CHARTERED TAX INSTITUTE OF MALAYSIA (225750 T)
(Institut Percukaian Malaysia)

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

ADVANCED TAXATION 2

DECEMBER 2016

Student Registration No.		**Date**	
Desk No.		**Examination Centre**	

Time allowed: 3 hours

INSTRUCTIONS TO CANDIDATES

1. You may answer this paper **EITHER** in English **OR** in Bahasa Malaysia. Only **ONE** language is to be used.
2. This paper consists of **SIX** questions. **Candidates are ONLY REQUIRED TO ANSWER FIVE QUESTIONS.**
3. The Income Tax Act 1967 (as amended) is referred to as ITA.
4. Each answer should begin on a separate answer booklet.
5. All workings **MUST** be shown as marks will be awarded.
6. Answers should be written in either black or blue ink.
7. No question paper or answer booklets are to be removed from the examination hall.

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

Question 1

Abel Sdn Bhd (A) operates a manufacturing concern. A owns 90% of the shares in B Sdn Bhd (B) an information technology company and 60% in Cain Sdn Bhd (C) which is involved in food manufacturing. Dawson Sdn Bhd (D) a management consultancy firm is owned by A 10%, 20% by B and the balance 70% by C. C purchased its 70% shareholdings on 23 August 2015. All the companies were incorporated under the Companies Act 1965, are resident in Malaysia and have a 31 December year-end with a paid-up capital of RM3 million. A, B, C and D collectively are refered to as 'the Group'. All other shareholdings are by non-related parties. Details of the companies' financial results for the year-ended 31 December 2016 are as follows:

	A **RM'000**	**B** **RM'000**	**C** **RM'000**	**D** **RM'000**
Adjusted income / (loss)	324	(650)	318	(120)
Cash donations to approved institutions	60	25	30	50
Interest income	240	30	80	20
Capital allowances:	44	70	40	45

Required:

(a) **State 'Yes' or 'No' whether the following companies are related, for group relief and the reason(s) in the table below:**

Your are required to answer in a tabular form as given below in your answer booklet.

Companies	**Related? Yes/No**	**Reason**
A & B		
A & C		
A & D		
B & C		
B & D		
C & D		

(6 marks)

(b) **Identify which company has current year losses, but cannot surrender its losses to the other companies in the Group although it is a related company, and explain why.**

(4 marks)

(c) **For any company which is surrendering its losses to other companies in the Group, compute the amount that can be surrendered and any unutilised balance remaining in its loss account.**

(3 marks)

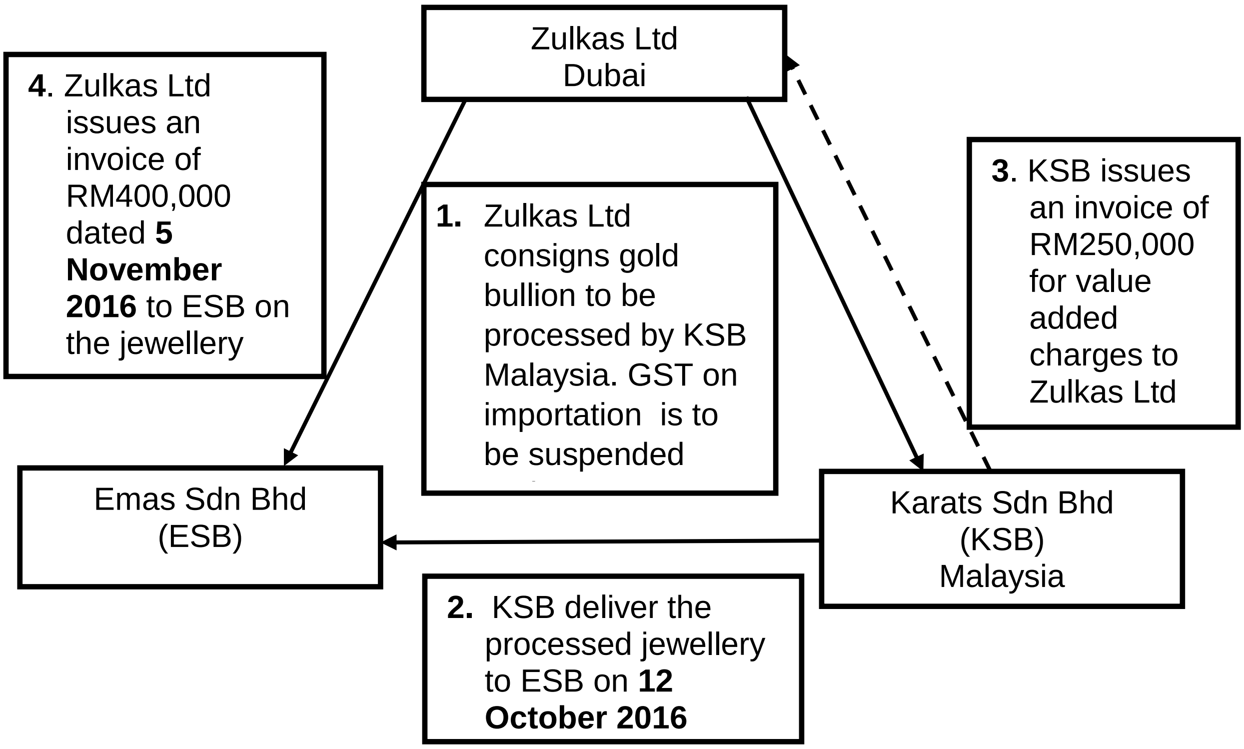
(d) **Compute the chargeable income for year of assessment 2016 for each of the companies.**

(7 marks)

[Total: 20 marks]

Question 2

(a) Karats Sdn Bhd (KSB), a manufacturer of jewellery, acquired gold bullion from AT Bank Bhd. Besides that, KSB also applied for Approved Toll Manufacturer Scheme (ATMS) and Approved Trader Scheme (ATS) to manufacture jewellery based on gold bullion consigned from the principal Zulkas Ltd in Dubai. The approval for both the schemes were granted to KSB on 10 July 2016. Zulkas Ltd appointed a Malaysian distributor, Emas Sdn Bhd (ESB) to market 20% of its jewellery manufactured by KSB and the balance, 80%, to be exported back to Zulkas Ltd. in Dubai. The diagram below illustrates the transaction under ATMS among Zulkas Ltd, KSB and ESB.



Required:

(i) KSB is a GST registered person under Section 20 of the GST Act 2014. KSB is eligible to apply for Approved Toll Manufacturer Scheme (ATMS) and is approved under the scheme because the company has satisfied the criteria**.**

What are the 2 criteria that needs to be fulilled to be eligible for ATMS status under the GST Act 2014? (3 marks)

(ii) **Explain the concept and imposition of GST based on:-**

a. **Delivery of jewellery by KSB to ESB?** (1 mark)

b. **The value added services amounting to RM250,000 charged by KSB on Zulkas Ltd?** (1 mark)

(iii) Based on the diagram above, if KSB issues invoice to Zulkas Ltd amounting RM250,000 and Zulkas Ltd issues an invoice amounting RM400,000 on 5 November 2016 to ESB for the delivery of jewellery by KSB on 12 October 2016, how much is ESB to account for output tax and claim input tax (if any) in these situations:-

a. **ESB is a registered person** (1 mark)

b. **ESB is a non-registered person** (1 mark)

(iv) KSB has the intention to apply for the Approved Jeweller Scheme (AJS) to reduce the burden of cash flow on the gold ingots acquired from AT Bank Bhd. It purchased gold bullion amounting to RM3 million from AT Bank Bhd based on a tax invoice issued dated 18 June 2016.

State the mechanism to charge GST by AT Bank Bhd and the mechanism by KSB to account for GST under the AJS.

(3 marks)

(b) (i) Jedidiah Sdn Bhd is a toy manufacturer who sell toys (taxable supply) and also provides transportation for the workers (exempt supply). Supplies for each taxable period (quarterly basis) in year 2016 are as follows.

Supply	Taxable (RM)	Exempt (RM)	Total (RM)	Residual Input tax
Q1	400,000	50,000	450,000	10,000
Q2	150,000	100,000	250,000	20,000
Q3	800,000	14,000	814,000	12,000
Q4	600,000	100,000	700,000	27,000

Compute the annual adjustment that needs to be made by Jedidiah Sdn Bhd.

(5 marks)

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(ii) Lee Sdn Bhd, a wholly taxable supplier, was registered under the GST Act 2014 on 1st Jan 2016 and its first tax year ends on 31st December 2016. The company acquired a new photostat machine for RM 1,060,000 inclusive GST 6% (RM 1,000,000 + RM 60,000 GST) on 10th Jan 2016. Later, Lee Sdn Bhd became a mixed supplier and the annual proportional taxable use (or annual residual input tax recovery rate) of the photostat machine is as follows:-

First interval	:	100 %
Second interval	:	80 %
Third interval	:	60 %
Fourth interval	:	70 %
Fifth (final) interval	:	Sold the asset on 1st January 2020

Show clearly the Capital Goods Adjustment that needs to be made by Lee Sdn Bhd.

(5 marks)

[Total: 20 marks]

Question 3

Lord Tomlin in IRC v Duke of Westminster (1936) 1 A.C.1, highlights the right of a taxpayer to arrange his affairs to pay the minimum amount of tax. As such in the context of Malaysian tax environment, taxpayers will want to pay less tax when the opportunity arise.

Required:

(i) **Briefly explain the main objective and general approach of Director General of Inland Revenue (DGIR) in applying Section 140, ITA 1967.**

(4 marks)

(ii) **Discuss critically the relevant principles followed by DGIR for effective implementation of GAAR as evident in Section 140, ITA 1967. You should cite relevant case law where appropriate.**

(10 marks)

(iii) **Penalties are imposed on companies under the self-assessment system for non-compliance. Briefly explain three circumstances of non-compliance and the potential penalties incurred**.

(6 marks)

[Total: 20 marks]

Question 4

(a) Donald Thumb Industries Sdn Bhd ('the company') is a local manufacturing company situated in Cyberjaya, producing spare parts for computers and security equipment for the American market. It has been in operation for several years and recently experienced staff shortage, as well as high turnover of skilled female staff. The company found that the main reason for the shortage and turnover was that there are no facilities nearby for the staff to send their children to a child care centre or a kindergarten. Accordingly at a recent board meeting of the company directors it was decided that the company will construct a child care centre and a kindergarten ('the facilities') for the staff's children within the curtilage of the factory premises to address the problem.

After the board meeting the Operations Manager, Mrs Hill Harry has approached you to discuss if any income tax incentives is available before the company goes ahead with the construction of the facilities.

Required:

Explain to the Operations Manager the incentives that are available (tax benefits) to a company, under the income tax provisions, in respect of a child care centre and a kindergarten for the year of assessment 2016, including the conditions that must be complied with, and advise her accordingly.

You are encouraged to support your answer by citing the relevant legislation.

(10 marks)

(b) RAC Office Steel Sdn Bhd ('the company') is in the business of manufacturing steel racks and cabinets for office use. The cabinets are marketed both in the domestic and international markets. Owing to stiff competition, the company recently acquired a patented industrial design from an Indian company that is world famous for its design, at a cost of RM1.5 million. The acquisition will enable the company to produce aesthetically pleasing cabinets that can also withstand extreme temperature and therefore protect valuable documents from damage by fire.

In acquiring the patented design, the company incurred the following expenditure:

	RM	RM
Purchase of patented industrial design		1,500,000
Additional expenditure		
Consultancy fee	112,300	
Legal fee	89,840	
Stamp duty	44,920	
Travelling expenses for negotiations	33,690	280,750
Total expenditure on acquisition		1,780,750

The company's accountant has given the following information in respect of the accounting period ended 30 June 2016:

(i) Adjusted income for YA 2016: RM 405,456
(ii) Rental income: RM224,600
(iii) Capital allowance to be claimed for the year of assessment 2016: RM25,000

Sometime in May 2016, the Board of Directors decided that it would be more profitable if the cabinets are manufactured by its wholly owned subsidiary, RAC Kedah Sdn Bhd ('the subsidiary') in Alor Setar. The patented industrial design would be transferred to the subsidiary for a sum of RM2 million on 1 August 2016. The subsidiary commenced production of the steel cabinets using the transferred patented industrial design from 15 August 2016. The subsidiary closes its accounts to 30 June in line with its holding company. The subsidiary is forecasting an adjusted income of RM485,136 and would claim a capital allowance of RM67,380 for the year of assessment 2017. It has no other income other than the income from the business operations.

Required:

Compute the chargeable income of RAC Office Steel Sdn Bhd and RAC Kedah Sdn Bhd for the relevant years of assessment, indicating the allowances (if any) due on the acquisition of the patented industrial design for the relevant years of assessment.

(10 marks)

[Total: 20 marks]

Question 5

A Bhd, a public listed company, owns directly 100% of the shares in B Sdn Bhd, D Sdn Bhd and E Sdn Bhd. A Bhd also owns 100% of Da Co, a Bermudan company. Da Co owns 100% of C Sdn Bhd.

(i) Mr Z, A Bhd group's tax manager, informs you that B Sdn Bhd is ceasing business and will, amongst other things, transfer its factory to C Sdn Bhd. C Sdn Bhd will settle the purchase price of the factory by issuing shares to B Sdn Bhd. In addition, B Sdn Bhd will have to pay a number of very large redundancy packages as some senior employees have been with B Sdn Bhd for many years.
Mr Z seeks your advice on the income tax, stamp duty and Real Property Gains Tax implications of the above for B Sdn Bhd and C Sdn Bhd**.**

Required:

Highlight to Mr Z the tax issues involved and tax exemptions or reliefs that might be available. (8 marks)

(ii) Mr Z tells you that C Sdn Bhd is contemplating leasing another factory that it owns (Factory 2) to D Sdn Bhd. D Sdn Bhd would operate a new manufacturing line from Factory 2. Mr Z asks for your comments on the income tax issues for C Sdn Bhd in relation to the above.

Required:

Advise Mr Z. (3 marks)

(iii) Mr Z informs you that the group, through E Sdn Bhd, is looking at making an acquisition. The target of the acquisition is X Sdn Bhd. E Sdn Bhd will obtain a bank loan of RM20 million to make the acquisition. E Sdn Bhd has the option of buying either the shares of X Sdn Bhd or of buying X Sdn Bhd's business. X Sdn Bhd's business is selling widgets and is a very profitable company.
Mr Z asks you to outline the tax issues relating to the above and the main differences for tax purposes between buying the shares of X Sdn Bhd or X Sdn Bhd's business.

Required:

Advise Z on his concerns.

(Your advice is not required to include Goods and Services Tax).

(7 marks)

(iv) **Mr Z now asks you to summarise how the purchase of X Sdn Bhd's shares will be treated for Goods and Services Tax purposes.**

(You are required to cite relevant GST legislation/regulations to support your answer.)

(2 marks)

[Total: 20 marks]

Question 6

(a) Durian Runtuh Sdn Bhd (DRSB) commenced a durian plantation business in the year 2009 with a view of earning lucrative income from the sale of durians. The company also had some investments in shares and fixed deposit. For the year 2016, due to a severe drought, the durian business suffered a huge loss. In addition to the business loss of RM10,000, DRSB had declared dividend income of RM6,000 and fixed deposit interest income of RM3,000 in its income tax returns for the year of assessment 2016.

Required:

Based on the definition of 'investment holding company' (IHC) as provided in the ITA, determine whether or not DRSB is an IHC for year of assessment 2016.

(2 marks)

(b) Karak Holdings Sdn Bhd (KHSB) is an investment holding company as provided in the ITA. KHSB was incorporated in 2010 with a paid-up capital of RM5 million and its profit and loss account for the year ended 31 December 2016 is as follows:

	Note	**RM'000**	**RM'000**
Dividend	1		470
Interest	2		1,500
Distribution of real estate investment trust (REIT)	3		200
Gain on disposal of investments			469
Management fees			50
Unrealised gain on foreign exchange			132,000
Gross Profit			134,689
Less: **Operating and administrative expenses**			
Interest	4	900	
Technical consultant fees	5	236	
Directors' fees		358	
Bonus		364	
Overtime		30	
Staff allowances		53	
Staff salary		621	
Rental of office		480	
Rental of computer and printer		32	
Printing and stationery		45	
Upkeep of office		2	
Upkeep of motor vehicles		9	
Promotion and advertisement		10	
Travelling & accommodation		772	
Courier charges		1	
Bank charges		11	
Motor vehicle maintenance		67	
Telephone and fax charges		44	
Depreciation		144	
Entertainment		60	
Loss on disposal of quoted shares		20	
Miscellaneous expenses		90	4,349
Net Profit Before Tax			**130,340**

Notes to accounts

1. Dividend

Company name	Date of Payment	Warrant Number	Net Dividend
Baka Offshore Petroleum Berhad	10 July 2016	0017031	RM470,000

The dividend is a single-tier dividend.

2. Interest income comprises of:
   (i) interest income from fixed deposit - RM220,000
   (ii) interest income from Redeemable Convertible Loan Stock – RM522,000
   (iii) interest income from advances to subsidiaries (foreign) – RM533,000
   (iv) interest income on advances to subsidiaries (local) – RM225,000

3. The distribution income is from Axa REIT.

4. Interest expense comprises of interest in respect of a loan taken to finance the following investments:
   (i) purchase of shares in Baka Offshore Petroleum Berhad
   (ii) purchase of Redeemable Convertible Loan Stock
   (iii) investment in Axa REIT

5. Technical consultant fees – comprises of:
   (i) audit fee - RM30,000
   (ii) secretarial fee - RM13,000
   (iii) consultation fee for hotel tax incentive – RM20,000
   (iv) valuation charges - RM173,000

Required:

Calculate the chargeable income and tax payable of Karak Holdings Sdn Bhd for the year of assessment 2016.

(15 marks)

(c) State the differences in the tax treatment between an investment holding company and an investment holding company listed on Bursa Malaysia as stated under the ITA.

(3 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)