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

PROFESSIONAL EXAMINATION

FINAL LEVEL

ADVANCED TAXATION 1

DECEMBER 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.

5. For this examination question paper, you are to assume that the basis year ending 31 December 2023 has elapsed.

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Question 1

(a) **(i)** **Who is the chargeable person in a Trust?**

(2 marks)

(ii) **Under what circumstances is a Trust considered non-resident for tax purposes?**

(2 marks)

(iii) **State the differences in taxation between a Trust and its Beneficiaries.**

(2 marks)

(iv) **Clarify the tax treatment of a Trust with regard to the deductibility of expenses incurred by the Trust and remuneration paid to a Trustee.**

(3 marks)

(v) **How is distribution to unit holders classified in terms of taxation?**

(1 mark)

(b) ABC Trust has the following income for the year of Assessment 2022:

Types of Income	**RM**
Business Income (Malaysia)	32,000
Business Income (Indonesia)	50,000
Rental of Malaysian Properties	20,000
Malaysian Dividends	10,000
Interest	5,000

ABC Trust disclosed additional information:

- Donation to an approved charitable institution - RM5,000.
- Administrative expenses for managing the Trust - RM3,000.

Both beneficiaries X & Y are entitled to an equal share of the distributions. In the year 2022, the trust distributed income to the beneficiaries and are as follows:

Beneficiary	**RM**
X - Malaysian Income.	10,000
Y – Malaysian Income	20,000

(i) **Compute the total income/chargeable income and income tax payable for the year of Assessment 2022.**

(6 marks)

(ii) **Compute the total income of each beneficiary X and Y, for the year 2022.**

(4 marks)

[Total: 20 marks]

Question 2

(a) **Discuss briefly the determination of the resident status of a club, association or similar institution under the ITA.**

(2 marks)

(b) With respect to the taxation law on a club, association or similar institution, Section 53A was inserted by Act 693 of 2009 effective from the year of assessment 2009 and subsequent years of assessment.

Required:

With reference to section 53A of the ITA, discuss briefly the provisions and the tax treatment applicable to a club, association or similar institution before the introduction of section 53A, and the effect of this section on its treatment from the year of assessment 2009 and subsequent years of assessment.

(2 marks)

(c)

'The cardinal requirement is that all the contributors to the common fund must be entitled to participate in the surplus and that all the participators in the surplus must be contributors to the common fund...'

Lord MacMillan
Municipal Mutual Insurance Ltd. v. Hills [(1932) 16 T.C. 430]

Required:

Discuss the *dicta* of Lord MacMillan above in the context of the taxation of a club, association or similar institution under the provisions of the ITA and the practice of the Director General of Inland Revenue under the Public Ruling No. 1/2005.

(4 marks)

(d) The Ipoh Fitness and Golf Club ('the Club') was registered as a club under the Societies Act 1966. It is not a charitable body. The Club has arrangements with external parties to provide food and beverage, a gym service and vending machines dispensing cold drinks at its premises. These facilities are enjoyed by the members and their wives and children and some invited guests.

The Club derives interest from a fixed deposit with a local bank and rental from the letting out of golf carts to other clubs; and occasionally received donation to tide over some of its operating expenses especially events celebrating festive occasions.

The Club's newly elected secretary, Mr Narayana has approached you for advice and guidance on the tax treatment of its income and expenditure before preparing the accounts for the year ended 31 December 2023.

Required:

With reference to the ITA, briefly explain to Mr Narayana the tax treatment of its operations including the provision of food and beverage, the gym services and provision of vending machines by external parties, the interest income and rental income as well as donations received and expended on celebrating festive events during the year.

(4 marks)

(e) The Kuantan Retired Officers' Club ('the Club) was registered in 1990 and the membership consists of state officers who have retired from service. It is essentially a recreational club for its members, but occasionally conducts workshops and seminars on various health related issues and wealth planning for financial security in which non-members may take part. Some excess funds of the Club are held in a fixed deposit with a local bank in Kuantan.

The Club has furnished the following accounts of its affairs for the year ended 31 December 2023:

The Kuantan Retired Officers' Club		
Statement of income and expenditure for the year ended 31 Dec 2023		
	RM	**RM**
Member subscriptions	351,384	
Workshop and seminar fees (non-members)	87,846	
Bank fixed deposit interest	3,514	442,744
Less: Expenditure		
Hotel- rental for workshop and seminars	5,270	
Speaker fees	2,400	
General and odd job wages	15,812	
Administrative staff salaries	52,708	
Telephone, postage, courier and stationery	1,757	
Travelling expenses	5,270	
Miscellaneous expenses	3,514	86,731
Surplus of income over expenditure		356,013

Capital allowance due on office equipment owned and used by the club is RM15,000 for the year of assessment 2023.

Required:

Compute the chargeable income of The Kuantan Retired Officers' Club for the year of assessment 2023.

Note:
You are not required to show the detailed workings in arriving at the chargeable income (for which no marks are allocated). However, marks are awarded for the proper presentation of the computation in line with section 5 of the ITA.

(8 marks)

[Total: 20 marks]

Question 3

(a) Mr John Lee (Mr Lee) is a Hong Kong entrepreneur who plans to set up a real estate investment trust ('the trust') in Malaysia, with the funds for the investment coming from some of his millionaire friends and established developers. Being a hands-on person, he is at the moment not sure of how the trust would be treated for Malaysian income tax purposes; and therefore, has prepared some questions in his mind for clarification:

(i) When would an entity be considered a real estate investment trust, and whether the expenditure incurred in the setting up of such a trust be allowed a deduction for income tax purposes?

(ii) How would the rental income from the letting out of the real properties of the trust be treated for tax purposes?

(iii) The trust may be managed by a Board of Trustees who will ensure administrative and legal compliance. Would the remuneration paid to the trustees be an allowable deduction for income tax purposes?

(iv) Fund managers and financial experts would be appointed to run the different investment portfolios once the trust is set up. Would their professional fees be a deductible expenditure?

(v) Mr Lee is not certain at the moment whether the trust is to be listed, or not listed, on the Bursa Malaysia. For income tax purposes, he is wondering what would be the implication for a trust that is listed and one that is *not* listed on the Bursa Malaysia?

(vi) Will the distribution of the dividends to the unit holders (whether corporate or individuals – and whether resident in Malaysia or not) be taxable on the recipients?

Mr Lee has made an appointment with you to discuss the above matters.

Required:

With reference to the specific provisions of the ITA and related legislations, prepare your response to Mr John Lee for each of the questions raised in (i) - (vi) above.

(12 marks)

(b) The Magnolia PTF (Magnolia) has been in business for more than five years since its incorporation with an initial paid-up capital of RM6 million. It is approved by the Malaysian Security Commission as a real estate investment trust and listed on Bursa Malaysia.

For the year ended 31 December 2023, Magnolia has submitted the following statement of accounts:

The Magnolia PTF		
Statement of income for year ended 31 Dec 2023		
Income	**RM**	**RM**
Rent		788,400
Dividends (Hong Kong - remitted net of tax)		13,200
Gains from realization of shares		44,400
		846,000
Expenses		
Interest on loan for acquisition of properties	82,410	
Interest on acquisition of shares	9,840	
Depreciation	24,600	
Quit rent and assessment	40,590	
Repairs and maintenance	66,420	
Property manager's fees	40,590	
Entertainment	39,360	
Secretarial fees	8,610	
Tax filing fees	14,760	
Donation	60,000	387,180
Net profits		458,820

Notes to the accounts:
1. The rent is derived from building rented out.
2. The Hong Kong tax on the dividends was 15%.
3. The donation was made in cash to a Malaysian approved charitable body.

In respect of the assets used in the business, the accountant for Magnolia has worked out the capital allowance for the current year of assessment as amounting to RM26,280.

Required:

(i) **With reference to the ITA, compute the total income of the Magnolia PTF for the year of assessment 2023.**

(7 marks)

(ii) **What is the minimum amount of dividend that Magnolia PTF must distribute in order to be not chargeable to tax for the current year of assessment?**

(1 mark)

Note:
You must present the computation in accordance with the provision of section 5 of the ITA.

[Total: 20 marks]

Question 4

Mr Samuel, director of Smart-Retails Sdn Bhd (SSB), has approached you. On 10 January 2019, the company was incorporated with a paid-up ordinary share capital of RM2 million. SSB is a tax resident company in Malaysia and its main source of income is from its retail business and investment income from properties, shares, and interest from local banks.

Covid-19 has affected SSB's business very badly, and it has temporarily ceased its retail business until today. The company's statement of income and expenditure for the year ended 31 December 2022:

	RM	RM
Gross income		
Interest from fixed deposits with local banks		100,000
Rental income from two factories at Shah Alam, Selangor (after allowable expenses) and industrial building allowances are RM160,000		600,000
Dividends from resident companies listed in Bursa Malaysia		240,000
Gains from the disposal of shares and real property in Malaysia		1,860,000
		2,800,000
Less: **Expenses**		
Directors' fees	550,000	
Salaries and wages	210,000	
Audit and Secretarial fee	45,000	
Maintenance of office	12,000	
Bank loan interest (for the two factories)	113,000	
Maintenance (Quit rent, assessment and insurance for the two factories)	150,000	
Depreciation	70,000	
Cash donation to welfare home (an approved organisation)	50,000	
		1,200,000
Net profit before taxation		1,600,000

Required:

(a) **Explain whether Smart-Retails Sdn Bhd is an investment holding company for the year of assessment 2022.**

(2 marks)

(b) **Discuss the tax implications once Smart-Retails Sdn Bhd is determined to be an investment holding company in respect of its income and deductions.**

(8 marks)

(c) **Compute the fraction of the permitted expenses and tax payable by Smart-Retails Sdn Bhd for the year of assessment 2022.**

(10 marks)

[Total: 20 marks]

Question 5

(a) (i) How is the income of unit trusts taxed and what is the scope of charge?

(2 marks)

(ii) What is the tax treatment on distributions in the hands of the unit trust holders?

(1 mark)

(iii) How is the tax residence of Unit Trust determined?

(1 mark)

(iv) List two types of expenses incurred by unit trust that are not allowable and considered as not wholly and exclusively incurred in the production of the investment income.

(1 mark for each – Total 2 marks)

(b) (i) Reena Unit Trust was setup primarily for investment purposes but also derived rental income from letting out a factory. They were unsure whether expenses incurred in the factory for the year ended 31.12.2022, as shown in the table below were eligible for any tax deductions against rental income.

Reena Unit Trust

Costs	**RM**
Cost of purchasing machinery	165,000
Cost of alteration of an existing building for installation of machinery	55,000
Total	220,000

Required:

Determine, with reasons, whether each of the abovementioned expenditure qualifies for special deduction as provided for in the Income Tax Act 1967.

(2 marks for each – Total 4 marks)

(ii)

Irene Unit Trust Fund	
Established:	2016
Main Investments:	Shares, Bonds, and Fixed Deposits

The Profit and Loss Account of Irene Unit Trust Fund for the year ended 31 Dec 2022 is as follows:

Income		**RM**
Malaysian Dividend (Single Tier)		400,000
Exempt Dividend (Pioneer Status)		100,000
Interest		30,000
Gains from disposal of shares		200,000
Gross Income		730,000
Less: Expenses		
Office rent & Incidentals	24,000	
Manager's remuneration	30,000	
Share registration expenses	10,000	
Telephone & Stationery	6,000	
Trustee Fee	24,000	
Audit, Secretarial and Accounting Fee	10,000	
Interest on loan to purchase shares	5,000	
Printing and Postage	4,000	
		113,000
Net profit		617,000

Required:

Compute the Tax Payable for the Year of Assessment 2022.

(10 marks)

[Total: 20 marks]

Question 6

Loyal Sdn Bhd (LSB) is a resident manufacturing company in Malaysia with its factory located in Sepang, Selangor. The company was incorporated on 1 April 2022 and immediately commenced manufacturing a promoted product.

On 20 April 2022, LSB decided to apply investment tax allowance (ITA) instead of the pioneer tax incentive from the Malaysian Investment Development Authority (MIDA). The company received the approval letter from MIDA for the ITA incentive on 1 June 2022 and ITA granted for the years of assessment (YA) 2023 to 2027.

The accountant of LSB provided the following projected tax information:

Year of Assessment	**2023**	**2024**	**2025**	**2026**	**2027**
	RM'000	**RM'000**	**RM'000**	**RM'000**	**RM'000**
1. Business (manufacturing)					
Adjusted income/(loss)	(1,000)	(2,000)	3,000	4,000	5,000
2. Statutory income from the rental of a shophouse in Klang, Selangor	500	500	500	0	0
Capital expenditure for ITA:					
Plant & Machinery	3,000	2,000	1,000	0	1,500
Purchase of a new factory (including land at a cost of RM2,000,000)	0	0	0	7,000	0
Capital allowances (CA) and Industrial building allowance (IBA)	1,000	1,100	1,000	1,800	1,800
Unabsorbed CA and IBA brought forward	300	0	0	0	0
Unabsorbed business loss brought forward	400	0	0	0	0

Required:

(a) **Compute Loyal Sdn Bhd's chargeable income and exempt income for each of the years of assessment 2023 to 2027.**

(10 marks)

For part (a), a tabular format must be used for your computation. All detailed workings must be shown to support your answers. Show clearly the amount of investment tax allowance, capital allowances and industrial building allowance, business losses including the amount to be carried forward to the post tax relief period.

(b) **Advise Loyal Sdn Bhd on the difference in the tax treatment between ITA and pioneer status of its rate and its deduction and which of the incentives should be more favourable to LSB.**

(10 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)