GIP v The Comptroller of Income Tax
[2024] SGITBR 2

Case Number	: Income Tax Appeal Nos 4 to 9 of 2019
Decision Date	: 02 May 2024
Tribunal/Court	: Income Tax Board of Review
Coram	: Thian Yee Sze; Tan Beng Hwee Paul; Darren Koh Ngiap Thiam
Counsel Name(s)	: Edmund Leow S.C. and Terence Wah (Dentons Rodyk & Davidson LLC) for the appellant; Rajiv Rai and Emmanuel Lee for the respondent
Parties	: GIP v The Comptroller of Income Tax

Revenue Law – Income taxation – Appeals – Tax avoidance – Application of section 33 of the Income Tax Act

Revenue Law – Income taxation – Appeals – Exercise of the Comptroller's discretion

2 May 2024 Judgment reserved.

Income Tax Board of Review Chairperson Thian Yee Sze (delivering the decision of the Board):

Introduction

1 This is an appeal by the taxpayer, a registered medical practitioner under the Medical Registration Act 1997, against the decision of the Comptroller of Income Tax ("the Comptroller") to raise six Notices of Additional Assessment ("NoAAs") for the Years of Assessment ("YA") 2013 to 2018 on the ground that the taxpayer had entered into an arrangement through the incorporation of a company to enter into a partnership to operate a clinic in order to reduce his personal tax liability in those relevant years under section 33(1) of the Income Tax Act 1947 ("the Act"), resulting in the taxpayer having to pay $128,475.86 in additional taxes.

2 The issue before this Board is whether section 33(1) should have been invoked by the Comptroller to disregard the taxpayer's company when determining the income of the taxpayer liable to personal income tax on the ground that even though the income was stated to be that of the company, it should have been attributable to the taxpayer as it was revenue generated through the medical and consultation services rendered by the taxpayer to the clinic.

Facts

3 The taxpayer was until some time in 2011 an employee of [NRM], a leading medical service provider, serving as its deputy medical director for several years.

4 In June 2011, in connection with [NRM]' overarching plan to extend its reach into the heartlands of Singapore and ultimately expand its presence locally through the establishment of clinics under the auspices of its wholly-owned subsidiary, [GBRN], a proposal was put up to [NRM]' Board of Directors to, first, open a new [GBRN] clinic at [BTS] ("the clinic"), and second, enter into a tenancy agreement for the premises. According to the proposal to the Board submitted on 10 June 2011[note: 1], the taxpayer had "expressed his interest to partner ([GBRN]) to set up the new clinic" and to "take up 50% of the partnership". Renovation works were projected to take two weeks after "our takeover of the space in Jul 2011", with the clinic commencing operations in August 2011. Based on the proposal, the clinic was projected to start making a profit from Year 2 of operations[note: 2].

5 Upon obtaining [NRM]' Board's approval of the proposal, [NRM] entered into a tenancy agreement for the premises on 15 July 2011 with the landlord, [SKA], for a three-year term from 1 September 2011 to 31 August 2014 at a monthly rent of $6,300[note: 3]. At the same time, on 18 July 20211, [GBRN] entered into a partnership ("1st partnership") with the taxpayer to carry on the business of operating the clinic at the premises ("the business")[note: 4]. The 1st partnership was registered with the Accounting and Corporate Regulatory Authority ("ACRA") on 26 July 2011 under the business name, [GBRNT]"[note: 5]. The relevant provisions in the 1st partnership deed[note: 6] for the purposes of the appeal are as follows:

(a) [NRM] is entitled to sub-let the premises to the partnership for the purposes of the business on the basis that the partnership will be responsible for all the obligations and liabilities of a tenant under the lease, and shall reimburse [NRM] for all the rent and payments due, and costs and expenses incurred in relation to the lease (at (C) of the Recital and Clause 3.2).

(b) The partnership is in equal shares (at Clause 1.1).

(c) The partners are to remain in partnership in the business until the expiry of the lease of the premises or any renewal of it unless and until the partnership is dissolved or terminated (at Clause 4.1).

(d) The obligations of the taxpayer, defined as the "working partner", are set out in detail in Clause 6.2, including the following:

(i) Be responsible for the day-to-day running of the business;

(ii) Service corporate clients of the [NRM] group of companies at the rates notified by [GBRN];

(iii) Adhere to the relevant corporate administrative procedures of [GBRN]; and

(iv) Be bound by all decisions of [GBRN] in relation to the prices of goods and services to be charged by the business, as well as the salaries to be paid to the employees of the partnership.

(e) The duties of the taxpayer are set out in Clause 6.3, and include the following:

(i) Devote all his time, knowledge and skills exclusively to the interests of the business;

(ii) Make good to the partnership any loss occasioned by his negligence and misconduct;

(iii) Maintain the relevant medico-legal insurance throughout the duration of the partnership;

(iv) Keep proper patient records; and

(v) Conduct himself in a manner becoming of a medical practitioner.

(f) The taxpayer is to ensure that the clinic is open during the stipulated hours, and is to work 41 hours per week, out of which there should be at least two weekday night slots (at Clause 6.4).

(g) The taxpayer is to engage or employ a full-time registered medical practitioner or *locum tenens* at the cost of the partnership (at Clause 6.5).

(h) The annual leave entitlement of the taxpayer (at Clause 8.1).

(i) The absence of the taxpayer not expressly permitted under the terms of the 1st partnership deed or otherwise allowed by the partnership will result in the taxpayer's Fixed Monthly Sum ("FMS") payable in respect of the month to which the unauthorised absence relates being proportionately reduced by reference to the proportion that the aggregate number of hours of unauthorised access shall bear to the aggregate number of hours the taxpayer is required to work in the relevant month (Clause 8.3).

(j) [GBRN] is entitled to appoint a *locum tenens* to cover the duties of the taxpayer during his absence (Clause 8.4).

(k) The method of allocation and distribution of profits and losses is set out in Clause 12:

> (i) [GBRN] and the taxpayer will share in the Distributable Profits, as defined in Clause 12.2, in the agreed percentages, i.e. 50% each (Clause 12.1).
>
> (ii) Out of any profits for each Financial Year, the taxpayer shall be entitled to be paid an amount before the balance of profits is distributed as the Distributable Profits ("the First Cut"). The amount of the First Cut is to be determined based on a set percentage of the profits in the Financial Year (Clause 12.4).
>
> (iii) All losses of the business shall be shared by [GBRN] and the taxpayer in the agreed percentages (Clause 12.6).

(l) The compensation and benefits of the taxpayer are set out in Clause 13:

> (i) The taxpayer shall be paid by way of a FMS of $12,000 a month or such other sum as the partners shall agree (Clause 13.1);
>
> (ii) The FMS payable shall be increased based on a formula if the amount of profit increases (Clause 13.2); and
>
> (iii) The taxpayer shall be entitled to medical benefits at the cost and expense of the partnership (Clause 13.3).

6 The business under the partnership commenced on 25 August 2011[note: 7].

7 On 1 October 2011, pursuant to a novation agreement entered into between the landlord, [NRM] and the 1st partnership, the latter took the place of [NRM] as the tenant of the premises[note: 8].

Incorporation of a company by the taxpayer to partner [GBRN]

8 According to the taxpayer, his intention from the outset was to enter into the partnership through a corporate vehicle in order to benefit from the protection of limited liability[note: 9]. He stated that he "raise(d) the possibility of using a company as my corporate vehicle in the Partnership as early as possible"[note: 10] and that he had received the informal support of [NRM]' management for the corporate vehicle to replace him as a partner, and hence did not have to "rush to insert the corporate vehicle during those initial months of the Business after its commencement"[note: 11] while he concentrated on the operations of the new business. He attached his email correspondence with [NRM] dated 31 January 2012 to support his position that [NRM] had approved the use of the company prior to its incorporation[note: 12]. In the exchange, the taxpayer first wrote to the Financial Controller of [NRM] as follows:

> As discussed previously I would like to change the partnership to [NRML] and my Company.
>
> I understand that the terms shouldn't change much except the medical insurance for hospitalization.
>
> Would you have a draft partnership for this model that I can start looking though (*sic*).

9 The Financial Controller replied an hour later that afternoon:

> I do not have the draft template and will have to make amendment based on your contract. Give me some time to put this together as we are in the midst of audit and year end closing. I will target to send to you 3rd or 4th week of Feb.

The Financial Controller later sent the taxpayer the "draft Partnership agreements for your reference if you want to convert your partnership from your name to your company's name".

10 It is noted that the email exchange took place more than seven months after the approval of the partnership proposal at [4].

11 The taxpayer stated that despite his intention to use the corporate vehicle all along to enter into the partnership, he delayed the incorporation of a company for a few months for a few reasons. First, he had to set up and work out the operational aspects of implementing the new business on his own as [NRM] did not assign anyone to assist him, and at the same time hold down his full-time job at [NRM][note: 13]. Second, he wanted to tie down the commercial terms and arrangements for the partnership and the business first as it would not have made sense for him to incorporate a company before the business had been approved. He was also concerned that there would be a conflict of interest for him to own a medical company while carrying on his role with [NRM], and hence did not want to set up the corporate vehicle before approval was obtained [note: 14]. Third, he had to quickly enter into the partnership as a sole proprietor initially as he "(thought) it was highly likely that [GBRN] was not able to wait for (him) to incorporate my company before entering into the partnership ... because [NRM] had already entered into a tenancy of the Premises which started running on 15 July 2011, and would have wanted to novate this lease to the partnership as soon as possible, given that [NRM] was not intended to be the real ultimate tenant which is obliged to pay rental to the landlord"[note: 15].

12 About six months after the commencement of the business and a couple of weeks after the email exchange with the Financial Controller of [NRM] at [8] and [9] above, the taxpayer incorporated a company, [FDP] ("the Company"), on 18 February 2012, with him as its sole shareholder and director. The business of the Company was described to be "medical, personal industrial and corporate health consultancy"[note: 16]. He continued to be the sole shareholder and director at the material time leading up to the lodgment of the appeal before the Board.

13 On 30 March 2012, the Company entered into a partnership agreement with [GBRN] ("partnership agreement")[note: 17], with the taxpayer as the covenantor, and by virtue of which the Company substituted the taxpayer as [GBRN]'s partner to carry on the business. Pursuant to this modified partnership arrangement ("2nd

partnership"), the taxpayer withdrew as a partner in the business, and the Company was registered with ACRA as a partner of [GBRN] in the business on 1 April 2012[note: 18].

14 The substance of the terms of the partnership agreement were in *para materia* with those in the 1st partnership deed. A close comparison of the terms in the two documents will reveal that the terms were almost identical save for the replacement of the name of the taxpayer with the name of the Company except in respect of obligations and duties which were required to be undertaken by the taxpayer personally as they could not be undertaken by a non-individual (e.g. to work in the clinic at stipulated working times and his absence from the business to attend to national service duties), or *qua* covenantor.

15 The material differences between the two documents relevant to this appeal are as follows:

(a) The duties of the taxpayer *qua* partner in Clause 6.3 of the 1st partnership deed are converted into the covenants of the taxpayer in Clause 6.3 of the partnership agreement in consideration of [GBRN] agreeing to the Company substituting the taxpayer in the 1st partnership to form the 2nd partnership. In addition, the taxpayer also undertakes and warrants to remain the sole shareholder of all the issued capital of the Company (Clause 6.3(i) of the partnership agreement).

(b) A new Clause 6.6 in the partnership agreement stating that nothing shall be construed to deem the taxpayer an employee of the 2nd partnership, and that the Company shall be solely responsible for engaging the taxpayer and remunerating or compensating the taxpayer for his services rendered to the business.

(c) It is expressly stated in Clause 8.1 of the partnership agreement that the Company shall be free from its obligation to cause the taxpayer to provide his services to the business when the latter is on annual or medical leave.

(d) Any unauthorised absence of the taxpayer from the business will result in the proportionate reduction of the Company's share of the FMS based on the formula set out in Clause 8.3 of the partnership agreement, which is identical to that in the 1st partnership deed.

(e) The partnership agreement includes two new items of partnership expenses related to the insurance coverage for the taxpayer:

(i) The reimbursements of the taxpayer's hospital and surgical insurance coverage premiums (Clause 11(c)); and

(ii) The cost of Keyman insurance in respect of the taxpayer (Clause 11(d)).

(f) The Distributable Profits are paid to the Company in place of the taxpayer under the 2nd partnership (Clause 12 of the partnership agreement).

(g) The FMS is paid to the Company in place of the taxpayer under the 2nd partnership (Clause 13).

(h) It is stated in Clause 13.3 of the partnership agreement that the Company/taxpayer is entitled to procure a hospital and surgical insurance plan for the taxpayer at the cost and expense of the 2nd partnership.

(i) If the taxpayer dies within a stipulated period (tied to the term of the lease of the premises), the Company shall be deemed to have withdrawn from the 2nd partnership (Clause 17.5(a) of the partnership agreement).

(j) Clause 18.1 of the partnership agreement provides that [GBRN] may immediately expel the Company from the 2nd partnership and exclude the taxpayer from the premises if the taxpayer is incapacitated or commits acts prohibited by the said clause. One such act which will result in the Company's expulsion from the 2nd partnership is when the taxpayer ceases to be the sole shareholder of all the issued capital of the Company (at Clause 18.1(j)).

16 Pursuant to the arrangement in the 2nd partnership, the Company filed its income tax returns annually based on its share of (i) the FMS; (ii) the First Cut, (iii) Distributable Profits; and (iv) locum fees from the time of the Company's incorporation.

Audit of the taxpayer's income tax returns

Audit process in 2016

17 In February 2016, the Individual Income Tax Division of the Inland Revenue Authority of Singapore ("IRAS") commenced an audit of the taxpayer and the Company. The aim of the audit was to identify individuals who had abused the corporate structure and the associated tax exemptions by retaining income derived from personal efforts within a corporate structure in order to pay lower personal income taxes[note: 19].

18 On 26 February 2016, Ms Chew Xuan Yin, ("Ms Chew"), the officer charged with the audit, wrote to the taxpayer to request for information on the Company, including its business model, the services and activities it carried out, the number of employees and its financial statements[note: 20]. This was followed by a series of correspondence between the taxpayer or his solicitors and Ms Chew over the next few months:

(a) On 29 February 2016, the taxpayer provided the Company's unaudited financial statements for the financial year ending on 31 December 2014[note: 21]. On 1 March 2016, the taxpayer provided the rest of the information sought by Ms Chew by email as follows[note: 22]:

(i) [GBRN] was the taxpayer's primary partner "at the moment" and co-owned the clinic. The Company provided the taxpayer as the anchor doctor to the clinic.

(ii) "At the moment", all the revenue of the Company was earned through "(t)he investment in (the clinic) and provision of the doctor".

(iii) There was one other staff member of the Company, the corporate secretary, and the main reason for the hire was the "mandatory need for a corporate secretary". The taxpayer added that "(t)he staff is kept minimal at the moment and accounting services are obtained externally".

(b) The taxpayer sent another email to Ms Chew on 13 April 2016 to explain why the Company was set up and provided more information on the workings of the Company[note: 23]:

(i) He delayed the incorporation of the Company as he was busy with the setting-up of the clinic while working full-time at [NRM].

(ii) He incorporated the Company as it was a legal separate entity, a prudent step he took as "(w)hile businesses are not magnets for lawsuits, caution is certainly prudent when my partners have their own in house lawyers".

(iii) The Company had explored other avenues of business "in trading and photography".

(iv) The FMS of $12,000 a month was based on "the number of sessions required of the clinic, there was no change of the payment before or after the switch of partnership arrangement".

(v) There had been "no change to the work arrangement at (the clinic) either before or after the change in partnership".

(vi) The taxpayer had "(paid) myself with regular dividends since start-up. Dividends were kept to ensure the company accounts were healthy".

(vii) The taxpayer also attached bank statements and locum fee payments.

(c) On 15 August 2016, after a call from Ms Chew in the previous week, the taxpayer sent another email to propose the way forward to address IRAS' concerns through a revised pay structure by paying the FMS and the fees payable to the Company arising from the taxpayer working extra hours as *locum tenens* directly to the taxpayer instead of the Company[note: 24]. The profits earned from the clinic would remain with the Company. The taxpayer also explained the circumstances behind the late incorporation of the Company:

(i) He accepted that a partnership between [GBRN] and the Company "would have been ideal from the start" and that the partnership "would ideally be set up right in the first place". However, "(d)iscussion for conversion, approval by Parkway board and eventually signatures were reasons the current structure wasn't started earlier". He reiterated that "we did not set up the company late but transited as early as we could".

(ii) At the time the Company was incorporated, the financial outlook for the partnership was uncertain. In addition, they had lost a major contract.

(iii) The Company's payment to the taxpayer for his services in the clinic remained low because of the uncertain financial position and outlook of the partnership.

(d) In response to Ms Chew's further queries on 3 October 2016, including the names of other staff and his roles and responsibilities in the Company, the taxpayer sent an email on 6 October 2016 with the following information[note: 25]:

(i) While there were people who assisted him with work, they were not on the Company's payroll. The taxpayer also gave family and friends medical advice without charge, and did photoshoots as a photographer without charge.

(ii) At the Company, the taxpayer "multi-hat as we are but a small operation. It ranges from directing, ensuring payroll, finance to ensure bills are paid and taxes are coordinated with IRAS". In addition to detailing the various duties and ancillary services he provided to the clinic, the taxpayer provided medical services "as per contract by myself at present".

(e) In a further email to Ms Chew on 26 October 2016, the taxpayer urged IRAS to give him some leeway, bearing in mind the "pains of the starting years" when deciding "how much needs to be reversed in the starting years. He requested that any reversal be from 2015. He explained the reasons for arriving at a sum of $12,000 in the form of the FMS paid to the Company and the monthly salary of $7,000 the Company paid him[note: 26]:

(i) The FMS was not just for "simple doctoring". In practice, the Company managed all aspects of the practice of the clinic.

(ii) The taxpayer's monthly salary at $7,000 or $85,000 per annum was "base(d) on a medical officer with 5 to 10 years experience" working 42 hours a week.

Audit findings in early 2017

19 On 28 February 2017, Ms Chew sent an email to the taxpayer to inform him that for YA2013 – 2016, the Comptroller would be assessing the income reported by the Company under the taxpayer's name "as the income was earned through your personal exertion, notwithstanding the fact that "the Company" was set up to receive the income instead"[note: 27]. She added that based on the information provided and the reason for the existence of the Company, "we recognised that it was set up more to provide support services to yourself". As such "as an administrative practice, we are applying a 5% cost mark-up for the support services provided". The email also detailed line items comprising the income and expenses of the taxpayer and the Company in YA2016 which formed the basis of the adjusted assessment. Pursuant to these audit findings, the Comptroller sent a letter dated 28 March 2017[note: 28] to inform the taxpayer that the audit review on the his partnership income from the clinic for YA2013 – 2016 had been completed and issued four NoAAs ("the 1st set of NoAAs") dated 28 March 2017 in respect of the taxpayer for YA2013 – 2016[note: 29], resulting in a substantial increase in the tax payable by the taxpayer in each of the YAs[note: 30].

Further discussions following the issuance of the 1st set of NoAAs

20 Upon the receipt of the 1st set of NoAAs, the taxpayer's solicitors sent an email to Ms Chew on 25 April 2017[note: 31] to request that the Comptroller reconsider its position and proposed that the taxpayer's income should comprise (i) director's fees of $85,000 a year prior to YA2017 and (ii) an annual employment salary of $150,000 for YA2017 and beyond. The Company's income should in turn comprise (i) 50% of the partnership business profit and (ii) the FMS of $12,000. The solicitors also detailed the reasons for the taxpayer's position, which were summarised under four headings:

(a) The taxpayer was entitled to conduct business through a private limited company, and a company was a separate legal entity from its shareholders and directors;

(b) As a separate legal entity, the Company was the partner of the partnership business whereas the taxpayer was not a partner, *de facto* or otherwise;

(c) The Company had obligations to fulfil under the partnership agreement, and the taxpayer worked for the Company in order to enable the Company to fulfil its obligations, and hence should be taxed on the remuneration received from the Company for that work; and

(d) As a partner of the partnership business, the Company should be taxed on the partnership profits, and not the taxpayer, who worked for the Company.

21 The Comptroller maintained its position and the assessed amounts in the 1st set of NoAAs in Ms Chew's email of 19 September 2017 in response to the solicitors' email of 25 April 2017[note: 32]. She set out the Comptroller's reasons for the decision as follows:

> 2. Having reviewed and considered the information provided by you during our audit, we understand that *the income reported by (the Company) during the Years of Assessment (YAs) 2013 to 2016 was income derived from the medical and consultation services rendered by you to (the clinic)*. We also noted that *there is no change in your modus operandi such that you are the sole key person providing these services, before and after the setting up of (the Company). Despite the fact that you are the key person providing the services, you only received director's fees of $85,000 each year from (the Company), which appear to be artificially low*. We note that the gross profit that is received by (the Company) is more than $200,000 each YA from YA 2013 to YA 2016.

3. *In view of the facts, the Comptroller of Income Tax ("the Comptroller") is invoking Section 33 of the Income Tax Act to vary your arrangement and tax the full amount of income derived from the provision of medical and consultation services in your hands*. As you had provided documents to show work done by the employees of (the Company), in terms of stock taking and drug purchase, we are thus prepared to recognise (the Company) as a company providing support services to you and we have thus applied a 5% cost mark up as income earned by (the Company).

4. We would like to clarify that the Comptroller has no intention to interfere in the way individuals carry on their businesses, and the use of a specific business form is a choice exercised by taxpayers based on business and commercial considerations. However, we wish to highlight that for income tax purposes when the Comptroller discovers in the course of his audit that the income derived but not properly declared and hence, not taxed appropriately, the Comptroller will revise the assessments to tax the income in the hands of the individual rather than the company.

[emphasis added]

22 In an effort to resolve the differences in the positions between parties, a meeting was held between the taxpayer and his solicitors, and the Comptroller's representatives. According to the taxpayer, he worked on the basis that the issue of his remuneration was no reason to disregard the Company entirely for income tax purposes. On that assumption, he proposed to adjust the quantum of his employment remuneration based on the appropriate market rate. The Respondent's representatives also did not reject the taxpayer's suggestion to submit such a proposal at the meeting[note: 33]. As such, on 1 March 2018, the taxpayer's solicitors sent an email to Ms Chew setting out the taxpayer's proposal to adjust his employment remuneration, pursuant to which the taxpayer's proposed salary was $12,000 a month or $144,000 a year between April 2012 and 2016[note: 34]. A draft employment agreement between the Company and the taxpayer was also included for consideration[note: 35]. Prior to this, the Company and the taxpayer never entered into a formal employment contract.

23 In her email dated 9 March 2018 in response to the email of 1 March 2018, Ms Chew sought clarification on the nature of the Company's revenue derived from locum services[note: 36]. In their reply dated 21 March 2018[note: 37], the taxpayer's solicitors stated that the revenue claimed by the Company from the partnership business was for the engagement or employment of medical practitioners outside the taxpayer's working hours pursuant to Clause 6.5 of the partnership agreement (which was in identical terms as Clause 6.5 of the 1st partnership deed at [5(g)] above. They stated that the taxpayer continued to operate the clinic beyond his working hours pursuant to Clause 6.5 save for 20 – 30 days a year when external practitioners were hired. The locum fees claimed by the Company against the partnership business for locum services, including for the taxpayer, was at $90/hour in the main. It was also clarified that in relation to the taxpayer's locum hours:

… (the taxpayer) has never been paid separately (on a personal income level) by (the Company) for locum hours rendered beyond that specified in Clause 6.4 of the Partnership Agreement. Instead, (the taxpayer)'s employment basic salary coves all working hours at the clinic, even if the hours extend beyond that stipulated in Clause 6.4 of the Partnership Agreement. Meaning, locum fees claimed from the partnership business for locum hours rendered by (the taxpayer) are retained by (the Company). Any improved profitability of (the Company's) business arising from hiring less external locum (and (the taxpayer's) working for longer hours) would be reflected in a higher bonus for (the taxpayer).

Rejection of the taxpayer's proposals to resolve the matter and issuance of the 2nd set of NoAAs

24 By way of an email dated 10 December 2018[note: 38], Ms Chew informed the taxpayer's solicitors that the Comptroller had considered and rejected the taxpayer's proposal of 1 March 2018 to settle the case. The email went on to explain that:

> … since the time that offer was made, IRAS has examined many similar cases and has further refined our position. Based on our current position and the facts in this case, *we would disregard the company entirely for income tax purposes, in view that the income reported in (the Company) was for medical and consultation services rendered by (the taxpayer) to (the clinic). As the income earned was through (the taxpayer's) personal efforts, the full income should be assessed to tax in the hands* of (the *taxpayer)*. This is notwithstanding the fact that he had assigned the said income to his owned company.
>
> [emphasis added]

25 That said, the Comptroller was willing to maintain the position as reflected in the 1st set of NoAAs as the taxpayer "may have been considering to reorganise his medical practice based on the previous IRAS position communicated to him". The Comptroller gave the taxpayer till 21 December 2018 to accept IRAS' previous position, in which case "the company will be disregarded for income tax purposes only from YA 2020 (basis period 2019)". If no acceptance was received by 21 December 2018, the Comptroller would "disregard (the Company) entirely and proceed to raise additional assessments from YA2014 onwards".

26 The taxpayer's solicitors replied to Ms Chew on 21 December 2018, stating that the taxpayer had decided to "appeal further on this matter" and requested IRAS "to issue its Notice of Refusal to Amend".

27 The Comptroller then proceeded to issue five NoAAs for YA2014 to YA2018 based on his "refined" position spelt out in the email of 10 December 2018 to disregard the Company entirely for income tax purposes ("2nd set of NoAAs). That for YA2014 was issued on 31 December 2018[note: 39], while those for YA2015 to YA2018 were issued on 31 January 2019[note: 40]. This resulted in a further substantial increase in the amount of income tax payable by the taxpayer in the relevant YAs[note: 41]. In raising the NoAAs for YA2015 to YA2018, the Comptroller reiterated the basis for doing so in the accompanying letter dated 31 January 2019[note: 42]:

> Based on our current position and facts in this case, we would disregard the company entirely for income tax purposes, in view that the income received by (the Company) was fees for medical and consultation services rendered by you to (the clinic). As the income was earned through your personal efforts, the full income should be assessed to tax in your hands.

28 The cumulative additional income tax payable by the taxpayer for YA2013 to YA2018 as a result of the Comptroller's audit was $128,475.86. The breakdown of the additional tax for each YA as set out in the Agreed Statement of Facts ("ASOF") is as follows:

> (a) By NoAA for YA 2013 dated 28 March 2017: additional tax in the sum of S$35,595.97;
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> (b) By NoAAs for YA 2014 dated 28 March 2017 and 31 December 2018: additional tax in the sum of S$21,856.27;
>
> (c) By NoAAs for YA 2015 dated 28 March 2017 and 31 January 2019: additional tax in the sum of S$21,514.54;
>
> (d) By NoAAs for YA 2016 dated 28 March 2017 and 31 January 2019: additional tax in the sum of $25,127.80;
>
> (e) By NoAA for YA 2017 dated 31 January 2019: additional tax in the sum of S$11,045.56; and
>
> (f) By NoAA for YA 2018 dated 31 January 2019: additional tax in the sum of $13,335.72.

29 In February 2019, through six Notices of Refusal to Amend issued pursuant to section 76(6) of the Act, one for each YA in dispute (i.e. YA2013 – YA2018), the Comptroller informed the taxpayer that he was not prepared to amend the assessment in the NoAAs detailed in [28][note: 43]. The taxpayer's appeal before this Board is in respect of the Comptroller's assessment in these NoAAs.

The law governing the interpretation and application of section 33(1) of the Act

30 Section 33 of the Act provides as follows:

> 33.—(1) Where the Comptroller is satisfied that the *purpose or effect of any arrangement* is directly or indirectly —
>
> *(a) to alter the incidence of any tax which is payable by or which would otherwise have been payable by any person*;
>
> (b) to relieve any person from any liability to pay tax or to make a return under this Act; or
>
> *(c) to reduce or avoid any liability imposed or which would otherwise have been imposed on any person by this Act*,
>
> The Comptroller may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the arrangement and make such adjustments as he considers appropriate, including the computation or recomputation of gains or profits, or the imposition of liability to tax, so as to counteract any tax advantage obtained or obtainable by that person from or under that arrangement.
>
> (2) In this section, *"arrangement" means any scheme, trust, grant, covenant, agreement, disposition, transaction and includes all steps by which it is carried into effect*.
>
> (3) This section shall not apply to —
>
> (a) any arrangement made or entered into before 29th January 1988; or
>
> *(b) any arrangement carried out for bona fide commercial reasons and had not as one of its main purposes the avoidance or reduction of tax*.
>
> [emphasis added]

31 It is noted that although section 33 was amended with effect from 7 December 2020, the above provisions are in *para materia* with the amended section 33.

32 In enacting section 33 in its present substantive form in 1988, the then Minister for Finance, Dr Richard Hu Tsu Tau ("Dr Hu"), explained during the Second Reading of the Bill that it was so necessary in order to meet the need for a more effective general anti-avoidance provision to deal with increasingly sophisticated tax avoidance schemes (see Singapore Parliamentary Debates, Official Report (13 January 1988) vol 50 at cols 358–359):

> … The need to strengthen section 33 *stems from the fact that tax avoidance schemes are getting increasingly complex and are becoming "tailor-made" to suit specific clients*, thereby adding to this difficulty in identifying them. The existing section 33 is grossly inadequate to deal with these schemes. Most countries have taken steps to strengthen their legislation to combat tax avoidance. Even Hong Kong has far wider provisions than our proposed amendment.

> *In assessing whether a particular scheme would fall under the ambit of section 33*, the Inland Revenue Department would, among other things, look for the presence of artificiality, *the interposing of various intermediaries* or transactions to reduce or avoid tax and transfer pricing. *It should be stressed that the aim is to reduce blatant or contrived tax avoidance arrangements and is not intended to affect normal commercial transactions. I would also like to clarify that companies and individuals granted tax exemptions and concessions under specific incentive schemes would not be affected by the new section 33. They will continue to enjoy the tax concessions.*
>
> …
>
> I would like to reiterate that *the sole objective of the amendment is to curb the proliferation of blatant tax avoidance schemes in Singapore and is not intended to affect normal commercial transactions*.
>
> [emphasis added]

33 The leading case of *Comptroller of Income Tax v AQQ and anor* [2014] 2 SLR 847 ("*AQQ*") on the construction, interpretation and application of section 33 involved a financing arrangement that was entered into by the taxpayer in conjunction with a corporate restructuring scheme through which the taxpayer acquired equity interests in and thereby ownership of subsidiary companies, and which was found to amount to an arrangement to avoid tax within the meaning of section 33(1). The Court of Appeal in *AQQ* laid down the principles and the detailed analytical framework for determining if a particular arrangement falls foul of the prohibition against tax reduction or avoidance in section 33. Both parties agree that the analytical framework in *AQQ* applies in the case before us. We hence set out the reasoning and guidance of the Court delivered by Sundaresh Menon CJ in construing section 33 in considerable detail as they directly inform the factual determination of this appeal.

Definition of "arrangement"

34 Section 33(2) defines the word, "arrangement", to mean "any scheme, trust, grant, covenant, agreement, disposition, transaction and *includes all steps by which it is carried into effect*" [emphasis added]. The Court of Appeal stated that the word is a composite term that means the overarching scheme, agreement or transaction and includes the component steps that carry into an effect an arrangement. In this light, the court clarified that "a tax avoidance arrangement may constitute a combination of steps that may be individually unobjectionable" at [43] of *AQQ*. It cited with approval the decision of the Privy Council in *Peterson v Commissioner of Inland Revenue* [2006] 3 NZLR 433 in which Lord Millett explained how a tax avoidance arrangement could be identified at [33]:

> Their Lordships consider that the *Commissioner is entitled at his option to identify the whole or any part or parts of a single composite scheme* as the "contract, agreement, plan or understanding" which constitutes the "arrangement" for the purpose of section 99. *Whether there was a single "arrangement" or two or more connected but distinct "arrangements"* (as there were in *Commissioner of Inland Revenue v BNZ Investments Ltd* [2002] 1 NZLR 450) *is a question of fact for the [Commissioner].* …
>
> [emphasis added]

35 The Court of Appeal in *AQQ* then applied the above definition of "arrangement" to the appeal before them in this way at [44]:

> The Comptroller had chosen – before the Board, the High Court and indeed before us – to particularise the impugned arrangement as the composite scheme that comprised both the Corporate Restructuring and Financing Arrangement. It was on this basis that the Comptroller sought to apply the purpose and effect test in s 33(1). In our judgment he was entitled to do this and we accept that the composite

scheme falls within the definition of "arrangement" in s 33(2). Our ensuing analysis will proceed on this broad premise, with references to the term "Financing Arrangement" used generally where the tax avoidance element can be found in the relevant component steps.

Definition of "purpose or effect" in section 33(1) and the predication principle

36 The Court of Appeal construed the phrase "purpose or effect" *conjunctively* so as to refer to the *objectively ascertained effect* of the arrangement in question: at [45]. In this regard, the court applied the "predication principle":

> 45 AQQ and the Comptroller both agreed with the interpretation that the Judge attached to the phrase "purpose or effect" … Applying the "predication principle" that emerges from Lord Denning's judgment in *Lauri Joseph Newton and others v Commissioner of Taxation of the Commonwealth of Australia* [1958] 1 AC 450 ("*Newton*"), the words are to be construed conjunctively so as to refer to the *objectively ascertained effect* of the arrangement in question. In *Newton*, Lord Denning explained the like phrase found in s 260 of the Income Tax and Social Services Contribution Assessment Act 1936-1951 (Cth) (Aust) then in force in the following terms (at 465–466):
>
>> They show that the section is not concerned with the motives of individuals. It is not concerned with their desire to avoid tax, but only with the means which they employ to do it. It affects every "contract, agreement or arrangement" (which their Lordships will henceforward refer to compendiously as "arrangement") which has the purpose or effect of avoiding tax. *In applying the section you must, by the very words of it, look at the arrangement itself and see which is its effect - which it does - irrespective of the motives of the persons who made it.* …
>>
>> *In order to bring the arrangement within the section you must be able to predicate - by looking at the overt acts by which it was implemented - that it was implemented in that particular way so as to avoid tax. If you cannot so predicate, but have to acknowledge that the transactions are capable of explanation by reference to ordinary business or family dealing, without necessarily being labelled as a means to avoid tax, then the arrangement does not come within the section.*
>>
>> [emphasis in original omitted; emphasis added]
>
> 46 Read as a whole, the "predication principle" is thus concerned with the characterisation of the objective ends of an arrangement, that is, whether it may be predicated from the observable acts by which an arrangement is implemented that it was implemented in that way so as to achieve the ends stated in any of the limbs in s 33(1).
>
> 47 As articulated by Lord Denning, an arrangement would not be predicated as a tax avoidance arrangement if the arrangement is capable of explanation "by reference to ordinary business or family dealing, without necessarily being labelled as a means to avoid tax" (see *Newton* at 466). …

Definition of "to reduce or avoid any liability imposed or which would otherwise have been imposed" in section 33(1)(c)

37 The Court of Appeal stated that section 33(1)(c) includes both tax liability that has been imposed and liability which "would otherwise have been imposed" had the arrangement sought to be impugned had not been entered into. It explained that the insertion of the latter phrase:

> 51 … has the effect of pre-empting the argument raised in *Newton* that the word "liability" only referred to a pre-existing liability that had actually accrued: see *Tan Wee Liang* at 93. In *Newton*, Lord Denning said at 464:

… Their Lordships cannot accept this submission. They are clearly of opinion that the word "avoid" is used in its ordinary sense - in the sense in which a person is said to avoid something which is about to happen to him. He takes steps to get out of the way of it. It is this meaning of "avoid" which gives the clue to the meaning of "liability imposed." *To "avoid a liability imposed" on you means to take steps to get out of the reach of a liability which is about to fall on you.*

[emphasis added]

52 The words "*would otherwise* have been imposed" [emphasis added] postulate a hypothetical liability that was about to fall on the taxpayer which the interpolation of the arrangement had the purpose or effect of reducing or avoiding: see Tang Siau Yan, "Tax Avoidance" in ch 45 of *The Law and Practice of Singapore Income Tax* (Pok Soy Yoong *et al* ed) (2nd Ed, LexisNexis, 2013) at para 45.88.

Interpretation of section 33(3)(b)

38 Section 33(1) does not apply to an arrangement that falls within the ambit of s 33(3)(*b*). Section 33(3)(*b*) contains two cumulative limbs. To fall under this exception, the arrangement:

(a) must have been carried out for *bona fide* commercial reasons; *and*

(b) must not have had as one of its main purposes the avoidance or reduction of tax.

39 The Court of Appeal held that the inquiry into whether the arrangement was carried out for *bona fide* commercial reasons and did not have tax reduction or avoidance as one of its main purposes was a subjective one:

71 We agree with the Judge that the phrase " *bona fide* commercial reasons" necessitates a subjective inquiry. The concept of *bona fides* or good faith is subjective, and the word "reasons" in common parlance concern motives or justifications, which are again infused with a subjective quality.

74 In our judgment, the Judge's reading of "purpose" – as being concerned with the taxpayer's subjective intentions of the end to be achieved in carrying out the transaction – is more consistent with the overall tenor and intention underlying s 33(3)(*b*), which seeks to narrow the *prima facie* overly inclusive scope of s 33(1) that could conceivably catch *any* arrangement that has an objectively ascertainable purpose of reducing or avoiding tax. *The first limb of s 33(3)(b) is therefore concerned with the taxpayer's subjective commercial motives for entering into a transaction, and the second limb is concerned with the subjective consequences that the taxpayer wishes to obtain.* Similarly structured transactions may thus be taxed differently depending on whether the taxpayer had set out to create a result whereby his tax liability was avoided or reduced. *This is to be seen in the context of the fact that s 33(3)(b) only comes into play where the taxpayer is found to have derived a tax advantage on the basis of one or more of the limbs of s 33(1). In that situation, the question then becomes whether the taxpayer is able to take himself out of the operation of s 33(1) by showing that even if objectively it is predicated that he had acted in order to obtain a tax advantage, subjectively, this was not what he had set out to do and that he was acting with bona fide commercial reasons* .

[emphasis added]

Interpreting section 33 purposively – interaction between section 33 and other specific provisions of the Act

40 The Court of Appeal acknowledged that there was a conceptual conundrum which was presented when an overarching general anti-avoidance provision in a taxing statute such as section 33(1) seemed "to pull in the opposite direction from other provisions that appear to exist for the taxpayer's benefit": at [94]. The court hence addressed the tension between specific provisions in the Act and the general anti-avoidance provision. It described the conundrum in this way:

> 94 … how is the general anti-avoidance provision to be construed in a manner that is compatible with the other specific provisions of the statute that appear, on their face, to define the taxpayer's obligations and liabilities and entitle a taxpayer to structure his affairs accordingly in order to reduce his tax liability?

41 In arriving at a purposive interpretation of section 33 to guard against the potentially over-inclusive reach that would follow from a literal interpretation of the threshold limbs of s 33(1), the court reviewed Australian and New Zealand jurisprudence to develop adequate safeguards and held that the correct approach in construing section 33 together with other specific provisions of the Act was the "scheme and purpose approach" adopted by the majority of the Supreme Court of New Zealand in *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2009] 2 NZLR 289 ("*Ben Nevis*").

42 The "scheme and purpose approach" as explained by the majority in *Ben Nevis* was summarised in *AQQ* at [104(b)]:

> … the legislature's purpose was best served by construing specific tax provisions and the general anti-avoidance provision to give appropriate effect to each instead of considering one as overriding the other (at [103]). Where the taxpayer relies on specific provisions, the taxpayer must satisfy the court that the use of the specific provision was within its intended scope and that the use of the provision, viewed in the light of the arrangement as a whole, has altered the incidence of tax in a way that was within the contemplation and purpose of the legislature. If it was not, it will be a tax avoidance arrangement for the purposes of the general anti-avoidance provision (at [107]). The court is not confined as to the matters which may be taken into account in deciding whether a tax avoidance arrangement exists, and a classic indicator is when the taxpayer obtains the benefit of the statutory provision in an artificial or contrived way (at [108]). The court is also not limited to purely legal considerations, but may consider whether the impugned arrangement, viewed in a commercially and economically realistic way, uses the specific provision in a manner that is consistent with the legislature's purpose (at [109]).

43 In endorsing the scheme and purpose approach, Menon CJ explained its advantages in the interpretation of tax legislation as follows:

> 108 We also agree with the reasoning of the majority in *Ben Nevis* that a general anti-avoidance provision should not be read as "overriding" any specific provision of the Act or *vice versa* and would respectfully adopt Richardson J's approach in *Challenge (CA)* on the purposive interpretation of s 33. An arrangement should not be construed as having the purpose and effect of, for example, reducing or avoiding liability imposed by the Act within the meaning of s 33(1) if the arrangement results in a tax effect or advantage that is in fact contemplated by the use of the specific provision in the Act; there is thus, in a legal sense, no *reduction* or *avoidance* of liability that would otherwise have been imposed by the Act. This would enable s 33 to be read purposively, as a provision that can be understood within the context of the Act and in accordance with s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("Interpretation Act") as promoting the overall purpose and object underlying the Act.
>
> 109 The scheme and purpose approach provides a conceptual methodology for analysis that combines tax policy and principle to deal with the question of whether a taxpayer is entitled to point to the use of a specific provision of the Act as not constituting a tax avoidance arrangement under s 33. We acknowledge the force of some of the criticisms that Mr Singh levied against the scheme and purpose approach, but the majority in *Ben Nevis* did not assume that discerning whether the use of a specific provision was within the contemplation or purpose of Parliament would be an easy task, and nor do we. Tax legislation evolves in a fragmented manner according to policy shifts at any single point in time and it

may not be always possible to identify a coherent set of intentions within the Act; but the advantage of the scheme and purpose approach is that it provides a helpful framework in applying s 33(1), instead of asserting a doctrinal position that leans entirely in favour of the taxpayer's choice.

44 The court then set out at [110] the scheme and purpose approach that ought to be adopted with respect to the interpretation of section 33 as follows:

(a) consider whether an arrangement *prima facie* falls within any of the three threshold limbs of s 33(1) such that the taxpayer has derived a tax advantage; and if so,

(b) consider whether the taxpayer may avail himself of the statutory exception under s 33(3)(*b*); and if not,

(c) ascertain whether the taxpayer has satisfied the court that the tax advantage obtained arose from the use of a specific provision in the Act that was within the intended scope and Parliament's contemplation and purpose, both as a matter of legal form and economic reality within the context of the entire arrangement.

The parties' positions on the applicability of section 33 of the Act

45 While parties did not dispute that the three-stage analytical framework laid down by *AQQ* at [44] above is to be applied in determining if the arrangement put in place by the taxpayer was caught by the anti-avoidance provision in section 33[note: 44], their positions diverged in respect of how the three-stage test was to be applied to the factual matrix at hand. As a few sets of submissions were filed by parties in the course of the appeal, should there be refinements or deviations in the positions taken within those submissions, the Board will take the latest positions set out in the closing submissions after the hearing as each party's standing position on a particular issue.

The taxpayer's position

46 The taxpayer submitted that the partnership between the Company and [GBRN] to operate the clinic did not take the form of an arrangement which was caught by section 33(1) in the first place as it amounted to an ordinary business transaction. It could not be predicated that the arrangement had its purpose and effect the reduction or avoidance of tax – any tax advantage which resulted from the arrangement was merely incidental to that. In this regard, there was a disagreement between parties on the scoping of the arrangement in question.

47 Even if the arrangement fell within section 33(1), which was denied, the taxpayer submitted that the statutory exception in section 33(3) applied to him to immunise the arrangement as there were *bona fide* commercial reasons for the arrangement. According to the taxpayer, the sole purpose of the arrangement was to help the taxpayer achieve the business structure which he always wanted to use to enter into the partnership with [GBRN][note: 45]. Tax reduction or avoidance was not one of the main purposes.

48 As an alternative, the taxpayer submitted that the tax difference between a company and an individual, and the Start-Up Tax Exemption ("SUTE") and the Partial Tax Exemption ("PTE") savings arising from sections 43(6A) and 43(6) of the Act which the taxpayer enjoyed as a result of the arrangement were not just incidental to the arrangement but were within the scheme and purpose of those provisions.

49 Finally, the taxpayer contended that the Comptroller did not exercise his powers under section 33(1) fairly and reasonably for two reasons:

(a) The Comptroller's decision to disregard the Company was wholly unreasonable after he had initially recognised the Company as valid during the audit and raised the 1st set of NOAAs; and

(b) The Comptroller unreasonably refused to accept the taxpayer's proposals of 15 August 2016 (at [18(c)] above) and 1 March 2018 (at [22] above) as the proposals would have sufficiently counteracted the tax advantage which the Comptroller considered objectionable.

50 The taxpayer submitted that as the Comptroller did not exercise his discretion fairly and reasonably, he had exceeded its powers under section 33(1) in raising the 2nd set of NOAAs. The assessments made by the Comptroller which are the subject of this appeal are hence *ultra vires* and should be set aside.

The Comptroller's position

51 The Comptroller took the view that sections 33(1)(a) and (c) were objectively engaged. It was submitted that the arrangement had the effect of altering or reducing the taxpayer's tax liability in the following manner:

(a) In relation to section 33(1)(a), the arrangement altered the tax incidence of the income generated from the provision of the taxpayer's medical practitioner services as the income attributable to the taxpayer under the 1st partnership deed, which comprised (i) the FMS; (ii) the locum fees; (iii) the First Cut and (iv) 50% of the Distributable Profits (i.e. after the First Cut had been deducted), was shifted to the Company under the partnership agreement, thereby causing the tax incidence on that income to fall on the Company instead of the taxpayer.

(b) In relation to section 33(1)(c), the arrangement produced the effect of reducing the taxpayer's tax liability through (i) causing the Company to receive the revenue generated from the taxpayer's medical services; (ii) causing the Company to pay the taxpayer an artificially low annual salary; and (iii) causing the Company to issue tax-exempt dividends to the taxpayer. At the same time, the Company was able to benefit from claiming the SUTE and PTE exemptions, lower corporate rate tax rates and rebates. According to the Comptroller, the net result of the arrangement was that "it granted the (taxpayer) access to a substantial amount of the revenue generated from his medical services, as if he had actually received the same amount in his own hands, while paying substantially lesser personal income taxes on the same amount. All in all, the (taxpayer) enjoyed a substantial $128,475.86 in tax savings during the relevant YAs"[note: 46].

52 The Comptroller submitted that taxpayer had failed to show that the statutory exception in section 33(3)(b) was applicable in the circumstances. The arrangement was not carried out for *bona fide* commercial reasons as there were no changes to the business and the taxpayer's medical practice before and after the incorporation of the Company. In addition, the taxpayer's claim of wanting the limited liability protection afforded by a corporate structure was "internally inconsistent and grossly exaggerated"[note: 47]. In any event, the benefit of the limited liability feature of a corporate structure was not its only purpose as the evidence showed that tax reduction was one of the main purposes of the arrangement.

53 Finally, the Comptroller submitted that the taxpayer had not shown that the tax advantage from the use of the SUTE and PTE exemptions under sections 43(6A) and (6C) was within Parliament's contemplation and purpose.

Issues to be considered

54 In determining if the Comptroller correctly invoked section 33(1) to disregard the arrangement effected through the incorporation of the Company and to attribute all of the Company's income to the taxpayer for the purposes of determining the taxpayer's liability to tax, the following issues will be examined by the Board:

(a) The nature of the “arrangement” sought to be impugned under section 33(1);

(b) Whether the purpose or effect of the arrangement fell within the ambit of sections 33(1)(a) and (c);

(c) Whether the taxpayer was entitled to avail himself of the statutory exception under section 33(3)(b);

(d) Whether the taxpayer can rely on sections 43(6A) and (6C) of the Act to preclude the operation of section 33; and

(e) Whether the taxpayer has shown that the Comptroller’s exercise of his powers under section 33(1) was unfair and unreasonable.

55 These issues will be considered in turn.

The nature of the “arrangement” sought to be impugned under section 33(1)

56 The taxpayer submitted that the Comptroller had to particularise the arrangement at the time of invoking section 33(1) and not any later as there was otherwise no way the Respondent could have properly applied that section[note: 48]. Bearing that it mind, the arrangement as formulated by the taxpayer comprised only two steps: (i) the incorporation of the Company and (ii) the Company’s replacement of the taxpayer as a partner of the partnership to receive the income that should have been earned by the taxpayer had he remained as a partner[note: 49], and referred to several emails or letters which Ms Chew wrote to the taxpayer on 28 February 2017, 28 March 2017, 19 September 2017 and 10 December 2018 to show that only these two steps were identified by the Comptroller.

57 The Comptroller disagreed with the taxpayer’s particularisation of the arrangement and submitted that it comprised the following four steps[note: 50]:

(a) On 18 February 2012, the taxpayer incorporated the Company, with the taxpayer as the sole shareholder and director;

(b) On 1 April 2012, the Company substituted the taxpayer as [GBRN]’s partner in the business;

(c) As a result of (a) and (b), the revenue arising from the taxpayer’s medical services was received by the Company instead of the taxpayer; and

(d) The taxpayer (as the sole director) also caused the Company to pay himself an artificially low annual salary and substantial tax-exempt dividends.

58 Having reviewed the evidence before us, we agree with the Comptroller’s identification of the component steps in the arrangement before us.

59 First, the taxpayer’s contention that the Comptroller must particularise the arrangement *and* make known how he particularised it at the time of involving section 33(1) in his tax assessment is not supported by the authorities. The court in *AQQ* did not impose such a duty on the Comptroller when defining the term, “arrangement”. In the High Court decision of *ABC v The Comptroller of Income Tax* [1959] 1 MLJ 162, in dealing with the adequacy of the Notices of Assessment and Additional Assessment issued pursuant to section 76 of the Income Tax Ordinance, Buttrose J found that on the construction of the Ordinance as a whole, he was unable to find anything which required the Comptroller or imposed upon him a duty to specify or give particulars of the sources of a taxpayer’s income before a legal liability to tax was disclosed. While the

Comptroller may wish to assign a source of income if he wished, there was nothing in the Ordinance which could compel him to do so. In response to the taxpayer's argument that these Notices were bad as they simply contained a figure and did not specify or give particulars of the sources from which the chargeable income was derived, Buttrose J opined that "(t)he Comptroller is, in my view, perfectly entitled under the Ordinance to say "I determine your chargeable income at $x and assess your liability to tax at $y" and nothing more".

60 The statutory construction in *ABC* applies with equal force in the case before us – there is nothing in section 33 which imposes a duty on the Comptroller to so particularise the arrangement on which he relies to invoke section 33(1). Contrary to what the taxpayer submitted, section 33(1) does not impose a statutory requirement for the Comptroller to particularise the arrangement which he seeks to impugn. Section 33(1) simply states that the Comptroller is to be "satisfied that the purpose or effect of any arrangement" directly or indirectly results in tax avoidance or reduction. It does not go on to state that for the Comptroller to be so satisfied, he must particularise and inform the taxpayer of the particularisation of the arrangement. To adopt the taxpayer's interpretation of the duty of the Comptroller in this regard would be to read into section 33 what Parliament did not intend.

61 Second, in any event, it is clear from the correspondence between Ms Chew and the taxpayer or his solicitors in the course of audit from February 2016 to December 2018 that the Comptroller was concerned not just with the steps of the arrangement in [56] above but also with the fourth step mentioned in [57(d)]. In respect of the length of the audit, we agree with the Comptroller's submission that the audit concluded in December 2018, and that while it was mentioned in the letter to the taxpayer on 28 March 2017[note: 51] that the Comptroller has "completed our audit review in your partnership income from (the clinic) for the Years of Assessment 2013 to 2016", the audit did not in fact end then as parties continued to correspond thereafter and the taxpayer continued to provide further information and make further offers to the Comptroller until December 2018.[note: 52]

62 With respect, the taxpayer's excerpts of the correspondence between the parties[note: 53] did not give a complete picture of the Comptroller's concerns with the arrangement. As early as August 2016, more than half a year before the issuance of the 1st set of NoAAs, the concern with the low salary drawn by the taxpayer from the Company had been raised. The taxpayer was clearly aware of this concern as he sent an email on 15 August 2016 to address IRAS' concerns, including the "reason for low payout to main service provider, "(the taxpayer)"[note: 54], following a call from Ms Chew in the previous week. The taxpayer further explained the decision to pay him a salary of $7,000 a month in a follow-up email to Ms Chew on 2 November 2016 – this again showed that the issue of the artificially low salary paid to the taxpayer was clearly on the minds of both the taxpayer and the Comptroller.

63 The Comptroller reiterated his concerns in later correspondence. In paragraph 2 of her email of 19 September 2017 (see [21]above, Ms Chew stated that "(d)espite the fact that you are the key person providing the services, you only received director's fees of $85,000 each year … *which appear to be artificially low*" [emphasis added]. Following from that, the taxpayer's solicitors put up another proposal to resolve the matter on 1 March 2018 by increasing his remuneration from $7,000 to $12,000 a month, another strong indication that the taxpayer was aware that the salary issue was of substantial concern for the Comptroller.

64 In light of the above evidence, we agree with the Comptroller's submission that the component steps of the arrangement set out in [57] above were always in the Comptroller's contemplation and that the taxpayer had at the material time been fully aware of this.

65 The Board's ensuing analysis will hence proceed based on the four component steps of the arrangement identified by the Comptroller in [57].

Whether the purpose or effect of the arrangement fell within the ambit of sections 33(1)(a) and (c)

66 Pursuant to the analytical framework in *AQQ*, in the first stage of the inquiry, the Board is to consider whether the arrangement *prima facie* falls within any of the three threshold limbs of s 33(1) such that the taxpayer has derived a tax advantage. In this regard, the purpose or effect of the arrangement is to be objectively ascertained.

Burden and standard of proof

67 In determining the appeals before this Board, the onus of proving that the Comptroller's assessment is excessive falls on the taxpayer: section 80(4) of the Act. The standard of proof required of the taxpayer is on a balance of probabilities: *GCH v Comptroller of Income Tax* [2018] SGITBR 1 at [5]; *ND v Comptroller of Income Tax* [2006] SGITBR 3 at [24].

68 The taxpayer submitted that his legal burden of proving that the assessment is excessive is met so long as he shows that the income assessed against him comprised both his income and the Company's income, and that the Company and he were separate legal entities. Based on the taxpayer's reasoning, when it is undisputed that the Company is a separate legal entity from the taxpayer (which was the case here), and the additional income assessed against the taxpayer was all received by the Company and not by the taxpayer (which was also the case here), "these assessments should naturally and without more be considered to be excessive and correspondingly section 80(4) of the Act would be satisfied, because (the taxpayer) would by default have proven that the assessments in question included income not earned by (the taxpayer) but by a third party"[note: 55]. According to the taxpayer, once he has "proven a prima facie case that the assessments in question are excessive", the burden then shifts to the Comptroller to "rebut the prima facie case or to prove that section 33(1) of the Act applies"[note: 56]. If the Comptroller is able to show that section 33(1) applies, the burden then shifts back to the taxpayer to prove that the exception in section 33(3)(b) applies or that the tax advantage that he derived was within the scheme or purpose of the relevant provisions in the Act[note: 57].

69 With due respect, the taxpayer's interpretation of section 80(4) and its relationship with section 33 in relation to burden of proof turns the provision in section 80(4) on its head.

70 Section 80(4), which is sited in the Part of the Act providing for appeals to this Board, is the provision which stipulates the party on whom the onus or legal burden of proving that the Comptroller's assessment is excessive lies in appeals to the Board against the Comptroller's decision in assessing income tax. The Comptroller's assessment relating to any particular taxpayer would ordinarily take into account not only the categories of income which are subject to income tax under section 10 but also all other provisions in the Act which have the effect or modifying or adjusting the taxpayer's income tax liability, such as deductible expenses under section 14, provisions setting out exemptions from income tax in Part 4 of the Act, and anti-tax avoidance provisions. In arriving at his assessment, the Comptroller would necessarily have to form a view and take a position on whether the provisions in the Act which modify or adjust the taxpayer's liability apply to the taxpayer's specific circumstances. *A fortiori*, whether the Comptroller's assessment is excessive would necessarily need to be determined by examining if the Comptroller's view or position taken was wrong. Seen in its proper operative context, it cannot be that the burden of proof imposed by section 80(4) applies so narrowly and superficially as contended by the taxpayer without the need for the taxpayer to also satisfy the Board that the *basis* for the Comptroller's assessment was wrong.

71 In *ABC*, the rationale behind placing the onus of proving that the assessment of the Comptroller is excessive on the taxpayer in section 80(3) of the Income Tax Ordinance was explained by Buttrose J, who cited with approval the principle enunciated by the A-G CJ Isaacs of the Australian High Court in *Federal Commissioner of Taxation v Clarke* [1927] 40 CLR 246, 251 at p.251 as follows:

> The justice of that burden cannot be disputed. From the nature of the tax, *the Commissioner has, as a rule, no means of ascertainment but what is learnt from the taxpayer, and the taxpayer is presumably and generally, in fact, acquainted with his own affairs.* The onus may prove to be dischargeable easily or with difficulty according to the circumstances.

[emphasis added]

72 Hence, we are of the view that to prove that the Comptroller's assessment was excessive, the taxpayer needs to satisfy us on a balance of probabilities that section 33(1) of the Act was wrongly invoked by the Comptroller.

Whether the objective purpose or effect of the arrangement prima facie falls within section 33(1)

73 We agree with the Comptroller's submission that section 33(1)((c) is satisfied on the facts and evidence presented, and that applying the predication principle laid down in *AQQ*, the objectively ascertained purpose or effect of the arrangement was to reduce the taxpayer's income tax liability.

74 To this end, we have found that it can be predicated from the observable acts by which an arrangement was implemented that it was implemented in a way which achieved the end of reducing or avoiding the tax liability imposed or which would otherwise have been imposed on the taxpayer under section 33(1)(c). It is not disputed that throughout the relevant period, from the time the 1st partnership deed was entered into up to a few years after the incorporation of the Company and the entering into of the partnership agreement, the business of the partnership did not change and the taxpayer continued to be the only anchor doctor of the business. He was the only doctor providing medical services at the clinic both during the stipulated opening hours in Clause 6.4 of the partnership agreement and outside that when he provided locum services to the clinic save for 20 – 30 days each year when external medical practitioners were engaged. The Company was also not involved in any other business or commercial activity save for the business under the partnership. In essence, the *modus operandi* of the partnership, the business and the Company did not change throughout this period.

75 We set out these observable acts in the following paragraphs.

76 First, as mentioned earlier, the terms of the partnership agreement between the Company and [GBRN] were in *para materia* with those in the 1st partnership deed. The most substantive difference between the two sets of documents lay in the change in the recipient of the various payments and remuneration from the taxpayer under the 1st partnership deed to the Company under the partnership agreement as detailed in [15] above. In summary, the components of remuneration or income which the Company received in place of the taxpayer as a result of one of the steps in the arrangement, thereby resulting in the Company substituting the taxpayer as a partner of [GBRN] in the business, are as follows:

(a) FMS at $12,000 a month

(b) First Cut of profits

(c) 50% of the Distributable Profits

(d) Locum fees

77 The Company's total revenue from the above four components in YAs 2013 to 2018 was $1,803,017.78. This revenue would have been paid to the taxpayer in the absence of the arrangement.

78 Second, as its sole director, the taxpayer also caused the Company to pay him a low annual salary. According to the taxpayer in his 2nd Supplementary Affidavit at [24], his annual salary (referred to as "Director's Remuneration" in the Company's annual balance sheets) in 2013 to 2016 was $85,000 per year or $7,000 per month. In 2017, this was raised to $194,260.

79 The taxpayer sought to justify the salary quantum as being in line with the salary of a medical officer with five to ten years' experience, as he had then, and cited the Occupational Wage Survey ("OWS") conducted by the Ministry of Manpower and the Central Provident Fund Board to support his position. While we are willing to and have considered the findings of this survey by virtue of section 80(5)(d) of the Act, which disapplies the strict rules of evidence and empowers the Board to admit any evidence adduced, whether admissible or inadmissible under written law relating to the admissibility of evidence, it is of little assistance to the taxpayer. The roles and duties of the survey respondents to the OWS were not stated and hence, it is unclear if the roles they played were akin to the taxpayer's. The data from the OWS also excluded bonuses, which would be a substantial component of an employee's wages.

80 The taxpayer also argued that his monthly salary of $7,000 with the Company was comparable to the monthly salary of $9,000 which he earned at [NRM] as a deputy medical director. Again, this was not an accurate comparison to make as his role at [NRM] was very different from his role in the Company and the partnership as the sole revenue generator of the business. The Company's cumulative revenue for YA2013 to YA2018 amounted to more than $1.8 million or between $21,700 to $29,600 per month[note: 58], more than three times the monthly salary which the Company paid the taxpayer. This sum represented the value and worth of the taxpayer's role in the partnership both before and after the incorporation of the Company, as agreed to by [GBRN] and reflected in the 1st partnership deed and the subsequent partnership agreement.

81 To put it in proper perspective, for exactly the same role which he played in the business and the partnership before and after the incorporation of the Company, the taxpayer's annual salary as a direct effect of the arrangement was 43.1% of the remuneration he would have received if he, instead of the Company, was the partner.

82 Third, the taxpayer testified that while the Company received locum fees in each of the YAs in question from the taxpayer's overtime medical services, it did not pay him additional salary for the extra hours he clocked. Instead, the Company paid tax-exempt dividends to him from the locum fees it received[note: 59]. The total amount of locum fees received by the Company between YA2013 and YA2018 was $449,520, out of which $420,000 in tax-exempt dividends were paid to the taxpayer[note: 60]. If the arrangement had not been put in place, all the locum fees would have been paid to the taxpayer.

83 The nature of the arrangement in the appeal before us is akin to that in *Wee Teng Yau v Comptroller of Income Tax* [2021] 3 SLR 1290 ("*Wee Teng Yau*"). The background facts and key features of the arrangement were succinctly set out by Choo Han Teck J:

> 1. The Appellant, Dr Wee, is a *dentist who was employed by a dental clinic* known as Alfred Cheng Orthodontic Clinic Pte Ltd ("ACOC") from January 2011 to May 2012. On 1 May 2012, Dr Wee *incorporated a company* known as Straighten Pte Ltd ("SPL"), *of which he was the sole director and shareholder*.
>
> 2. From 1 May 2012, *Dr Wee continued to provide the same dental services to ACOC's patients as he had done before. The only difference is that from 1 May 2012, ACOC paid for Dr Wee's services to SPL instead of to Dr Wee. SPL, in turn, paid Dr Wee a salary and also a director's fee. Tax-exempt dividends were also declared and paid to Dr Wee from the profits remaining in SPL.*
>
> …
>
> 4. For YAs 2013 to 2016, *SPL paid a total of $336,000 by way of director's remuneration to Dr Wee. Dr Wee also received $765,205 by way of tax-exempt dividends as shareholder. During this period, the annual remuneration to Dr Wee from SPL (which ranged between $40,000 to $110,000) was significantly lower than the $279,194.60 which Dr Wee had earned directly from ACOC in 2011.*

> 5. The Comptroller thus treated the fees received by SPL from ACOC as Dr Wee's income and levied tax accordingly. Dr Wee objected on the ground that he should only be taxed on his personal income which was the remuneration that SPL had paid him. The balance from ACOC to SPL should be paid by SPL as corporate tax. By this arrangement, the Comptroller submits, Dr Wee would be paying less tax than if the entire ACOC payment to SPL was treated as income to Dr Wee. The matter was reviewed by the Income Tax Board of Review ("ITBR") which agreed with the position of the Comptroller.
>
> [emphasis added]

84 In our view, the facts in *Wee Teng Yau*, and in particular the parts which we have emphasised in the above extract, are on all fours with those in the appeal. In *Wee Teng Yau*, the High Court found that the arrangement fit under section 33(1)(a) and (c) as "Dr Wee gets the same amount of pay from ACOC but avoids paying the tax he used to pay, because he could use SPL to extract tax benefits that he could not himself obtain": at [8]. Similarly, in the case before us, we agree with the Comptroller's submission that:

> The net result of the Arrangement was that it granted the (taxpayer) access to a substantial amount of the revenue generated from his medical services, as if he had actually received the same amount in his own hands, while paying substantially lesser personal income taxes on the same amount. All in all, the (taxpayer) enjoyed a substantial $128,475.86 in tax savings during the relevant YAs.
>
> (Respondent's Closing Submissions at [39])

85 Before we move on to consider whether the taxpayer can avail himself of the exception in section 33(3)(b), we should address the taxpayer's submission that to determine if section 33(1) is engaged, the Board should first consider the propriety of the arrangement before considering if the arrangement resulted in a reduction of tax liability. The taxpayer's proposed construction to determine the applicability of section 33(1) is, in our view, at odds with the three-stage analytical framework in *AQQ*, which clearly provides that the inquiry into the propriety, justification or intention of the arrangement is a subjective one which is to be considered when determining if section 33(3)(b) applies to take the arrangement out of the ambit of section 33(1) – see [39] above. If we were to adopt the taxpayer's proposed construction, it would render the next stage of the inquiry under section 33(3)(b) otiose and in effect nullify a key component of the three-stage test in *AQQ*.

86 To recapitulate, we find that the arrangement fell within the ambit of section 33(1)(*c*) based on the objectively ascertainable purpose or effect of the component steps of the arrangement which, taken together, have the effect of reducing the taxpayer's liability in income tax. In the same vein, section 33(1)(a) is also engaged by virtue of the arrangement, the effect of which is to alter the incidence of tax payable by the taxpayer given that under the arrangement, the four components of income generated by the business (i.e. the FMS, First Cut, Distributable Profits and locum fees) are payable to the Company instead of the taxpayer.

Whether the taxpayer was entitled to avail himself of the statutory exception under section 33(3)(b)

87 As section 33(1) has been engaged, to avail himself of the statutory exception under section 33(3)(b), the taxpayer must prove that the arrangement (i) must have been carried out for *bona fide* commercial reasons; *and* (ii) must not have had as one of its main purposes the avoidance or reduction of tax. This conjunctive inquiry is a subjective one – as was held in *AQQ* at [74], the first limb of section 33(3)(b) is concerned with the taxpayer's subjective commercial motives for entering into a transaction, and the second limb is concerned with the subjective consequences that the taxpayer wishes to obtain.

88 The Court of Appeal in *AQQ* stated that in determining the subjective intentions of the motives of the taxpayer, as such subjective intentions might not be readily apparent, the Board or Judge may ascertain this by reference to evidence or testimony of the taxpayer's actual contemporaneous state of mind and assess the

veracity of this by drawing the requisite inferences from the surrounding objective evidence or features of the arrangement: at [82]. This fact-sensitive inquiry was reiterated by the High Court in *Wee Ten Yau* at [18]:

> I agree … that s 33(3)(b) has an extremely broad reach. That is because it declares that s 33 does not an apply to any arrangement which "had not as one of its main purposes" the avoidance of tax, and the court cannot redraft it by replacing "one of" with "the". Hence, *we have to read "bona fide commercial reasons" and "had not as one of its main purposes" together.* The Court must inquire into the tax advantage the taxpayer hopes to obtain from the arrangement in question. *If the taxpayer's intentions, as inferred from the surrounding evidence or features of the arrangement, were to reduce or avoid tax liability, s 33(3)(b) does not apply for his benefit* (*AQQ* at [74] and [82]). One should bear in mind that s 33(3)(b) is supplemental to s 33(1) and is intended to facilitate the interpretation of that provision.
>
> [emphasis added]

89 Having regard to the evidence presented by the taxpayer of his actual contemporaneous state of mind and subjective intentions, and assessing the veracity of that evidence by drawing the requisite inference from the surrounding objective evidence and features of the arrangement, we find that the taxpayer has not shown that the statutory exception in section 33(3)(b) applies to exempt him from the application of section 33(1). Our reasons are elaborated on below.

The presence of bona fide commercial reasons - the taxpayer's subjective commercial motives for entering into the arrangement

90 We have earlier found that the arrangement, when objectively considered, had the effect of reducing or avoiding the taxpayer's tax liability within the ambit of section 33(1). At the second stage of the inquiry, which is a subjective one, the taxpayer first needs to prove that, despite it being caught by section 33(1), the arrangement was carried out for *bona fide* commercial reasons.

91 The taxpayer maintained throughout the audit process and during the appeal to the Board that the purpose of incorporating the Company to enter into the partnership with [GBRN] was to enable him to have the protection of limited liability which the separate legal personality of the Company provided, and that he formed the intention to do so from the outset when the partnership idea was first discussed. As he explained in his affidavit (AAEIC-1 – 123) at [13]:

> By nature I am a risk-adverse and cautious individual. I had intended from the outset to enter the Business through the Company, because I knew that I would not be legally protected had I personally entered directly into a partnership with [NRM], as compared to just being an employee of [NRM]. I had intended to use a company as a shield in order to mitigate exposure to potential liabilities numerous risks from being a partner of a partnership business, especially personal liability for the debts and liabilities of the Business.

92 The taxpayer's evidence is that while he had the intention all along to use a corporate vehicle to entire into the partnership, he delayed the incorporation of a company for a few months for a number of reasons – see [11] above.

93 Although the taxpayer has asserted that he had the intention to incorporate a company to enter into the partnership from the get-go, there is no contemporaneous objective evidence to support that. The proposal to [NRM]' Board of Directors dated 10 June 2011, which was documented by the taxpayer himself together with the Financial Controller, and which went into detail on the key aspects of the proposed partnership and the clinic's projected patient load and financial returns, did not make any mention of the possibility or intention of using a corporate vehicle by the taxpayer in the partnership. Such a critical component of the proposal, especially for a risk-adverse and cautious individual like the taxpayer, should or would have been mentioned in the proposal. In support of his averment that [NRM] had approved the use of the Company prior to its incorporation[note: 61], the taxpayer attached the email correspondence with [NRM] on 31 January 2012. In our

view, the email exchange does not support the taxpayer's contention. The email exchange took place more than seven months after the approval of the partnership proposal in June 2011. The content of the email exchange also does not show either that there were discussions on the use of the corporate vehicle by the taxpayer at the outset or that [NRM] had informally supported the replacement of the taxpayer with the Company as the partner. The email correspondence only indicates that as at January 2012, the taxpayer was desirous of changing the partners in the business "to [NRML] and My Company". It could also be inferred from the exchange that parties were still in discussion over whether to change the name of the partner from the taxpayer to the Company and in that context, the taxpayer requested "a draft partnership for this model that I can start looking through". When the Financial Controller later sent the taxpayer draft partnership agreements, she stated that they were for "(the taxpayer's) reference *if you want* to convert your partnership from our name to your company's name" [emphasis added]. In our view, the clear inference to be drawn from the exchange is that several months after the 1st partnership deed was entered into, the taxpayer was still actively considering the use of the company as a partner, and that no final decision or agreement had been made in this regard.

94 As for the taxpayer's submission that he incorporated the company in order to benefit from the protection offered by limited liability, we are not convinced that the mitigation or shield against potential liabilities which incorporation brings through its separate legal personality was as important a consideration for him as he sought to impress upon the Board.

95 In [24] – [28] of his affidavit (at AAEIC-7 and 8), the taxpayer stated that he faced the following potential liabilities without the limited liability protection of the Company:

(a) Liability from medical claims – the taxpayer was worried that the insurance coverage under his Medical Protection Society ("MPS") membership would not fully cover all the medical claims brought against him personally as the MPS could choose whether to decline or limit the granting of professional indemnity to a member. He could hence be personally liable for the amount of the claim not covered by the MPS coverage.

(b) Public liability claims – He was not sure if the public liability insurance taken out by the [NRM] group would cover his share of liability in claims for bodily injury arising out of accidents at the clinic. He might hence be potentially liable for such claims.

(c) General contractual and commercial liabilities – As his MPS coverage and the public liability insurance taken out by the [NRM] group would not cover the contractual and commercial liabilities of the business, including those arising out of the day-to-day running of the business and the leasing of the premises, there was a "genuine and commercial need for the limited liability protection of the Company"[note: 62] as he would still be personally subject to unlimited liability for the debts and commercial liabilities of the business as a sole-proprietor partner of the partnership without the limited liability protection of the Company.

96 We find that the taxpayer has exaggerated the effect of the limited liability protection:

(a) With respect to the protection from liability arising out of the various types of claims, he has already covenanted in Clause 6.3(d) of the partnership agreement to "make good to the New Partnership any loss occasioned by his negligence or misconduct". This means that having a limited liability corporate structure would not address his concerns as there would be no protection even with the corporate structure where the liability occurred as a result of the taxpayer's negligence or misconduct. This carve-out considerably reduces the limited liability protection of a company set-up.

(b) With respect the protection from medical claims, we agree with the Comptroller's submission that as the taxpayer's liability in a medical negligence claim arises out of a duty of care that is personally owed by the doctor to the patient, it cannot be limited or transferred to the Company. Although the taxpayer gave evidence that he was not sure that medical negligence claims against doctors were personal in

nature and could not be shielded by a corporate vehicle[note: 63], we do not give much weight to that evidence. As a senior doctor and a deputy medical director of a large medical service provider, he should or would be aware of this. Even if he did not, he should and would have done his due diligence when deciding whether to incorporate a company to reap the extent of the limited liability benefit which so concerned him.

(c) As for the protection from public liability claims, the taxpayer's assertion on this in his affidavit was contradicted by his testimony during cross-examination, when he clarified that the public liability policy taken out by the [NRM] group did cover his liability to some extent and that in any event, he could have taken out the public liability insurance personally to cover any such risks[note: 64]. In our view, the evidence given by the taxpayer was quite uncertain in this regard, which only shows that this was not a factor he took into account seriously at the relevant time.

(d) As for the taxpayer's concern with general contractual and commercial risks and liabilities, we agree with the Comptroller's submission that any commercial risk he would have been exposed to during the course of running the business would have been significantly mitigated by the fact that [GBRN] was an equal partner in the business. In this regard we accept the Comptroller's reasons at [57] of the Respondent's Closing Submissions as to why this would be the case:

> [GBRN] is a subsidiary of a large corporate group held under IHH Healthcare Berhad, a company listed on the Singapore Stock Exchange and Bursa Malaysia, that had significant experience operating 1,000 medical clinics across Singapore and Asia. This meant that [GBRN] had significant experience and legal resources at its disposal, which would have been extended to assist the Business to navigate commercial issues that may arise. [GBRN] had every interest to extend support because it had a 50% stake in the Business, which meant that any liabilities or losses incurred by the partnership would be [GBRN]'s as well.

97 At the hearing, the taxpayer essentially agreed with the analysis set out in the above extract[note: 65].

98 In light of our findings on the facts and evidence presented before the Board at [96], we are *not* persuaded that the the protection of limited liability through the incorporation of the Company by mitigating or shielding him from different types of potential liability was a reason for the arrangement. There was also no other cogent evidence proffered to suggest that there was any other commercial objective achieved with the incorporation. This would dispose of the taxpayer's argument that he should be entitled to rely on section 33(3)(b) to exempt him from the prohibition against tax avoidance in section 33(1).

Whether avoidance or reduction of tax was one of the main purposes - the subjective consequences that the taxpayer wished to obtain

99 Should we be wrong to find that limited liability protection was not a reason why the taxpayer entered into the arrangement, and that in reality the there were *bona fide* commercial reasons for entering into the arrangement, the taxpayer still has to go on to show that avoidance or reduction of tax was *not* one of the main purposes of the arrangement sought to be impugned. For completeness, we have also considered the second limb of the inquiry under section 33(3)(b).

100 We have earlier found that the objective purpose or effect of the arrangement resulted in substantial cumulative tax savings for the taxpayer in YA2013 to YA 2018 amounting to $128,475.86. The rate of tax savings ranged from 38.1% in YA2017 to 46% in YA2018 to a high of 90% and 94.3% in YA2015 and YA2013 respectively.[note: 66] This was a direct result of the fact that by virtue of the arrangement, (i) all the revenue generated through the provision of the taxpayer's medical services, who was essentially the sole revenue generator of the business, was banked into the Company's account instead of the taxpayer's; (ii) he was paid an artificially low annual salary; and (iii) he was paid substantial tax-exempt dividends out of the locum fees the Company received from the locum services which the taxpayer himself provided – see our analysis in [76] to [84].

101 In this regard, we have earlier highlighted that the *modus operandi* of the clinic and the business of the partnership after the arrangement was put into place was essentially the same throughout the relevant YAs as that prior to the incorporation of the Company: see [74].

102 We note that almost all of the taxpayer's locum fees were withdrawn from the Company tax-free – out of a total of $449,520 in locum fees received by the Company in YA2013 to YA2018, $420,000 or 93.4% of that sum was received by the taxpayer in the form of tax-free dividends. We also note that based on the taxpayer's reported annual salary of $85,000, the taxpayer's total salary in the relevant YAs was only 43.1% of the income that he would have received if he had continued as a partner of the business in his own name if the arrangement had not been put in place. The annual salary which the taxpayer received was also solely for his medical services and not for his other roles and functions – the taxpayer informed Ms Chew during the course of the audit in his email of 2 November 2016 that as "the starting years were all about survival", he put in the extra hours (both as a locum as a manager running the clinic) "for free during the extra hours"[note: 67].

103 In that same email to Ms Chew, the taxpayer himself admitted that he "use(d) tax structuring to help me with the startup of a business, which is a fair advantage all new business (*sic*) enjoy". As there was a dispute between parties as to whether that statement by the taxpayer went on to show that the taxpayer had intended to obtain the benefit of tax reduction or avoidance as one of the main purposes of the arrangement, we have set out the entire paragraph in which the above statement appears to put it in its proper context:

> 3) I hope some leeway can be given to alleviate the pains of the starting years. Apart from uncertain business prospects, there was a lot of capital injection during the start up. *If anything, I use tax structuring to help me with the startup of a business, which is a fair advantage all new business enjoy.* The startup capital for the partnership should be around 114k. I hope IRAS can take this into consideration when deciding how much needs to be reversed in the starting year.
>
> [emphasis added]

104 What is clear from a reading of the paragraph is that the taxpayer was concerned with the high startup capital required to kick off and run the business. He was also concerned with the "uncertain business prospects". This was why, as he explained, he used "tax structuring to help me with the startup of a business, which is a fair advantage all new business (*sic*) enjoy" to "alleviate" the heavy financial commitment involved. When the Comptroller's counsel queried him about the statements he made in the said email at the hearing, the taxpayer agreed that he wanted and needed the tax savings which came with the incorporation of the company. The taxpayer's evidence on the stand corroborated the documentary evidence in the email as to the taxpayer's subjective intentions pertaining to the purpose of the arrangement:

> Q: Okay, right. So correct me if I am wrong, in other words *when before the business commenced, you were already at a disadvantage*. Okay, before you answer this. By that, let me just clarify. *What I mean by disadvantage, you were out of pocket by $57,000, that's the first disadvantage*.
>
> A: *Correct*.
>
> Q: *And the second disadvantage is that you faced the uncertain business prospects for the first year*.
>
> A: Yes, *you are right*.
>
> Q: Right. And in your email, if I can bring you back to the email in Ms Chew's affidavit, page 163, you have described this disadvantage as the "pains of the starting year".
>
> A: Yes, you are right.

Q: Right, okay. Now I'll bring your attention to this specific sentence: "If anything, I used tax restructuring to help me to start off the business, which is a fair advantage all new business enjoy." You see that sentence?

A: Yes, you are right, I see it.

Q: *You would agree with me that anyone reading that sentence, in essence, what you are telling the IRAS auditor, right, was that you wanted the tax saving benefits that came with the incorporation of a company, correct*?

A: *Yes, that can be one of the reasons*.

Q: Yes, one of your reasons, okay. *And you needed this advantage because like you said and agreed to, your starting point, you were already in a disadvantageous position*.

A: *Yes, you are right*.

[See the Transcript (Day 1) at page 109/line 12 to page 110/line 17; emphasis added]

105 The taxpayer has sought to characterise the tax advantage as a "by-product" of the arrangement and not its main objective[note: 68], and pointed to his testimony during his re-examination at the hearing where he said that "tax probably wasn't my main motivation or driver for setting up a company. I mean it may be a good by-product to have itself or one of the points to help me along"[note: 69]. Regardless of how one were to characterise it, from his email to Ms Chew, it was evident that to the taxpayer's mind, one objective of the "tax structuring" was to help relieve the burden of the substantial financial outlay which was required to be committed to the business of the partnership. In our view, this was yet another proof point towards deciphering the subjective consequences the taxpayer wished to obtain from the arrangement.

106 To our minds, the objective evidence as to the economic and financial consequences of the arrangement which we have just spelt out, coupled with the evidence on the taxpayer's state of mind at the material time, point strongly to the conclusion that tax reduction or avoidance was indeed one of the main purposes, if not the main purpose, of the arrangement.

107 Set against this, the taxpayer has put forth no cogent evidence that tax reduction was not a main purpose of the arrangement.

108 Finally, the taxpayer sought to argue that he had in fact received substantially less monies from the partnership in the course of the six YAs under the arrangement than he would hypothetically have received without the arrangement in place. According to the taxpayer, with the arrangement in place, the total amount he received in those years after deducting his tax liability from the income that he had declared to IRAS was $1,165,606, inclusive of the tax-free dividends of $420,000 he received in YA2014, YA2016 and YA2017. However, if he had not entered into the arrangement, the total income he would have received over the same period would have been $1,436,664, $271,058 *more* than what he did in fact receive with the arrangement in place. He arrived at the figure of $1,436,664 by adding the same tax-free dividends of $420,000 to the total amount he would have hypothetically received after deducting his tax liability pursuant to the six NoAAs (see [28]) from the income that he would have received if the partnership arrangement under the 1st partnership deed had remained in place.

109 With respect, the taxpayer's basis for comparison in this regard is flawed.

110 First, a material indication that an arrangement contains tax avoidance or reduction as one of its main purposes is the amount of tax savings reaped as a consequence. It has already been shown that with the arrangement in place, the taxpayer reaped substantial tax savings amounting to $128,475.86. The adding of tax-free dividends to the total sum received by the taxpayer in the relevant years as a direct result of the tax savings obtained does not erase the fact that the taxpayer had benefitted from tax savings with the arrangement which the Comptroller now says he was not rightly entitled to.

111 Second, as the Respondent correctly pointed out at [94] of the Respondent's Reply Closing Submissions, the comparison fails to take into account the fact that a substantial amount of the partnership profits was retained in the Company as retained earnings, which the taxpayer had ready access to as the sole shareholder and director of the Company. We also agree with the Respondent that the taxpayer's argument that he would have wanted to get his hands on the monies in the Company as quickly as possible instead of leaving them exposed to the creditors if tax avoidance was the arrangement's main purpose was speculative – it is, as the Respondent argued and which we agree with, "difficult to see how a taxpayer's desire to receive monies as quickly as possible, or avoid exposure to creditors, is evidence of an intention to avoid tax": at [95] of the Respondent's Reply Closing Submissions.

112 We hence do not find that the taxpayer's comparison at [108] assists him to show that avoidance or reduction of tax was not one of the main purposes of the arrangement.

113 For the reasons we have set out, we find that the taxpayer was not entitled to avail himself of the statutory exception under section 33(3)(b).

Whether the taxpayer can rely on sections 43(6A) and (6C) of the Act to preclude the operation of section 33

114 While we have found that section 33(3)(b) did not apply to the taxpayer, he can nevertheless avoid the consequences of section 33(1) if he is able to show that the arrangement in question results in a tax effect or advantage that is in fact contemplated by the use of a specific provision in the Act, in which case there is, in a legal sense, no reduction or avoidance of tax liability: see *AQQ* at [108] at [43] above. To this end, pursuant to the "scheme and purpose approach", the rationale of which was explained (see [42] and [43)above) and laid down by the Court of Appeal in *AQQ* at [110] (see [44] above), the Board will need to be satisfied that the tax advantage which the taxpayer obtained arose from the use of a specific provision in the Act that was within the intended scope and Parliament's contemplation and purpose, both as a matter of legal form and economic reality within the context of the entire arrangement.

115 The taxpayer submitted that the PTE and SUTE savings provided for in sections 43(6A) and 43(6) respectively of the Act which the taxpayer enjoyed as a result of the arrangement were not just incidental to the arrangement but were within the scheme and purpose of those provisions.

The purpose of the introduction of the PTE and SUTE tax exemption schemes by Parliament

116 In recognition of the fact that small businesses formed an important component of the Singapore economy, the PTE scheme was introduced from YA2002 to help them get established and grow. In his Budget Statement in 2001, the Minister for Finance explained the objective of the PTE scheme and how the partial tax exemption would assist such businesses in their entrepreneurial pursuits:

> *The Government also recognises that small businesses are an important component of the Singapore economy. To help such companies, I have decided to introduce a tax exemption scheme that will help them grow and get established.*

With effect from YA2002, three-quarters of up to the first $10,000 of a company's chargeable income, and one-half of up to the next $90,000 will be exempt from corporate tax. The remaining chargeable income will be taxed at the newly lowered rate of 24.5%.

This means that many small and medium enterprises and start-ups will have their taxes reduced by more than half, for the same chargeable income. Based on current data, about two-thirds of taxable companies will be taxed at less than half the previous tax rate. *Companies, most particularly, smaller enterprises, can look forward to being able to plough more of their profits back to their business to exploit growth opportunities.*

All companies, not just the small and medium-sized ones, will enjoy the tax exemption. The benefits passed on to companies arising from the lower corporate tax rate under this new tax regime are estimated to amount to $680 million annually. *This overall lowering of the tax burden is a demonstration of the Government's resolve to keep our corporate tax rate competitive globally, and our belief in the importance of creating a pro-business environment that is conducive to entrepreneurship.*

The tax exemption will not apply to Singapore dividends received by companies. Such dividends will be taxed at 24.5%.

[emphasis added]

117 The SUTE scheme was introduced from YA2005 to enhance the level of assistance to encourage and support new companies to thrive and succeed. In his Budget Statement in 2004, the Deputy Prime Minister and Minister for Finance made it clear that the SUTE was targeted at new companies in order to encourage and reward entrepreneurs who started up new companies to pursue their business ideas:

Encouraging Entrepreneurship

<u>Tax Exemption for New Companies</u>

4.20 *New companies represent our hopes for a more entrepreneurial economy. Government will give these start-ups every opportunity to thrive and succeed*. I have therefore decided to fully exempt from tax the first $100,000 of normal chargeable income (excluding Singapore dividends). This exemption will apply to new companies for each of their first three years of assessment that fall within the period YA 2005 to YA 2009. This, together with the current partial tax exemption feature of our corporate tax regime, underscores our commitment to keep statutory costs on entrepreneurs as low as possible. Details of this scheme are provided at <u>Annex C</u>.

…

<u>Annex C – Tax Exemption Scheme for New Companies</u>

1. To lower the statutory burden on small companies and to help them get established, the Government introduced the partial exemption feature into our corporate tax system in Budget 2001. This exempts three-quarters of the first $10,000 of normal chargeable income (excluding Singapore dividends received by companies) and half of the next $90,000 of normal chargeable income from corporate tax.

2. *To encourage and reward entrepreneurs who start up new companies to pursue their business ideas, a full tax exemption scheme for new companies will be introduced*. Qualifying new companies will now enjoy full tax exemption on the first $100,000 of their normal chargeable income. Similar to the current

partial tax exemption scheme, the tax exemption will not apply to Singapore dividends received by the qualifying companies. *This scheme will enable new companies to retain a larger portion of their earnings to be ploughed back into their businesses*.

[emphasis added]

118 It is clear that the PTE and the SUTE schemes, taken collectively, are targeted at entrepreneurs who use the corporate vehicle to grow their businesses and pursue their businesses by reducing the amount of taxes they have to pay so that they can plough back or reinvest a larger portion of their earnings and profits in their business, and pursue business ideas and growth opportunities. The two schemes are not, as the taxpayer sought to argue, merely "natural benefits of incorporating a company"[note: 70], as is clear from the Budget Statements above. They were established with specific purposes and objectives in mind, in furtherance of spurring economic growth through the support of the entrepreneurial spirit and the pursuit of business ideas.

Whether the tax advantage obtained by the taxpayer was within the intended scope of the PTE and SUTE schemes and Parliament's contemplation and purpose

119 Having regard to the purpose and objectives of the PTE and SUTE schemes, on the facts and evidence before us, it is clear to the Board that the tax advantage obtained by the taxpayer through the PTE and SUTE schemes was not within the contemplation or purposes of Parliament – it was not within the scheme and purpose of sections 43(6A) and 43(6) of the Act.

120 In coming to this conclusion, we note that there is no evidence placed before us to suggest that the taxpayer either took steps to grow or expand his medical business, pursue business ideas or to plough back the retained profits and earnings into growing the business. Contrary to the taxpayer's argument[note: 71], the fact that the taxpayer left his job at [NRM] and went into the partnership venture with [GBRN], in and of itself, is not sufficient evidence of his entrepreneurial efforts and pursuits for the purposes of the PTE and SUTE schemes, which is aimed at the pursuit of business ideas and business growth.

121 A review of the Statements of Account of the Company for YA2013 to YA2016 also shows that the taxpayer's salary formed a large part of its expenses, while the rest of the expenses were incurred towards the operations of the clinic, e.g. entertainment costs, office supplies, telecommunication and staff refreshments[note: 72]. The taxpayer also confirmed during cross-examination that there were no plans to expand the business either when the Company was incorporated or thereafter: see the Transcript (Day 1) at page 144/line 2 to line 22.

122 As the taxpayer has failed to show that the tax advantage he obtained by virtue of the arrangement was within the scheme and purpose of sections 43(6A) and (6C) of the Act for the above reasons, we find that the taxpayer cannot rely on these provisions to preclude the operation of section 33. For the avoidance of doubt, our decision is not to be interpreted as being applicable to all corporate vehicles of a similar nature: whether the tax advantage enjoyed by a particular taxpayer would fall within the intended scope of the PTE and SUTE schemes under sections 43(6A) and 43(6) would necessarily depend on the specific factual matrix in question.

Whether the taxpayer has shown that the Comptroller's exercise of his powers under section 33(1) was unfair and unreasonable

123 The taxpayer argued that the Comptroller did not exercise his powers under section 33(1) fairly and reasonably as, first, the decision to disregard the Company after he had initially recognised the Company as valid was unreasonable; and second, the Comptroller had unreasonably refused to accept the taxpayer's proposals to address the Comptroller's concerns as they would have sufficiently counteracted the tax advantage which the Comptroller considered objectionable: see [49] and [50] above.

124 In *AQQ*, the Court of Appeal gave guidance on the appropriate standard of review over the Comptroller's exercise of his powers under section 33(1) to "disregard or vary the arrangement and make such adjustments as he considers appropriate … so as to counteract any tax advantage obtained … from or under that arrangement":

> 118 Section 33(1) is an empowering provision conferring wide powers of reconstruction; the Comptroller "*may*" disregard or vary an arrangement "as he *considers* appropriate" where "he is *satisfied*" that the arrangement falls within one of the three limbs. The words used in s 33(1) are therefore reminiscent of statutes conferring administrative discretion. In *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR(R) 484 ("*JD Ltd*"), this court commented on the scope of review in an appeal against a decision of the Comptroller that involved an exercise of discretion and observed that where a provision provided that the Comptroller was to be "satisfied" (at [49]):
>
>> … [s]ome degree of administrative discretion is therefore conferred on the Comptroller, who has to be satisfied that the interest expended on borrowings was incurred to earn the dividend income. We are of the opinion that such discretion, as has been acknowledged by the Comptroller, does not give the latter *carte blanche* authority but is instead to be exercised in good faith and in the interests of good administration.
>
> …
>
> 121 … *we cannot accept Mr Singh's argument that the court's scope of review necessarily entails a full and unconstrained consideration of the merits*. Mr Singh's basic submission that the court is entitled to review the exercise of the Comptroller's discretion under s 33 is undoubtedly correct. Section 34 puts it beyond doubt that ss 79 and 81, which are expressly stated to apply to the Comptroller's *assessments*, also apply to the exercise of the Comptroller's discretion ...
>
> 122 *However, it does not thereby follow that the standard of review on appeal in relation to the exercise of an administrative discretion would entail a complete reconsideration of the merits of the matter without any regard to the manner in which the Comptroller did in fact exercise his discretion*. ....
>
> 123 The authorities demonstrate that the same intensity of review does not apply to all issues before the court on an appeal from the Board (or for that matter, on an appeal to the Board from the Comptroller's decision). For example, *when the court considers an appeal from the Board on a finding of fact, the question that the court asks itself is whether "no reasonable body of members constituting an Income Tax Review Board could have reached the findings reached by the Board"* (*per* Chan Sek Keong JC, as he then was, in *Mount Elizabeth (Pte) Ltd v Comptroller of Income Tax* [1985–1986] SLR(R) 950 at [17]). … The approach of this court in *JD Ltd* similarly recognised that a more limited degree of review, inherent in the appellate review process, was appropriate where the Comptroller's exercise of a flexible statutory discretion was challenged before the court.
>
> 124 *We affirm the standard of review adopted by the Judge in this case, namely that the Comptroller had to exercise his powers in a manner that was "fair and reasonable".* This is consistent with the general latitude accorded to the Comptroller in *JD Ltd* where the exercise of an administrative discretion was called into question. The court is therefore entitled to strike down any variations or adjustments made by the Comptroller that are arbitrary or unreasonable as well as any excessive or abusive exercise of discretion that falls outside the scope of the Comptroller's powers under s 33(1). *However, this review is necessarily limited, and where there are two or more methods of counteracting a tax advantage, it is not for the court to decide that one particular method is to be preferred over the others*. Such an attenuated standard of review would not render the statutory right of appeal under the Act nugatory.

To counteract a tax advantage

> 125 The Judge did not expressly analyse the meaning of the phrase "counteract the tax advantage" in s 33(1), and the section does not contain express statutory guidance as to how the relevant tax advantage may be identified or counteracted. Reading s 33(1) as a whole, "tax advantage" is referable to the tax liability that the arrangement had the purpose or effect of avoiding or reducing; and *the word "counteract" indicates that the Comptroller's powers can only be exercised to nullify the tax advantage that was obtained and nothing more*. Section 33(1) operates as (i) a voiding provision to disregard the arrangement, (ii) a reconstruction provision empowering the Comptroller to vary or make adjustments to the tax elements of the arrangement and (c) a charging provision that allows for the imposition of liability to tax. ...
>
> 126 *There is nothing in the section that mandates the Comptroller to take a particular course or choose a specific mode of exercising his powers, as long as the final object of counteracting the tax advantage is attained*. …
>
> [emphasis added]

125 In gist, the appropriate standard of review is whether the Comptroller exercised his powers in a manner that was "fair and reasonable". In this regard, the review by the Board or the appellate court, as the case may be, is necessarily limited, and where there are two or more methods of counteracting a tax advantage, it is not for the Board to decide that one particular method is to be preferred over the others.

126 Bearing in mind the above guidelines, the taxpayer has failed to persuade the Board that the Comptroller did not exercise his powers under section 33(1) fairly or reasonably.

127 In respect of the taxpayer's argument that the Comptroller's ultimate decision to completely disregard the Company was wholly unreasonable after he had initially recognised the Company as valid during the audit and raised the 1st set of NOAAs, with respect, this is borne out of a mischaracterisation and incomplete exposition of the audit process and extended negotiations between parties as detailed in [17] – [27] above. Importantly, the audit process which commenced in February 2016 only concluded in December 2018/January 2019, and not with the issuance of the 1st set of NOOAs. It is important to note that the taxpayer never accepted the assessments in the 1st set of NOOAs in any event. In addition, neither the taxpayer nor the Comptroller accepted the various proposals made by the other party during the course of the audit – while there were offers made and refined along the way, there was no amicable resolution reached between parties as they could not agree on the different proposals made. We hence do not agree with the taxpayer's assertion that the Comptroller had "made a sudden 180 degree change on 10 December 2018" by disregarding the Company entirely[note: 73].

128 We further agree with the Comptroller's account of what transpired during the audit and negotiations as follows, as that is borne out by the documentary evidence and the testimony of the witnesses (at [108] of the Respondent's Reply Closing Submissions):

> (a) As Ms Chew explained under cross-examination, the use of the 5% cost mark-up stated in her email of 28 February 2017 (see [19] above) was a concession that the Comptroller was willing to extend to the taxpayer at that time. It is irrelevant to the appeal before the Board whether or not the concession was an administrative practice that had been extended to other doctors.
>
> (b) Since the email of 28 February 2017, although the taxpayer had ample opportunity to agree that the Company provided support services to him and to hence apply a 5% cost mark-up for the support services provided, he never did so. On the contrary, the taxpayer disagreed that the Company was set up to provide support services to him. As the taxpayer's counsel stated in their email to Ms Chew dated 25 April 2017, "we strongly disagree with any notion that the Company was set up to provide support services to (the taxpayer)".

(c) The Comptroller explained the reason why he ultimately made the decision to assess the Company's income under the taxpayer instead of using a 5% cost mark-up. As stated in Ms Chew's email of 10 December 2018 he had made the decision after having "examined many similar cases" and "further refin(ing) (his) position" since 28 February 2017.

129 In respect of the taxpayer's argument that Comptroller had unreasonably refused to accept the taxpayer's proposals as they would have sufficiently counteracted the tax advantage which the Comptroller considered objectionable given that "the Comptroller's objection at its core was only to the level of (the taxpayer's) salary"[note: 74], it is clear that the Comptroller's objection was not just in relation to the amount of salary the Company paid to the taxpayer but in respect of the structure of the whole arrangement itself, including the fact that the revenue arising from the taxpayer's medical services was received by the Company instead of the taxpayer, as well as the fact that the taxpayer (as the sole director) also caused the Company to pay himself an artificially low annual salary and substantial tax-exempt dividends (see [57(c)[and [57(d)] above].

130 In determining if the Comptroller's exercise of his powers so as to counteract the tax advantage obtained from the taxpayer's arrangement under section 33(1) was fair and reasonable, the Comptroller does not have to exercise his powers in a specific manner, as long as the final object of counteracting the tax advantage is attained, as per *AQQ*. For the reasons we have just explained, the taxpayer has failed to show that the Comptroller exercised his powers in this case in a manner which was anything less than fair and reasonable.

Conclusion

131 For the foregoing reasons, the taxpayer's appeal in Income Tax Appeal Nos 4 to 9 of 2019 is dismissed, with costs of the appeals to be awarded to the Comptroller, the quantum of which is to be agreed between parties or fixed by the Board. Should parties be unable to agree on the quantum of costs, they are to write in on the appropriate quantum of costs to be awarded within four weeks of the date of the Board's decision. Any such submissions are to be limited to five pages by each party.

[note: 1] Affidavit of [GIP] (AAEIC-1 – 123) at Exhibit TWL-1.

[note: 2] See Section 4 of the proposal, "Financial Projections and Returns" at Exhibit TWL-1 of AAEIC.

[note: 3] Agreed Bundle of Documents (ABOD-1 – 122) at ABOD-5 – 12.

[note: 4] Agreed Statement of Facts (ASOF-1 – 4) at [7].

[note: 5] At ABOD-86.

[note: 6] At ABOD-14 – 42.

[note: 7] At ABOD-86.

[note: 8] ASOF at [8] and ABOD-44 – 46.

[note: 9] See AAEIC at [13].

[note: 10] AAEIC at [19].

[note: 11] AAEIC at [19].

[note: 12] AAEIC-41 – 42.

[note: 13] AAEIC at [14], [15] and [19].

[note: 14] AAEIC at [17] and [18].

[note: 15] AAEIC at [16].

[note: 16] ABOD-48.

[note: 17] ABOD-53 – 80.

[note: 18] At ABOD-86 – 87.

[note: 19] Affidavit of Chew Xuan Yin (RAEIC-1 – 255) at [6].

[note: 20] ABOD-82.

[note: 21] RAEC-113 – 115,

[note: 22] RAEIC-112.

[note: 23] RAEIC-106.

[note: 24] RAEIC-167 – 173.

[note: 25] RAEIC-118 – 119.

[note: 26] RAEIC-163 – 164.

[note: 27] RAEIC-225 – 226.

[note: 28] At the Appellant's Reply Submissions (ARS1 – 43) at ARS-43.

[note: 29] At RAEIC-33, 34, 36 and 38.

[note: 30] For YA2013, the taxpayer was liable for $37,753.10 in taxes instead of $2,157.13; for YA2014, the tax payable was $21,035.12 instead of $3,317.59; for YA2015, the tax payable was $21,524.26 instead of $2,399.22; for YA2016, the tax payable was $27,368.42 instead of $3,401.98.

[note: 31] AAEIC-21 – 24.

[note: 32] AAEIC-25.

[note: 33] See AAEIC at [9].

[note: 34] AAEIC-26 -28.

[note: 35] RAEIC-193 – 200.

[note: 36] RAEIC-192.

[note: 37] RAEIC-191.

[note: 38] RAEIC-215.

[note: 39] ABOD-109.

[note: 40] ABOD-111 – 114.

[note: 41] For YA2013, the taxpayer remained liable for $37,753.10 in taxes instead of $2,157.13, as per the 1st set of NoAAs; for YA2014, the tax payable increased from $21,035.12 to $25,173.86, a further increase of $4,138.74 from the 1st set of NoAAs; for YA2015, the tax payable increased from $21,524.26 to $23,913.76, a further increase of $2,389.50 from the 1st set of NoAAs; for YA2016, the tax payable increased from $27,368.42 to $28,529.78, a further increase of $1,161.36 from the 1st set of NoAAs; for YA2017, the tax payable was $28,991.78 instead of $17,946.22; for YA2018, the tax payable was $28,979.52 instead of $15,643.80..

[note: 42] RAEIC-218.

[note: 43] At ABOD-116 – 122.

[note: 44] See the Appellant's Closing Submissions dated 11 February 2022 (ACS-1 – 97) at [113].

[note: 45] At [242] of ACS.

[note: 46] See the Respondent's Closing Submissions dated 11 February 2022 (RCS-1 – 45) at [39].

[note: 47] At [61] of RCS.

[note: 48] At [117] of ACS.

[note: 49] At [120] of ACS.

[note: 50] At [19] of RCS and [27] of the Respondent's Reply Closing Submissions (RRCS-1 – 45) dated 18 March 2022.

[note: 51] At ARS-43.

[note: 52] At [30] of RRCS

[note: 53] At [120] – [125] of ACS.

[note: 54] At RAEIC-167 – 168.

[note: 55] At [80] of ACS.

[note: 56] At [102] – [103] of ACS.

[note: 57] At [102c] of ACS.

[note: 58] See column E of the Table “Respondent’s Exhibit: Revenues” tendered at the hearing of the appeal.

[note: 59] See the Transcript (Day 1) at page 56/line 1 to page 62/line 10.

[note: 60] See columns D and I of the Table “Respondent’s Exhibit: Revenues” tendered at the hearing of the appeal.

[note: 61] At [19] of AAEIC.

[note: 62] At [28] of AAEIC.

[note: 63] See the Transcript (Day 1) at page 112/line 2 to page 116/line 16.

[note: 64] See the Transcript (Day 1) at page 117/line 5 to page 120/line 12.

[note: 65] See the Transcript (Day 1) at page 125/line 7 to page 126/line 21.

[note: 66] See Table F at [20] of RCS.

[note: 67] At RAEIC-163 – 164.

[note: 68] At [305] of ACS.

[note: 69] See the Transcript (Day 1) at page 167/line 15 to page 168/line 21.

[note: 70] At [325] of ACS.

[note: 71] [89c] of the Appellant’s Reply Closing Submissions (ARCS-1 – 27) dated 18 March 2022

[note: 72] RAEIC-176 – 184.

[note: 73] At [340] of ACS.

[note: 74] At [354] of ACS.

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