

# 怎樣區分 資本性 與 營運性

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## 區分營運性支出與資本性支出的準則

什麼是營運性支出 What is revenue expenditure? 什麼是資本性支出 What is capital expenditure? 這是會計學上極為重要的課題，簡而言之，會計學把所有支出按它們的本質分為：資本性支出(capital expenditure)和營運性支出(revenue expenditure)。一般而言，於貨物買賣中招致的開支—包括匯價差異(exchange difference)—屬營運性：賺的要課稅，蝕的可扣稅，惟納稅人將營運中所得貨款撥作外幣定期存款，貨款便會即時轉作資本性—若有匯價虧損，便不可扣稅，見案例 CIR v Li & Fung。至於稅例如何區分資本性支出和營運性支出? 答案是：稅務條例(Inland Revenue Ordinance)裏沒有這條問題的答案，所以還須在會計學(accounting)及稅務案例(tax cases)中找答案。

事實上，在一般公認的商業及會計的準則內，亦沒有這問題的標準答案，但在一些權威會計著作裏，通常提及三項考慮因素：(1) 支出性質 the nature of expenditure (2) 使用期長短 the period of use 及 (3) 支出金額 the materiality of the expenditure

### 支出性質

倘若支出是用來購買固定資產，例如：辦公室、商舖、汽車...等，這些支出通常會視為資本性支出。

### 使用期長短

資本性支出的使用期較長，通常長達數年；營運性支出的使用期較短，通常少於一年。

## 支出金額

資本性支出的金額，通常會較營運性支出為大。事實上，一些小額支出，即使使用期非常長，例如買了一把鐵尺，亦會視為營運性支出。

雖說稅務條例裏沒有明確答案，但卻有不少資本性或營運性支出的案例，以下是一些稅局經常採用的原則及案例。在未列舉案例前，先要指出，在眾多案例中，很多法官不約而同地引用亞當史密斯 Adam Smith 在國富論(The Wealth of Nations)對資本(capital)定義的評論：

“Fixed capital is what the owner turns to profit by keeping it in his own possession whereas circulating capital as what he makes a profit of by parting with it and letting it change masters. The latter capital circulates in this sense. Thus premises, plant, leases and goodwill are fixed capital retained and used in the business. They form part of the permanent structure of the business and receipts for their sale, or compensating any physical loss or damages will be capital receipts and not taxable. On the other hand, an asset will be a part of the circulating capital of the business if it is acquired in the ordinary course of trade, and is sold, or is used in manufacturing what is sold e.g. trading stock, raw materials. Receipts related to these items are revenue receipts and taxable.”

事實上，一項資產，對某些人說，是資本性財產，但對另一些人來說，可能是營運性財產，譬如一台紡織機器，對經營生產衣服的商人，它便是資本性財產，但對出售機器的供應商來說，它便是營運性財產。在稅務上區分資本性財產和營運性財產，不單是事實上的問題 a question of facts，也是怎樣在找到的事實上去推論的法律問題 It is also a question of law on the facts ascertained --- 它的答案，會因每個個案的實際情況而異。換句話說，這個問題，沒有簡單明確的答案 There is no hard

and fast rule for this question。而事實上，每個評稅員，或每個法官，對同一個案，亦可能會提出完全相反的答案和理據，所以，納稅人應及早引用對己方有利的法律依據和案例，以盡早解決爭議。

以下案例，據本人經驗，是評稅員經常引用的：

### Vallambrosa Rubber Co. Ltd. v. Farmer [1910] 5 TC 529

納稅人投資大量金錢於種植橡膠樹，以期望數年後的橡膠收成，法官判那是營運性支出，並指出營運性支出是會經常重覆出現：Capital expenditure was spent once and for all; whereas income expenditure was expected to be recurrent, 但必須注意，這個判斷不是唯一的考慮因素 But this test is not final or conclusive.

### British Insulated and Helsby Cables v Atherton [1926]

公司注入大筆資金成立員工退休金計劃，法官認為這項支出是資本性支出，原因是該筆資金是一次過的支出：It was a "once and for all" expenditure. (有關退休金支出扣稅，請參閱本章第 3.18 節。)此外，法官又在判詞指出：當一項支出發生了，不單只要考慮它是否屬於一次過，還要看它是否帶來一項資產(an asset)、一個有長期效益(enduring benefit)的好處(advantage)：若然，那就有非常好的理由去判定它為資本性支出(When an expenditure is made, not only once and for all, but with a view to bringing into existence of an asset or an advantage for the enduring benefit of the trade ... there is very good reason for treating such expenditure as ... capital.).

## IRC v Carron Co. [1968] 45 TC 65

納稅人是一間船務公司，它花了鉅款除去公司憲章內的限制，目的是為了改善公司行政，以及增進公司的盈利能力 The company, incorporated by charter, incurred substantial expenditure in obtaining a new charter to remove certain business restrictions under its constitution，法官判定開支是營運性支出，並且指出，即使開支涉及長期利益，它亦可能是營運性支出，問題的關鍵是在於開支的目的。

## Wharf Properties Ltd. v CIR 4 HKTC 310

公司借款購買銅鑼灣電車廠 tram depot，改建為大型商業物業(即現今的銅鑼灣時代廣場)，以期賺取租金。在物業落成前，公司將物業售與集團內的其他公司。公司申請借款利息扣稅。稅局以利息為資本性開支拒絕。法庭同意稅局的理據。筆者按：因為該物業發展 property redevelopment 是為了賺取長期租金收入，所以屬資本性財產 capital asset，而在出租前的開支---包括建築成本及有關利息---屬資本性支出 capital expenditure，按稅例規定及案例原則，不可扣稅，但當物業落成後，物業可以出租，利息開支便會轉為營運性 revenue nature，與物業的維修開支 repair expenditure 一樣，可以在計算應課稅利潤時作為可扣稅開支 deductible expenditure，這項原則，亦曾應用於下述案例。

## CIR v Tai On Machinery Works Ltd. [1969] 1 HKTC 411

納稅人借款與建一座樓宇，用作商業用途，法官指出，在樓宇使用前的利息支出是資本性的，要計算在樓宇成本之內，而在樓宇落成使用後的利息，是營運性的，可以在計算應課稅利潤時扣稅。

## 法庭對資本性與營運性的評論

香港實行普通法，所以法官對資本性與營運性的評論具有權威性及指導性，茲將歷來較重要的評論摘錄如下：

In the Wharf Properties case, the judge Chan J said: "Capital expenditure includes that is incurred as a capital and also expenditure which, although not a capital in itself, is payment of a capital nature... If the expenditure was a capital payment, it was of course caught by section 17(1). But even if it was not a capital payment, the court had to consider whether it was of a capital nature or revenue nature... In order to decide the question of whether an expenditure was of a capital or revenue nature, one had to examine not only the status or nature of the expenditure but also the reason or purpose for which and the circumstances under which it was incurred. None of the tests was decisive. The answer to the question depended very much on the facts of each case and ultimately it was common sense appreciation of all the guiding features which would provide the answers... namely (a) fixed or circulating capital test, (b) once and for all or securing expenditure test, (c) enduring benefit test, (d) profit yielding structure test (e) the three matters considered by Dixon J in Sun Newspapers Limited & Associated Newspaper Limited v Federal Commissioner of Tax [1938] 5 ATD 87."

In the case of Sun Newspapers Ltd., the judge said: "There are three matters to be considered: (a) the character of the advantage sought, and in this its lasting qualities may play a part, (b) the manner in which it is to be used, relied upon or enjoyed, and in this and under the former head recurrence may play its part, and (c) the means adopted to obtain it; that is, by providing a periodical reward or outlay to cover its use or enjoyment for periods commensurate with the payment

or by making a final provision or payment so as to secure future use or enjoyment... Expenditure is of a capital nature if its purpose is to establish, replace, or enlarge the capital structure of the business... Recurrence is not a test; it is no more than a consideration the weight of which depends upon the nature of the expenditure."

In the case *BD Australia Limited v Federal Commissioner of Tax* [1965] 112 CLR 386, the judge said: "Fixed capital is prima facie that on which you look to get a return by your trading operations. Circulating capital is that which comes back in your trading operations."

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