



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

REVENUE LAW

DECEMBER 2015

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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 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) Real property gains tax (RPGT) generally applies only when a chargeable asset is disposed of.

**Required:**

**Explain, by reference to relevant case laws, the meaning of the term 'dispose' in the RPGT Act.**

(9 marks)

- (b) XYZ Sdn Bhd acquired a factory building in July 2000 for a consideration of RM 1 million.

In December 2006, a massive flood destroyed substantial parts of the building. The insurance compensation in respect of the damages to the building amounted to RM1.2 million. The compensation was paid in January 2007, and the entire amount was immediately spent on reconstructing the damaged parts of the building.

The building is sold in December 2015 for RM2 million.

**Required:**

**State how the insurance compensation will be treated in computing the gains on disposal**

(7 marks)

- (c) Joseph disposed a building and, being somewhat active in real property transaction, was unsure whether the gain is assessable under the Income Tax Act or the RPGT Act. Lately, he received an assessment to RPGT in respect of the disposal and thus has concluded that the Director General of Inland Revenue is now estopped from raising an assessment to income tax in respect of the gain.

**Required:**

**Explain with reference to decided cases whether The DGIR can assess Joseph to Income tax on the same gains**

(4 marks)

**[Total: 20 marks]**

## Question 2

- (a) Best Driving School Sdn Bhd (BDS) (year ending 31 December) is a company licensed to carry on the business of managing a driving school for learner drivers of various motor vehicles such as cars, motorcycles, buses and lorries.

In the year 2014, the taxpayer incurred RM2.8 million for constructing a training ground and associated buildings necessary for the business.

### Required:

**Would the cost of the construction of the training ground and associated buildings be eligible for capital allowances under Schedule 3 of the Income Tax Act 1967?**

**Candidates are required to cite relevant case law to support their answer.**

(6 marks)

- (b) Robot Toys Sdn Bhd commenced business on 1 January 2014 and operates a toy manufacturing factory at Butterworth. The company incurred capital expenditure on building, plant and machinery during the year 2014. The finance manager Mr Andrew Pang has queried whether the expenditure listed in (i) to (iv) below would qualify for capital allowances under Schedule 3 of the Income Tax Act:

### Required:

**State whether the items listed below are eligible for allowances under Schedule 3 of the Income Tax Act 1967 citing case law authority in support of the answers**

- (i) **Expenses incurred towards the purchase of an old house next to the factory to convert to a child care centre for the children of its employees for RM2 million. It incurred another RM800,000 on repairs and improvements to make the building suitable as a childcare centre.**

(4 marks)

- (ii) **Computer costing RM4,900 purchased for use of company staff. The computer was found to be unsuitable after six months and was disposed for RM3,600 on 1 September 2014.**

(4 marks)

- (iii) **Billboards costing RM800,000 at shopping malls advertising the company's toys.**

(3 marks)

- (iv) **Security control equipment RM1.8 million installed at the factory premises.**

(3 marks)

**[Total: 20 marks]**

### Question 3

- (a) Luxury Vehicles Sdn Bhd (LVSB) is a Malaysian company and it is a dealer and franchise holder of imported French cars. The company's accounts end on 31 December each year. Luxury Vehicles Bhd sold new cars and also transacted with used cars which were traded in. In order to promote the sales of cars, the taxpayer supported and organised high profile events such as global fashion shows.

In 2014, a sum of RM1 million was incurred to sponsor an international fashion show in Malaysia. The taxpayer (LVSB) was the principal sponsor. The taxpayer's logo, name and brand were displayed prominently in various magazines, newspapers, television and billboards.

Luxury Vehicles Sdn Bhd also sent its dealers, who met their sales targets, to Paris, France. The company (LVSB) is contractually and legally bound to pay the "holdback margins" as well as "target and standard margins" to its dealers who met their sales targets.

**Required:**

**Advise on the tax deductibility of:**

- (i) sum of RM1 million to sponsor the international fashion show; and
- (ii) "Holdback margins" as well as "target and standard margins" to its dealers incurred by Luxury Vehicles Sdn Bhd in the year 2014.

**Candidates should state the statutory provisions and cite case law authority for their advice.**

(8 marks)

- (b) A non-resident company, Global Communication Network Ltd (GCN) operates an international network for voice, data and video communication. A Malaysian company, Data Link Sdn Bhd (DLSB) had an agreement with GCN to allow connect with its data traffic and access the global services provided by GCN in return for payments at a fixed rate. The Malaysian company (DLSB) had further indicated that in 2014 GCN had wholly performed services to DLSB outside Malaysia.

**Required:**

**Explain with reasons whether the payments made in 2014 by Data Link Sdn Bhd to Global communication Network Ltd would be subject to withholding tax under the provisions of the Income Tax Act 1967.**

**Candidates should cite relevant case law in support**

(6 marks)

- (c) Subang Construction Sdn Bhd (SCSB) is a company involved in the business of building high rise condominium blocks in Bandar Sunway. In September 2014, two of its foreign construction workers were fatally wounded when the partially built roof of a building collapsed. The company had to pay compensation to the deceased' representatives.

The company (SCSB) also incurred legal expenses in contesting the quantum of compensation to be paid to the representative' of the deceased workers.

**Required:**

**Would the legal expenses incurred in defending the case and the compensation paid to the construction worker's representatives be tax deductible under the Malaysian Income Tax Act 1967?**

**Support your answer with relevant case law.**

(6 marks)

**[Total: 20 marks]**

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#### Question 4

- (a) "A business has incurred a loss, hence a compensatory payment was made to the person".

In respect of the above statement, provide any two instances when compensation received by a person for loss of income would be is taxable under the Income Tax Act 1967. Appropriate case law and provisions of the Income Tax Act 19767 are to be used to support the answer.

(8 marks)

- (b) Yap Seng Tiles Sdn Bhd is a retail outlet selling many different brands of building products since 2002. It had long standing contracts ranging from three to five years with various suppliers.

One of the existing contracts with a remaining term of five years was prematurely terminated in 2014 as it was no longer profitable for the supplier and a compensation of RM75,000 was paid in the same year to Yap Seng Tiles Sdn Bhd.

**Required:**

**Explain whether the compensation of RM75,000 received by Yap Seng Tiles Sdn Bhd in 2014 is taxable under the Income Tax Act 1967? Candidates are encouraged to provide appropriate case law to support your answer.**

(6 marks)

- (c) Mega Stores Sdn Bhd suffered losses due to severe floods in Kuala Krai, Kelantan in December 2014 that inundated the floor space of the building. The losses have been reported to be in the region of RM10 million. The company has made an insurance claim to KH Insurance Bhd for loss of plant and machinery, stock in trade as well as consequential loss due to the flood damage.

**Required:**

**Explain, with reasons, the tax treatment of the compensation receivable by Mega Stores Bhd from KH Insurance Bhd in the year 2014.**

(6 marks)

**[Total: 20 marks]**

### Question 5

Infra Sdn Bhd (Infra) is the owner of a piece of land in Kajang. The land was occupied by squatters.

Exo Sdn Bhd (Exo) is a property development company incorporated for the sole purpose of the joint venture with Infra to develop properties on the Kajang land.

Exo entered into a joint venture with Infra, with the following terms in the joint venture agreement (JVA):

1. Infra to evict the squatters from the Kajang land
2. Obtain the necessary approval and consent from relevant authorities to convert the land from agriculture to commercial category.
3. Exo to make a payment of RM 8 million to Infra upon execution of the JVA

Exo paid RM8 million upon execution of the JVA. Infra was not able to fulfil the conditions as stated in the JVA.

Infra subsequently paid RM12 million to Eco to compensate on Eco's loss arising from the termination of the JVA where Exo effectively lost its rights to develop the Kajang land.

#### **Required:**

**Advice Exo on whether the RM12 million received from Infra constituted a capital or revenue receipt and consequently discuss its tax implications.**

Candidates are required to cite relevant case laws to support the answer.

**[Total: 20 marks]**

## Question 6

Dr. Imelda Santos, a cardiothoracic surgeon from the Republic of Philippines, has been employed in Malaysia, by a private medical centre situated in Penang, under a 6-year contract of service, since YA 2009.

Dr. Santos was a tax resident in Malaysia for 3 years from YA 2009 to YA 2011.

On 10 January 2012, Dr. Santos took a 7 month leave of absence from her employment, to be a volunteer with Doctors Without Borders/Médecins Sans Frontières (“**MSF**”) in Al-Dhale’, Yemen. Upon completion of her voluntary service with MSF, Dr. Santos returned to Malaysia and resumed her employment on 10 August 2012.

In YA 2013, Dr. Santos was in Malaysia for a total of 185 days.

Between 2 February 2014 and 15 February 2014, Dr. Santos vacationed in Bangkok with her boyfriend. Sometime thereafter, Dr. Santos’ best friend in Philippines suffered a sudden heart attack. So, on 28 April 2014, Dr. Santos returned to Philippines to care for her best friend. After nursing her best friend back to health, Dr. Santos returned to Malaysia and resumed her employment again on 18 October 2014.

Dr. Santos left Malaysia permanently on 9 April 2015, 1 week after her contract of service ended.

Between 2012 and 2015, Dr. Santos’s stay in Malaysia was as follows:-

Year	Period of Stay in Malaysia	Number of Days
2012	1.1.2012 – 10.1.2012	10
	10.8.2012 – 31.12.2012	144
2013	1.1.2013 – 31.3.2013	90
	28.9.2013 – 31.12.2013	95
2014	1.1.2014 – 2.2.2014	33
	15.2.2014 – 28.4.2014	73
	18.10.2014 – 31.12.2014	75
2015	1.1.2015 – 9.4.2015	99

**Required:**

(i) **Determine the residence status of Dr. Imelda Santos for the years of assessment 2012, 2013, 2014 and 2015, giving reasons and case law authority to support your answer.**

(12 marks)

(ii) **State with reference to the ITA and decided cases, how the residence of a company is determined.**

(8 marks)

**[Total: 20 marks]**

**[END OF QUESTION PAPER]**