IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 132

Tax Appeal No 8 of 2025

Between

(1) Tan Chek Jin Adrian
(2) Caroline Khi Yu May
(3) Wong Sook Miin, Jocelyn

… *Applicants*

And

Comptroller of Income Tax

… *Respondent*

JUDGMENT

[Revenue Law — Income taxation — Appeals]
[Revenue Law — Income taxation — Avoidance]
[Revenue Law — Income taxation — Incentives]

Version No 1: 18 Jun 2026 (16:34 hrs)

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Tan Chek Jin Adrian and others
v
Comptroller of Income Tax

[2026] SGHC 132

General Division of the High Court — Tax Appeal No 8 of 2025
Wong Li Kok Alex J
9 March 2026

18 June 2026 Judgment reserved.

Wong Li Kok Alex J:

Introduction

1 This application is the latest of several cases where medical professionals have run afoul of the tax authorities in how they have conducted the business of their medical practices. In this case, the applicants had disagreed with the respondent's tax ruling and had sought a review ("Review") from the Income Tax Board of Review ("Board"). The applicants were unsuccessful in the Review and have applied to this court to, *inter alia*, set aside the Board's decision ("Decision").

2 At the heart of this application is the question of whether the applicants had arranged their business in such a way that one of the main purposes of such a structuring was to avoid the payment of tax.

Facts

The parties

3 The applicants are three doctors who are specialist obstetricians and gynaecologists ("O&G"). They had been colleagues at the O&G department of KK Women's Children's Hospital ("KKH") before they decided to venture into private practice. Of the three applicants, the first appellant ("Dr Tan") is the most senior specialist. The other two applicants ("Dr Khi" and "Dr Wong" respectively) were undergoing specialist training at KKH when they first met Dr Tan and, according to Dr Tan, had ambitions to work in private practice under his supervision as a senior specialist.[1]

4 The respondent is the Comptroller of Income Tax ("Comptroller").

Background to the dispute

5 The full background to the dispute has been set out in the Decision and I adopt them for the purposes of this application. I highlight some material facts that are pertinent to this application.

6 When the applicants first ventured into private practice, they established a single company, ACJ Women's Clinic Pte Ltd ("ACJW"), in 2004. The applicants each signed employment contracts with ACJW for a monthly remuneration of $5,000 (excluding annual bonus). Under ACJW, the applicants took on both "inpatient" (*ie*, surgical) services ("Inpatient Services") and "outpatient" (*ie*, general consultancy) services ("Outpatient Services").[2]

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1 Affidavit of Tan Chek Jin Adrian dated 7 October 2025 ("TCJ-2") at paras 8 to 9.

2 TCJ-2 at paras 22 to 23.

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7 As ACJW's business evolved, the applicants each set up separate medical companies. According to Dr Tan, they enabled the applicants, amongst other things, to more equitably distribute the profits based on each appellant's respective contributions to the practice.[3]

8 Three medical companies were thus established:[4]

(a) AT OG Services Pte Ltd ("ATOG") was incorporated on 25 April 2005 with Dr Tan and his wife as co-directors and equal shareholders.

(b) CKYM Holdings Pte Ltd ("CKYM") was incorporated on 30 May 2007 with Dr Khi as its sole director and shareholder.

(c) JW Medical Holdings Pte Ltd ("JWMH") was incorporated on 30 May 2007 with Dr Wong as the sole director and shareholder.

I will refer to these companies collectively as the "Medical Companies".

9 The practice was reorganised again on 12 March 2014, when the applicants established surgical companies for which each of the three applicants were the sole director and shareholder. ACJ Tan Surgery Pte Ltd ("ACJT") was established by Dr Tan, CKHI Surgery Pte Ltd ("CKHI") by Dr Khi and Joy Wong Surgery Pte Ltd ("JWS") by Dr Wong. I will refer to these companies collectively as the "Surgical Companies". According to Dr Tan, the Surgical Companies carry out Inpatient Services for patients seeking treatment at ACJW. They do not render Outpatient Services, which are still undertaken by ACJW.

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3 TCJ-2 at para 38.

4 TCJ-2 at paras 37 and 39.

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The Surgical Companies would invoice patients and receive fees for the Inpatient Services, and ACJW would invoice patients and receive fees for Outpatient Services.[5]

10 For the purposes of this judgment, I will refer to the establishment and operations of each of ACJW, the Medical Companies and the Surgical Companies as the "ACJW Arrangement", the "Medical Companies Arrangement" and the "Surgical Companies Arrangement" respectively and collectively as the "Arrangement".

11 Each of the three applicants signed employment contracts with their respective Surgical Companies on 1 December 2016. Their monthly remuneration under these contracts was $6,000 (excluding annual bonus). In addition to this remuneration, each of the applicants also received directors' fees and dividends from their respective Surgical Companies.[6]

12 The establishment of the Medical Companies and the Surgical Companies allowed the applicants to obtain tax rebates under the Start-Up Tax Exemption ("SUTE") and the Partial Tax Exemption ("PTE") schemes under ss 43(6) and 43(6A) of the Income Tax Act (Cap 134, 2014 Rev Ed) ("Act") ("Sections 43(6) and 43(6A)") (Decision at [105]).

13 The Comptroller conducted an audit review of the applicants and concluded with respect to ACJW that, amongst other things (Decision at [36(a)]):

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5 TCJ-2 at paras 65 to 68.

6 TCJ-2 at para 70.

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(a) The fees reported by ACJW for providing administrative and support services ("ACJW Fees") appeared disproportionately high compared to the amount paid for the medical services provided by the applicants.

(b) The salary and directors' fees reported did not reflect the correct economic value of the applicants' contributions.

(c) Adjustments would be made to the ACJW Fees so that they were commensurate (*ie*, at arm's length) with the administrative and support services provided.

(d) The "Cost-Plus 10%" method would be used to compute the price for the ACJW Fees on an arm's length basis (see [94] below).

14 With respect to the Medical Companies and the Surgical Companies, the Comptroller concluded that (Decision at [36(b)]):

(a) He was not satisfied that the establishment of these companies was carried out for *bona fide* commercial reasons and that tax advantages had not been one of the main reasons for that establishment.

(b) Section 33 of the Act ("Section 33") would be invoked to revise the tax assessments for years of assessment ("YA") 2013 to 2018.

(c) The residual profit from ACJW would be divided into equal shares and transferred to each appellant to be taxed as employment income in their individual names.

15 On 10 October 2019, the Comptroller issued additional and amended income tax assessments for the applicants for YA 2013 to 2018. On

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27 December 2019, the Comptroller raised additional assessments for YA 2015 on the respective Surgical Companies as a claw-back of tax exemptions and rebates which the Comptroller determined the Surgical Companies were not entitled to (Decision at [38], [42] and [43]). Collectively, I refer to these additional assessments as the "Additional Assessments".

16 These decisions of the Comptroller were appealed to the Board for review.

The Board's Decision

17 The Board viewed the appellants' establishment of the Arrangement as a single holistic arrangement for the purposes of s 33(1) of the Act ("Section 33(1)") (Decision at [49]).

18 The Board held that, even if the objective purpose of the Arrangement was for ordinary business purposes, it was clear that the objective effect of the Arrangement was tax advantages gained by the applicants, thus bringing it within Section 33(1) (Decision at [63]).

19 The applicants had not convinced the Board that the exception under s 33(3)(*b*) of the Act ("Section 33(3)(*b*)") applied. The way in which the Medical Companies and the Surgical Companies were actually used undermined the applicants' arguments that they were established for *bona fide* commercial reasons. Further, the significant tax advantages gained by the applicants through the payment of dividends and shareholder loans to themselves also supported the conclusion that tax avoidance or reduction was at least one of the main purposes of the Arrangement (Decision at [98] and [103]).

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20 The Board accepted that the tax advantages from the SUTE and PTE schemes may not have been the determining factor in the establishment of the Medical Companies and the Surgical Companies. However, the Board did not find that the establishment of these companies fell within Parliament's contemplation and purpose behind Sections 43(6) and 43(6A) to encourage entrepreneurship. The Board was thus not satisfied that Section 33(1) could be precluded from applying to the Arrangement in this regard (Decision at [111] to [114]).

21 Finally, the Board concluded that the Comptroller's invocation of Section 33(1) was fair and reasonable (Decision at [119]). The arguments made by the applicants against the Cost-Plus 10% method of calculating ACJW's Fees pursuant to Section 34D of the Act were moot as the Comptroller was using his wide powers under Section 33(1) to counteract the tax advantages gained by the applicants (Decision at [117]).

The parties' cases

The applicants' case

22 The applicants seek to set aside the whole of the Decision as well as to obtain the following declarations:[7]

(a) The ACJW Arrangement, the Medical Companies Arrangement and the Surgical Companies Arrangement are not arrangements which fall within the ambit of Section 33.

(b) Even if the ACJW Arrangement, the Medical Companies Arrangement and the Surgical Companies Arrangement are

[7] The applicants' written submissions dated 29 December 2025 ("AWS") at para 1.

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arrangements which fall within the ambit of Section 33, the applicants are entitled to avail themselves of the statutory exception under Section 33(3)(*b*).

(c) The applicants are entitled to rely on Sections 43(6) and 43(6A) to preclude the operation of Section 33.

(d) The Comptroller's exercise of powers under Section 33(1) was unfair or unreasonable.

23 The applicants contend that the Board erred in relying solely on the tax savings of the applicants arising from the Arrangement in finding that the Arrangement was *prima facie* captured within Section 33(1). According to the applicants, the Board also erred in analysing the ACJW Arrangement, the Medical Companies Arrangement and the Surgical Companies Arrangement as one single arrangement. In view of the above, the applicants' case is that the incorporation of ACJW, the Medical Companies and the Surgical Companies did not *prima facie* fall within the ambit of Section 33(1). Any tax advantages gained by the applicants through the SUTE and PTE schemes arose from changes in the law and could not have been foreseen at the time each of the three arrangements were put into place.[8]

24 Further, the applicants argue that the Board erred in finding that the applicants were not entitled to avail themselves of the statutory exception in Section 33(3)(*b*). In other words, the Board erred in finding that ACJW, the Medical Companies and the Surgical Companies were not established for *bona fide* commercial reasons and had the avoidance or reduction of tax as one of

[8] AWS at p 17, subheading B and p 24, subheading (vi).

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their main purposes.[9]

25 The applicants also take the position that the Board erred in finding that the applicants could not rely on Sections 43(6) and 43(6A) to preclude the operation of Section 33. The applicants' case is that the tax advantages obtained by ACJW, the Medical Companies and the Surgical Companies were within Parliament's contemplation and purpose.[10]

26 Finally, and in the alternative, the applicants say the Board erred in finding the Comptroller's exercise of powers under Section 33(1) was fair and reasonable. The applicants' case is that the Comptroller's utilisation of the Cost-Plus 10% method for ACJW and the "personal exertion" principle for the Medical Companies and the Surgical Companies was unfair and unreasonable. Instead, the Comparable Uncontrolled Price method ("CUP Method") suggested by the applicants should have been used instead, which demonstrates that the applicants' compensation fell within the range of compensation received by the applicants' peers.[11]

The respondent's case

27 The Comptroller takes the position that he correctly decided that the objective purpose or effect of the Arrangement *prima facie* fell within ss 33(1)(*a*) and 33(1)(*c*) of the Act ("Sections 33(1)(*a*) and 33(1)(*c*)"). Amongst other things, the Comptroller argues that the Board correctly identified the Arrangement in dispute and that the applicants' argument that the tax savings

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9 AWS at p 25, subheading C.

10 AWS at p 39, subheading C.

11 AWS at p 45, subheading D.

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could not have been foreseen should not be accepted.[12]

28 The Comptroller also notes that the Board correctly decided that the applicants were not entitled to avail themselves of the statutory exception under Section 33(3)(*b*). Dr Tan's purported reasons for his low taxable remuneration in ACJW and for establishing ATOG and ACJT do not stand up to scrutiny. The Board was also unable to establish the subjective motivations of Dr Khi and Dr Wong as they did not give evidence before the Board. [13]

29 The Comptroller contends that the Board correctly decided that the applicants could not rely on Sections 43(6) and 43(6A) to preclude the operation of Section 33.[14]

30 Finally, the Comptroller takes the position that the Board's decision that the Comptroller's exercise of his powers under Section 33(1) was fair and reasonable was correct.[15]

Issues

31 The four issues to be determined in this application correspond to the four main arguments raised by the parties. These are:

(a) whether the Board erred in finding that the Arrangement consisting of ACJW, the Medical Companies and the Surgical Companies *prima facie* fell within the ambit of Section 33(1);

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12 The respondent's written submissions dated 16 February 2026 ("RWS") at p 27, subheading B.

13 RWS at p 34, subheading C.

14 RWS at p 45, subheading D.

15 RWS at p 47, subheading E.

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(b) whether the Board erred in finding that the applicants were not entitled to avail themselves of the statutory exception in Section 33(3)(*b*);

(c) whether the Board erred in finding that the applicants could not rely on Sections 43(6) and 43(6A) to preclude the operation of Section 33;

(d) whether the Board erred in finding the Comptroller's exercise of powers under Section 33(1) was fair and reasonable.

32 Before I address my decision on each of these issues, I consider the standard of review for appeals against the Decision of the Board.

Standard of review for appeals against the Decision of the Board

33 In *Comptroller of Income Tax v AQQ* [2014] 2 SLR 847 ("*AQQ*"), the Court of Appeal rejected the argument that the role of the courts in an appeal from the Board is to conduct a fresh and unconstrained review of the merits of the Comptroller's decision. Instead, "a more limited degree of review" is inherent in the appellate review process in such a context. The court extends deference to the Board where findings of fact are concerned by asking whether "no reasonable body of members constituting an Income Tax Review Board could have reached the findings reached by the Board" (*AQQ* at [115], [121] and [123], citing *Mount Elizabeth (Pte) Ltd v Comptroller of Income Tax* [1985-1986] SLR(R) 950 at [17] and *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR(R) 484 ("*JD Ltd*")). This approach was recently applied by the Appellate Division of the High Court in *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2025] 2 SLR 56 at [26].

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34 The apex court added that the Comptroller has to exercise his powers under Section 33(1) in a fair and reasonable manner. Any variations or adjustments that are arbitrary or unreasonable or any excessive exercise of discretion would be liable to be struck down. This review however is limited, as "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" (*AQQ* at [124]).

The scheme and purpose approach to Section 33 of the Act

35 Section 33 is at the core of this application and I set it out in full below:

> 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

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> (*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.

36 Having considered varying approaches to anti-tax avoidance provisions in the United Kingdom, Australia and New Zealand, the Court of Appeal in *AQQ* set out the following approach to Section 33 which I reproduce below:

> 110 In summary, the scheme and purpose approach that ought to be adopted with respect to the interpretation of s 33 is 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.

37 This test has been applied in a number of subsequent decisions of the Board and was also alluded to by this court in *Wee Teng Yau v Comptroller of Income Tax* [2021] 3 SLR 1290 ("*Wee Teng Yau*").

The Board did not err in finding that the Arrangement consisting of ACJW, the Medical Companies and the Surgical Companies *prima facie* fell within the ambit of Section 33(1)

38 The applicants' position that the Board erred in finding that the Arrangement fell within the ambit of Section 33(1) ("Section 33(1) Finding") coalesces around three key arguments. I will deal with each of these in turn.

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The Board's reliance on quantitative evidence to dispose of the Section 33(1) Finding

39 According to the applicants, the Board relied solely on the tax savings that they had obtained in making the Section 33(1) Finding. Put another way, the Board should not have relied on this quantitative evidence alone in making the Section 33(1) Finding, but should also have considered the objective circumstances surrounding the Arrangement.[16] As noted at [46] of *AQQ*, the Comptroller should have examined the "observable acts by which an arrangement is implemented" to determine whether "it was implemented in that way so as to achieve the ends stated in any of the limbs in s 33(1)". The applicants also contend that the relevant observable acts are those at the time when the Arrangement was entered into.[17]

40 The Comptroller does not dispute that the applicants' observable acts should be considered, but argues that the relevant observable acts are the fact that the applicants paid themselves very low remuneration and instead gave themselves very high tax-exempt dividends and interest-free loans.[18]

41 In my view, the correct approach is to examine the observable acts by which the Arrangement was *implemented*. This requirement originates from Lord Denning's judgment in *Lauri Joseph Newton v Commissioner of Taxation of the Commonwealth of Australia* [1958] AC 450 at 465 to 466, which was cited in *AQQ* at [45]:

> … 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. …

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16 AWS at paras 34 to 37.

17 AWS at paras 30 to 31.

18 Minute sheet of the hearing on 9 March 2026 at pp 14 to 15.

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> 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.

42 I agree with the Comptroller that the observable acts by which the Arrangement was implemented was the applicants' payment of artificially low remuneration to themselves and their drawing of large sums in the form of tax-exempt dividends and interest-free loans. I am not persuaded by the applicants' argument that the court is confined to looking at observable acts at the time the Arrangement was entered into. Reading Lord Denning's remark in its context, the observable acts clearly refer to those undertaken to implement the relevant arrangement (*ie*, during the arrangement), rather than only those at the time of its establishment. This reading makes ample sense, as arrangements may be initially established for seemingly innocent purposes but are implemented in ways to reduce or avoid tax.

The Board did not err in its analysis of the Arrangement

43 The applicants also argue that the Board erred in treating the Arrangement holistically as a single integrated arrangement, instead of as three distinct arrangements. The applicants contend that each of the ACJW Arrangement, the Medical Companies Arrangement and the Surgical Companies Arrangement was motivated by different business considerations, so it was wrong for them to be viewed as a single arrangement.[19]

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[19] AWS at paras 38 to 41.

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44 In the applicants' submissions, the three arrangements, if looked at individually, would not justify the Section 33(1) Finding for the following reasons:

(a) The quantitative tax savings relied on by the Board (for YA 2013 to 2018) in coming to its Decision only arose six to eight years after the ACJW Arrangement and the Medical Companies Arrangement had come into effect, and the Comptroller had not raised any issues with these arrangements in the years preceding 2013. The logical inference from this is that the Comptroller had no complaint with the ACJW Arrangement and the Medical Companies Arrangement.[20]

(b) Further, the reasons for establishing ACJW were predominantly for the purposes of establishing a new private practice business. The reasons for establishing the Medical Companies were for a more equitable distribution of profits and flexibility in operating structure. There was therefore nothing to suggest that the ACJW Arrangement and the Medical Companies Arrangement were for tax avoidance purposes.[21] Finally, the Surgical Companies Arrangement was for the purposes of taking over Inpatient Services and invoicing from ACJW. In addition, the applicants sought to attribute any professional negligence liabilities to the respective doctor's Surgical Company.[22]

45 In my judgment, the applicants' objection to the classification of the Arrangement can be swiftly addressed.

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20 AWS at paras 44, 45 and 48.

21 AWS at paras 46 and 52.

22 AWS at paras 54 to 55.

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46 Section 33(2) of the Act ("Section 33(2)") defines an "arrangement" as "any scheme, trust, grant, covenant, agreement, disposition, transaction and includes all steps by which it is carried into effect". Section 33(2) was considered in *AQQ* and the Court of Appeal confirmed that "arrangement" is a "composite term that *means* the overarching scheme agreement or transaction that *includes* the component steps that carry into an effect an arrangement" [emphasis in original], including where those component steps are individually unobjectionable (at [43]). Further, in quoting from the Privy Council's decision in *Peterson v Commissioner of Inland Revenue* [2006] 3 NZLR 433, the Court of Appeal in *AQQ* also concluded that the Comptroller is entitled, at his option, to identify a single or two or more connected but distinct arrangements (at [43] and [44]).

47 I therefore do not agree with the applicants that the Board erred in viewing the Arrangement as one single arrangement for the purposes of Section 33(1). The Board's view of the Arrangement did not fall outside the boundaries of how an arrangement could be viewed according to *AQQ*. Even if the applicants' purposes for each of the ACJW Arrangement, the Medical Companies Arrangement and the Surgical Companies Arrangement varied, they were nonetheless connected arrangements that evolved over time. It was therefore perfectly logical for the Comptroller to exercise his discretion to view the Arrangement as one single holistic arrangement and for the Board to accept this approach.

48 On the question of why the Comptroller did not raise issues with the Arrangement before YA 2013, the Comptroller explains that s 74(1) of the Act prescribes a four-year time bar for raising additional assessments. That being the case, by the time the Additional Assessments were raised in 2017, the Comptroller could not raise issues with the applicants' tax assessments for YA

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2012 or earlier. This, however, did not mean that the Comptroller did not find the Arrangement objectionable in the years before 2013.[23] There is no flaw in the Comptroller's logic here and I accept the Comptroller's position on this point.

The applicants' case that tax advantages attributable to the applicants arose out of changes in the law and could not have been foreseen is not accepted

49 The applicants' case is that at the time the ACJW Arrangement, the Medical Companies Arrangement and the Surgical Companies Arrangement were implemented, the applicants could not have been aware of how changes in the tax regime would manifest, nor how profitable their business would be. That being the case, it was inappropriate for the Comptroller to base the Additional Assessments on tax savings arising from changes in the law which the applicants could not have foreseen.[24]

50 This point was not explicitly addressed in the Decision. However, this argument was also not explicitly advanced before the Board. Indeed, it seems that the applicants put forward this argument for the first time in this application, albeit based on Dr Tan's testimony before the Board.[25]

51 If it is the applicants' position that they should bear no responsibility for changes in the law, then this is a position I find difficult to accept. First and foremost, ignorance of the law is no excuse. Secondly, the applicants cannot have their cake and eat it too. They cannot accept the benefits of changes in the tax rate (as between corporate and personal income taxes) in their favour and

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23 RWS at para 22.

24 AWS at paras 56 to 58.

25 TCJ-2 at paras 79 to 81.

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yet plead ignorance, in the same breath, of the impact on their tax liability that this change may have. Finally, the applicants point me specifically to Dr Tan's testimony before the Board to demonstrate how he was unaware of the specifics of the advantages gained by the applicants in a tax environment where corporate tax rates were reducing and personal income tax rates were moving in the opposite direction.[26] I find it concerning that Dr Tan had been in contact with his accountant at the relevant time and had been made aware of the tax savings arising from these changes in the tax environment, but took no steps to clarify how such savings could impact his or the applicants' tax liability. The tax regime in Singapore is largely a self-reporting regime, and every individual bears the responsibility of accurately complying with their tax obligations. At best, Dr Tan's evidence shows that he turned a blind eye to what his tax obligations could be in the hope that legal consequences would not follow. I fail to see how this approach can be used to justify the applicants' position that the Arrangement falls outside the ambit of Section 33.

52 Even if the applicants' argument on the foreseeability of changes in tax law is raised in the context of their purpose when implementing the Arrangement, for the reasons set out at [51] above, I find it equally difficult to accept that such a purpose must be set in stone. The applicants submit that it would "not have been appropriate for the [Comptroller] to have based [his] Additional Assessment on tax savings which the [a]pplicants had obtained as a result of changes in the law that the [a]pplicants could not have foreseen at the time of entering into the respective arrangements."[27] Changes in tax law are frequent. Even if the applicants were not aware of that, it was evident from Dr Tan's exchange with his accountant that there were discussions on this topic

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[26] RWS at para 56; TCJ-2 at paras 80 to 81.

[27] AWS at para 58.

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following the annual budget announcements.[28] Put another way, the applicants may not have known how tax law would change but they ought to have known that it would change and should have been alert to this. I struggle to accept that they anchored their purpose for the Arrangement to a tax regime that would remain indefinitely constant.

53 Finally, if the applicants' case is that it is irrelevant to take into account tax savings that the applicants could not have foreseen when entering into the Arrangement, and thus such savings should not be considered in determining the objective purpose and effect of the Arrangement, I agree with the Comptroller's submissions that this position also does not hold water. As the Comptroller notes, looking at YA 2013 to 2018, it is apparent that the applicants had already gained significant tax savings through the SUTE and PTE rebates that were already in force as well as the clear differential between the corporate and personal income tax rates.[29] That being the case and bearing in mind my conclusion on how the Comptroller is entitled to view the Arrangement (above at [47]), I also disagree with the applicants' arguments in this regard.

54 I therefore conclude that the Board did not err in finding that the Arrangement *prima facie* fell within the ambit of Section 33(1).

The Board was correct in finding that the applicants were not entitled to avail themselves of the statutory exception in Section 33(3)(*b*)

55 There is no dispute between the parties that the two elements of Section 33(3)(*b*), that the arrangement in question should be carried out for *bona fide* commercial reasons and does not have as one of its main purposes the

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28 TCJ-2 at para 81.

29 RWS at paras 67 to 68.

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avoidance or reduction of tax, should be read conjunctively. Whether these elements are satisfied is also based on the subjective inquiry of the taxpayer's commercial motives and consequences that the taxpayer wishes to obtain (*AQQ* at [71] and [74]).

56 The Board correctly identified at [46] of the Decision that the burden of proof in the appeals against the Comptroller's decision on the Additional Assessments lay with the applicants. This is not disputed by the applicants in their submissions before me.

57 As the Comptroller correctly identifies, there is a preliminary issue to be addressed before embarking on the analysis of the application of Section 33(3)(*b*) to this case. The Comptroller points out that only Dr Tan filed an affidavit of evidence-in-chief at the hearing before the Board ("Hearing"). As he conceded under cross-examination at the Hearing that he had no personal knowledge of Dr Khi's and Dr Wong's Medical Companies, Dr Tan can only attest to his own motivations and intended consequences for entering into the arrangements involving his Medical Company and Surgical Company (and not those of Dr Khi or Dr Wong).[30] The Board found that this did not adequately address the different factual circumstances of Dr Khi and Dr Wong (Decision at [119(d)]). In the same vein, only Dr Tan filed an affidavit in support of this application and he noted that he was authorised by Dr Khi and Dr Wong to do so on their behalf.[31] The Comptroller's submission before me is thus that Dr Tan can only speak for himself and he cannot claim to represent Dr Khi and Dr

30 Affidavit of Lau Meow Siam dated 10 November 2025 at para 40.

31 TCJ-2 at para 2.

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Wong on their subjective motives and intended consequences for the Arrangement.[32]

58 Bearing in mind that the application of the Section 33(3)(*b*) exception requires a subjective analysis of the applicants' motives and intended consequences for the Arrangement, I agree with the Comptroller that this is a fatal handicap to Dr Khi's and Dr Wong's case to challenge the Additional Assessments on the basis that the Arrangement fell within the Section 33(3)(*b*) exception. The Comptroller's argument on this point was also not challenged by the applicants in oral arguments. That being the case, while the applicants' counsel can still make legal submissions on their behalf, only Dr Tan can testify, as a matter of fact, regarding his subjective state of mind for the purposes of the Section 33(3)(*b*) exception.

59 Before I address the applicants' arguments on the Section 33(3)(*b*) exception, I pause to note their position that the Board failed to firstly consider each of ACJW Arrangement, Medical Companies Arrangement and Surgical Companies Arrangement separately before moving on to look at the Arrangement as a whole. The applicants appear to rely on *AQQ* at [43] to contend that the reference in *AQQ* to an arrangement which "may constitute a combination of steps that may be individually unobjectionable" requires such an approach.[33] Firstly, I disagree that [43] of *AQQ* mandates this approach. This passage in *AQQ* merely describes the breadth of what could constitute an arrangement for the purposes of Section 33(2) (see [43] to [47] above). Secondly and in any event, the Board clearly analysed the arguments from both parties

32 RWS at para 76.

33 AWS at para 100.

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for each of the three parts of the Arrangement before reaching its overall conclusion on Section 33(3)(*b*) (Decision at [71] to [96]).

It is incorrect to consider the subjective commercial motives and intended consequences of the applicants only at the point in time of entering into the Arrangement

60 The applicants' position is that their subjective commercial motives and intended consequences that form the Section 33(3)(*b*) exception are to be assessed at the point in time of entering into the Arrangement.[34]

61 I disagree. The express language of s 33(3)(*b*) does not impose a temporal limit as the applicants suggest. More importantly, tax avoidance cases tend to span long periods of time, as is the case in this application. Motivations and intentions evolve over that time depending on many factors, including the economic circumstances of the taxpayers and their businesses, or changes in the tax regime. As such, restricting the analysis of the Section 33(3)(*b*) exception to a specific point in time constricts the consideration of the subjective analysis in a manner that is both artificial and not intended by the Act.

62 In my judgment, whilst the subjective commercial motives and intended consequences of an arrangement at the point in time the arrangement was entered into is certainly a relevant consideration, all admissible evidence that could allow the determination of the subjective motivations and intentions of the taxpayer in the arrangement is relevant for the purposes of the Section 33(3)(*b*) exception.

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[34] AWS at para 61.

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63 The applicants also quote from [74] and [82] of *AQQ* to demonstrate that the Court of Appeal, in referring to what the taxpayer "set out to create" and the taxpayer's "contemporaneous state of mind", meant that this analysis must be considered at the point in time the arrangement in question was entered into.[35] However, nothing in these paragraphs in *AQQ* requires such a restrictive approach in terms of time.

*Dr Tan has not made out his case that the Section 33(3)(***b***) exception should apply to him*

ACJW

64 Dr Tan argues that ACJW was established for *bona fide* commercial purposes, as he was not a businessperson and the setting up of a company (*ie*, ACJW) was the best way to reduce the applicants' personal liability and risks in case the business did not succeed.[36] Dr Tan's evidence is also that it was the success of the business and not the payment of taxes that was at the forefront of the applicants' minds when ACJW was established.[37] The Comptroller also purportedly relied on hindsight bias in making the Additional Assessments. Amongst other things, the applicants could not have known how much revenue they would generate when ACJW was first established or how changes to the corporate and personal income tax rates would have resulted in the tax savings that the Comptroller found objectionable.[38]

65 Dr Tan relies on his affidavit evidence and oral evidence before the Board to show that, when ACJW was established, the applicants' motivations

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35 AWS at paras 60 to 61.

36 AWS at para 65(a).

37 AWS at paras 65(b), 72 and 73.

38 AWS at paras 65(b), 67, 68 and 71.

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were to establish a viable business, having just left KKH to venture into private practice. He also gives evidence that tax considerations were not in play at the time. Further, the $5,000 a month salary that was initially allocated to each of the applicants from ACJW was a fair amount, given that they had just started the new practice and were uncertain as to its returns.[39]

66 This evidence was considered by the Board (Decision at [71] to [76]), albeit it was not explicitly stated in the Decision whether the evidence was accepted or believed in the context of ACJW.

67 In my judgment, even if this evidence was accepted, it could not be the only factor in considering whether the Section 33(3)(*b*) exception is engaged. If Dr Tan's complaint is with respect to hindsight bias or the Comptroller penalising him for changes in the law which he could not have foreseen, this has also been addressed and dismissed (at [52] above).

68 The Comptroller adds that, even in light of Dr Tan's evidence, Dr Tan did not explain why his $5,000 a month salary was so much lower than what he could have reasonably drawn elsewhere. According to the Comptroller, Dr Tan was paid $45,600 a month before moving to private practice. Nor did he explain why his salary was not adjusted upwards as ACJW grew more profitable, or why he was paid substantial sums through tax-exempt dividends and interest-free shareholder loans.[40] For YA 2013 to 2018, the Comptroller valued Dr Tan's tax-exempt dividends from ACJW at $1,600,000 and shareholder loans to the applicants collectively in excess of $1,000,000 (Decision at Annex D).[41] This

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39 TCJ-2 at paras 18 to 20.

40 RWS at para 81 and footnote 7.

41 RWS at para 9.

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was also noted in the Decision and the specific numbers are not challenged by Dr Tan in this application.

69 Dr Tan's evidence on his $5,000 salary at ACJW (*ie*, that he was new to private practice) partially explains why it was set at a modest level. However, I agree with the Comptroller that Dr Tan has not gone so far as to explain why the salary remained at that level as the practice became more profitable or why those profits were instead extracted as dividends and shareholder loans. At the Hearing before the Board, Dr Tan also relied on the transfer pricing expert report authored by Mr Sim Tzi Yong, who opined that the aggregate of applicants' salary, bonuses and directors' fees for YA 2013 to 2018 was at an arm's length range compared to specialists in their field.[42] This expert report is, again, insufficient to explain why the applicants decided to pay themselves large sums as dividends and loans.

70 That being the case, even if I accept that there were *bona fide* commercial reasons to establish ACJW, I do not accept that the second requirement in Section 33(3)(*b*) has been satisfied. In the absence of a reasonable explanation from Dr Tan, the payment of substantial tax-exempt dividends and shareholder loans points to the avoidance or reduction of tax as one of the main purposes for the Arrangement.

ATOG

71 According to Dr Tan, the Medical Companies were established to achieve a more equitable distribution of profits as between the three applicants. Further and contrary to the Comptroller's assertions, the applicants' desire for

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42 TCJ-2 at p 2676.

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more flexibility to explore ventures individually was also demonstrated by Dr Khi's purchase of a property through CKYM. Moreover, the Medical Companies did not merely perform negligible tasks, as the three applicants (who were also directors of their respective Medical Companies) could also provide medical services.[43] Dr Tan had also taken advice from his accountant that the establishment of the Medical Companies could streamline the accounts for each applicant beyond ACJW. Dr Tan was not aware that there were any other options to achieve this.[44] That being the case, the Medical Companies were established for *bona fide* commercial purposes and not to avoid or reduce tax.

72 Dr Tan's evidence on the motivations and intentions for the establishment of ATOG includes a conversation he had with his accountant.[45] Dr Tan did not call his accountant to give evidence, nor did he include any evidence of written advice from his accountant. That being the case, even if this conversation was a lucid account of structuring advice from the accountant (on which I have my doubts), neither the Board nor I can attribute much weight to it in the absence of direct evidence from that accountant.

73 Against this, the Comptroller demonstrated that over YA 2013 to 2018, Dr Tan had been paid dividends of $5,140,026 and up to $830,973 in interest-free loans (Decision at Annex D).[46] This was also noted in the Decision and the specific numbers are not challenged by Dr Tan in this application. The Comptroller's case is that Dr Tan's attempts to convince this court that the Section 33(3)(*b*) exception should apply to the Medical Companies

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43 TCJ-2 at paras 32, 33, 43 and 47; AWS at para 78 to 79.

44 TCJ-2 at para 42; AWS at paras 81 to 83.

45 TCJ-2 at p 421, lines 11 to 13.

46 RWS at para 15.

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Arrangement (with respect to ATOG) is woefully inadequate for the following reasons:[47]

(a) Dr Tan's explanation that he did not know there were other ways of achieving a more equitable distribution of the fruits of the contributions from the applicants does not hold water. His conversation with the accountant was, at best, garbled (see above at [72]). His discomfort with going through the details of the applicants' respective contributions in order to declare bonuses through ACJW was contradicted by a provision which allowed the applicants to see one another's contribution in each Medical Company through a variable component to address each Medical Company's contribution to ACJW.[48]

(b) Dr Tan did not explore any other ventures or business opportunities using ATOG. Since he was already receiving shareholder loans from ACJW, presumably, he could already have pursued those other ventures without having to establish ATOG.

(c) If Dr Tan wanted to exit from his collaboration with Dr Khi and Dr Wong, he would still have to arrange an exit from ACJW. The establishment of ATOG did little or nothing to help in this regard.

(d) The Board determined that ATOG was simply a vehicle to receive income, had no medical assets and seemed to perform no function other than to receive revenue, distribute profits, salaries, dividends and shareholder loans (Decision at [119(c)]). The medical assets used by the applicants were in fact owned by ACJW.

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47 RWS at paras 84 to 89.

48 TCJ-2 at para 40(c).

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74 I agree with the Comptroller's submissions that Dr Tan has not demonstrated that his motivations for establishing the Medical Companies Arrangement (with respect to ATOG) were for *bona fide* commercial purposes and that he did not have the avoidance or reduction of tax as one of its main purposes. Dr Tan should not be hiding behind discussions with his accountant as a means of escaping responsibility for his tax obligations. If his accountant had indeed provided explicit advice for structuring the Medical Companies Arrangement or the Arrangement as a whole in this way, Dr Tan should at least have provided evidence of that advice to the Board or this court to help demonstrate his true motivations based on professional advice. Mere references to these discussions without further evidence leaves the impression that Dr Tan is being evasive as to his real purposes in establishing the Medical Companies Arrangement. In light of the Comptroller's case as set out above (at [73]), I agree with the Comptroller that Dr Tan has not adequately explained the purpose of the Medical Companies Arrangement.

75 Dr Tan also points to the Decision at [111] and contends that the Board accepted that the main purpose of establishing ATOG and ACJT was not to avoid or reduce tax.[49] However, this is not what the Board concluded and I reproduce the Board's remark here for clarity:

> 111. The Board accepts that the tax advantages from the SUTE and PTE schemes may not have been the determining factor in the appellants' decision to incorporate their Medical Consultancy Companies and Surgical Companies and may even have been incidental to the arrangement but this has no bearing on whether the arrangement furthered the intent and purpose of the SUTE and PTE schemes.

[49] AWS at paras 84 and 98.

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It is clear that the Board only stated that the tax advantages from the SUTE and PTE schemes *may* not have been the determining factor and *may* have only been incidental to the Arrangement. The Board did not, as Dr Tan asserts, definitively accept that the main purpose of establishing ATOG and ACJT was not to avoid or reduce tax.

ACJT

76 On ACJT, Dr Tan's position is that the Board failed to appreciate the nuanced difference between the Surgical Companies and the Medical Companies. The establishment of the Surgical Companies was discussed with the applicants' accountant and was aimed at separating Inpatient Services and Outpatient Services between the Surgical Companies and ACJW respectively. A mere restructuring of the Medical Companies could not have achieved this purpose with respect to claims relating to *past* operations of the Medical Companies affecting ACJW and the applicants.[50] The issue of tax liability was not discussed with the accountant when the Surgical Companies were established. If the applicants' intention was truly to avoid tax, they could have set up new companies every three years to take full advantage of the SUTE and PTE rebates and the Board agreed with the applicants' arguments that tax avoidance was not the main purpose of the Surgical Companies.[51] That being the case, the Surgical Companies were also established for *bona fide* commercial purposes and not to avoid or reduce tax.

77 I disagree with Dr Tan's submission that the Board failed to appreciate the nuanced difference between the ATOG and ACJT.[52] Dr Tan's more detailed

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50 AWS at paras 87 to 90.

51 AWS at paras 93, 97 and 98.

52 AWS at para 87.

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explanation for the establishment of the Surgical Companies (including ACJT) was the concern that claims had been made against individual applicants and ACJW. The restructuring therefore divided responsibilities for Inpatient Services and Outpatient Services as between the Surgical Companies (including ACJT) and ACJW. In this way, future claims against individual doctors arising from Inpatient Services could be directed at the responsible individual applicant and the corresponding Surgical Company. Dr Tan had taken advice from the accountants on this, albeit tax issues were allegedly never discussed.[53]

78 In my judgment, the Board correctly observed (at [99] and [100] of the Decision) that there was no need to establish the Surgical Companies to achieve this purpose. It would have been sufficient to simply restructure the Medical Companies and the same outcome would have been achieved. The fact that the applicants themselves submit that the establishment of the Surgical Companies made the Medical Companies superfluous seems to support this conclusion. In the absence of an adequate explanation by Dr Tan, the establishment of Surgical Companies was an important factor in the Board's conclusion that tax avoidance or reduction was one of the main purposes of the Arrangement. The Board's reasoning in this regard is sound and I see no reason to disagree.

79 On the point that Dr Tan had obtained this restructuring advice from his accountant, I have already noted the unreliability of this evidence in the absence of direct evidence from the accountant (see above at [72]). I also agree with the Comptroller's submission that it is Dr Tan's subjective motivations and intentions that are relevant to establishing whether the exception in Section 33(3)(*b*) should apply.[54] Advice from an accountant may help to

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53 AWS at paras 20 to 26.

54 RWS at para 99.

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establish what those motivations and intentions were, but that advice cannot on its own be the reason why the Section 33(3)(*b*) exception should apply.

80 The Comptroller's evidence and the Decision noted that Dr Tan paid himself a salary of $6,000 a month from ACJT. However, for YA 2015 to 2018, he was paid dividends in the amount of $2,350,000 and obtained interest-free shareholder loans of up to $2,126,660 (Decision at Annex D).[55] This was also noted in the Decision and the specific numbers are not challenged by Dr Tan in this application. Taken together with Dr Tan's unconvincing explanations for the establishment of ACJT, the Board concluded that there was a strong suggestion that tax avoidance or reduction was at least one of the main purposes of the Arrangement (Decision at [103]).

81 For similar reasons as those noted above (at [74]), Dr Tan has not convinced me that the Surgical Companies Arrangement (with respect to ACJT) was for *bona fide* commercial purposes and did not have tax avoidance or reduction as one of its main purposes. His efforts in hiding behind discussions with his accountant do not convince. Likewise, he has not adequately countered the Board's position and the Comptroller's arguments respectively at [78] and [80] above.

82 I pause here to note the applicants' reference to precedents where the instances of tax avoidance or reduction, in their view, presented more compelling cases than the present case.[56] In *Wee Teng Yau*, this court found that one of the main purposes of the arrangement in question was to allow a dentist to receive the same income he used to receive from the dental clinic at which he

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55 RWS at para 20.

56 AWS at paras 74, 88 to 89.

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worked through a corporatised arrangement. This arrangement allowed him to extract tax advantages which he could not himself obtain, as the evidence clearly showed that the only patients the dentist had during the tax period were the patients of the dental clinic (*Wee Teng Yau* at [8] to [11]). Similarly, in *GIP v The Comptroller of Income Tax* [2024] SGITBR 2 ("*GIP*"), the offending medical practitioner had conceded in his evidence that the tax advantage in question was not the "main motivation or driver" behind the arrangement but was a "good by-product" of it. That evidence helped the Board in *GIP* conclude that tax avoidance or reduction was at least one of the main purposes of that arrangement (*GIP* at [105] and [106]).

83 The applicants seem to be making the case that the smoking guns that were present in *Wee Teng Yau* and *GIP* are not present in the current case and the applicants ought not to be punished. In my judgment, *Wee Teng Yau*, *GIP* and this case are variations of the same theme. The issue at hand is whether sufficient evidence has been put forward by the applicants to demonstrate that the conjunctive requirements of a *bona fide* commercial purpose and the arrangement not having tax avoidance or reduction as one of its main purposes have been made out. In the context of the current case, this requires the applicants to put forward sufficient evidence of the reasons for the Arrangement that stands up to a fair challenge. On balance, I conclude that they have not done so and are thus not entitled to avail themselves of the statutory exception in Section 33(3)(*b*).

The Board correctly found that the applicants could not rely on Sections 43(6) and 43(6A) to preclude the operation of Section 33

84 The third stage of the analysis in *AQQ* (at [36] above) requires the applicants to satisfy me that a tax advantage obtained arose from a "specific

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provision of 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."

85 To recapitulate, the relevant provisions in this application are Sections 43(6) and 43(6A), which concern the SUTE and PTE rebates (also see above at [12]):

> (6) Despite subsection (1) but subject to subsection (6C), tax as described in subsection (6A) or (6B) (as the case may be) is levied and must be paid for each year of assessment upon the chargeable income of every company or body of persons.
>
> (6A) For the purposes of subsection (6), the tax that is levied —
>
> (*a*) in the case of a company, for the years of assessment 2008 to 2019 (both years inclusive); and
>
> (*b*) in the case of a body of persons, for the years of assessment 2010 to 2019 (both years inclusive),
>
> is tax at the rate prescribed in subsection (1)(a) on every dollar of the chargeable income, except that —
>
> (*c*) for every dollar of the first $10,000 of the chargeable income, only 25% is chargeable with tax; and
>
> (*d*) for every dollar of the next $290,000 of the chargeable income, only 50% is chargeable with tax.

86 Another preliminary point to address is that the Comptroller has confirmed that he was not denying the SUTE and PTE rebates for ACJW, as he has employed a different method to counteract the tax advantages obtained by the applicants in that regard.[57] That being the case, this section will focus on the SUTE and PTE rebates for the Medical Companies and the Surgical Companies.

87 The applicants insist that the SUTE and PTE rebates do not require an element of entrepreneurship and that the PTE and SUTE rebates obtained by the

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57 RWS at para 105.

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Applicants were within Parliament's contemplation and purpose.[58] Even if entrepreneurship is a requirement for the SUTE and PTE rebates, the applicants' position is that this requirement has been fulfilled. Amongst other things, Dr Khi used her Medical Company to purchase a commercial property.[59] Further, another doctor (*ie*, Dr Candice Wong) joined ACJW in 2019.[60]

88 On the interaction between general and specific tax provisions at the third stage of the analysis, I am guided by the Court of Appeal's remarks in *AQQ* at [108]:

> 104 In *Ben Nevis*, the Supreme Court of New Zealand sought to lay out a comprehensive statement on how the general anti-avoidance provision should be applied. The approach adopted by the minority and majority respectively may be summarised as follows:
>
> …
>
> (b) The majority, Tipping, McGrath and Gault JJ, in a slant on this held that 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,

58 AWS at footnote 35.

59 AWS at para 78(a); TCJ-2 at para 29.

60 AWS at para 121.

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> 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]).
>
> …
>
> 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 … 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 …

Therefore, the focus at the third stage of the analysis is whether the specific provisions (*ie*, Sections 43(6) and 43(6A)), in light of their "intended scope and Parliament's contemplation and purpose, both as a matter of legal form and economic reality", preclude the operation of Section 33(1). In other words, the court examines the legislative intent behind Sections 43(6) and 43(6A) not to determine whether they apply to the applicants, but whether Parliament intended the applicants to benefit from them such that the Comptroller cannot exercise his powers under Section 33(1) to disregard or vary the Arrangement. As such, the fact that Sections 43(6) and 43(6A) on their face do not mention "entrepreneurship" is immaterial.

89 With this understanding in mind, I now turn to examine the "intended scope and Parliament's contemplation and purpose" for Sections 43(6) and 43(6A). I agree with the Comptroller's submission that entrepreneurship is a requirement for the SUTE and PTE rebates. In the Budget Statement in 2001, the Minister for Finance Dr Richard Hu Tsu Tau explained that the PTE scheme would help to promote entrepreneurship, especially for smaller businesses

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(*Singapore Parliamentary Debates, Official Report* (23 February 2001) vol 73 at cols 44-45 (Dr Richard Hu Tsu Tau, Minister for Finance)):

> The Government also recognises that small businesses are an important component of the Singapore economy. To help such companies, I have to introduce a tax exemption scheme that will help them grow and get established.
>
> …
>
> … Companies, most particularly smaller enterprises, can look forward to being able to plough more of their profits back to their businesses to exploit growth opportunities.
>
> … 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.

90 The 2004 Budget Statement also makes clear that the SUTE scheme was similarly introduced to encourage entrepreneurship (Ministry of Finance, *Budget Statement 2004 Building a Future of Opportunity* at Annex C):

> 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. … This scheme will enable new companies to retain a larger portion of their earnings to be ploughed back into their businesses.

91 It is clear from these extracts that "Parliament's contemplation and purpose" for Sections 43(6) and 43(6A) was the encouragement of entrepreneurship (*AQQ* at [110(c)]), such that companies receiving these rebates can reinvest more of their profits back into their businesses to pursue growth opportunities and business ideas. This was also the conclusion reached by the Board in *GIP* at [116] to [118]. Whilst Parliament intended all companies, large or small, to be able to enjoy the PTE and SUTE rebates, in my view, this is only the case *if* the company uses the rebates to pursue entrepreneurial activities.

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92 Focusing only on the Medical Companies and the Surgical Companies, I also reject the applicants' alternative argument that the Medical Companies and the Surgical Companies satisfied the requirement of entrepreneurship. The Board correctly held that no evidence indicates that they "were used to pursue business ideas or that monies were ploughed back into the companies to grow the respective businesses" (Decision at [113]), as it is evident that, even on the applicants' case, the Medical and Surgical Companies were merely used as corporate vehicles to receive income and shield liabilities.[61] Further, the fact that Dr Khi purchased a commercial property through her Medical Company does not mean that the Medical Company was used to pursue entrepreneurial activities. There is insufficient evidence before me as to whether the commercial property was used to expand Dr Khi's medical practice, and hence to pursue growth opportunities and business ideas. Nor does the joining of Dr Candice Wong in 2019 mean that the Surgical Companies were expanding their business. It was not apparent to me what business expansion plans were being implemented through Dr Candice Wong's participation in ACJW. In any event, Dr Candice Wong only joined ACJW after the relevant YAs that are in issue in this application. As such, the PTE and SUTE rebates under Sections 43(6) and 43(6A) do not preclude the Comptroller from exercising his powers under Section 33(1) to disregard or vary the Arrangement.

The Board did not err in finding the Comptroller's exercise of powers under Section 33(1) was fair and reasonable

93 The applicants contend that the "personal exertion" principle, which they note is derived from the New Zealand case of *Spratt v Commissioner of Inland Revenue* [1964] NZLR 272 ("*Spratt*"), has been expressly rejected by

61 AWS at paras 119 and 122.

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this court in *Wee Teng Yau*. For context, the "personal exertion" principle states (*Spratt* at 277; *Wee Teng Yau* at [20]):

> … No taxpayer can, by way of assignment, escape assessment of tax on income resulting from his personal activities – such income always remains truly his income and is derived by him irrespective of the method he may adopt to dispose of it.

That being the case, the Comptroller's use of the "personal exertion" principle to tax the net profits of the Medical Companies and the Surgical Companies in the hands of the applicants as individuals had no basis. Further, the Comptroller's use of the Cost-Plus 10% method to attribute the remaining share of ACJW's net profits to the applicants is also a disguised use of the "personal exertion" principle.[62]

94 The Cost-Plus 10% method is explained in the Comptroller's closing submissions before the Board:[63]

> The Cost-Plus 10% Method was set out in the IRAS Circular on the "Incorporation of Companies by Medical Professionals and Relevant Tax Implications" published in November 2019 (the "**Circular**"), and it works as follows: A 10% mark-up is applied to the company's cost base to determine the company's share of profit for the administrative and support services provided to the doctor. The remaining profits are attributed to and taxed in the hands of the doctor as the doctor's income for the provision of his medical professional services.
>
> [emphasis in original]

95 I disagree that *Wee Teng Yau* is authority for the proposition that any application of the "personal exertion" principle has no effect in Singapore. As Choo Han Teck J noted in that case, there needs to be caution in assuming that the "personal exertion" principle is some form of common law exception that

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62 AWS at paras 130 to 135.

63 TCJ-2 at pp 5928 to 5929.

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allows the Comptroller to levy taxes that have not been provided for in the Act. Choo J went on to clarify that the "personal exertion" principle was merely a judicial expression used to emphasise that "a person cannot avoid paying taxes for work done by him, simply by assigning this pay to someone else". In any event and as Choo J rightly pointed out, under the Act, the Comptroller has tools available to him under Sections 33(1)(*a*) and 33(1)(*c*) to impugn ineligible tax advantages and to counteract the same (*Wee Teng Yau* at [22]).

96 The Comptroller's counteraction of the tax advantages obtained by the applicants through the Arrangement was undertaken pursuant to his powers under Section 33(1). As the Court of Appeal noted in *AQQ* (at [124]), where there are varying methods to counteract a tax advantage, it is not for the court to decide whether one method is to be preferred over others. Only adjustments that are arbitrary or unreasonable or any excessive exercise of discretion would be liable to be struck down (see also at [34] above).

97 In light of the above, I do not find the Comptroller's method of counteracting the tax advantages obtained in the Medical Companies and the Surgical Companies to be arbitrary or unreasonable. The Cost-Plus 10% method (see [94] above) was explained by the Comptroller in a letter to ACJW as early as August 2019.[64] Its logic is sound and I do not see any arbitrariness or excessive exercise of discretion in using this approach.

98 Further and as the Comptroller explains in his submissions, in the context of this case, any method used to calculate the tax advantages obtained by the applicants in the Arrangement would have some element that reflects

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64 TCJ-2 at p 1940.

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their personal exertions.[65] As noted above (at [95]), the personal exertions in this context are not used as the basis for clawing back tax advantages outside the scope of the Act, but as a method of calculating the amount of tax advantages to be counteracted based on specific powers available under the Act (*ie*, Section 33(1)).

99 In any event, the Comptroller has pointed out certain concerns with the CUP Method proposed by the applicants,[66] and I agree with these concerns. The CUP Method relies on questionable data from an occupational wage survey in 2018 ("OWS"). Amongst other things, the OWS did not identify the number of O&G specialists surveyed nor their seniority. The OWS was also conducted in 2018, which was past the YAs in dispute (*ie*, 2013 to 2018).

100 The Board ultimately concluded (at [119] of the Decision) that the Comptroller's exercise of his powers under Section 33(1) was fair and reasonable. In light of the above, I see no reason to disagree with this conclusion.

Conclusion

101 The application is dismissed for the aforesaid reasons. Unless agreed, parties are to submit their written costs submissions of no more than five pages within one week of this decision.

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65 RWS at para 108.

66 AWS at para 139; RWS at para 112.

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Wong Li Kok Alex
Judge of the High Court

Ho Wei Liang Sherman and Leong Kit Weng (Shook Lin & Bok LLP) for the applicants;
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