



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

ADVANCED TAXATION 2

DECEMBER 2022

Student
Registration No.

Date

Desk No.

Examination Centre

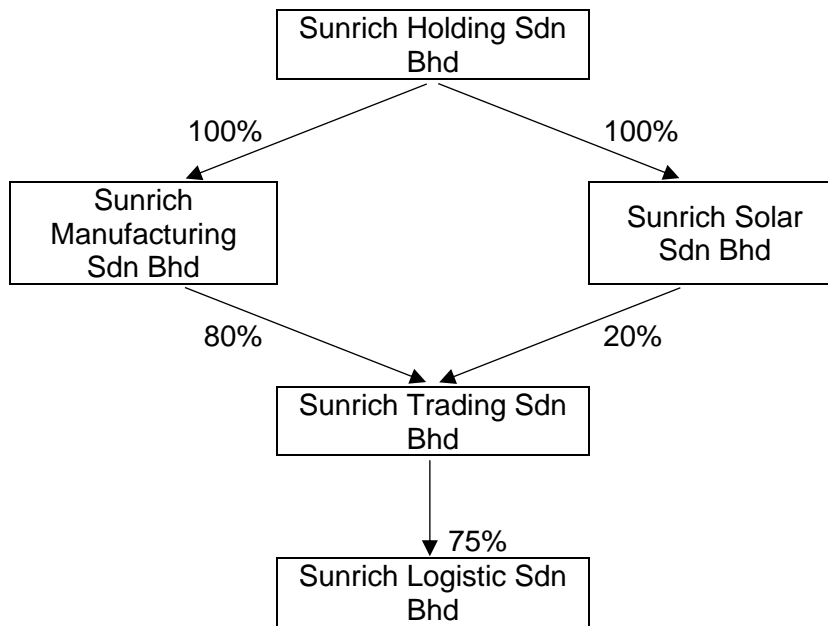
Time allowed: 3 hours

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



The entire Sunrich group of companies was incorporated in Malaysia on 1 October 2020 with 30 September as the financial year end. The paid-up share capital for each company is RM3 million except for Sunrich Holdings Sdn Bhd which has a paid-up share capital of RM5 million. They are all tax resident in Malaysia with the above holding structure since incorporation.

Details and other relevant information of the above companies for the year ended 30 September 2022 are as follows:

Sunrich Holding Sdn Bhd ("SHSB")

This is an investment holding company. Its only source of income was dividend. The company received a single tier dividend of RM1,000,000 from STSB and an exempt dividend of RM2,000,000 from SSSB.

Sunrich Manufacturing Sdn Bhd ("SMSB")

The company manufactures solar panels. It suffered an adjusted loss of RM2,000,000, with industrial building allowance and capital allowance totaling RM900,000. The company received an annual rental income (net of allowable expenses) of RM400,000 and made a cash donation of RM100,000 to the Ministry of Health's Covid-19 Fund.

Sunrich Solar Sdn Bhd ("SSSB")

The company operates as an independent power producer for rooftop solar projects. Its adjusted income was RM4,000,000 and the capital allowance was RM2,400,000. It was granted investment tax allowance by the Malaysian Investment Development Authority on 1 January 2021. The incentive is given by way of allowance based on 100% of qualifying capital expenditure incurred over a period of 10 years deducted against the 100% of statutory income from the business. The company has an unabsorbed investment tax allowance brought forward of RM8,000,000 from previous year of assessment.

Sunrich Trading Sdn Bhd ("STSB")

The company trades solar-related products. Its adjusted income (after allowable expenses) was RM3,000,000 and the capital allowance was RM1,450,000. The company received a fixed deposit interest of RM100,000 from a local bank.

Sunrich Logistic Sdn Bhd (“SLSB”)

The company offers transportation services to clients. It turned profitable this year with an adjusted income (after allowable expenses) of RM350,000 and the capital allowance was RM200,000. The company has an unabsorbed business loss brought forward of RM30,000 from previous year of assessment.

Required:

- (a) **Explain the conditions to be fulfilled by companies that wish to qualify themselves for group relief.**
(5 marks)
- (b) **Discuss the possibility of SMSB surrendering its current year business loss to each of the other companies in the group as follows:**
- (i) SHSB
 - (ii) SSSB
 - (iii) STSB
 - (iv) SLSB
- (6 marks)
- (c) **Compute the amount of current year business loss that can be surrendered by SMSB for the year of assessment 2022 and the unabsorbed business loss that can be carried forward by SMSB.**
(2 marks)
- (d) **Compute the chargeable income for the year of assessment 2022 for each of the companies in the group taking into account the group relief.**
(7 marks)

[Total: 20 marks]

Question 2

Niels Fredericia Shipping A/S (“NFS”) is a Danish shipping company operating from the port of Fredericia in Denmark for many years. Its main business includes bulk shipping, containers and shipping logistics. It is well known globally for its super-efficient logistics and terminal operations having developed its own proprietary data processing software (“DPS”) for the purpose.

Keluarga Malaysia Shipping & Logistics Sdn Bhd (“KMSL”) is a Malaysian company carrying on the business of providing shipping and logistics services for goods imported into Malaysia from around the world. About three years ago, through the acquisition of shares by NFS, KMSL became a related company of NFS. Subsequently, as part of a business operations restructuring, the business of KMSL was expanded to cover shipping logistics in the South China Sea region, taking over function previously done by NFS.

KMSL was assisted in this expanded operation by the use of the DPS from NFS. This system was to be used for the shipping business operations of KMSL only, and is not permitted to exploit any of the intellectual property, rights or the technical know-how embedded in the system in any way.

NFS charges related and third parties for the use of this DPS and accordingly, KMSL is required to make quarterly payments for using the software. An agreement to this effect was signed on 1 October 2022 and will be effective for five years. Any improvement to, and upgrades of the DPS within this agreement period will be shared at no extra cost. Payments under this agreement should be made

within the first ten days after the end of the relevant quarter. NFS treats these receipts as part of its business income when filing its tax returns in Denmark.

The new accountant who joined KMSL only in November 2022 is a fresh graduate and is not very sure of the tax treatment for this payment. He has made an appointment to see you to discuss on the matter.

Required:

- (a) **Advise the accountant of Keluarga Malaysia Shipping & Logistics Sdn Bhd on whether withholding tax should be deducted from the payment to Niels Fredericia Shipping A/S for use of the proprietary data processing software, and the consequence for non-compliance.**

Note:

You should make reference to the ITA 1967 (as amended), Extract of the Double Taxation Agreement with Denmark provided in the Appendix, and the relevant case law authorities in framing up your advice. In this regard, also highlight briefly to the accountant the interpretive approaches to tax legislations specifically those relating to 'royalty'.

(14 marks)

- (b) **With reference to the ITA, discuss briefly the meaning of 'crediting' in the context of a transaction by a resident of Malaysia with a non-resident, and its legal impact for the application of withholding tax provisions, citing a relevant case law in support of your discussion.**

(6 marks)

Extract of Article XII of the Malaysia - Denmark DTA

DOUBLE TAXATION AGREEMENT (MALAYSIA – DENMARK)

Article XII

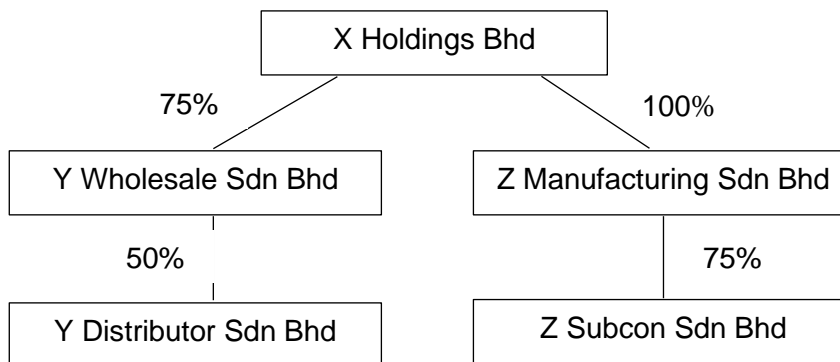
1. Royalties derived from one of the Contracting States by a resident of the other Contracting State who is subject to tax in that other Contracting State in respect thereof shall be exempt from tax in the first-mentioned Contracting State provided that such royalties are approved after the signature of this Agreement by the Government of the Contracting State from which they are derived.
2. The term "royalties" as used in this article means a payment of any kind received as consideration for the use of, or the right to use, any copyright, any patent, trade mark, 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 but does not include any royalty or other amount paid in respect of literary or artistic copyrights or of motion picture films or of tapes for television or broadcasting or of the operations of a mine, oil well, quarry or other places of extraction of natural resources or of timber or forest produce.
3. Sums derived by a resident of one of the Contracting States from the other Contracting State the payment of which is approved after the signature of this Agreement by the Government of that other Contracting State, from the alienation of any right or property from which royalties (as defined in paragraph 2 of this article) are or may be derived, shall be exempt from tax in that other Contracting State.

4. The provisions of paragraphs 1 and 3 of this article shall not apply if the recipient of the royalties, or sums, being a resident of one of the Contracting States, has in the other Contracting State from which the royalties or sums are derived a permanent establishment with which the rights or property giving rise to the royalties is effectively connected. In such a case, the provisions of article VII shall apply.

[Total: 20 marks]

Question 3

- (a) What is the legislation that lists the taxable services for the purposes for services tax? (1 mark)
- (b) List down the nine groups of taxable services. (3 marks)
- (c) What are the criteria for two companies to be treated as companies within a group of companies? State the legislation governing this. (2 marks)
- (d) What are the services that may be treated as not a taxable service if they are provided by a company in a group to companies to another company in the group? (3 marks)
- (e) The group structure of X Holdings Bhd and its respective shareholdings of the issued share capital of the companies are as follows:



X Holdings Bhd does not have the authority to appoint or remove any of the directors of the board of directors of the subsidiaries.

X Holdings Bhd charges rental, management fees, advertisement charges and information technology ("IT") services to each of the four subsidiaries. X Holdings Bhd invoices these four services separately on a monthly basis and X Holdings Bhd does not provide any of these services to parties outside the group.

Required:

- (i) Which of X Holdings Bhd's services are taxable services and subject to service tax? (3 marks)

(ii) Analyse the group structure of X Holdings Bhd to determine

a. which companies qualify as a company within a group of companies with X Holdings Bhd; and

(5 marks)

b. which services are eligible to be treated as not a taxable service.

(3 marks)

State the reasons and the relevant legislation.

[Total: 20 marks]

Question 4

WaterCress Sdn Bhd ("WaterCress") was incorporated on 12 January 2018 with an initial issued share capital of RM1 million in shares of RM1 each held by husband and wife, Meng (20%) and Sally (80%) respectively. WaterCress immediately commenced business operation from date of incorporation in trading building materials in Cameron Highland. As of 31 December 2019, the total tangible assets of the company were RM1.1 million made up of a Lorry, some equipment, stocks, trade receivables and other debtors and cash of RM300,000.

On 1 January 2020, Meng transferred a piece of land to WaterCress for a consideration of 800,000 WaterCress shares at RM1 each plus RM200,000 in cash. WaterCress recorded the land under property Plant and Equipment ("PPE"). Meng bought the piece of land for RM800,000 with incidental costs of RM80,000 in November 2017.

On 31 December 2020, WaterCress decided to go into property development and transferred the land from property plant and equipment ("PPE") to stock in trade. The market value of the piece of land has remained at RM1 million. On the same date, WaterCress bought over another piece of land for RM2 million financed with a bank loan of RM1.8 million. As of 31 December 2020, the total tangible assets of the company were RM3.9 million (inclusive of the 2nd piece of land).

On 31 December 2021, WaterCress made a rights issue of shares on a one-for-four basis at a price of RM1 per share in cash. Meng took 250,000 shares and Sally 200,000.

Meng and Sally sold all their shares in WaterCress to BIG Bhd, a third-party property developer company, for RM3 per share on 1 September 2022.

Required:

(a) (i) Pursuant to para 34A, Second Schedule of the RPGT Act 1976, any sale of shares in a real property company ("RPC") would be subject to real property gain tax ("RPGT") with effective 21 October 1988. Determine when will a company be classified as an RPC.

(3 marks)

(ii) Determine, with supportive computation and explanation, if WaterCress is a real property company ("RPC") at the following dates:

a. 1 January 2020.

b. 31 December 2020.

(2 marks)

- (b) State the real property gains tax consequences for each of the following transactions (disposal or deemed disposal) with supportive computation and explanation.
- (i) Meng transferred the piece of land to WaterCress for a consideration of 800,000 WaterCress shares at RM1 each plus RM200,000 in cash. (2 marks)
- (ii) The transfer of land to stock from property plant and equipment (PPE) to stock in trade on 31 December 2020. (3 marks)
- (c) State the real property gains tax consequences for the disposal of all of Meng's and Sally's shares on 1 September 2022 to Big Bhd with supportive computation and explanation. (10 marks)

[Total: 20 marks]

Question 5

To expand its manufacturing business, BTS Sdn Bhd is considering to acquire either the business of LP Sdn Bhd ("asset deal") or 100% of the shares in LP Sdn Bhd itself ("share deal"). The consideration for the acquisition (in either case) would be RM40 million cash. BTS and LP are not related companies.

The CEO of BTS Sdn Bhd understands one key transaction tax that it needs to consider would be stamp duty, and requests for assistance on this matter.

Latest available audited balance sheet of LP Sdn Bhd (as at 31 December 2021) is set out in the next page.

Required:

- (a) BTS Sdn Bhd was advised by its lawyers that for the asset deal option, BTS Sdn Bhd would need to enter into a sale and purchase agreement with LP Sdn Bhd and also execute a Memorandum of Transfer ("MoT") for the transfer of title to the property. BTS Sdn Bhd will also take a bank loan of RM35 million for the acquisition.

What would be the instruments subject to stamp duty in this case, and at what rates? (3 marks)

- (b) Calculate the potential stamp duty on the acquisition of shares and the acquisition of the business
- (i) Acquisition of shares. (2 marks)
- (ii) Acquisition of business (all assets and liabilities) – assume that the market value of the land and building is RM35 million. (6 marks)

- (c) The CEO/sole shareholder of LP Sdn Bhd is interested in staying on in the business, and offered to sell shares or the business of LP in exchange for (i) cash of RM 10 million and (ii) balance of RM30 million to be satisfied by issuance of shares in BTS.
- (i) Would it be relevant to consider the possibility of stamp duty relief under sections 15 and 15A under the Stamp Act? (1 mark)
- (ii) What are the conditions to such relief? (4 marks)
- (d) Apart from stamp duty (and income tax implications), what other potential tax or taxes that BTS Sdn Bhd would need to consider, including from the perspective of the seller? (2 marks)
- (e) Would the stamp duty costs be deductible for income tax purposes? What would be the basis under the ITA? (2 marks)

LP Sdn Bhd
(incorporated in Malaysia)

Statement of Financial Position for the Financial Year ended 31 December 2021

	Note	RM
Non-Current Assets		
Property, plant and equipment	1	42,500,000
Total Non-current Assets		42,500,000
Current Assets		
Inventories		700,000
Trade Receivables		3,500,000
Amount owing from related party		3,500,000
Cash and bank balances		5,400,000
Total Current Assets		13,100,000
Total Assets		55,600,000
Capital and equity		
Issued capital		30,000,000
Accumulated losses		-5,400,000
Total Equity		24,600,000
Non-Current Liabilities		
Term loan		31,000,000
Total Non-Current Liabilities		31,000,000
		55,600,000

Note 1: The property, plant and equipment includes book value of land and building of RM30 million. The rest of the PPE consists of plant and equipment.

[Total: 20 marks]

Question 6

Article 4 of the UN Model Convention provides a definition of Resident.

(a) **What are the functions of the concept of residence in double tax agreement (“DTA”)?**
(6 marks)

(b) The DTA provides tiebreaker rule to resolve the incidence of dual residence for individuals.

Required:

What do you understand are the reasons behind the tiebreaker rule and how it is decided in the DTA?

(8 marks)

(c) Justin lives with his wife and son in Country A. He is a director and shareholder of a company in Country A. He sold his house to his son but continues to occupy the house and also paid for the maintenance and utility bills for the house. The telephone account is in the name of the company of which he is a director and shareholder.

Justin has bank accounts and health insurance in Country A. Justin applied for residency in Country B, where he owned jointly with his wife a holiday home. He is issued an identity card by the government of Country B, where he also had a bank account. The holiday home has limited power supply and the telephone is rarely used.

Required:

Based on the above, where do you think Justin’s centre of vital interests lie?

Note:

Country A and Country B follow the UN Model on Article 4.

(6 marks)

Extract of the UN Model Convention

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.

[Total: 20 marks]

(END OF QUESTION PAPER)