Answers

All statutory references are to the Income Tax Act 1967, as amended, unless otherwise stated.

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7 December 2012

Dear Sir,

Proposed share-listing exercise – Tax implications

We understand that Grand Sdn Bhd (Grand) is in the midst of preparations for its public listing in the Bursa Malaysia. It is thus important that the tax affairs of the company be brought up-to-date and in good order.

We append below our comments on some of the relevant issues:

(i) Income tax treatment as an unlisted investment holding company

Grand is an investment holding company deriving income from rents and interest from bank deposits. The rental income from the three rental assets is treated as a single source under s.4(d).

Expenses fulfilling the deductibility tests under s.33(1) are deductible from gross income in arriving at adjusted income. Hence the loan interest, quit rent and assessment rates are deductible from the grouped rental income. Thus, in Appendix 1, the loan interest of RM35,000, although far in excess of the rental income of RM14,000 from the agricultural land, is fully absorbed against the grouped rental income.

As the factory is used as an industrial building by its tenant-subsidiary, Grand, as the owner, is entitled to claim industrial buildings allowances (IBA) in arriving at the statutory income. The factory's qualifying building expenditure was RM500,000, thereby entitling Grand to claim an IBA of RM15,000 (3% of RM500,000).

A deduction [under s.60F] in respect of permitted expenses as prescribed under the law [s.60F] is available to Grand in arriving at the total income. This is the lower of 5% of the gross income and the amount arrived at by applying the formula A x B/4C, where A is the total permitted expenses; B the gross income from dividends, interest and rents; and C the aggregate of the gross income from dividends, including exempt dividends, interest and rents and any gains made from the realisation of investments. In this case, as shown in Appendix 1, B and C are equal at RM216,000 (RM182,000 + RM34,000).

You will note from Appendix 1 that permitted expenses do not include 'tax computation fees' and 'depreciation' but the 'secretarial fees' are included because they are specifically included in the law [s.60F].

(ii) Income tax treatment of Grand as a listed investment holding company (IHC) versus an unlisted IHC

If Grand becomes a listed IHC, it will be deemed [under s.60FA] to derive its rental income and interest income as separate business sources. Rules relating to deduction of expenses, capital allowances and losses will accordingly apply to each source in the case of a listed IHC. Note, however, that the 'secretarial fees' are not allowable under the general deductibility rules [in s.33(1)].

Grand as a listed IHC will not be subject to the restriction of deduction of expenses according to the formula A x B/4C. All qualifying common expenses will be prorated between the two deemed business sources in the ratio of their gross income and will be deductible without any prescribed overall restriction to 5% of gross income

Apart from the IBA, the listed IHC will also be entitled to claim capital allowances for assets used in the running of the company's operations, where previously as an unlisted IHC it was precluded from claiming.

However, each deemed business source is only allowed deduction of expenses restricted to the gross income from that source. As such, in Appendix 2, as the deductions in excess of gross income from the deemed rental business source are disregarded, there is no current year rental business loss to be set off against the deemed interest business income.

Furthermore, as provided specifically by law [s.60FA(3)], any unabsorbed capital allowance cannot be carried forward to a subsequent year. Thus, as shown in Appendix 2, Grand as a listed IHC will not be able to carry forward the unabsorbed capital allowances from the deemed rental business source to the ensuing year.

(iii) Implications of under-charging of rents and our recommendations

We understand that it has been the policy of Grand to charge rents at 15% below the market rate because the subsidiaries are not yet profit-making.

This transfer pricing practice will likely attract scrutiny from the tax authorities and may well lead to upward income adjustments to bring it on par with market rates, leading to additional assessments being raised. Worse still, hefty penalties will be imposed for incorrect returns.

We would strongly advise that Grand revises this policy with immediate effect and sets its rentals at prevailing market rates.

We have considered the various issues as requested. If you require any further or other clarifications, please do contact us.

Yours faithfully,

ABC

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Tax Principal,
Excellent Tax Services

Appendix 1

Tax computation
Grand Sdn Bhd (unlisted IHC)
Year of assessment 2012

	RM	RM
Rental income		182,000
Less Deductions under s.33(1)		
Loan interest	35,000	
Quit rent, assessment rates	13,000	
		(48,000)
Adjusted income		134,000
Less Industrial building allowance		(15,000)
Statutory income from rents		119,000
Add Statutory income from interest		34,000
Aggregate income		153,000
Less [s.60F] Deduction		
Permitted expenses:		
Audit fees	3,500	
Directors' fees	140,000	
Tax computation fees	nil	
Secretarial fees	1,000	
Staff remuneration	60,000	
Upkeep of office	6,000	
Depreciation	nil	
	210,500	
Lower of		
A x B/4C = 210,500 x 216,000/(4 x 216,000) = 52,625 or		
5% of gross income = 216,000 x 5% = 10,800		(10,800)
Total/chargeable income		142,200

Appendix 2

Tax computation
Grand Bhd (listed IHC)
Year of assessment 2012

	RM	RM	RM
Rental income			182,000
Less Deductions under s.33(1)			
Loan interest		35,000	
Quit rent, assessment rates		13,000	
Common expenses			
Audit fees	3,500		
Directors' fees	140,000		
Tax computation fees	nil		
Secretarial fees	nil		
Staff remuneration	60,000		
Upkeep of office	6,000		
Depreciation	nil		
	209,500		
Proportion applicable to rental income			
182,000/216,000 x 209,500		176,523	
			(224,523)
Adjusted income			nil
Excess deductions disregarded		42,523	
Industrial building allowance disregarded		15,000	
Statutory income from rents			nil
Interest income		34,000	
Less Proportion of common expenses applicable to interest			
34,000/216,000 x 209,500		32,977	
Add Statutory income from interest			1,023
Aggregate/total/chargeable income			1,023

2 AA group of companies

(a) Real property companies

(i) AA Sdn Bhd (AA), BB Sdn Bhd (BB) and CC Sdn Bhd (CC) acquired their business premises immediately after their respective incorporation dates and before they commenced their business operations. This means that on the date of acquiring the real properties, the value of tangible assets (other than real properties or real property company shares) consisted of cash, which is 10% of its total tangible assets. The percentage of the defined value of real property against total tangible assets would, therefore, be 90%, i.e. well in excess of the requisite 75%.

As AA, BB and CC are controlled companies, each of the three companies would unavoidably become real property companies (RPCs) one day after their incorporation dates.

(ii) When NewCo acquires the business premises from AA, BB, and CC, the three companies are the disposers of their sole real properties. On the day of disposal, the three companies must determine afresh their RPC status.

On this date, the percentage of real property against total tangible assets of BB and CC will be nil as the two companies do not own any other real properties or RPC shares. Therefore, BB, and CC will cease to be RPCs on the day they dispose of their sole real properties to NewCo.

However, AA continues to hold shares in BB and CC. These shares are RPC shares and remain RPC shares notwithstanding that BB and CC have shed their RPC status. Therefore, AA may remain an RPC if the defined value of the shares in BB, CC and NewCo (which is also an RPC) constitutes 75% or more of the total tangible assets of AA on the day AA disposes of its warehouse to NewCo.

(b) Transfer of the three business premises: income tax and real property gains tax (RPGT) implications for each of the disposers and the acquirer.

AA

AA will be disposing of land and a warehouse to NewCo. The warehouse building would have qualified as an industrial building for which industrial building allowances (IBA) had been claimed. The transaction price for the warehouse of RM800,000 is ignored as this is a controlled transfer (AA controls NewCo) and AA is deemed to dispose of the warehouse for a sum equal to the residual expenditure on the first day of the disposer's final period, i.e. the first day of the basis period for the year of assessment 2013. There will therefore be no balancing allowance or balancing charge for AA for the year of assessment 2013.

The land and warehouse constitute a chargeable asset for RPGT purposes. As they were acquired in May 2009, it will be a disposal of real property in the fourth year (May 2009 to March 2013). As such, any RPGT gains accruing to AA would be effectively subject to RPGT at 5%.

BB
BB will be disposing of the shop lot to NewCo. As the shop lot does not qualify for IBA or other capital allowances, there are no balancing adjustments to be made upon its disposal.

As for RPGT, the shop lot constitutes a chargeable asset. Any gain would be effectively chargeable to RPGT at 5% as the disposal will occur in the third year (June 2010 to March 2013).

CC
CC will be disposing of the car park land to NewCo. Similarly, the land does not qualify for capital allowances and therefore will not require any balancing adjustments for income tax purposes.

Regarding RPGT, the car park land is a chargeable asset. Any gain would be effectively chargeable to RPGT at 10% as the disposal is expected to occur within two years (July 2011 to March 2013).

Lease rental payable AA, BB and CC will qualify as deductible expense.

NewCo
NewCo is the acquirer of the three properties which will be let to AA, BB and CC. The rental income it receives will be treated as a single source under s.4(d).

As the warehouse will continue to be used as an industrial building by AA, NewCo will be eligible to claim IBA in respect of the warehouse [under paragraph 60, Schedule 3]. Being transferred under controlled conditions, AA's residual expenditure for the warehouse as at the end of the year of assessment 2012 will constitute the qualifying building expenditure for NewCo for the year of assessment 2013.

The shop lot and the car park land will not qualify for any capital allowances against the rental income.

The lease rental income received by NewCo will be taxable as rental income per se, not as business income, as no ancillary services are provided.

For RPGT purposes, NewCo will unavoidably be a real property company as, there being no other tangible assets, the defined value of the three properties will constitute 96·6% (1,740,000/1,800,000 x 100) of NewCo's total tangible assets as at the date of acquisition.

(c) Stamp duty for NewCo

NewCo is potentially liable to stamp duty as follows:

			RM	RM
Land and warehouse	First RM100,000	at 1%	1,000	
	Next RM400,000	at 2%	8,000	
	Remaining 700,000	at 3 %	21,000	
				30,000
Shop lot	First RM100,000	at 1%	1,000	
	Next RM350,000	at 2%	7,000	
				8,000
Car park land	RM90,000	at 1%		900
Total				38,900

(d) Relief for the transfer of real properties under the restructuring exercise

(i) Real Property Gains Tax Act

[Paragraph 17 of Schedule 2 of the] RPGT Act provides for relief for a transfer of assets between companies in the same group. The conditions that must be satisfied are:

- The transferee company is a resident company;
- Prior approval from the Director General (DG);
- An asset is transferred between companies in the same group;
- To bring about greater efficiency in operation;
- For a consideration consisting of shares or substantially (at least 75%) in shares in the company and the balance in money payment.

The proposed transfer of assets satisfies all but one of the requisite conditions for the relief:

- AA, BB, CC and NewCo belong to the same group of companies as BB, CC and NewCo are all wholly-owned subsidiaries of AA.
- NewCo, being the transferee, is confirmed to be a resident company.

– The transfer of the three properties is pursuant to the restructuring exercise to bring about greater efficiency within the group.
– The transfer of assets has not happened yet, so an application may be made to the DG to obtain prior approval for the transfers.
– However, the consideration is wholly in cash, thus failing to satisfy the consideration-substantially-in-shares condition.

Therefore, the AA group of companies does not qualify for the RPGT relief.

[**Tutorial note:** *If the AA group had qualified for the RPGT relief, it would take the form of the transactions being deemed as no-gain-no-loss transactions. This is achieved by deeming the disposal price to NewCo to be equal to the original acquisition price of the disposers, i.e. AA, BB and CC. NewCo is therefore deemed to acquire the three properties at their original acquisition price by AA, BB, and CC but the date of acquisition will be the date the three properties are disposed to NewCo.*]

(ii) Stamp Act

[Section15A of the] Stamp Act provides for relief from stamp duty where a transfer of property occurs between associated companies, i.e. one company holds at least 90% of the issued share capital of the other, or a third company holds at least 90% of the shares of both the disposer and the acquirer companies.

The transactions are between associated companies, as defined, because:

– In the case of the transfer of the land and warehouse, the disposer AA holds 100% of NewCo's share capital.
– In the case of the transfer of the shop lot and the car park land, the disposers BB and CC and the acquirer NewCo are all 100% held by AA.

Additionally, the exemption under s.15A shall not apply unless it is shown to the satisfaction of the Stamp Duty Collector that the transfer is not executed in pursuance of an arrangement under which:

(a) the consideration is wholly or partly provided or received, directly or indirectly, by a person other than a company associated with the transferor or transferee; or
(b) the property was previously transferred by such a person; or
(c) the transferor or transferee were to cease to be associated by reason of a change in the percentage of the issued share capital of the transferee in the transferor or a third company.

Given that no party other than AA, BB, CC and NewCo are involved and that their equity position will remain as before, the transfer of properties is not such an arrangement. Therefore, the AA group of companies will be able to fulfil the above condition.

The relief thus afforded to NewCo is an outright exemption from stamp duty in respect of the acquisition of the three properties.

3 WasteNot Sdn Bhd (WNSB)

(a) Whether eligible to be a regional distribution company (RDC)

The conditions for approval as an RDC are:

– The company must be incorporated in Malaysia.
– The company carries on a business of qualifying activities, i.e. it acts as:
  – a collection or consolidation centre
  – for finished products, components and spare parts
  – produced by its related companies for its own brand, from within or outside Malaysia
  – for distribution to related or unrelated companies within or outside Malaysia.
– The company must achieve an annual value of sales of at least RM100 million, of which export sales must be at least RM80 million. Further, of the total export sales, direct export sales must be at least RM50 million.
– The company must have a minimum paid up capital of RM500,000 and minimum annual business spending of RM1,500,000.

Referring to WNSB:

– It is confirmed to be a company incorporated in Malaysia.
– Its business of manufacturing and distributing recycled paper products in Malaysia and abroad, and sourcing the products from Malaysia, Vietnam and Cambodia renders it as carrying on a qualifying activity.
– For the year of assessment 2012, its total sales amounted to RM130 million (exceeding the required threshold of RM100 million), made up of export sales of RM105 million (exceeding the RM80 million threshold). Of the export sales, direct exports accounted for RM65 million (exceeding the minimum required of RM50 million).
– Its paid up share capital is RM5 million, well in excess of the requisite RM500,000.
– Its business spending of RM90 million is also well in excess of the minimum requirement of RM1·5 million.

Therefore, WNSB is clearly in a position to obtain approval from the Minister of Finance as an RDC

(b) Computation of exempt income and chargeable income

	RM'000	RM'000
Gross revenue from sales		130,000
Less Deductible expenses		(90,000)
Adjusted income from qualifying activity		40,000
Less Capital allowances		(3,000)
Statutory income (SI)		37,000
Less Exemption		
Direct export sales:		
100% of SI, i.e. (RM65 million/RM130 million) x RM37 million	18,500	
Drop shipment export sales:		
A/B x C where		
A = Lower of RM40 million or RM39 million (60% of direct exports)		
B = Total sales, i.e. RM130 million		
C = SI, i.e. RM37 million		
A/B x C = RM39 million/RM130 million x RM37 million	11,100	
Local sales		
D/B x C where:		
D = 20/80 x E		
E = the lower of (direct exports + A) or local sales,		
i.e. the lower of (RM65 million + RM39 million)		
or RM25 million = RM25 million		
D/B x C = (25% of RM25 million)/RM130 million x RM37 million	1,779	
Total exemption		(31,379)
Balance of statutory income/total income/chargeable income		5,621

(c) Amount exempted, significance and impact on shareholders

With reference to the computation in part (b), the amount that may be credited into the exempt account is RM31,379,000.

This means that WNSB will be able to distribute an exempt dividend of up to RM31,379,000 to its shareholders.

The shareholders (individual and corporate) will be exempted from income tax in respect of such a dividend. Further, a corporate shareholder will be able to on-declare an exempt dividend to its own shareholders. This is known as the two-tier exemption.

4 Yummy Wok Sdn Bhd (Yummy)

(a) Deductibility of legal expenses

Defence against a customer's suit
As the suit was brought by a customer who alleged discrimination by a staff of the restaurant, the subject matter pertains to the core service offered by the restaurant. Therefore the expense is in direct connection with the income-generating activity. Regardless of the outcome of the legal action, the expense fulfils the 'wholly' (i.e. the quantum) and 'exclusively' (i.e. the purpose and subject matter) tests as well as the 'process' test in that it is incurred in the production of gross income.

Therefore, the legal expense in defending the suit is tax deductible.

Legal action against a contract supplier
Food ingredients constitute inventory to a restaurant. Legal action against a supplier regarding the quality of the inventory is closely connected to the income generating activity of providing quality food to its customers. The expense is incurred in the process of the production of gross income from the restaurant business.

Therefore, this item of legal expense is tax deductible.

Registration of 'Yummy Wok' as a trademark
Yummy has built up its name to the extent that it is popular and famous. The trademark 'Yummy Wok' is therefore a brand name, which constitutes a fixed asset, albeit an intangible one, to the company. Expenditure to create, crystalise or formalise a fixed asset is clearly capital in nature.

The expense to register the trademark is therefore not deductible in arriving at the adjusted income of Yummy.

[**Tutorial note:** *If the paid up share capital had not been more than RM2·5 million, the company would have been eligible for a special deduction for the cost of registration of patents and trademarks under P.U. Order 418 of 2009.*]

(b) Proposed dividend: income tax impact on Yummy and next steps

On paying the net dividend of RM180,000, Yummy will utilise or frank an imputation credit of RM60,000 (180,000/75 x 25), leaving a balance of RM5,000 (RM65,000 – RM60,000). This means that Yummy may further frank up to RM15,000 of net dividend in order to fully utilise the remaining imputation credit.

Yummy must take care that it distributes the franked dividend by, at the latest, 31 December 2013 because the transitional period for running down the 108 balance ends on 31 December 2013. If the 108 balance is not utilised by that date, any remaining balance will be forfeited.

(c) Proposed franked dividend: income tax treatment and impact on shareholders

Shareholder Mr Veteran

As Mr Veteran has no other income, his gross dividend of RM24,000 [10% of 240,000 (i.e. RM180,000 regrossed = 180,000/75 x 100)] will constitute his aggregate income and total income for the year 2012.

After deducting personal relief of RM9,000 and allowing for the tax rebate of RM400, Mr Veteran is not expected to have any tax liability for this year.

The imputation credit of RM6,000 (RM24,000 x 25%) is a set-off under s.110. The excess of the s.110 set-off over the 'nil' tax charged will entitle Mr Veteran to a tax refund of RM6,000.

Shareholder Miss Agro

Miss Agro's statutory income of RM350,000 from her business source denotes that her marginal rate of tax is already at the top scale rate of 26%. Any additional income, such as this proposed franked dividend from Yummy, will be subject to tax at 26%.

With her 20% shareholding, Miss Agro's gross franked dividend will amount to RM48,000 (RM240,000 x 20%) with an accompanying imputation credit of RM12,000.

The franked dividend will effectively be subject to tax at 26%, compared to the 25% imputation credit. This means that Miss Agro will have to pay an additional tax of RM480 (RM48,000 x 1%) on the dividend.

So Miss Agro should not expect a tax refund, but instead should be prepared to top up more tax in view of the franked dividend.

Shareholder Aok Sdn Bhd (Aok)

The dividend will constitute the income of Aok in the year of assessment 2013 as it is received during the basis period ended 31 January 2013. There is a specific provision that a franked dividend received by a company during the transitional period to the single-tier system must be fast-tracked from the statutory income stage to the total income stage. This means that no part of the franked dividend will be available to set off deductions from aggregate income in arriving at total income.

Hence, in the case of Aok, the statutory income from the franked dividend of RM168,000 will bypass the aggregate income stage and go straight to the total income stage. The current year business loss that Aok incurred cannot be set off against the dividend income. The loss will have to be carried forward to the following year.

Meanwhile, the dividend income of RM168,000 will form Aok's total/chargeable income, attracting tax at 25% as Aok evidently does not qualify for the reduce rate of 20% (Aok controls Yummy which has a paid up capital of RM3 million).

The tax charged of RM42,000 will be exactly squared off by the s.110 set-off of RM42,000 (RM168,000 x 25%).

So, there will be no tax refund, but neither is there any further tax payable by Aok.

5 Mr AnakMalaysia (AM)

(a) **Employment packages considered**

		Tax calculation RM	Disposable income RM
Package A			
Remuneration		200,000	200,000
EPF contributions by employer (not taxable)		nil	nil
Statutory/aggregate/total income		200,000	200,000
Less Personal reliefs (RM9,000 + RM6,000)		(15,000)	
Chargeable income		185,000	
Tax charged: RM14,325 + (RM85,000 x 26%)		36,425	(36,425)
Rental expense			(60,000)
Payment for car rental			(12,000)
Net disposable income			91,575
Package B			
Remuneration		120,000	120,000
EPF contributions by employer (not taxable)		nil	nil
Share benefit		15,000	15,000
Car benefit – prescribed value		5,000	
Living accommodation benefit:			
Defined value	RM60,000		
30% of RM120,000	RM36,000		
Lower		36,000	
Total income		176,000	135,000
Less Personal reliefs (as above)		(15,000)	
Chargeable income		161,000	
Tax charged: RM14,325 + (RM61,000 x 26%) =		30,185	(30,185)
Net disposable income			104,815

Relative merits

Package A is simple, straight forward, cash-based and offers a larger base for the EPF contributions. The disadvantage is the entire remuneration is taxable with no deductions. The payment for house and car rentals are made by AM out of after tax income.

Under Package B, the tax charged is lower and the net disposable income is higher as there are no car and rent payments to be made from after tax income; but the base for EPF contributions is lower.

Under both packages, AM lives in the same kind of house and drives the same kind of car, but under Package B, he ends up having a lower tax payable and a higher net disposable income. The downside is that he will have RM9,600 (RM24,000 – RM14,400) less savings in his EPF but this is compensated by the fact that he has shares worth RM15,000 which may appreciate in value.

It is clear that Package B is preferable from both a tax and net disposable income viewpoint.

(b) **Tax treatment of remittance of RM2 million**

The RM2 million is AM's cumulative savings from income earned and capital gains made abroad.

The income component of the foreign-sourced remittance is specifically exempted [under paragraph 28, Schedule 3] when remitted to Malaysia.

The capital gains component is similarly not taxable because there is no tax on capital gains in Malaysia, other than the tax on real property gains arising from the disposal of real properties situated in Malaysia.

(c) **Tax treatment of the income or gains arising from investment plan**.

Income or gains from AM's investments are rents, dividends, realised gains from dispoal of shares and interest income.

Investment in real property

The income received will be treated as rental income [under s.4(d)], i.e. investment income.

Expenses such as quit rent, assessment rates, repairs and maintenance charges and real estate agent's fees are deductible in arriving at the adjusted income. AM will not be eligible to deduct capital [Schedule 3] allowances.

Investment in shares
Dividends arising from the investment in shares will likely be single-tier, therefore exempted from tax. If there should be franked dividends, these will be taxable in AM's hands. AM's marginal rate of tax is at the top of the scale rate, i.e. 26%, so the imputation credit of 25% carried by franked dividends will be insufficient to offset the tax charged on the dividends and AM will have to pay an additional tax of 1% on the franked dividends.

Any realised gains from the sale of such investment shares will, *prima facie*, be capital or non-income in nature, therefore not taxable in Malaysia.

Deposits in banks
Interest earned from such deposits is, without any limits or thresholds, specifically exempted from tax in Malaysia.

		Marks
1	Grand Sdn Bhd	
(i)	**Income tax treatment as unlisted investment holding company (IHC)**	
	Rental income a single source, interest source	1 + ½
	Deductions in arriving at adjusted income, grouped rental treatment	1 + 1
	Factory: eligible for IBA	½
	Deduction of permitted expenses in arriving at total income	1
	Note excluded items	½ + ½
	Calculation: formula compared to 5%	½ + ½
	Tax computation per Appendix 1:	
	Deductions, IBA, aggregate income	½ + ½ + ½
	Permitted expenses	1
	Formula	1
	Restriction to 5%	½
		11
(ii)	**Compare with income tax treatment as a listed (IHC)**	
	Rental income and interest are deemed separate business sources	1
	Attendant business source treatment	½
	No restriction of expenses through formula unlike for unlisted IHC	½
	No restriction to 5% of gross income unlike for unlisted IHC	½
	Can claim capital allowances, but deductions in excess of gross income are disregarded	1+ 1
	Cannot carry forward unabsorbed capital allowance	1
	Tax computation per Appendix 2:	
	Qualifying common expenses	1½
	Proportion to rental source	1
	Unabsorbed IBA lost	1
	Proportion to interest source	1
		10
(iii)	**Transfer pricing issue**	
	Under-charging rents is transfer pricing	1
	Likely scrutiny leading to upward income adjustments	1
	Additional assessments and hefty penalties for incorrect returns	1 + 1
	Advice – stop immediately and charge market rates	1
		5
	Professional marks	
	Format and presentation of letter	1
	Clarity, effectiveness of communication including logical flow	2
	Appropriate use of appendices	1
		4
		30

	Marks
2 AA group of companies	
(a) Real property companies	
(i) Confirm that AA, BB and CC each became RPC	½
When	½
Reason for becoming RPC	1
	2
(ii) BB, CC: confirm cease to be RPC	½
When	½
Reason for ceasing to be RPC	½
AA: still holds RPC shares	½
BB and CC shares retain RPC shares status	½
May still be RPC	½
	3
(b) Transfer of the three business premises: income tax and RPGT implications	
AA	
Warehouse industrial building on which IBA claimed	1
Why controlled sale and impact	1+1
Conclusion: no BA/BC	1
Land and warehouse a chargeable asset	½
Disposal in fourth year	½
RPGT rate of 5%	1
BB	
Shop lot is not an industrial building, no IBA	1
Conclusion: no balancing adjustments	½
Chargeable asset	½
Disposal in third year	½
RPGT rate of 5%	½
CC	
Car park land – not entitled to capital allowance: no balancing adjustments	½ + ½
Chargeable asset	½
Disposal within two years	½
RPGT rate of 10%	1
NewCo	
Income from all three assets treated as a single rental source, but not as business income, and why	1
Warehouse eligible for IBA and why	1
Qualifying expenditure equal to AA's residual expenditure	½
No capital allowance for shop lot and car park land	½
NewCo is RPC and why	1
	16
(c) Stamp duty for NewCo	
Land and warehouse	½ + ½ + ½
Shop lot	½ + ½
Car park land	½
	3

		Marks
(d)	**Relief for the transfer of real properties under the restructuring exercise**	
	(i) RPGT Act	
	Conditions (5 x ½ maximum 2)	2
	Four conditions fulfilled	½
	One condition not fulfilled	1
	Disqualified	½
		4
	(ii) Stamp Act	
	Conditions:	
	Transfer between associated companies	½
	One holds at least 90% of the share capital of the other or	½
	Both held at least 90% by a third company	½
	Must not be an arrangement	1
	How the group qualifies	½ + ½
	The relief: exemption from stamp duty for the three properties	½
		4
		32

3 (a)	**Whether eligible to be a regional distribution company (RDC)**	
	Conditions for approval as an RDC:	
	– The company must be incorporated in Malaysia	½
	– Qualifying activity – meaning	1½
	– Minimum requirements re sales components	1½
	– Minimum requirements re share capital	½
	– Minimum requirement re business spending	½
	How WasteNot Sdn Bhd (WNSB) qualifies:	
	It is confirmed to be a company incorporated in Malaysia	½
	How WNSB's business is a qualifying activity	½
	How WNSB's sales components exceed minimum requirements	1
	How WNSB's share capital and business spending exceeds minimum requirements	1
	Conclusion that WNSB qualifies	½
		8
(b)	**Computation of exemption income and chargeable income**	
	Arriving at statutory income	½ + ½
	Calculation of exemption re	
	Direct export sales	½ + ½ + ½
	Drop shipment export sales	1 + ½ + ½ +½
	Local sales	1 + 1 + ½ + ½
		8
(c)	**Exempt income and its significance**	
	Correctly identify exempt income	½
	Significance: exempt dividend	½
	shareholders, individual and corporate, are exempt	1
	Two-tier exemption	1
		3
		19

			Marks
4	(a)	**Deductibility of legal expenses**	
		Defence against a customer's suit	
		Reasons and arguments	2
		Conclusion: tax deductible	½
		Legal action against a contract supplier	
		Reasons and arguments	1
		Conclusion: tax deductible	½
		Registration of 'Yummy Wok' as a trademark	
		Reasons and arguments	1½
		Conclusion: not tax deductible	½
			6
	(b)	**Proposed dividend: income tax impact on Yummy and next steps**	
		Calculation of utilisation of imputation credit	1
		Balance of credit RM5,000	½
		Can frank up to RM15,000 net dividend or gross dividend of RM20,000	½
		Time frame: 31 December 2013 and why	1
			3
	(c)	**Proposed dividend: income tax treatment and impact on shareholders**	
		Shareholder Mr Veteran	
		Quantify dividend amount	½
		Form his aggregate/total income	½
		Why he is not chargeable to tax	1
		Confirm imputation credit is s.110 set-off	½
		Conclusion: tax refund and amount	½ + ½
		Shareholder Miss Agro	
		Explain why her marginal rate is top scale rate	½
		Quantify her dividend and imputation credit	½ + ½
		How additional 1% tax is payable	1
		Shareholder Aok Sdn Bhd (Aok)	
		Prescribed treatment of franked dividend for a company recipient	1
		Implication	½
		Quantify Aok's franked dividend and imputation credit	½
		Loss cannot be absorbed while dividend is fully taxable	1
		Rate of tax applicable, credit square off	½
		No tax payable, no refund	½
			10
			19

			Marks
5	(a)	**Mr AnakMalaysia: employment packages**	
		Package A	
		Computation of tax charged	1½
		Computation of net disposable income	1
		Package B	
		Computation of tax charged	2
		Computation of net disposable income	1
		Relative merits	
		Package A	1½
		Package B	1½
		Evaluation and conclusion	1½
			10
	(b)	**Tax treatment of remittance of RM2 million**	
		Income component: exempt when remitted	½
		Reason: specific provision	½
		Capital gains component not taxable	½
		Reasons: no tax on capital gains in Malaysia	½ + ½
		other than RPGT on real property in Malaysia only	½
			3
	(c)	**Tax treatment of the income or gains arising from investment plan**	
		Investment in real property	
		Rental income treated as investment income	½
		Expenses deductible	1
		No capital allowances	½
		Investment in shares	
		Dividends: single-tier, exempted from tax	½
		Franked dividends: taxable, imputation credits	½ + ½
		Additional 1% tax payable	½
		Gains from sale of shares not taxable	½
		Reason: capital or non-income in nature	½
		Deposits in banks	
		Bank deposit interest exempted	½
		No limits or thresholds for exemption	½
			6
			19