



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

REVENUE LAW

DECEMBER 2017

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. Answers should be written in either black or blue ink.
6. 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

Abraham was employed as a professional golfer at a golf club. His terms of employment entitled him to various payments as stated below.

Required:

Discuss the taxability of each of the receipts mentioned below by referring to decided cases (if any):

- (i) **A monthly salary, a right to sell golfing equipment and a right to charge repair fees for golfing equipment.**

(3 marks)

His duties include consultations in an advisory capacity with the greenkeeper regarding the maintenance of the greens and the coaching of members. In addition to his salary, it was customary for him to receive:

- (ii) **At Christmas, a cash gift from the committee derived from the contributions of the members;**

(3 marks)

- (iii) **Extra fees from members for additional private lessons;**

(3 marks)

- (iv) **In exhibition games under his terms of employment, certain payments for specific performances;**

(3 marks)

- (v) **Occasional winnings from bets with other amateur golfers;**

(3 marks)

- (vi) **Prize winnings from taking part in the annual professional golf tournaments at various golf centres in Malaysia; and**

(2 marks)

- (vii) **After many years of service the taxpayer retired and the then committee arranged a golf tournament as a benefit for him. The proceeds of this tournament were paid to him on the eve of his retirement.**

(3 marks)

[Total: 20 marks]

(The rest of the page is blank)

Question 2

- (a) (i) **Explain the importance of the distinction between capital expenditure and revenue expenditure, with reference to the relevant provisions in the Income Tax Act 1967; and**
(2 marks)
- (ii) **Give examples of two (2) tests formulated by the courts for distinguishing between capital expenditure and revenue expenditure, with reference to relevant case law.**
(8 marks)
- (b) **In the following cases, state whether the expenditure is deductible in arriving at the taxpayer's adjusted income.**
- (i) Company A, which is in the business of planting oil palm trees, took a lease on the land for a period of 60 years at a total rental of RM60 million. It paid a rental of RM15 million (the expenditure) made up of rental payment of RM5 million for YA 2015 and RM10 million for YA 2016. .
(4 marks)
- (ii) Company C provides a luxury bus service from Kuala Lumpur to Johor Bharu. Company C spends RM10,000 monthly (the expenditure) on the subscription to satellite television for its' customers on the bus.
(2 marks)
- (iii) Company D is a manufacturer of Magnetic resonance imaging (MRI) machines. Company D held a conference for the dissemination of knowledge and experience about the machines. In doing so, Company D incurred expenditure in sponsoring doctors and pharmacists to attend the conference by providing for their travel costs, meals, registration fees and accommodation (the expenditure), without any purchases required from the sponsored doctors and pharmacists.
(4 marks)

[Total: 20 marks]

(The rest of the page is blank)

Question 3

Samad is a Government servant in the Health Ministry who had inherited four commercial properties in a building following the demise of his father in 1998. Since then he had been receiving rental income from the properties.

In 2010, he appointed a property agent to sell two of the properties in order to cash in on the capital appreciation. However, no sale took place as there were no buyers for the properties at the minimum price set by Samad. He continued to earn rental income.

In October 2017, the Government compulsorily acquired all the four units as the buildings would be demolished to make way for a public infrastructure project.

Required:

- (i) **Applying the badges of trade principle with reference to case law, explain whether the gain made by Samad from the compulsory acquisition of the commercial properties is subject to income tax as business income?**
(14 marks)
- (ii) **If income tax does not apply, what are the RPGT implications of the transaction?**
(6 marks)

[Total: 20 marks]

Question 4

“Telco Sdn Bhd (“Telco”) is in the business of licensing out spaces of its telecommunication towers. In essence, Telco had constructed the telecommunication towers for the same to be licensed out to telecommunication companies in Malaysia. Such companies will then install its satellites or antennas on the towers. The telecommunication towers can be dismantled, moved and reinstalled at other places when required.

Telco does not have any other business other than this and the telecommunication towers are its only apparatus in generating income for the company. It houses its office premise in a separate building. Telco does not conduct its business at the telecommunication towers. The telecommunication towers do not have any roof or walls and therefore, there is no desk or office equipment placed at the telecommunication towers. Telco conducts its business at an office located separately from the telecommunication towers.

Subsequent to the construction of the telecommunication towers, Telco claimed capital allowances in respect of the construction cost incurred.

Required:

Based on the above facts, advice Telco on whether it is able to claim capital allowances pursuant to Schedule 3 of the Income Tax Act 1967 in respect of the capital expenditure it incurred on its plant or machinery.”

[Total: 20 marks]

Question 5

Lancaster group of companies deals in electrical items and the ultimate holding company is Lancaster UK. Lancaster UK, is a United Kingdom (UK) tax resident company incorporated in the UK. Lancaster Sdn Bhd is a Malaysian tax resident company incorporated in Malaysia and is one of the subsidiaries of Lancaster UK.

As part of the Lancaster Group global venture, Lancaster UK launched a new project whereby Lancaster UK will manage the project by determining the types of electrical item which will be sold by a particular subsidiary and the condition in which the electrical items are to be supplied to the said subsidiary i.e. whether in a Complete Built Unit (“CBU”) or in Complete Knock Down form (“CKD”).

For purposes of this project, Lancaster Sdn Bhd entered into a contract with Lancaster UK for the purchase of the allocated electrical items to be sold in Malaysia. Lancaster UK had determined that the electrical items will be provided to Lancaster Sdn Bhd in CKD form. The electrical items will be procured by Lancaster UK from Lancaster China in CBU form and will thereafter be broken down by Lancaster UK into smaller parts using low technical skills before it supplies the said electrical items to Lancaster Sdn Bhd. The services will be provided by Lancaster UK wholly in the United Kingdom.

In addition to the price of the electrical items, the contract provides that Lancaster Sdn Bhd is to pay Lancaster UK for the services of breaking down the electrical items into CKD form. The consideration for the services portion is RM40,000. At the end of the project, Lancaster UK rendered an invoice to Lancaster Sdn Bhd for the sum of RM40,000 for the services of breaking down the electrical items to CKD form.

Required:

- (i) **Based on provisions of the Income Tax Act 1967 and relevant case law authorities, discuss if there is any withholding tax implication on such services and if there is, what double tax treaty protection may be afforded to Lancaster UK?**

(15 marks)

On the assumption that withholding tax is applicable, Lancaster Sdn Bhd, when it was about to make the payment for the invoice, informed Lancaster UK that it will be deducting withholding tax at the applicable rate when remitting the payment. Lancaster UK however was not agreeable to the deduction of withholding tax and requested Lancaster Sdn Bhd to bear the withholding tax instead.

Required:

- (ii) **Advise Lancaster Sdn Bhd on the implications of bearing Lancaster UK’s withholding tax.**

(5 marks)

[Total: 20 marks]

Question 6

“The IRB is not entitled to raise assessments/additional assessments for time-barred years”

Required:

Examine this statement with reference to the Income Tax Act 1967 and case decisions on assessments and the powers of the IRB to raise assessments beyond a certain time period.

[Total: 20 marks]

(END OF QUESTION PAPER)