



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

ADVANCED TAXATION 2

JUNE 2021

Student
Registration No.

Date

Desk No.

Examination Centre

Time allowed: 3 hours

INSTRUCTIONS TO CANDIDATES

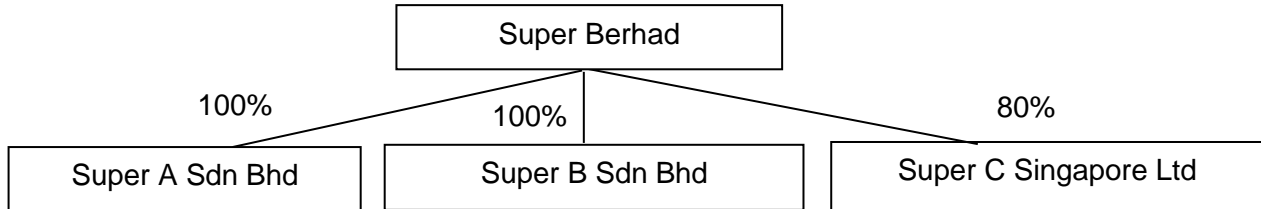
1. You may answer this paper **EITHER** in English **OR** in Bahasa Malaysia. Only **ONE** language is to be used.
2. This paper consists of **SIX** questions. **Candidates are ONLY REQUIRED TO ANSWER FIVE QUESTIONS.**
3. The income Tax Act 1967 (as amended) is referred to as ITA.
4. Each answer should begin on a separate answer template.
5. All workings **MUST** be shown as marks will be awarded.

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

Question 1

The Super Group of Companies was incorporated on 1 June 2019 with the following shareholding structure.

All these companies prepare their annual accounts to 30 May.



(a) Super Berhad provides management services to its subsidiaries.

The adjusted income from its management services business for the current year of assessment 2021 was RM10 million, after charging interest expenses on a bank loan of RM40 million (obtained way back in 2019). The bank loan was taken from a Malaysian bank at an interest rate of 6% per annum.

The bank loan was utilised for the following purposes:

1. Equity investment: RM10 million to finance the subscription of ordinary shares in Super A Sdn Bhd and a dividend of RM100,000 was received from Super A Sdn Bhd in May 2021.
2. Loans and advances: RM20 million were extended as loans to subsidiaries with an annual interest rate of 8% whereas RM2 million as advances (non-interest-bearing) to subsidiaries. Details are as follows:

	Loans RM	Advances RM
Super A Sdn Bhd	5,000,000	1,200,000
Super B Sdn Bhd	5,000,000	600,000
Super C Singapore Ltd	10,000,000	200,000

3. Working capital: RM8 million.

Required:

For current year of assessment 2021,

- (i) Quantify (with explanation) the amount of interest expenses to be restricted; and** (3 marks)
- (ii) Compute the amount of interest expenses to be allocated to each of the sources of income, i.e. management fees, dividend income and interest income, and state their deductibility against each of the sources of income.** (8 marks)

(b) Super B Sdn Bhd is involved in retail clothing store business. Owing to the Covid-19 pandemic, Super B Sdn Bhd decided to close all its retail stores and relaunched its brand as an online-only retailer. It requires financing from Super Berhad to finance the online sales start-up cost. For this purpose, Super Berhad will obtain a bank loan and extend the financing to Super B Sdn Bhd by way of:

1. Option 1: Inject the funds via subscription of ordinary shares in Super B Sdn Bhd; or
2. Option 2: Extend an interest-bearing loan to Super B Sdn Bhd.

Super B Sdn Bhd's online business will take at least two years to become profitable.

Required:

Explain the income tax implications on Super Berhad of each of the above option of investment and advise Super Berhad which of the two options would be more tax-efficient. (9 marks)

[Total: 20 marks]

Question 2

Fastcar Sdn Bhd (the "Company") is a company incorporated and tax resident in Malaysia. The Company is in the business of manufacturing cars. It has a paid up share capital of RM10,000,000 since 2016.

In 2017, the Company was awarded investment tax allowance at 60% of qualifying capital expenditure for a period of 5 years commencing from YA 2017. The allowance may be set off against 70% of statutory income.

The Company incurred qualifying capital expenditure from YA 2017 to YA 2019 as follows:

YA	Qualifying capital expenditure incurred
	RM
2017	30,000,000
2018	100,000,000
2019	150,000,000

In 2020, the Inland Revenue Board of Malaysia ("IRB") conducted a desk audit on the Company and raised the following issues:

1. The Company has not met the requisite conditions required for the investment tax allowance incentive.
2. The Company had accrued royalty expense of RM4,000,000 in YA 2019. Although the RM4,000,000 has not been remitted to the Singapore tax resident company, the Company had remitted the withholding tax to the IRB. The Company had claimed tax deduction on both amounts.
3. The Company had an outstanding trade payable of RM3,000,000 to its parent company since YA 2017. The parent company had waived the outstanding amount in YA 2019. The Company had not subjected the amount to tax.

Separately, the Company had, in 2013, disposed of a shop lot which it acquired in 2012. The Company had paid the Real Property Gains Tax Assessment raised by the IRB. In the tax audit conducted in 2020, the IRB informed the Company that the profit arising from the disposal of the shop lot should be subject to tax under the Income ITA and not the Real Property Gains Tax Act, 1976.

Required:

- (i) Based on the issues raised by the IRB, compute the revised tax payable for YA 2017 to YA 2019. Please set out your computation in detail (marks will be awarded for workings).

For this purpose, you should assume as follows:

- The Company's chargeable income for YA 2017 to YA 2019 is as follows:

	YA 2017	YA 2018	YA 2019
	RM	RM	RM
Chargeable income	100,000,000	200,000,000	300,000,000

- Company has only one source of income.

(7 marks)

(ii)

- a. The IRB has informed that it will proceed to raise the Notices of Additional Assessment for YA 2017 to YA 2019. Explain the offence that the Company has committed and the penalty for such an offence under the ITA and the Tax Audit Framework.
- b. The Company has decided that it will appeal against the Notices of Additional Assessment for YA 2017 to YA 2019. Explain the appeal process accorded in the ITA.

(5 marks)

- (iii) The IRB has informed that it will proceed to raise the Notice of Additional Assessment under the ITA for the sale of the shop lot.

As the tax advisor, explain to the Company what the IRB is allowed and is not allowed to do in respect of this Notice of Additional Assessment.

(4 marks)

- (iv) After the abovementioned Notices of Additional Assessments were raised, the Company failed to pay the taxes.

Explain:

- a. Under what circumstances would an individual connected with the Company be liable for the taxes of the Company.
- b. What actions can the IRB take to recover such taxes from the individual.

(4 marks)

[Total: 20 marks]

Question 3

Company A is a holding company and its subsidiaries consists of four other companies, i.e. Company B, C, D and E. Company E operates a rubber plantation while Company D is engaged in the cultivation of onions. The income from these operations are declining in recent years.

In order to achieve greater efficiency in operation within the group, it was proposed to the Board of Directors that the landed properties in Company D be transferred to Company E. The rubber plantation and onion cultivation should then be cleared and converted into an oil palm plantation. The consideration for the transfer has not been determined as yet.

Required:

- (i) **Discuss the liability to real property gains tax in respect to the transfer of the chargeable asset from Company D to Company E in the context of the Real Property Gains Tax Act 1976.** (10 marks)
- (ii) **What is the position if Company E is a property developer and takes the land from Company D (cultivated with onions) into its trading stock for development into a high-rise residential property?** (10 marks)

[Total: 20 marks]

Question 4

The world is facing an unprecedented crisis in the history of mankind. The Covid-19 pandemic has affected businesses, economies, employments where borders are closed and travel restrictions are imposed by many countries. This has created many tax issues with regard to residency status, permanent establishment, income from employment amongst many others. The Organisation for Economic & Co-operation and Development ("OECD") has issued guidance on tax treaties and the impact of the Covid-19 pandemic. Many countries including Malaysia have issued their own guidance to address some of these tax issues.

According to the guidelines issued by the Inland Revenue Board ("IRB"), temporary presence in Malaysia because of Covid-19 travel restrictions due to the movement control order ("MCO") period, that period shall not be taken to form part of the period(s) for the purpose of determining resident status.

Required:

Based on the above, you are to advise on the income tax implications on the following situations:

- (i) **Joe Kim, an IT data analyst from Korea came to Malaysia for a 3-week holiday on 1 March 2020. However, he got stranded here due to the Covid-19 travel restrictions as the Malaysian border was closed. His extended period of stay in Malaysia would have qualified him as a resident based on the ITA. During this time, he continues to work remotely in Malaysia for his employer in Korea.**

On the available facts as above, would he be considered as having exercising an employment in Malaysia? State what are the conditions or factors you need to consider in arriving at your answer.

(10 marks)

- (ii) While during his extended stay under the MCO period in Malaysia, he ceased employment with his Korean employer. He in turn accepted to work with a Malaysian company as an IT data analyst in October 2020 and the company got him an employment permit to work in Malaysia.

Joe Kim took up a 2-year lease for an apartment so he can stay and work in Malaysia. He has a home in Korea where he stays while working there. Since he is now working in Malaysia, he asked his sister to rent out his property in Korea as he foresees that he won't be back to Korea in the near future.

Required:

- a. **What is the tax treatment with regard to his employment income with his ex-Korean employer after taking up employment in Malaysia?**
- b. **Under the Korean domestic law, Joe Kim is also considered as a resident for tax purposes. Article 4(2) of the Korea/Malaysia Double Tax Agreement spelt out the tie-breaker rules on resolving dual residency status of an individual.**

What is your understanding of "permanent home" and explain where Joe Kim would most likely be resident in for tax purposes?

(10 marks)

Reference is made to Article 4 of UN Model Convention.

The extract of the UN Model Convention is given at the end of this paper.

[Total: 20 marks]

Question 5

- (a) Ali, Mattias, Ah Heng & Co ("AMAC") is a Malaysian accounting firm and the sole Malaysian representative or affiliate of MAX International Accountants and it is registered for service tax purposes. As the sole Malaysian representative or affiliate, AMAC will pay MAX International Accountants RM annually:

1. Affiliation subscription fees of RM300,000. This fee is solely for according AMAC the rights to use the MAX International Accountants branding in Malaysia.
2. Software fees of RM250,000. This fee is for the usage of MAX International Accountants' proprietary audit software.
3. IT support fees of RM360,000. MAX International Accountant has a team of software specialists to provide troubleshooting services for the proprietary audit software.

There are separate contracts for each of the above and they are separately invoiced.

In addition, AMAC is also required to subscribe to Google Workspace to utilise the functions of the proprietary audit software as well as a local data centre to host their data. Google charges RM40 per person annually for the use of Google Workspace and AMAC has 80 staff who need to use it. The local data centre charges an annual hosting fee of RM50,000.

Required:

Analyse the service tax implications on the above, including for imported taxable service and digital service, and compute any service tax payable.

(9 marks)

- (b)
- (i) Describe the essential characteristics of digital services. (3 marks)
 - (ii) What are the types of digital services that are not subject to service tax? (2 marks)
 - (iii) Who is defined as a consumer in Malaysia for the purposes of service tax on digital services? Include guidance provided by the Royal Malaysian Customs Department to foreign registered persons to determine a consumer in Malaysia. (6 marks)

[Total: 20 marks]

Question 6

- (a) Article 5(3)(a), of the UN Model Convention. the term “permanent establishment” also encompasses:

A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

Required:

The expressions “building site, a construction, assembly or installation project” is not defined in the UN Model Convention.

What is your understanding of the expression and how you would interpret it in the context of the UN Model Convention?

(4 marks)

- (b) Donald Vision Ltd, a UK IT Company won a project in Country M to install an advanced electronic sensors system using solar panels to generate alternative power to drive the sensors system for a MNE company based in Country M. The installation of the advanced sensor system will take approximately 3 months. Testing, modifications or training on the use of the system will take another 2 months. Due to the occurrence of frequent thunderstorms in Country M, the solar panels installation was delayed for another 2 months which Donald Vision Ltd didn't anticipate when planning for this project.

Required:

Advise Donald Vision Ltd, whether the project in Country M will create a permanent establishment there. In your advice, explain the factors to consider in determining the threshold period for a permanent establishment.

(8 marks)

- (c) Trident Builder Co (“Trident Co”) resident in Country R bid and concluded a contract to build and deliver a completed warehouse building for Honeysweet Co, a resident in Country S. The construction contract is concluded by 3 associated companies of Trident Group which are also residents of Country R.
- Company A will provide the interior design of the building. It is expected to take 1 month to complete;
 - Company B will construct the building using latest fabricated building technology and expected to be completed in 5 months;
 - Company C will undertake electrical wirings, installation of equipment etc. The estimated duration of the work is about 3 months.

Required:

Advise whether Trident Co’s associated companies have created permanent establishment or not for Trident Co in Country S as the result of the above contracts.

Describe the tax issues that you can identify from these contracts and what possible suggestions you can recommend to resolve them.

(8 marks)

[Total: 20 marks]

Extract of the UN Model Convention

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) The term “person” includes an individual, a company and any other body of persons;
 - (b) The term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (c) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (d) The term “international traffic” means any transport by a ship or aircraft, except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;
 - (e) The term “competent authority” means:
 - (i) (In State A):
 - (ii) (In State B):
 - (f) The term “national” means:
 - (i) any individual possessing the nationality of a Contracting State
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) He shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - (c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - (d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, 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” includes especially:
 - (a) A place of management;
 - (b) A branch;
 - (c) An office;
 - (d) A factory;
 - (e) A workshop;
 - (f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term “permanent establishment” also encompasses:
 - (a) building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

- (b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- (a) The use of facilities solely for the purpose of storage or display 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 or display;
- (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 of collecting information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity.
- (f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

provided that such activity or, in the case of subparagraph (f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

- (a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- (b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
 - (i) in the name of the enterprise, or
 - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
 - (iii) for the provision of services by that enterprise,unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) the person does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually maintains in that State a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article but subject to the provisions of paragraph 7, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person.
7. Paragraphs 5 and 6 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.
9. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

(END OF QUESTION PAPER)