Examiner's report
P6 (MYS) Advanced Taxation
June 2016

General Comments

The examination consisted of two sections. Section A is compulsory and is made up of Question 1 for 35 marks and Question 2 for 25 marks, while Section B contained three questions of 20 marks each, from which candidates had to answer two questions.

Most candidates attempted all four questions, and there was little evidence of time pressure. Where questions were left unanswered by candidates, this appeared to be due to a lack of knowledge, as opposed to time pressure.

One issue is found to be somewhat prevalent: not reading the question requirement closely enough and therefore providing irrelevant answers.

Specific Comments

Question One
This 35-mark question was based on a manufacturing company and tested candidates' knowledge relating to export incentives, finance leases and withholding tax provisions.

Part (i) for 9 marks required candidates to explain why the company qualified for the two stated export incentives and their respective mechanisms. Some candidates provided the requisites of another export incentive, that of the "Malaysian International trade company" instead of the "allowance for increased exports". Yet other candidates wrote about the "enhanced allowance for increased exports" despite the fact that the latter was clearly excluded by the shareholding structure given in the scenario.

Part (ii) for 7 marks examined the rudiments of the Leasing Regulations 1986, i.e. that a finance lease arrangement is treated in the same manner as an operating lease unless the lease transaction is a "deemed sale". Some candidates correctly identified one of the leased assets as a "special purpose asset". However, they did not know how to follow through to conclude that it was therefore a deemed sale, and that the asset qualified for capital allowance based on the full cost as it was not in the nature of a hire-purchase transaction.

Parts (iii) and (iv) for a total of 10 marks tested the application of withholding tax provisions, consequences of non-compliance and measures to mitigate such consequences. Although the withholding tax scenarios involving lease rentals and technical services were straight forward, some candidates did not appropriately answer about the applicability of withholding tax provisions and the consequences of non-compliance. The part about mitigating the consequences was also not well answered.

Many candidates did not perform well on this question. Future candidates are urged not to neglect the tax fundamentals such as withholding tax. They should always read the question requirements closely and carefully so that they answer to the point.

Question Two
This 25-mark question covered the topics of real property gains tax (RPGT), controlled sale and shareholder continuity on the transfer of tangible and intangible assets from a sole proprietorship to

a dormant company acquired and controlled by the sole proprietor. It also tested the capital versus revenue arguments as well as classification of income.

This question was answered reasonably well. The application of controlled sale provisions was well done. Nevertheless, there are three shortfall areas.

Firstly, many candidates did not realise that a no-gain-no-loss outcome was disadvantageous in this scenario and that a simple tax plan was to structure it as a normal "plain vanilla" disposal rather than a disposal for a consideration substantially in shares. Also, a number of candidates were confused over the 75% of the consideration being satisfied in shares and the individual's 70% shareholding in the company taken over by him.

Secondly, some candidates did not read the scenario carefully enough to register that the four patents that produced royalties were disposed of and that they were required to determine the capital or revenue status of the disposal proceeds, not of the royalties received.

Thirdly, majority of candidates did not consider the significance of the total change of shareholding in a dormant company. They went on to talk at length about carry forward of losses and capital allowance with no reference to the shareholder continuity rules.

Question Three
This 20-mark optional question consists of part (a) testing GST for the first time in this paper, and part (b) relating to tax audit adjustments and professional ethics.

Of the minority that selected this question, many did not directly answer why group registration was denied and how the four services provided were to be treated GST-wise. That said, there were some very good answers provided to this part.

Candidates' response to Part (b) regarding the classification of interest income revealed that many of candidates did not have the updated knowledge of the amendment introduced in 2014 with regard to interest income being statutorily regarded as investment income in most cases.

In this connection, candidates are reminded that they must learn and apply the updated tax provisions.

It is encouraging to note that the ethics question in this part was well answered.

Question Four
This 20-mark optional question comprised two separate parts: part (a) relating to the taxation of a unit trust and a unit holder, while part (b) dealt with the taxation of a limited liability partnership (LLP).

This question was well answered.

The following few weak points were noted. Some candidates exhibited some confusions over a unit trust with a Real Estate Investment Trust (REIT) and a normal trust. As regards the treatment of partners' salaries in an LLP, while most candidates clearly stated that these were deductible if they are provided in the LLP deed, many did not go on to state that salaries thus paid were to be taxed as employment income in the hands of the partners. Some candidates did not read the question requirement carefully to register that they should comment on the tax treatment of distribution of profits by a partnership and an LLP, rather than how much each entity can distribute.

Question Five
This 20-mark question was made up of three parts:

Part (a) for 12 marks required a discussion of RPGT treatment of the transfer of assets under various circumstances after the death of the owner- individual.

Part (b) for 4 marks explored the differences between a tax audit and a tax investigation.

Part (c), also for 4 marks, tested the statutory requirement (introduced in 2014) that a company tax return must be based on audited accounts.

All three parts were well responded to.