



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

ADVANCED TAXATION 2

JUNE 2023

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

AB Trading Sdn Bhd ("ABSB") is involved in trading of consumer goods. It commenced its business operation on 1 April 2019.

ABSB is 65% owned by AB Berhad and 35% owned by Spade Pte Ltd. ABSB transacts all trade through CIMB Bank Berhad and insures with local insurance companies.

ABSB prepares its annual Income Statement to 31 March and its financial details were as follows:

Year of Assessment ("YA")	2023	2022	2021	2020
	RM'000	RM'000	RM'000	RM'000
Domestic sales	1,000	3,000	1,000	1,500
Export sales				
- Export of locally manufactured goods	10,000	4,000	2,000	3,500
- Export of imported goods	11,000	5,500	3,000	8,000
Goods sold to Free Industrial Zones	3,500	3,000	2,500	1,500
Total sales (Note)	25,500	15,500	8,500	14,500

Note: All sales are stated at FOB (Free-On-Board) prices except for those imported goods which are reported on a CIF (carriage, insurance and freight) basis. FOB prices are 10% less than CIF prices.

Required:

- (a) State ALL the five (5) requisite conditions for ABSB to be qualified as an approved Malaysian International Trading Company ("MITC").
(5 marks)
- (b) Discuss the exemption and tax treatment for the export incentive to be enjoyed by an approved MITC.
(4 marks)
- (c) Assuming ABSB is an approved MITC. Determine for each of the year of assessment from 2020 to 2023 whether ABAB is entitled to claim the export incentive. Compute the exempt income of ABSB for the relevant year of assessment(s). Support your answer with explanation and detailed calculations.
(8 marks)
- (d) Another form export incentive is allowance for increased exports ("AIE") incentive. State ANY three (3) differences in AIE compared with MITC.
(3 marks)

[Total: 20 marks]

Question 2

- (a) The Inland Revenue Board of Malaysia (“IRB”) has issued updated Guidelines (“the Guidelines”) on Taxation of Electronic Commerce Transactions in 2019, replacing the earlier guidelines dated 1 January 2013. The Guidelines provide guidance on income tax treatment in respect of e-commerce transactions (“e-CT”).

Required:

With reference to the Guidelines, explain the scope of charge of income tax in relation to e-CT.

(4 marks)

- (b) WH Hotels Berhad (“WHHB”), a resident company in Malaysia, operates a hotel chain. To build resilience amid the Covid-19 pandemic, WHHB has decided to use a well-known online advertising company, TwitChat Ltd (“TCL”), a US-based company, to market its hotel rooms and ancillary products. The agreement arrangements were as follow:

1. A monthly subscription fee of USD1,000. This fee offers WHHB the rights to create its own advertising campaign using TCL’s platform.
2. A 3% commission per transaction. This commission will be charged for each successful booking/sales for customers who transacted via TCL’s platform.

Required:

With reference to the Guidelines,

- (i) **State, with reasons, whether the above payments are deemed to be derived from Malaysia.**

(2 marks)

- (ii) **Explain, with reasons, the withholding tax implications with regard to the above payments and where applicable, state the rate of withholding tax.**

(10 marks)

- (iii) **Discuss the likely differences in the tax treatments/implications if TLC were to have a branch in Malaysia to market its advertising platform.**

(4 marks)

Extract of the Guidelines on Taxation of Electronic Commerce Transactions

GUIDELINES ON TAXATION OF ELECTRONIC COMMERCE TRANSACTIONS

1.0 INTRODUCTION

1.1 Inland Revenue Board of Malaysia (IRBM) has introduced guidelines on taxation of e-commerce that was published on 1 January 2013. With the evolvement of the e-commerce transactions (e-CT) and the emerging of new business models, there is a need to replace the existing guidelines.

1.2 Therefore this new guideline seeks to provide some guidance on income tax treatment in respect of e-CT. Currently there is no specific provisions under the ITA 1967 governing e-CT, as such the current tax law and interpretations are applicable to determine taxability in this context.

1.3 IRBM adopts the principle of neutrality where both e-CT and conventional transactions are subject to the same tax treatment. As such, taxpayers in similar situations and carrying out similar transactions should be subjected to the same tax treatment.

6.0 SCOPE OF TAX LIABILITY FOR SPECIAL CLASSES OF INCOME

6.1 Under Section 4A of ITA 1967 special classes of income received by a non-resident person is subject to tax in Malaysia via withholding tax under section 109B ITA 1967.

6.2 Any amount paid in consideration of any advice given, or assistance or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme in relation to e-CT can be classified as special classes of income.

6.3 The derivation of Special Classes of Income shall be deemed to be derived from Malaysia if:

- a. the responsibility for the payment lies with the Government, a State Government or a local authority;
- b. the responsibility for the payment lies with a person who is resident in Malaysia for that basis year; or
- c. the payment is charged as an outgoing or expense in the accounts of a business carried on in Malaysia.

7.0 SCOPE OF TAX LIABILITY FOR ROYALTY

7.1 Any royalty paid to a non-resident in relation to e-CT will be subjected to withholding tax under section 109 ITA 1967.

7.2 Effective from YA 2017 the definition of "Royalty" has been amended where the word "software" has been added to the definition of "Royalty" where as mentioned in the ITA 1967, to include the use or the right to use of software, any transmission through satellite, payment in respect of total or partial forbearance, the use of, or the right to use of know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill and use or the right to use licences with regards to some or all of the part of the radiofrequency spectrum.

[Total: 20 marks]

Question 3

With reference to the *Rangka Kerja Audit Cukai* (Tax Audit Framework) issued by the Inland Revenue Board and which came into effect on 1 May 2022, discuss briefly ANY FOUR (4) of the following matters:

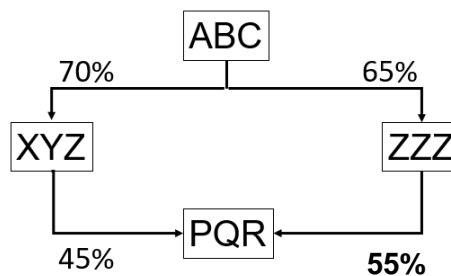
- (a) The objective of a tax audit from the perspective of the Inland Revenue Board.
- (b) The basis of selection of cases for a desk audit.
(Note: Candidates need to highlight only any FOUR (4) of the selection criteria.)
- (c) The duties and responsibilities of the taxpayer.
- (d) The expectation of the taxpayer and the right to complain and how it would be handled by the Inland Revenue Board.
- (e) Penalties that may be imposed if there is a discovery of any under declaration or non-disclosure of income and the discretion that may be exercised by the Director General of Inland Revenue.

(5 marks each for any FOUR questions answered)

[Total: 20 marks]

Question 4

ABC Sdn Bhd ("ABC") owns four (4) subsidiary companies holding 70% of the ordinary share capital in XYZ Sdn Bhd ("XYZ"); 65% of the ordinary share capital in ZZZ Sdn Bhd ("ZZZ"). In turn, XYZ holds 45% of the ordinary share capital in PQR and ZZZ holds 55% of the ordinary share capital in PQR. The group structure is depicted as follows:



All the above companies are Malaysian resident companies incorporated in Malaysia having the same 12-month basis period with the same year ending 31 December and have ordinary paid-up capital of more than RM5 million since 1 January 2020 and there have been no changes to the group structure since that date. All companies have been profitable since then except in year ended 31 December 2022 due to the Covid-19 pandemic.

Other financial information's of the above companies for the year ended 31 December 2022 are as follows:

	RM'000	RM'000	RM'000	RM'000
Companies	ABC	XYZ	ZZZ	PQR
Current year adjusted business income	5,350		1,000	
Capital allowances of the above business income	500		100	
Current year adjusted business (loss)	(1,000)	(5,000)		(4,000)
Capital allowances of the above business loss	100	300		150
Other non-business statutory income	200	300	500	
Approved donations	50		10	

In addition to holding shares in its subsidiaries, ABC operates two (2) businesses. Business I is in the business of delivery of goods and services and Business II was in trading in fertilizers. Due to the prolonged pandemic and war in Ukraine, Business II made a loss during the year ended 31 December 2022.

XYZ, PQR and ZZZ are also in the business of trading of various goods. XYZ and PQR both are badly affected by the Covid-19 pandemic and the Ukraine war. ZZZ was able to withstand the Covid-19 pandemic and Ukraine war and thus, was able to post some profits. ABC, XYZ and ZZZ have some non-business income from rental and interest. PQR does not have any non-business income and foresee that its trading business will continue to make business losses for the next five (5) years. The directors of XYZ is confident that the company shall be able to recover from the pandemic and be profitable from the year 2023 onward.

The directors of ABC are concerned that there may be errors in the computation of the losses made in the subsidiary companies. In addition, all the subsidiary companies have already filed in their tax returns as they feel that they do not need to pay tax and more likely to get a tax refund from their PCB tax instalments.

Required:

- (a) **Briefly explain the conditions required of a company to be eligible to participate in group relief.**
(5 marks)
- (b) **Applying the related companies' concept, based on the group structure above, identify and explain, with supportive computations, the companies which are eligible to participate the group relief.**
(3 marks)
- (c) **Compute the chargeable income for all the four companies applying group reliefs where applicable (including identifying claimant company(s) and surrendering company(s) where applicable).**
(Marks will be awarded for any narrations of the computations.)
(8 marks)
- (d) **Advise the directors of ABC as to what happens when there is an error in the adjusted business loss of the surrendering company(s) where the surrendering company(s) have filed their tax return for the year of assessment 2022.**
(4 marks)

[Total: 20 marks]

Question 5

Malta Trading (Labuan) Ltd (“MT”) is trading in all sorts of antiques and woodworks, a Labuan trading activity. It was incorporated under the Labuan Companies Act 1990. It purchases antiques and woodworks from Vietnam, Thailand, Indonesia, and Philippines and sells them to customers in the European countries and United States of America. The company also holds shares in Malta Sdn Bhd (“MSB”), a resident company incorporated in Malaysia and hence receives yearly dividend from MSB. In the year 2022, MT disposed all its investments in another Malaysian resident company and made a gain of RM3 million. MT does not make any trade with MSB or any other Malaysian resident-incorporated companies in Malaysia. MT only charged MSB an annual royalty fee for using the “StarBeek” brand owned by MT. MSB has a chain of café all over Malaysia under the brand name “Starbeek” and has been profitable since its incorporation. Both the companies, MT and MSB, close their accounts on 31 December every year.

The audited profit and loss account for MT for the year ended 31 December 2022 is as follows:

	RM'000	RM'000
Revenue		5,000
Less Cost of Sales		(1,450)
Gross profit		3,550
Less:		
Provision of doubtful debts	200	
Depreciation	10	
Interest expense	20	
Other overhead expenses	400	(630)
Trading profit		2,920
Dividend from MSB		100
Gains on disposal of shares		3,000
Net profit		5,390
Less: Zakat to Labuan Islamic Religious Authority (with receipt)		(25)
Net profit after Zakat		5,365

Included in the Revenue is the annual royalty fee of RM3 million received from MSB during 2022.

Required:

- (a) (i) Briefly explained the basis period of a Labuan entity for a year of assessment (“YA”). (2 marks)
- (ii) Briefly describe the tax treatment for Labuan entities incorporated under the Labuan Companies Act 1990 for:
- Labuan entity carrying on Labuan trading activity. (2 marks)
 - Labuan entity carrying on Labuan non-trading activity. (2 marks)
 - Labuan entity carrying both trading and non-trading activities (1 mark)

(iii) For a Labuan entity to enjoy the preferential tax rate,

- a. what are substantial activity requirements of a Labuan entity. (2 marks)
- b. what are the conditions required if the Labuan entity that undertakes pure equity holding activities in relation to “control and management” in Labuan. (2 marks)

(b) Compute the tax payable by Malta Trading (Labuan) Ltd for the year of assessment 2023 based on the accounts and briefly explain the treatment of ZAKAT. (8 marks)

(c) What will be the tax consequences in the event that Malta Trading (Labuan) Ltd fails to comply with the requirements to enjoy the preferential tax rate. (1 mark)

[Total: 20 marks]

Question 6

Article 15 of the UN Model Convention on “Dependent Personal Services” governs the taxing rights to the contracting state in which the employment is exercised.

(a) Article 15(2)(a) states “The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned”;

Required:

Explain your understanding of “in any twelve-month period commencing or ending in the fiscal year concerned” under Article 15(2)(a).

(5 marks)

(b) Shaun Michael who is a resident in State Reddie and who is present in State Swedie for 185 days in year 1 to carry out employment activities there and who then returns to State Reddie. In year 2, Shaun Michael receives a performance bonus for the work he performed in State Swedie, which is taxable in State Swedie in year 2 under its domestic law. In both States, the calendar year is the fiscal year.

Required:

Based on the above, state which will be the fiscal year, (year 1 or year 2) under Article 15(2)(a) and your rationale for it.

Note: Both countries adopt Article 15 of the UN Model Convention.

(5 marks)

- (c) The wordings of Article 15(2)(a) on the 183 days threshold clause is used to exclude the taxing rights by the source state in respect of short-duration exercise of the employment on the territory of the source state.

Required:

- (i) **What is your understanding of 183 days presence under Article 15(2)(a).** (5 marks)
- (ii) **Please briefly explain in determining the 183 days count, are there any categories that exclude any days in aggregating to 183 days.** (5 marks)

Extract of the UN Model Convention

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 any twelve-month period commencing or ending in the fiscal 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.

[Total: 20 marks]

(END OF QUESTION PAPER)