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

PROFESSIONAL EXAMINATION

FINAL LEVEL

REVENUE LAW

MARCH 2025

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 <u>FIVE</u> QUESTIONS.**

2. The Income Tax Act 1967 (as amended) is referred to as ITA and the Real Property Gains Tax Act 1976 as RPGTA.

3. Each answer should begin on a separate answer template.

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

Question 1

(a) **Discuss briefly the significance of the words *'in respect of having or exercising the employment'* in the derivation of the employment income with reference to section 13 of the ITA, and relevant case laws, expressing an opinion where appropriate.**

(10 marks)

(b) Mr Matador Gonzales ('Gonzales') is a Mexican-American from California, the United States of America. He is a professional actor, appearing in American television sitcoms, comedy shows and movies. He goes by his stage name 'Gonzo' (meaning somebody bizarre, outrageous or unconventional), and has a large following in Malaysia, the Philippines and Singapore.

He had recently taken a break from the entertainment industry in the United States and is living in Singapore with his companion, Jessica Chan. Nevertheless, he does perform occasionally to earn some money to sustain himself and his companion. A local entertainment firm ('the firm') that operates a pub in Kuala Lumpur engaged Gonzales to perform comedy sketches under a one-year contract at its pub.

Under the contract, Gonzales will perform during the weekends at the pub at specified times, and will be paid at the end of each month. He will be provided with any basic props or setting that may be required for his comedy sketches; and accommodation, meals, and insurance for the period of his stay in Malaysia for the performances. Gonzales will travel from Singapore for his shows in Kuala Lumpur, and this travel will be arranged and paid for by the firm. In Malaysia, Gonzales is prohibited from performing anywhere or for any occasion other than at the firm's pub; but in Singapore, Gonzales performs from time to time at the city's various entertainment spots.

Mr Daniel Kumar, the owner of the firm that operates the pub has approached you to discuss the application of the local tax laws in the case of Gonzales for tax compliance purposes.

Required:

Explain to Mr Daniel Kumar the taxation aspects of income from an employment and one from the exercising of a profession, discussing the income tax implication in both cases. You should make specific reference to the provisions of the ITA and relevant case laws and advice Mr Daniel Kumar on the stand the Director General of Inland Revenue may take with respect to the assessment to be made on Mr Matador Gonzalez.

(10 marks)

[Total: 20 marks]

Question 2

(a) *'If the Company had started to pay these pensions and had paid them year by year, I understand it is not disputed that those payments would be a business expense, sums laid out for the purposes of the business, according to the Act, and year by year those sums would have been deductible.*

The question is whether a lump sum ... paid at the beginning to prevent these sums having to be paid later, can be deducted?

Rowlatt, J., (High Court) in *British Insulated and Helsby Cables Ltd v Atherton* (10 TC 155).

Required:

Discuss briefly the *dicta* of Rowlatt, J., above in the context of the facts and decision in the case of *British Insulated and Helsby Cables Ltd v Atherton* (10 TC 155); and the principles and considerations taken into account in allowing, or disallowing, a lump sum expenditure incurred in the course of carrying on its business, both at the High Court and at the House of Lords, mentioning the relevant case laws deliberated with regards to those principles and considerations.

(10 marks)

(b) Tangkap Ikan Sdn Bhd ('TISB') is a local fishing company operating a single fishing boat, the *Naga Laut*, that it bought in 2019. The fishing operations, with 12 crew members including the captain, are carried out in the coastal waters of Peninsular Malaysia.

In the middle of the year 2020 the boat, a large 30-metre long vessel strayed into the Indonesian territorial waters during a fishing trip, when its navigation and communication equipment was severely damaged in a violent storm.

The boat and the crew were detained by the Indonesian authorities for illegally encroaching into their territorial waters. The captain and the crew were shortly after jailed and the boat confiscated. Following diplomatic negotiations between the governments of Malaysia and Indonesia, the captain and the crew were released from jail two years later, but the boat was not returned.

Following legal actions initiated by TISB, the boat was finally returned in February 2024. The boat was in a dilapidated and deplorable condition when handed over to TISB by the Indonesian marine authorities. During the more than three years the boat was detained in Indonesia, it had apparently been neglected with no attention having been paid to keeping her in good repair as it should have been under normal circumstances.

TISB then filed a claim of RM1.3 million as compensation with the Indonesian marine authorities for damages to the boat. In an out-of-court settlement (to avoid the draggy court proceedings) TISB accepted RM500,000 in a final settlement. No recoveries were made from insurance as the insurance company refused to pay TISB any sums on the grounds that the boat's detention by the Indonesian authorities was an event not covered by the insurance contract.

To continue its fishing business, TISB repaired and refurbished the boat spending RM950,000 to bring it to a sea-worthy condition; and she set sail to sea for the first time since her detention, in late November 2024.

For the year ended 31 December 2024 TISB's accountant, Ms Kamala credited the sum of RM500,000 as 'Compensation Received from Foreign Government for Boat Detained', and debited RM950,000 being 'Repair and Refurbishment of the *Naga Laut*'.

Ms Kamala wants a confirmation from you whether this accounting treatment is proper, and the income tax implication of the entries so that she could proceed to prepare the income tax computation for the year of assessment 2024.

Required:

Comment on Ms Kamala's accounting treatment of the compensation and the repairs; and advise her on the income tax implications of those entries in the profit and loss account of Tangkap Ikan Sdn Bhd for the year ended 31 December 2024 in respect of *Naga Laut*.

Note:
You are required to refer to the provisions of the ITA and discuss briefly the facts and the decisions in the relevant cases that you would cite in support of your advice to Ms Kamala.

(10 marks)

[Total: 20 marks]

Question 3

(a) Two companies, Casone Sdn Bhd and Deria Sdn Bhd, entered into a collaborative arrangement to trade imported goods during a period of market instability. Under this arrangement, Casone Sdn Bhd supplied the goods at cost price to Deria Sdn Bhd, and Deria Sdn Bhd sold the goods to customers. Instead of agreeing on fixed payments or commissions, Deria Sdn Bhd paid Casone Sdn Bhd 50% of the net profits earned from the sales. Both companies also bore joint risks, such as price fluctuations, shipping delays, and cancellations, with costs being shared proportionately. The arrangement operated without a written contract and ended after six months, with a final accounting and division of profits.

The revenue authorities assessed the profits arising from the arrangement as joint income under the partnership arrangement, treating Casone Sdn Bhd and Deria Sdn Bhd as partners for tax purposes. Both companies disputed this assessment, asserting that their business relationship was one of supplier and distributor, not a partnership, and therefore should not be taxed as joint income.

Required:

Discuss whether the arrangement between Casone Sdn Bhd and Deria Sdn Bhd constitutes a partnership under the provisions of the ITA.

Note:
Candidates are required to support the answer with reference to the provisions of the ITA and relevant case laws. You should also briefly state the facts and arguments in the case or cases you cite in support of your answer.

(15 marks)

(b) Amanda is a pastry chef who specialises in custom-made desserts but struggles with marketing and selling her creations.

Ben, a marketing consultant and loyal customer of Amanda, suggested that he could market and sell the desserts on Amanda's behalf. Ben proposed to do so at his own costs and expenses, including hiring a photographer to showcase the desserts and placing advertisements on various social media platforms.

In return, Amanda agreed to sell her desserts exclusively through Ben and to pay him 50% of all the profits from her business on a monthly basis. Ben had however issued a letter to Amanda stating categorically that the arrangement they have between them with respect to the making and selling of the desserts is not a partnership – and Amanda, grateful for the help from Ben, had agreed to this existing 'arrangement'.

Notwithstanding the letters above, Amanda and Ben proceeded to register a Certificate of Registration of Business which states both their names as joint and equal proprietors of the business.

Required:

Advise Amanda and Ben on whether, and to what extent, can they defend the position that they are not in a partnership in respect of the business, in light of the existence of the Certificate.

Note:
Candidates are required to support the answer with reference to the relevant case law or laws. You should also briefly state the facts and arguments in the case or cases you are citing in support of your answer.

(5 marks)

[Total: 20 marks]

Question 4

(a) Stark Industries Sdn Bhd ("the Company") is a Malaysian incorporated resident company engaged in the manufacturing and development of advanced defence technologies. The Company was involved in a government contract that required significant upfront investment in research and development. Due to the extended payment cycle of government contracts, the Company faced delays in receiving payments for completed milestones.

To mitigate financial risks, the Company secured a financial arrangement with Umbrella Corporation Bank, which provided short-term credit facilities repayable in 12 monthly instalments at an interest rate of 3% per annum. The interest charged by the bank on credit facilities amounted to the following sums:

Year of Assessment	Loan Amount (RM)	Interest Expenses Incurred (RM)
2019	10,000,000	300,000
2020	10,000,000	300,000
2021	10,000,000	300,000
Total	30,000,000	900,000

However, due to delays, the Company was unable to access its payments on time and suffered financial strain. In response, the Company initiated legal proceedings against the government, seeking compensation for delayed payments, including statutory interest on the outstanding sums. The court ruled in favour of Stark Industries Sdn Bhd, awarding the Company both the outstanding payments and an additional compensatory interest sum as follows:

Year of Assessment	Statutory Interest Awarded (RM)
2019	500,000
2020	1,200,000
2021	900,000
Total	2,600,000

The Company's accounts are closed on 31 December each year.

Required:

(i) **Based on the decision in *Westminster Bank v Riches (28 TC 159)*, discuss whether statutory interest awarded to Stark Industries Sdn Bhd for the years of assessment 2019, 2020, and 2021 are taxable.**

Note:
You are required to state briefly the facts, arguments, and the decision in the case of *Westminster Bank v Riches (28 TC 159)* and explain how this case applies to the scenario above.

(7 marks)

(ii) **With reference to the relevant ITA provisions, state, with reasons, whether Stark Industries Sdn Bhd's interest expense paid to Umbrella Corporation Bank is deductible for YA 2019, 2020 and 2021.**

(3 marks)

(b) Aerotech Sdn Bhd, a company specializing in the manufacturing of high-performance automotive engines, has entered into licensing agreements with various international companies. Under these agreements, Aerotech Sdn Bhd receives lump sum payments and ongoing royalties in exchange for granting the right to use its patented technology and providing technical assistance.

Required:

(i) **Explain the scope of tax on royalty in Malaysia, identifying the relevant statutory provision, defining "royalty" as per Malaysian tax law, and whether withholding tax obligations apply to payments of royalty.**

(3 marks)

(ii) **Discuss whether the lump sum payments and ongoing royalties received by Aerotech Sdn Bhd under its licensing agreements with the various international companies should be classified as revenue or capital receipts for income tax purposes. In your discussion, examine the key principles distinguishing revenue from capital receipts, referring to relevant case law, including *Jeffery v Rolls Royce Ltd (40 TC 443)*, to support your discussion.**

(7 marks)

[Total: 20 marks]

Question 5

(a) Greenland Sdn Bhd ('Greenland') is involved in the landscaping business. Its director, Ravin, is the sole shareholder of Greenland. On 5.3.2019, Greenland acquired a piece of land in Johor Bahru for RM6 million.

By a sale and purchase agreement dated 25.5.2022, Greenland agreed to sell the piece of land to Flowerpot Sdn Bhd ('Flowerpot') at an agreed price of RM5 million. Ravin's wife, Patricia, is the sole shareholder of Flowerpot. The land was duly transferred to Flowerpot by the execution of a Memorandum of Transfer on 20.1.2023.

In July 2024, the Director General of Inland Revenue assessed Greenland to real property gains tax, deeming the disposal price as RM8 million.

Ravin of Greenland is a little puzzled by the assessment as his understanding is that the property was disposed of for RM5 million as per the sale and purchase agreement.

He has approached you for clarification and advice on whether he should appeal against the assessment.

Required:

With reference to the RPGTA explain to Ravin the legal concepts of acquisition, disposal and the values of real property to be taken into account in the determination of a chargeable gain, underscoring your explanation with a relevant case law highlighting the issues of control, ownership and transfers.

(12 marks)

(b) Agriculture Sdn Bhd ('Agriculture') is engaged in the business of rubber plantations. It owns and operates rubber plantations on several pieces of agricultural land ('the Land') in the State of Perak.

On 20.8.2023, Agriculture entered into a conditional sale and purchase agreement ('SPA') with Cocoa Sdn Bhd ('Cocoa') to sell the Land for RM20 million. The SPA has an express term providing that the intended sale of the Land is subject to the approval of the Perak State Authority pursuant to the National Land Code.

The Perak State Authority gave its approval for the sale of the Land on 20.1.2024 and the Land was transferred to Cocoa on 10.3.2024.

Required:

With reference to the RPGTA and relevant case law or laws, advise Agriculture Sdn Bhd on the date of disposal of its agricultural land.

(4 marks)

(c) On 5.10.2018, ABC Sdn Bhd ('ABC') entered into a sale and purchase agreement with XYZ Sdn Bhd ('XYZ') to sell to XYZ a piece of land located in Seremban. Subsequently, the Director General of Inland Revenue ('DGIR') raised an assessment for real property gains tax on ABC, which was then duly served on ABC.

ABC did not make any payment of the tax assessed by the DGIR.

Consequently, a civil action was filed to recover the tax due and payable by ABC. In an application for summary judgment against ABC, ABC claimed that, due to the default in payment of the purchase price by XYZ, the land has not been disposed of yet and there was no chargeable gain under the RPGTA.

Required:

In the context of recovery of tax under the RPGTA, and relevant case law, discuss whether there is any basis for ABC Sdn Bhd to challenge the application for summary judgment.

(4 marks)

[Total: 20 marks]

Question 6

(a) ABC Sdn Bhd ("**ABC**") is one of the wholly owned subsidiaries of XYZ Foundation. The Foundation was recognised as an institution of public character under the Income Tax Act 1967 ("**ITA**"). This means that gifts of money made to the XYZ Foundation were tax deductible in the hands of the donor. In 2010, the Ministry of Finance issued a directive expressing the government's desire for subsidiaries to donate their surplus funds to the XYZ Foundation. In compliance with this directive, ABC began donating its surplus funds to the foundation over the next seven years.

Subsequently, Director General of Inland Revenue (DGIR) reviewed these transactions and alleged that they were part of a tax avoidance scheme under Section 140 of the ITA. As a result, the DGIR sought to disallow the donation as a gift under Section 44(6) of the ITA. The DGIR then issued a Notice of Additional Assessment ("**Forms JA**") for the YA 2010 to YA 2017 having made such adjustments as he thought fit.

However, the Form JA did not specify the sub-paragraph of Section 140 under which ABC's transactions were disregarded, varied or any adjustments made to counteract the effect of those transactions.

Furthermore, the DGIR did not provide ABC with any particulars of the adjustments made to the transactions in raising the additional assessment.

ABC, aggrieved by the additional assessment, objected on the grounds that the DGIR's actions did not comply with the procedural requirements set out in the ITA.

Required:

(i) With reference to relevant case laws, discuss whether the donations made by ABC Sdn Bhd to the XYZ Foundation for the years of assessment 2010 to 2017 constitute tax avoidance and fall within the scope of Section 140 of the Income Tax Act 1967.

(6 marks)

(ii) With reference to relevant case laws and provisions in the ITA, discuss the basis on which ABC Sdn Bhd can contest the DGIR's additional assessment for the years of assessment 2010 to 2017, including the validity of the Form JA and the additional tax raised.

(8 marks)

(b) American Innovations Ltd ("**AIL**"), a United States-based multinational corporation, established a wholly-owned subsidiary in Malaysia, Air Innovations Malaysia Sdn Bhd ("**AIM"**), to develop and test air taxi prototypes for the Asian market. Under AIM's Articles of Association, management was vested in its Board of Directors in Kuala Lumpur, with powers of delegation.

In 2019, Mr Nathan, an AIL engineer, was seconded to Malaysia to oversee AIM's operations. He managed AIM's day-to-day affairs but reported key updates to AIL's board, which retained overall decision-making authority.

Ms Lee, a director of AIM, was appointed Resident Director in Singapore to manage operations related to an AIM's joint venture there. Operating under a power of attorney, she conducted business from Singapore with little interference from AIM's board. Separate accounts were maintained in Singapore for the joint venture operations, but profits were incorporated into AIM's financial statements. No monies from the joint venture operations were remitted to Malaysia.

During the year 2020, significant strategic decisions for AIM were made by AIL's board in the United States, while day-to-day meetings were held in Malaysia. But in June 2021, AIL's board convened in Malaysia for the first time, approving a testing facility in Johor Bahru and delegating further decision making authority to AIM's management.

Required:

The management of American Innovations Ltd, and Air Innovations Malaysia Sdn Bhd now seek your advice on the tax residence status of the two companies in Malaysia for the years of assessment 2023 and 2024 under the ITA.

(6 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)