



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

REVENUE LAW

DECEMBER 2014

Student Reg. 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 QUESTION**
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

Jojo Wong has been working in Malaysia several years and has been a tax resident in Malaysia for five years up to and including the year of assessment 2009. When the company she was working for was awarded a major contract in Indonesia, she was seconded to the Jakarta office on 20 December 2009. She returned to Malaysia on 15 November 2011.

Jojo Wong joined an international group of companies located in Germany on 15 July 2012, to advance her career. Before leaving for Germany in 2012, she went to Singapore for 17 days from 29 June to 15 July 2012 to attend a work related conference sponsored by her employers.

After over a year in Germany, she returned to Malaysia on 1 August 2013 and stayed until 31 October 2013, in order to help set up a Malaysian subsidiary of the international group.

Following this assignment, she was seconded to New York on a two year contract with the same group of companies, as a result of which she was regarded as non-Malaysian tax resident for the year of assessment 2014.

Between 2010 and 2013, Jojo Wong's stay in Malaysia was as follows:-

<u>Year</u>	<u>Period of stay in Malaysia</u>	<u>Number of Days</u>
2010	Nil	-
2011	15.11.2011 – 31.12.2011	47
2012	1.1.2012 - 15.7.2012	197
2013	1.8.2013 - 31.10.2013	92

Required:

Determine the residence status of Jojo Wong for the years of assessment 2010, 2011, 2012, and 2013, giving reasons and case law authority to support your answer.

[Total: 20 marks]

QUESTION 2

ToyKids Sdn Bhd is a manufacturer of kids' toys and incurred the following expenditure in 2013:

- (a) ToyKids bought a second hand factory for RM400,000 and soon after acquisition, incurred RM80,000 in extensive repairs comprising RM25,000 to replace some roof tiles with tiles of similar quality and RM55,000 to rewire the electrical system and improve the drainage system for the factory. Six months after commissioning the factory, the company spent RM15,000 to repaint the factory and build an extension costing RM60,000 to accommodate covered parking bays for the senior staff.

Required:

Advise ToyKids Sdn Bhd of the *tax deductibility* of each item of expenditure outlined above (without any reference to Industrial Building Allowance (IBA)). Provide statutory and case law authority for your advice.

(8 marks)

- (b) It was a good year for ToyKids and it rewarded its staff with a local holiday trip to Pangkor Island in 2013 for its 50 employees and their immediate families which cost RM2,600 for each employee in appreciation of their service to the company. It planned to make this an annual event. The company also organized high profile events like fashion shows, sports and celebrity events attracting lots of publicity, as well as sent its sales personnel who met the sales target, to Spain for a toy-makers' conference. This cost ToyKids RM55,000. At year end, the company also had its annual general meeting which was attended by 100 shareholders. After the meeting, the company organized a lunch for the shareholders and 50 employees of the company in conjunction with the company's 10th anniversary. The cost of the annual general meeting was RM10,000 and the lunch cost RM12,000.

Required:

Advise ToyKids Sdn Bhd of the *tax deductibility* of each item of expenditure outlined above. Provide statutory and case law authority for your advice.

(12 marks)

[Total: 20 marks]

QUESTION 3

Ali Baba Company Sdn Bhd (ABC) is a logistics company that uses an electronic data processing (EDP) system developed by its parent company based in Denmark, Delta Engineering A/S (DE), to facilitate documentation, booking and communication systems, data communication and cargo control. The EDP systems are necessary for ABC to conduct its business operations in Malaysia as part of the global activities of the DE Group. ABC pays EDP charges for the access to the EDP systems provided by DE. ABC did not withhold taxes from the EDP charges made to DE. ABC then claimed the EDP charges as deductible expenses under Section 33(1) of the Income Tax Act 1967 (ITA).

Subsequent to a tax audit, the Revenue relying on the definition of “royalty” under Section 2 of the ITA treated the EDP charges as royalty. Since ABC failed to withhold tax, the Revenue further disallowed ABC from claiming the EDP charges as deductible expenses. As a result, the Revenue raised notices of additional assessment on ABC, thus subjecting ABC to additional taxes, plus penalty.

Required:

Advise Anna, the finance manager, on the following:

- (a) **In what circumstances would the business income of DE be taxable in Malaysia?**
(5 marks)
- (b) **In what circumstances would the EDP charges amount to royalty? Why is it important to distinguish payments for “ownership of know-how” from that of “the right to use the know-how”?**
(12 marks)
- (c) **In the event of a conflict between the DTA and the ITA, what is your advice to Anna?**
(3 marks)

[Total: 20 marks]

QUESTION 4

XYZ Sdn Bhd (XYZ) is a logistics company which is principally engaged as a shipping agent for a Singaporean company (SGC). For the agency work undertaken, XYZ received commission payment from ABL at the rate of 5%. This is treated as XYZ's income and taxed as business income. In 2001, due to an internal restructuring and acquisitions, SGC reduced XYZ's commission to 4%.

In 2009, the Revenue performed a transfer pricing adjustment on the commission income received by XYZ for the years of assessment 2004 and 2005, whereby XYZ's recognised commission income was adjusted from 4% back to 5%.

Required:

Advise Lucas, the general manager of XYZ, on the following:

- (a) What is the difference between Section 140 and Section 140A of the ITA?**
(5 marks)
- (b) What type of documents is XYZ required to keep for transfer pricing purposes? Will failure to maintain such documents attract penalty?**
(5 marks)
- (c) How many years is XYZ required to keep records of its business? What is meant by "records"?**
(3 marks)
- (d) What are the recommended transfer pricing methodologies which XYZ can utilise in evaluating its transfer price? Advise Lucas on the differences between the methodologies.**
(7 marks)

[Total: 20 marks]

QUESTION 5

Kain Sdn Bhd (Kain) owns a factory and substantial plant and machinery from which it carries on a textile manufacturing business. Over the years Kain sustained substantial losses. Consequently Kain posted accumulated adjusted loss in the amount of RM10 million and unabsorbed capital allowance attributable to qualifying plant expenditure incurred on the plant and machinery for the tobacco business in the amount of RM35 million.

According to Mr Cotton, the financial controller of Kain, the company has plans to cease the textile manufacturing business and would derive rent from letting out space in the factory. The proceeds from letting the factory is expected to yield about RM2 million annually.

Required:

Based on relevant statutory provisions and case law, advise Mr Cotton:

- (a) Whether unabsorbed adjusted loss in the amount of RM10 million can be used to set off against income from letting out the factory premises in arriving at Kain's chargeable income.**

(12 marks)

- (b) Whether unabsorbed capital allowance can be used to set off against adjusted income derived from letting out the premises**

(8 marks)

[Total: 20 marks]

QUESTION 6

Pokok Holdings Sdn Bhd is an investment holding company. The only asset of Pokok Holdings Sdn Bhd is shares in Dahan Sdn Bhd, which is classified in its accounts as “shares in a subsidiary”. Pokok Sdn Bhd is the only shareholder in Dahan Sdn Bhd which was incorporated in 1970 and never commenced business. The only asset owned by Dahan Sdn Bhd is 500 hectares of land in the State of Pahang which is a jungle and was at all material times classified as “stock-in-trade” in its accounts. The objects clause in the Memorandum of Association of Dahan includes “development” and “turning over land for profit”.

Dahan Sdn Bhd intends to develop the land and is about to enter into an agreement with Papan Sdn Bhd wherein Papan Sdn Bhd will be given the rights to fell and remove the timber on the land owned by Dahan Sdn Bhd in consideration for payment by Papan Sdn Bhd of RM3 million and an undertaking to clear the land of jungle.

Meanwhile, Pokok Holdings Sdn Bhd received from Buaya Sdn Bhd to buy over all the shares in Dahan Sdn Bhd which is currently owned by Pokok Holdings Sdn Bhd.

Mr Awan, the tax manager of Pokok Holdings Sdn Bhd seeks your opinion on the following matters:

Required:

(a) **Assuming that the transactions would be successfully concluded on 27 December, 2014 what is the year of assessment to which the transactions relate?**

(5 marks)

(b) **As regards Dahan Sdn Bhd, can the proceeds of RM3 million from the disposal of timber be treated as capital and therefore not chargeable to income tax because the company has never had any business transactions before this and furthermore, it is the intention of Dahan Sdn Bhd to embark on the business of development and not logging.**

(8 marks)

(c) **As regards the offer by Buaya Sdn Bhd to buy over all the shares in Dahan Sdn Bhd which is currently owned by Pokok Holdings Sdn Bhd, is Dahan Sdn Bhd a “real property company” for the purposes of Real Property Gains Tax?**

Based on relevant statutory provisions and case law, advise Mr Awan.

(7 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)