



CHARTERED TAX INSTITUTE OF MALAYSIA (225750 T)
(Institut Percukaian Malaysia)

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

REVENUE LAW

JUNE 2016

Student
Registration No.

Date

Desk No.

Examination Centre

Time allowed: 3 hours

INSTRUCTIONS TO CANDIDATES

1. You may answer this paper **EITHER** in English **OR** in Bahasa Malaysia. Only **ONE** language is to be used.
2. This paper consists of **SIX** questions. **Candidates are ONLY REQUIRED TO ANSWER FIVE QUESTIONS**
3. The Income Tax Act, 1967 (as amended) is referred to as ITA.
4. Each answer should begin on a separate answer booklet.
5. All workings **MUST** be shown as marks will be awarded.
6. Answers should be written in either black or blue ink.
7. No question paper or answer booklet is to be removed from the examination hall.

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

Question 1

- A. ABC Sdn Bhd (ABC) was incorporated in April 2006. In July 2006, ABC entered into a joint venture agreement (JVA) with Echo Park PLC (Echo), an internationally recognised amusement park operator, to develop land into a world class amusement park in the state of Johor.
- a) Pursuant to the JVA, ABC purchased in October 2006 a plot of land spanning 30 acres in Kulai, Johor. The land was shown as a non-current asset in ABC's audited accounts and was the only plot of land owned by ABC.
 - b) In November 2010, ABC submitted an application to the local authority for the necessary planning and building approvals to develop the amusement park on the said land. The necessary approvals were obtained by ABC in January 2011 subject to the fulfillment of certain conditions within 6 months.
 - c) In March 2011, the JVA was terminated due to a fundamental disagreement between ABC and Echo.
 - d) The approvals lapsed in July 2011 due to non-fulfillment of the pre-requisite conditions. During the period 1 October 2010 to 31 March 2011, ABC had carried out some earthworks on the land.
 - e) Subsequently in January 2012, ABC submitted plans to develop a housing project on the land, for which approvals were obtained in October 2012. The housing project was completed in December 2013 and all housing units were disposed of by April 2014.

Required:

- (i) **Were the sales of the housing units by ABC carried on in the course of a trade within the meaning of section 4(a) ITA, 1967?**
- (ii) **If so, when did this trade commence?**

Provide case law authority to support your answer.

(14 marks)

- B. A portion of the said land, measuring 3 acres, was compulsorily acquired by the Johor state government in December 2012 under the Land Acquisition Act 1960. Consequently, in February 2014, the Johor state government paid to ABC the sum of RM 3.5 million as compensation, resulting in considerable gain to ABC.

Required:

Is the gain from the sale of the portion of land liable to income tax?

Cite decided cases in support of your answer.

(6 marks)

[Total: 20 marks]

Question 2

Bunga Raya Sdn Bhd (Bunga Raya) a company incorporated in Malaysia with its registered office in Kulai, Johor, operates an express bus service to Johor Bahru, Kuala Lumpur, Penang and several other routes in Malaysia.

For the routes which end at Johor Bahru, Bunga Raya was subsequently granted permission by the Public Transport Council of Singapore by way of a contract dated 12.6.2010 to operate in the Republic of Singapore.

Passengers embarking in Singapore for journeys to Kuala Lumpur, Ipoh and Penang purchased their tickets in Singapore currency from agents in Singapore.

Required:

- (i) By reference to the Act and relevant case law authorities state whether the income derived from the sale of bus tickets in Singapore is chargeable to tax in Malaysia?**
- (ii) Would Bunga Raya have a permanent establishment in Singapore if the agents were the sole agent and had an office in Singapore?**

(15 marks)

(5 marks)

[Total: 20 marks]

Question 3

- (a) *“The deductibility of fines (including penalties) and misappropriation of company’s funds have always been contentious and often taxpayers dispute when tax authorities disallow them as a deduction for income tax purposes”.*

Required:

In respect of the above statement, consider the deductibility under the ITA for the following:

- (i) fines and penalties**
- (ii) misappropriation of funds (including theft by either employees or directors of firms)**

Support your answers with relevant case law.

(12 marks)

- (b) Happy Tours Sdn Bhd is a travel agency. Mr. Kenny Tan joined the company in 1990 as an office administrator and was subsequently promoted as Finance Manager.

Mr. Tan’s duties and responsibilities, amongst others involved the daily banking in of cash and cheques received for the day. He was also one of the authorised cheque signatories of the business.

In 2015, it was found that Mr Tan had stolen the company’s funds to the sum of RM1.5 million. The company then lodged a police report alleging that Mr. Tan had embezzled the said amount.

The company through its tax agent made claims for tax deductions for the loss incurred in 2015.

Required:

By reference to the Act and decided cases consider the deductibility of the RM1.5 million loss due to embezzlement.

(8 marks)

[Total: 20 marks]

Question 4

See Garden Holdings disposed a plot of land at a price of RM2.8million as contracted under a sale and purchase agreement. A rebate was given in the form of a deduction from the purchase price. This was evident from the credit note for RM800,000 issued to the purchaser for a rebate on the purchase consideration. The same was also stated in a letter by the solicitor of See Garden in the conveyance of the plot of land, setting out in the statement of account to the purchaser.

The rebates were given by See Garden as part of its marketing and pricing strategy to secure the agreement for the purchaser to purchase the plot of land. The buyer had no connection with purchaser and the transaction between them was at arm's length. The sale and purchase agreements did not disclose the amount of the rebates given:

- in an attempt to prevent the information (i.e the net purchase price) from escaping or leaking into the public domain, and
- at the request of the Purchaser in order to facilitate their financing requirements.

The real property gain tax return was filed by See Garden accordingly and the IRB evoked section 25(2), the anti-avoidance provision in the RPGT Act 1976 (which is *pari materia* with section 140 of the ITA) by disallowing the rebate on the grounds that the same was not included in the sale and purchase agreement.

The IRB adjusted the disposal price by disallowing the deduction of the rebate from the purchase price effectively disregarding the rebate given by See Garden.

Required

(i) With reference to the above facts, is the IRB entitled to evoke the anti-avoidance provision to disregard the rebate given?

(2 marks)

(ii) With reference to court decisions, discuss if the DGIR has unlimited powers to disregard transactions. Cite the principles laid down in the court decisions in applying section 140 of the ITA to any transactions.

(18 marks)

[Total: 20 marks]

Question 5

“The word ‘plant’ is a chameleon-like word which takes its colour from its context”

Capital allowance is available on expenditure incurred on plant and machinery as provided in the Act. As the word ‘plant’ is not defined under the ITA, the development of case law has been relied on hitherto.

Required:

With reference to the statement above, discuss your understanding of decided cases that shed light on what is ‘plant’ for the purpose of determining Schedule 3 allowances under the ITA.

[Total: 20 marks]

Question 6

Swedish House (‘Swedish’) is a company with exclusive operations in Switzerland and is a tax resident of Switzerland. ‘Swedish’ provides a variety of content, technological products and solutions to ‘Swedish’ businesses around the world. ‘Swedish’ has no permanent establishment in Malaysia.

‘Swedish’ entered into a local vendor agreement with Swedish Malaysia Sdn Bhd (SM) to distribute, market and sell ‘Swedish’ products in Malaysia. The agreement appointed SM as the sole intermediary distributor in Malaysia and granted a non-exclusive right to market and sell the products in Malaysia. Further the agreement stipulated that SM has no rights to reproduce the product and no rights to exploit any of the intellectual property rights of the products in Malaysia.

SM acquired a limited intermediary distributorship in Malaysia and was granted access to ‘Swedish’ Network to enable them to offer the products to the customers in Malaysia.

SM paid a distribution fee to ‘Swedish’ for the products, services and support services of ‘Swedish’.

Required:

(i) Advise based on reported cases and the Act whether the distribution fee paid by SM to ‘Swedish’ is a royalty payment or are business profits of ‘Swedish’.

(15 marks)

(ii) Would the distribution fee paid by SM be subject to withholding tax in Malaysia?

(5 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)

