



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

ADVANCED TAXATION 2

DECEMBER 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

Efficient Sdn Bhd (“ESB”) was incorporated in July 2021 and immediately commenced its business of providing transportation services solely in Peninsular Malaysia. Being involved in an approved service project (“ASP”), ESB is aware that the company is eligible for tax incentives.

ESB’s projected financials for the next five (5) years are as follows:

Year of Assessment	2022	2023	2024	2025	2026
(in thousands)	RM	RM	RM	RM	RM
Adjusted income/ (loss)	500	3,000	3,800	4,400	5,500
Capital allowances	2,800	2,400	2,100	2,000	1,900
Qualifying capital expenditure to be incurred:					
Plant & Machinery	1,500	2,000			
Motor vehicles (commercial)	6,000	3,000	2,000		

Required:

- (a) Discuss the types of incentives that are available to ASPs with reference to Section 127 of the ITA and Schedule 7B of the ITA. (2 marks)
- (b) State any three (3) differences for each of the tax incentives mentioned above. (6 marks)
- (c) Assuming ESB satisfied all criteria under the ASP incentive, advise the directors of ESB on which tax incentive (Section 127 of the ITA or Schedule 7B of the ITA) is more preferable. Detailed computation is required to support your advice (marks will be awarded for workings). (8 marks)
- (d) What is the difference in the quantum of exemption/ allowance if ESB were to carry on its business solely in East Malaysia? (4 marks)

[Total: 20 marks]

Question 2

- (a) The IRB has conducted a raid at the premises of taxpayer i.e., John in connection with a tax investigation. From the raid, the IRB has obtained the following information on John:
1. In year 2015, John invested RM500,000 in unit trust. In year 2020, John topped up RM1,500,000 in the unit trust. The current market value of the unit trust is RM2,500,000.
 2. In year 2020, John purchased a bungalow from his friend for RM1,000,000. He obtained 70% bank loan. He funded the purchase price difference and the stamp duties for the agreements with his savings. The RM3,000 monthly instalment for the loan commenced in January 2021.
 3. In year 2020, John purchased a car for RM180,000. He traded in his old car for RM20,000 and financed the balance via hire purchase at an interest rate of 2.5% per annum. During the year 2020, he paid instalments of RM3,000 per month for five (5) months.
 4. In year 2020, John received an employment income of RM200,000 and subjected it to an EPF contribution at 11%. John also received rental income of RM36,000. John only reported the RM200,000 employment income in his tax return.
 5. In year 2020, John's personal expenditure amounted to RM80,000.

Based on the above information, compute John's omitted income for the year 2020. Marks will be awarded for workings.

(8 marks)

- (b) **State three (3) criteria that may have caused the IRB to select John for a tax investigation.**
- (3 marks)
- (c) **State two (2) types of powers that the IRB can exercise during the visit to John's premises pursuant to a tax investigation.**
- (2 marks)
- (d) **During the visit to John's premises, the IRB has requested for the password to John's computer. John refused to co-operate. Elaborate on the nature of the offence committed by John.**
- (4 marks)
- (e) **John has engaged you as his tax agent to assist with the tax investigation. He has enquired about a composite assessment. Explain what is a composite assessment.**
- (3 marks)

[Total: 20 marks]

Question 3

- (a) The Chartered Tax Institute of Malaysia (“CTIM”) has issued Rules and Regulations (“the Rules”) on professional conduct and ethics on 23 February 2012 that was framed in broad and general terms on the basic guidelines in respect of professional conduct of members of the CTIM.

Required:

With reference to the Rules, explain THREE (3) Fundamental Principles that must be adhered to by a member of CTIM.

(6 marks)

- (b) Mr Chelladorai is a professional accountant and has his own firm in Kuala Lumpur, providing among other things, professional tax advisory services. Mr Chelladorai has a daughter who is attending medical school at an internationally recognised institution in Malacca. She was offered a study loan by the institution to complete her studies but it requires a third-party guarantee. Chelladorai has in mind to ask one of his long-time clients to provide the guarantee.

Required:

With reference to the Rules, advise Mr Chelladorai on the implication, from a professional and ethics point of view, on obtaining the loan guarantee from his client.

(6 marks)

- (c) Mr Rajaratnam, a member of the CTIM, has been a practising accountant for many years and runs his own firm and has several long-time clients. Recently, he has to act in a transaction where one of his clients was selling a large business to a buyer who is also his client. While he is aware that he should not be acting for both parties in the matter, he is faced with a particularly difficult situation on account of peculiar circumstance where he is finding that it is not easy to say ‘No’.

Required:

With reference to the Rules, discuss the three (3) basic choices that Rajaratnam has in acting for both of his clients.

(8 marks)

[Total: 20 marks]

Question 4

- (a) (i) Describe the liability of a person to register for sales tax, detailing when he is liable to be registered for sales tax, the deadline to register and the effective date of registration. (4 marks)
- (ii) What is defined as 'manufacture' according to the Sales Tax Act 2018? (5 marks)
- (iii) When is sales tax due? (3 marks)
- (b) PQR Sdn Bhd was established as the sole importer of widgets which is a taxable good for sales tax. It began importing widgets into Malaysia from 1 January 2017 and sold them to Malaysian distributors. PQR Sdn Bhd began to import components of the widget and assembled them in Malaysia before selling them to the distributors from 1 January 2019.

The monthly sales data for the years from 2017 to 2019 are as follows:

	2017 (RM)	2018 (RM)	2019 (RM)
January	40,000	70,000	60,000
February	20,000	50,000	50,000
March	60,000	60,000	30,000
April	50,000	40,000	80,000
May	30,000	30,000	60,000
June	40,000	20,000	50,000
July	20,000	50,000	60,000
August	50,000	60,000	70,000
September	60,000	50,000	60,000
October	30,000	50,000	70,000
November	30,000	60,000	80,000
December	60,000	30,000	60,000
Total	490,000	570,000	730,000

- (i) How does sales tax affect PQR Sdn Bhd when it is importing widgets? (3 marks)
- (ii) Analyse and state when is PQR Sdn Bhd liable to be registered for sales tax, its deadline to register and its effective date of registration. (5 marks)

[Total: 20 marks]

Question 5

- (a) Under Article 12 on Royalties in the UN Model, there are several elements that qualify the rights attributed to the residence state under the Article.

What are the five (5) features that qualified the residence state's taxing rights?

(5 marks)

- (b) Article 12(2) states that "beneficial owner" from the royalty would benefit from exemption or reduced rate for royalties in the tax treaty.

Why is it important to include the term "beneficial owner" in Article 12 and give examples of persons who should not be considered as beneficial owners of the royalty income?

(5 marks)

- (c) Vince Innovations ("VI"), a company resident in Takechi Republic entered into a licensing agreement with Bond Assembly ("BA"), a resident in Saints James, a nation located in the Pacific Ocean. BA's business activity is in the assembly of electric cars. In consideration for the use of VI's intellectual property, BA paid royalties to VI. The royalties were subject to Saints James withholding tax of 25% under its domestic law which was reduced to 10% under the Royalty Article of Saints James and Takechi Republic Double Tax Agreement ("DTA") on the basis that the recipient of the royalties is the beneficial owner.

Due to some internal restructuring, VI moved its residence to Victoria Isle, a nation located in the Atlantic Ocean. Victoria Isle has no DTA with Takechi Republic. VI assigned its rights under the licensing agreement to Vince Corp ("VC"), a related company located in Takechi Republic.

Under the assignment agreement, VI retained ownership of the intellectual property. VC has only the right to receive royalty payments and the obligations to pay the royalty payments within 60 days of receiving from BA to VI. VC will retain 10% of the royalty payments received as management fee and pays the balance to VI. The royalties were the largest revenue and expense items of VC. VC's principal activity is that of provision of management services.

The Royalty Article of Takechi Republic and Saints James DTA follows Article 12 - Royalties of the UN Model Convention.

- (i) **What is the withholding tax rate that BA should apply when making the royalty payment to VC?**

(2 marks)

- (ii) **Explain why you apply the withholding tax rate in your answer above to the royalty payment and the reasons you have taken into consideration.**

(8 marks)

Extract of the UN Model Convention

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed ___ per cent (the percentage is to be established through bilateral negotiations) of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

[Total: 20 marks]

Question 6

Section 12(1)(a) of the Income Tax Act, 1967 (“Act”) provides that “so much of the gross income from the business as is not attributable to operations of the business carried on outside Malaysia shall be deemed to be derived from Malaysia”.

(a) State whether income derived from the following companies is deemed to be derived from Malaysia under section 12 of the Act.

- (i) Pearson Sdn Bhd (“Pearson”) is a manufacturer of miniature precision tools used by semiconductor companies in USA and Japan to produce chips for the aeronautical industry. Pearson occasionally participates in trade exhibitions in USA and Japan to showcase its miniature precision tools. In one of such trade exhibitions in USA, Pearson secured a trade order of RM6 million (USD1.5 million) to produce miniature precision tools to Fairfield Inc, a USA semiconductor company. Pearson signed the contract during the trade exhibition in the USA. (4 marks)
- (ii) Berger Quest Inc, (“Berger Quest”) a company resident in USA specialises in the business of offshore oil drilling operations and the hiring of oil rigs for offshore drilling. Berger Quest entered into a charter agreement with Petrocarbon, a Malaysian oil company for the hiring of an oil rig to Petrocarbon for their offshore drilling activity in the South China Sea. The charter agreement was signed in USA. The charter agreement for hiring of the oil rig is valued at RM40 million (USD10 million). (4 marks)

(b) Malaysia is considering introducing 5G technology and has identified certain spectrum bandwidth for the roll-out of 5G in Malaysia. Three (3) of the current Malaysian telcos, namely Shellcom, Maxim and DeeCi are interested to offer 5-G technology to their customers. The three (3) telcos have approached Byeden Inc (“Byeden”), the largest 5G infrastructure engineering company in USA for assistance in installing telecommunication towers (“towers”) in the Klang Valley for 5G pilot roll-out in 2023.

Byeden has entered into separate contracts with Shellcom, Maxim and DeeCi for the installation of towers. Shellcom, the largest telco requires fifty (50) towers and the installation work is expected to last for five (5) months. Maxim and DeeCi need to install thirty (30) towers each and the installation works for Maxim and DeeCi each requires three (3) months to complete. Byeden will start the installation work for DeeCi first, followed by Shellcom and finally Maxim. The entire installation works will commence in February 2022 and is expected to be completed by December 2022.

Byeden intends to lease a warehouse in Subang for two (2) months to store the materials, parts, and equipment needed for the installation works.

The tax authorities have indicated in their Practice Note, for the “construction, an installation or assembly project” under section 12(4) of the Act, the meaning of a “place of business” is established in Malaysia if it exceeds a period of five (5) months in a calendar year.

Byeden has appointed you as their tax consultant and seek your tax opinion on whether it has a place of business in Malaysia based on the proposed works it will intend to perform in Malaysia. Please explain your basis on how you have arrived at your conclusion in your tax opinion to Byeden.

Note: There is no DTA between USA and Malaysia.

(12 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)