

Examiner's report

P6 Advanced Taxation (MYS)

June 2012



General Paper Comments

Candidates generally came prepared and did reasonably well.

The two compulsory questions in Section A of the paper took up a total of 68 marks: 36 marks (including 4 professional marks) for Question 1 and 32 marks for Question 2.

Section B offered three questions of 18 marks each, only two of which needed to be answered. All three questions are scenario-based.

- Question 3 tested the transfer of property between relatives triggering anti-avoidance provisions, the income tax as well as RPGT treatment of the income and the transfer.
- Question 4 involved a foreign company having a representative based in Malaysia and the attendant implications of whether there was an employment subsisting, whether there was a permanent establishment and how the representative and the permanent establishment would be treated.
- Question 5 examined the issue of commencement of a motorway concession operator, the proper classification of rental income and the eligibility for industrial building allowance.

Questions 1, 4 and 5 called for considering both sides of the relevant issues and the candidate was invited to draw their conclusions based on the facts given.

Section B was well responded to, especially Question 3 on settlement and Question 4 on the elements of employment, permanent establishment and assessability of employment income. Relatively fewer candidates selected Question 5 relating to the determination of date of commencement of a motorway concession business.

Specific Comments

Question One

This question examined two main areas:

- The disposal of intangible assets by an on-going business; and
- Research and development (R&D) incentive in the form of double deduction.

In Part (i), most candidates did well in presenting arguments for both view points (i.e. capital and revenue nature of the receipt for the sale of a product line) before arriving at a conclusion supported by reason/s. However the issue of bases of income recognition was not as well answered. Instead of considering the bases of income recognition i.e. lump sum or staggered, many candidates continued to consider classification i.e. whether it was business income, royalty income or even leasing income!

Part (ii) relating to the research and development incentive was well responded to, although the majority of the candidates could not resist putting down all they know about R&D tax incentives, most of which was irrelevant and did not gain any marks. This would have taken up precious time, while the time would have been better employed thinking through the requirements.

Of the 4 professional marks, one each was allocated to the appropriate format of a report and the use of an appendix, while the two remaining marks were for clarity and effectiveness of communication. Many candidates secured good professional marks. About the only shortfall was that candidates tended to sign off, which should not be in a report.

Question Two

This question carried 32 marks and tested candidates on the takeover of one company by another and the attendant tax issues. The four parts dealt with the following aspects:

- (a) inventory valuation upon cessation of business
- (b) distribution of dividends to outgoing shareholders,
- (c) trade receivables
- (d) controlled sales provisions in respect of assets taken over.

While many candidates did well regarding trade receivables and controlled sales, many others were not conversant with inventory valuation. As for distribution of dividends, many candidates did not respond to the requirement which called for a dividend policy. Many candidates did not appreciate the fact that the dividends should be distributed to the outgoing shareholders before the impending takeover of the shares by the acquiring company. Instead they wrote at length, irrelevantly, of the imputation system being in transition and the two-tier exemption of the exempt dividend. Nevertheless, most candidates did realise the need for sufficient retained earnings in distributing dividends.

Question Three

This question concerned a settlement of property to a relative and its impact on the rental income stream and real property gains tax. This was very well responded to and was selected by most candidates. However, candidates again spent precious time writing down all they knew about the anti-avoidance provision of section 65, which did not gain them any marks.

Question Four

This question dealt with a foreign company outsourcing some business activities to Malaysia overseen by a local liaison person. The issues examined related to the determination of master-servant relationship, whether the income was subject to tax in Malaysia, whether there was a permanent establishment and knowing the significance of having a permanent establishment.

This question was also selected by most candidates and was well answered. It was heartening to note that the majority of candidates correctly arrived at the conclusion that an employment was exercised in Malaysia, thereby rendering the employment income as derived in Malaysia, duly subject to tax in Malaysia. Again, in explaining the significance of having a permanent establishment in Malaysia, candidates wrote all they knew about double tax agreements in general.

Question Five

This question related to the commencement of operations for a motorway concession holder, whether rental received from the rest area was business income or rental income, and the eligibility for industrial building allowance.

This was the least selected of the three optional questions. Those who did select it, did not perform well. They did not fully appreciate the principles relating to the commencement of a business apart from the simplistic view that a business commenced when it began to generate revenue.

Conclusion

At the risk of repeating, candidates are urged to:

- Read the text of the question or the scenario;
- Understand what is required in each part of the question;
- Think through the issues carefully;
- Note the major points that must be covered; and then finally
- Embark on the answers.

Overall, candidates were diligent in preparations and good efforts were made.