



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

ADVANCED TAXATION 2

SEPTEMBER 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.
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) Bina Kedai Sdn Bhd ('BK') is a local resident company engaged in the development and sale of real properties. In the year 2015 it had built 30 units of shophouses on the outskirts of the Kajang town in Selangor.

BK had serious cash flow issues and sought the advice from its tax agent, who suggested that the company could delay the sale of the properties, and let it out for rent – and avoid paying high income tax under the ITA on profit from the sales.

The properties could be sold later as disposal of investments, and any gains made will only attract real property gains at a much lower rate than corporate income tax. BK was agreeable, especially to the idea of paying less tax.

The developed properties were then arranged to be owned by Sewa Kedai Sdn Bhd ('SK') as investment properties.

SK, an investment holding company fully owned by BK, then managed the shophouses, renting them to various tenants and providing comprehensive maintenance and support services to the tenants. Tax returns were duly filed under the ITA and the rental income was treated as business income falling to be assessed under section 4(a) of that Act.

In the year 2023, SK sold the entire 30 units of the shophouses and filed a return under the Real Property Gains Tax Act 1976 reporting the gains arising from the sale of the shophouses.

### Required:

- (i) **Express an opinion on whether the transactions by the companies, namely Bina Kedai Sdn Bhd and Sewa Kedai Sdn Bhd are within the scope of legitimate tax planning without any elements of tax avoidance or evasion.**

(3 marks)

- (ii) **With reference to the ITA and the Real Property Gains Tax Act 1976, advise Bina Kedai Sdn Bhd the view that may be taken by the Director General of Inland Revenue in respect of the gains from the sale of the shophouses. Support your advice by citing relevant provisions of the ITA and a decided case law.**

(3 marks)

- (b) Ms Chan Siew Lin ('Ms Chan') calls herself an 'accounting advisor' and works independently - keeping business records, preparing the accounts and the completion and submission of the income tax return to the Inland Revenue Board for her clients who are small scale companies, sole proprietorships and partnerships. One of her clients is Mico Furniture Manufacturing Sdn Bhd ('Mico') in Broga, Selangor.

Mico has not kept proper records and asked Ms Chan to help prepare the accounts, complete and file the tax return for the year of assessment 2021. Ms Chan then worked on the available patchy records, and where necessary, using estimates and orally confirmed figures, prepared the final accounts and filled up the tax return. It was signed by Mico's director and submitted to the Director General of Inland Revenue within the deadline.

### Required:

- (i) **With reference to the ITA, explain the responsibility of a person who assists in or advises with respect to the preparation of a return for tax of another person.**

(2 marks)

- (ii) What are the implications if such assistance results in the understatement of the liability of the tax of another person in the context of the action of Ms Chan Siew Lin, Mico Furniture Manufacturing Sdn Bhd and the director of Mico Furniture Manufacturing Sdn Bhd?

(2 marks)

- (iii) How could Ms Chan Siew Lin and the director of Mico Furniture Manufacturing Sdn Bhd avoid any inference that they had acted wilfully or with intent to evade tax or assist any other person to evade tax?

(2 marks)

- (c) En Kassim Abdullah ('Kassim') is a senior executive in a real property company. In 2023 the Inland Revenue Board officers investigated his tax affairs. Based on documents obtained during a raid, and subsequent interviews with En Kassim, a senior investigations officer had pieced together the following information:

1. Landed properties

Kassim had purchased a piece of land in 2021 costing RM660,000. Sometime in early 2023 an adjoining piece of land came up for sale and Kassim quickly bought it, agreeing to pay RM1,980,000 which was actually 15% higher than the market value of the land. Being in the property line he knew it was well worth the price paid on account of the potential appreciation prospects. At the end of December 2023, the market value of the properties was RM3,500,000.

2. Bungalow

In 2023, Kassim bought a bungalow in Bangi for RM1,320,000 and rented it out. He paid RM396,000 as down payment and took a loan for the balance. No instalments were paid yet during the year.

3. Motor car

Previously Kassim had relied on the company's official car for both his official and private travelling needs. However, as part of the company's cost cutting measures, commencing in 2023, company car benefits were withdrawn.

Kassim then bought a new car during the year 2023 costing RM237,600. He took a loan of RM210,000 to finance the purchase. For the year ended 31 December 2023 he had paid instalments totalling RM19,800.

4. Employment income

As a senior executive, Kassim receives a gross income of RM264,000 per annum from his employment. He contributes 11% of his gross income to the employment provident fund (EPF), while his employer contributes another 10%.

5. Rental income

It was discovered that Kassim had not reported his rental income for the year 2023. The senior officers had worked out the net income at RM47,520 and Kassim had agreed to this figure.

6. Private and personal expenses

Based on discussions with Kassim and his tax agent, it was mutually agreed that the sum amounting to RM200,000 is a reasonable figure in the context of Kassim's lifestyle.

The senior revenue officer has passed the file containing the above information to you to work out the omitted income that may be liable to income tax, in preparation for a joint meeting with Kassim, his tax agent and his lawyer scheduled for the following week.

**Required:**

**Based on the information in the file, work out the omitted income that should be brought to charge to income tax in respect of En Kassim Abdullah for the period covering the years of assessment 2021 to 2023, using the capital accretion method.**

(8 marks)

**[Total: 20 marks]**

## **Question 2**

Venture capital is financial capital provided by individuals, companies or venture capital companies to high potential and high-risk growth start-up companies at early stage. Investors, referred to as venture capitalists take very high risks when investing in a start-up venture company. In order to encourage venture capital activities in Malaysia and to support the start-up companies, the Malaysian Government has announced a number of incentives for the industry.

**Required:**

- (a) Explain the tax exemption incentive for a venture capital company investing in a venture company under the Income Tax (Exemption) (No. 2) Order 2022.**  
(4 marks)
- (b) Explain the conditions to qualify for the above tax exemption incentive.**  
(6 marks)
- (c) Samuel, who is a retiree, invested in AI Sdn Bhd which was set up to undertake a new business venture in artificial intelligence. Samuel took up 5% of the shares in AI Sdn Bhd at a cost of RM1 million. When AI Sdn Bhd went into listing, Samuel disposed of all his investment in AI Sdn Bhd for RM2 million. Samuel has no other income or investments other than his pension income.**

**Required:**

**Discuss the income tax implications from Samuel's perspective.**

(2 marks)

- (d) Zoom Sdn Bhd also made an investment of 20% ordinary share capital in AI Sdn Bhd for an amount of RM5 million on 1 March 2020. Zoom Sdn Bhd increased its investment in AI Sdn Bhd on 1 November 2021 in the form of early-stage financing for an amount of RM2 million. When AI Sdn Bhd went into listing on 1 April 2023, Zoom Sdn Bhd disposed of its entire investment in AI Sdn Bhd. Zoom Sdn Bhd obtained certification from the Securities Commission (SC) that the investment in AI Sdn Bhd qualifies for the venture capital tax incentive.**

**Required:**

**Discuss the income tax implications on the disposal of investment by Zoom Sdn Bhd.**

(6 marks)

- (e) Skype Bhd, a venture capital company enjoying a tax exemption under Income Tax (Exemption) (No. 2) Order 2022 also took up 5% ordinary share capital in AI Sdn Bhd for an amount of RM1 million.

**Required:**

**Discuss whether Skype Bhd is allowed to claim deduction on the cost of investment in AI Sdn Bhd.**

(2 marks)

**[Total: 20 marks]**

### Question 3

- (a) **Describe the exemptions available under Schedule A, Schedule B and Schedule C of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018.**

(8 marks)

- (b) ExpertIT Sdn Bhd is an information technology service provider and it is registered for service tax to provide web hosting services to Malaysian clients. It is a wholly-owned Malaysian subsidiary of ExpertIT Group Limited based in Singapore.

Each year, ExpertIT Group Limited will charge ExpertIT Sdn Bhd the following:

	RM
Advertising fees for promotions in Singapore	400,000
Management fees	300,000

In addition to the above, ExpertIT Sdn Bhd also acquires web hosting services from an unrelated IT company based in Hongkong. This IT company is a large global IT service provider known to provide web hosting services to many companies in Malaysia and it is registered for service tax on digital services.

**Required:**

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

- (i) **The implications of service tax on ExpertIT Sdn Bhd for its acquisition of the above services. State the applicable legislation.**
- (ii) **Whether ExpertIT Sdn Bhd is eligible to any service tax relief or exemption of service tax on the above services it acquired. State the applicable legislation.**

(12 marks)

**[Total: 20 marks]**

#### Question 4

University Eastlake is a private higher educational institution which is registered with the Ministry of Education, Malaysia. University Eastlake is a resident company in Malaysia and recruits both local and international students. To expand the market, the following expenses were incurred in the year of assessment (YA) 2023.

No.	Type of Expenses	RM
1	Travel fare (economy class) – (2 person)	8,000
2	Cost of accommodation (RM700 x 6 days x 2 person)	8,400
3	Sustenance (RM300 x 6 days x 2 person)	3,600
4	Salaries for the 2 marketing staff	96,000
5	Cost of brochures and pamphlets printed for distribution overseas	5,000
6	Cost of advertisement in a media outside Malaysia	3,000
7	Participation in approved overseas education fair	2,200

**Required:**

- (a) (i) **Compute the expenses deductible under Section 33(1) and allow as double deduction incurred in the YA 2023.**  
(8 marks)
- (ii) **State any four (4) qualifying criteria for double deductions on expenses relating to promotion of export by University Eastlake.**  
(4 marks)
- (b) In 2003, the Government identified 5 sectors of professional services to nurture and to promote their services abroad. Expenses relating to promotion of export are eligible for double deductions.

**Required:**

- (i) **To identify five (5) sectors of professional services that are eligible for double deduction incentives.**  
(5 marks)
- (ii) **To identify any three (3) market exploration expenses that are eligible for double deduction incentives.**  
(3 marks)

**[Total: 20 marks]**

## Question 5

Double tax treaty (“DTA”) is an agreement signed between two (2) sovereign states for avoidance of double taxation, promoting flow of investments and prevention of fiscal evasion.

### Required:

- (a) (i) **Explain your understanding of double taxation and how DTA achieves its objectives.**

(6 marks)

- (ii) **Explain what it means the “prevention of fiscal evasion” in the context of DTA.**

(4 marks)

- (b) (i) **Article 3(1)(d) defined the term “international traffic”. What is your understanding of the term international traffic and how is the profit from international traffic subjects to tax between two (2) contracting states?**

**Please refer to Article 3 of the UN Model Convention as attached.**

(4 marks)

- (ii) **Bedenland and Putensia are two countries having large coastlines located across the Pacific Ocean. Both countries have signed a DTA based on the UN Model Convention.**

Yuri Corp, a cruise liner operator from Putensia operates a cruise leisure line DreamCruise in Bedenland to cater for variety of customers. The tour package consists of a round trip from the southern port to the northern port in Bedenland. Part of the voyage takes place outside Bedenland with no stopover port during the trip. Yuri Corp’s effective management is located in Putensia.

**Based on the above, explain with reasons whether Yuri Corp’s cruise is considered as international traffic based on the definition under Article 3(1)(d).**

(6 marks)

### Article 3 GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

- (a) The term “person” includes an individual, a company and any other body of persons;
- (b) The term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (c) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (d) The term “international traffic” means any transport by a ship or aircraft, except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;
- (e) The term “competent authority” means:
  - (i) (In State A): .....
  - (ii) (In State B): .....
- (f) The term “national” means:
  - (i) any individual possessing the nationality of a Contracting State

- (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
- (g) The term “recognized pension fund” of a Contracting State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:
  - (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities, or
  - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements to which subdivision (i) applies.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

**[Total: 20 marks]**

### **Question 6**

Many businesses are increasingly going digital. However, the global tax system is still focussed on the traditional “brick and mortar” or the physical type of economy. The Organisation for Economic Co-operation and Development (OECD) recognised the changes in business trend and has issued Base Erosion and Profit Shifting (BEPS) 15-point Action Plan in October 2015 to address gaps in international taxation.

OECD issued BEPS Action 1 Report on “Addressing the Tax Challenges of the Digital Economy” where taxing digital business has become very challenging in the current economy. It identified a number of broader tax challenges that the current tax system that have to deal with in the face of digitalisation of the economy.

**Required:**

**(a) What are the tax challenges that the current tax system brought about by the digitalisation of the economy?**

**(12 marks)**

**(b) What are the implications facing both businesses and tax authorities on taxing digital businesses based on current tax standards?**

**(8 marks)**

**[Total: 20 marks]**

**(END OF QUESTION PAPER)**