



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

REVENUE LAW

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 and the Real Property Gains Tax Act 1976 as RPGT.
4. Each answer should begin on a separate answer template.

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

Question 1

- (a) The general rule as regards to the scope of charge is that a person resident in Malaysia is assessable to income tax on income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia.

Required:

With reference to the ITA, discuss the various aspects of the scope of charge to tax in Malaysia.

(8 marks)

- (b) ‘... the question whether the gross profit resulting from a particular transaction arose in or derived from one place or another is always in the last analysis a question of fact depending on the nature of the transaction. It is impossible to lay down precise rules of law by which the answer to that question is to be determined. The broad guiding principle ... is that one looks to see what the taxpayer has done to earn the profit in question... the profit will have arisen in or derived from the place where the property was let, the money was lent or the contracts of purchase and sale were affected.’

Per Lord Bridge in Commissioner of Inland Revenue v. Hang Seng Bank Ltd [(1990) STC 733]

Required:

With reference to the *dicta* of Lord Bridge above, discuss the facts and decision in the case of *Kyros International Sdn Bhd v KPHDN [(2013) MSTC 30-056]*.

(12 marks)

[Total: 20 marks]

Question 2

The Green Diamond Golf Club (‘the club’) was registered as a member’s club. Its members are made up of retired government and private sector employees. The club provides a place for social interaction, dining facilities, welfare and sports activities for the mutual benefit of the members. The members pay an entrance fee and an annual subscription, and other charges for food and drinks etc. to enjoy these facilities, including golfing.

The club sits on a piece of land owned by the Rawang-Seremban Railway Company Bhd (‘the company’). The land was leased by the company to the club for a nominal annual rent. The lease contains, among others, a condition that the club will be solely responsible at its own cost to upkeep the land and the properties therein in good repairs and condition. In addition, another clause in the lease requires that the club allow the company’s employees to partake in the facilities as non-members (‘visitors’) of the club but for a payment to be determined by the club.

The club charges the visitors a sum that is higher than that charged for the members for any facilities they enjoy including food and drinks. The stated intention was not the making of a profit but to subsidise the club members’ subscription so that it can be kept low.

For the year ended 31 December 2020, the accounts of the club showed a receipt of RM80,000 on account of the fees charged on the visitors and RM200,000 being the cost of operation and maintenance of the club. The club treasurer had stated that while the club did not make any surplus, the members’ subscription was maintained at the same amount as previously on account of this ‘comfortable’ financial standing of the club.

Required:

- (i) Discuss the taxability of a club with reference to the ITA, Public Ruling No. 1 of 2015 and the Principle of Mutuality. (10 marks)
- (ii) With reference to the case of *Carlisle and Silloth Golf Club v Smith* (6 TC 48), discuss whether the receipt of RM80,000 would be liable to income tax.

Note:

You are required to state briefly the facts, the crux of the arguments and the decision of the case mentioned.

(10 marks)

[Total: 20 marks]

Question 3

- (a) The Layby Station Sdn Bhd ('the company') operates highway rest stops along the Kuala Lumpur – Johor Bharu Highway. The company has a 20-year lease agreement with the Malaysian Highway Authority ('the Authority'), a government body to whom an annual lease payment is made in respect of the highway rest stops operations. The annual lease charges are computed as a percentage of the gross sales made at these stops, and includes dutiable items like cigarettes and tobacco. In 2019, the duty on cigarettes and tobacco were increased substantially and as a result the lease charges increased disproportionately to the 'true' gross sales. This was untenable as the increased sales reflected a higher value of the indirect tax imposed on the goods sold. With another 15-years to run on the lease from 2019, the company negotiated with the Authority in November 2019 to revise the particular lease agreement clause to exclude indirect taxes from the gross sales figures with a view to cutting down on its operational expenditure.

The Highway Authority agreed to the revision on payment of a one-time premium of RM100,000. The revised clause in the lease reduced considerably the payment of the lease charges from the year 2020 onwards.

The amount of RM100,000 was charged in the company's accounts and a deduction was claimed in computing the adjusted business income. However, the revenue authorities disallowed the deduction claimed.

Required:

With reference to the ITA discuss the disallowance of the sum of RM100,000 to The Layby Station Sdn Bhd in computing its adjusted income from business.

Note:

You must quote a relevant case law in support of your answer, indicating briefly the facts, argument and decision in that case.

(10 marks)

- (b) Petrol Supplies Sdn Bhd ('the company') is a supplier of motor vehicle fuel. By an agreement signed sometime in 2012, it had appointed North Malaya Petrol Distributors Sdn Bhd ('the distributor') as its main agent to distribute fuel in Peninsular Malaysia. The distributor is paid a minimum fixed sum and a percentage of the sales of fuel sold by the distributor.

Towards the end of 2019 the company found that the arrangement was financially onerous as the prices of fuel had increased very much over the years and the profits made reduced gradually over the same period. With the pandemic arising from the Covid-19 virus and movement restrictions, the payment made to the distributor was more than anticipated originally. It is projected to increase over the next few years that will cut substantially into the company's profits.

To overcome these problems, the company then entered into negotiations with the distributor under which the distributor would go into liquidation and the company would pay a sum of RM900,000. The company will engage those employees remaining with the distributor. By a separate agreement the company will acquire the buildings, plant and machinery of the distributor and from 2020 onwards will do the distribution itself. It was expected that this arrangement will give greater flexibility of operations while cutting cost of operations.

Required:

With reference to the ITA discuss the deductibility of the payment of RM900,000 to the North Malaya Petrol Distributors Sdn Bhd in computing the business adjusted income of Petrol Supplies Sdn Bhd.

Note:

You must quote a relevant case law in support of your answer, indicating briefly the facts, argument and decision in that case.

(10 marks)

[Total: 20 marks]

Question 4

Yes Tea Sdn Bhd ("the Company") is in the business of growing and selling tea. In 2020, the Company incurred capital expenditure on the construction of a building complex for its business. The various buildings built in the complex are linked by an internal road system. The following are the cost details of the construction:

- a) RM850,000 on Building A where harvested tea leaves are softened, rolled, twisted, oxidised, and dried, before being packed into packages of individual tea bags.
- b) RM150,000 on Building B where repair and maintenance services are carried out on the Company's equipment and machinery used in the harvesting, softening rolling, twisting, oxidation, drying and packaging process.
- c) RM200,000 on Building C, which serves as an administration block which is used solely as an office by the administrative and management personnel of the company.
- d) RM100,000 on staff recreation room, bathrooms and washrooms located in the various parts of the building complex.
- e) RM30,000 on the internal road system linking the various buildings in the whole complex.
- f) RM20,000 on a stand-alone building housing a waste incinerator where waste and discards from the Company's daily operations are incinerated.

Required:

With reference to the ITA and relevant case laws, discuss the meaning of ‘industrial building’, and whether the expenditures incurred under (a)-(f) above would qualify for industrial building allowance.

Note:

You are required to support your answer citing relevant case laws stating briefly the facts, arguments and the grounds of the decision in those cases.

[Total: 20 marks]

Question 5

- (a)** Fashion Sdn Bhd (FSB) is a retail company incorporated in Malaysia. FSB is wholly owned by Fashion Ltd (FL), the holding company in Hong Kong. FL is wholly owned by Fashion Inc. (FI), the ultimate holding company in the United States of America (USA).

FSB had set up a business in Kuala Lumpur that deals with trading activities. However, the purchase of the raw materials, and the manufacture of the same, are wholly and exclusively carried out in Hong Kong.

The board of directors of FSB comprise of three (3) American residents, three (3) Hong Kong residents and one (1) Malaysian resident. All major decisions affecting FSB are made at the board of directors’ meetings, all of which are held in the USA, except for one which was held in Kuala Lumpur on 30.10.2020 where an important policy decision was made. The financial accounting period of FSB is the calendar year.

Ms Olivia owns 90% of the shares in FI and the remaining 10% are owned by Mr Larry and Mr Liam. Ms Olivia is a resident of the USA while Mr Larry and Mr Liam are residents of Hong Kong. As Ms Olivia is the majority shareholder, the meetings of the shareholders are usually held in the USA.

Recently, Ms Olivia had serious disagreement with the Malaysian director, Mr Ahmad. As the disagreement could not be resolved amicably, Ms Olivia intends to exercise her voting powers to remove Mr Ahmad as a director from the board of directors during the next shareholders’ meeting that will be held on 30.8.2021.

Required

With reference to the ITA, advise Fashion Sdn Bhd whether it is tax resident in Malaysia from the year of assessment 2020 onwards.

Note:

You are required to support your answer citing relevant case laws stating briefly the facts, arguments and the grounds of the decision in those cases.

(10 marks)

- (b) *'Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be.'*
Lord Tomlin in *IRC v Duke of Westminster* [1936] AC 1

- (i) **State briefly the facts of the case in *IRC v Duke of Westminster*.** (2 marks)
- (ii) **With reference to the ITA and the decision in *IRC v Duke of Westminster* [(1936) AC 1], *CIT v AB Estate* [(1967) 1 MLJ 89] and *Syarikat Ibraco-Peremba Sdn Bhd v KPHDN* [(2014) MSTC 30-084], discuss whether the substance of the transaction is given the edge over the doctrine of the legally valid form.**

Note:

You are required to support your answer stating briefly the facts, arguments and the grounds of the decision in the relevant cases.

(8 marks)

[Total: 20 marks]

Question 6

Agile Sdn Bhd ('the company') is in the business of manufacturing kitchen sinks and hardware. The company had always filed its tax returns and paid the taxes on time. In doing so, the company had at all times obtained professional tax advice in managing its tax affairs and it also made full and frank disclosure in all the tax returns filed.

In 2020, the Inland Revenue Board (IRB) commenced an audit on the issue of deduction of business expenses for years of assessment 2012 to 2015. The company duly provided all the requested documents and information to the IRB, while fully cooperating with the IRB throughout the audit. It also explained at length to the IRB on why certain questioned expenses were deducted and how those expenses as deducted in arriving at the adjusted income were in compliance with the provisions of the ITA.

Nevertheless, the IRB was of the view that certain commissions that were claimed as expenses by the company were not deductible.

On 30 Dec 2020, the company's tax agent, SKA Tax Advisory Sdn Bhd ('the tax agent') received notices of additional assessment for YA 2012 to 2015 all dated 3 Dec 2020. The IRB had imposed penalty of 45% and demanded for full payment of the taxes and penalty within 30 days from the date of the notices of assessment. The notices were received by registered post by the tax agent who then forwarded these to the company.

In raising the additional assessments, the IRB did not state the reasons for the time-barred assessments.

The IRB had posted the notices to the tax agent as it was their address that was stated as the registered address in the returns submitted by the company i.e.

*Agile Sdn Bhd
c/o SKA Tax Advisory Sdn Bhd
23, Jalan Hillview,
Taman Megah,
50800 Subang Jaya.*

The company duly appealed against the assessments to the Special Commissioners of Income Tax (SCIT). During the hearing before the SCIT, the IRB did not make any specific allegations of fraud or wilful default on the part of the company. The IRB merely stated that the company was negligent because they deducted the commission payments in arriving at the adjusted income for the relevant years of assessment.

On 30 March 2021, the company received a writ of summons from the Government of Malaysia whereby it demanded the full payment of the taxes. The company challenged the summons on the grounds that the notices of assessment were not properly served.

Required:

With reference to the ITA and relevant cases laws, advise Agile Sdn Bhd on the following matters:

- (i) The timeline for Agile Sdn Bhd to file a notice of appeal to the Special Commissioners of Income Tax against an assessment made; (4 marks)**
- (ii) Whether the assessments as raised on Agile Sdn Bhd are valid; (5 marks)**
- (iii) Whether the assessments as raised are time barred and the grounds for challenging such assessments; and (4 marks)**
- (iv) Whether the notice of assessments as raised were properly served on Agile Sdn Bhd, and its implication in law for the payment of the taxes due and payable. (7 marks)**

[Total: 20 marks]

(END OF QUESTION PAPER)