



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

REVENUE LAW

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 booklet is to be removed from the examination hall.

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

Question 1

Ace Shopping Centre Sdn Bhd ("**ASC**"), the taxpayer, was in the business of developing and selling shopping centres. ASC entered into an agreement to purchase a large plot of residential land ("**the said Land**") totalling 6 acres. ASC's business plan was to build a shopping centre on 1.2 acres of the land. The said Land was subdivided into 12 lots of equal size ("**the said Lots**"). ASC successfully applied for conversion of the said Lots from residential to limited commercial use on 1.10.2004.

On 1.1.2005, ASC took steps to evict squatters who were present on the said Lots, incurring a total of RM250,000 to this end. On 1.2.2005, ASC incurred a further RM500,000 on development charges. However, the local government Council rejected ASC's application to build a shopping centre on the said Lots. ASC did not appeal the rejection. There was a winding-up petition filed against ASC on 1.6.2005, which was lifted on 1.2.2007. The lifting of the winding-up petition was done to enable the Appellant to do its business.

ASC decided to sell the said Lots at a gain. For this purpose, ASC hired Mr. Sellwell from Shanghai, a renowned property broker. With Mr. Sellwell's expertise, ASC was able to sell the said Lots at a gain to twelve (12) separate buyers : (1) Lots 1, 2, 3 and 4 in March 2013, (2) Lots 5 and 6 in February 2014, (3) Lots 7 and 8 in December 2015, and (4) Lots 9, 10, 11 and 12 in October 2016. ASC spent a total of RM400,000 on Mr. Sellwell's professional fees and disbursements.

Required:

- (a) **With reference to case law, explain whether the gain made by the taxpayer from the disposal of the said Land was assessable to income tax under section 4(a) of the Income Tax Act 1967.**

(16 marks)

- (b) **How, if at all, would your answer in (a) differ if the said Land was entered into and reflected as Property Plant and Equipment (PPE) in the annual audited accounts and expenditure on the said Land was transferred to capital account.**

(4 marks)

[Total: 20 marks]

Question 2

Mr. Johann Stein, a radio and television announcer from Germany, has been employed in Malaysia by a broadcasting television corporation (“**MBC**”) situated in Johor, under a 5-year contract of service, since YA 2011.

Mr. Stein resided in Malaysia for 2 years from the year 2011 to 2012, and remained in Malaysia from 15.3. 2011.

In YA 2013, Mr. Stein left Malaysia on 1.2.2013 to visit Asia with his friends. Mr. Stein returned to Malaysia and resumed employment on 15.11.2013.

In YA 2014, incidental to his employment at MBC Mr. Stein was seconded to a broadcasting television corporation situated in Indonesia (“**IBC**”) from 31.3.2014 to 1.10.2014 to promote MBC. On 25.10.2014 Mr. Stein returned to Germany to care for his cousin who had been involved in a car crash. Mr. Stein returned to Malaysia and resumed his employment on 10.11.2014.

Mr. Stein left Malaysia permanently on 29.3.2015, 2 weeks after his contract of service ended.

Between 2011 and 2015, Mr. Stein's stay in Malaysia was as follows:-

<u>Year</u>	<u>Period of Stay in Malaysia</u>	<u>Number of Days</u>
2011	15.3.2011 – 31.12.2011	292
2012	1.1.2012 – 31.12.2012	366
2013	1.1.2013 – 1.2.2013	32
	15.11.2013 – 31.12.2013	47
2014	1.1.2014 – 31.3.2014	90
	1.10.2014 – 25.10.2014	25
	10.11.2014 – 31.12.2014	52
2015	1.1.2015 – 29.3.2015	88

Required:

- (a) **Determine the residence status of Mr. Stein for the years of assessment 2011, 2012, 2013, 2014 and 2015, giving reasons and case law authority to support your answer.** (18 marks)
- (b) **How would your answer to (a) vary if Mr. Stein's remuneration is paid partly in Germany and partly in Malaysia.** (2 marks)

[Total: 20 marks]

Question 3

ACE Manufacturing Sdn Bhd (ACE) is tax resident company based in Shah Alam. ACE has been involved in the manufacturing of colour pencils since the YA 2008. In the YA 2013, the company started an expansion programme due to the increase in market demand for its products. The expansion programme will involve the construction of a new plant in a plot of land adjacent to the current plant. The new plant will be completed in the YA 2015 and the finance director has approached you, the company's tax adviser on whether the following capital expenditure incurred on the new plant qualifies for Reinvestment Allowance in the YA 2015:

- (i) Fencing
- (ii) Road
- (iii) Office area
- (iv) Warehouse
- (v) Void area
- (vi) Parking area
- (vii) Lift lobby
- (viii) Surau
- (ix) Meeting rooms
- (x) Toilets

Required:

- (a) **By reference to the Act, public ruling and relevant case law authorities, advise the finance director whether the above capital expenditure qualifies for Reinvestment Allowance in YA 2015?**

(13 marks)

In addition to the above capital expenditure, ACE also incurred the following capital expenditure for the expansion project in YA 2015:

- (i) Delivery trucks
- (ii) Forklifts to transport raw materials and finished goods to and from the warehouse
- (iii) Machine A, for folding the boxes and putting the pencils into those boxes
- (iv) Machine B, to pack boxes of colour pencils into cartons

Required:

- (b) **By reference to the Act, public ruling and relevant case law authorities, advise the finance director whether the above capital expenditure qualifies for Reinvestment Allowance in YA 2015?**

(5 marks)

- (c) **Will the same capital expenditure in (ii) above qualify for Reinvestment Allowance if they were incurred in the YA 2016?**

(2 marks)

[Total: 20 marks]

Question 4

“Infras Sdn Bhd (“Infras”) is in the business of operating a futsal arena, where it has synthetic futsal pitches. In essence, Infras will construct the new futsal pitches. In such construction, it incurred capital expenditure on the infilling, draining, textile material and sand filled of the synthetic grass pitch.

Infras does not have any other business other than this and the futsal pitches are its only apparatus in generating income for the company. It houses its office premise in a separate building. Subsequent to the construction of the new futsal pitches, Infras claimed capital allowance in respect of the construction cost incurred.

Based on the above facts, advice Infras on whether it is able to claim capital allowance in respect of the capital expenditure it incurred on its plant or machinery.”

Required:

Discuss with reference to decided case law and relevant statutory provisions of the ITA 1967, whether Infras is able to claim capital allowance in respect of the expenditure incurred on the synthetic futsal pitches.

[Total: 20 marks]

Question 5

- (a) Sharon has been working as a lab technician with a pharmaceutical company since 2005. Her hobby is writing novels, which is done on a part time basis whenever she finds free time.

In the year 2015, she wrote a novel and surrendered it to a publisher and was paid RM90,000. The payment is for distribution rights to publish and sell 5,000 copies of the novel.

Required:

- (i) **With reference to the Income Tax Act 1967, determine the tax treatment on the amount of RM90,000 which she received in the year 2015.** (2 marks)
- (ii) **State your reasons** (5 marks)
- (b) CMart Sdn Bhd (CMart) operates a mini market in their own land in Banting, Klang and has been in operation since 2001. The following details were reported in the notes to the account in the financial statement for the year ending 31 December 2015.

Required:

Identify whether the following expenses will qualify for deduction in determining the adjusted income of CMart Sdn Bhd. State reasons for your answer or/and the principles applied in decided cases.

- (i) **The roof of the store which is situated beside the mini market collapsed due to heavy thunder storm. CMart spent RM100,000 in building a new roof. The existing structure was made of wood and is now replaced with a steel structure which is much higher compared to the old structure.** (5 marks)
- (ii) **A burglary took place at the mini market and an amount of RM3,000 cash in the cash register which was held for daily transaction was stolen. CMart claimed the loss in computing its adjusted income.** (5 marks)
- (iii) **A fine of RM500 was paid to the local town council for not keeping the business premise clean in accordance to the standard set by the authority.** (3 marks)

[Total: 20 marks]

Question 6

Letting of real property is deemed as a business source and the income received from it is charged to tax under section 4(a) of the ITA if maintenance services or support services in relation to the real property is comprehensively and actively provided.

Required:

- (a) **Explain what you understand by the term:**
 - (i) **Maintenance services or support services comprehensively provided.** (6 marks)
 - (ii) **Services actively provided** (2 marks)
- (b) **Provide an example of an activity whereby letting of real property is deemed as a business source** (4 marks)
- (c) **Explain the implications, if the property is rented to a related party** (4 marks)
- (d) **Identify who the related parties involved are as mentioned in item (c) above** (4 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)