



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

REVENUE LAW

MARCH 2024

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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) Mr 'Ekor' Eng is a businessman operating a 4-digit gambling outlet in Alor Setar in the State of Kedah and is patronised by the local punters and players.

In the game, a player is entitled to pick a 4-digit number and choose the amount he wants to bet (or forecast). There are two types of forecasts – a "Big" forecast and a "Small" forecast. A "Small" forecast will warrant higher winnings, but the player will only win if his number comes up in the first, second or third places. The winnings are lower for a "Big" forecast, but in addition to the first, second and third places, there are 10 "special numbers" which pay RM180 for a RM1 bet, and 10 "consolation numbers" which pay RM60 for a RM1 bet. There are also variations to these forecast products which potentially would enable a player to win as much as RM1.8 million on a single bet that cost only RM1.00 to purchase.

As such these games are a big draw, especially among the poorer working-class people who hope that a RM1.00 spent on a ticket would one day make them rich beyond their wildest dreams. But the game can also be addictive and often lead to financial stress and ruin. As a result, the game was officially banned in Kedah sometime in late 2022.

Mr 'Ekor' Eng then closed his shop but continued the 'business' from his home accepting forecasts from punters, using mobile phones and the internet. He has a private arrangement with his close friend in Penang who operates a legal gambling outlet there to accept these forecasts and make out payment on winning forecasts. He had not kept any official records in respect of these dealings, and in filing his tax returns for the year of assessment 2023, he had not reported the gains or profits from the 'business' for fear of alerting the authorities of his illegal operations.

### Required:

- (i) **Briefly discuss the issue of morality and its relevance in the context of the taxation of the gains or profits derived from an 'illegal' business operation as deliberated by the judges in the case of *C Hayes (Inspector of Taxes) v R.J. Dugan* [1929 IR 406].** (4 marks)
- (ii) **With reference to the ITA, discuss the taxability of the gains or profits from the illegal operations by Mr 'Ekor' Eng for the year of assessment 2023, including the issue of keeping records and the raising of an assessment by the Director General of Inland Revenue where insufficient records are kept.**

### Note:

You must quote a relevant case law in support of your answer, highlighting briefly the facts, argument by the taxpayer and basis of the decision in that case.

(8 marks)

- (b) Madani Tanah dan Pelaburan Sdn Bhd ('the company') was incorporated in 2019 by several retired civil servants who hold shares in the company in various proportions. These are former employees in the land offices of various states who are familiar with land matters. The company's Memorandum and Articles of Association provide various powers to the company including the power to acquire and hold land as long-term investment, acquire, develop and sell the developed land for profit.

Sometime in 2020 the company made its first purchase - a large piece of abandoned agricultural land near a location where a state government had proposed to build an international airport. The company intended to develop the land as soon as the economic activities relating to the construction of the airport commences. However, the state government fell from power in a state election held in 2022 and the new government that came to power then quickly scuttled the plan to build the international airport as being not practical.

As a result, the plan by the company to develop the land at an opportune time fell through. And with cost of holding the unproductive land escalating, it decided to dispose the land. It advertised the land for sale and after three unsuccessful attempts, it finally sold the land to a local mining group for a small profit. This was the only transaction in land by the company.

Before filing the tax returns for the year of assessment 2023, the Managing Director of the company had made an appointment with you to discuss the tax implications of the acquisition and disposal of the land.

**Required:**

**With reference to the ITA and relevant case laws, discuss the transaction with respect to the land with the Managing Director of the Madani Tanah dan Pelaburan Sdn Bhd on how the Director General of Inland Revenue may view the profits made, and how in your view, it is possible to argue that the transaction is one giving rise to a capital gain, and accordingly not liable to income tax.**

**Note:**

You are required to state briefly the facts, the crux of the arguments and the decision of the case (or cases) you would mention in the course of your discussion.

(8 marks)

**[Total: 20 marks]**

## Question 2

- (a) Manaf & Lingam Flour Mills Sdn Bhd ('the company') is a supplier of wheat flour to the government hospital bakeries (for baking special diet breads) under a 15-year contract signed in 2020 ('the contract'). The wheat is imported from Ukraine and is milled in Kajang and supplied to the bakery at an agreed fixed price under the contract.

In February 2022 Russia invaded Ukraine and by June 2022 about 20% of the Ukrainian territory was occupied by the Russian troops. The result was an internal displacement of thousands of wheat farm workers and devastating environmental damage leading to a worldwide food crisis as the land affected was the prime wheat producing region in Ukraine supplying about 30% of the world's demand.

Resolution by the member states of the United Nations General Assembly asking Russia to immediately withdraw was not heeded resulting in sanctions imposed on Russia triggering widespread economic impact including now shortage of oil supplies from Russia.

By the third quarter of 2022, the company encountered disruptions to its wheat supply from Ukraine, and the prospect of normalisation of wheat supplies seemed rather dim as the Russo-Ukrainian War dragged on into late 2023 with no sign of a ceasefire to the conflict.

The cost of wheat imports and oil increased dramatically and the company was unable to supply wheat flour at the agreed price under the contract. To sustain profitability, the company held several rounds of meetings with the government authorities to review the terms of the contract. In November 2023 the government agreed to a higher price for the wheat flour supply to be effective from 1 December 2023 upon the company making a one-time payment of RM300,000.

The company charged the RM300,000 as 'Contract Review Fees' in the accounts for the year ended 31 December 2023. The contract, which accounts for about 70% of the company's gross revenue, does not appear as an asset in the company's balance sheet.

### Required:

**With reference to the provisions of the ITA discuss the basis for Manaf & Lingam Flour Mills Sdn Bhd's claim of the sum of RM300,000; and the position that may be taken by the Director General of Inland Revenue.**

### Note:

You must quote a relevant case law or laws in support of your answer, indicating briefly the facts, argument and the decision and its relevance to the issue at hand.

(10 marks)

- (b) CJPJ Transport Sdn Bhd ('the company') is a locally incorporated company running a bus service within the townships of Cyberjaya and Putrajaya in Selangor. As part of the government's green program, the buses use hydrogen gas as fuel. The gas burns clean as compared to diesel fuel, but it is highly inflammable. Sometime in December 2023, one of the buses caught fire on account of a leak in the gas piping in the bus engine and it went out of control. The bus, which at that time was descending a steep hill along a row of shops, crashed into a crowded restaurant. The driver sustained serious injuries and was rushed to the hospital. He died three days later from his injuries at the Putrajaya Hospital.

Investigations after the crash revealed that the company had not maintained the bus according to the manufacturer's specifications; and had disregarded the scheduled replacement of the gas piping and valves in order to cut costs. The company admitted liability and paid RM200,000 as compensation to the driver's widow. The widow was however not satisfied with the quantum of the compensation and instituted legal proceedings demanding the company pay RM1,500,000. The company then engaged a legal firm to resist the claim, but the High Court hearing the case decided in favour of the widow. The company's appeal against the decision was dismissed by the Court of Appeal. In resisting the widow's claim the company incurred altogether legal fees of RM80,000.

In filing its tax return for the year of assessment 2023, the company claimed the sum of RM1,500,000 paid as compensation to the widow; and the legal fees of RM80,000 in arriving at the adjusted income of the business.

**Required:**

**With reference to the ITA and relevant case law, discuss the deductibility of the claims made by CJPJ Transport Sdn Bhd in arriving at the adjusted income for the year of assessment 2023.**

**Note:**

You must quote relevant case law and discuss the facts, arguments and decision in the case and its relevance to the issue at hand.

(10 marks)

**[Total: 20 marks]**

### Question 3

The taxpayer, Venture A+ Sdn Bhd, is a company incorporated in Malaysia which primarily engages in project development and investment holding. It commenced operations in 2015, initially focusing on subcontractor work. Unfortunately, from 2015 to 2017, Venture A+ Sdn Bhd failed to submit tax returns due to a lack of tax knowledge.

In 2018, the company held a directors' meeting at M Hotel, Kuala Lumpur, during which they decided to seek professional assistance. Consequently, they engaged an auditor for the preparation of audited accounts, tax computations, and the submission of tax returns.

During the assessment of Venture A+ Sdn Bhd's financial position, the auditor discovered a lack of proper and comprehensive records for sales and purchase transactions i.e. the delivery orders and invoices.

Undeterred by the absence of payment proof and invoices, the auditor proceeded with the audited accounts. Subsequently, the auditor emphasised the necessity for Venture A+ Sdn Bhd to maintain proper records.

On 22.2.2022, the Director General conducted a tax audit, revealing Venture A+ Sdn Bhd's failure to submit tax returns for 2015 to 2017. Additionally, the company had claimed deductions for unjustified expenses in 2018. Consequently, the Director General, requested an explanation and additional documents from Venture A+ Sdn Bhd.

Regrettably, Venture A+ Sdn Bhd failed to provide the requested documents, offering only a brief explanation. On 30.8.2022, the Director General issued Notices of Assessment for the years 2015 to 2018, imposing a 40% penalty under Section 113(2) of the ITA.

In response, Venture A+ Sdn Bhd, feeling aggrieved, served Notices of Appeal to the Director General on 23.9.2022. These Notices of Appeal were duly acknowledged, but a later discovery on 4.10.2022, revealed that the Notices of Appeal were undated.

On 22.4.2023, the Director General forwarded the case to the Special Commissioners of Income Tax.

- (a) **Discuss the taxpayer's obligation in filing tax returns and keeping proper records, as well as the consequences of failing to do so, referring to the prevailing tax law and case law.** (4 marks)
- (b) **Discuss the validity of the Notices of Assessment for the years of assessment 2015 to 2018 with reference to the prevailing tax law and case laws, including the burden of proving fraud, wilful default or negligence.** (6 marks)
- (c) **With reference to the case law, discuss if the penalty has been properly imposed.** (4 marks)
- (d) **Venture A+ Sdn Bhd would like to understand the appeal procedure under Section 99 of the Income Tax Act 1967. Please explain.** (6 marks)

**[Total: 20 marks]**

#### Question 4

TPR Enterprise (“**TPR**”) is a Singapore tax resident company incorporated in Singapore. It is in the business of supplying highly advanced semiconductor products to the international market from its manufacturing plant in Singapore. It is a trusted brand worldwide and its products enjoy premium status.

TPR had recently conducted a review of its market exposure and identified Malaysia as a new untapped market. Eager to kickstart its entry into Malaysia, TPR entered into an agreement with Sun Agents Sdn Bhd (“**SASB**”), an established Malaysian company in the business of selling high-tech products solely in Malaysia (“**the SASB-TPR Agreement**”). The terms of the Agreement were, among others, that SASB is required to purchase a minimum of 10,000 units of Zypher-1 chipsets per year from TPR. Both parties also agreed that the prevailing market price for the chipsets will be adopted for every transaction. In return, TPR will allow SASB to market the chipsets as TPR’s agents. However, the Agreement also explicitly disallows SASB from entering into any contracts on behalf of TPR. In the meantime, SASB continues to sell chipsets from other brands, including chipsets of TPR’s competitors. In YA 2023, TPR generated a gross income of RM 2,000,000.00 from its supply of Zephyr-1 chipsets to SASB.

#### Required:

- (a) List with reasons, any **TWO (2) objectives of a double taxation agreement.** (2 marks)
- (b) With reference to the **ITA and the Double Taxation Agreement between Malaysia and Singapore, discuss whether the profits of TPR can be taxed in Malaysia, and if so, to what extent.**

#### Notes:

1. You are encouraged to cite at least **TWO (2) relevant case laws** in your answer.
2. An extract of the **Double Taxation Agreement between Malaysia and Singapore** is attached.

(15 marks)

- (c) With reference to case law, state with reasons whether the **responsibility to account for withholding tax automatically follows a foreign entity’s liability to tax and whether Sun Agents Sdn Bhd’s payments to TPR Enterprise under the SASB-TPR Agreement are subject to withholding tax.**

(3 marks)

**DOUBLE TAXATION AGREEMENT BETWEEN MALAYSIA AND SINGAPORE**  
**P.U.(A): 200/2005**

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" 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; 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 firstmentioned 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 of 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.

**[Total: 20 marks]**

### **Question 5**

**(a)** Matthew is a poultry farmer who carries on chicken farming from his three farms in Penang for many years. With the assistance of his uncle, John, he would sell the live chickens at the markets in Penang.

Jay owns and runs a butchery in Seberang Perai for several years, specialising in chicken and other poultry products. Jay depends on a few regular suppliers from whom he sources and obtains live chicken. The chickens would then be slaughtered and prepared for sale at his butchery. Amongst others, Jay supplies fresh and frozen chicken products to various well-known restaurants and grocery chains in Malaysia. Jay and Matthew were acquainted but did not have any business dealings with each other until 2022.

In early 2022, Malaysia was affected by a chicken shortage due to global increases in the costs of chicken feed and an unprecedented outbreak of disease amongst the chicken population in many chicken farms. Matthew was largely unaffected and was in fact able to increase his production of chicken. Amongst others, he had stockpiled significant amounts of chicken feed and had also invested in the latest sanitation measures at his chicken farms which helped prevent the outbreak of diseases. However, Matthew was unable to easily sell the chickens anymore as his uncle John had recently passed away from Covid-19.

On the other hand, Jay found himself unable to obtain regular supplies of live chicken from his usual suppliers, all of whom were badly affected by the crisis. Upon the suggestion of a mutual acquaintance, Jay started placing a few orders from Matthew. After the first three orders, it was agreed between Matthew and Jay that the supply of chicken would be invoiced to Jay at cost, whilst Jay would pay Matthew half of his net profits. The other salient terms of the business arrangement were as follows:

- A formal written agreement was never executed. Instead, both parties were content to trust each other to implement the relevant business transactions in an expedient and satisfactory manner.
- No formal obligation was imposed on Matthew to supply chicken (whether exclusively or not) to Jay. Likewise, no formal obligation was imposed on Jay to purchase chicken from Matthew. However, during the period of this arrangement, Matthew did not supply chicken to any buyers other than Jay. Jay relied on Matthew for most of his chicken supply, although he continued to purchase limited quantities of chicken on an ad hoc basis from other chicken farmers as and when this became available.
- After the initial three orders, Jay ceased issuing formal Purchase Orders to Matthew. Orders were communicated informally via WhatsApp or telephone calls and were invoiced to Jay upon delivery. The invoices issued to Jay were based on the cost of the chicken plus delivery charges.
- Jay would pay half of the profits he generates from every delivery of chicken to Matthew after accounting for costs.
- In one particular month when Matthew suffered from a labour shortage on his chicken farms, Jay sent 6 of his workers to work on Matthew's farm. Jay did not recover these labour costs from Matthew, indicating that he would cover them on a goodwill basis.
- This business arrangement continued even after the chicken shortage crisis had ceased.

In mid-2023, after an audit, the Director General of Inland Revenue (“**DGIR**”) raised assessments on Matthew and Jay, contending that their profits from the business arrangement should be taxed as a partnership. Matthew and Jay disagreed, arguing that they should be both be taxed separately as sole proprietors. Matthew and Jay appealed to the Special Commissioners of Income Tax (“**SCIT**”).

**Required:**

**Based on the facts above, and by reference to case laws, discuss whether the Special Commissioners of Income Tax should rule in favour of the Director General (on the basis that the business is a partnership) or Matthew and Jay (on the basis that their respective businesses are sole proprietorships)?**

(12 marks)

**Note:**

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

- (b) Alexa is a skilled software developer, who is highly proficient in coding and creating customised software applications and solutions.

Henry, an experienced tech entrepreneur and satisfied client of Alexa's software creations, proposed that he (Henry) should handle the marketing and sales of the software on Alexa's behalf. Henry suggested doing so at his own costs, which would include creating a website to better showcase Alexa's services and placing advertisements on various online platforms.

In return, Alexa agrees to exclusively sell his software through Henry, and Alexa commits to sharing half of the monthly profits from the software development business with Henry.

- (i) Alexa issued a letter to Henry stating as follows:

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

Henry issued a reply letter to Alexa stating that:

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

**Required:**

**By reference to the case of *Fenston v Johnstone* (23 TC 29), advise Alexa and Henry 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) Notwithstanding the letters above, Alexa and Henry proceeded to register a Certificate of Registration of Business which states both their names as joint and equal proprietors of the business.

**Required:**

**By reference to the case of *SK v Ketua Pengarah Hasil Dalam Negeri* (1996) MSTC 2,670, advise Alexa and Henry on whether and to what extent they would be able to defend the position that they are not in a partnership in light of the existence of the Certificate of Registration of Business?**

(4 marks)

(sub-total: 8 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

- (a) Leafy Sdn Bhd (“Leafy”) is in the business of printing and distributing flyers.

In June 2021, the Inland Revenue Board (“IRB”) conducted a tax audit on Leafy and disallowed certain expenses claimed. A notice of additional assessment dated 12.4.2022 for the year of assessment (“YA”) 2019 was subsequently raised. Leafy disputed the assessment and filed an appeal to the Special Commissioners of Income Tax.

As the assessed tax remained unpaid, on 1.3.2023, a civil action was commenced to recover the outstanding income tax for the YA 2019. In an application for summary judgment against Leafy, the Director General claimed that the notice of additional assessment had been posted to Leafy’s registered office. The Director General produced a record book showing the date on which the notice was posted to Leafy. Leafy has denied receiving the notice of additional assessment.

The IRB also produced a certificate confirming Leafy’s outstanding tax, giving the name and address of Leafy and the amount of tax due from Leafy. The certificate was signed by the Assistant Director of Inland Revenue. Leafy is of the view that only the Director General of Inland Revenue is authorised to sign the certificate.

### Required:

**With reference to the Income Tax Act 1967 and the relevant case law, discuss whether there is any basis for Leafy to challenge the application for summary judgment.**

(12 marks)

- (b) Lucy runs a textile business. She frequently travels abroad for work.

On 22.5.2020, the Director General obtained judgment against Lucy, as administratrix of the estate of the late Cecil for income tax due from Cecil. On 3.7.2022, the Director General issued a certificate restricting Lucy personally and barring her from leaving Malaysia until she had settled the outstanding tax due from Cecil. The Director General had served a notice of the issue of the certificate to Lucy on 4.8.2022.

On 15.12.2022, Lucy applied for the renewal of her passport. The IRB office informed Lucy that the certificate would be revoked if she furnished security in the form of a bank guarantee for the amount of tax still outstanding. The revocation of the certificate would enable Lucy to be issued with a new passport.

Lucy takes the position that the certificate should not have been issued as she did not intend to leave Malaysia permanently and further, she did not personally owe the tax.

### Required:

**With reference to the Income Tax Act 1967 and the relevant case law, advise Lucy if there is any merit in challenging the certificate issued by the Director General of Inland Revenue.**

(8 marks)

**[Total: 20 marks]**

**(END OF QUESTION PAPER)**