the instrument to construe the various kinds of payments as being of the same nature. This is the problem in relation to the Appellant's arguments. Here, the Appellant has expressly demarcated three distinct kinds of consideration for the Bonds – the Interest, the Discounts and the Redemption Premium. This being the situation, and given that one of these

three kinds of consideration increases in quantum the longer the Bonds remain unredeemed and is expressly identified as "interest", whereas the other two kinds of consideration are one-off payments of amounts that do not vary with the period of time for which the Bonds remain unredeemed, it is difficult to argue that those other two kinds of consideration are "interest". Accordingly, it is our view that the Interest alone is "interest" for s 14(1)(a) purposes; the Discounts and the Redemption Premium are not. It follows that the Discounts and the Redemption Premium are not deductible under s 14(1)(a).

56 In the light of the conclusion we have reached on the s 14(1)(a) issue, we offer no comment on the Respondent's argument that since the amended s 14(1)(a) (as defined at [9] above) expanded s 14(1)(a) to explicitly include within its ambit sums "payable in lieu of interest or for the reduction thereof", the position prior to the amendment of s 14(1)(a) must have been that such borrowing costs did not constitute "interest" for s 14(1)(a) purposes. We would also state for the record that on this issue, the parties cited in the course of their arguments many more authorities than those referred to in this judgment; however, only a few of the authorities cited were of real assistance to us.

Conclusion

57 In the result, we hold that the Discounts and the Redemption Premium are not deductible under s 14(1)(a) because they do not constitute "interest" for s 14(1)(a) purposes; neither are they deductible under the general deduction formula in s 14(1) because, being capital expenditure, s 15(1)(c) operates to prohibit their deduction. Although, from the commercial perspective, men of business might not see any difference in substance between the three forms of expenses incurred by the Appellant in issuing the Bonds (*ie*, the Interest, the Discounts and the Redemption Premium), the 2001 Act does distinguish between them for the purposes of deductibility. As held in *Andermatt* at [27], only interest payments in respect of a capital loan which has a "direct link" to the income of a taxpayer are deductible in determining the tax liability of the taxpayer. For these reasons, we dismiss this appeal with costs and the usual consequential orders.

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