

# Examiner's report

## P6 Advanced Taxation (MYS)

### December 2013



#### General Comments

The examination consisted of a compulsory section A and a section B with a choice of two out of three questions. Section A contained question 1 for 35 marks and question 2 for 25 marks. Section B comprised three further questions of 20 marks each.

Most candidates attempted the required four questions. There was no evidence of time pressure. Where questions or parts of questions were left unanswered by candidates, this appeared to be due to a lack of preparedness.

Questions 1a, 3a, 3b and 3c, and 4a were well answered. Candidates found Questions 2a, 2c, 2d, 4b, 4c and 5b most challenging. This is mainly due to candidates not fully understanding core tax principles.

#### Specific Comments

##### Question One

This 35-mark question was based on an established plantation company, Hijau Sdn Bhd (Hijau), with plans to venture into a new education business by utilising part of its land bank.

It tested candidates' knowledge of the relative merits of carrying out a separate business activity under the existing company or starting a new company for the new activity.

Part (b) for 22 marks required candidates to explore each option and to recommend the preferred option. It tested the meaning of disposal for CA purposes, the clawback in the form of agriculture charge, eligibility and absorption of CA and losses, group relief, the deductibility of interest expense, exposure to RPGT and stamp duty.

Many candidates performed less than satisfactorily on this question.

Future candidates must take note that application of fundamental principles learned in F6 are and will continue to be an important element of the P6 paper and must be thoroughly understood, refreshed and they would do well to practise their application in different commercial scenarios.

##### Question Two

This 25-mark question involving a tour agency, Sini-Sana Sdn Bhd (SSSB), covered the topics of double taxation, permanent establishment (PE), derivation of business income as well as derivation of employment income.

Part (a) for 6 marks required candidates to determine whether SSSB had a PE in China. Part (b) for another six marks required candidates to explain the significance of having a PE. Candidates' performance was barely passable for both parts.

Part (c) worth 8 marks tested the basis of determining whether the income was derived in Malaysia, or China, or both, and following that whether employee costs are deductible. Majority of the candidates completely missed the potential double taxation of the tour income.

What is more surprising is many candidates' inadequate response to Part (d) which required the determination of derivation of employment income of the four employees who were based in China to support the tour agency business. Very few caught on that employment income is derived where the employee "exercises" his employment, not "who" pays his salary, "where" it is paid, nor the place of residence.



This question aims to highlight to candidates to be circumspect and consider all related issues in a given scenario: be it the assessability of business income, how much is subject to tax, deductibility of expenses and the assessability of the employees.

This question was not well responded to.

### **Question Three**

This 20-mark question was based on a trust and tested on determination of the trust's residence status, the distributable income, total income, the tax treatment of the beneficiaries in different circumstances, and annuity paid to a minor, thus involving settlement and accumulation.

Most, if not all, candidates selected this question and performed exceedingly well.

### **Question Four**

This 20-mark question relates to real property gains tax (RPGT).

Part (a) for 13 marks required the computation of RPGT on the disposal of land and different tranches of RPC shares. Candidates performed very well on this part.

However, Part (b) for 4 marks required an appreciation of income tax versus RPGT, which was not well answered. Most candidates just went on and on about RPC shares and completely missed the point that the shares and land became stock-in-trade to Muthu Sdn Bhd.

Part (c) for 3 marks required the candidates to state the compliance requirements for two different circumstances. Performance was poor on this part.

### **Question Five**

This 20-mark question was the least selected question in section B. It comprised three unrelated parts.

Part (a) for 8 marks required an explanation of the terms "tax avoidance" and "tax evasion" and applying it to Mr X's pre-determined tax liability, the accrual basis of recognition of business income and the statutory requirement of keeping sufficient records for seven years. While most candidates who attempted this question did satisfactorily for the terms and the duration of records retention, they invariably omitted the accrual basis of recognising business income.

Part (b) for 4 marks dealt with the statutory time bar. This was poorly answered.

Part (c) for 8 marks required a discussion of whether Madam Kool derived income subject to tax and how the appeal process applied to her. The assessability issue was relatively well discussed but the answers on the appeal process was inadequate.

Future candidates are well advised to be conversant on aspects of tax administration and compliance requirements