



CHARTERED TAX INSTITUTE OF MALAYSIA (225750 T)
(Institut Percukaian Malaysia)
Registration Number: 199101015438 (225750-T)

PROFESSIONAL EXAMINATION

FINAL LEVEL

ADVANCED TAXATION 2

JUNE 2022

Student
Registration No.

Date

Desk No.

Examination Centre

Time allowed: 3 hours

INSTRUCTIONS TO CANDIDATES

1. This paper consists of **SIX** questions. **Candidates are ONLY REQUIRED TO ANSWER FIVE QUESTIONS.**
2. The income Tax Act 1967 (as amended) is referred to as ITA.
3. Each answer should begin on a separate answer template.
4. All workings **MUST** be shown as marks will be awarded.

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

Question 1

PQ Make Sdn Bhd (PQM), tax resident company in Malaysia, manufactures woodwork furniture. It is currently enjoying reinvestment allowance (RA) on capital expenditure incurred on expanding and modernizing its woodwork business.

For the year ended 31 May 2022, PQM has incurred the following capital expenditure:

	RM'000
Computer Numeric Controlled Machines	800
Factory (expansion)	1,500

PQM registered a significant increase in export sales due to unexpected upsurge in customer demand from European countries. The exported products have constantly attained more than 50% of the value-added.

PQM's sales details were as follows:

Year of Assessment (YA)	2022	2021
	RM'000	RM'000
Total sales (Note)	13,000	5,000
Domestic sales	1,000	1,500
Export sales	10,000	2,000
Goods sold to Free Industrial Zones	2,000	1,500

Note: All sales are reported on a CIF (carriage, insurance and freight) basis. FOB (Free-On-Board) prices are 10% less than CIF prices.

For YA2022, PQM is contemplating whether to claim reinvestment allowance or allowance for increased exports incentive.

Required:

- (a) **State four (4) qualifying conditions that must be met by a company to be eligible for the Allowance for Increased Exports (AIE) incentive.**
(5 marks)
- (b) **State two (2) circumstances under which a company is disallowed from enjoying AIE incentive even having fulfilled (a).**
(2 marks)
- (c) **Discuss the incentive and the tax treatment by which AIE incentive is given to manufactured products.**
(5 marks)
- (d) **Advise the directors of PQM on which tax incentive (AIE or RA) should opt for to optimize the tax benefits in YA2022.**

Your recommendation is required to be supported with detailed calculation.

(8 marks)

[Total: 20 marks]

Question 2

- (a) The Director General of Inland Revenue may be alerted on matters relating to tax evasion by several factors. And, once alerted, he has at his disposal several tests to determine and verify that a particular case is one that is appropriate for commencing a tax investigation.

Required:

Discuss any TWO (2) tests that could be employed by the Director General of Inland Revenue to determine and verify that a particular case warrants a tax investigation.

(6 marks)

- (b) Following a letter from an informer, an income tax team headed by a senior officer of the Inland Revenue Board's office in Kuantan raided the trading premises of Mr C.K. Chong (Chong) a well-known merchant carrying on the business of dealing in animal feed. Following the raid, the senior officer reviewed the books of accounts and other documents of the business, and pieced together the following information in respect of the years ended 31 December 2020 and 2021:

Statement of financial position for 2020 and 2021				
	YE 31/12/2020		YE 31/12/2021	
	RM	RM	RM	RM
Capital		280,000		550,000
Balance of PL ac b/f	216,590		314,460	
Profit for the year	<u>177,870</u>		<u>217,800</u>	
	394,460		532,260	
Less: Drawings	<u>80,000</u>	<u>314,460</u>	<u>120,000</u>	<u>412,260</u>
Proprietor's funds		<u>594,460</u>		<u>962,260</u>
Represented by:				
Non-current assets		455,310		784,390
Current assets	336,380		384,780	
Less: Current liabilities	<u>197,230</u>	<u>139,150</u>	<u>206,910</u>	<u>177,870</u>
Total net assets		<u>594,460</u>		<u>962,260</u>

The senior officer also had several interviews with Chong and obtained the following information and particulars:

1. Chong supplies the local farmers, mainly engaged in livestock breeding with commercially prepared feeds that includes corn, soybean, oats and barley. Some of these are imported and compounded locally and sold directly or through agents to the farmers.
2. He had bought a new motorcar for cash in 2020 for his private use, costing RM224,000.
3. In 2017 he had bought shares costing RM42,350 in a public listed company that deals with animal feed. However, three years after its purchase the share price kept sliding downward owing to a financial scandal. He decided to cut loss and sold off the shares in late 2021, incurring a loss of RM12,350.
4. In 2021, he bought a two-storey factory that was under construction for RM544,000 on the outskirts of the town. He made a down-payment of RM55,000 and the balance was financed by a bank loan. The loan repayment will only commence sometime in early 2023.
5. The house that Chong currently stays was bought for RM820,000 in 2005. He took a bank loan, but managed to settle the loan in 2017 using money from a lottery win.

6. After scrutinising the personal bank accounts and other written records, it was mutually agreed that his 'personal and private expenses' amounted to RM216,630. The expenditure included amounts spent on the household, medical, entertainment, and travelling.
7. Chong had made a donation of RM5,000 in 2021 to an animal care home. The home is an approved charitable body for income tax purposes. He has the official receipt for the donation made.

The senior officer had now passed the case to you to work out the omitted income.

Required:

With reference to the Income Tax Act 1967 and the information provided above in respect of Mr C.K. Chong, prepare a capital statement to determine the omitted income of the business using the 'capital accretion' method.

Note: Marks will be awarded for proper presentation.

(14 marks)

[Total: 20 marks]

Question 3

- (a) What is the definition of taxable and exempted goods for the purposes of sales tax? (2 marks)
- (b) When is sales tax charged or levied? (4 marks)
- (c) What are the rates of sales tax? (3 marks)
- (d) What is the value on which sales tax will be charged, for taxable goods that are imported? (3 marks)
- (e) ABC Sdn Bhd imported Widgets that are taxable under the Sales Tax Act 2018 for resale to consumers in Malaysia. Widgets are listed in First Schedule, Sales Tax (Rates of Tax) Order 2018 and subject to import duties at the rate of 20%.

The value of Widgets imported by ABC Sdn Bhd in the year 2018 is as follows:

2018	RM
January	30,000
February	35,000
March	33,000
April	48,000
May	29,000
June	32,000
July	42,000
August	38,000
September	33,000
October	36,000
November	36,000
December	30,000

Required:

- (i) How will sales tax be imposed on ABC Sdn Bhd's importation of Widgets for the year 2018?
- (ii) Compute the total sales tax payable by ABC Sdn Bhd for the year 2018. (6 marks)

XYZ Sdn Bhd is a registered manufacturer and it is also an importer of Widgets. However, XYZ Sdn Bhd uses Widgets as components in its manufacture of Fidgets and Gidgets, which are exempted goods and taxable goods respectively, for sales tax purposes.

Required:

- (iii) Describe the facilities available to XYZ Sdn Bhd for the exemption of sales tax on its importation of Widgets. (2 marks)

[Total: 20 marks]

Question 4

ABC Sdn Bhd owns 80% of A Sdn Bhd. A Sdn Bhd is in discussion with Target Sdn Bhd to acquire a piece of land from Target Sdn Bhd. Target Sdn Bhd is a real estate investment company, wholly owned 100% by Mr XYZ.

A Sdn Bhd and Mr XYZ would like to engage you to provide them with tax advice in relation to the proposed transaction to highlight the potential tax costs and risks.

All the above companies have 31 December year ends.

Required:

- (a) Mr XYZ is aware that disposing of the land by Target Sdn Bhd will result in Target Sdn Bhd being subject to Real Property Gain Tax (RPGT). As an alternative to disposing the land, he is considering disposing his 100% equity stake in Target Sdn Bhd. Please comment on whether you agree with Mr XYZ that his suggestion is better for him, and explain what he needs to consider in relation to RPGT for disposal of land and disposal of equity shares.

Explain the RPGT considerations between disposing the land vs disposing the shares in Target Sdn Bhd. Clarify what additional information you would require to confirm your opinion.

(5 marks)

- (b) Based on your comments for (i) above, what should A Sdn Bhd consider from an RPGT perspective in considering Mr XYZ's suggestion.

Provide your answer from A Sdn Bhd's perspective on the RPGT risks associated with buying the land directly and buying the shares in Target Sdn Bhd.

(3 marks)

- (c) RPGT is a cost to the seller, but you also need to consider potential tax costs for the buyer. What is the potential stamp duty applicable to A Sdn Bhd?

Advise A Sdn Bhd on the applicable rate of stamp duty on the acquisition if it acquires the land directly or the shares of Target Sdn Bhd. You do not need to calculate the applicable duty, but your answer should explain the method of determining the applicable duty. You are also required to advise when the stamp duty is payable, and which Item under Schedule 1 of the Stamp Act is the duty applicable.

(8 marks)

- (d) **Advise A Sdn Bhd on the what are the criteria for stamp duty relief under Section 15A of the Stamp Act, 1949. Give your view as to whether or not A Sdn Bhd will qualify for Section 15A relief if A Sdn Bhd acquires the land or shares of Target Sdn Bhd.**

(4 marks)

[Total: 20 marks]

Question 5

Yuna Konishi an IT 3-D engineer specialist working for Nakamichi Design, Japan was seconded to Malaysia to assist in the setting up a 3-D laboratory for its Malaysian subsidiary company from 1 April 2019 to 15 May 2019 (45 days). Yuna who has never been to Malaysia, immediately went for a 2-week holiday (14 days) in Penang after setting up the laboratory before returning to Japan.

Yuna returned to Malaysia on 1 August 2019 and stayed on until 10 December 2019 (132 days) to oversee the running of the laboratory and provide trainings to the local engineers. Yuna's remuneration was paid and borne by Nakamichi Design, Japan during her secondment to Malaysia.

Required:

Japan/Malaysia Double Tax Agreement on Article 15 on "Dependent Personal Services" lays down various principles underlying the taxation of remuneration in an employer-employee relationship.

- (a) **Explain the application of Article 15 and interpret each condition when a resident individual exercising employment in the other Contracting State ("Source State") is subject to taxation in that Source State.** (8 marks)
- (b) **Advise whether Yuna has derived an employment income in Malaysia and how Article 15 – Dependent Personal Services would apply in her situation and compute her tax liability where necessary.** (12 marks)

[Total: 20 marks]

Extract of Japan And Malaysia Double Tax Agreement

ARTICLE 15 - DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
 - (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - (c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

Question 6

- (a) How do you determine the source of employment in Malaysia? (3 marks)
- (b) Resident and non-resident are subject to income tax in Malaysia on their Malaysian employment income. Please state the conditions to qualify as a resident and whether there are conditions that a non-resident can enjoy tax exemption on employment income in Malaysia. (5 marks)
- (c) The impact of Covid-19 pandemic has affected the tax principles governing tax treaties. Unprecedented measures imposed or recommended by governments in most jurisdictions including travel restrictions and curtailment of business operations.

The Inland Revenue Board of Malaysia (IRBM) has issued FAQ on international tax issues due to Covid-19 travel restrictions imposed during Movement Control Order (MCO) period. Generally, the normal tax rules based on the Income Tax Act, 1967 (Act) regarding residence and permanent establishment are disregarded during the Covid-19 pandemic.

Joel a Malaysian is working as a designer for an automotive company in Germany for the past three (3) years. Joel was in Malaysia for a 3-week vacation beginning 1 May 2021 to be with his family. Due to the Covid-19 pandemic he could not leave Malaysia as the borders were closed. Joel continued to work from his home and his remuneration paid by the employer into his accounts in Germany.

Malaysia subsequently reopened its border on 15 October 2021 allowing individuals having full vaccination status to leave the country while remaining closed to visitors from entering into Malaysia. Joel applied for the post of designer with a Japanese automotive company in Malaysia and was offered employment to work in Malaysia effective 1 December 2021.

- (i) Advise whether Joel's employment income in Germany is subject to income tax in Malaysia during the MCO period and when he subsequently left Malaysia once Malaysia reopened its border on 15 October 2021. (7 marks)
- (ii) Advise what is Joel's tax position since he has accepted employment with a Japanese automotive company in Malaysia and had not ceased employment with his German employer. (5 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)