FINAL LEVEL
REVENUE LAW

OBJECTIVE:

To examine the understanding, interpretation and application of legal issues and case law decisions and the provisions of the income tax statutes.

1. To understand the legal basis of the various tax issues.
2. To apply case law principles in a given tax scenario to argue a case.
3. To compare and contrast conflicting case law decisions.
4. To critically evaluate tax issues of form vs substances and deliberation of issues by the court.

CONTENTS:

The following topics below are to be studied with reference to legal issues and case laws. Students are required to study the relevant cases listed in the *List of Tax Cases* provided below.

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(A) The Basis of Malaysian Taxation

1. Scope of charge–derived scope, world scope and its advantages and disadvantage
2. Derivation of Income Section 3 of the Income Tax Act (“the Act”)
3. Classes of Income Section 4, 4A, 4B and 4C of the Act

(B) Employment Income:

1. Determination of residence of individuals
2. Distinctions between profession and employment
3. Meaning of having or exercising an employment
4. Derivation of employment income
5. Gross income from employment
6. Deductible expenses
7. Exemptions

(C) Business Income

1. Business, trading and adventure in the nature of trade
2. Meaning of adventure or concern in the nature of trade
3. Badges of trade
4. Mutual trading
5. Illegal activities – issues of law, ethics, moral and revenue considerations

(D) Partnerships, Limited Liability Partnerships and Other Entities

1. Legal aspects of Partnership and Limited Liability Partnership
2. Types of partners
3. Legal existence of partnerships
4. Tax aspects
5. Other taxable persons such as trusts including Real Estate Investment Trust and Property Trust Fund, estates, settlements and co-operative societies

(E) Capital and Revenue Expenditure

1. The Capital/Revenue distinction and related case laws
2. Deductible expenses (general rule and specific provisions)
3. Disallowed expenses

(F) Deductions for Capital Expenditure

1. The law on Capital Allowances and Charges:
    a. Definition of qualifying capital expenditure on plant and machinery
    b. Special cases
2. Controlled sales
3. Industrial Building Allowances (IBA):
    a. Legal Definition of industrial building and activities that do not fall within the definition - manufacturing, processing and processing
    b. Study of litigated cases
4. Reinvestment Allowance Intention of granting the allowances, principles and practice, study of recent cases on the related issues

(G) Companies and bodies of persons

1. Legal criteria in residence status and its significance for taxation
2. Transfer pricing and the rights of relevant countries to tax income
3. Anti-avoidance provisions - Court deliberations on form vs substances

(H) Dividends, Interest, Royalties, Annuities, Rents, Premiums, Discounts, Periodical Gains and Other Gains or Profits

1. Case law principles
2. Basis of assessment
3. Derivation
4. Gross income
5. Adjusted income
6. Exemptions

(I) Real Property Gains Tax

1. Principles and scope of charge
2. Chargeable assets (including leases & options) and persons
3. Exemptions
4. Computation of chargeable gains and allowable losses
5. Tax rates
6. Circumstances of 'disposal price deemed equal to acquisition price' & 'no loss & no gains' treatment
7. Connected persons
8. Circumstances to apply market value
9. Conditional contract
10. Returns and assessments
11. Payment and recovery of tax
12. Responsibilities of disposer/acquirer
13. Consequences of non-compliance
14. Real property company (RPC)

(J) Double Taxation Agreements and the Legal Principles

1. Double taxation and the role of tax conventions
2. Purpose of tax treaties and avoidance of double taxation
3. Concept of residence
4. Permanent establishment
5. Taxation of business profits
6. Taxation of interest
7. Taxation of royalties
8. Taxation of dependent personal services
9. Taxation of other income

(K) Returns, assessment and appeals

1. Tax returns - Statutory duty of taxpayer and failure to submit tax returns
2. Assessments - Time bar assessments, service of notice
3. Penalties
4. Appeals
    a. Special commissioners of Income Tax
    b. Relief for error or mistakes
    c. Fraud and time barred

(L) Collection and recovery – legal aspects, conflict between payment and appeal against tax

1. Liability to pay and the application of Section 103 of the Act
2. Tax installments
3. Recovery of unpaid tax and the application Section 106 of the Act
4. Prevention from leaving Malaysia
5. Withholding tax

READING LIST – REVENUE LAW

1. **Income Tax Act 1967.** (as amended)
2. **Public Rulings** and **Operational Guidelines**
3. Dr Nakha Ratnam Somasundaram. **Revenue Law Tax Cases Digest**. (Latest edition)
4. Veerinderjeet Singh. **Veerinder on Taxation**. (Latest edition)
5. Choong Kwai Fatt. **Malaysian Taxation Principles & Practice**. (Latest edition)
6. Choong Kwai Fatt. **Advanced Malaysian Taxation Principles & Practice**. (Latest edition)
7. DP Naban, S Saravana Kumar, Siti Fatimah Mohd Shahrom. **Malaysia and Singapore Tax Cases Digest**. (Latest edition)
8. Kasipillai, Jeyapalan. **A Guide to Malaysian Taxation**. (Latest edition)
9. Richard Thornton. **Thornton's Malaysian Tax Commentaries**. (Latest edition)
10. CCH Tax Editors. **Malaysian Master Tax Guide**. (Latest edition)
11. **Tax Guardian**, Journal of the Chartered Tax Institute of Malaysia
12. **List of Tax Cases**

Revenue Law – *List of cases*

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(K) **Returns, assessment and appeals**	<u>Statutory duty of taxpayer</u> i) Ketua Pengarah Hasil Dalam Negeri v Lai Keng Chong & Anor (2012) MSTC 30-042 ii) CIT v Cheng Poh Seng [(1952) 18 MLJ 81] <u>Failure to submit tax return</u> i) Public Prosecutor v Choo Swee Huat (1950-1985) MSTC 292 ii) Public Prosecutor v Lee Seng Seh (1950-1985) MSTC 311 iii) Public Prosecutor v Mohd Isa bin Din iv) Choon Shin Cheong v. Public Prosecutor (1995) 2 MSTC 3,446 <u>Time barred assessments</u> i) Society of La Salle Brothers v Ketua Pengarah Hasil Dalam Negeri (2017) MSTC 30-135 ii) Infraquest Sdn Bhd v KPHDN (2016) MSTC 30-133 iii) Pensonic Sales & Services Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri iv) Government of Malaysia v GCL & Anor v) DD Dev Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2008) MSTC 3, 726 vi) EMSB v Ketua Pengarah Hasil Dalam Negeri (2010) MSTC 10-004 vii) PSSSB v Ketua Pengarah Hasil Dalam Negeri (2010) MSTC 10-009 viii) Integrated Credit & Leasing Sdn Bhd v Kerajaan Malaysia [(2009) MSTC 4,371] ix) USS Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [(2009) MSTC 3,833] <u>Service of notice</u> i) Kerajaan Malaysia v Sun City Development Sdn Bhd [2007] AMTC 171 ii) Kerajaan Malaysia v Kemayan Bina Sdn Bhd [(2008) MSTC 4334] iii) Kerajaan Malaysia v Neraca Untung Sdn Bhd [(2009) MSTC 4,452] iv) Wong Kuok Ming v Government of Malaysia (2009) MSTC 4,431 v) Kerajaan Malaysia v Syarikat Muliajaya Sdn Bhd (2010) MSTC 30-017 vi) Kerajaan Malaysia v Saratoga Sdn Bhd (2008) MSTC 4,343

	<u>Special commissioners of Income Tax</u> i) Malayan United Industries Berhad v Ketua Pengarah Hasil Dalam Negeri & Kerajaan Malaysia (2005) MSTC 4,192 ii) Ketua Pengarah Jabatan Hasil Dalam Negeri v Rheem (Far East) Pte Ltd 1998 2 CLJ supp 351 iii) Comptroller of Income Tax v BC Co Ltd [1966] 1 MLJ 287 iv) Ngee Tai Shipping Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2008) MSTC 4,308 v) Ketua Pengarah Jabatan Hasil Dalam Negeri v Dr Arunjit Dutt (1995) 2 MSTC 3454 vi) Meton Properties Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (1998) MSTC 3691 vii) SL Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2000) MSTC 3830 viii) Director General of inland Revenue v TCM (1988) 1 MSTC 3,006 ix) Lower Perak Co-operative Housing Society Bhd v Ketua Pengarah Hasil Dalam Negeri (1994) 2 MSTC 3,406 x) Edwards v Bairstow and Harrison [1956] AC 14 xi) Chua Lip Kong v Director-General of Inland Revenue [1982] 1 CLJ 398 xii) LFY Sdn Bhd v Comptroller General of Inland Revenue (1988) 1 MSTC 3059 xiii) Norman v Golder 26 TC 293 <u>Relief for error or mistake</u> i) J Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (1999) MSTC 3037 ii) AQP v Comptroller of Income Tax (2011) MSTC 70-011
(L) **Collection and recovery – legal aspects, conflict between payment and appeal against tax**	<u>Liability to pay</u> i) Government of Malaysia v TCS (1989) 1 MSTC 3,089 ii) AP v Government of Malaysia (1950-1985) MSTC 224 iii) Lim Tian Huat v KPHDN [(2003) MSTC 3998] <u>Recovery of unpaid tax</u> i) SMT Co Ltd v Government of Malaysia (1950-1985) MSTC 136 ii) Kerajaan Malaysia v Abdul Rahim Mohd Aki (1995) 2 MSTC 3,437 iii) Government of Malaysia v Dato' Mahindar Singh (1996) MSTC 3,515 iv) Connaught Housing Development Sdn Bhd v Kerajaan Malaysia [2003] 8 CLJ 144 v) Kerajaan Malaysia v Sun City Development Sdn Bhd (2007) MSTC 4,269 vi) Kerajaan Malaysia v Kemayan Bina Sdn Bhd (2008) MSTC 4,334 vii) Integrated Credit & Leasing Sdn Bhd v Kerajaan Malaysia (2009) MSTC 4,371 viii) The Government of Malaysia v Kamawang Enterprise Sdn Bhd (2009) MSTC 4,455 ix) Kerajaan Malaysia v Promet (Langkawi) Resort Sdn Bhd & Anor (2012) MSTC 30-051 x) Kerajaan Malaysia v United Axis Sdn Bhd (2009) MSTC 4,425 <u>Prevention from leaving Malaysia</u> i) TCY v The Government of Malaysia & Ors (1994) 2 MSTC 3,373 ii) Lim Moon Heng @ Lim Boon Siang v The Government of Malaysia & Anor (2002) MSTC 3957 iii) Ong Bee Yam v pengarah Hasil dalam Negeri, Sarawak & Anor (2003) MSTC 3979 iv) Goh Eng Hwa v Ketua Pengarah Lembaga Hasil Dalam Negeri & Satu Lagi (2008) MSTC 4,348 v) Ronald Beadle v Hamzah HM Saman & Ors (2008) MSTC 4,275 vi) Hamzah HM Saman & 2 Ors v Ronald Beadle (2010) MSTC 30-011

	<u>Withholding Tax</u> i) Ketua Pengarah Hasil Dalam Negeri v Alcatel-Lucent Malaysia Sdn Bhd & Anor (2016) MSTC 30-134 ii) Lembaga Hasil Dalam Negeri Malaysia v Alam Maritim (M) Sdn Bhd (2013) MSTC 30-068 iii) Ketua Pengarah Hasil Dalam Negeri v Mudah.My Sdn Bhd (2017) MSTC 30-137 iv) WW (S) Pte Ltd v Director General of Inland Revenue (1988) 1 MSTC 2104 v) ES Pte Ltd v CTT Sdn Bhd (1989) 1 MSTC 3,075 vi) BPS Ltd v Ketua Pengarah Hasil Dalam negeri (1997) MSTC 2847 vii) Esso Production Malaysia Inc v Ketua Pengarah Hasil Dalam Negeri (2008) MSTC 4,016 viii) TS Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2008) MSTC 3,707 ix) Ketua Pengarah Hasil Dalam Negeri v Teraju Sinar Sdn Bhd (2014) MSTC 30-080 x) Lembaga Hasil Dalam Negeri v Alam Maritim (M) Sdn Bhd (2012) MSTC 30-049 xi) Ketua Pengarah Hasil Dalam Negeri v Alcatel Lucent Malaysia Sdn Bhd (2015) MSTC 31-101 xii) Ketua Pengarah Hasil Dalam Negeri v Damco Logistic Malaysia Sdn Bhd (2013) xiii) Ketua Pengarah Hasil Dalam Negeri v Thomson Reuters Global Resources (2016) MSTC 30-124 xiv) EPM Inc v Ketua Pengarah HDN (2001) MSTC 3,306 xv) Erria shipping v Carra Timber Transport Sdn Bhd [(1989) 1 MSTC 3075 xvi) AIACL v KPHDN [(2002) MSTC 3438]