Examiner's report

P6 Advanced Taxation (MYS)
March 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.

In order to pass this examination, candidates must obtain a comprehensive knowledge of tax principles and, more important, develop the ability to apply that knowledge to given scenarios. Candidates should understand the rationale for given tax provisions rather than mechanically learning by rote.

During the exam, candidates would do well to read the requirements closely and be clear as to what exactly is required, so that they can proceed to precisely answer what is being examined. Regurgitating whatever is recalled of the subject matter takes up valuable time and will earn few marks.

The examination is not based upon traditional textbook type questions but on commercial scenarios. The examination necessarily contains technical material but a good part of the examination is based around the application of the fundamental principles in taxation.

Specific Comment

Question One
This question required the candidates to prepare a letter accompanied by an appendix to a client laying out the relative tax impact of alternative options in commencing a new manufacturing activity. The options involve the undertaking of the new activity either in the same company or in a new company, and adopting different appropriate tax incentive measures. The relevant tax incentive measures were identified for the candidates.

Candidates were required to explain how each company qualified for the respective incentive measure. This was relatively well responded to. Part of the question involved the set-off of capital allowances and losses under each option and many candidates knew the rules of set-off and carry-forward but were unable to apply these fundamental principles correctly to the scenario at hand.

When asked about the impact on the tax estimate for the existing company or the need to provide a tax estimate for the new company, candidates were unable to precisely answer the requirement set and instead provided detail about other aspects (such as the 85% rule, the instalments scheme, moratorium for small companies, penalties etc) which were irrelevant in this context. Many candidates were able to provide a recommendation, but did not follow through with valid justifications.

Question Two
The context of this question was a successful business relocating from rented premises to its own enlarged premises with ancillary facilities. In fact, the question tested fairly basic tax principles: classification of income streams – whether business source, whether separate business source; deductibility of expenditure items – whether capital or revenue, whether incurred in the production of gross income; and capital expenditure – whether plant, industrial building or simply non-qualifying.

Some candidates performed well here but others did less so. Those that did less well did not identify the basic principles being tested. In answering this type of question, there is a range of possible points, which could be raised by candidates. Candidates were given due credit for any well-argued conclusions reasonably applied to the scenario given.

Question Three

Question 3 comprised two distinct parts. In part (a), candidates were required to discuss how two related companies operating in Labuan were to be taxed, and to explain the possibility of an election for alternative tax treatment. This is a technical area and required a precise response. Many candidates did satisfactorily here, but other candidates just wrote down what they knew without reference to the specifics of the requirement.

Part (b) of the question dealt with settlement on a minor but also involved the application of basic tax principles relating to a tax computation. This was relatively well answered.

Question Four

This question examined the relative tax treatment of two business structures/entities in a given context of two individuals, one a resident and the other a non-resident, coming together to carry out a business. The requirement specified the areas for analysis and comparison. It also asked candidates for a conclusion on the preferred structure and further asked for non-tax differences between the business structures.

Some of the areas identified for comparison were well attempted: such as the persons chargeable, the determination of the entity's tax residence, the applicable tax rates, and the non-tax differences. However, other areas were not as well answered: such as the tax treatment of distributions and the computation of the after-tax return to the individuals.

Question Five

This question was made up of three distinct parts. Part (a) dealt with real property gains tax (RPGT), with a focus on a certain relief available. Computation of RPGT was also tested but with a twist, which was not spotted by many candidates. Generally, this part was satisfactorily answered, but there was room for improvement.

Part (b) dealt with the invocation of the general anti-avoidance rule in relation to a given scenario. Some candidates did well here and presented cogent arguments.

Part (c) was concerned with ethics, requiring candidates to explain the concepts of "tax evasion" and "tax avoidance" and to advise on an appropriate response to a client's request. This part was also well done, indicating a good appreciation of the concepts and an ability to translate this understanding to the given scenario.