



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

REVENUE LAW

JUNE 2015

Student Reg. 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

Mau, Sze and Tong have worked for many years in a private company as senior tax advisors and they decided to leave their respective jobs. Mau decided to open a firm providing advice on tax returns in respect of the recently implemented Goods and Services Tax (GST). Sze joined a local university as a lecturer on taxation, whilst Tong took up employment as the head of human resource department in Vietnam.

Required:

- (a) **Based on the scenario given above, identify and briefly explain as to who are exercising a “contract of service” and those who are exercising a “contract for services”.** (7 marks)
- (b) **Discuss five (5) differences in the tax treatment of a person exercising employment as compared with a person carrying on a profession.** (10 marks)
- (c) **Outline any three benefits-in-kind received by an employee from his employer that are exempted from income tax under the ITA.** (3 marks)

[Total: 20 marks]

QUESTION 2

The Income Tax Act (ITA) does not provide a definition for the term “plant and machinery”. Numerous case laws are used to establish the meaning of plant and machinery for the purpose of determining Schedule 3 allowances under the ITA 1967.

Required:

- (a) **Using decided case laws, explain what is meant by the term “plant and machinery” for the purpose of determining Schedule 3 allowances under the ITA 1967.** (8 marks)
- (b) Robin Loh, a lawyer commenced a legal practice in January 2014. For his legal practice, Robin acquired a full set of reference books amounting RM40,000. To optimise the working space in the office, Robin purchased movable office partitions amounting to RM12,000. He also installed a permanent plaster ceiling to the office amounting to RM8,000.

Required:

Advise Robin, with reference to case law, whether each of the following are considered plant and machinery for income tax purposes and are entitled to Schedule 3 allowances:

- (i) reference books bought for the practice
- (ii) moveable office partitions
- (iii) Plaster ceiling for office.

(12 marks)

[Total: 20 marks]

QUESTION 3

- (a) Anna, a finance executive in BizCo Sdn Bhd, is given the task to brief her team on the various tests which one may apply in distinguishing a revenue expense from a capital expense.

Anna has approached you to advise her on the 5 different tests in distinguishing a revenue expense from a capital expense. **In advising Anna on the different tests, she has requested you to cite case laws and explain briefly the various tests.**

(15 marks)

- (b) **Anna has also requested your advice on the factors to be taken into account in claiming a deduction under the Income Tax Act 1967.**

(5 marks)

[Total: 20 marks]

QUESTION 4

The Inland Revenue Board (IRB) recently conducted a field audit on ABC Sdn Bhd and is presently requesting for further documents from the company before issuing their final audit findings. John, a new manager of ABC Sdn Bhd, wishes to understand the company's rights to appeal under the Income Tax Act 1967 ("ITA") in the event ABC is aggrieved by IRB's assessment.

Advise John on the following:

- (a) **What is the appeal procedure available to ABC Sdn Bhd pursuant to the ITA in the event it is aggrieved by the IRB's assessment?**

(6 marks)

- (b) **In the event ABC Sdn Bhd is out of time in initiating its appeal in the prescribed form, can ABC Sdn Bhd still pursue its appeal?**

(4 marks)

- (c) **ABC Sdn Bhd decides to file a letter of objection first before filing the notice of appeal in its prescribed form. Is this a valid method of appeal?**

(4 marks)

- (d) **Apart from the appeal procedure as set out in the ITA, is there an alternative avenue of appeal available to ABC Sdn Bhd?**

(6 marks)

[Total: 20 marks]

QUESTION 5

Jentera Sdn Bhd (“Jentera”) owns a fleet of tractors and excavators from which it carries on the business of excavation. In recent years, there has been a decline in the construction sector and Jentera sustained substantial losses. Consequently, Jentera posted accumulated adjusted loss of RM2 million and unabsorbed capital allowances attributable to qualifying plant expenditure incurred on the plant and machinery for the business amounting to RM20 million.

According to Mr Tayar, the financial controller of Jentera, the company has plans to cease the excavation business and would derive rental income from letting out the tractors and excavators. The business of letting the tractors and excavators is expected to yield RM3 million annually.

Using case laws to support your answer and making reference to the tax legislation, advise Mr Tayar:

- (a) **Whether the unabsorbed adjusted loss of RM2 million can be used to set off against income from letting out of tractors and excavators in arriving at Jentera’s chargeable income; and** (12 marks)
- (b) **State whether unabsorbed capital allowances of RM20 million can be used to set off against adjusted income from the letting out of tractors and excavators.** (8 marks)
[Total: 20 marks]

QUESTION 6

Mr Sarikei, who is a timber hauling contractor, entered into a joint-venture with a timber company, Mulu Sdn Bhd to submit a tender for the alienation of land in the State of Sarawak. Both Mr Sarikei and Mulu Sdn Bhd are in the timber business but this is the first time they have entered into a joint-venture.

Mr Sarikei and Mulu Sdn Bhd were successful in the tender and were jointly awarded 200 hectares of land by the Sarawak State Government. Before they started work, they received an offer to sell the rights to extract timber from another timber merchant, Kayu Sdn Bhd for RM25 million, out of which Mr Sarikei’s portion would be RM13 million.

Mr Sarikei seeks your opinion if the proceeds of RM13 million from the disposal of rights to extract timber can be treated as capital and therefore not chargeable to income tax. According to him, this is the first time he entered into a joint venture and that the rights to extract timber has not commenced.

- (a) **Based on relevant statutory provisions and citing appropriate case law, advise Mr Sarikei on the taxability of the proceeds received by him.** (12 marks)
- (b) **Mr Sarikei informs that, instead of deriving income from the disposal of the rights to extract timber, the joint venture may decide to sell the plot of land to Harap Sdn Bhd for RM50 million. Mr Sarikei would like to know if the proceeds will be subject to income tax. Advise Mr Sarikei.** (8 marks)
[Total: 20 marks]