Professional Level – Options Module

Advanced Taxation (Malaysia)

Monday 1 June 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)

ACCA

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 %	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	

Non-resident individual

All chargeable income	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%

Non-resident company

All chargeable income	26%

Labuan offshore company

income from an offshore business activity

All chargeable income	3%

Trust body – resident or non-resident

All chargeable income	
year of assessment 2007	27%
year of assessment 2008	26%

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
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 Subramaniam passed away suddenly during 2006 leaving his sole trader business to be carried on by his executors. By 1 January 2007, the administration of the estate had been completed and the trust period began. The executors, his brother Balasingam and his son Chandran, continued as trustees.

The trust assets consisted of the business formerly carried on by Subramaniam, some shares in Malaysian companies and some shares in Indian companies. However, the business of the trust was transferred into a company, Chandranti Sdn Bhd, on 1 July 2007 and the trustees continued to hold all of the shares in that company.

By his will, Subramaniam provided for his assets to be held on trust for the beneficiaries as follows:

- An annuity of RM2,000 per month to his wife Vatsala.
- A half of the income remaining after charging the annuity, to his son Chandran, who is now 24 years old.
- A half share of the income remaining after charging the annuity, to his daughter Shanti. However, the income was to be accumulated until her eighteenth birthday on 1 October 2008 when she became entitled to receive it outright. From that time, she has been entitled to receive her half share of the income as it arises.

All of the beneficiaries were resident in Malaysia throughout, except for Chandran who became resident in India with effect from 1 January 2008. Balasingam has been resident in India throughout.

Relevant information for tax purposes is as follows:

Year of assessment	2007 RM	2008 RM
Business adjusted loss	(20,000)	
Balancing charge	75,000	
Capital allowances	50,000	
Dividends:		
Malaysian companies after tax at 27%	7,300	
Chandranti Sdn Bhd – single tier		60,000
Indian companies – after 15% tax – remitted to Malaysia	27,000	
Interest received from Malaysian companies		40,000
Approved donation in cash		1,000
Approved donation of sports equipment		3,000

Required:

Prepare a letter from Feisty Tax Services Sdn Bhd to the trustees giving the advice that the trustees have requested on the following matters:

(a) Whether the trust body is resident in Malaysia or not for the years of assessment 2007 and 2008, giving a brief explanation. (3 marks)

(b) Whether the trustees are liable to Malaysian income tax for the years of assessment 2007 and 2008, giving a brief explanation. (3 marks)

(c) Assuming the trustees are liable to Malaysian income tax for the years of assessment 2007 and 2008, the amount that would be payable for each year, without regard to any instalment payments that the trustees might have made. (12 marks)

(d) Whether Vatsala is liable to Malaysian income tax for the years of assessment 2007 and 2008, giving a brief explanation. (3 marks)

(e) Whether Chandran and Shanti are liable to Malaysian income tax in respect of their shares of the trust income for the years of assessment 2007 and 2008, giving a brief explanation. (6 marks)

Appropriateness of the format and content of the letter and the effectiveness with which the information is communicated. (3 marks)

(30 marks)

2 **(a)** Alpha Berhad is a holding company which has owned 100% of the paid up ordinary share capital of Beta Sdn Bhd and 50% of the paid up ordinary share capital of Delta Sdn Bhd for several years. At the same time, Beta Sdn Bhd also held 20% of the paid up ordinary share capital of Delta Sdn Bhd. Throughout the relevant period(s), all three companies were resident in Malaysia, used a 30 June year-end accounting date, had a paid-up ordinary share capital of more than RM2·5 million and were not entitled to use the small company tax rate.

Both Beta Sdn Bhd and Delta Sdn Bhd have been carrying on manufacturing businesses for many years.

Provisional results of the three companies for the year to 30 June 2009 are as follows:

	Alpha Berhad	**Beta Sdn Bhd**	**Delta Sdn Bhd**
	RM	**RM**	**RM**
Single tier dividends	800,000	–	–
Adjusted income/(loss)	–	2,000,000	(4,000,000)
Capital allowances		(2,000,000)	(1,000,000)
Reinvestment allowance			(900,000)

These results take into account:

(1) For Beta Sdn Bhd, a deduction of RM1 million, being 20% of the cost of acquiring registered patents for use in its business. The contract for the acquisition is not yet signed but the deal is expected to be completed by 30 June 2009.

(2) For Delta Sdn Bhd, a reinvestment allowance at 60% intended to be claimed on qualifying capital expenditure of RM1·5 million expected to be incurred before 1 July 2009 on automation equipment, this being the company's first such qualifying expenditure.

Required:

As the in-house tax adviser to the Alpha Berhad group, prepare a report to the group financial controller explaining with reasons whether, and to what extent if any, group relief will be available for the adjusted loss sustained by Delta Sdn Bhd. The report should deal with the following aspects:

(i) The basic conditions of eligibility – related company; (4 marks)

(ii) The other conditions of eligibility; (4 marks)

(iii) The availability of group relief; (3 marks)

Appropriateness of the format and content of the report and the effectiveness with which the information is communicated. (2 marks)

(b) After producing your report on the availability of group relief to the board of Alpha Berhad, the group financial controller made some suggestions which he thinks might help to improve the potential for claiming group relief and asked to be briefed on the matter as soon as possible. These are:

– Beta Sdn Bhd to refrain from claiming capital allowances for the year of assessment 2009.
– Beta Sdn Bhd to defer until after 30 June 2009 the proposed acquisition of the registered patents.
– Delta Sdn Bhd to defer the proposed capital expenditure until after 30 June 2009.

Required:

As the in-house tax adviser to the Alpha Berhad group, prepare a briefing note for discussion with the group financial controller explaining how the adoption of his three suggestions would affect your previous advice on the availability of group relief. The briefing note should deal with the following aspects:

(i) Non-claim for capital allowances; (4 marks)

(ii) Deferment of the acquisition of proprietary rights; (5 marks)

(iii) Deferment of capital expenditure by Delta Sdn Bhd; (4 marks)

(iv) A summary of the tax consequences including any relevant calculations; (7 marks)

(v) The relevance of the anti-avoidance provisions, if any; (4 marks)

Appropriateness of the format of the briefing note. (1 mark)

(38 marks)

Section B – TWO questions ONLY to be attempted

3 **(a)** The deductions for capital expenditure on mines and expenditure on prospecting operations are set out in Schedules 2 and 4 of the Income Tax Act 1967 respectively.

Required:

(i) Define any TWO of the following:

(1) the formula used to determine the annual deduction for qualifying mining expenditure;
(2) the residual life of a mine;
(3) qualifying prospecting expenditure; and
(4) an eligible area. (4 marks)

(ii) Explain the consequences for a prospector when his prospecting in an eligible area is successful and he is granted a licence to mine in that area. (3 marks)

(b) Carimas (M) Sdn Bhd, a company trading in precious metals, has also been engaged in prospecting for gold deposits in an eligible area in Malaysia since 2004. By late 2006, the company had succeeded in discovering a small viable gold seam and was awarded a mining licence with effect from 1 January 2007. At the outset, the estimated life of the mine was determined to be seven years.

The following information is available for the company's last five accounting years to 31 December:

	2004 RM	2005 RM	2006 RM	2007 RM	2008 RM
Gold mining business					
Adjusted income				200,000	300,000
Capital allowances				60,000	75,000
Precious metals trading business					
Statutory income	500,000	350,000	450,000	600,000	475,000

The above amounts are stated before taking into account the following amounts of qualifying prospecting expenditure:

	2004 RM	2005 RM	2006 RM
Amount	480,000	260,000	100,000

Each year Carimas (M) Sdn Bhd elected to claim a deduction in respect of its qualifying prospecting expenditure.

Required:

Determine the total income of Carimas (M) Sdn Bhd for each of the years of assessment affected by the above information. (9 marks)

(16 marks)

4 **(a)** An approved operational headquarters company may be eligible for an exemption if it provides services to its related company in Malaysia or outside Malaysia.

Required:

(i) Explain the meaning of 'related company' in this context; (5 marks)

(ii) Explain the meaning of 'qualifying services' in this context. (3 marks)

(b) Earth Group Services Sdn Bhd is an approved operational headquarters company operating in Malaysia. For the year ended 31 December 2008, the gross income and expenses incurred were:

	RM
General management, administration and technical support services as specified by the Minister of Finance provided to:	
Mercury Sdn Bhd	200,000
Venus Sdn Bhd	400,000
Mars Limited	300,000
Jupiter Limited	300,000
Saturn Limited	600,000
Uranus Limited	200,000
	2,000,000
Less: overhead expenses	1,000,000
Net income	1,000,000

Earth Group Services Sdn Bhd is a wholly-owned subsidiary of a multinational corporation. The same multinational corporation also holds 70% of the share capital of Mercury Sdn Bhd and Venus Sdn Bhd, 100% of the share capital of Mars Limited, Jupiter Limited and Saturn Limited, and 30% of the share capital of Uranus Limited.

Only Earth Group Services Sdn Bhd, Mercury Sdn Bhd and Venus Sdn Bhd are resident in Malaysia.

All overhead expenses are tax deductible and it is agreed that, where relevant, they can be apportioned *pro rata* to gross income. Earth Group Sdn Bhd did not claim any capital allowances.

Required:

Determine the amount of any tax exemption to which Earth Group Services Sdn Bhd is entitled as an approved operational headquarters company for the year of assessment 2008. (8 marks)

(16 marks)

5 (a) The income tax returns for a company (Form C) and of an individual (Forms B and BE) contain a tick box in which the taxpayer is required to indicate whether he has complied with all Inland Revenue Board public rulings.

Required:

State the consequences for a taxpayer of submitting a tax return based on his preferred interpretation of a particular point so that the tax payable is less than it would have been if he followed the public ruling; and explain what other action(s) could have been taken to comply with the law and to protect the taxpayer's own position. (5 marks)

(b) Hafiz and Mazlan, who are brothers, each runs a motorcycle service and repair centre in the same kampong area, each with an annual sales turnover of approximately RM120,000 (the service tax licencing threshold for such activities is RM150,000). The two workshops are several kilometers apart and deal with different customers. However, Hafiz and Mazlan have been served with a notice from the Director General of Customs directing that they be treated as a single taxable person for service tax purposes.

Required:

(i) Explain the grounds on which the Director General may make such a direction; (2 marks)

(ii) Explain the consequences of making such a direction; (4 marks)

(iii) Explain what rights Hafiz and Mazlan have, if any, to challenge the direction. (2 marks)

(c) State ANY THREE important reasons why the source and derivation of income must be properly identified. (3 marks)

(16 marks)

End of Question Paper