

Professional Level – Options Module

# Advanced Taxation (Malaysia)

Monday 1 December 2008

**Time allowed**

Reading and planning: 15 minutes

Writing: 3 hours

This paper is divided into two sections:

Section A – BOTH questions are compulsory and MUST be attempted

Section B – TWO questions ONLY to be attempted

**Tax rates and allowances are on pages 2–3**

**Do NOT open this paper until instructed by the supervisor.**

**During reading and planning time only the question paper may be annotated. You must NOT write in your answer booklet until instructed by the supervisor.**

**This question paper must not be removed from the examination hall.**

The Association of Chartered Certified Accountants

# Paper P6 (MYS)

The ACCA logo consists of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black rectangular background.

**SUPPLEMENTARY INSTRUCTIONS**

1. You should assume that the tax rates and allowances shown below will continue to apply for the foreseeable future.
2. Calculations and workings should be made to the nearest RM.
3. All apportionments should be made to the nearest whole month.
4. All workings should be shown.

**TAX RATES AND ALLOWANCES**

The following tax rates, allowances and values are to be used in answering the questions.

Resident individual		Income tax rates	
		Chargeable income	
Band RM	Cumulative RM	Rate %	Tax payable Cumulative RM
2,500	2,500	0	0
2,500	5,000	1	25
15,000	20,000	3	475
15,000	35,000	7	1,525
15,000	50,000	13	3,475
20,000	70,000	19	7,275
30,000	100,000	24	14,475
150,000	250,000	27	54,975
Excess		28	

Resident company		
Paid up ordinary share capital	RM2,500,000 or less	More than RM2,500,000
On the first RM500,000	20%	At standard rates
On the remainder or all at standard rates:		
Year of assessment 2007	27%	27%
Year of assessment 2008	26%	26%

Resident trust body, receiver or executor of an individual not domiciled in Malaysia at date of death	
All	26%

Labuan offshore company – chargeable income from an offshore business activity	
All	3%

Non-resident	
Company	As above
Other	28%

### Personal deductions

	RM
Self	8,000
Self – additional if disabled	6,000
Spouse	3,000
Spouse – additional if disabled	3,500
Child – basic rate	1,000
Child – higher rate	4,000
Disabled child	5,000
Life insurance premiums and approved scheme contributions	maximum 6,000
Medical expenses for parents	maximum 5,000
Medical expenses for serious disease of self, spouse or child, including up to RM500 for medical examination	maximum 5,000
Basic supporting equipment for self, spouse, child or parent if disabled	maximum 5,000
Educational and medical insurance for self, spouse or child	maximum 3,000
Study course fees for skills or qualifications	maximum 5,000
Purchase of a personal computer	maximum 3,000
Purchase of books, magazines etc for personal use	maximum 1,000
Purchase of sports equipment	maximum 300
Deposit for a child into the National Education Savings Scheme	maximum 3,000

### Rebates

Individual with chargeable income not exceeding RM35,000	RM
Basic rate	350
Rate for an individual entitled to a deduction for a spouse or a former wife	700

### Capital allowances

	Initial Rate %	Annual Rate %
Industrial buildings	10	3
Plant and machinery – general	20	14
Motor vehicles, heavy machinery	20	20
Computers, information technology equipment and computer software	20	40
Office equipment, furniture and fittings	20	10

### Stamp duty

#### Rates of duty under the First Schedule

Conveyance, assignment, transfer or absolute bill of sale – Item 32(a)	Rate %
For every RM100 or fractional part thereof:	
On the first RM100,000	1
On the next RM400,000	2
On the excess over RM500,000	3

**Section A – BOTH questions are compulsory and MUST be attempted**

- 1 Rockhard Sdn Bhd has been granted pioneer status to manufacture advanced composite materials at its factory in Negeri Sembilan, which is not a promoted area. Activities began from production day, 1 October 2005, and accounts have been made up to 30 September each year.

The results have been as follows:

Year to 30 September	2006 RM	2007 RM	2008 RM
Pioneer adjusted income/(adjusted loss)	(500,000)	1,576,000	2,536,000
Bank deposit interest	10,000	100,000	18,000
Approved donation paid	–	12,000	–
Capital expenditure incurred on machinery and plant eligible for annual allowances at 14%, which was brought into use immediately	2,000,000	–	–

At a recent board meeting of Rockhard Sdn Bhd, it was proposed that the company relocate its pioneer activity to a promoted area in order to obtain improved tax incentives. Messrs Swift and Smart have been asked by the company secretary to report to the company on the income tax implications of this proposal.

**Required:**

**Prepare a report from Messrs Swift and Smart addressed to the secretary of Rockhard Sdn Bhd advising on the income tax implications of relocating the pioneer activity of Rockhard Sdn Bhd to a promoted area. The report should deal with the following aspects:**

- (a) **Briefly indicate the tax incentives under the Promotion of Investments Act 1986 that will be available to Rockhard Sdn Bhd on relocating to a promoted area, indicating any choice to be made.** (2 marks)
- (b) **Describe the features of the tax incentives that will be available to Rockhard Sdn Bhd for a promoted activity or promoted product on relocating its manufacturing activity to a promoted area and make a comparison with those enjoyable outside the promoted areas.** (9 marks)
- (c) **Explain the factors that would influence the choice between the two main tax incentives under the Promotion of Investments Act 1986.** (5 marks)
- (d) **Determine the chargeable income and the amounts entering the exempt account for each of the years of assessment 2006, 2007 and 2008 based on the incentive presently enjoyed by Rockhard Sdn Bhd.** (12 marks)
- (e) **Provide a summary comparing the chargeable income and exempt amounts for the years of assessment 2007 and 2008 as disclosed by the computations in (d) with what they would have been if Rockhard Sdn Bhd had been able to relocate to a promoted area from the outset and enjoy pioneer status as described in (b) above.** (4 marks)
- (f) **Appropriateness of the format and content of the report and the effectiveness with which the information is communicated.** (3 marks)

**(35 marks)**

2 Brothers, R Winger and L Winger, derive part of their income from property holdings.

At the present time (1 December 2008), the properties owned by the brothers, and their market values, are:

	Market value RM
<b>R Winger</b>	
Condominium 1	1,500,000
Condominium 2	900,000
Condominium 3	600,000
<b>L Winger</b>	
Freehold bungalow	1,800,000
Purpose-built freehold warehouse	1,200,000
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	6,000,000
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There are no borrowings.

The two Winger brothers have conceived a plan to merge their properties by transferring them to a newly incorporated company called Goalpost Sdn Bhd. Only two ordinary shares, one to each of the two Winger brothers, have been issued so far. According to its Memorandum of Association, the company's principal object is to acquire and hold land and buildings for investment.

All of the properties will be transferred to Goalpost Sdn Bhd on 1 January 2009 wholly or partly in exchange for ordinary shares in the company to be issued to the Winger brothers. The company will begin to receive rents from 1 January 2009. No maintenance and support services will be provided to the tenants.

**Required:**

**Prepare a letter from First League Tax Services Sdn Bhd to R Winger and L Winger explaining the tax implications arising on, and from the transfer of, their properties to Goalpost Sdn Bhd. Your letter should cover, separately, the following aspects ONLY:**

- (a) Stamp duty on the transfer of the properties, including a calculation of any liability. (4 marks)
- (b) Having regard to tax efficiency, the appropriate amounts of ordinary share capital to be issued to R Winger and L Winger. (6 marks)
- (c) Whether Goalpost Sdn Bhd will be an investment holding company. (7 marks)
- (d) The tax treatment of the rental income received by Goalpost Sdn Bhd. (2 marks)
- (e) Having regard to tax efficiency, the appropriate level of directors' fees to be paid by Goalpost Sdn Bhd to R Winger and L Winger. (4 marks)
- (f) Appropriateness of the format of the letter and the effectiveness with which the information is communicated. (2 marks)

**(25 marks)**

**Section B – TWO questions ONLY to be attempted**

- 3 (a)** Malaysia has entered into double taxation agreements with many countries. Most of them are based on the OECD model treaty.

The concept of a 'permanent establishment' is very significant in determining the Malaysian tax position of persons involved in international activities as the industrial and commercial profits of a non-resident are not taxable in Malaysia unless they arise through a permanent establishment.

Under the OECD model, a permanent establishment is said to be 'a fixed place of business in which the business or the enterprise is wholly or partly carried on'. In addition to this general statement, the OECD model specifies a number of places that are especially included in the meaning of permanent establishment, as well as a number of situations in which a permanent establishment is deemed to exist because of the nature of the activities being carried on.

**Required:**

**State TWO ONLY of the locations that are especially included in the meaning of permanent establishment.**  
(2 marks)

- (b)** A company from France has been contracted to supervise the construction of a toll highway in Malaysia and is expected to be engaged on the project for 15 months. The company from France, which has no premises of its own in Malaysia, will work out of the premises of the highway concession company. Malaysia has a double taxation agreement with France.

**Required:**

**State, giving reasons, whether the company from France will be liable to income tax on the income derived from its supervisory activities in Malaysia.**

**Note: you are not required to comment on any tax implications arising under s.107A of the Income Tax Act 1967.**  
(5 marks)

- (c)** Willy Bright, who is not resident in Malaysia, is the sales and marketing representative for Bright Publications Limited, a United Kingdom resident company. Bright Publications Limited is owned and controlled by Willy Bright and his brother, Harry Bright, who has not so far been actively involved with the company. Bright Publications Limited does not have a permanent establishment in Malaysia.

Harry Bright is about to retire from his present employment in the United Kingdom and intends to relocate from the United Kingdom to live in Malaysia in his retirement. Willy Bright sees this as an opportunity to get some help in his sales and marketing activities in Malaysia.

**Required:**

**State, giving reasons, whether each of the following courses of action may result in Bright Publications Limited being deemed to have a permanent establishment in Malaysia.**

- (i) Customers are given Harry Bright's telephone number and e-mail address and told that they may refer to him for details of and advice on books and publications available from Bright Publications Limited;**  
(2 marks)
- (ii) A stock of books for supply to Malaysian customers is kept at Harry Bright's residence in Malaysia;**  
(2 marks)
- (iii) Harry Bright is appointed as a director of Bright Publications Limited.**  
(5 marks)

- (d) Besides dealing with tax liability on the basis of a permanent establishment, a comprehensive double taxation agreement can help to resolve a number of other taxation issues.

**Required:**

**Identify and briefly explain TWO ONLY of the tax issues that a comprehensive double taxation agreement can help to resolve.** (4 marks)

**(20 marks)**

- 4 (a) Cheapshop Sdn Bhd carries on a business and makes up accounts to 31 March each year. The company has been paying dividends regularly and since the start of the single tier system it has not opted to disregard its s.108 balance. The directors want to determine whether the s.108 balance is now sufficient to pay out a further dividend of RM200,000 gross during 2008.

The following information is available:

	RM
Balance of the s.108 account at the end of the year of assessment 2007	25,000
Final monthly instalment of tax for the year of assessment 2007, paid 10 April 2007	10,000
Balance of tax for the year of assessment 2007, paid on the timely submission of Form C	15,000
Interim dividend paid in cash on 15 December 2007, net of tax at 27%	73,000
Final dividend paid in cash on 15 March 2008, net of tax at 26%	185,000

Based on the estimate submitted, Cheapshop Sdn Bhd needed to pay monthly instalments of RM9,600 for the year of assessment 2008 and all payments were made on the due date. No revision of the estimate was made.

**Required:**

**Determine, with the help of any necessary calculations, whether the s.108 balance is sufficient to pay out a further dividend of RM200,000 gross.** (10 marks)

- (b) Ying Fatt Sdn Bhd purchased some ordinary shares in two companies listed on Bursa Malaysia on 12 September 2008. The companies were ABC Berhad and XYZ Berhad. The shares in ABC Berhad were sold again on 29 November 2008 but the shares in XYZ Berhad were retained. In the meantime a dividend on the shares in ABC Berhad was received on 29 November 2008 and this consisted of two elements:

	RM
In cash with tax deducted at 26% – net	33,300
Exempt – from pioneer income	15,000

A single tier dividend of RM10,000 was received from XYZ Berhad on 25 November 2008.

A loan had been taken out to buy all of the shares so acquired and the interest paid during 2008 was RM4,000.

Ying Fatt Sdn Bhd has no other income.

However, Ying Fatt has incurred an adjusted business loss of RM6,000 in the basis period for the year of assessment 2008.

**Required:**

**In respect of each element of the dividends state whether, and why or why not, Ying Fatt Sdn Bhd will be entitled to:**

- (i) a s.110 dividend tax credit; (4 marks)
- (ii) a deduction for interest expense; and (3 marks)
- (iii) a deduction for the business loss. (3 marks)

**(20 marks)**

- 5 (a) Jayapalan is a director of Rising Star Berhad, a company recently listed on Bursa Malaysia. On 30 November 2008 Jayapalan sold 35,000 shares in Rising Star Berhad for RM4.50 each.

Of the shares disposed of, Jayapalan had obtained 15,000 shares on 1 July 2006 by way of an offer to him at that time as a company executive. The price paid was RM1 per share, which was the par value. At the time, Rising Star Berhad was not listed on Bursa Malaysia and had an issued share capital of RM1,000,000. The company's net assets position was then as follows:

	RM
Patents and trade marks	250,000
Goodwill	150,000
Land and buildings	1,000,000
Machinery, plant and motor vehicles	800,000
Trade debtors	200,000
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	2,400,000
Trade creditors	100,000
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Net assets	2,300,000

The other part of the shares disposed of by Jayapalan came from the exercise of a right granted to him by the company in July 2007. Under that right, he acquired 20,000 shares in November 2008 at the price of RM1.50 per share. On 31 July 2007, when the right was first exercisable, the market value of the shares was RM1.85 each and on 20 November 2008 when he exercised the right it was RM4.10 per share.

**Required:**

**Determine, giving brief explanations, the amount of Jayapalan's income and the time when it is deemed to arise from:**

- (i) the shares attributable to the 1 July 2006 acquisition; and (9 marks)
- (ii) the shares attributable to the 20 November 2008 acquisition. (5 marks)

**Note:** you should show the details of any necessary supporting calculations.

- (b) On 25 November 2008 Rising Star Berhad became a wholly owned subsidiary of Aggressor Berhad. Some executives and directors, including Jayapalan, were given notice to terminate their employment on 31 December 2008. Jayapalan, who is now aged 47 and still in good health, will receive a compensation sum of RM200,000 for the early termination of his employment. Jayapalan has worked for Rising Star Berhad since 1 January 1998, except for a period of one year when he worked for Morning Star Sdn Bhd, a 51% subsidiary of Rising Star Berhad.

**Required:**

**Determine, giving brief explanations, the amount of the compensation sum on which Jayapalan will be chargeable to tax, if any, and the time at which it will be chargeable.** (6 marks)

**(20 marks)**

**End of Question Paper**