



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

ADVANCED TAXATION 2

DECEMBER 2023

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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

- (a) Article 15 on Income from employment and dependent services of the UN Model states that “salaries, wages and other similar remuneration” are taxable only in the person’s jurisdiction of residence unless the “employment is exercised” in the other jurisdiction. (refer to attachment).

**Required:**

**Briefly, explain your understanding of the above statement.**

(6 marks)

- (b) Country Xee and Country Yaz shared a common border. However, Country Yaz has a well-developed shared services industry. Country Xee is more into agricultural and small medium industrial sectors.

Many people residing in Country Xee commute daily to Country Yaz for work due to better remuneration. These people have contracts of employment with companies in Country Yaz. However, due to Covid-19 pandemic and the imposition of travel restrictions, these workers had to remain in their homes and worked remotely for their employers in Country Yaz during the period 2020 and 2021.

There are also many people of Country Xee who also preferred to stay in Country Yaz since they are employed by companies over there. As a result of travel restriction, these people returned to Country Xee to work remotely for their employers in Country Yaz.

Based on the domestic law of Country Xee and Country Yaz, a person will be a resident if he stays for more than 183 days in a calendar year. However, Country Xee and Country Yaz have issued respective guidance that a person is not resident in the state if they are stranded there due to Covid-19 pandemic.

**Required:**

- (i) **Discuss the taxability of the employment income of these cross-border workers due to the border restriction; unable to commute daily to Country Yaz to work as a result of Covid-19 pandemic.**

(7 marks)

- (ii) **Discuss the resident status of those people working in Country Yaz now, who have temporarily returned to Country Xee due to Covid -19 pandemic.**

(7 marks)

## Excerpt 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]

### Question 2

- (a) Para 2.1 (i) of the Rules and Regulations (on Professional Conduct and Ethics) issued by the Chartered Tax Institute of Malaysia on 23 February 2012, provides that:

*A member must, at all times, perform his work objectively, impartially and independently. In order to do so, it is essential that a member remains free from any influence which could impair his independence.*

**Required:**

**Discuss briefly the concept of 'professional independence' embodied in the said paragraph and how a tax professional can take care to preserve this independence in the course of carrying out the duties of his profession, including managing any conflicts that may arise.**

(8 marks)

- (b) Mr Selvarajah Sathya Moorthy ('Mr Moorthy') is a professionally qualified tax accountant. In addition to a professional qualification, he also holds a degree in law and a Master's Degree in Business Administration. He runs his own tax advisory firm in Damansara Utama since 1995. Of his many clients are Mr and Mrs Wong running a florist and a transport business. Damansara Florists Enterprise is run by Mrs Rebecca Wong ('Rebecca'); and Damansara Transport Enterprise is run by Mr Robert Wong ('Robert').

Rebecca buys flowers from Cameron Highlands and distributes them to local destinations covering Penang to Kota Kinabalu. She often travels to Cameron Highlands to personally meet the farmers and select the range of flowers for distribution. The logistics aspect is taken care of by her husband Robert.

The businesses operated, as a husband-wife team, developed and flourished over the years. Part of the success was attributed by Mr Wong himself to their reliance on the many pieces of advice on income tax, finance and legal compliance given by Mr Moorthy to the couple.

In January 2023 the couple were legally divorced.

After the divorce, Mr Robert would like to retain the services of Mr Moorthy. Meanwhile, Rebecca too has approached Mr Moorthy to continue to 'help her out' with legal and financial advice, including income tax compliance work.

Having known the couple for many years, Mr Moorthy now finds it very onerous to say 'No' and have his decision accepted by Robert and Rebecca.

**Required:**

**With reference to the Rules and Regulations (On Professional Conduct and Ethics) prepared by the Chartered Tax Institute of Malaysia, discuss the THREE (3) basic choices that Mr Selvarajah Sathya Moorthy has in acting for Mr Robert Wong and Miss Rebecca Wong, particularly after their divorce.**

(8 marks)

- (c) Mr Lawrence Tan Tuck Lock ('Mr Lawrence'), a resident and citizen of Malaysia, is the tax manager with Prize, Water and Ice Associates ('the firm'), a large accounting firm operating from Kuala Lumpur that provides taxation and consultancy services. The firm of Ah Long & Associates ('ALA') was one of the long-time clients of the firm, and their financial and tax matters were primarily handled by Mr Lawrence and his team.

Recently, ALA was investigated for suspected money laundering activities in connection with a major corruption scandal that involved several politicians and corporate figures in Malaysia. The matter is being investigated by the local government anti-corruption agency ('the agency') and the Attorney General's Office may file a case at the High Court if sufficient evidence is available. Mr Lawrence has been 'invited' by the agency to assist on matters relating to the financial dealings of Mr Ah Long who is a principal business associate of ALA.

Mr Lawrence has called you for advice.

**Required:**

**In the context of the Rules and Regulations (On Professional Conduct and Ethics) of the Chartered Tax Institute of Malaysia, advise Mr Lawrence Tan Tuck Lock how he should go about this matter.**

(4 marks)

**[Total: 20 marks]**

### Question 3

- (a) Singaporean Heritage Group Ltd has a wholly owned subsidiary in Malaysia called Baba Sdn Bhd. Baba Sdn Bhd has a joint venture with another Malaysian company and it owns 49% of the shares of the joint venture company called Nyonya Sdn Bhd. However, neither Singaporean Heritage Group Ltd nor Baba Sdn Bhd has the power to appoint directors to the board of directors of Nyonya Sdn Bhd.

Singaporean Heritage Group Ltd manages the operations of both Baba Sdn Bhd and Nyonya Sdn Bhd. It provides, amongst others, sales support and human resource administration to both the Malaysian companies and charged them management fees.

**Required:**

**Analyse the above and state the following:**

- (i) **What are imported taxable services and how does it apply to the management fees charged by Singaporean Heritage Group Ltd? State the relevant legislation.**  
(3 marks)
- (ii) **State and describe the service tax legislation that defines companies within a group of companies. How will it impact the management fees paid by Baba Sdn Bhd and Nyonya Sdn Bhd?**  
(7 marks)

- (b) Capitol Sdn Bhd is company engaged in business of conducting market research and it is registered for service tax purposes. During the year, it acquired the following services:
- i. Catering services from Sungguh Sedap Sdn Bhd for a staff lunch.
  - ii. Repairs of the office photocopy by CopyRUs Sdn Bhd. The photocopier has suddenly malfunctioned and required urgent repairs.
  - iii. Remote IT diagnostic services on server by Merlion IT Services Singapore Pty Ltd. The service was performed remotely from Singapore.
  - iv. Placement of advertisements in New York subway trains paid to American Advertisements Agency LLP.
  - v. Annual subscription for accessing an online database of global marketing data hosted by Kensington Pty Ltd, a company located in London.

The above service providers with the exception of Kensington Pty Ltd, have not charged service tax. Kensington Pty Ltd charged service tax on digital services at the rate of 6%.

**Required:**

**Capitol Sdn Bhd is concerned if any of the above services it acquired has service tax implications and has requested that you analyse them to determine this and what it needs to do. Review each of the five (5) services to determine their service tax implications, stating the relevant legislations.**

(10 marks)

**[Total: 20 marks]**

#### Question 4

- (a) Briefly discuss why it is imperative to have an income tax audit system in place in the context of the self-assessment system, including the tracking of tax defaulters by the Inland Revenue Board of Malaysia through special programmes.

(5 marks)

- (b) In selecting a company for a comprehensive review (or '*semakan menyeluruh*'), several criteria are used based on which the particular company may be selected for an audit review.

**Required:**

**Discuss briefly any TWO (2) criteria that may be used by the Inland Revenue Board of Malaysia for such a comprehensive review.**

(5 marks)

- (c) Mr Henry Wong ('Mr Wong') carries on a business selling motor spare parts. He was audited on 1 March 2021 and the case was closed on 15 June 2021. He was found to have not declared an income of RM65,000 from a particular transaction on 1 July 2020 affecting the return for the year of assessment 2020.

The Inland Revenue Board ('IRB') had wanted to impose a penalty of 15% under section 113(2) for non-disclosure but his tax agent, Chua & Kong Associates, argued that it was a case of interpretation – whether the income was capital or revenue. And based on a case law decision, Mr Chua was of the view that the amount is a capital receipt – and had advised the client to exclude the sum from his return of income – and accordingly the client filed the return on that basis.

The Revenue official acknowledged that the non-disclosure may not have been wilful or intentional, or even a case of an advice given without reasonable care.

Nevertheless, the IRB officer was not in agreement with the amount not disclosed as being capital in nature. The officer therefore prepared an additional assessment for the year of assessment 2020 but did not impose any penalty under section 113(2) of the ITA.

In May 2023, another audit exercise was commenced on Mr Wong for the year of assessment 2022 and it was found that he had left out an income of RM102,000 from his accounts. The particular transaction was done in September 2022. When this was brought to his notice, Mr Wong claimed that the non-disclosure was on the advice of his accountant. Chua & Kong Associates however explained that when the particular transaction was brought to the notice of Mr Wong, he had explained over the phone that it was a transaction similar to the one on 1 July 2020. Due to time constraints, the tax agent accepted the explanation and filed the relevant tax return.

Following the audit in May 2023, Mr Chua had written to the Revenue office that apparently the undisclosed sum of RM102,000 was not one that is similar to the transaction done on 1 July 2020, and he volunteered to rectify the matter on behalf of the client.

The IRB plans to raise an additional assessment for the year of assessment 2022 in respect of the undisclosed sum of RM102,000, and impose a penalty in the context of sections 114(1A) and 113 of the ITA.

**Required:**

With reference to the *Rangka Kerja Audit Cukai* issued by the Inland Revenue Board of Malaysia (effective from 1 May 2022), and section 114(1A) ITA read together with section 113 of the ITA, discuss the penalty imposition options for the Director General of Inland Revenue in this case of Mr. Henry Wong's 'non-disclosure' in both the instances; and whether the non-disclosure of the income of RM102,000 will be considered a first offence or a second offence.

(10 marks)

**[Total: 20 marks]**

### **Question 5**

- (a) Article 4(1) of the UN Model defines a 'resident of a Contracting State' as a 'person who under the law of that State is liable to tax by reason of his domicile, residence, place of management or any other criterion of a similar nature....'

**Required:**

- (i) Briefly explain the statement 'a person qualifies as a resident of who under the law of that State is liable to tax....'.

(2 marks)

- (ii) What is the likely issue that may arise in determination of a person qualifies as a resident of a contracting state?

(2 marks)

- (b) Article 4(2) lists a set of criterion or rule under the tie-breaker rule where a resident is a resident of both contracting states. One of the rules under Article 4(2)(a) mentioned about 'permanent home'.

**Required:**

Please elaborate what is meant by the concept and key attributes of 'permanent home available to him' as applied in the said paragraph.

(6 marks)

## Excerpt 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 that person’s 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 as well as a recognized pension fund of that State. 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.



- (c) Chi Jin Lee ('Chi Jin') works as a senior electronic engineer and is employed by MircoTech Electronics Malaysia, a subsidiary company of MicroTech Electronics Inc, one of the largest global semiconductor companies headquartered in the United States of America. Chi Jin reports to Dexter Mark, the Head of Quality Project in Malaysia.

Chi Jin was seconded to Thailand for 11 months (January to November) in 2022 to work on a client's project there. During this period, he reported to Dexter Mark on the progress of works and also received guidance and instructions on the project. Chi Jin's remuneration was paid to his bank accounts in Malaysia and charged as an expense to MircoTech Electronics Malaysia. Chi Jin was present in Malaysia for the 3 preceding years (i.e., 2019, 2020 and 2021) and will be a resident in Malaysia for 2023.

**Required:**

- (i) **Explain Chi Jin's resident status in Thailand and Malaysia for 2022.** (4 marks)
- (ii) **Discuss whether Chi Jin's duties performed in Thailand are incidental to his employment in Malaysia. The income tax implications, if any, based on your analysis and the type of relief available if the income is subject to double taxation. A copy of Article 4 of the Malaysia and Thailand DTA is attached.** (6 marks)

**Excerpt of the Malaysia and Thailand DTA**

**ARTICLE 4  
RESIDENT**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:--
  - (a) in the case of Thailand, a person who is resident in Thailand for the purposes of Thai tax; and
  - (b) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax.
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 in accordance with the following rules:
  - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
  - (b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
  - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national; (d) if he is a national of both Contracting 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, then the competent authorities of the Contracting States Shall settle the question by mutual agreement.

**[Total: 20 marks]**

## Question 6

- (a) Article 5(1) of the UN Model on Permanent Establishment (PE) states that “For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on”.

**Required:**

**Explain your understanding of the definition of the permanent establishment concept in Article 5(1) of the UN Model.**

**What are the key components in Article 5(1) that would trigger a person having a permanent establishment in the other contracting state?**

(12 marks)

- (b) Most wide-screen movies produced by film companies are filmed in studios equipped with the latest mock-up or digital backdrops at selected locations around the world. Cainland is a developing country located in Blue Ocean. Cainland Government wants to attract film producers to shoot their movies in their studios modelled after these established studios offering tax incentives and cash grants to film companies to do their filming in the country.

Andrew Kartono, a film producer and a national of Cainland, wants to capitalise on this incentive offered by his government. Andrew Kartono together with two business partners, James Cena and Zain Joko, both nationals of Country, Roundland set up a film production company Ashwood Production, in Cainland to import photographic equipment & props and lease such equipment to film companies in Cainland. These equipment and props are procured from Pineberry Inc, a company based in Roundland for leasing to Ashwood Production which in turn leases to other film companies in Cainland.

Note: There is a Double Tax Agreement between Cainland and Roundland which is based on the UN Treaty Model.

**Required:**

**Explain whether the leasing of equipment and props by Pineberry Inc to Ashwood Production constitutes a permanent establishment in Cainland.**

(8 marks)

## Excerpt of the UN Model Convention

### ARTICLE 5 PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term “permanent establishment” also encompasses:
  - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
  - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.
4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),provided that such activity or, in the case of subparagraph (f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.
  - 4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and
    - (a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
    - (b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.
5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, if such a person

- (a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
- (i) in the name of the enterprise, or
  - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
  - (iii) for the provision of services by that enterprise,
- unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually maintains in that State a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise.
6. Notwithstanding the preceding provisions of this Article but subject to the provisions of paragraph 7, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person.
7. Paragraphs 5 and 6 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.
9. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

**[Total: 20 marks]**

**(END OF QUESTION PAPER)**