



CHARTERED TAX INSTITUTE OF MALAYSIA

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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

REVENUE LAW

JUNE 2017

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) Alpine Malaysia Sdn Bhd (Alpine-M) is required to make regular Electronic Data Processing (EDP) payments to its holding company Alpine Holding (Alpine-H) in Denmark. The EDP Systems was necessary for the Alpine-M to conduct its operations in Malaysia. The EDP charges were business income of Alpine-H in Denmark and Alpine-H does not have a permanent establishment in Malaysia. Based on Article XII of the Double Tax Agreements (DTA) between Malaysia and Denmark, the EDP charges is not defined as royalty but fall within the royalty definition under Section 2 of the ITA . The finance controller has approached you, the company's tax adviser on whether the EDP charges are subject to withholding tax under Section 109 of the ITA:

Required:

- (i) **By reference to the ITA, DTA and relevant case law authorities, advise the finance controller whether the above EDP charges are subject to withholding tax.** (9 marks)
- (ii) **Would the position be the same if the EDP charges are made to a country without a DTA with Malaysia?** (2 marks)
- (b) XLXT Malaysia Sdn Bhd (XLXT) makes payment of charter hire fees for the supply of ships together with crew to non-resident companies operating the business of time charter of ship and crew. The charter hire income is business income of the non-resident companies. None of these non-resident companies have a permanent establishment in Malaysia and were also residents of countries which had DTA with Malaysia. XLXT has approached you for advice on whether the charter fees are subject to withholding tax under Section 109B of the ITA:

Required:

By reference to the ITA, DTA and relevant case law authorities, advise XLXT whether the charter fees are subject to withholding tax? (9 marks)

[Total: 20 marks]

Question 2

"Business promotion expenses may amount to entertainment expenditure that is prohibited under the ITA".

Required:

Examine the recent developments of the law on this subject and discuss this statement based on legislation and decided cases on how disputes arising from the claim of business promotion expenses were decided by the courts.

[Total: 20 marks]

Question 3

- (a) **A written agreement or a deed of partnership does not necessarily constitute partnership for income tax purposes.** (10 marks)
- (b) **A partnership could exist without a formal agreement or a deed of partnership.** (10 marks)

Required:

Elaborate for each statement in (a) and (b) above by reference to the ITA and decided cases.

[Total: 20 marks]

Question 4

Dr Jenny, a qualified Petroleum Engineer is employed by Universiti Teknologi Petronas (UTP) as a lecturer. As an expert in the field of petroleum engineering, she is often invited via UTP by other universities and private companies to deliver talks either during or after office hours. Her terms of employment also includes her to perform such services.

On top of that, on a freelance basis, as an independent speaker, she also delivers talks frequently which are organized by private companies on weekends. She did not seek the approval of UTP because the task is outside office hours.

In 2016, in addition to the salary and remuneration from UTP, Jenny also received the following income:

- (a) **An amount of RM20,000 as a token of appreciation from other local universities and private companies which she received through the university.** (10 marks)
- (b) **An amount of RM55,000 as an independent speaker.** (10 marks)

Required:

State with reasons whether both the payments in (a) and (b) as stated above are taxable by referring to the relevant provisions in the ITA.

Elaborate your answer by relating to case laws for each payment.

[Total: 20 marks]

Question 5

- (a) Section 91(3) of the ITA reads as follows:-

(3) The Director General where it appears to him that: (a) any form of fraud or wilful default has been committed by or on behalf of any person; or (b) any person has been negligent, in connection with or in relation to tax, may at any time make an assessment in respect of that person for any year of assessment for the purpose of making good any loss of tax attributable to the fraud, wilful default or negligence in question.

With reference to case law, explain the meaning of fraud, wilful default and negligence in the context of section 91(3) of the ITA.

(10 marks)

- (b) Syarikat MNM Sdn Bhd received Notices of Assessment dated 11.1.2016. Syarikat MNM filed an appeal against these Notices of Assessment to the Special Commissioners of Income Tax on 20.1.2016 but failed to pay the tax in the meantime. In civil proceedings before the Kuala Lumpur High Court, the Revenue obtained judgment against Syarikat MNM for the unpaid tax on 20.2.2017. Syarikat MNM made an application for execution of the judgment to be stayed until after their appeal against the Notices of Assessment had been heard by the Special Commissioners of Income Tax, on the basis that the Notices of Assessment were excessive.

With reference to case law, is Syarikat MNM be entitled to the stay applied for?

(5 marks)

- (c) **What is the procedure to file an appeal to the Special Commissioners of Income Tax out of time and in what circumstances may such an application be allowed?**

(5 marks)

[Total: 20 marks]

Question 6

“Capital Sdn Bhd (“Capital”) is in the business of manufacturing steel plates. In 2016, the Inland Revenue Board (“IRB”) performed an audit on Capital for the years of assessment 2013 and 2014. The IRB found that the expenditure relating to directors’ allowances and as deducted by Capital pursuant to Section 33(1) of the ITA did not rank for deduction. Accordingly, the IRB raised two notices of additional assessment for the years of assessment 2013 and 2014, where a total of RM 200,000 was due and payable as income taxes.

Capital received the two notices of additional assessment on 5 January 2017. Being aggrieved by the notices of additional assessment, Capital subsequently filed notices of appeal i.e. Form Q to the Director General of Inland Revenue. As far as Capital was concerned, the directors’ allowances could be deducted under Section 33(1) and therefore, the IRB does not have any legal basis to raise the said assessments.

However, by 3 March 2017, Capital has yet to fulfil the payment of the notices of additional assessment.

The IRB, through the Government of Malaysia, then served Capital a copy of an originating summons and statement of claim in order to recover the income taxes arising from the notices of additional assessment, which Capital alleges were incorrectly raised.

Required:

State whether Capital can use the merits of its case i.e. that the directors’ allowances are deductible as a defence in the civil claim filed by the Government of Malaysia.

Can Capital delay payment until the appeal is settled and what should be the right approach it should take?

You are required to support your answer by identifying the relevant provisions in the ITA and case decisions.

[Total: 20 marks]

(END OF QUESTION PAPER)