



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

REVENUE LAW

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 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 13(1)(a) of the ITA provides as follows:

*Gross income of an employee in respect of gains or profits from an employment includes—*

*(a) any wages, salary, remuneration, leave pay, fee, commission, bonus, gratuity, perquisite or allowance (whether in money or otherwise) in respect of having or exercising the employment.*

### Required:

**Briefly discuss the provisions of section 13(1)(a) above and its significance for the taxation of employment income in Malaysia, with particular emphasis on the words ‘*in respect of having or exercising the employment*’ and the derivation of the employment income within the meaning of section 13(2).**

### Note:

**Reference should be made to relevant case laws where appropriate in your discussion including the implication of the word ‘*incidental*’ in relation to the derivation of employment income contained in section 13(2)(c).**

(10 marks)

- (b) Ms Helen Salsa (Ms Salsa) is a Hong Kong citizen. She is a trained dancer and specialises in salsa and has won several international awards for her salsa performances. Salsa is a fusion of many music and dance styles such as mambo, pachanga, cumbia and rumba springing in the Caribbean islands based on Spanish and African musical and cultural influences in the early twentieth century.

Bumiputra International Hotel Sdn Bhd (BIH), a local five-star hotel engaged her, through her Malaysian agent, for a series of performances at the hotel at specified dates and times throughout the year 2023. The agent arranged her legal matters including a written contract for a one-year performance at BIH in Kuala Lumpur, Putrajaya, Penang and Johor Bharu.

As a highly sought-after dancer by high-end hotels in the Asia Pacific region, Ms Salsa usually dictates her own terms and conditions of her engagement. Besides quoting a high fee for the performance, the contract required among other things that the hotel will provide an orchestra for her nightly performances. However, if Ms Salsa finds the orchestra not to her expectation, she may arrange for alternative musicians and would be entitled to charge the hotel for the expenses incurred. She will bring her own costumes and the hotel will provide a team of stand-by makeup artists during her performance.

In addition, the contract requires BIH to provide her free accommodation at the hotel with meals, dry cleaning services as well as a fully covered medical and accident insurance for the duration of her stay for the performances.

She will be paid at the end of each month based on the number of shows performed. A clause in the contract strictly prohibits Ms Salsa from performing elsewhere at private parties or engaging in alternative performances in Malaysia while the contract is in force.

The Director General of Inland Revenue issued a notice of assessment for the year of assessment 2023 treating the income received by Ms Salsa as ‘professional fee’ and charging it under section 4(a) of the ITA. Her agent, Puan Siti Salasiah bt Abdul Rahim, however is of the view that the sum should be assessed under section 4(b) of the ITA as employment income.

Puan Siti Salasiah is currently very confused about the application of the tax law to her client's case, and has made an appointment to see you to discuss the matter.

**Required:**

**Discuss the concept of 'employment' embodied in the provisions of the ITA and the implication for liability to income tax in the context of Ms. Helen Salsa's contract with the Bumiputra International Hotel Sdn Bhd.**

**Note:**

**You should distinguish the essential legal features of the provisions in the ITA for the taxation of employment income as compared to 'business', and highlight the relevant case laws in support of your discussion, and advise Puan Siti Salasiah bt Abdul Rahim on the stand that her client should take with regards to the assessment made for the year of assessment 2023.**

(10 marks)

**[Total: 20 marks]**

**Question 2**

*'... and to say that because they cannot bring an action to recover the bets they make, betting being made illegal by Act of Parliament, therefore they do not carry on a vocation, it seems to me is putting a construction upon the Act which would be giving a very undue favour ....'*

*Denman, J.*

**Required:**

**(a) With reference to the ITA and the relevant case laws, discuss the meaning of 'vocation' in the context of business and illegal trade, and the issue of bringing betting gains to taxation including its tax treatment of expenses and losses.**

(8 marks)

**(b) Discuss briefly the rules of interpretation of tax provisions and how some interpretation can give it '... a very undue favour...' and the role played by judges in interpreting the law to give it a 'force of life'.**

(12 marks)

**[Total: 20 marks]**

### Question 3

MTC Inc. (“MTC”), a prominent Japanese multinational specializing in industrial product manufacturing, expanded its global operations in 2020 by establishing a medical equipment manufacturing subsidiary in Malaysia, named MTC (Malaysia) Sdn Bhd (“MTCM”). MTCM operates as a contract manufacturer primarily serving MTC as its main client.

The management of MTCM is vested in the board of directors in Japan, with the power of delegation. In May 2020, one of the directors, Ms. Carol, was appointed resident director in Malaysia, with a mandate to manage day-to-day trading operations from an office in Kuala Lumpur, acting under a power of attorney granted by MTC. The financial year ends on December 31 each year.

Throughout the year 2020, all significant decisions were made during the board meetings held in Japan. However, in September 2021, the Japanese directors travelled to Malaysia and convened a board meeting, during which several critical strategic decisions were reached.

Recently, MTC has made plans to expand MTCM's operations by providing industrial products to its subsidiary company located in Singapore.

MTCM approaches you for advice.

#### Required:

- (a) **With reference to relevant case laws, briefly discuss whether the residential location of a company’s director has an impact on its corporate tax residence status.** (2 marks)
- (b) **With reference to relevant case laws, briefly discuss whether the location of a company’s physical business operation can influence its corporate tax residence status.** (4 marks)
- (c) **Determine MTC (Malaysia) Sdn Bhd’s tax residence status in Malaysia for the years of assessment 2020 and 2021 briefly explaining the basis of your determination and supporting it with relevant case laws.** (4 marks)
- (d) Assume that in the year of assessment 2023, MTC (Malaysia) Sdn Bhd ceased its operations in manufacturing medical equipment and sold its manufacturing assets due to low market demand. MTC then acquired a biotechnology manufacturing factory from TLC, with approval from Ken, the sole proprietor of TLC. Linda (the wife of Ken), purportedly acting as a director of MTC (Malaysia) Sdn Bhd, exercised the option to purchase the biotechnology manufacturing factory. The board of directors of MTC (Malaysia) Sdn Bhd approved the transfer of its shares to both Ken and Linda through a circular resolution. Within a month of granting the option, Ken and Linda became the sole shareholders and directors of MTC (Malaysia) Sdn Bhd.

However, the IRB disallowed the carry-forward of MTC (Malaysia) Sdn Bhd's agreed unabsorbed losses up to and including a year of assessment before the TLC acquisition. The IRB invoked Section 140 of the ITA, to disregard two key transactions:

- i. the acquisition of TLC; and
- ii. the transfer of MTC (Malaysia) Sdn Bhd's shares to Ken and Linda.

The IRB contends that these transactions were structured to avoid tax liabilities and, therefore, should be disregarded under Section 140.

MTC (Malaysia) Sdn Bhd is seeking your guidance in response to the disallowance of the carry-forward losses and the invoking of Section 140 of the ITA by the IRB.

**In your response, discuss briefly the relevant statutory provisions and case law precedents for the IRB's stand.**

(10 marks)

**[Total: 20 marks]**

#### **Question 4**

Mr Richie (Richie), a Malaysian, is a long-time director of Maximus Sdn Bhd ("**Maximus**"), a Malaysian company engaged in the sole business of manufacturing electronic chips. As part of his 10-year service award in 2013, 80 shares of RM100 each were registered in his name. That was the only time Richie had received or bought any shares in Maximus.

At the end of the year 2021, it came to Richie's knowledge that Company A, a Malaysian electronic device manufacturer, was looking to sub-contract part of its manufacturing process. Richie approached Company A with a proposal to be a subcontractor in the project. He was told: "We have never heard of Maximus. We need a bank guarantee from you or we won't proceed". After getting the relevant approvals from the company's board of directors, Richie went to Bank Z and applied for a bank guarantee. While he was there, he also applied for and obtained a term loan to be utilized for the purchase of new machinery. The bank guarantee and term loan were approved on, among others, the following terms:

- i. Maximus shall place a sum of RM5,000,000 in a fixed deposit account with the bank.
- ii. The fixed deposit sum was to accrue interest at a rate of 5% p.a.
- iii. If the fixed deposit is uplifted, the bank guarantee will be rescinded.
- iv. The interest rate for the term loan was charged at 2.5% above the base lending rate (9% at the time)

Maximus was successfully appointed as a subcontractor in January 2022. Using the loan sum, Maximus purchased specialized machinery required for the manufacturing of Company A's products. Work commenced in March 2022 and regular payments were made to Maximus by Company A. In YA 2022, Maximus incurred interest expenses pursuant to the term loan.

Riding the positive wave in the electronics market, Maximus achieved exceptional profits in 2022. At an ordinary general meeting held on 23.12.2022, the shareholders in the company passed the following resolution:

*"That a dividend of 250 per cent is hereby declared for credit in cash to the shareholders whose names duly appear in the Company's share register on the 31st December 2022."*

On 24.12.2022, Richie's bank account was credited with a sum of RM20,000.

**Required:**

**With reference to the ITA and Maximus Sdn Bhd:**

- (a) **State with reasons, whether Maximus' interest expense paid to Bank Z is deductible in YA 2022.**  
(4 marks)
- (b) **Maximus says that its interest income from the fixed deposits constitutes business income because the fixed deposit was placed solely to secure its contract with Company A. Furthermore, it cannot be held as an investment as the interest payments on the term loan are much higher than the interest income from the fixed deposits. With reference to the relevant case law and ITA provisions, advise Maximus whether this view is correct.**  
(7 marks)
- (c) **Would your advice in part (b) above change if Maximus was engaged in the principal business of banking and insurance?**  
(4 marks)
- (d) **With reference to the relevant provisions of the Income Tax Act 1967, whether Richie is required to subject the dividend paid out by Maximus to income tax for YA 2022.**  
(2 marks)
- (e) **Assuming Maximus is a company incorporated in Liechtenstein (no double taxation agreement with Malaysia), what is the current position of the law relating to the taxation of Richie's foreign-sourced dividend income in Malaysia and whether such dividend income needs to be declared by Ritchie?**  
(3 marks)

**Note:**

**Candidates are required to support their answers with reference to the relevant case laws and statutory provisions.**

**[Total: 20 marks]**

## Question 5

- (a) Oakwood Furnishings Sdn Bhd (“the Company”) had been a leading manufacturer of bespoke furniture in Malaysia since the 1980s. In 2021, the Company’s founder and owner decided to retire from business and relocate to Australia. The Company transferred its factory in Muar to its wholly owned subsidiary, a company incorporated in Australia (‘the Subsidiary) and thereafter, ceased operations in Malaysia.

The Company had previously claimed agriculture allowance and capital allowance on qualifying assets used in its business. The Subsidiary does not carry on business in Malaysia. Subsequently, the Subsidiary leased the factory to a Malaysian paint manufacturing company.

**Required:**

**Discuss whether the provisions relating to disposals subject to control under the ITA would apply to the Oakwood Furnishings Sdn Bhd’s transfer of the factory to its wholly owned subsidiary.**

(4 marks)

**Note:**

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

- (b) Sugar & Everything Nice Sdn Bhd (“the Company”) is in the business of processing, packaging and selling organic spices. In 2021, the Company incurred capital expenditure on the construction of two (2) buildings, namely:
- i. RM 250,000.00 on Building A which was to be used for the cleaning, maintaining and calibrating of the Company’s spice grinding and packaging machinery.
  - ii. RM 300,000.00 on Building B where the spices are meticulously cleaned and sorted, removing impurities such as debris and foreign particles before the final packaging process.

**Required:**

**Discuss briefly whether the expenditures incurred by the Company below would qualify for industrial building allowance.**

- (i) RM 250,000.00 on Building A

(5 marks)

- (ii) RM 300,000.00 on Building B

(3 marks)

**Note:**

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

(sub-total: 8 marks)

- (c) Palm Oil Fruits Growers Sdn Bhd (“the Company”) has been in the oil palm plantation business since 2000. It plants oil palm trees for the purpose of cultivating and harvesting the oil palm fruits for sale to midstream and downstream companies, including milling companies. In 2018, the Company decided to expand its plantation business by embarking on what it regarded as an agricultural project. It acquired 1,000 hectares of plantation land to increase its production capacity. It incurred RM 8.5 million in expenditure in respect of the following:
- i. To clear and prepare the land for planting;
  - ii. To plant the oil palm trees;
  - iii. To provide irrigation and drainage systems for the oil palm trees;
  - iv. To purchase plant and machinery to facilitate the planting and harvesting process;
  - v. To construct access roads and bridges;
  - vi. To construct buildings, including hostels for the plantation workers;
  - vii. To carry out structural improvements on the land.

It incurred these expenditure for the purpose of cultivating oil palm fruits. As a result of this expansion and the expenditure incurred, the Company was able to increase its production capacity of oil palm fruits by almost 300%.

**Required:**

**Discuss whether the Palm Oil Fruits Growers Sdn Bhd is entitled to claim reinvestment allowance for the expenditures in i. to vii. above pursuant to Schedule 7A ITA.**

**Note:**

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

(4 marks)

- (d) Palm Oil Millers Sdn Bhd (“the Company”) has been in the palm oil milling business since 2000. It purchases oil palm fruits from oil palm plantations which it processes to extract crude palm oil and palm kernel oil for sale to downstream refinery companies. In 2019, the Company decided to embark on the following:
- i. It incurred RM7 million to purchase machinery for use in its palm oil milling business. The machinery is meant to expand the Company’s production capacity and also to replace and modernise the Company’s existing milling equipment.
  - ii. It incurred RM20 million to purchase a factory and plant and machinery to enable it to carry out oil refining. This will enable it to refine and produce edible oils for sale, in addition to the crude palm oil and palm kernel oil which it has already been manufacturing and selling.

**Required:**

**Discuss whether the Palm Oil Millers Sdn Bhd is entitled to claim reinvestment allowance for the expenditures above pursuant to Schedule 7A ITA.**

**Note:**

**Candidates are required to support the answer with reference to the relevant provisions of the ITA. Candidates are not required to refer to case laws for this question.**

(4 marks)

**[Total: 20 marks]**

## Question 6

- (a) Patchwork Sdn Bhd (“Patchwork”) is a Malaysian tax resident company incorporated in Malaysia. Patchwork is in the retail clothing industry.

Easy Packaging Pte Ltd (“Easy”) is a tax resident of Singapore that is in the business of providing packing services. Easy is appointed by Patchwork to handle and repackage clothes that Patchwork purchases from its manufacturers prior to the sale in Malaysia. Patchwork pays Easy a fee for the service provided in Singapore.

Patchwork claims a deduction of the fee paid to Easy under Section 33(1) of the Income Tax Act 1967. However, the Director General of Inland Revenue (“DGIR”) disallowed the deduction on the basis that Patchwork had failed to deduct withholding tax from the payment to Easy.

Patchwork is of the view that there is no duty to withhold tax pursuant to Article 7 of the Double Taxation Agreement between Malaysia and Singapore since Easy has no permanent establishment in Malaysia.

### Required:

**With reference to the ITA and the Double Taxation Agreement between Malaysia and Singapore, advise Patchwork on whether there is any basis for challenging the decision of the Director General of Inland Revenue. Cite relevant case laws in support of your answer.**

(8 marks)

- (b) Ideal Technologies Pte Ltd (“Ideal”) is an audio streaming company that provides music and audio streaming services through its online platform.

Ideal is a company incorporated and tax resident in Singapore. Ideal has a branch office in Malaysia solely for the collection of user feedback from Malaysian users of its streaming platform.

Empire Media Sdn Bhd (“Empire”) is a Malaysian tax resident company incorporated in Malaysia. Empire accessed and used Ideal’s audio streaming network by uploading its podcasts to Ideal’s online platform to be streamed by Ideal. The services provided by Ideal are merely streaming services and there is no transfer of any proprietary rights to Empire. Empire pays Ideal a streaming fee for the services provided.

### Required:

**With reference to the ITA1967 and the Double Taxation Agreement between Malaysia and Singapore, discuss whether Ideal Technologies Pte Ltd has a permanent establishment in Malaysia and whether the streaming fee paid by Empire Media Sdn Bhd may be categorised as royalty that is subject to withholding tax in Malaysia. Cite relevant case laws in support of your discussion.**

(12 marks)

## **DOUBLE TAXATION AGREEMENT BETWEEN MALAYSIA AND SINGAPORE**

### Article 5

#### **PERMANENT ESTABLISHMENT**

1. 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.

2. The term “permanent establishment” shall include 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; and
- (g) a building site or construction, installation or assembly project, which exists for more than 6 months.

3. The term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of a preparatory or auxiliary character.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other State for more than 6 months in connection with a building site or a construction, installation or assembly project which is being undertaken in that other State.

5. Where a person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph 6 applies) is acting in a Contracting State on behalf of an enterprise of the other Contracting State that enterprise shall be deemed to have a permanent establishment in the first mentioned State if that person:

- (a) has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(b) maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

7. 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.

#### Article 7

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only on so much thereof as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, insofar as they are reasonably allocable to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. If the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## Article 12

### **ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 8 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information (know-how) concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying such royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

**[Total: 20 marks]**

**(END OF QUESTION PAPER)**