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

PROFESSIONAL EXAMINATION

FINAL LEVEL

REVENUE LAW

SEPTEMBER 2026

Student Registration No.		**Date**	
Desk No.		**Examination Centre**	

Time allowed: 3 hours

INSTRUCTIONS TO CANDIDATES

1. This paper consists of **SIX (6)** questions. **Candidates are ONLY REQUIRED TO ANSWER <u>FIVE</u> (5) 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

In the case of *Ketua Pengarah Hasil Dalam Negeri v Penang Realty Sdn Bhd* [1997] 7 MLRH 584 (HC)], the High Court ruled in favour of the Director General of Inland Revenue who had treated Penang Realty Sdn Bhd's transactions in dealing with properties, including the renting out of properties, as trading activities, and accordingly taxed the gains or profits from the disposal of 88 units of fully constructed houses by Penang Realty Sdn Bhd (that were previously rented out) as income taxable under section 4(a) of the ITA.

Required:

(a) Briefly state the facts of the case with particular focus on the legal issue arising from the 88 units of houses sold.

(5 marks)

(b) Discuss the decision of the High Court in the matter of treating the gains from the disposal of the 88 houses as income taxable under section 4(a) of the ITA.

(5 marks)

(c) Discuss the arguments put forward by Penang Realty Sdn Bhd on why the gains from the disposal of the 88 houses should be treated as gains from the disposal of investment and therefore not liable to income tax.

(5 marks)

(d) Express your opinion on the decision of the High Court and the arguments put forward by the taxpayer in the case.

(5 marks)

Notes:

1. In your discussion you are required to make references to relevant cases laws.
2. Ignore the issue of the compensation received by Penang Realty upon the compulsory acquisition of part of the company's land.
3. Ignore any legislation and case law developments subsequent to the High Court decision in Penang Realty Sdn Bhd.

[Total: 20 marks]

Question 2

The Lifestyle & Wellbeing Fitness Club ('the club') is set in the middle of a large planned township with easy access by the residents. The club was registered under the Societies Act 1966 and is operated by the developer of the township, since 1995. The club offers several facilities, including a golf course, a beautiful tree-lined and well-lit dedicated pathway for jogging and walking, a swimming pool and a wading pool, and an open-air gym ('outdoor facilities').

Members pay an entrance fee, an annual subscription fee (it could be paid monthly too with the management's approval), and other charges for food and beverage enjoyed at the club premises.

In recent years, several government skills training institutions and vocational colleges has sprung up on the peripheral of the township. The Ministry of Vocational Education which runs these institutions and colleges then approached the club to allow the trainees and the college students ('trainees') to enjoy the club's outdoor facilities for free i.e. they would not pay any entrance fee or subscription; however, they would pay for any food or beverage consumed at the club's premises. To maintain goodwill with the government agencies and as part of its CSR [corporate social responsibility], the club management agreed to this proposal.

The club management at a special meeting decided to impose a higher charge for food and beverages consumed at the club by these trainees. It was recorded in the minutes of the special meeting that this was not a move aimed at increasing the club's profits but merely to recover part of the cost of operating the outdoor facilities. This will also apply to 'visitors' brought in by members to the club.

For the year ended 31 December 2025, the club's management had produced the following accounts:

No.	Particulars	RM
1	Entrance fees from new members	60,000
2	Receipts being subscriptions from members	425,000
3	Receipts from food and beverage sales to 'trainees' and 'visitors'	96,000
4	Receipts from food and beverage sales to members	350,000
5	Receipts of interest from a fixed deposit	1,560
6	Club operation and maintenance expenses	736,000
7	Other miscellaneous expenses	142,000

Required:

(a) Discuss whether The Lifestyle & Wellbeing Fitness Club would be liable to income tax, making reference to the ITA, the Public Ruling No. 1 of 2015 and the principle of mutuality.

(12 marks)

(b) Discuss whether the various receipts shown in the accounts for the year ended 31 December 2025 by The Lifestyle & Wellbeing Fitness Club would be liable to income tax.

(8 marks)

(Note: In your discussions, you are required to make references to relevant cases laws.)

[Total: 20 marks]

Question 3

Alpha Alloy Sdn Bhd ("**AASB**") is a Malaysian resident company engaged in the manufacture of industrial steel components used in the oil and gas industry. Due to increasing production costs and a decline in export orders, AASB undertook several measures during the year of assessment 2025 to improve its financial position and maintain its competitiveness.

The following expenses were incurred in the course of taking those measures:

i. **RM2,800,000** was paid as retrenchment compensation and retirement benefits to employees following a restructuring exercise. The restructuring was undertaken to streamline operations by removing duplicated functions and reducing operating costs. After the restructuring exercise, AASB continued its manufacturing operations and retained its principal production with the leaner facilities.

ii. **RM620,000** was incurred to repair the Company's manufacturing plant in Pasir Gudang, Johor. The factory had been used continuously in AASB's business for more than 30 years. The expenditure was incurred to replace damaged roofing sheets, repair cracked flooring, refurbish the drainage system and restore electrical wiring that had deteriorated over time. In light of its tight cash flow caused by increasing production costs and declining export orders, AASB deliberately avoided any reconstruction, rebuilding or improvements of a permanent nature, and confined the expenditure to repairs necessary to restore the factory to its previous operating condition.

iii. AASB maintained a large inventory of spare parts for its production machinery to minimise production downtime. During the year, spare parts costing **RM220,000** became obsolete following the replacement of several old production lines with newer machinery. As the spare parts could no longer be used or sold, the Company wrote them off in its accounts.

iv. In August 2024, AASB entered into an agreement with Global Iron Resources Sdn Bhd ("**GIR**"), the holder of an iron ore mining concession covering approximately 82,000 hectares in Pahang. Under the agreement, GIR granted AASB the exclusive right for 20 years to extract and purchase iron ore from the concession area for use in AASB's manufacturing business. In consideration, AASB agreed to pay RM40 million, comprising RM20 million as an upfront payment upon execution of the agreement and the balance by way of monthly payments over the concession period. During the year of assessment 2025, AASB paid the RM20 million upfront payment together with RM1 million in monthly payments that had fallen due under the agreement, bringing the total amount paid during the year to RM21 million.

Required:

Advise Alpha Alloy Sdn Bhd whether each of the four expenses in (i) to (iv) above is deductible under the ITA, citing the relevant statutory provisions, public rulings and case authorities.

Your answer should apply the relevant principles derived from case law and assess whether each expense meets the legal criteria for tax deductibility.

Note:
Candidates are required to support the answer with reference to the provisions of the Income Tax Act 1967 and relevant case law. You should also briefly state the facts and arguments in the case or cases you are citing in support of your answer.

[Total: 20 marks]

Question 4

(a) **Briefly explain the functions and legal effects of a Double Taxation Agreement between Malaysia and another Contracting State in the context of the relevant statutory provisions of the Malaysian ITA and applicable case laws.**

(4 marks)

(b) Your client, PQR CleanTech Pte Ltd ("PQR"), is a company incorporated and tax resident in Singapore. PQR develops and supplies smart water monitoring systems used by factories to monitor water usage, leakage and filtration performance.

PQR entered into an arrangement with Meridian Environmental Solutions Sdn Bhd ("Meridian"), a Malaysian company which distributes environmental technology products in Malaysia.

The relevant facts are as follows:

i. Meridian is appointed as PQR's "exclusive authorised agent and distributor" for Malaysia.

ii. Meridian purchases PQR's smart water-monitoring systems from PQR and resells them to Malaysian customers on its own account.

iii. Meridian determines its own resale prices to Malaysian customers, although PQR provides recommended retail prices and marketing guidelines.

iv. Meridian is not allowed to negotiate or conclude contracts on behalf of PQR, or bind PQR in any way.

v. Any purchase orders by Meridian to PQR are submitted to PQR in Singapore and accepted by PQR in Singapore.

vi. Meridian keeps PQR products at its Malaysian warehouse. The products are owned by Meridian after purchasing it from PQR.

vii. Meridian also sells products from other suppliers, although PQR's products made up approximately 78% of Meridian's revenue in 2025.

viii. PQR does not have any branch, registered office, warehouse, factory, employees or servers in Malaysia.

ix. PQR's employees visited Malaysia several times during YA 2025 to provide product training, attend customer demonstrations and assist Meridian in responding to technical queries. The visits lasted 96 days in total.

x. During those visits, PQR's employees used a meeting room at Meridian's premises. The meeting room was also used by Meridian's own staff, and PQR had no dedicated room, signage, lease, key or exclusive right to use any part of Meridian's premises.

In 2025, PQR derived RM3.6 million from sales of smart water monitoring systems to Meridian.

Required:

The Director General of Inland Revenue, Malaysia takes the position that PQR's profits from the Malaysian market are taxable in Malaysia. PQR seeks your advice on whether the RM3.6 million derived by PQR may be taxed in Malaysia.

(16 marks)

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Extract of relevant articles

Article 3 - GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:

…

(c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Singapore as the context requires;

…

(f) 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;

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 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) Following an income tax audit by the officers of the Inland Revenue Board, ABC Sdn Bhd ('ABC') was issued with a notice of additional assessment for the year of assessment ('YA') 2025 amounting to RM2 million. ABC duly filed a notice of appeal to the Special Commissioners of Income Tax and, pending the appeal, did not pay the tax, contending that the assessment was excessive and based on erroneous transfer pricing adjustments.

Prior to the issuance of the notice of additional assessment, ABC had instructed the Director General of Inland Revenue ('DGIR') to forward all returns, notices and correspondence to its tax agent, Messrs XYZ Tax Consultants. Accordingly, the notice of additional assessment was addressed and posted to Messrs XYZ Tax Consultants Sdn Bhd. Although ABC did not deny that the notice of additional assessment had in fact been received, it contended that the notice had not been properly served on it. At no time did ABC inform the DGIR that the address or the details of the recipient used in the notice of additional assessment was incorrect.

Pending the appeal, ABC was also engaged in discussions with the DGIR regarding the possibility of paying the tax arrears by instalments.

As the assessed tax remained unpaid, the DGIR commenced a civil action and applied for summary judgment to recover the outstanding tax. In support of the application, the DGIR produced a certificate signed by the Assistant Director of Inland Revenue certifying that RM2 million remained due and payable by ABC. The DGIR also produced a record book showing the date on which the notice of additional assessment was posted by him to Messrs XYZ Tax Consultants Sdn Bhd.

Required:

With reference to the ITA and the relevant case law, discuss whether there is any basis for ABC Sdn Bhd to challenge the DGIR's application for summary judgment.

(15 marks)

(b) **(i)** On 10 June 2026, Mr Lim received a notice of additional assessment for YA 2016 for the sum of RM80,000.

Mr Lim did not pay the tax assessed on the grounds that the assessment was time-barred.

As no payment was made, the DGIR commenced recovery proceedings and applied for summary judgment.

Required:

In the context of the DGIR's recovery proceedings, advise Mr Lim whether he has any basis to resist the DGIR's application for summary judgment.

(3 marks)

(ii) **Assume instead that the notice of additional assessment did not indicate any right of appeal available under the ITA. Would your answer to (b)(i) above be different?**

(2 marks)

[Total: 20 marks]

Question 6

Digital Nexus Malaysia Sdn Bhd ("**DNM**") is a company incorporated and tax resident in Malaysia. During the year ended 31 December 2025, DNM entered into the following agreements with two non-resident companies.

Agreement 1 – Global Business Intelligence Platform

DNM entered into an agreement with Insight Global AG ("**Insight**"), a company incorporated and tax resident in Switzerland.

Under the agreement:

- Insight grants DNM online access to its global business intelligence platform through a secure cloud-based portal.
- The platform contains financial information, company profiles, market intelligence and industry reports.
- DNM may only access and retrieve information for its own business purposes.
- DNM is prohibited from copying, modifying, sublicensing or exploiting the platform.
- All intellectual property rights remain with Insight.
- Insight has no permanent establishment in Malaysia.

DNM paid RM2,000,000 without deducting withholding tax.

Agreement 2 – Product Repackaging Services

DNM also appointed PackPro Pte Ltd ("**PackPro**"), a company incorporated in Singapore, to:

- dismantle products;
- repackage products into export configurations;
- relabel products; and
- prepare export documentation.

All services were performed in Singapore. PackPro has no permanent establishment in Malaysia. DNM paid RM1,500,000 without deducting withholding tax.

Following a withholding tax audit, the Director General of Inland Revenue ("**DGIR**") contended that withholding tax ought to have been deducted on both payments and proposed to disallow the expenses under Section 39(1)(j) of the ITA.

Required

(a) Advise whether the payment made by Digital Nexus Malaysia Sdn Bhd to Insight Global AG under Agreement 1 is subject to withholding tax.

In your answer, identify the relevant statutory provisions and support your answer with the relevant case law.

(7 marks)

(b) Advise whether the payment made by Digital Nexus Malaysia Sdn Bhd to PackPro Pte Ltd under Agreement 2 is subject to withholding tax.

In your answer, identify the relevant statutory provisions and support your answer with the relevant case law.

(7 marks)

(c) Discuss the income tax consequences to Digital Nexus Malaysia Sdn Bhd arising from its failure to deduct withholding tax on the payment made to Insight Global AG and PackPro Pte Ltd. Support your answer with the relevant statutory provisions and judicial authorities.

(6 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)