DuaneMorris®
& SELVAM LLP
A JOINT LAW VENTURE

## Singapore High Court Decides Landmark Tax Avoidance Case

On 18 December 2012, the Singapore High Court released the much anticipated judgment of ***AQQ v Comptroller of Income Tax*** [2012] SGHC 249 (the "**AQQ Case**"). This landmark decision clarifies the general anti-tax avoidance provision in Section 33 of the Income Tax Act ("**ITA**")[1] for the very first time since the amended provision was enacted in 1988. Prior to the *AQQ Case*, it had always been unclear how Section 33 of the ITA would be applied in practice.

Background Facts

B, a listed Malaysian company, is the ultimate holding company of C[2], D, E, G and H[3]. AQQ (the "**Taxpayer**") was established in May 2003 as a Singapore subsidiary as part of a restructuring exercise by the B group of companies ("**Group**"). In connection with the proposed restructuring[4] which involved the acquisition of the Relevant Subsidiaries, a Singapore branch of a foreign bank ("**Singapore Bank**") was involved in the financing arrangement (the "**Financing Arrangement**"). Prior to April 2003, Singapore Bank had presented a discussion paper entitled "Fixed Rate Notes Financing Structure" ("**Discussion Paper**") to B setting out its proposal for the arrangement[5].

In connection with the acquisition of the Relevant Subsidiaries, the Taxpayer entered into the Financing Arrangement[6], which involved the following steps:

---

1 Chapter 134 of Singapore.

2 A Malaysian subsidiary.

3 D, E, G and H are subsidiaries in Singapore (collectively, the "**Relevant Subsidiaries**").

4 Please refer to **Annex A** which shows the group structure before and after the restructuring.

5 The Discussion Paper stated:

> "the main objective of the proposed restructuring is to enable [B] to streamline its operations in Singapore by having a flatter corporate structure. To achieve this objective, it has been proposed that a new holding company [i.e., the Taxpayer] be established in Singapore. By having a holding company in Singapore that owns 100% of the various Singapore subsidiaries, the [Group] would be in a position to avail itself of the "Group Relief" provisions under the Singapore income tax legislation"

The Discussion Paper also contained the following statements:

(a) "We understand that D and E will pay tax franked dividends to [the Taxpayer], the proceeds of which are to be used to service the interest payments under the Fixed Rate Notes";

(b) "Based on the numbers used in the illustration above, [the Taxpayer] should be able to derive savings amounting to more than S$17.9 million. ..."

6 To help understand the fairly complicated transactions which took place on 18 August 2003, please refer to **Annex B**.

(1) On 18 August 2003, the Taxpayer issued 10-year 8.85% p.a. $225M fixed rate convertible notes ("**Notes**") to Singapore Bank, the proceeds of which was used by the Taxpayer to finance the acquisition of the Relevant Subsidiaries:

(a) $75M was paid to B for the acquisition of 100% in D;

(b) $75M was paid to C for the acquisition of 50% in E, G and H; and

(c) $75M was paid to D for the acquisition of the remaining 50% in E, G and H.

(2) On the same day:

(a) Singapore Bank stripped the interest component ("**Interest Coupons**") from the Notes, and retained the Interest Coupons. Singapore Bank sold $205M of the principal component of the Notes ("**Principle Notes**") at par for $205M by entering into a conditional payment obligation ("**CPO1**") with its Mauritius branch ("**Mauritius Bank**", and together with Singapore Bank, the "**Banks**"). Under CPO1, Singapore Bank promised to pay an amount equivalent to 8.845% p.a. to Mauritius Bank conditional upon Singapore Bank receiving payments under the Interest Coupons from the Taxpayer; and

(b) Singapore Bank also entered into a forward sale agreement for the remaining $20M of the Principal Notes with Mauritius Bank.

(3) Similarly, on the same day:

(a) Mauritius Bank in turn sold the $205M Principal Notes to C by entering into a conditional payment obligation ("**CPO2**") with C. Under CPO2, Mauritius Bank promised to pay an amount equivalent to 8.84% p.a. to C, conditional upon payments being made by Singapore Bank under CPO1; and

(b) Mauritius Bank also entered into a forward sale agreement for the remaining $20M of the Principal Notes with C.

(4) In connection with the Financing Arrangement:

(a) B granted an interest-free inter-company loan of $75M (being proceeds from the Taxpayer) to C to enable C to pay Mauritius Bank for the purchase of the Principal Notes. With this loan ($75M) and its own proceeds from the Taxpayer (also $75M), C paid $150M to Mauritius Bank for the purchase of the $205M Principal Notes;

(b) D granted an interest-free inter-company loan of $75M (being proceeds from the Taxpayer) to C to enable C to pay Mauritius Bank for the purchase of the Principal Notes. Of the $75M, C transferred $55M to Mauritius Bank on 18 August 2003 (i.e., the same day) for the purchase of the $205M Principal Notes, and placed the balance $20M as an

investment deposit with Singapore Bank to secure the forward sale of the $20M Notes to Mauritius Bank.

(c) Mauritius Bank paid $205M to Singapore Bank for the purchase of $205M Principal Notes from Singapore Bank.

On 18 November 2003, C withdrew the $20M investment deposit from Singapore Bank and paid the same to Mauritius Bank for the purchase of the remaining $20M Notes. Mauritius Bank in turn paid $20M to Singapore Bank for the delivery of the balance $20M Notes.

During the tax assessment years between 2004 and 2007, the Relevant Subsidiaries paid dividends to the Taxpayer, which were taxable income to the Taxpayer. These dividends carried tax credits arising from tax deemed deductible at source which could be set off against tax payable on the Taxpayer's chargeable income under the old imputation system[7]. The Taxpayer claimed the interest paid to the Singapore Bank on the Notes as deductions against the franked dividends it received, the combined effect of which resulted in the Taxpayer receiving substantial tax refund from the Comptroller.

After the notices of assessment for the relevant years (which took into account the interest deductions claimed, and the dividends received, by the Taxpayer) were issued, following further enquiries, the Comptroller:

(a) subsequently formed the view that the Taxpayer had engaged in a tax avoidance scheme;

(b) exercised his powers pursuant to Section 33[8] of the ITA to disregard both the dividend income and interest expenses for tax deduction purposes; and

---

7 Prior to 1 January 2003, Singapore adopted the full imputation system for taxation of companies, which meant that the tax payable by a company on its normal chargeable income was strictly not a final tax, as the tax payable could be used to pay dividends with tax credit (or commonly known as "franked dividends"). When the shareholders received the dividends, they were taxable on the dividends on the grossed-up basis (i.e., inclusive of Section 44 tax credits). The corporate tax that had been paid in relation to the dividends was "imputed" to the shareholders so that they could claim credit for the tax deducted at source (under Section 46 of the ITA). Hence, if the tax credit available to a shareholder was greater was greater than his tax liability, he would be entitled to a tax refund from the Comptroller of Income Tax in Singapore ("**Comptroller**").

8 **33. Comptroller may disregard certain transactions and dispositions**

(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.

(c) issued additional assessments, which assessed the Taxpayer to tax liability instead.

The Taxpayer appealed against the Comptroller's decision to the Income Tax Board of Review ("**ITBR**"), but failed at the ITBR stage. The Taxpayer then appealed to the High Court. The pertinent issue to be decided by the High Court was whether the Financing Arrangement constituted tax avoidance within the ambit of Section 33[9].

Interpretation of Section 33

In interpreting Section 33, the High Court explained that there is a distinct two-part structure:

(1) Section 33(1) sets out three specific circumstances, at least one of which must be fulfilled before the Comptroller may exercise his powers under Section 33(1). The "purpose or effect" of the arrangement in question must be to:

(a) alter the incidence of any tax which is payable by or which would otherwise have been payable by any person;

(b) relieve any person from any liability to pay tax or to make a return under the ITA; or

(c) reduce or avoid any liability imposed or which would otherwise have been imposed on any person by the ITA.

(2) Section 33(3) sets out the exceptions to the application of Section 33, which include where the arrangement in question was carried out for *bona fide* commercial reasons and had not, as one of its main purposes, the avoidance or reduction of tax.

Hence, the proper approach towards applying Section 33 is as follows:

(a) The Comptroller must first determine whether the arrangement in question falls within any of the three limbs in Section 33(1).

(b) If the arrangement does not fall within any of the 3 limbs in Section 33(1), the Comptroller cannot exercise his powers thereunder.

---

(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.

[9] The other crucial issue was whether the Comptroller was entitled to exercise his powers under Section 33(1) in the manner that he did.

(c) If the arrangement does fall within any of the 3 limbs in Section 33(1), it must further be determined whether any of the statutory exceptions in Section 33(3) applies to the arrangement in question.

(d) If any of the statutory exceptions applies to the arrangement in question, the Comptroller may not exercise his powers under Section 33(1).

(e) Conversely, if none of the statutory exceptions applies, the Comptroller may exercise his powers under Section 33(1).

Relevant Principles

"Purpose or Effect". Before the Comptroller may exercise his powers under Section 33(1), he must be satisfied that the "purpose or effect" of the arrangement in question is one or more of the three consequences set out in Sections 33(1)(a), 33(1)(b) or 33(1)(c). The High Court endorsed Lord Denning's "predication principle" enunciated in the Privy Council case of ***Lauri Joseph Newton and Ors v Commissioner of Taxation of the Commonwealth of Australia*** [1958] 1 AC 450, which required the court to objectively determine the tax avoidance purpose or effect of the arrangement in question with reference to the terms of the arrangement and the manner it was implemented, without reference to the motives of the parties involved. The objective effect of the arrangement is paramount.

Applying the approach above, to determine if the Financing Arrangement fell within any of the 3 limbs of Section 33(1), the Comptroller had to be able to predicate, by looking at the overt acts in the Financing Arrangement, that it was implemented in that particular way so as to achieve one or more of the 3 consequences set out in Section 33(1). The High Court was of the view that the Financing Arrangement at least fell within Section 33(1)(c). In reaching this conclusion, the High Court reasoned as follows:

(1) Income tax was ordinarily payable in respect of the dividend income received by the Taxpayer, less allowable deductions and allowances (if any). Hence, there was relevant tax liability for the purposes of Section 33(1).

(2) It is only after tax has first been charged on the dividend income that the Taxpayer was allowed to set off the Section 44 tax credits against the income tax payable on the dividend income.

(3) The Taxpayer paid interest to Singapore Bank in respect of the Notes issued pursuant to the Financing Arrangement. The interest expenses were claimed by the Taxpayer as deductions against its dividend income.

(4) Without the interest expenses, the whole dividend income would be subject to tax. With the interest expenses, the dividend income less the interest expenses is subject to tax, so that the amount of tax charged is lower.

(5) As such, by generating interest expenses which are claimed as deductions against dividend income, *the Financing Arrangement had the purpose and effect of reducing or avoiding a liability imposed by the ITA*. Without the interest expenses, there would have been more tax charged on the dividend income.

It is also noteworthy that the High Court found that the Financing Arrangement had the effect of avoiding the liability of C (being a non-Singapore tax resident) to bear withholding tax for the interest payments that it received[10]. The key steps in the Financing Arrangement which enabled C to avoid liability to pay withholding tax were the detachment of the Interest Coupons from the Notes, and the interposition of Banks in the chain of interest payments.

Statutory Exception in Section 33(3). To avail itself of the statutory exception under Section 33(3)(b), the Taxpayer must prove the arrangement in question:

(1) was carried out for *bona fide* commercial reasons; and

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

"bona fide commercial reasons": In respect of the first element, the High Court was of the view that the Taxpayer's reasons for carrying out the arrangement is a subjective matter of fact that is determined by drawing the appropriate inferences and reaching the appropriate conclusion after considering all the relevant evidence, which includes (but is not limited to) the relevant contemporaneous documents, the manner in which the arrangement was carried out and the testimonies of the relevant witnesses on the stand.

"tax avoidance as one of the main purposes": In respect of the second element, the Taxpayer must prove that the same arrangement had not as one of its main purposes[11] the avoidance or reduction of tax. Whether any of the main purposes of the arrangement was to avoid or reduce tax is a subjective matter of intention to be determined after a consideration of all the relevant evidence, which includes (but is not limited to) those examples cited earlier.

For both elements, all the relevant circumstances of the case are considered, and the arrangement is considered in the context of those circumstances[12]. A number of UK cases[13] which had interpreted a

---

10 The High Court explained if (i) Singapore Bank had subscribed for the Notes with the Interest Coupons not being detached from the Notes and if the Notes (with Interest Coupons) were sold onwards from Singapore Bank to C through Mauritius Bank; or (ii) C had directly subscribed for the Notes from the Taxpayer, in either case, the Taxpayer would have had to deduct withholding tax from the interest that it would have to pay to C under the Interest Coupons, and account to the Comptroller such withheld tax.

11 Section 33 should not apply if one of the purposes of the arrangement is to avoid liability for tax so far as it is merely one and possibly a subsidiary purpose or effect of the arrangement or where the tax avoidance was merely incidental.

12 The High Court gave by way of an example: the testimony of a witness might be that the arrangement in question was carried out for *bona fide* commercial reasons and not for the purpose of avoiding or reducing tax, but the manner in which the arrangement was carried out and the contemporaneous documents for the various transactions within the arrangement might lead one to disbelieve the witness and reach the opposite conclusion. Everything depends on a holistic evaluation of all the relevant evidence.

13 The High Court relied on ***Inland Revenue Commissioners v Brebner*** [1967] 2 AC 18 ("***Brebner***"), a House of Lords case, and the recent case of ***Trevor G Lloyd v Revenue and Customs Commissioners*** [2008] STC 681, where it was observed:

> "The issues for me are first whether the Transaction was carried out for *bona fide* commercial reasons; it is not whether it was a *bona fide* commercial transaction, which is more objective. Secondly, whether its main object (or one of its main objects) was to enable the tax advantage to be obtained. *Reasons are subjective reasons*

broadly similar provision, *viz* Section 28[14] of the United Kingdom's Finance Act 1960, supported the view that the question whether one of the main objects is to obtain a tax advantage is a subjective one, that is, a matter of the intention of the parties. The High Court concluded that the statutory exception in Section 33(3)(b) should be interpreted as importing a subjective test which requires an inquiry into the subjective reasons of the taxpayer for carrying out the arrangement in question[15].

Whether the Financing Arrangement satisfied Section 33(3)(b)

The High Court had to consider whether, on a proper interpretation and application of Section 33(3)(b), it was reasonable that the Financing Arrangement was carried out for *bona fide* commercial reasons and did not have as one of its main purposes the avoidance or reduction of tax. After examining the evidence, the High Court agreed with the Comptroller that the Taxpayer did not carry out the Financing Arrangement for *bona fide* commercial reasons. For example:

(a) The Taxpayer's witness confirmed that the Group was capable of financing the restructuring and it was not necessary to involve the Singapore Bank and Mauritius Bank in the restructuring through the Financing Arrangement.

(b) Although the witness had previously testified that there were 3 objectives[16] in carrying out the restructuring and the Financing Arrangement. When further questioned, the witness admitted that the Bank was involved in the restructuring mainly to achieve the third objective, i.e., to return the "tax assets" represented by the tax credits in the Section 44 accounts of the Relevant Subsidiaries to B.

(c) The High Court placed great reliance on the Discussion Paper (prepared by Singapore Bank), which did not explain how the Financing Arrangement would help to achieve the main objective of the restructuring, i.e., to streamline its operations in Singapore through a "flatter" corporate

---

*why the Transaction was carried out; the object (which I equate with purpose) is what the Transaction hoped to achieve. In looking at these I am bound to look at the transaction in its context*. ... [emphasis added]"

14 28(1) Where —
(a) in any such circumstances as are mentioned in the next following subsection, and
(b) in consequence of a transaction in securities or of the combined effect of two or more such transactions,
a person is in a position to obtain, or has obtained, a tax advantage, then *unless he shows* that the transaction or transactions were carried out either for *bona fide commercial reasons* or in the ordinary course of making or managing investments, *and that none of them had as their main object, or one of their main objects, to enable tax advantages to be obtained*, this section shall apply to him in respect of that transaction or those transactions: ...

15 The High Court departed from the ITBR which had interpreted Section 33(3)(b) as importing a fully objective test. The High Court noted that its approach was consistent with the Minister for Finance's speech during the Second Reading of the bill which introduced the amended Section 33 in 1988, that Section 33 is intended to only catch deliberate and blatant tax avoidance arrangements and is not meant to affect normal legitimate commercial transactions. The provision will not apply to *bona fide* transactions even if these result in tax savings where such savings are incidental to the transactions. On the other hand, the provisions will apply to transactions where payment of tax is avoided through deliberate and artificial tax avoidance arrangements.

16 namely: (a) to simplify the corporate structure; (b) to claim group tax relief; and (c) to have the "tax assets" residing in the Relevant Subsidiaries returned to B.

structure. Instead, the Discussion Paper expressly states that "[the Taxpayer] should be able to derive savings amounting to more than S$17.9 million". The High Court inferred that when the Taxpayer accepted the proposal in the Discussion Paper, it also agreed with the rationale behind the proposal, namely, the extraction of tax benefits.

(d) A stock exchange announcement by B which stated that "the issue of the Notes will not have any impact on the consolidated net borrowings of the B group". The High Court was of the view this showed that B never expected the Financing Arrangement to result in the Group overall owing money to the Bank.

(e) The High Court also found many features of the Financing Arrangement which led one to reasonably conclude that the Financing Arrangement was not carried out for *bona fide* commercial reasons and had as one of its main purposes the avoidance or reduction of tax:

(i) The Discussion Paper did not disclose how the sums paid for the Relevant Subsidiaries were arrived at and no valuation was carried out. The evidence strongly suggested that the Taxpayer grossly overpaid for the acquisition of the Relevant Subsidiaries[17].

(ii) There was no satisfactory evidence to show that the interest rate was commercially arrived at. The High Court highlighted the fact that although the interest rate under Interest Coupons was 8.85% p.a., the benefit of such high interest did not go to either the Singapore Bank nor the Mauritius Bank (each of whom only effectively earned "interest" of 0.005%). Instead C ultimately earned interest at 8.84% p.a, which was part of the Group, who had paid the high interest of 8.85%.

(iii) There was no explanation given as to why B and D each made substantial interest-free inter-company loans of $75 m to C. The making of the interest-free loans enabled B and D to avoid the tax which would otherwise have been payable on interest income arising had the loans been subject to interest.

(iv) The Taxpayer also could not explain why B and D had to loan indirectly a total of $150M through C to the Taxpayer by first lending the sum to C, which then effectively loaned the same amount to the Taxpayer when C bought the Principal Notes through Mauritius Bank and Singapore Bank.

(v) The fact that B, C and D opted not to directly[18] loan the total sum of $225M interest-free to the Taxpayer, but instead chose to carry out the circuitous steps of the Financing

---

17 The net asset values of the Relevant Subsidiaries based on their financial statements for the year ended 31 December 2002 were merely $61M. The amount paid (i.e., $225M) was more than 360% the net asset value of the subsidiaries. The High Court was of the view that the larger the amount paid for the Relevant Subsidiaries, the more the borrowing by the Taxpayer through the issuance of the Notes; the more interest under the Financing Arrangement, the more allowable deductions which the Taxpayer could utilise against the taxable dividend income. Ultimately, this led to more tax refund from the Comptroller.

18 B and D could have loaned the $150M (whether interest-free or not) directly to the Taxpayer without the circular involvement of Singapore Bank, Mauritius Bank and C. However, if no interest was paid by the Taxpayer, the Taxpayer would not have been entitled to deductions for interest paid. However, if the loan to the Taxpayer had been subject to

Arrangement supported the view that the Financing Arrangement was entered into to generate large interest expense and consequently led to large refunds for the Taxpayer.

(f) The High Court agreed with the ITBR that there was in substance no real loan made by the Banks to the Taxpayer. The funds under the Financing Arrangement essentially flowed in a loop back to the Group on the same day. In substance, there was no actual credit risk incurred by the Banks whose role was actually that of a facilitator[19].

In summary, the High Court was of the view the Singapore Bank and the Mauritius Bank were interposed in the Financing Arrangement so that the Taxpayer would be able to obtain the tax refund without the interest it bore without being taxed in the hands of C. For this reason, the High Court agreed with the ITBR that the Financing Arrangement was not carried out for *bona fide* commercial reasons but had, as one of its main purposes, the avoidance of tax. In other words, high interest expenses were artificially incurred to generate tax refunds.

Choice Principle ? The Taxpayer tried to argue that even if Section 33 applies to the Financing Arrangement, effect should be given to the relevant specific provisions of the ITA (relating to deductions, the payment of franked credits and refund thereof) and the operation of Section 33 should be superceded. The issue is when does taking advantage of a specific tax provision conferring a tax benefit amount to tax avoidance within the meaning of Section 33. This line of argument is commonly known as the "choice principle" and the "scheme and purpose approach" which developed in Australia and New Zealand respectively. However, the High Court declined to follow both the Australian and New Zealand approaches, which had developed in the absence of any corresponding equivalent of Singapore's statutory exception under Section 33(3)(b). As Singapore already has the statutory exception under Section 33(3)(b), there was hence no need to adopt either approaches.

Comptroller's exercise of his powers under Section 33

The Comptroller's powers under Section 33(1) must be exercised in a manner that is fair and reasonable in order to achieve the purpose of counteracting the tax advantage obtained or obtainable from the arrangement. He must treat taxpayers fairly and exercise his statutory discretion reasonably.

As noted earlier, the Comptroller disregarded both the dividend income and interest expenses under the additional assessments. Although the High Court found that the Financing Arrangement was caught by Section 33(1), and that the Taxpayer could not rely on the statutory exception, the High Court was of the view that since it was only the Financing Arrangement (i.e., the artificial incurring of interest expense which enabled the taxpayer to obtain tax refund without C being liable for withholding tax) which offended Section 33, the Comptroller should not have disregarded the dividend income as the Taxpayer was entitled to it under the ITA. The High Court was of the view that the Comptroller did not exercise his powers under Section 33(1) fairly and reasonably when he disregarded both the dividend income and the

---

interest, such interest income would have been taxable in the hands of D and B, which would have neutralised any tax refund to the Taxpayer.

[19] This view was further supported by the fact that each of the Banks only earned 0.005% p.a. on $225M (or $11,250 p.a.) under the Financing Arrangement.

interest expenses, and this was sufficient for the High Court to discharge the additional assessments and allow the Taxpayer's appeal[20].

Conclusion

After more than 2 decades since its introduction, some light is finally shed as to how Section 33 ought to be interpreted and applied in practice. The High Court has concluded that a proper balance is struck between the rights and interest of taxpayers and the Comptroller by interpreting Section 33(1) as importing an objective test, while allowing taxpayers to avail themselves of the statutory exception under Section 33(3)(b), which should be interpreted as importing a purely subjective test, against the potential overreach of Section 33(1).

Although the *AQQ Case* is undoubtedly a landmark decision, but given the huge sums involved, the writer is of the view that the Comptroller is likely to appeal against the High Court's decision. It remains to be seen whether the Court of Appeal (if invited to so determine) would disturb the determinations made by the High Court, in particular, in relation to the legality of the additional assessments.

In the context of current international developments where a number of global multinationals have been alleged to have carried out unethical or aggressive, albeit legitimate (arguably), tax avoidance strategies by way of shifting profits from high tax jurisdictions to low tax jurisdictions through controversial transfer pricing mechanisms and "treaty shopping" practices, and amidst increasing measures between governments on closer international co-operation on the sharing of tax information, the release of the *AQQ Case* on the interpretation of the Singapore general anti-tax avoidance provision could not have been more timely.

As can be seen, the line distinguishing legitimate tax planning from unacceptable tax avoidance arrangements is often a fine one, and the drawing of this line will often turn on the specific facts of the case and the perceived culpability of the taxpayer by the tax authority. Hopefully, with the general principles and framework enunciated in the *AQQ Case*, the business community is able to plan ahead their tax strategies more confidently and pre-empt any unanticipated tax adjustments by the Singapore tax authorities.

Should you require any further information relating to the article, please feel free to contact us.

Written on 10 January 2013 by:

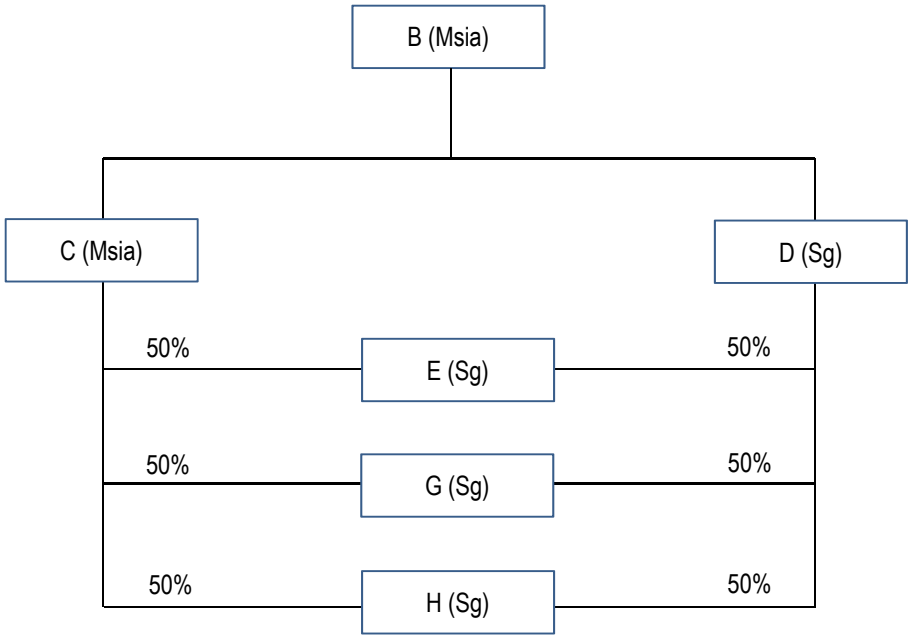
David Teo Shih Yee Tel: +65 6311 3666 Email: DTeo@duanemorrisselvam.com

**DUANE MORRIS & SELVAM LLP** is a joint law venture between **Duane Morris LLP** and **Selvam LLC**.

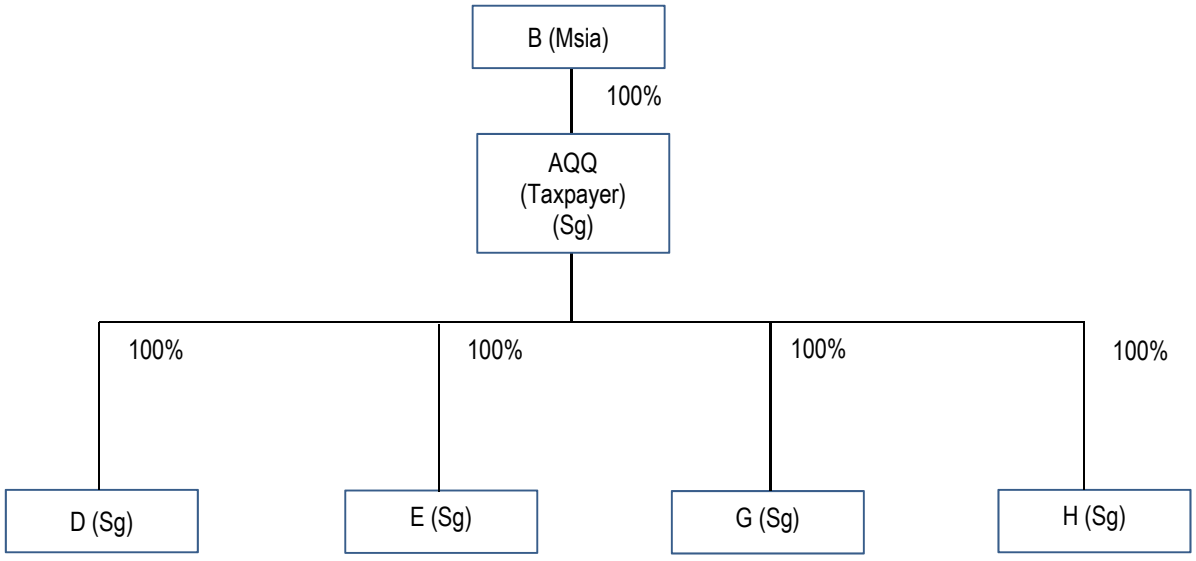
[20] It should be noted that the High Court also held that the Comptroller had acted *ultra vires* when he issued additional assessments under Section 74(1) of the ITA, as the Comptroller had in fact assessed the Taxpayer to less tax than that under the original assessments, by disregarding the relevant dividend income. Section 74(1) states "Where it appears to the Comptroller that any person liable to tax has not been assessed or *has been assessed at a less amount than that which ought to have been charged*, the Comptroller may ... assess that person at such amount or additional amount as according to his judgment ought to have been charged."

**Annex A**

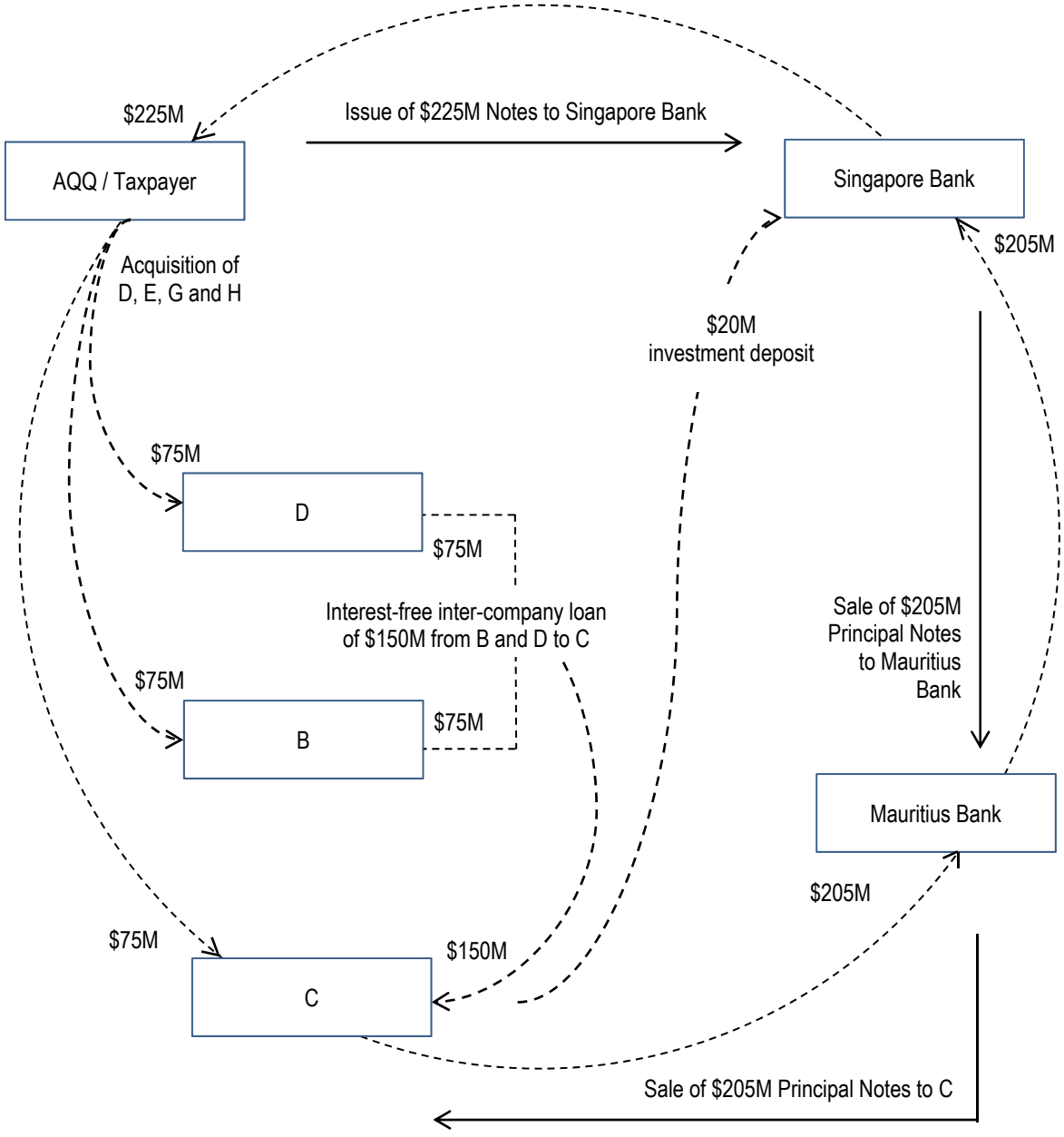
Before restructuring




After restructuring



**Annex B**


$225M
Issue of $225M Notes to Singapore Bank
AQQ / Taxpayer
Singapore Bank
$205M
Acquisition of
D, E, G and H
$20M
investment deposit
$75M
D
$75M
Interest-free inter-company loan
of $150M from B and D to C
Sale of $205M
Principal Notes
to Mauritius
Bank
$75M
B
$75M
Mauritius Bank
$205M
$75M
$150M
C
Sale of $205M Principal Notes to C