

Professional Level – Options Module

Advanced Taxation (Malaysia)

Monday 7 December 2009

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.

Income tax rates

Resident individual

Chargeable income

Band RM	Cumulative RM	Tax payable	
		Rate %	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	12	3,325
20,000	70,000	19	7,125
30,000	100,000	24	14,325
Excess		27	

Non-resident individual

All chargeable income

27%

Resident company

Paid up ordinary share capital

**RM2,500,000
or less**

**More than
RM2,500,000**

On the first RM500,000

20%

25%

On the remainder

25%

25%

Non-resident company

All chargeable income

25%

Labuan offshore company – income from an offshore business activity

All chargeable income

3%

Trust body – resident or non-resident

All chargeable income

25%

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 child into the National Education Savings Scheme	maximum	3,000

Rebates

	RM
Individual with chargeable income not exceeding RM35,000 – basic rate	400
Further rebate for an individual entitled to a deduction for a spouse or a former wife	800

Capital allowances

	Initial allowance	Annual allowance
	%	%
Industrial buildings	10	3
Plant and machinery – general	20	14
Motor vehicles, heavy machinery	20	20
Office equipment, furniture and fittings	20	10

Stamp duty

Rates of duty under the First Schedule

	Rate %
Conveyance, assignment, transfer or absolute bill of sale – Item 32(a)	
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 Asteroid Bhd ('Asteroid') carries on a leasing business making up accounts to 30 September each year. For the year ended 30 September 2009, the draft accounts show the following information:

	RM
Gross revenue	1,992,000
Expenses:	
Staff, office and administrative expenses	600,000
Directors' remuneration	200,000
Zakat perniagaan	10,000
Depreciation	290,000
	<u>1,100,000</u>
Profit before tax	<u>892,000</u>

The company's tax agents, Moonwalk Sdn Bhd, have been asked to provide an estimate of the tax payable by Asteroid for the year of assessment 2009. In addition to a copy of the draft accounts, they have been provided with the following information:

Gross revenue consists of income derived from leasing transactions made up as follows:

	RM
Income received from operating leases	1,678,000
Income received from finance leases:	
Lease No.1	
Lease of a heavy machine granted on 1 January 2009 for 72 months with rentals of RM20,000 per month. The asset cost RM980,000. The lessee may purchase it for RM10 at the end of the lease term.	50,000
Lease No.2	
Lease of refrigerated road transport vehicles granted on 1 April 2009 for 60 months with rentals of RM50,000 per month. The assets were purchased from the lessee for RM2,000,000. The lessee had owned the assets for three years and claimed capital allowances on them prior to sale. The lessee has no right to re-acquire the assets, but is permitted to continue to lease them for a nominal sum at the expiry of the lease term.	62,000
Lease No.3	
Lease of computers and IT equipment granted on 1 January 2009 for 60 months with rentals of RM45,000 per month. The assets were purchased from the lessee for RM1,800,000. The lessee had owned the assets for less than one year and was not entitled to claim capital allowances on them. The lessee has no right to re-acquire the assets.	90,000
Lease No.4	
Lease of office equipment granted 1 January 2007 for 30 months with rentals of RM65,000 per month. The asset cost RM1,500,000. Although the lessee had no legal right to acquire the asset, it was sold to him for a nominal sum when the lease term ended.	112,000
	<u>1,992,000</u>

For the operating leases the amount shown above is the full amount of the lease rentals received but for the finance leases the amounts represent only the interest element. Rentals unpaid are not included in the draft accounts because Asteroid does not recognise them for accounting purposes. They comprise:

	RM
Income from operating leases:	
At 30 September 2008	140,000
At 30 September 2009	73,000

Capital allowances for all assets, including the eligible leased assets mentioned above, for the year of assessment 2009 are:

	RM
Leased assets	1,200,000
Non-leased (common) assets	20,000

Required:

(a) Prepare a letter from Moonwalk Sdn Bhd addressed to the Secretary of Asteroid Bhd providing the information required by the company for the year of assessment 2009. This should deal separately with the following aspects:

- (i) For each of the finance leases (Nos.1 to 4 above) state and explain how the lessor is treated for income tax purposes under the Income Tax Leasing Regulations 1986; (11 marks)
- (ii) Commencing with the gross revenue calculate the gross income for tax purposes from each business source for the year of assessment 2009, showing details of any adjustments made; (8 marks)
- (iii) Commencing with the profit before tax, compute the chargeable income of Asteroid Bhd for the year of assessment 2009, showing the adjusted income and statutory income from each business source, and the aggregate income.

Note: your computation should be based on the assumption that nothing is disallowable, except for what is obvious from the income statement, and that any apportionments between the separate business sources are to be made in proportion to their gross income for tax purposes. (9 marks)

Professional marks will be awarded in part (a) for the appropriateness of the format and content of the letter and the effectiveness with which the information is communicated. (2 marks)

(b) Briefly explain the rationale of the Court of Appeal decision in *Ketua Pengarah HDN v Daya Leasing Sdn Bhd* (2005) MSTC 4,124 determining that common expenses should be apportioned in proportion to gross income and the anomaly inherent in that decision. (3 marks)

(33 marks)

- 2 SM Tech Sdn Bhd ('SM Tech') is a Malaysian resident company providing information and communication technology (ICT) services and making up accounts to 31 December each year. The directors have identified the need for some pre-year end tax planning and have asked Canny, their in-house accountant, who is an ACCA graduate, to prepare a report for the forthcoming board meeting. The following information is available to Canny:

Projected results for the year to 31 December 2009:

	RM	RM
Gross revenue:		
ICT services provided to foreign clients		120,000
ICT services provided to non-foreign clients		85,000
Fees earned from computer tuition classes held on the company's premises		50,000
Sale of computer hardware and software		25,000
		<u>280,000</u>
Cost of computer hardware and software sales		<u>(15,000)</u>
Gross profit		265,000
Overheads:		
Staff salaries and other employee costs	50,000	
Directors' fees	25,000	
General overheads	25,000	
Depreciation	15,000	
		<u>115,000</u>
Profit before tax		<u><u>150,000</u></u>

The following information is also available to Canny:

1. Providing ICT services to foreign clients is one of the services specified for the purposes of the exemption for increased export of qualifying services.
2. The gross revenue derived from the provision of ICT services to foreign clients in the year to 31 December 2008 was RM80,000.
3. The amount of unrelieved exemption for increased export of qualifying services brought forward from the year of assessment 2008 is RM60,000.
4. Unabsorbed losses brought forward from the year of assessment 2008 are RM85,000.
5. Capital allowances for the year of assessment 2009 are RM65,000.
6. The exempt account balance brought forward is nil.
7. The following items are expected to occur in the year to 31 December 2010 and have not been taken into account in the projected results:
 - A. Capital expenditure to be incurred on computers and IT equipment to re-equip the tuition centre is RM75,000. This will be eligible for accelerated capital allowances (20% initial and 80% annual). No balancing adjustments on disposal of the existing equipment are anticipated.
 - B. Gross revenue to be derived from a substantial contract with an Indonesian client is RM120,000.

Required:

(a) Prepare the report that Canny is required to provide for the board meeting. The report should deal with the following aspects:

(i) A provisional computation of SM Tech Sdn Bhd's income tax liability for the year of assessment 2009 without taking into account either of items 7A or 7B above, clearly identifying the amounts of any unrelieved exemption, losses or capital allowances; (10 marks)

(ii) Explain and quantify the tax consequences of bringing either or both of items 7A and 7B above into the year 2009.

Note: any increase in costs as a result of the bringing forward of the contract should be ignored;

(15 marks)

(iii) Briefly explain whether or not it is advantageous, from a tax point of view, to bring forward to 2009 either or both of items 7A and 7B above. (3 marks)

Professional marks will be awarded in part (a) for the appropriateness of the format and content of the report and the effectiveness with which the information is communicated. (2 marks)

(b) State and explain whether it is possible that any of the tuition fees earned by SM Tech Sdn Bhd at its premises in Malaysia can be taken into account as qualifying services provided to foreign clients. Most of the tuition fees are paid by the individuals receiving tuition but some are paid by their sponsoring employer companies.

(5 marks)

(35 marks)

Section B – TWO questions ONLY to be attempted

- 3 (a)** 'Income tax is a tax on income' is an obviously true statement but, in order to apply income tax to any particular receipt, we need to know whether it is income or not. The Income Tax Act 1967 provides no definition to help us so we have to rely upon a body of case law developed by the courts, not all of which is Malaysian. One of the positive tests used to determine the nature of a particular receipt is whether it represents a disposal of fixed capital (in which case it is not income) or of circulating capital (in which case it has the nature of income).

Required:

- (i) State and briefly describe ONLY TWO examples of fixed capital;** (2 marks)
 - (ii) State and briefly describe ONLY TWO examples of circulating capital;** (2 marks)
 - (iii) Explain, giving a relevant example, why the proceeds from the disposal of a particular asset may be a capital receipt for one person whilst it may be an income receipt for another.** (3 marks)
- (b) Discuss the nature of the following receipts stating whether they represent income and whether they are taxable or not. You may refer to any relevant statute or case law.**
- (i) Individual A works as an enforcer in a downbeat part of town where he regularly makes a living by extorting money from local traders to 'protect' their business interests. Extortion is an illegal activity;** (2 marks)
 - (ii) A sum received by Individual B from his employer by way of a scholarship;** (2 marks)
 - (iii) Company C operates a toll highway and received a sum of RM30 million from the Malaysian Federal Government by way of a subsidy in consideration for refraining from applying a clause in its concession agreement under which it would be entitled to increase toll charges;** (2 marks)
 - (iv) Gains made by Individual D from gambling. Individual D has a well-paid job in a bank but his hobby is gambling and he can be seen every night at the tables at Genting Casino. In recent times he has made a lot of money from gambling and he is thinking of giving up his regular job to concentrate on making a living from systematic gambling.** (3 marks)

(16 marks)

- 4 Tasik Sdn Bhd (Tasik), which has a paid up ordinary share capital of RM2 million, holds 65% of the paid up ordinary share capital of Sungei Sdn Bhd (Sungei). Both companies have a 31 March year end.

On 1 January 2007 Tasik purchased a heavy milling machine from Sungei for RM120,000. This machine had been acquired by Sungei on 1 July 2006 at a cost of RM150,000. Tasik, which was then engaged in a qualifying project claimed reinvestment allowance and capital allowances on the original cost of RM150,000.

The milling machine was sold back to Sungei for RM100,000 on 1 March 2009.

Tasik acquired another heavy milling machine from the United States of America and that machine was put into use for Tasik's qualifying project on 15 March 2009. The acquisition is being financed by a Malaysian bank under an Islamic financing arrangement. This required that the bank purchase the machine from the supplier for the agreed cash price of RM164,000 and then sell it to Tasik for RM200,000. Tasik paid the bank an initial deposit of RM20,000 on 17 March 2009 and the balance is to be paid by 36 monthly instalments of RM5,000 each commencing on 31 March 2009.

In addition, the sum of RM10,000 was paid to the supplier of the new milling machine for installation charges on 18 March 2009. No tax has been withheld or paid over to the Director General of Inland Revenue in respect of this payment.

The following information applicable to Tasik for the year of assessment 2009 is also available:

	RM
Capital allowances on assets other than the old and new milling machines	70,000
Unabsorbed reinvestment allowance brought forward	138,216
Unabsorbed losses brought forward	10,000
Adjusted business income	130,000

Required:

- (a) **Explain the tax treatment of Tasik Sdn Bhd on the sale of the milling machine to Sungei Sdn Bhd on 1 March 2009, in relation to both reinvestment allowance and capital allowances.** (4 marks)
- (b) **Taking into account the transactions relating to the sale of the old milling machine and the purchase of the new one, compute Tasik Sdn Bhd's chargeable income for the year of assessment 2009 and the amounts carried forward in respect of capital allowances, reinvestment allowance and unabsorbed losses, if any.** (12 marks)

(16 marks)

- 5 (a) The rate of tax prescribed under the Labuan Offshore Business Activity Tax Act 1990 (LOBATA) for a Labuan Offshore Company is 3%, but such a company does not always pay tax at that rate.

Required:

Describe ONLY TWO circumstances in which a Labuan Offshore Company will not pay tax at 3% on the whole of its income. (4 marks)

- (b) Firestar Limited is a Labuan Offshore Company engaged in the business of dealing in stamps and coins. The items are bought at auction in London and sold to customers in the United States of America. For the year ended 30 June 2009, the company had the following audited results when converted into ringgit:

	RM	RM
Sales		3,000,000
Cost of sales		<u>2,000,000</u>
Gross profit		1,000,000
Interest on US treasury bonds		<u>200,000</u>
		1,200,000
<i>Less:</i>		
Overhead expenses	250,000	
Depreciation	25,000	
Zakat paid in Labuan	<u>25,000</u>	<u>300,000</u>
Net profit before tax		<u><u>900,000</u></u>

Required:

- (i) Assuming that Firestar Limited made no elections, determine the amount of tax payable under LOBATA based on the results given above and state the year of assessment concerned; (4 marks)
- (ii) Explain the tax treatment of the interest on US treasury bonds under LOBATA; (2 marks)
- (iii) Describe an election that Firestar Limited is entitled to make in relation to the tax payable under LOBATA based on the results given above, including the procedures for and consequences of such an election. (4 marks)
- (c) An offshore business activity means an offshore trading activity or an offshore non-trading activity carried on, in or from Labuan in a currency other than Malaysian currency, by an offshore company with non-residents or with another offshore company but does not include shipping operations.

Required:

State ANY TWO meanings of 'resident' in this context. (2 marks)

(16 marks)

End of Question Paper