



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

REVENUE LAW

JUNE 2019

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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 (5) 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. Answers should be written in either black or blue ink.
6. 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

Parkland Sdn Bhd ("Parkland") is a company that was incorporated in year 2014 and principally engaged in property investment. In fact, it is stated in its Memorandum and Articles of Association that its principal activity is that of property investment.

In the same year, it purchased a plot of land at Jalan Ampang. This was their first and only purchase of a property. It was recorded in Parkland's Directors' Resolution and minutes of board meeting that this plot of land was purchased for investment purposes and will be held long term.

In addition, the said land was treated as a "fixed asset" in Parkland's audited accounts. After the purchase, Parkland did not conduct any work of a substantial nature on the land.

In year 2016, a renowned international developer i.e. Sky Development Sdn Bhd ("Sky Development") enquired whether Parkland was interested in developing a mixed-development project on the said plot of land.

Following a short negotiation, Parkland signed a joint development agreement with Sky Development. Essentially, the agreement sets out very clearly that Parkland would supply the plot of land to be developed, and Sky Development would carry out the development works entirely. Parkland also executed a Power of Attorney to grant all rights to Sky Development in order to enable the latter to deal with all things necessary to develop the land.

Subsequently, Sky Development applied for development orders from the Land Office and local authorities ("the authorities"). Sky Development also proceeded to drain the land in preparation for the mixed development.

However, prior to obtaining approvals from the authorities, relationship between Parkland and Sky Development broke down and the project was immediately halted and subsequently terminated.

Parkland later received a very good offer from another entity i.e. Rainbow Sdn Bhd to purchase the land. Parkland then disposed the same to Rainbow Sdn Bhd in year 2019, and made a gain of RM10 million.

### **Required:**

**Based on the above facts, advise whether the gain of RM10 million made by Parkland Sdn Bhd from the disposal of the land would be subjected to income tax or real property gains tax.**

**[Total: 20 marks]**

## Question 2

- (a) Ravi is a highly respected senior partner in a firm of chartered accountants (“the Firm”) in Kuala Lumpur. One of the clients of the firm, Aerodynamics Sdn Bhd (“the Company”) was desperately in need of a financial person to be on its management team. The founder member of the company, being impressed with Ravi, offered him a position of ‘manager’ in charge of finance, with a generous monthly salary of RM30,000. The offer was made verbally sometime in February 2018 over a cup of tea. Ravi was initially very hesitant with the offer because he was already in a very comfortable position in the firm whereas taking up the offer would involve giving up a stable income, perks and status, in addition to geographically relocating to work in the company.

Upon further persuasion, he agreed to join the company on condition that he would be on the same status as an ‘executive director’ in the company. Towards this end a block of 50,000 shares (worth RM200,000 at that time) were allocated from the founder to Ravi in March 2018 and this qualified him to be on the board of directors of the Company. Ravi then left the Firm in June 2018 and his share capital in the Firm was returned to him. On 1 September 2018 he joined the Company officially and his first salary was paid on 30 September 2018.

### Required:

**Identify the tax issue or issues in the scenario stated above. How would you resolve it in the context of the ITA and the relevant applicable case law?**

### Note:

You are required to examine the possible position that may be taken by the Revenue authorities and that of the taxpayer with respect to the identified issue or issues.

(10 marks)

- (b) Mr Gan (“the taxpayer”) is an expatriate and the Asian Representative for Asian Heavy Equipment Ltd (“the company”) under a 2-year contract of employment signed in Hong Kong in 2017. The company was an American company, incorporated and having its place of business in Hong Kong. It sells and distributes heavy construction equipment to countries in the South East Asia region. In connection with this it also provides technical and management support to its customers in those countries, including Malaysia.

The company did not have an office in Malaysia but the taxpayer resided in Malaysia on a work pass and had an official correspondence address in Malaysia. He operated from Kuala Lumpur for the two years in 2017 and 2018 and travelled to other countries in the course of his work. The job performed by the taxpayer was a three-fold parallel comprising marketing, technical and management support. But these were qualitatively different and also specific to the problems facing each of the product dealers in those territories, and have no nexus to the duties he performed in Malaysia.

He is required to compile and prepare monthly and annual reports on the status of the business in the various countries, and submit them to Hong Kong. Sometimes, owing to time constraints these information are compiled in the relevant countries but are brought over and the reports are completed in Malaysia for submission to Hong Kong.

Under the contract of employment, he was provided two paid leave per annum, both of which he chooses to spend in the relevant years in the United States for personal reasons.

The taxpayer treated the work periods spent in countries other than Malaysia as work performed outside Malaysia. And accordingly he did not include the income for those periods in his Malaysian tax return for the years of assessment 2017 and 2018. However, the Inland Revenue Board included the income of the taxpayer from the exercise of his employment both in Malaysia and outside Malaysia in raising the relevant assessments.

**Required:**

**With reference to the ITA and relevant case laws:**

**(i) Explain, with reasons, why the Malaysian Inland Revenue Board would choose to assess the income of the taxpayer for the years of assessment 2017 and 2018 from the exercise of his employment, both in Malaysia and outside Malaysia.**

**(5 marks)**

**(ii) Explain, with reasons, whether the taxpayer completing the Malaysian income tax return by excluding the employment income for periods spent outside Malaysia has any basis for doing so.**

**(5 marks)**

**[Total: 20 marks]**

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### Question 3

- (a) In *British Insulated and Helsby Cables Ltd v Atherton* (10 TC 155), Viscount Cave said:

*‘When an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or advantage for the enduring benefit of a trade, there is a very good reason ... for treating such an expenditure as properly attributable to ...capital’.*

**Required:**

- (i) **State briefly the facts of the case in the *British Insulated and Helsby Cables Ltd v Atherton*.**

(2 marks)

- (ii) In the context of the ITA and the decision in the *British Insulated and Helsby Cables Ltd* case, **discuss the principle and the consideration one could take into account in its application.**

(8 marks)

- (b) In the case of the *Sun Newspaper Ltd v FC of T* [(1938) 61 CLR ] Dixon J formulated a test, in relation to expenditure incurred, to make a distinction between a profit yielding subject and the profit yielding process, commonly referred to as the ‘Business Entity Test’.

**Required:**

**Briefly indicate the three relevant factors that one needs to consider in the application of the ‘Business Entity Test’ as propounded in the case of *Sun Newspaper Ltd v FC of T*.**

(3 marks)

- (c) Chettinad Cuisine Sdn Bhd (“Chettinad”) was a popular food outlet in Bangsar specializing in the South Indian Chettinad food. It was in operation for several years and very popular with the locals and foreign tourists. Sometime in 2018 a new food outlet offering similar food was planned in the neighbourhood by a competitor. Fearing that its business may be drastically affected, Chettinad entered into an arrangement with the competitor not to establish an eatery anywhere within 100 kilometres radius of Bangsar for the next five years. In consideration of the arrangement signed on 15 June 2018, Chettinad agreed to pay the competitor RM900,000 in installments of RM300,000 over the next three years.

Chettinad had claimed the sum of RM900,000 as a deduction in arriving at the adjusted profit for the year of assessment 2018.

**Required:**

**Identify and discuss the issues in Chettinad Cuisine Sdn Bhd’s claim for the deduction of the expenditure of RM900,000 in the context of the ITA, quoting relevant case laws.**

(7 marks)

**[Total: 20 marks]**

#### Question 4

- (a) Butterfly Garden and Properties Sdn Bhd (“BGP”) is a well-known city property developer with a large land bank in Selangor. Sometime in early 2017 it experienced cash flow problems arising from a slowdown in the property market. In order to ease the cash flow it sold a piece of prime land in Kuala Lumpur to Ravi Properties Sdn Bhd (“RP”) at an agreed price of RM3.9 million. The two companies are not related parties.

An oral agreement was reached sometime in December 2017 and the solicitor for BGP prepared a Sale and Purchase Agreement (“SPA”) for the party’s signature on 14 January 2018.

However, owing to the depressed property market and strict banking lending practice, RP found that it was not possible to finance the acquisition at the agreed price. It therefore re-negotiated with BGP for a discount of the original price. BGP too understood the position faced by RP and agreed to a discount of RM400,000. A credit note was issued to this effect but no amendment to the sale price was made in the SPA signed previously.

The issue of the credit note was done for several reasons, one being to maintain the information of the sale price as per the SPA in the public domain; and secondly, it is to assist RP to obtain a higher percentage of the loan from a willing bank (i.e. the bank will work on the basis of the SPA price). The property was transferred when RP settled the payment of RM3.5 million to BGP in June 2018.

In filing its tax returns for purposes of the RPGT Act, BGP indicated in the relevant form that the disposal price of the material property as RM3.5 million. However, the Director General of the Inland Revenue Board took the disposal value of RM3.9 million stated in the SPA in computing the RPGT liability.

**Required:**

- (i) **With reference to section 25(2) of the RPGT Act, briefly distinguish between tax mitigation and tax avoidance.**

(6 marks)

- (ii) **Discuss briefly whether the disposal price of RM3.5 million for the purposes of RPGT, BGP was engaged in tax avoidance or evasion.**

(Support your discussion with relevant case laws.)

(8 marks)

- (b) The imposition of tax under the RPGT Act and the ITA are mutually exclusive.

**Required:**

- (i) **Explain to what extent is this statement true.**

- (ii) **Discuss the statement in relation to the case of *Teruntum Theatres Sdn Bhd v KPHDN* [(1998) 4 MLJ 195].**

(6 marks)

**[Total: 20 marks]**

## Question 5

The Froobies group of companies is in the business of manufacturing canned fruits and vegetables. The ultimate holding company is Melonboss (M) Sdn Bhd (“Melonboss”), a Malaysian tax resident. Melonboss also undertakes business operations as a trading company and intends to carry on manufacturing operations in the future. Melonboss commenced its business operations in the year of assessment (YA) 2014 and closes its accounts on 31 December each year. Its income from trading operations alone is typically more than half of its total income each year.

When first setting up the group, Melonboss had obtained bank loans to finance the investments in its subsidiaries, incurring RM500,000 in interest expenses every year on these loans.

Melonboss also provides loans and associated treasury services to the other companies in the Froobies group of companies, by sourcing funds within the group and lending the funds to its subsidiaries, including provision of associated treasury services such as foreign exchange risk management. Melonboss views itself to be carrying on a lending and treasury business (in addition to its trading activities). However, Melonboss has not obtained any regulatory licenses or approvals, in respect of its lending or treasury activities.

On 1 January 2016, Citrusboo (M) Sdn Bhd (“Citrusboo”), a Malaysian tax resident and a subsidiary of Melonboss., borrowed RM3,000,000 from Melonboss for a duration of 3 years, on which interest was charged at an arm’s length rate of 5% (i.e. RM150,000 per annum). Based on the loan agreement, the interest and principal repayments are only due to be paid on the last day of the loan period (i.e. 31 December 2018). However, as Citrusboo ran into severe financial difficulties, it did not make any payments to Melonboss by 31 December 2018.

In YA 2017, Melonboss placed a fixed deposit as security in a Malaysian bank to obtain banking facilities to be used for its business. Another fixed deposit was placed as investment in a Hong Kong bank. Melonboss derives interest income from these two fixed deposits.

Melonboss owns a 4-storey office building, two shop houses, a factory and a vacant piece of land. The properties were acquired as Melonboss had expected its business to expand quickly. However, due to poor economic conditions, Melonboss could not expand its business and decided to let out its properties for three years (i.e. YA 2016 to YA 2018). The rental income received in respect of the properties for each of the relevant year was as follows:

Property	Rental income		
	Year ended 31 December 2016	Year ended 31 December 2017	Year ended 31 December 2018
Vacant Land	RM1,500,000	-	-
Factory	RM800,000	RM800,000	RM800,000
4-storey office building	RM100,000	RM100,000	RM100,000
Two shop houses	RM600,000	-	-

The rental income for the vacant land and the two shop houses for the three years (i.e. YA 2016 to YA 2018) were received in advance in the year ended 31 December 2016. The advance rent was agreed with the tenant (an unrelated party) in exchange for a lower rental charge.

Melonboss engaged a third-party vendor to provide maintenance and support services (inclusive of cleaning services, security services, maintenance of lighting and open spaces etc.) for the 4-storey office building and the two shop houses. The vacant land and factory are maintained by occupying tenant.

Melonboss also received dividend income from its subsidiaries in and outside Malaysia.

The Chief Financial Officer (CFO) of Melonboss has approached you, the company's tax adviser, for advice on the tax treatment for the interest, rental and dividend income earned by the company.

**Required:**

- (i) With reference to the Income Tax Act 1967 (ITA), relevant Public Ruling(s) and decided case laws, discuss the tax treatment of the interest income earned by Melonboss from Citrusboo from YA 2016 to YA 2018.**

(6 marks)
- (ii) How would your tax treatment differ if there was no due date stipulated in the loan agreement between Melonboss and Citrusboo for the interest payments due from Citrusboo?**

(1 mark)
- (iii) With reference to the ITA, relevant case laws and Public Ruling(s), discuss the tax treatment of the interest income earned by Melonboss from the fixed deposit placements (in and outside Malaysia) for YA2017.**

(3 marks)
- (iv) With reference to the ITA, relevant case laws and Public Ruling(s), discuss the tax treatment of the rental income earned by Melonboss from YA 2016 to YA 2018.**

(7 marks)
- (v) With reference to the ITA, discuss the tax treatment for the dividend income earned by Melonboss from its subsidiaries in and outside Malaysia.**

(3 marks)

**[Total: 20 marks]**

**Question 6**

- (a) **With reference to the ITA, discuss briefly the meaning of 'plant' and the claim for capital allowance.**

**Note:**

You are NOT required to quote any case law for this part of the question.

(1 mark)

- (b) Mr Desmond is a lawyer practicing in the field of revenue law. In the year 2018, Mr Desmond incurred the expenditure in (i) to (iii) below.

**Required:**

**Discuss whether the expenditure incurred by Mr Desmond below would be treated as qualifying expenditure on 'plant and machinery'.**

- (i) **RM 5,000.00 for the purchase of the latest copies of tax statutes and textbooks;**  
(4 marks)
- (ii) **RM 1,100.00 on magazines and other leisure reading materials for the lounge in his law office; and**  
(1 mark)
- (iii) **RM 8,500.00 on a new plaster ceiling and lighting fixtures for his office.**  
(5 marks)

**Note:**

Candidates are required to support the answer with reference to the relevant provisions of the ITA and related case laws.

- (c) **With reference to expenditure incurred by Mr Desmond in (b)(i) - (iii) above indicate the amount of initial allowance that he would be entitled to claim for the year of assessment 2018.**

**Note:**

Candidates need not provide a set of computation in arriving at the allowance amount.

(1 mark)

- (d) Orange Cotton Sdn Bhd (“the Company”) is a company in the business of manufacturing cotton fabric from raw cotton. In 2017, the Company incurred capital expenditure on the construction of a building complex and other construction expenditures in (i) to (iv) below.

**Required:**

**Discuss briefly whether the expenditures incurred by Orange Cotton Sdn Bhd below would qualify for industrial building allowance.**

- (i) **RM 900,000.00 on Building A where raw cotton in the form of staple fibre is delivered. Here, the raw cotton is unravelled and cleaned by removing substance such as leaves, seeds, or sand before being processed into sheets.** (3 marks)
- (ii) **RM 50,000.00 on an internal road system linking up the various buildings in the complex.** (1 mark)
- (iii) **RM 300,000.00 on a workshop where repair and maintenance services are carried out on machines used in the cotton manufacturing process.** (3 marks)
- (iv) **RM 150,000.00 on a staff recreation room, bathrooms and washrooms in the complex.** (1 mark)

**Note:**

Candidates are required to support the answer with reference to the relevant provisions of the ITA and related case laws.

**[Total: 20 marks]**

**(END OF QUESTION PAPER)**