SECTION 30 OF SINGAPORE INCOME TAX ACT[1] — THE FORGOTTEN VASSAL

History

In 1947, a report was drawn up by R.B. Heasman[2] on the practicability of income tax for the Colony of Singapore and the Malayan Union with details of a draft bill and proposals for administration and staffing. In Part III of the report[3] it was commented thus:

> Under the model bill, as drafted, evasion would be negligible if not entirely impossible, in respect of income arising from property and employments. So far as investment income is concerned, to include income arising from trusts and estates, taxation at source will generally speaking, ensure full collection. As regards trades and businesses, all concerns registered under the Companies Ordinances are required by law to keep their accounts in English, and to submit their books and records for annual audit. In addition, public companies must submit copies of their profit and loss accounts and balance sheets each year to the Registrar of Companies.

After twenty five years of implementation, it may be said that the comment was an over-optimistic appraisal of the infallibility of the statute, witnessed by the various amendments that had to be introduced to prevent certain rampant evasion schemes devised to minimise tax liability, especially in connection with corporate activities.[4] Perhaps one of the matters which was in the contemplation of the draftsman as giving rise to such optimism was the clause granting wide discretionary powers to the Comptroller of Tax, to deem undistributed profits to be a part of the income of those persons controlling such companies. Clause 24 of the Bill[5] set out such powers:

> Where it appears to the Commissioner that with a view to the avoidance or reduction of tax a company controlled by not more than five persons has not distributed to its shareholders as dividend, profits made in any period ending after the first day of ...., 194.., which could be distributed without detriment to the company's existing business, he may treat any such undistributed profits as distributed, and the persons concerned shall be assessable accordingly.

1. Singapore Statutes, Rev. Ed. 1970, Cap. 141.
2. See *A Report to their Excellencies The Governors of the Malayan Union and Singapore,* with recommendations, including a Draft Bill and proposals for Administration and Staffing, printed by The Malayan Union Government Press 1947. (Referred to as the Heasman Report).
3. Heasman Report, at p. 3, ("Review and Epitome of Criticisms and Objections").
4. A perusal of the list of amendments introduced since 1947 will show that a number of tax loop-holes were found in the statute giving rise to avoidance schemes: e.g. the sale of "loss" companies as a tax advantage was amended in 1969 (Amendment No. 23 of 1969); the use of trusts and other settlements as a tax shelter was corrected in 1960 by Ordinance 36 of 1960.
5. Heasman Report, at p. 11.

In the attached explanatory notes submitted with the Bill, no mention was made of this particular clause. It may be inferred that the draftsman thought that such a clause was plain upon its face, and no further comment was necessary. It was only at the level of the committees' sittings to discuss the bill that we discern any uneasiness with the wording of the proposed section.[6] It is interesting to note the following paragraphs in the Report of the Income Tax Committee of the Federation of Malaya.[7]

> The official attitude expressed before the Committee is that this section (clause 24) is primarily concerned with director controlled companies, but that this is not stated in the Ordinance due to the difficulty of finding a definition which is adequate and incapable of circumvention. It was officially confirmed also that there is no intention of preventing companies from making justifiable reserves from their profits, but that the section is designed expressly to prevent 'avoidance or reduction of tax'.
>
> It was agreed, in view of this explanation, that no recommendation for amendment or deletion was either necessary or practicable, for the Comptroller would judge each case on its merits, and in any event the assessee had recourse to appeal against the assessment, when it would be judicially decided whether the facts necessary to the exercise of the Comptroller's discretion existed.

One may question the attitude of the committee in its acceptance of the clause, when the wording of the clause did not reflect the official attitude of the legislature. It does not seem a sufficient explanation that vague and wide discretionary powers should be given to the Comptroller because of the draftsman's inadequacy at expressing himself. At a more generous level, the committee may be seen as portraying the feelings of governmental paternalism, with simple faith in the Comptroller, that he will exercise his discretion according to the intention behind the clause rather than upon a literal interpretation of the clause.

The Singapore committee considered two proposals put forward in connection with clause 24.[8] It was originally proposed that the rate of tax for companies and the maximum rate of tax for individuals be made the same, thereby reducing any advantage which may be obtained by individuals from using a corporate front. On rejection of this proposal, it was then suggested that the proviso to section 21(1) of the English Finance Act 1922, be incorporated into clause 24 to make the meaning more explicit, and to delineate the activities which must be considered by the Comptroller. The proviso suggested was:

> Provided that, in determining whether any Company has or has not distributed a reasonable part of its income as aforesaid, the Comptroller shall have regard not only to the current requirements of the company's business but also to such other requirements as may be necessary or advisable for the maintenance and development of that business.

6. See Reports of the Income Tax Committees printed by the Government Press in Kuala Lumpur, 1948. Two committees sat to discuss the bill, one in Singapore and the other in Malaya. Both committees produced reports of their meetings and proposals.

7. *Ibid.*, at p 25.

8. *Ibid.*, at p. 41.

It was felt that with this proviso, the Comptroller would be required to consider *all* requirements of the company and not just present requirements.

When the Income Tax Ordinance was promulgated in 1947,[9] clause 24 became enacted as section 27,[10] and the words "controlled by not more than five persons" were left out of the final version. This may be seen as an intent to apply the section to companies with more than five controlling persons and even, possibly, to extend the ambit of the section to cover public companies. In the following year, 1948, the section was amended by deleting the word "existing" from the section, so that the Comptroller had then to consider all businesses of the company and not only the "existing business" of the company, in the question of retained income.[11] No further substantive changes have been made to the section since.

In the twenty five years that it has lain in the statute book, this provision has yet to see any action.[12] One possible explanation for this phenomenon may lie in the comparative insignificance of private companies in Singapore during the years 1948-60. Those few companies that did exist, were encouraged to grow and expand; under such circumstances, it would have been undesirable to exercise the power in section 27. However, this dearth of private companies is long over and in the mushroomed corporate society of today, it is inevitable that section 27 (since renumbered as section 30) will make its maiden bow in court.

The essence of section 30 is variously referred to in tax literature as the unreasonable accumulations provision,[13] the excess retention tax,[14]

9. Ordinance 39 of 1947.

10. Section 27 reads "Where it appears to the Comptroller that with a view to the avoidance or reduction of tax a company has not distributed to its shareholders as dividend, profits made in any period ending after the commencement of the basis period for the first year of assessment under this Act, which could be distributed without detriment to the company's existing business, he may treat any such undistributed profits as distributed, and the persons concerned shall be assessable accordingly."

    On a point of technicality one may observe that the original proposal of "first day of , 194 ," was substituted with the phrase "year of assessment under this Act," perhaps to avoid the uncertainty of the exact day when the statute would take effect in 1948.

11. Income Tax (Amendment) Ordinance, No. 20 of 1948.

12. The writer has checked the Malayan Law Journals from the year 1949 to the present day and is unable to discover any case which deals with the problem of section 30. It is therefore assumed that no court of law has sat in hearing on the section.

13. This is the American terminology used to describe those cases where the taxpayer company fails to distribute such profits as are in excess of that necessary to meet the reasonable business needs of the company. The American legislation puts a penalty upon the company for failure to distribute. See s. 531 of the Internal Revenue Code of 1954.

14. The excess retention tax of New Zealand, like the American unreasonable accumulations tax, is imposed upon the company for failure to distribute profits earned in excess of such amounts required to meet existing liabilities and development expenditure. See Land and Income Tax Act 1954 as amended by Act No. 2 of 1958, s. 15.

the undistributed profits tax[15] and tax on shortfall distribution.[16] The section states:

> Where it appears to the Comptroller that with a view to the avoidance or reduction of tax a company has not distributed to its shareholders as dividend, profits made in any period ending after the commencement of the basis period for the first year of assessment under this Act, which could be distributed without detriment to the company's business, he may treat any such undistributed profits as distributed, and the persons concerned shall be assessable accordingly.

Unlike the American and English counterparts to this section,[17] there is no additional tax levied on the company, upon the income accumulated by such company: the Comptroller's powers are limited to deeming the income distributed and taxing the shareholders on such sums as they are deemed to have received. The section cannot therefore be considered a penalty section as no greater burden is borne by the company or the taxpayers. It is but a mechanical device afforded to the Revenue as an antidote against tax avoidance schemes.

Purpose of Section 30

The purpose of section 30 is not to scrutinise every case of accumulation of profits by companies: there must be a motive element of tax reduction or avoidance in the accumulation policy as well as proof that such accumulated income is capable of distribution without detriment to the company's business. It is interesting to note that the section does not distinguish between avoidance and evasion: it is implicitly clear that the evil to be corrected by the section is not only in those cases where the taxpayer has committed an offence, but includes such situations where the taxpayer devises schemes within the framework

15. The undistributed profits tax of Australia imposes a liability on the company to pay out in taxes such amounts which would have been payable by the shareholders if the company had paid the dividends necessary to make up sufficient distribution. See the Australian Income Tax Assessment Act 1936-1949, sections 104-109.

16. Under the Income Tax Act 1952 (15 & 16 George VI & Eliz. II c.10) of England, the Commissioner of Inland Revenue was given the power to deem that income of bodies corporate be included as income of their members in those cases where there is insufficient distribution. The shareholders of the company are apportioned liability according to their interest in the company. In 1965 these provisions were repealed and replaced by another set of rules which pin liability on the company rather than on the shareholders. These amendments were consolidated in the Income and Corporation Taxes Act 1970. The term used to identify the undistributed income is "shortfall" and this is arrived at by comparing the required standard distribution with the actual distribution made by the company: In calculating the required standard distribution it would be relevant to take into consideration that amount which cannot be distributed without prejudice to the requirements of the company's business. See ss. 289 and 290 of the Income and Corporation Taxes Act 1970.

17. The American provision imposes a tax of 27½% on the first $100,000 accumulated income and a further tax of 38½% upon the remainder. There is however allowed a minimum accumulated earnings credit of $100,000 which may be accumulated without having to establish a reasonable business need. See Internal Revenue Code 1972, ss. 531 and 535.

of the statute to reduce his tax liability.[18] However, it must not be assumed that every tax reduction scheme is suspect. It would be logical to assume that in those cases where accumulation of profits is carried on under the specific licence of a statute, such cases will not be harrassed by a section 30 involvement. Thus, where a company enjoying the incentives under the Economic Expansion Incentives (Relief from Income Tax) Act[19] accumulates profits for purposes of re-investment because of the tax advantages to be gained in increasing capital expenditure, it would seem that such accumulation will not be caught within section 30.

Section 30 may be characterised as a defensive tool to the Comptroller rather than an offensive one. Where the corporate structure is used to protect the shareholders with the intention of lowering income tax to unrealistic proportions, the Comptroller may use the powers given him to "lift the corporate veil" and reach behind the corporate form to those persons profiting by such arrangements. The problem is most common in the case of close corporations or private limited companies[20] where shareholding is concentrated in the hands of a few people.

Some Aspects of Tax Avoidance Through the Corporate Form

The corporate form is a useful timing device for the minimization of taxes in an individual. Its usefulness lies in its ability to hold income as a separate legal entity without incurring liability in the shareholders until such time as the profits are paid out to the shareholders as dividends. Because of the control which individuals with major shareholdings in a corporation exercise, the distinction between policies for the corporation's benefit and the shareholders' benefit may become blurred, especially when the shareholders are in a very high tax bracket. The shareholders may wish to leave the profits in the company until such times as their tax liability is low; this need not reduce their ability to use the profits.[21]

18. It is interesting to compare the objective of this section and some of the remarks made from the bench in England. In the case of *Inland Revenue Commissioners* v. *The Duke of Westminister* [1936] A.C. 1 at p. 8, Lord Atkin commenting on the tax device used by the Duke to reduce his surtax, said: "I do not use the word device in any sinister sense, for it has to be recognized that the subject, whether poor and humble or wealthy and noble, has the legal right so to dispose of his capital and income as to attract upon himself the least amount of tax." There is, since the date of this case, a change of attitude on the question of tax avoidance schemes. This seems to stem from the growing acceptance by the populace of taxes as serving a useful purpose in society.

19. Singapore Statutes, Rev. Ed. 1970, Cap. 135.

20. A private company incorporated in Singapore must comply with s.15 of the Companies Act (Singapore Statutes, rev. ed. 1970, Cap. 185.). The number of shareholders in a private company is limited to fifty.

21. Undistributed profits may be capitalised or may be retained as liquid assets in the company: a shareholder with sufficient interest in the shareholding may very easily persuade the company to make loans to him during the period of non-distribution of profits. If income of a taxpayer is a measure of the economic power accrued to a taxpayer between two points of time, a man who chooses to retain his income in the company to minimize his taxes, without suffering any decrease in purchasing power, must be treated as if he has elected to have the income distributed to him.

The tax upon corporate income is 40%, but the tax upon individuals is on a progressive scale with a maximum of 55%.[22] An individual taxpayer with income from a number of sources, (some of which are not within his control because he does not have a major or substantial shareholding, or for other reasons) can manipulate his income to minimize taxes. Assume that the taxpayer has income of $50,000 from sources over which he has no control. Assume further that he has a controlling interest in a company which has made a substantial profit in the same basis period. If the company were to declare dividends, the total dividends received by the taxpayer will push him into the 50% or 55% bracket of tax. However, if the individual prevails upon the company to refrain from paying out dividends, his tax liability remains below 50%, upon gross income of $50,000. In terms of tax planning, it would definitely be to the taxpayer's advantage to delay the distribution of dividends. His ability to use the profits of the company is usually in no way hindered by the non-declaration of dividends as the company would, one may assume, be amenable to allowing substantial loans to the shareholders.[23] The accumulated profits may then be declared as dividends to taxpayers in a year where the taxpayer has little income from other sources. By spreading the total income over a period of years the total taxes paid will be smaller than in the case of no planning.[24]

Analysis of the Section

There are three limbs in section 30 which require examination. The Comptroller may only deem income of the company to be income of the shareholders if:

(a) he is of the opinion that there is a scheme of tax avoidance or reduction,

(b) that profits earned in any period have not been distributed to the company's shareholders,

(c) that such profits may be distributed to the company's shareholders without any detriment to the company's business.

22. See s. 43(a) of the Income Tax Act, and also the Second Schedule of the Act.

23. Where the money borrowed is used by the taxpayer as part of capital expenditure, he may be able to deduct the interest paid on the loan against his profits for the year. See the Income Tax Act, s. 14(1)(a).

24. Under the present rates, if the taxpayer has chargeable income amounting to $50,000, his rate of tax is 40% on the progressive scale. If the company should declare dividends in the same basis period, the taxpayer will have income in excess of $50,000 and the tax imposed upon the next $50,000 income *(i.e.* any amount declared in dividends) will be taxed at the rate of 50%. This higher tax imposed upon the income will make it more desirable in terms of tax, to retain the profits of the company in the company rather than pay it to the shareholders. If the dividends are declared in a year when the shareholder has other income of only $20,000, this will be more beneficial in terms of tax planning. Assuming that the dividends amount to $10,000, on the first $5,000 of such dividends paid, the taxpayer will only pay tax at the rate of 25% and upon the remaining $5,000 he will be taxed at the rate of 30%. This will mean that his liability has been reduced from a rate of 50% to less than 30%.

It is worth noting at the outset that the Comptroller may take into consideration all profits made by the company since the 1st of January 1948[25] (the first year of assessment under the Act) in a section 30 assessment. This ability to look at the whole financial structure of the company since 1948, rather than a confined view of the previous year's profits alone, is a decided advantage to the Comptroller as he will be better able to assess the validity of claims relating to the company's financial needs. Accumulations made in one year considered on their own, may seem reasonable, but considered in the light of previous years' accumulations may be seen in a different light.

Onus of Proof

Unlike the English provisions in the 1922 Finance Act,[26] there are no special rules prescribed for an assessment under section 30. The English Courts placed the onus upon the Revenue authorities to prove unreasonable withholding from distribution.[27] In Singapore, there is general provision which places the onus of proof upon the taxpayer who claims his tax to be excessive.[28] In the light of this statutory provision requiring the taxpayer to prove his case, it may be assumed

25. See G.N. S. 433/47.

26. S. 21 of the English Finance Act 1922 (subsequently consolidated into s. 245 of the Income Tax Act 1952) is similar to s. 30 of the Singapore Income Tax Act. The First Schedule of the 1922 Finance Act (subsequently consolidated into ss. 246-264 of the Income Tax Act 1952) sets out the procedure to be adopted in the case of an exercise of powers under s. 21. Amongst others, there is given to the directors of the company the ability to swear a statutory declaration stating that no super-ax is avoided by the non-distribution of profits and setting out the facts and circumstances upon which such opinion is based. In the face of such a declaration the Special Sommissioners shall not take further action in the matter unless they see reason to the contrary.

27. See *Thomas Fattorini (Lancashire) Ltd.* v. *Commissioners of Inland Revenue* (1942) 24 T.C. 328, 356 *per* Lord Wright. See also *A. & J. Mucklow Ltd.* v. *Commissioners of Inland Revenue* (1954) 35 T.C. 251, at p. 287 *per* Jenkins L.J.: "As to Mr. Tucker's contention regarding the onus of proof, it is I think important to bear in mind what has to be proved and the nature of the proof of which it is capable. The thing to be proved is an unreasonable withholding from distribution. But given a withholding, the reasonableness of it is not susceptible of direct proof short of, so to speak, a plea of guilty by the company. It is an inference of fact to be made from the primary facts, comprising the nature of the company's business, its financial position, the needs of its business, present or future, certain or contingent, the amount of the income in question, the extent, if any, to which it has been distributed, and any reasons deducible from the foregoing facts or otherwise shown for not distributing it or, as the case may be, not distributing more of it. If on consideration of the whole of the facts as proved or admitted in the course of the hearing the Special Commissioners find that there was income which could have been but was not distributed, and that on the facts as proved or admitted there was no reason, or no sufficient reason, for not distributing it, then they can and ought to conclude that the company has acted unreasonably in withholding it from distribution. The onus is on the Crown in the sense that the direction must be discharged unless the facts proved or admitted are such as to justify that conclusion." This dicta was quoted and approved of in a case decided by Upjohn J. in *C.I.R.* v. *White Bros., Ltd.* (in Liquidation) (1956) 36 T.C. 589.

28. See the Income Tax Act, s. 80(3).

that in Singapore, the taxpayer must discharge the onus upon him by bringing in evidence to show that there is no unreasonable withholding.[29]

The method whereby a taxpayer may discharge the burden upon him has been set out in the case of *A.B.C.* v. *Comptroller of Income Tax, Singapore*[30] by Buttrose J.

> The onus on the appellant here is not only to show that the assessment is wrong but what must be done to put it right. The taxpayer appellant does not rebut the presumption merely by showing that there is an error in the assessment and thereby creating a blank — he must *go* further as was indicated in *Trautwein* v. *Federal Commissioner of Taxation* (1936) 56 C.L.R. 63, and show either that there ought to be a blank — a complete omission of the item in question, or that something should be substituted for that item.[31]

In a section 30 assessment, the taxpayer who challenges the Comptroller's exercise of discretion must necessarily submit that his liability should be nil on that count.[32] To discharge such burden, the taxpayer must bring in evidence to show that the profits cannot be paid without detriment to the company's business. It is interesting to note that with the deletion of the word 'existing' from the section, it may be presumed that the taxpayer may now take into consideration not only such present needs of the business as may be apparent, but may also consider the projected future needs of the business, certain or contingent.[33] The details of what will amount to reasonable accumulation for future needs is a question of fact for which the financial position of the company, the nature of the business, the risks involved, and the amount of the income in question will have to be considered.[34]

Should the taxpayer bring in evidence to disprove the motive element relating to the avoidance or reduction of tax? It is apparent that proof or disproof of motive cannot be accomplished directly, short of having the taxpayer company swear a statutory declaration through its directors, that the intention for non-distribution of profits is not for the avoidance of tax. Of course an admission of guilt on the part of the taxpayer company would be direct proof of the motive element. But other than such, the motive of tax avoidance must be elicited as an inference from facts and evidence presented to the Court.

29. In the case of *C.E.C.* v. *Comptroller of Income Tax* [1971] 2 M.L.J. 54, Winslow J. opined that s. 80 was applicable to a case under s. 33 of the Income Tax Act (dealing with artificial and fictitious transactions). By analogy, one may assume that s. 80 will also be applicable to cases under s. 30, in the absence of anything to the contrary within the statute.

30. (1959) M.L.J. 162 at p. 166.

31. This dicta was approved by the Court of Appeal in the case of *Comptroller of Income Tax* v. *S. & Co. (Pte.) Ltd.* [1972] 2 M.L.J. 234, at p. 240.

32. It may be that the taxpayer can plead that the amount of income deemed to accrue to him from undistributed profits is too high or inconsistent with his interest in the company. Under such plea, the evidence which must be brought to Court will be one of facts relating to the shareholder's interest rather than the substantive part of s. 30.

33. See fn. 10, above.

34. The dicta of Jenkins L.J. in the case of *A. & J. Mucklow Ltd.* v. *Commissioners of Inland Revenue* (1954) 35 T.C. 251, at p. 287, is very persuasive in this respect. See fn. 26, above, for the dicta.

It is possible to envisage a situation where the taxpayer company is able to show that in the pursuit of a line of business objectives, it would be necessary to accumulate profits of the company. But, in the pursuit of the particular business objectives, it may also be apparent that a tax advantage is gained by some shareholders in the reduction of tax liability. How then should the Courts resolve such a case ?

The problem postulated above is readily resolved if we can identify the correct test for motive under the section. Is it necessary that the motive of tax avoidance or reduction be the "dominant, controlling or impelling"[35] motive for the accumulation ? Or, is it sufficient that tax reduction be one of the motives which persuades a company to adopt a particular line of action? If the dominant motive test is accepted, the answer to the above hypothetical situation will be in favour of the taxpayer, if he can show that the reason for his accumulation policy is predominantly for a business purpose, although the saving in tax to the shareholders is a subsidiary purpose to such business purpose. However, if the correct test be the second proposition above, then, a taxpayer will fail if it can be inferred that one of the reasons for the pursuit of a particular line of activity, not necessarily the main reason, is the saving of tax to the shareholders.

The adoption of the second test would mean that in any case where the accumulation policy of the company results in a tax reduction to the shareholders, there arises a presumption that the company had as one of its purposes the objective of tax reduction. It will be incumbent on the taxpayer to show that the saving in tax is explainable independent of the accumulation policy. For example, it may be sufficient discharge if the shareholder is able to show that his tax bracket rose above 40% through a windfall happening subsequent to the accumulation policy pursued by the company.

It may be that the dominant motive test is a more realistic approach, closer to sensible business practices. If a taxpayer is able to point to some reasonable business purpose for his accumulation policy, independent of the tax savings which will be made to the shareholders, it should not detract from the validity of his arguments if one of the incidents of such a policy will result in tax savings to the shareholders. It is true that many a policy is formulated to maximise profits, not only to the company but to the shareholders as well. Where the only reason which a company can show for pursuing a particular course of action is tax reduction benefiting the shareholders, this will be within the vice expressed in the official comment of the legislator[36] and against

35. The term "dominant, controlling or impelling" was used in the American cases in the test for purpose under the American sections of the Internal Revenue Code of 1954. See *Young Motor Co.* v. *Commissioner of Internal Revenue* 281 F.2d 488, at p. 491; *United States* v. *Donruss Co.* 393 U.S. 297. In the latter case the previously held opinion that there must be shown the dominant purpose for tax avoidance was rejected in favour of the test that any one of the purposes being tax avoidance would be sufficient.

36. See p. 2, above.

public policy[37] and should be taxed under section 30. If no sound business reason exists but tax reduction, it must mean that such profits may be distributed without detriment to the company's business.

The problem may be further complicated in cases where the tax reduction affects only some portion of the shareholders and not all of them. Can the Comptroller exercise his discretion in section 30 and deem income to all shareholders ? If the motive test be 'any purpose' rather than 'dominant purpose', it would seem that the Comptroller may well exercise his powers affecting all shareholders. In the face of a valid business reason for accumulation, accompanied by an unintended or secondary benefit to some shareholders, an exercise of power under section 30 against all shareholders may be regarded as both unjustifiable and arbitrary.[38]

If the alternative solution is adopted, namely, confining the deemed income to be present only in those shareholders who profit by a tax reduction, we are faced with a problem of different tax treatment of the same class of persons — a problem of tax equality. In any event, the inevitable result in such a situation would be to force a distribution of profits. It will not be unnatural for the shareholders affected by the deemed income to demand actual distribution of dividends in view of the claims by Revenue.

The problems confronting section 30 seem formidable at this distance. But tax cases are really decided upon facts as much as on interpretation of the law, and when faced with a set of facts, it may be that a solution will manifest itself.

LOKE KIT CHOY *

37. If one is to assume that the administration of tax is to be the same for all persons, it would follow that any administrative sanction offered to a class of persons to reduce their liability through the imposition of a facade such as a company, to hold income on their behalf, would be contrary to public policy.

38. In an exercise of powers given under s. 30, the Comptroller will deem income to exist in all shareholders. This means that irrespective of the business motive, the Comptroller is really forcing the company to distribute its profits, against the Company's own judgment. There seems to be no good reason to substitute the Company's business judgment with the Comptroller's.

* LL.B., LL.M.; Lecturer in Law, University of Singapore.