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# Answers

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1 Letter to Smart Incorporated

Tax Firm  
Any Street  
50000 Kuala Lumpur  
Malaysia

Mr. David Cooper  
Vice President Finance  
Smart Incorporated  
Any Street  
New York  
US

8 December 2016

Dear Mr David,

Further to our meeting on 5 December 2016, we would like to set out the tax issues and implications in relation to your proposed investment in a manufacturing facility in Malaysia. We have also included in the letter some suggestions on how the tax efficiency of the project can be improved based on the information provided during our above mentioned meeting.

**(i) Tax incentive available**

As Very Smart Malaysia Sdn Bhd (VSM) intends to establish a factory to manufacture a promoted high technology product (the smart watch), it qualifies for enhanced benefits as compared to the standard incentive package offered by the Government. The company can choose either the pioneer status or the investment tax allowance (ITA) incentive. These two incentives are mutually exclusive and the tax incentive application must indicate the incentive applied for.

**Pioneer status**

If VSM applies for pioneer company status, it will be accorded a full (100%) income tax exemption of the statutory income of the 'smart watch' manufacturing project for its first five years of production (the pioneer period). Statutory income basically refers to the income of the company after deducting tax allowable expenses and capital allowances.

The income exempted can be credited into a tax exempt income account from which tax exempt dividends can be distributed.

**ITA**

Alternatively, if claimed, the ITA is based on the capital expenditure incurred by VSM. Under this incentive, an additional allowance equal to 60% of the qualifying capital expenditure (factory building and plant and machinery) can be claimed for five years. The ITA claimed/absorbed can be used to exempt up to 100% of the statutory income of the proposed project. Any unutilised ITA can be carried forward indefinitely to be utilised against the future taxable income of the project.

Similar to the pioneer status incentive, the income exempted by the ITA is credited into a tax exempt income account from which tax exempt dividends can be distributed.

**(ii) Preferred tax incentive**

As both pioneer status and the ITA incentives are mutually exclusive, it is important that VSM chooses the right/optimum tax incentive to maximize its tax advantage. As pioneer status is given based on the profits earned in the first five years, this incentive would generally be preferred for projects which are profitable but with low/moderate capital investment. On the other hand, the ITA would give a better outcome if the project is capital intensive and there is a relatively long gestation period before the project becomes profitable.

Based on the financial projections provided, we attach a simulation of the tax position of VSM during the five-year incentive period. This indicates that pioneer status would give a better outcome as the company would not be in a tax paying position for the first five years of operation whilst under the ITA incentive, the company would have a tax liability of RM2,779,000.

Based on the above, we recommend that VSM apply for pioneer status.

**(iii) Tax efficient mode of financing**

In financing the project, SI is considering either providing VSM with an interest-bearing loan or subscribing for preference shares in VSM. The tax implications of the two options are discussed below.

**Interest-bearing loan**

Interest expenses paid qualify for a tax deduction if the interest is in respect of a loan used in the production of gross income or laid out on an asset used in the production of the gross income of the company. Therefore, as the loan will be utilised to finance the construction and working capital of VSM's manufacturing business, the interest incurred by VSM and paid to SI in the US should be tax deductible.

**Tutorial note:** *The interest deduction may be restricted under the thin capitalisation rules which are expected to be implemented from 1 January 2018 onwards.*

However, as VSM will only commence its manufacturing activity in January 2018, any interest incurred prior to the commencement of the manufacturing business will not be deductible.

Also, if VSM opts for pioneer status, the interest deduction for the first five years will only serve to reduce the amount of income to be exempted and does not therefore generate any tax benefit to the company.

In addition, the interest payment to SI, being a payment of interest to a non-resident, will be subject to Malaysian withholding tax at the rate of 15%. The withholding tax must be remitted to the Inland Revenue Board (IRB) within one month after paying or crediting the amount to the non-resident.

Interest is payable whether or not VSM is profitable. Thus, SI is assured of its return on the loan.

#### **Preference shares**

If SI subscribes for preference shares in VSM, the return for the financing would take the form of a dividend, which, being a profit appropriation, is not deductible by VSM for tax purposes.

If VSM opts for the pioneer status incentive, the non-deductibility of the dividends is not an issue for the first five years of production as the income of the company will be exempt from tax.

The preference share dividend, being a single-tier dividend, is tax exempt in the hands of SI and no further tax exposure accrues to SI on the dividend.

It should however be noted that dividends can only be paid out of profits available in VSM. As VSM is not expected to register profits in the initial two years, it will not be able pay any preference dividend to SI until it becomes profitable in 2019.

#### **Conclusion**

It may be more tax efficient for VSM to finance the project through a subscription of preference shares as this avoids any withholding tax deduction. However, SI must be mindful that it may not be able to receive any dividend until VSM becomes profitable.

#### **(iv) Tax position of the US engineer**

The engineer will be employed by VSM to oversee the construction of the factory in Malaysia. Therefore, his employment income will be subject to tax in Malaysia as it is in respect of an employment being exercised in Malaysia. However, the applicable tax rate will depend on the engineer's tax residence status.

The engineer is expected to be in Malaysia for seven months from 16 November 2016 to 15 June 2017. If this is the case he will be in Malaysia for 46 days for the basis year 2016 and for 166 days in the basis year 2017, which is less than the 182 days necessary for him to become a resident. Hence based on the current work schedule, the US engineer will not be tax resident in either the year of assessment (YA) 2016 or YA 2017.

As a non-resident, the engineer will be subject to tax at the flat rate of 28% and he will not be eligible for personal reliefs; whereas as a resident, he would be subject to graduated tax at rates from 0% to 28% and he would be eligible for personal reliefs.

Therefore, we should advise that the US engineer consider extending his stay in Malaysia until at least 1 July 2017, so that he will be in Malaysia for the requisite 182 days in the year 2017. This will qualify him as a tax resident for YA 2017 [s.7(1)(a)]. Also, as he is in Malaysia for 182 days for the basis year 2017, he will qualify for tax residence in YA 2016 as his physical presence in the year 2016 is linked to a consecutive period of 182 days in the following basis year [s.7(1)(b)].

#### **(v) Goods and services tax (GST) registration**

Based on the supply contract concluded, VSM will commence making taxable supplies from February 2017 onwards. Given the expected RM1 million monthly turnover, the registration threshold of RM500,000 will be exceeded in that month. Therefore, VSM should immediately register itself as a taxable person for GST purposes.

Once VSM is registered for GST, it will be able to claim the input tax incurred on the importation of the products from Japan. Similarly, VSM will also be able to claim the input tax incurred on the factory construction. There is no requirement to wait for the manufacturing operations to commence in order to claim the input tax as long as VSM has valid tax invoices for the construction works.

**(vi) GST treatment of the proposed trading activities**

The GST implications for the various supplies involved in VSM's proposed trading activities are summarised in the table below:

Nature of transaction	GST treatment
Importation of goods for customers in Malaysia and Singapore	This is the importation of taxable goods into Malaysia, so is subject to GST at 6%.
Sale of products to Malaysian customers	These sales are taxable supplies taking place in Malaysia, so will be subject to GST at 6%.
Sale of products to Singapore customers	These sales are regarded as the export of goods from Malaysia, so will be GST zero rated (0%).
Sale of products to other South East Asian markets	As the goods are to be delivered directly to the customers from Japan, the supply is not made in Malaysia since the goods are not removed from a place in Malaysia. As such, GST is not applicable.

We trust that we have adequately addressed your concerns. Meanwhile, please do not hesitate to contact us should you require further clarifications on any of the above matters.

Yours faithfully,

Tax director

Enclosure

**Appendix**

**Comparative calculations of tax incentives for the proposed manufacturing project**

**Option 1: Pioneer status**

Year of assessment	2018 RM'000	2019 RM'000	2020 RM'000	2021 RM'000	2022 RM'000
Profit before tax	(300)	3,000	7,000	8,000	9,000
Depreciation	1,000	1,000	1,000	1,000	1,000
Adjusted income	700	4,000	8,000	9,000	10,000
Less: Capital allowance	(700)	(4,000)	(2,950)	(1,650)	(1,820)
Statutory income	Nil	Nil	5,050	7,350	8,180
Pioneer exemption – 100%	Nil	Nil	(5,050)	(7,350)	(8,180)
Chargeable income	Nil	Nil	Nil	Nil	Nil
Tax liability at 24%	Nil	Nil	Nil	Nil	Nil
Unabsorbed CA carried forward (RM4,350,000 – RM700,000)	3,650				
(RM3,650,000 + RM1,650,000 – RM4,000,000)		1,300			
(RM1,300,000 + RM1,650,000 – RM2,950,000)			Nil	Nil	Nil

**Total tax liability: Nil**

**Option 2: Investment tax allowance (ITA)**

Year of assessment	2018 RM'000	2019 RM'000	2020 RM'000	2021 RM'000	2022 RM'000
Statutory income (per above)	Nil	Nil	5,050	7,350	8,180
ITA (up to 100%) (working)	Nil	Nil	(5,050)	(3,950)	Nil
Chargeable income	Nil	Nil	Nil	3,400	8,180
Tax liability at 24%	Nil	Nil	Nil	816	1,963
Total tax liability: RM2,779,000					

**Working: ITA claim**

Year of assessment	2018 RM'000	2019 RM'000	2020 RM'000	2021 RM'000	2022 RM'000
Total qualifying expenditure (RM 10,000,000 + RM5,000,000)	15,000				Nil*
ITA at 60%	9,000	Nil	Nil	Nil	Nil
Amount brought forward	Nil	9,000	9,000	3,950	Nil
Amount utilised	Nil	Nil	(5,050)	(3,950)	Nil
Amount available for carry forward	9,000	9,000	3,950	Nil	Nil

\* As the first qualifying expenditure was incurred on 1 January 2017, the tax relief period for ITA would be from 1 January 2017 to 31 December 2021. Therefore, the capital expenditure incurred in the year of assessment 2022 is not eligible for an ITA claim.

## 2 Subur group

### (a) Tax status and treatment of Subur Holdings Berhad (SHB) after the reorganisation

Based on the reorganisation plan, SHB will cease its trading business in palm oil products and start charging management service fees to its subsidiaries. With the cessation of its trading business, SHB's investment income (i.e. dividend and interest income) will be more than 80% of its total gross income. This is because the management fee income at a maximum of RM2 million will only account for 16.7% of the total gross income [RM2 million/(RM10 million + RM2 million)]. As such, SHB is likely to become an investment holding company for tax purposes [s.60FA].

As SHB will be a listed investment holding company, its investment income will be deemed a business source. However, any excess deductions and capital allowance from these deemed business sources will be disregarded.

The provision of management services will be treated as a separate business source. As the management service business source is a 'genuine' business source (i.e. not a deemed business source), any unabsorbed capital allowance or adjusted losses can be carried forward. Also, any current year tax losses from the management services business can be utilised to shelter the aggregate statutory business income of the company (i.e. the deemed business income).

The unutilised losses of SHB from the transferred trading business in palm oil products may be set-off against the future combined statutory income from both the genuine and deemed businesses of SHB.

### (b) Transfer of the trading business from SHB to Marketing Subur Sdn Bhd (MSSB)

#### Office equipment

As SHB will have claimed capital allowance on these assets, the transfer of the equipment should fall within the controlled transfer provisions [Paragraphs 38 and 39, Schedule 3]. Under these provisions, the assets are deemed to have been transferred at the residual expenditure (RE) of the transferor, i.e. SHB and hence no balancing charge or balancing allowance will arise for SHB. On the other hand, the transferee, MSSB, will only be entitled to claim annual allowances (no initial allowances permitted) based on the original acquisition cost of the assets restricted to the balance of the RE of the assets transferred. The transfer price between SHB and MSSB is disregarded under the 'controlled transfer/sale' situation.

#### Customer database

As this represents a capital asset of SHB, any excess or gain arising from the transfer of the asset would not be subject to income tax.

For MSSB, the amount paid would not be tax deductible as it is expenditure on acquiring a capital asset. As an intangible asset, it will not qualify for capital allowances.

#### Inventories

When a person permanently ceases to carry on its business, and at or about the time of cessation, the stock in trade of the business is sold or transferred for valuable consideration to another company which intends to use the stock in its business, the transfer value is taken to be an amount equal to the price paid on the sale or to the value of the consideration [s.35(5)].

In view of this, as SHB has unutilised tax losses, the inventories should be transferred for consideration equal to their market value in order to generate profits which can be sheltered by those tax losses. MSSB will as a result inherit a higher cost base and therefore, on the subsequent sale of the stock to third party customers, the profits generated will be lower.

#### Trade receivables

The receivables transferred would constitute capital assets to MSSB and any subsequent write-off of debts arising from their irrecoverability would not be tax deductible. Conversely, any writeback or recoveries of the debts transferred would not be taxable on MSSB.

It is therefore essential to ensure that prior to the transfer, SHB makes reasonable specific provisions for the debts so as to enable SHB to obtain a tax deduction for the debts, which are reasonably estimated to be irrecoverable. Alternatively, consideration should be given to not transferring the receivables and for SHB to continue to collect the outstanding receivables from the customers.

#### Provision for retirement benefits

No tax deduction would be granted to SHB for the transfer of the provision for retirement benefits, since the expenses have not crystallised at the point of transfer to MSSB as such provisions are regarded as contingent liabilities. However, MSSB should be able to claim a tax deduction when the expense is incurred, i.e. on the subsequent payment of the retirement benefits to the employees who retire in the normal course.

### (c) Transfer of shares in Oleo Subur Sdn Bhd (OSSB) from Plantation Subur Sdn Bhd (PSSB) to SHB

On the basis that the shares in OSSB are held by PSSB as a long term investment, the transfer of the shares to SHB would be regarded as a capital transaction. As such, any gains therefrom would not be subject to income tax.

The transfer of the shares would be subject to stamp duty at the rate of 0.3% based on the market value of OSSB. However, as the shares are being transferred between associated companies, stamp duty relief may be applicable [s.15A Stamp Act, 1949].

For this purpose, companies are 'associated' if:

- (i) either company limited by liability holds at least 90% of the issued share capital of the other; or
- (ii) a third company limited by liability holds at least 90% of the issued share capital of each of the companies limited by liability.

Stamp duty relief will not be available where:

- (1) any part of the consideration for the transfer of the shares was received from a non-associated company; or
- (2) the shares in OSSB were previously transferred to PSSB; or
- (3) SHB and PSSB cease to be associated following the transfer of the shares.

As this is an internal reorganisation and there is no intention for there to be a change of shareholding relationship, the proposed transfer should qualify for stamp duty relief.

### 3 (a) Mr Otak

#### (i) Comparative tax treatment

If the RM150,000 is paid to Mr Otak as compensation for a restrictive covenant, he will be eligible for an income tax exemption [paragraph 15(1)(b), Schedule 6] of up to RM10,000 for each full year of service. As Mr Otak has 12 full years of service, RM120,000 (RM10,000 x 12 years) of the payment will be exempt from tax. The remaining RM30,000 (RM150,000 – 120,000) will be subject to tax as employment income for the year of assessment (YA) 2016.

If the RM150,000 is paid to Mr Otak as a gratuity, he will not qualify for a tax exemption for retirement gratuity [under paragraph 25, Schedule 6] even though he has worked with X Sdn Bhd for more than ten years. This is because, at 43 years of age, he has not attained either the statutory or contractual ages of retirement, being 55 years and 50 years, respectively. He is also not retiring due to ill health.

However, Mr Otak will be eligible for an exemption [under paragraph 25D, Schedule 6] of RM1,000 for every completed year of service, i.e. RM12,000 in total.

Therefore, the balance of RM138,000 (RM150,000 – RM12,000) will be subject to tax. Further, the entire sum of RM138,000 will be taxable in a single year, YA 2016, because pursuant to current laws [s.25(1) as amended with effect from the YA 2016], where gross income from employment is received in a relevant period, it is treated as gross income of that relevant period.

#### (ii) Tax advice

First, Mr Otak should not opt to receive a gratuity for past services: given that there is only limited exemption available to him for such a payment, as he is far from retirement age. Also, the true nature of the RM150,000 is that of compensation for a restrictive covenant and, as a compensation payment, Mr Otak will be eligible for exemption of RM120,000 and only suffer tax on RM30,000.

Further, Mr Otak should consider continuing his employment with X Sdn Bhd for another two months so that he can achieve an additional completed year of service with the same employer, thus qualifying for tax exemption of another RM10,000.

### (b) Mr M

#### (i) Date of payment of additional tax

The amount payable under the additional assessment for YA 2013 of RM25,000 was due and payable on the service of the additional assessment, i.e. on the date the assessment was issued of 23 January 2015. This is the case notwithstanding that Mr M has appealed against the assessment [s.103(2)].

#### (ii) Tax appeal and Inland Revenue Board (IRB) non-response

The appeal was made in time, i.e. within 30 days after the issue of the assessment, and it was properly made in writing using the prescribed form. However, the appeal was not duly supported with technical arguments and documentary evidence: it merely stated that the additional assessment was excessive.

On the other hand, the IRB's lack of response also did not fulfil its obligations to review the appeal, call for further information if necessary, or otherwise respond to the appeal within 12 months of the date of receipt of the appeal. The IRB also does not appear to have applied for an extension of time from the Minister of Finance for a further period of up to six months to review the appeal.

#### (iii) Validity of the issued certificate and legal action

Mr M has a duty under the Income Tax Act [s.89] to inform the IRB, in writing, of a change of address within three months of the change. Failure to do so constitutes an offence [under s.120(1)(d)] which, on conviction, is punishable with a fine in the range of RM200 to RM20,000 and/or six months' imprisonment.

As Mr M did not notify IRB of his change of address, the notice of the issue of the certificate [under s.104] did not reach him. The IRB has fulfilled its duty to serve the notice on him by registered post. Non-receipt of the notification does not invalidate the IRB's action of issuing the certificate [s.104(3) proviso].

It appears therefore that the certificate to prevent Mr M from leaving Malaysia has been lawfully issued. Pursuant to the law [s.104(5)], no legal proceedings can be instituted or maintained against the Government in respect of anything 'lawfully done' [under s.104].

Therefore, Mr M should be advised against taking legal action against the Government in preventing him from leaving the country.

#### 4 Madam Kaya

##### (a) Total income for the years of assessment (YA) 2015 and 2016

	RM	2015 RM	2016 RM
Statutory income from Business 1		50,000	100,000
Business 2 (loss)		nil	nil
Statutory income from businesses		50,000	100,000
Less Unabsorbed loss brought forward		nil	(100,000)
Net statutory income from businesses		50,000	nil
Statutory income from employment		200,000	200,000
Aggregate income		250,000	200,000
<b>YA 2015</b>			
Less Approved investment under the angel tax incentive Restricted to	350,000	(250,000)	
Disregarded	100,000		
Approved donation disregarded	5,000		
Total income YA 2015		nil	
Unabsorbed loss carried forward	100,000		
<b>YA 2016</b>			
Less Approved investment under the angel tax incentive			(130,000)
Current year loss Absorbed	80,000		70,000
Unabsorbed loss carried forward	(70,000)		(70,000)
Approved donation disregarded	10,000		
Total income YA 2016	1,200		nil

##### (b) Disposal of investments on 20 December 2016

Under the approved investment in the angel tax incentive scheme, the tax exemption is subject to the investment being held for at least two years from the date the investment is made.

If Madam Kaya disposes of the investments on 20 December 2016 the respective holding periods are as follows:

	Date of investment	Date of disposal	Holding period
ABC Sdn Bhd	10 March 2013	20 December 2016	3 years 9 months
DEF Sdn Bhd	28 December 2014	20 December 2016	1 year 11 months

Therefore, if the disposal takes place on 20 December 2016 as proposed, the exemption of RM250,000 in YA 2015 in respect of the investment in ABC Sdn Bhd will remain intact as the holding period has exceeded the minimum period of two years. So, Madam Kaya's total income for YA 2015 will remain unchanged (i.e. at nil)

However, with regard to the investment in DEF Sdn Bhd, the tax exemption of RM130,000 will not be granted when computing the total income of YA 2016 because the investment will have been held for less than two complete years.

The entire loss of RM80,000 and the donation of RM1,200 will then be able to be fully absorbed and Madam Kaya's total income for YA 2016 will become RM 118,800 (RM200,000 – RM80,000 – RM1,200).

**(c) Treatment of gains: capital or revenue**

**Arguments for capital gains treatment**

- Madam Kaya does not regularly deal in investments
- She refinanced her mortgage to raise funds to invest. Her annual income is sufficient to support the servicing of the loan instalments. Thus, she did not have to buy and sell in short timeframes.
- She has no related interest in the investee companies' businesses.
- She does not exercise any control nor participate in the businesses carried out by the investee companies: she was merely an investor.
- The investments were made with the sole purpose of financing the activities of the investee companies to obtain a legitimate tax shelter in the form of a tax exemption.

**Arguments for revenue gains treatment**

- Her status as an accredited angel investor shows that she is serious about investing and making gains therefrom.
- The short holding period indicates that she meant to buy and sell to realise profits in short timeframes.
- Repetition – she invested twice within a short time span, and she intends to invest in other investee companies.
- Finance – the fact that she borrowed money through refinancing her mortgage shows that she does not intend to hold on to the investments for long as the investee companies do not expect to pay dividends in the short term.
- Organisation – she went through the process of being accredited as an angel investor, made applications to the Government to invest in the investee companies, made informed choices regarding the companies to invest in: all point towards organisation to carry out a business activity.
- She clearly has intention to seek profits by repeatedly investing and disposing of her investments as an angel investor.

**Conclusion**

On balance, the arguments for a trade intention and revenue gains are stronger because of the repeated transactions of buying and selling and the effort required in investing and disposing of the shares in the incentive scheme.

**5 (a) PQR Sdn Bhd (PQR)**

**(i) Real property company (RPC) status**

**On 10 October 2000**

PQR is a controlled company and it acquired real property on this date.

The proportion of real property against total tangible assets on 10 October 2000 was  $300,000 / (300,000 + \text{cash of } (500,000 - 100,000)) = 42.86\%$ . Therefore, PQR was not an RPC on 10 October 2000.

**On 4 July 2013**

On this date, a real property worth RM200,000 was transferred to PQR as settlement of a debt owing to PQR. PQR has effectively 'acquired' a real property. It is therefore necessary to reassess its RPC status on this date.

The defined value of its real properties at 4 July 2013 is RM3,200,000 (i.e. RM3 million being the market value for the ten-acres of land + RM200,000 for the adjoining land). Total tangible assets as at 4 July 2013 are RM3,250,000 (RM3,200,000 + cash of RM50,000).

The proportion of real properties to total tangible assets is 98.46% ( $3,200,000 / 3,250,000$ ). Therefore, PQR became an RPC on 4 July 2013 as the defined value of its real property is not less than 75% of the value of its total tangible assets.



(ii) Real property gains tax (RPGT) on disposal of the land by PQR

	Ten acres of land RM	Adjoining land RM
Disposal consideration		
6,000,000 x 3,000,000/3,200,000		5,625,000
6,000,000 x 200,000/3,200,000		375,000
Acquisition consideration	300,000	
Less Compensation for damage	(200,000)	
Acquisition price		(100,000) (200,000)
Chargeable gain		5,525,000 175,000
Acquisition on 10 October 2000		
Disposal on 31 December 2016		
Disposal in the 17th year		
RPGT at 5%		276,250
Acquisition on 4 July 2013		
Disposal on 31 December 2016		
Disposal in the fourth year		
RPGT at 20%		35,000

(iii) RPGT on the disposal of the PQR shares

Alison's son is deemed to have acquired the RPC shares in PQR when the shares were transferred to him on 2 June 2014. He is deemed to have acquired the RPC shares at their market value at that date of RM2 million.

Bert is deemed to have acquired the RPC shares on 4 July 2013 when PQR became an RPC. As PQR was not an RPC when he first acquired the shares on 13 March 2000, his deemed acquisition price of the RPC shares is arrived at by reference to the formula  $A \times B/C = (RM3,000,000 + RM200,000) \times 50\% = RM1,600,000$ .

	Alison's son RM	Bert RM
Disposal price		
6,000,000/2	3,000,000	3,000,000
Acquisition price	(2,000,000)	(1,600,000)
Chargeable gain (CG)	1,000,000	1,400,000
Exemption: greater of RM10,000 and 10% x CG	(100,000)	(140,000)
Gain subject to RPGT	900,000	1,260,000
Acquisition on 2 June 2014		
Disposal on 31 December 2016		
Disposal in the third year		
RPGT at 30%	270,000	
Acquisition on 4 July 2013		
Disposal on 31 December 2016		
Disposal in the fourth year		
RPGT at 30% (no longer a citizen)		378,000

(b) (i) Mr Bijak

As a taxpayer, Mr Bijak is obliged to maintain sufficient records upon which he will base his tax return. The tax return he furnishes to the Inland Revenue Board (IRB) is expected to be based on true and fair records and accounts.

His request for pre-determining his tax liability at RM20,000 and keeping two sets of books for different purposes will therefore contravene the requirements of the Income Tax Act. In fact, it is tantamount to wilful evasion, fraud, wilful default and negligence, which are serious offences [s.114(1)].

(ii) Mr Algebra

As a tax agent, if Mr Algebra complies with Mr Bijak's request, he will be knowingly assisting his client in preparing a tax return that understates his tax liability, which is an offence [under s.114(1A)]. On conviction, the court may impose a fine (RM2,000 to RM20,000) and/or three years' imprisonment.

		<i>Marks</i>
<b>1</b>	<b>(i) Type of incentive</b>	
	Pioneer status, rate and mechanism	0.5 + 1 + 1
	ITA, rate and mechanism	0.5 + 1 + 1
	Mutually exclusive	0.5
		<hr/>
	<b>Available</b>	<b>5.5</b>
		<hr/>
	<b>Maximum</b>	<b>4</b>
		<hr/>
	<b>(ii) Preferred tax incentive to be applied</b>	
	Project attributes for each incentive	1 + 1
	Narrative re figures and conclusion	1.5
	Statutory income calculation	1.5
	Pioneer status calculation	1
	ITA calculation	2
2022 expenditure non-qualifying	1	
	<hr/>	
<b>Available</b>	<b>9</b>	
	<hr/>	
<b>Maximum</b>	<b>8</b>	
	<hr/>	
<b>(iii) Tax efficient mode of financing</b>		
Interest:		
Deductible with reason	1	
Pre-commencement	1	
Impact on pioneer incentive	1	
Payable regardless of profitability	0.5	
WHT on interest	1	
Dividend:		
Appropriation so no deduction	0.5	
Impact on pioneer incentive	1	
Single tier dividend, exempt	0.5	
Only payable if profitable	0.5	
Conclusion	1	
	<hr/>	
<b>Available</b>	<b>8</b>	
	<hr/>	
<b>Maximum</b>	<b>6</b>	
	<hr/>	
<b>(iv) Tax position of US engineer</b>		
Taxability of employment income	1	
Tax residence status for YA 2016 and 2017, with reason	0.5 + 0.5 + 0.5	
Impact of residence status on tax rate and personal reliefs	1 + 1	
Advice re extending stay	2	
	<hr/>	
<b>Available</b>	<b>6.5</b>	
	<hr/>	
<b>Maximum</b>	<b>6</b>	
	<hr/>	
<b>(v) GST registration</b>		
Registration threshold exceeded February 2017	0.5	
Register immediately	0.5	
Input tax on procurement of trading products from Japan	1	
Input tax on construction works	1.5	
	<hr/>	
<b>Available</b>	<b>3.5</b>	
	<hr/>	
<b>Maximum</b>	<b>3</b>	
	<hr/>	

	<b>Marks</b>
<b>(vi) GST implications</b>	
Each supply – identify + GST treatment (0.5 + 0.5 ) x 4	4
<b>Professional marks</b>	
Format and presentation of the letter	1
Clarity and effectiveness of communication including logical flow	2
Appropriate use of appendix / table	1
	<u>4</u>
	<b>35</b>
<b>2 (a) SHB post reorganisation</b>	
Becomes a listed IHC with reasons	2
Investment income deemed business source, treatment of excess deductions/CAs	1 + 1
Management fees a separate business source	1
Treatment of unabsorbed CAs/losses	1 + 1
Treatment of unutilized trading losses	1
	<u>8</u>
<b>Available</b>	8
<b>Maximum</b>	<u>7</u>
<b>(b) Transfer of trading business</b>	
Office equipment:	
Controlled transfer	1
Mechanism in SHB and MSSB	1 + 1
Customer database:	
Capital, not taxable	0.5 + 0.5
Not deductible and no CAs	0.5 + 0.5
Inventories:	
S.35(5) provision	1
Advise MV consideration and effect	1 + 0.5
Trade receivables:	
Capital asset for MSSB and effect	1 + 0.5
Make specific provision in SHB	1
Consider no transfer	1
Provision for retirement benefit:	
SHB not deductible	1
MSSB deductible when incurred	1
	<u>13</u>
<b>Available</b>	13
<b>Maximum</b>	<u>11</u>
<b>(c) Transfer of shares in OSSB</b>	
Income tax – capital	1
Stamp duty – rate, market value of company	0.5 + 1
Stamp duty relief:	
Transfer between associated companies	1
Meaning of associated company	1
Conditions: consideration, beneficial interest, cannot cease to be associated	1 + 1 + 1
	<u>7.5</u>
<b>Available</b>	7.5
<b>Maximum</b>	<u>7</u>
	<b>25</b>

		<i>Marks</i>
<b>3</b>	<b>(a) (i) Comparative tax treatment</b>	
	Compensation for restrictive covenant:	1.5
	Exemption available and application to Mr Otak	0.5 + 0.5
	Tax position including YA	
	Gratuity:	
	Exemption available and application to Mr Otak	
	Retirement gratuity	1.5
	Ill health	0.5
	Remaining exemption	1
	Tax position including YA	0.5 + 1
	<b>Available</b>	7
	<b>Maximum</b>	6
	<b>(ii) Tax advice</b>	
	Nature of payment	2
	Extend employment and impact	2
		4
<b>(b)</b>	<b>(i) Date of payment</b>	
	Due and payable on the service of the additional assessment	1
	<b>(ii) Tax appeal and non-response</b>	
	Appeal: in time, in writing/ prescribe form	1 + 0.5
	But appeal was not duly supported	1.5
	IRB's obligation – review within 12 months, apply for extension of 6 months	1 + 1
	<b>Available</b>	5
	<b>Maximum</b>	4
	<b>(iii) Validity of certificate and legal action</b>	
	Duty to inform change of address; within three months	1 + 0.5
	Offence, fine/imprisonment	0.5 + 1
	Certificate is lawfully issued with reasons	0.5 + 1
	Non-receipt is no plea	0.5
	Contemplated legal action is not possible	1
	<b>Available</b>	6
	<b>Maximum</b>	5
		<b>20</b>
<b>4</b>	<b>(a) Total income</b>	
	YA 2015	4
	YA 2016	4
		8
	<b>(b) Disposal on 20 December 2016</b>	
	Two year condition	1
	Holding periods	0.5 + 0.5
	Impact on YA 2015	1
	Impact on YA 2016	1 + 1
		5
	<b>(c) Capital or revenue</b>	
	Capital gains – arguments – 1 mark each, maximum	4
	Revenue gains – arguments – 1 mark each, maximum	4
	Conclusion	1
	<b>Available</b>	9
	<b>Maximum</b>	7
		<b>20</b>

		<b>Marks</b>
<b>5</b>	<b>(a) (i) RPC status of PQR</b>	
	Controlled company	1
	On 10 October 2000 – not a RPC with reasons	1·5
	On 4 July 2013 – RPC with reasons	2·5
		<hr/>
	<b>Available</b>	5
	<b>Maximum</b>	<hr/> 4
	<b>(ii) RPGT on disposal of land</b>	
	Ten acres of land	2·5
	Adjoining land	2
		<hr/>
	<b>Available</b>	4·5
	<b>Maximum</b>	<hr/> 4
	<b>(iii) RPGT on disposal of shares</b>	
	<b>Alison's son</b>	
	RPC shares deemed acquisition date and price	0·5 + 0·5
	Chargeable gain and exemption	0·5 + 0·5
	Holding period and tax rate	0·5 + 0·5
	<b>Bert</b>	
	RPC shares deemed acquisition date and price	0·5 + 1
	Chargeable gain and exemption	0·5 + 0·5
	Holding period and tax rate	0·5 + 1
		<hr/>
		7
		<hr/>
	<b>(b) (i) Mr Bijak</b>	
	Duty to maintain sufficient records upon which he will base his tax return	1
	Pre-determining his tax liability and keeping two sets of books contravenes this	1
	Tantamount to wilful evasion, fraud, wilful default and negligence	1
		<hr/>
		3
		<hr/>
	<b>(ii) Mr Algebra</b>	
	Assisting a client prepare a tax return that understates his tax liability	1
	Offence, fine and/or imprisonment	1
		<hr/>
		2
		<hr/>
		<b>20</b>
		<hr/>