



CHARTERED TAX INSTITUTE OF MALAYSIA)
(Institut Percukaian Malaysia)
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PROFESSIONAL EXAMINATION

FINAL LEVEL

REVENUE LAW

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 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) Oil Exploration Malaysia Sdn Bhd (“the Company”) is engaged in the oil and gas industry with a financial year end of 30 June. The Company was formed to acquire and let out on hire an oil drilling rig. In the year 2020, the company negotiated and obtained loans from three different banks and incurred interest and commitment fees in connection with the loan for the construction and deployment of the rig. The loan, totalled RM60 million, was charged to the capital account in the company’s books.

The Company incurred interest expenses of RM1.5 million, RM4.9 million and RM7.8 million for the years ended 30 June 2020, 2021 and 2022 respectively. The interest expenses are net of interest received as sums drawn down under the loan agreements, and which were not immediately applied for the payment towards the rig, were placed in fixed deposits that earned interest during the relevant period.

The oil rig was constructed and delivered to the Company on 1 July 2021. This date was agreed upon between the Revenue and the Company that this was the date of commencement of the Company’s business. After the delivery, the rig underwent sea trials between July and September 2021 and was actually let out on charter to an oil drilling company only in October 2021.

For the year ended 30 June 2022, the company charged, with respect to the interest cost of RM7.8 million, a sum of RM 5.5 million to the capital cost of the rig and a sum of RM2.3 million (representing the proportion of net interest payable between October 2021 and 30 June 2022) to the profit and loss account as financial expenses.

In the final account in respect of the cost of the rig, the Company had included RM1.2 million being commitment fees and capitalised interest of RM11.9 million into the total cost of the rig, which stood at RM200 million in the balance sheet for the year ended 30 June 2022.

For the year of assessment 2022, the Company claimed capital allowance on the sum of RM200 million as being qualifying capital expenditure on the provision of machinery or plant.

Required:

With reference to the provisions of the Income Tax Act 1967, specifically, schedule 3 and relevant case law, discuss the validity of the claim of capital allowance by Oil Exploration Malaysia Sdn Bhd on the cost of the oil rig that included commitment fees and interest costs.

Note:

You must briefly state the facts and discuss the decision in the relevant case law cited.

(10 marks)

- (b) Nanas Kooning Sdn Bhd (“the company”) is engaged in the business of growing, processing and canning pineapples. The company bought, cleared, and planted pineapple seedlings on three thousand acres of land in Johor, in late 2021.

In early 2022 it constructed a building at the edge of the plantation where the harvested pineapples will be received, washed, peeled, cut, sterilised and processed before it is canned, labelled and packed for the domestic and export market. While some machines are installed and used in the building, most of the canning activities are done by hand by a large force of local and foreign workers.

A second building was constructed a short distance away from the first building to be used for storing spare parts, fuel, lubricants, tools, jacks, hydraulic lifts and cranes for repairing and maintaining the machines used in the pineapple processing, as well as the harvesters, lorries, tractors and similar machines used in the plantation operation.

A short stretch of road, properly constructed and paved, runs from the first building to the second building.

The chief accountant of the company has called you to enquire whether the first and second building and the road connecting the two buildings would qualify for an industrial building allowance. He needed the information to estimate the provisional tax liability of the company for the year ended 31 December 2022.

Required:

Advise the chief accountant of Nanas Kooning Sdn Bhd whether the first building, the second building, and the road connecting the two buildings, would qualify for industrial building allowance. You should make reference to the provisions of the Income Tax Act 1967 and relevant case laws.

Note:

You must state the facts and the decision in the case cited for the purposes of the advice.

(10 marks)

[Total: 20 marks]

Question 2

Madani Land and Investments Sdn Bhd ("MLI") is a Malaysian company incorporated in 2017. The company's Memorandum and Articles of Association listed its principal activity as that of property investment besides several other objectives.

Soon after incorporation, MLI purchased a plot of land in Rawang, its first and only purchase of landed property. The land had great potential as per the advice given by the real property agent tasked with securing the land. The company secretary had recorded in MLI's Directors' Resolution and minutes of the Board of Director's meeting that this plot of land was specifically purchased as a long-term investment. Accordingly, the company accountant recorded the land as 'long term investment' in the company's balance sheet, and it was accepted by the external auditor that the landed property was correctly reflected in the accounts. The accounts are prepared for the year end 31 December each year.

MLI did not conduct any work of a substantial nature on the land except to put up a perimeter fence to prevent trespassing.

In 2019, a local developer i.e., Tanah Air Development Sdn Bhd ("TAD") enquired whether MLI was interested in developing a mixed-development project on the said plot of land. TAD owned a large piece of land next to MLI's land.

Negotiations were put in motion with TAD where MLI's lawyers and bankers took part, and shortly thereafter, MLI signed a joint development agreement with TAD. Under the agreement, MLI would allow the land to be developed by TAD exclusively, and TAD would carry out the development works entirely. To facilitate this operation, MLI executed a Power of Attorney ('PA') granting all rights to TAD so as to enable TAD to deal with all things necessary, particularly with government agencies, to develop the land. With the PA in hand, TAD applied for development orders from the Land Office

and various local authorities (“the authorities”). Pending official permissions, permits and approvals, TAD carried out earthworks on the land, including drainage and foundations for infrastructure.

However, several hiccups occurred when dealing with the land office and the local authorities resulting in numerous delays and cost escalations. Meanwhile, there was a management change in MLI and the new management was not in favour of proceeding with the joint development agreement with TAD on the old terms. A new round of negotiations to modify the joint venture arrangement agreed to by the earlier management too failed. With this failure to reach some amicable arrangement, and with delays and cost escalation, the parties called off the joint venture agreement.

As MLI was bleeding money, it agreed to dispose of the land when an attractive offer came from another developer, Star Properties Sdn Bhd. MLI’s land was disposed of under an agreement signed in November 2022. As the value of the landed property had appreciated significantly, MLI was able to cover its losses and make a net gain of RM15 million. The accountant reflected the sale in the books as a disposal of investment and the profit shown as a gain from the realisation of investment, and no tax liability was provided for. The auditors had not audited the accounts yet as at 31 December 2022.

The Inland Revenue Board, in the meanwhile, raised an assessment on the gains under the Income Tax Act 1967, and issued a notice of assessment to MLI.

The company’s accountant is a little baffled by the notice of assessment and has approached you for advice.

Required:

With reference to the Income Tax Act 1967 and the Real Property Gains Tax Act 1976 and relevant case laws, advise the accountant on the following:

- (a) How the Inland Revenue Board could have viewed the disposal of the land for it to be brought to charge;**
- (b) How Madani Land and Investments Sdn Bhd could argue that the disposal was a capital gain from an isolated transaction;**
- (c) Whether he should file an appeal against the notice of assessment and what would be the possible consequences.**

Note:

You are required to state *briefly* the facts, arguments and the decision of the relevant cases cited to support your consideration and advice.

[Total: 20 marks]

Question 3

- (a) Janet had furnished her personal income tax return form (“ITRF”) for the year of assessment (“YA”) 2020 on 30.4.2021. Sometime in early 2023, Janet realised that the chargeable income reported in her ITRF for the YA 2020 was incorrect as she forgot to claim a relief for the cost of the sports equipment which she incurred in 2020. On 15.3.2023, Janet had approached you for advice on claiming the relief for the purchase of sports equipment.

Required:

- (i) **Advise Janet on whether she may claim the relief for the purchase of sports equipment which she incurred in 2020.**

(4 marks)

- (ii) **If Janet had relied on a Public Ruling issued by the IRB in not claiming the relief for the purchase of sports equipment, would your answer to (i) be different?**

(2 marks)

- (b) Buildworks Sdn Bhd (“Buildworks”) is in the business of supplying construction equipment. Buildworks carries on its business activities in a factory at Shah Alam. Between 15.8.2019 to 18.8.2019, the Inland Revenue Board conducted a field audit at Buildworks’ factory.

On 15.7.2020, the Director General of Inland Revenue (“DGIR”) issued notices of additional assessment for the YAs 2013 and 2014 to Buildworks on the basis that Buildworks was not entitled to certain capital allowances it had claimed.

Buildworks duly filed an appeal to the Special Commissioners of Income Tax (“SCIT”) against the notice of additional assessment for the YA 2013 that it had received.

Buildworks did not make payment for the additional tax assessed for the YA 2013 on the basis that a formal appeal has been made to the SCIT. Further, Buildworks has always filed its tax returns on time, sought advice from professional tax agents and made full and frank disclosure of its tax treatment.

On 20.2.2021, a civil action was commenced by the DGIR against Buildworks to recover the amount of additional taxes payable for the YAs 2013 and 2014. In an application for summary judgment against Buildworks, the DGIR claimed that the notices of additional assessment for the YAs 2013 and 2014 had been posted to the last known address of Buildworks. The DGIR did not provide any evidence that the notice of additional assessment for the YA 2014 was actually posted.

Buildworks denied receiving the notice of additional assessment for the YA 2014.

Required:

With reference to the Income Tax Act 1967 (“ITA”) and relevant case laws, advise Buildworks on the following:

- (i) **Whether there is any basis for challenging the notice of additional assessment for the YA 2013;**

(5 marks)

- (ii) **Whether there is any basis for challenging the notice of additional assessment for the YA 2014; and**

(5 marks)

(iii) **Whether there is any basis for not making payment of the additional tax assessed for the YA 2013.**

(4 marks)

[Total: 20 marks]

Question 4

(a) Lee Sdn Bhd is a closely-held company owned by the Lee family. It has 12 members in total, with 80% of its shares held by the three (3) Lee brothers.

In 2017, it acquired a plot of land in Kuala Lumpur at the price of RM18,000,000. It acquired the land with the intention of developing it into a mixed development, consisting of residential properties, shop-offices and shoplots. The directors recorded this intention for the purpose of acquisition in a directors' resolution.

After the acquisition, Lee Sdn Bhd also obtained necessary permissions from the local council to develop the land, and further appointed several professionals to develop the land. As at 31.12.2017, Lee Sdn Bhd owns real property (i.e. the land) at a defined value of more than 98% of its total tangible asset.

In November 2018, Ang Sdn Bhd acquired 10% of Lee Sdn Bhd's shares at the purchase price of RM2,000,000. Ang Sdn Bhd later disposed their shares in Lee Sdn Bhd to PC Sdn Bhd at a gain of RM500,000.

Ang Sdn Bhd is seeking advice on the tax treatment for the gain of RM500,000. Ang Sdn Bhd is of the view that the shares are not shares in a real property company; Lee Sdn Bhd is not a vehicle that had been set up to avoid tax by acquiring and disposing of land. It is a legitimate property development company with genuine intention to develop land. On the other hand, Ang Sdn Bhd is concerned with the clear definition of Paragraph 34A of the Real Property Gains Tax 1976.

Required:

By citing relevant cases and provisions, discuss whether the gains received by Ang Sdn Bhd in disposing Lee Sdn Bhd's shares are subject to Paragraph 34A of RPGTA.

(10 marks)

(b) In 2019, A Sdn Bhd acquired 40% of B Sdn Bhd's shares at the acquisition price of RM18,000,000.

B Sdn Bhd is an investment holding company and has total tangible assets of RM20,000,000. It does not hold any real estate but owns shares in:

1. C Sdn Bhd at the value of RM14,000,000; and
2. D Berhad at the value of RM2,000,000.

C Sdn Bhd has total real property value of RM40,000,000 with total tangible assets valued at RM50,000,000.

D Berhad is a property development company with 28% of its shares listed on Bursa Malaysia. D Berhad has a total of six (6) directors all being executive and hold equal numbers of shares.

In 2023, A Sdn Bhd disposed of B Sdn Bhd's shares at a disposal price of RM25,000,000.

Required:

State with reasons if B Sdn Bhd is a real property company and determine whether A Sdn Bhd is liable to pay RPGT on the gain received from disposing shares in B Sdn Bhd.

(7 marks)

- (c) Jonathan has been married to Mimi for 50 years. He is a Singaporean citizen and purchased a holiday house in Johor Bahru in 2019 at an acquisition price of RM1,000,000.

In 2023, Jonathan transferred the house to Mimi. The house was valued at RM1,500,000 at the time of transferring the ownership of the house.

Required:

Discuss whether the transfer by Jonathan of the holiday house to Mimi would be subject to tax under the Real Property Gains Tax. Cite relevant provisions of the law in support of your discussion.

(3 marks)

[Total: 20 marks]

Question 5

- (a) Tony is a highly sought-after graphic designer. Tony has been running his own graphic design business as a sole proprietor for many years, under the name 'Tony Designs'. Tony regularly engages the services of freelance designers to help cope with the high demand for design services. Shirley, Jason and Krishna are three designers ("**the 3 Designers**") who regularly work with Tony on this basis.

In December 2018, Tony entered into a Partnership Agreement with the 3 Designers. Amongst others, the Partnership Agreement stipulated that:

1. The partners are to contribute equally to the rent of the studio office currently leased by Tony for use in the business.
2. The partners must be engaged full-time in the business of the partnership.
3. Each partner has the right to sign and endorse cheques on behalf of the partnership.
4. The accounts of the partnership should be made up annually and closed on the 31 December of each year.
5. The partners are entitled to the net profits of the partnership's business in equal shares.
6. The partners are jointly responsible for the net losses of the partnership's business in equal shares.

Tony persuaded the 3 Designers that this is done for marketing purposes only. Tony Designs will no longer be regarded as a one-man show but will henceforth be known as an established firm of 4 partners.

Tony assures the 3 Designers that notwithstanding the terms of the Partnership Agreement, their working relationship and financial arrangements will continue as before. Tony will continue to pay for rental alone, the 3 Designers can continue to take on freelance work with other businesses, and Tony will also bear all the profits and losses of the business alone. In return, Tony will pay the 3 Designers a fixed monthly sum regardless of whether the business is profitable or loss-making.

The signed Partnership Agreement was laminated and kept safely in the drawer of Tony's office desk. Thereafter, Tony filed his returns on the basis that Tony Designs was a partnership of 4 equal partners, recognising only 1/4 of the profits as his income. In January 2023, after an audit, the Director General of Inland Revenue ("DGIR") raised an assessment on Tony for the profits of the business for the years of assessment ("YAs") 2019, 2020 and 2021, contending that Tony Designs should be taxed as a sole proprietorship. Tony disagreed, arguing that assessments should be raised equally on all 4 partners in the partnership.

At the Special Commissioners of Income Tax ("SCIT"), the DGIR succeeded in establishing the following facts: that Tony continued to pay the rental for the studio office alone; the other partners had continued to take on freelance work with other businesses and Krishna had even started his own graphic design company; only Tony had been signing and issuing cheques for the business; the business did not keep proper accounts; based on available records and Tony's oral evidence, Tony had continued to bear all the profits and losses of the business alone throughout all YAs, whilst the other partners continued to receive a fixed monthly sum.

Required:

Based on the facts established by the DGIR, and by reference to case laws, discuss whether the SCIT should rule in favour of the DGIR (on the basis that the business is a sole proprietorship) or Tony (on the basis that the business is a partnership)? In giving their decision under paragraph 23 of schedule 5 of the Income Tax Act 1967, discuss what would be the decision, and the possible grounds for the Deciding Order of the Special Commissioners of Inland Revenue in this appeal.

Note:

Candidates are required to support the answer with reference to the provisions of the Income Tax Act and relevant case law or laws. You should also briefly state the facts and arguments in the case or cases you are citing in support of your answer.

(12 marks)

(b) Ravindran is a Saville Row trained tailor, who is more adept at making suits than selling them.

Rama, an experienced salesman and satisfied customer of Ravindran, suggested that he should sell and market the suits on Ravindran's behalf. Rama proposed to do so at his own costs and expenses, including the hiring of a videographer to capture the suit-making process, and the placement of advertisements on various social media platforms.

In return, Ravindran agrees to sell his suits exclusively through Rama only and will pay Rama half of all the profits from his business monthly.

Ravindran issued a letter to Rama stating as follows:

"Kindly provide written acknowledgement that the business arrangement between us for the marketing and sale of suits shall not be deemed to have created any partnership between us".

Rama issued a reply letter to Ravindran stating that:

"I hereby acknowledge unreservedly that the business arrangement between us for the marketing and sale of suits shall not constitute any partnership between us".

Notwithstanding the letters above, Ravindran and Rama proceeded to register a Certificate of Registration of Business which states both their names as joint and equal proprietors of the business.

Required:

- (i) **Advise Ravindran and Rama on whether and to what extent they would be able to rely on these letters to substantiate the position that they are not in a partnership.**
(4 marks)
- (ii) **To what extent can they defend the position that they are not in a partnership in light of the existence of the Certificate?**
(4 marks)

Note:

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

[Total: 20 marks]

Question 6

ABC Group is a multinational corporation incorporated in Singapore. In the year 2019, ABG Group expanded its poultry business operations into Malaysia by incorporating a Malaysian subsidiary company known as ABC Malaysia Sdn Bhd.

All business decisions for ABC Malaysia Sdn Bhd are made by ABC Group. However, in July 2021, the Singapore directors travelled to Malaysia and held a Board of Directors' meeting in Kuala Lumpur. The Director of the ABC Group, and the marketing executives personally flew in and joined the meeting to decide on the key business strategies, including the expansion plans for the Malaysian subsidiary. According to the plan, ABC Malaysia Sdn Bhd will focus on the expansion of production chains and the exportation of farm products to related companies in Thailand.

The CFO of ABC Malaysia Sdn Bhd has approached you for advice.

Required:

- (a) **In view of the given facts, advise ABC Malaysia Sdn Bhd on its residence status in Malaysia by referring to the legal criteria, tests and factors set out in the case laws.**
(7 marks)
- (b) **Discuss how income tax shall be charged for a year of assessment upon the chargeable income of ABC Malaysia Sdn Bhd in the context of the legal provisions contained in Schedule 1 of the Income Tax Act 1967?**
(3 marks)
- (c) **ABC Malaysia Sdn Bhd would also like to know whether the Income Tax Act 1967 has a general anti-avoidance provision. If yes, how does it operate? To assist their understanding, kindly discuss your answer with references to the Income Tax Act 1967 and case law examples.**
(10 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)