



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

ADVANCE TAXATION 2

JUNE 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. 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

- (a) (i) The term withholding tax (WHT) is generally used to cover a number of situations where the payee or recipient of income is subject to tax and the responsibility of deducting the tax and remitting it to the Inland Revenue Board (IRB) lies with the payer under the ITA.

Required:

Give 3 examples of WHT under the ITA.

(3 marks)

- (ii) **What is the main objective of the introduction of WHT provisions in the ITA?**

(3 marks)

- (iii) Desire Sdn Bhd with a financial year ending 30 June 2015 paid a royalty of RM1,000 to Mechanics Inc., a non-resident company on 1 June 2015. The company only remitted the withholding tax and late payment penalty of 10%, to the Inland Revenue Board of Malaysia (IRBM) on 2 February 2016 after the due date for filing the YA 2015 tax return which was on 31 January 2016. Desire Sdn Bhd claimed the RM1,000 royalty payment in its tax return.

Required:

Under the income tax law provisions, state what further consequences does Desire Sdn Bhd face in respect of the late payment and claim of the royalty expense?

(4 marks)

- (b) An Australian company (Oz Co) enters into a contract with a Malaysian company (M Co) for the provision of consultancy services. Oz Co will send 3 employees to Malaysia to render these services for a period of 2 months.

Required:

- (i) **What are the tax implications under the Malaysia Australia Double Tax Agreement (DTA)/Income Tax Act 1967 (ITA)?**

(4 marks)

Assume now that Oz Co sends the employees to Malaysia for 5 months.

Required:

- (ii) **What are the tax implications under the Malaysia Australia DTA/ITA? Would the individuals be taxable in Malaysia?**

Note: You are encouraged to use the excerpt from the Australia Malaysia DTA that is provided in the next page, to answer part (b) of the question.

(6 marks)

[Total: 20 marks]

Extract of Article 5, 7 and 14 of the Malaysia-Australia DTA

Article 5 **Permanent establishment**

1. *For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.*
2. *The term "permanent establishment" shall include especially—*
 - (a) *a place of management;*
 - (b) *a branch;*
 - (c) *an office;*
 - (d) *a factory;*
 - (e) *a workshop;*
 - (f) *a mine, oil or gas well, quarry or any other place of extraction of natural resources including timber or other forest produce;*
 - (g) *an agricultural, pastoral or forestry property;*
 - (h) *a building site or construction, installation or assembly project which exists for more than six months.*
3. *An enterprise shall not be deemed to have a permanent establishment merely by reason of—*
 - (a) *the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;*
 - (b) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;*
 - (c) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;*
 - (d) *the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;*
 - (e) *the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.*
4. *An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if—*
 - (a) *it carries on supervisory activities in that other State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that other State;*
 - (b) *substantial equipment is in that other State being used or installed by, for or under contract with, the enterprise; or*

- (c) *it furnishes services, including consultancy services, in that other State through employees or other personnel engaged by the enterprise for such purpose, but only where those activities continue (for the same or a connected project) within the other State for a period or periods aggregating more than three months within any twelve-month period.*
5. *A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if--*
 - (a) *he has, and habitually exercises in that first-mentioned State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or*
 - (b) *there is maintained in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders on behalf of the enterprise; or*
 - (c) *in so acting, he manufactures or processes in that first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.*

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Article 7
Business Income or Profits

1. *The income or profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the income or profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to that permanent establishment.*
2. *Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the income or profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.*
3. *In the determination of the income or profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses (including executive and general administrative expenses) which are reasonably connected with the permanent establishment and which would be deductible if the permanent establishment were an independent entity that incurred those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.*
4. *No income or profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.*

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Article 14
Personal Services

1. *Subject to Articles 15, 18, 19 and 20, remuneration (other than a pension) derived by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services may be taxed only in that Contracting State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration as is derived in respect thereof may be taxed in that other State.*
2. *Notwithstanding the provisions of paragraph 1, remuneration (other than a pension) derived by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services performed in the other Contracting State shall be taxable only in the first-mentioned State if—*
 - (a) *the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the basis year or year of income, as the case may be, of that other State;*
 - (b) *the remuneration is paid by, or on behalf of, a person who is not a resident of that other State; and*
 - (c) *the remuneration is not deductible in determining taxable profits of a permanent establishment which that person has in that other State.*
3. *Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State.*

Question 2

A Bhd is in the business of manufacturing components for the automotive and oil and gas sectors. It currently owns real properties (including a factory building used for its manufacturing activities).

Following a strategic review, A Bhd made the decision to dispose of its oil and gas business segment, to focus on its automotive segment.

A Bhd has a wholly owned subsidiary, B Sdn Bhd, which carries on the business of repair and maintenance services for oil and gas clients. A Bhd intends to carve out its oil and gas business to B Sdn Bhd and sell the shares of B Sdn Bhd. A Bhd will be transferring plant and machinery, stock, receivables and a factory building (including land) to B Sdn Bhd. A Bhd is in negotiation with several potential buyers for the shares in B Sdn Bhd, and will effect the transfer of its assets to B Sdn Bhd at the same time when it enters into a sale and purchase agreement for the sale of shares in B Sdn Bhd.

Over the last 10 years, A Bhd has acquired various real properties (including residential properties) and sold several of them for significant gains, on which A Bhd paid Real Property Gains Tax (RPGT).

- (i) **Is there any risk that A Bhd could be subjected to income tax, instead of Real Property Gains Tax (RPGT), on the disposal of the factory land and building to B Sdn Bhd? What are the factors to be considered under the ITA?**

(4 marks)
- (ii) **B Sdn Bhd would be acquiring the factory land and building from A Bhd. What RPGT considerations should the future buyer of B Sdn Bhd take into account? If RPGT is applicable, what are the RPGT obligations for the buyer and seller?**

(6 marks)

(iii) **What are the stamp duty implications from the transfer of assets by A Bhd to B Sdn Bhd? Would there be any stamp duty relief available? State the relevant conditions for stamp duty relief under the Stamp Act 1949.**

(5 marks)

(iv) **What are the Goods and Services Tax (GST) implications arising from the transfer of the various assets from A Bhd to B Sdn Bhd?**

(5 marks)

[Total: 20 marks]

Question 3

(a) (i) Determine when a supply shall be treated as taking place for the following:

a. **Goods under approval or sale or return terms (consignment goods)?** (2 marks)

b. **Machines or device operated by coins, tokens, etc.** (1 mark)

c. **Second-hand goods.** (3 marks)

d. **Continuous supplies of services.** (2 marks)

(ii) **For the purpose of charging Goods and Services Tax (GST), determine when goods are treated as supplied in Malaysia.**

(2 marks)

(b) (i) **List down five (5) categories of person other than a taxable person who are required to furnish declarations and make payment to GST.**

(5 marks)

(ii) Any person who is or has ceased to be a taxable person may **make a claim** to the Director General of the Royal Malaysian Customs Department for bad debt relief on the whole or any part of the tax paid by him in respect of the taxable supply.

Similarly any person who is or has ceased to be a taxable person is **liable to pay** the amount of tax given relief under bad debt relief when he receives the payment of debt.

Thomas Sdn Bhd (TSB) made a taxable supply to a customer on 15 February 2016. Details of the payments made by the customer are listed in the table below:

Thomas Sdn Bhd (TSB) Monthly taxable period

DATE	TRANSACTION	AMOUNT	DETAILS
15 Feb 2016	Tax Invoice to customer (inclusive of GST)	RM10,600	
30 Mac 2016	(i) Account for tax (GST)	_____	GST-03
30 April 2016	Payment received from customer	RM1,600	
16 Aug 2016	(ii) Outstanding payment	_____	After 6 months

31 Aug 2016	(iii) Claimed bad debt relief	_____	Sec. 58(2) GST-03
15 Nov 2016	Payment received from customer	RM3,500	
31 Dec 2016	(iv) Repayment of bad debt relief	_____	Sec. 58(3) GST-03
31 Mar 2017	TSB deregistered	RM5,500	Outstanding debt
1 Jun 2018	Payment received from customer	RM5,500	
31 Jul 2018	(v) Repayment (the balance) of bad debt relief	_____	Sec. 58(3) GST-03

Required:

Compute the appropriate tax claimed or repaid with reference to the table for the following:

- (i) Account for tax (GST)
- (ii) Outstanding payment
- (iii) Claim bad debt relief
- (iv) Repayment of bad debt relief
- (v) Repayment (the balance) of bad debt relief

You are to list (i) to (v), in your answer booklet and provide the answers.

(5 marks)

[Total: 20 marks]

Question 4

- (a) Ravi Exports International Sdn Bhd ('the company') is a company incorporated and tax resident in Malaysia and 70% of its paid-up capital are held by local shareholders. It has been in business for several years and is a company that has been approved by the Malaysian External Trade Development Corporation as a Malaysian International Trading Company.

The company wishes to claim an exemption as a Malaysian International Trading Company under the Income Tax (Exemption) (No. 12) Order 2002. The following information in respect of the company's accounts for the years ended 30 June are available:

Ravi Exports International Sdn Bhd						
Years ended 30 June		2015		2016		2017
		RM'000		RM'000		RM'000
Sales						
Export sales		5,580		16,320		15,000
Local sales		19,220		16,320		28,050
Total sales		24,800		32,640		43,050
Less: Cost of goods sold		14,880		22,032		33,660
Gross profit		9,920		10,608		9,390
Less: Expenses						
Marketing	25		150		224	
Finance charges	99		326		486	

Repairs and maintenance	620		1,156		1,496	
Professional fees	62		286		486	
Depreciation	868		1,088		1,683	
Administration	186		680		1,309	
Other expenses	<u>1,860</u>	<u>3,720</u>	<u>3,400</u>	<u>7,086</u>	<u>3,497</u>	<u>9,181</u>
Net profit before tax		<u>6,200</u>		<u>3,522</u>		<u>209</u>

The company has also provided the following additional information by way of Notes to the Accounts:

Notes to the accounts Years ended 30 June	2016 RM'000	2017 RM'000
Administration Includes the expense of participating in an approved international trade fair held in Malaysia	27	56
Other expenses Includes donation made to an approved charitable body in Malaysia.	12	25
Other information Capital allowance due	1,900	1,250

Required:

Compute the chargeable income of Ravi Exports International Sdn Bhd for the years of assessment 2016 and 2017.

Note: You must show all relevant workings in arriving at your answer.

(10 marks)

- (b) Mr. Prasad, a new accountant with Malaysian Lumber Products Sdn Bhd ('the company'), a Malaysian resident company, is asked by the company's Managing Director to consider a claim for double deduction in respect of some expenses the company had incurred in the year of assessment 2016 in respect of manufactured timber products exported to the European Union countries.

Mr Prasad read section 41(3) of the Promotion of Investments Act 1986 (as amended), the Income Tax (Promotion of Exports) Rules 1986 and the (Amendment) Rules 2003, but found these less than clear and accordingly prepared some information to discuss with you on the double deduction claims:

- (1) The company incurred publicity and advertising expenses of which RM50,000 was incurred on publications printed and distributed in Malaysia and another RM250,000 on publications printed and distributed in France, Germany and Spain.
- (2) The company provided samples of its timber products to prospective customers and Mr Prasad explained that:
 - a. RM60,000 was spent on providing samples to customers in Spain and France. The cost included air freight.
 - b. RM10,000 was spent on samples given to two German prospective customers who were in Malaysia at the relevant time.
- (3) Three tenders were prepared during the year of assessment 2016 for the supply of pre-fabricated timber to France, Germany and Spain. The tender for the German customer was submitted at the German embassy in Malaysia while those in France and Spain were prepared and submitted by its local professional representatives in the respective countries.

- (4) Three of the company's marketing staff travelled to France, Germany and Spain sometime in late 2016 to negotiate the sale of pre-fabricated timber. Mr Prasad was not sure of the actual expenditure incurred but would like your advice on the matter to determine the amount to be claimed.
- (5) Technical and support information was provided to three customers in France and two more in Spain. The company sent two of its technical managers to France and Spain for this purpose in 2016. The customers had purchased the company's product through a negotiated deal in early 2015.

Required:

- (i) **Explain to Mr Prasad, the intention of section 41(3) of the Promotion of Investments Act 1986 (as amended), the Income Tax (Promotion of Exports) Rules 1986 and the (Amendment) Rules 2003.**

(2 marks)

- (ii) **Discuss, explain and advise Mr Prasad on the claim for any FOUR (4) of the expenses listed under items (1) to (5) above.**

(8 marks)

[Total: 20 marks]

Question 5

- (a) Y Bhd is wholly owned by Mr Y and his son. Y Bhd owns directly 80% of A Sdn Bhd and has held these shares for many years. The remaining 20% of A Sdn Bhd is owned by Mr Y's son. A Sdn Bhd's business has not been doing well and A Sdn Bhd is expected to incur a loss for tax and accounting purposes in the year ending 31 December 2017.

Y Bhd holds directly 100% of the shares in B Sdn Bhd, E Sdn Bhd, F Sdn Bhd, G Sdn Bhd as well as I Inc. I Inc. holds directly 100% of the shares in Z Sdn Bhd. Z Sdn Bhd is very profitable.

B Sdn Bhd is an investment holding company and owns directly 100% of the shares in C Sdn Bhd. C Sdn Bhd is a profitable trading company.

E Sdn Bhd also has a trading business.

All the above companies have 31 December year ends.

Required:

- (i) Mr Y informs you that he is planning to arrange for A Sdn Bhd to transfer its expected tax loss for the year ending 31 December 2017 to C Sdn Bhd or Z Sdn Bhd. Mr Y wants your confirmation on whether this is possible.

Explain whether you consider that A Sdn Bhd could surrender its tax loss for the year ending 31 December 2017 to C Sdn Bhd or Z Sdn Bhd. If you consider this is possible, state what additional information you would require to confirm your opinion.

(6 marks)

- (ii) Mr Y subsequently tells you that he is considering enhancing the rights of the shares held by his son in A Sdn Bhd. In particular, the enhanced rights will include increased entitlement to dividends.

You are asked to advise whether the above would have any impact on your answer at 5(a) (i).

(2 marks)

- (b) Mr. Y informs you that E Sdn Bhd is planning to sell its business to F Sdn Bhd. F Sdn Bhd will finance the purchase of E Sdn Bhd's business with a loan from I Inc. I Inc. is the Y Bhd's group finance company and is located outside Malaysia. I Inc. is proposing to make a loan to F Sdn Bhd for this purpose with the interest and capital due to be paid after three years.

Required:

- (i) **Mr Y seeks your advice on whether F Sdn Bhd can obtain a tax deduction for the interest expense on the loan from I Inc and any relevant income tax issues. You are required to advise Mr Y. Would it make any difference to your answer if F Sdn Bhd purchased the shares in E Sdn Bhd instead of E Sdn Bhd's business?**
(6 marks)
- (ii) Mr Y informs you that I Inc. may be sold to A Sdn Bhd. A Sdn Bhd would take a short term loan from a Malaysian bank to finance the acquisition.

Mr Y asks you to confirm whether A Sdn Bhd can obtain a tax deduction for the interest expense on the loan to acquire I Inc. Mr Y also wishes to know whether A Sdn Bhd's tax losses can be used to "offset" dividends received from I Inc.

(3 marks)

- (c) Y Bhd has for many years owned an office building which it and its subsidiaries have used. Mr Y now proposes that Y Bhd will transfer the office building to G Sdn Bhd. Mr Y tells you that this will be done to achieve synergies as a number of G Sdn Bhd's staff have property management experience. As G Sdn Bhd is short of cash, G Sdn Bhd will issue shares in satisfaction of the purchase price. As land values in the vicinity of the office building have increased significantly in recent years, Mr Y is worried about the Real Property Gains Tax (RPGT) impact for Y Bhd.

Required:

Mr Y seeks your comments on Y Bhd's RPGT position and in particular whether there are any reliefs available.

(3 marks)

[Total: 20 marks]

Question 6

- (a) A property development company, Miniland Sdn Bhd ("the Company") is being investigated by the Inland Revenue Board (IRB). The IRB has taken the Company's tax files for Year of Assessment (YA) 2013 to YA 2016 for the purpose of review.

During YA 2013 to YA 2015, Miniland Sdn Bhd had undertaken a commercial development project by building a single phase of shop-lots. The said project was completed in YA 2015.

Upon completion of the IRB's review, the following tax issues arose:

1. The gross profit of the project had not been recognised in the accounts based on the percentage of completion method. The total gross profit was RM9,000,000;
2. Upon completion of the project, there was an unsold unit which the Company had rented out in YA 2016. The shop was rented out for a monthly rental of RM5,000, based on a tenancy agreement signed between the Company and the tenant. The Company received 10 months rental in YA 2016. This rental income was not declared in the Company's accounts;

3. In YA 2016, the market value of the shop rented out was RM1,900,000. The development cost of the shop was RM500,000;
4. The following are some details extracted from the accounts and tax computation-

	YA 2013	YA 2014	YA 2015	YA 2016
	RM	RM	RM	RM
Gross profit for project recognised in Profit and Loss account (not based on percentage of completion)	300,000	2,500,000	6,200,000	Nil
Chargeable income	150,000	1,300,800	5,000,000	Nil
Tax rate	25%	25%	25%	24%
Tax liability	37,500	325,200	1,250,000	Nil
Total development cost (estimated and final)	5,000,000	5,000,000	5,000,000	
Total development cost incurred up to date	1,500,000	3,800,000	5,000,000	

Note: The gross profit of RM9,000,000 excluded the cost of the unsold unit, which was captured as closing stock in the balance sheet.

Required:

- (i) **Re-compute the Company's gross profit for the project based on the percentage of completion method, to be determined on cost incurred to date.** (3 marks)
- (ii) **Re-compute the Company's chargeable income, tax liability and penalty for YA 2013 to YA 2015.** (11 marks)
- (b) The Inland Revenue Board (IRB) views that the unsold shop unit rented out is a withdrawal of stock.
- (i) **Re-compute the chargeable income, tax liability and penalty, assuming a rate of 45% for YA 2016.** (4 marks)
- (ii) **State 2 differences between a tax investigation and a tax audit conducted by the IRB.** (2 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)