



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

REVENUE LAW

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

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

Question 1

(a) Section 3 of the ITA provides as follows:

3. *Subject to and in accordance with this Act, a tax to be known as income tax shall be charged for each year of assessment upon the income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia.*

Required:

With reference to the facts and decision in the case of *OA Pte Ltd v KPHDN* [(1996) MSTC 2,752], briefly discuss the provisions of the ITA, specifically sections 3, 4, 12 and section 15, in relation to the concept of 'business income' and 'royalty' and its liability to income tax in Malaysia.

Note:

Reference should also be made to the provisions of the Double Taxation Agreements generally and its effect on the taxation of business income and royalty.

(10 marks)

(b)

'If the words in the various paragraphs of section 4 of the Malaysian Act are given their ordinary meaning – and their Lordships see no reason why they should not be – there is plainly room for overlapping between one paragraph and another ...'

Lord Diplock

American Leaf Blending Co. Sdn Bhd v Director General of Inland Revenue [(1979) 1 MLJ 1]

Required:

Discuss the concept of 'ordinary meaning' in relation to the interpretation of statutory words, with reference to section 4 of the ITA and its effect on the treatment of income derived from a source consisting of a business, rent or interest.

Note:

You are required to briefly state the facts and decision in the case of *American Leaf Blending Co. Sdn Bhd v Director General of Inland Revenue*.

(10 marks)

[Total: 20 marks]

Question 2

Glorious Venture Sdn Bhd ('the company') was incorporated in 2012 by three individuals who each took up equal shares in the equity of the company. The company's memorandum and articles of association provided wide powers, and the company could essentially venture into any activities, including the acquisition and development of land for sale and investment in land and real properties.

Sometime in late 2015, the company was offered a large piece of land in Selangor. The price offered was very attractive – however, the downside was that the land was situated in a remote mountainous, forested location and requires more than two hours of travel on a long dirt road to reach it. It was a former timber logging area, now completely denuded of trees and prone to severe erosion and mudslides. However, owing to the low price, the company was very much tempted and accepted the offer.

A contractor was engaged to carry out remedial earthworks to contain the erosion and the mudslides, but the price he quoted was considered too expensive, and subsequently, the arrangement was cancelled after some preliminary works on the land were done. A small compensation was paid to the contractor for the cancellation.

As there were sufficient funds available, an application was filed to develop the property, but the plans were rejected twice by the local municipal authorities. The land thus remained idle for several years. Meanwhile, the three directors had serious differences of opinion on what to do with the land. One director, who had a misunderstanding with the other two directors on the direction the company should take, left the company. A new director joined the company after buying over his shares.

Still, at this point in time, no workable agreements or consensus were reached. The new director, however, suggested that a new development plan be submitted in 2020 since a new State Government has come to power and prospects are looking good. Their proposals were again rejected and were officially notified in late 2021. The directors were very much disappointed, and sometime in early 2022, it was decided to sell the land as holding it serves no purpose and is beginning to be a liability. The land was finally sold in the middle of 2022, and the company made a small profit on the deal.

In November 2022, the Inland Revenue Board office sent a letter to the company asking one of the directors, Mr Hew, to attend an interview to discuss the company's tax affairs. Mr Hew, a retired accountant himself, is now concerned that the issue of the sale of the land might be brought up at the interview.

Before seeing the Revenue officer, Mr Hew has made an appointment with you to discuss generally the company's affairs, and more particularly, this matter of the recent sale of the land. He proposes to view the matter from all angles, i.e., (a) how would the Director General of Inland Revenue view the matter, and (b) the stand that the company should take given the court decision in the case of *KLE Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [(1995) 2 MSTC 2,245] and (c) the records that he may need to bring along to the interview.

Required:

With reference to the ITA and the decision in the case of *KLE Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [(1995) 2 MSTC 2,245], address Mr Hew's concerns with respect to the disposal of the land should this be raised at the interview.

Note:

You must briefly state the facts, arguments (for the Revenue and the Taxpayer) and discuss the decision in the case of *KLE Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [(1995) 2 MSTC 2,245] or other relevant cases in attempting this question.

[Total: 20 marks]

Question 3

- (a) EV Productions Sdn Bhd ('EVP') is a locally incorporated company engaged for several years in the fabrication of components and parts for electric vehicles, which are then wholly exported to China. These components and parts use chips with advanced technological features and are imported from The American Chip Corporation Inc., ('ACC'), based in the United States of America ('USA'), under very stringent terms and conditions that include the maintenance of secrecy of the embedded chip technology and periodical security clearance from the American defence and intelligence agencies.

At the time of the negotiations for the supply of the chips, ACC was financially strapped and required EVP to make payment in advance for the chips. EVP, in turn, inserted a condition requiring payment of interest on any late supply of chips. In order to secure an uninterrupted supply of chips, EVP agreed to these and several other conditions and signed a 5-year agreement with ACC, paying RM10 million upfront upon signing of the agreement in early 2020.

Sometime in early 2021, following trade and political disputes with China, USA imposed export sanctions which included any technological goods exported to that country directly or indirectly by American technology companies. Supply of chips to EVP was halted, and its business was badly affected when no chips were received for the 9 months ending in the financial year 31 December 2021. Furthermore, the prospect for the future supply looked very bleak indeed with the breakout of the Russian-Ukraine war as ACC's chips were diverted for the production of weapon supply to Ukraine.

The balance of the advance payments for the chips amounted to RM8 million (for which no chips were supplied yet). The company's claim for refund was rejected by ACC, citing the ban by the United States government on the export of chips as a *force majeure*, [i.e. an unforeseeable circumstance or event that prevents someone from fulfilling a contract] with no liability on its part.

EVP, after obtaining legal advice, filed a suit in New York for the recovery of the RM8 million. In closing the company's accounts, this amount of RM8 million was charged to the profit and loss account for the year ended 31 December 2021.

Required:

In the context of the deduction provisions of the ITA and relevant case law, discuss whether EV Productions Sdn Bhd can claim a deduction for the sum of RM8 million charged in the accounts in arriving at its adjusted income from the business for the year of assessment 2021.

Note:

Candidates are required to highlight the salient features of the case law quoted, and discuss it with relevance to the company's claim.

(10 marks)

- (b) The Malaysian Timber & Wood Industries Sdn Bhd (“the company”) was a Malaysian incorporated company engaged in the timber logging business for several years in the State of Kelantan. The company closes the accounts to 30 June each year. The company’s expenditure, among others, included payment of royalties to the State Government of Kelantan. Owing to some mismanagement, cash flow problems occurred in the early part of 2018. The payment of royalties fell into arrears, and the State Government issued its third warning notice to the effect that if the arrears are not paid up, the timber logging license may be cancelled. This would mean the cessation of the business of timber logging.

The company then obtained a loan of RM50 million in 2020 from Bank A to settle part of the timber royalty arrears. The interest for the loan was 12% per annum, and soon it became obvious the interest charges may not be manageable.

Meanwhile, the economy was showing signs of stagnation, and the Government declared that banks should endeavour to lend higher amounts to businesses at lower interest rates. Taking advantage of this government policy, the company applied and obtained a fresh loan of RM30 million from Bank C at an interest rate of 6%. Using this money, it settled part of the loan from Bank A in March 2022. The payment relieved the financial burden of the company significantly.

In filing its tax returns for the year of assessment 2022, the company had claimed a deduction for a sum of RM1.5 million being interest on the second loan paid to Bank C, in arriving at the adjusted income from its timber logging business. The Inland Revenue Board, however, disallowed the deduction of the interest claimed.

Required:

With reference to the provision of the ITA and the case of *RB Bhd v Ketua Pengarah HDN [(1995) 2 MSTC 2360]*, discuss whether the disallowance of the interest expenditure has any merits.

Note: You must state the facts and discuss the decision in the case of *RB Bhd v Ketua Pengarah HDN* in your answer at both the Special Commissioners and the High Court [reported as *Rakyat Berjaya Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [(1999) MSTC 3731]*

(10 marks)

[Total: 20 marks]

Question 4

James was a Malaysian citizen until June 2020 when he accepted Australian citizenship. On 1 January 2015, he had bought a terrace house in Johor Bahru. James also executed a trust deed dated 1 January 2015 where it was stated that he holds half of the terrace house as a trustee and in trust for his brother, Benjamin who is a Malaysian citizen. James disposed off the terrace house on 1 March 2022 and made a gain of RM500,000; and half of this gain i.e. RM250,000 was immediately paid to Benjamin. James had not filed any RPGT returns as he is of the view that there is no RPGT payable as the property was disposed off after 5 years from the date of acquisition.

Benjamin, on the other hand, owned a factory building located in Muar, Johor, which he purchased sometime in 2019 for RM1.5 million. In June 2022, Benjamin decided to sell this factory building to Tanjung Sdn Bhd ('TSB') and entered into a sale and purchase agreement dated 15 June 2022 ('SPA') with TSB at an agreed price of RM2 million. Thereafter, due to the Covid-19 pandemic, TSB fell into financial difficulties and was unable to pay the purchase price of the factory building to Benjamin. However, the sale and purchase of the factory was reflected in the TSB's audited accounts for financial year ended 30 June 2022.

Required:

Terrace House

- (a) With reference to the RPGT Act and the case of *Ang Lay Kim v Pengarah Lembaga Hasil Dalam Negeri* [(2009) MSTC 4,436], advise James whether there is RPGT payable, who is the chargeable person and whether he is obliged to pay only half of the real property gains tax.

(8 marks)

Factory

- (b) With reference to the RPGT Act, advise Benjamin on what is a chargeable gain and whether the factory is a chargeable asset.

(2 marks)

- (c) With reference to the RPGT Act, and the case of *Ketua Pengarah Hasil Dalam Negeri v The Pataling Rubber Estates Ltd* [(2011) MSTC 30-031], and *Mudek Sdn Bhd v Kerajaan Malaysia* [(2014) MSTC 30-071], discuss whether a disposal had taken place, and Benjamin's consequent liability to real property gains tax, if any.

(8 marks)

- (d) Notwithstanding the answer to (c) above, discuss whether the residence status of Benjamin will affect chargeability to real property gains tax on the factory based on the provisions of the RPGT Act.

(2 marks)

[Total: 20 marks]

Question 5

- (a) **With reference to the ITA, discuss briefly the meaning of 'plant' and the claim for capital allowance.**

Note:

You are NOT required to quote any case law for this part of the question.

(1 mark)

- (b) Ms Elizabeth is a professional tax consultant and licensed tax agent. In the year 2022, Ms Elizabeth incurred the expenditure in (i) to (iii) below.

Required:

Discuss whether the expenditure incurred by Ms Elizabeth below would be treated as qualifying expenditure on 'plant and machinery'.

- (i) **RM3,500 for the purchase of the latest copies of tax statutes and textbooks;**
(4 marks)

- (ii) **RM750 on magazines and other reading materials for the lounge in her office; and**
(1 mark)

- (iii) **RM15,000 on a new plaster ceiling, lighting fixtures and a water fountain for her office.**
(5 marks)

Note:

Candidates are required to support the answer with reference to the relevant provisions of the ITA and related case laws.

- (c) Golden Mangoes Sdn Bhd ('the Company') is in the business of growing, processing, and selling mangoes and their related products, including dried mangoes, mango juice, mango chips, and mango jam. In the year 2022, the Company incurred capital expenditure on the construction of a building complex and other construction expenditures as in (i) to (iii) below:

- (i) RM125,000 on Building A, which was to be used for the cleaning, servicing and repairing of the Company's machines which are used to process the harvested mangoes.

- (ii) RM325,000 on Building B, where the harvested mangoes are received, graded, sorted, washed, peeled, pitted, sliced, treated, dried, *etc.*, depending on the specific final product that is being produced.

- (iii) RM45,000 on an internal road system linking up the various buildings in the complex, including Building A and B.

Required:

Discuss briefly whether the expenditures in (i) - (iii) above incurred by Golden Mangoes Sdn Bhd would qualify for industrial building allowance under the ITA.

Note:

Support your answer with reference to the relevant provisions of the ITA and related case laws.
(9 marks)

[Total: 20 marks]

Question 6

- (a) Happy Kitchen Sdn Bhd ('Happy Kitchen') is in the catering business. Happy Kitchen had always filed its tax returns on time, sought advice from professional tax agents and made full and frank disclosure of its tax treatment in its tax returns.

In March 2021, the Inland Revenue Board ('IRB') carried out an audit on Happy Kitchen. One of the findings in the audit was that certain rebates claimed as expenses by Happy Kitchen were not deductible.

On 2.1.2022, Happy Kitchen received notices of additional assessment ('the assessments') for the years of assessment ('YAs') 2014 to 2016, all dated 30.12.2021. In raising the assessments, the IRB merely stated, in a covering letter, that Happy Kitchen had been negligent in claiming a deduction of certain rebates.

Happy Kitchen duly filed an appeal against the assessments to the Special Commissioners of Income Tax ('SCIT'). Happy Kitchen was of the view that there was no requirement to make payment of the additional taxes raised since the taxes were incorrectly assessed. Further, a formal appeal had been made against the assessments to the SCIT, and therefore, it should wait for the outcome of the appeal before deciding on the payment.

Required:

With reference to the ITA and relevant case laws, advise Happy Kitchen on the following matters:

- (i) **Whether the assessments raised are valid and the grounds for challenging the said assessments; and** (10 marks)
- (ii) **The consequences of not making payment of the additional taxes raised for YAs 2014 to 2016.** (6 marks)

- (b) QuikClean Sdn Bhd ('QuikClean') commenced business on 1.1.2017 and closes its financial accounts on 31 December each year. QuikClean submitted its ITRF for the YA 2017 on 31.7.2018. QuikClean did not report any chargeable income in its ITRF for the said year of assessment. On 15.1.2020, QuikClean was granted pioneer status for the period from 1.7.2017 until 30.6.2022. In January 2022, QuikClean approached you for advice on claiming the pioneer status incentive for the YA 2017.

Required:

Advise QuikClean Sdn Bhd on whether it may claim the pioneer status incentive for YA 2017 and the procedure for doing so.

(4 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)