Answers

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

1 Goode Tax Services
8, Jalan Baik,
80000 Kuala Lumpur,
Malaysia.

Finance Director,
Medico Sdn Bhd,
10, Lot 100,
10000 Kedah,
Malaysia.

7 June 2013

Dear Sir,

Expansion project – Tax implications

We understand that Medico Sdn Bhd (Medico) is poised to commence the implementation of its project to rationalise its activities and to upgrade its medical equipment. We append below our comments:

(a) Deductibility of interest expense

Medico will incur annual interest of RM1 million for the loan of RM10 million. The deductibility of the interest expense will depend on the utilisation of the funds.

The RM3 million utilised to acquire the latest medical equipment is money laid out on assets used or held in the basis period for the production of gross income from the hospital business. The interest on the RM3 million is therefore eligible for tax deduction [under s.33(1)(ii)] against the business income from operating the hospital.

However, Medico will not be able to claim a tax deduction for the remaining RM7 million against the gross income from its hospital business as the RM7 million is used to invest in shares and a loan. Interest relating to the investment in Klean Sdn Bhd's (Klean) shares and the loan to Klean will be restricted [under s.33(2)] and disallowed against Medico's business income as follows:

Investment in shares in Klean
RM2 million is used to take up the share capital of Klean Sdn Bhd. The interest attributable to the RM2 million should be related to the equity investment and any income arising from that investment. As Klean is expected to be immediately profitable, it is conceivable that a dividend will be distributed to Medico in the near future. However, Klean, being a company incorporated in 2013, is a company under the single-tier system. This means that any dividend distributed by Klean will be exempt from tax in the hands of Medico. It follows that the interest expense on the loan of RM2 million will not be tax deductible.

Loan to Klean
The RM5 million utilised to provide the loan to Klean will produce interest income. The interest incurred relating to the RM5 million is eligible for tax deduction [under s.33(1)] as the interest expense is wholly and exclusively incurred to produce the interest income. However, the 2% difference in the interest rate between the interest expense (10%) and interest income (8%) will be permanently lost as no loss is allowed in the case of a non-business source and, thus, no tax deduction can be allowed for the excess interest against other sources of income.

(b) Transfer pricing issues *vis-à-vis* Klean

Medico and Klean, being respectively the parent and subsidiary, are related parties.

We understand that Klean intends to charge Medico for the laundry and waste disposal service at 20% below the market rate charged by the former independent service provider because Medico charges interest on the loan to Klean at 4% below the prevailing market rate.

The transactions described above are both clearly at rates below those transacted between independent parties dealing at arm's length.

If the lower rates are adopted, it may raise transfer pricing issues and will likely attract scrutiny from the tax authorities. A tax audit may well lead to upward income adjustments for both Medico and Klean to bring them 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 Medico and Klean refrain from adopting such practices and instead set the charges for interest and services at prevailing market rates, i.e.:

– the loan made to Klean should carry an interest rate of approximating 12% rather than 8%; and
– the services provided by Klean to Medico should be at levels similar to those charged by the former service provider.

(c) Financing the upgrading of medical equipment

We next turn to the tax treatment and relative merits of the three methods of obtaining the use of the latest medical equipment. Our analysis is based on the three aspects of cash outflow, tax deductions and the ownership status of the equipment at the end of the fourth year. Please refer to the attached appendix where we have tabulated the analysis of each of the methods of outright purchase, operating lease and finance lease.

Outright purchase
If Medico acquires the medical equipment outright, the RM3 million incurred constitutes qualifying plant expenditure (QPE), based on which the capital allowances will be calculated. An initial allowance of 20% and annual allowance of 14% will be applicable. As RM3 million of borrowed money will be utilised to pay for the equipment, the attributable interest expense of RM300,000 will be deductible in addition to the claim of capital allowance of RM2·28 million by the end of the fourth year of assessment. However, note that only 76% [20% + (14% x 4)] of the QPE will be deducted by the end of the fourth year of assessment.

The cash outflow upfront of RM3 million under this method is obviously the highest as the other two methods can stagger the payments over four years. However, Medico will own the equipment from day one, although ownership also necessarily means that Medico will have to bear the repairs and maintenance costs as well.

Operating lease
The tax treatment of this method is that whatever is paid as the lease rental during the basis period is fully deductible as a revenue expense. Thus the 100% tax deduction will compare favourably with the 76% for the outright purchase method. No interest cost per se is incurred.

The operating lease method will see a total cash outflow of RM6 million, but staggered over four years. Moreover, Medico will not bear the cost of repair and maintenance during the four years. However, at the end of the four years the company will not own any asset at all.

Finance lease
Generally, finance lease payments are 100% tax deductible as and when they are incurred. Where there are uneven payments during the lease term, as in this case, the total finance lease payments paid each year are deductible in full. Thus, the total lease payments of RM4·4 million are deductible. This means that, as for an operating lease, there is a 100% deduction of the lease payments.

This method entails a total cash outflow of RM4·4 million staggered over the four years, with the lease interest already included in this figure. This is marginally higher than the amount applicable to an outright purchase. However, it should be noted that under this method, to obtain ownership of the equipment Medico will have to pay a further amount under the separate arrangement at the end of the four years.

The advantage is that the outflow is staggered instead of a lump sum upfront. When compared to an operating lease, the finance lease method is more favourable as the staggered payment in the first three years is about 13% [(1,500,000 – 1,300,000)/1,500,000] less than the operating lease, while over the four years it takes up about 26% [(6 million – 4·4 million)/6 million] less outlay than the operating lease.

Our recommendation
On balance, the finance lease method is the most favourable method as it

- allows a staggered payment of the capital expenditure and interest element which is marginally higher than the outright purchase, but significantly (26%) less than the operating lease method;
- obtains a 100% deduction for the lease payments made; and
- offers the possibility of acquiring the equipment at the end of the lease period.

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

Yours faithfully,

XYZ

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Tax Principal,
Goode Tax Services

Appendix

Comparative analysis
Method of financing the medical equipment

	YA2014 RM'000	YA2015 RM'000	YA2016 RM'000	YA2017 RM'000	Total RM'000
Cash outflow					
Outright purchase	3,300*	300	300	300	4,200
Operating lease	1,500	1,500	1,500	1,500	6,000
Finance lease	1,300	1,300	1,300	500	4,400
Tax deduction/capital allowance					
Outright purchase					
Capital allowance	1,020**	420	420	420	2,280
Interest deduction	300	300	300	300	1,200
	1,320	720	720	720	3,480
Operating lease deduction	1,500	1,500	1,500	1,500	6,000
Finance lease deduction	1,300	1,300	1,300	500	4,400

Ownership at the end of YA2017

Outright purchase	Owns the equipment
Operating lease	No ownership
Finance lease	Possibility of acquiring ownership at the end of the lease period

* In the first year, the total cost of RM3 million plus RM300,000 interest is paid out.

**Outright purchase: The capital allowance claim is based on 20% + 14% for the first year of assessment (YA), and 14% annually thereafter on the qualifying plant expenditure (QPE) of RM3 million.

2 Pelaburan group of companies

(a) Subsidiary One

(i) Eligibility for reinvestment allowance (RA)

– The company is resident in Malaysia as it was incorporated in Malaysia and it has been operating in Malaysia.
– The company has been in active operation for five years, therefore it satisfies the requirement that it must be in operation for not less than 36 months.
– The company has not been granted tax incentives such as pioneer status, investment tax allowance, etc.
– It has incurred RM10 million on automating its manufacturing assembly line, thereby fulfilling the condition that it must incur qualifying capital expenditure (QCE) on plant and machinery.
– Expenditure on automation satisfies the definition of a qualifying project.

(ii) Computation of total income

Year of assessment	**2013**		**2014**	
	RM	**RM**	**RM**	**RM**
Adjusted income		nil		
(Current year loss: RM1·8 million)				
Statutory income		nil		7,000,000
70% thereof	nil		4,900,000	
QCE	10,000,000		nil	
RA brought forward	nil		6,000,000	
RA of 60%	6,000,000		nil	
RA absorbed	nil		(4,900,000)	(4,900,000)
RA carried forward	6,000,000		1,100,000	
Statutory income from business		nil		2,100,000
Less Unabsorbed loss b/f		nil		(1,800,000)
				300,000
Other income		nil		nil
Aggregate income		nil		300,000
Less Approved donation (restricted to 10%)				(30,000)
Total income				270,000

(b) Group relief eligibility

(i) Eligibility for group relief

The conditions fulfilled are:

- The two subsidiaries are 100% held by Pelaburan. They are therefore related companies as defined, i.e. the companies are at least 70% held by each other or by a common holding company.
- They have been a group for the past five years. Therefore they fulfil the condition that the companies must be related companies
  - during the current basis period; and
  - the immediately preceding 12 months.
- They all have a full 12-month basis period ending on the same day, i.e. on 31 August 2013.
- As their issued capitals are RM5 million and RM12 million, they clearly satisfy the minimum RM2·5 million threshold requirement.
- All three companies have not enjoyed any form of tax incentives so far. However, Subsidiary One is poised to claim reinvestment allowance (RA) in the year of assessment 2013. Such a claim will render the Group ineligible for group relief in the year of assessment 2013.

(ii) The measure/action which Subsidiary One can take is to defer the completion of the automation project to September 2013 or later, so that the qualifying capital expenditure will only be incurred (i.e. the equipment will only be 'capable of being used') and, thus, RA claimable in the year of assessment 2014. This will mean that the Group will still be eligible for group relief in the year of assessment 2013.

(c) Group relief

(i) Loss which may be surrendered by Subsidiary One

The loss which may be surrendered by Subsidiary One is 70% of its current year adjusted loss: RM1·8 at 70% = RM1·26 million. The remaining RM540,000 must be carried forward.

(ii) Loss which may be claimed

	RM
By Pelaburan	
Aggregate income	500,000
Less Approved cash donation	(50,000*)
Defined aggregate income	450,000
By Subsidiary Two	
Statutory income from trading business	1,200,000
Other income	nil
Aggregate income	1,200,000
Less Approved donation	(50,000*)
Defined aggregate income	1,150,000

In the year of assessment 2013, Pelaburan and Subsidiary Two may together claim a loss up to RM1·26 million in any permutation they mutually decide.

* No restriction as the amount of donation is equal to or less than 10% of the aggregate income.

3 Technical fee to a foreign expert

(a) Miss Smart

(i) The foreign expert has not been to Malaysia before. She will be in Malaysia for only 80 days in 2013. Therefore, she will not qualify for tax residence in Malaysia under any of the residence rules for the year of assessment 2013.

The payment of RM200,000 will be deemed derived from Malaysia because the derivation rules [pursuant to s.15A] are fulfilled as follows:

- the technical nature of the payment;
- NumberWan, the payer, is a resident of Malaysia; and
- the foreign expert will personally be in Malaysia to render the technical services.

(ii) As a non-resident person receiving technical fees derived from Malaysia, the foreign expert is subject to tax in Malaysia at the fixed rate of 10% of gross income. The tax will be collected through the withholding mechanism.

As there is no double tax treaty between Malaysia and Miss Smart's country of residence, NumberWan would withhold 10% of gross, the domestic withholding rate for technical fees, on paying or crediting the technical fee to her, and remit the tax collected to the Director General of Inland Revenue (DGIR).

(b) NumberWan

(i) The foreign expert is appointed to supervise the upgrading of the kitchen equipment. The technical fee thus incurred is directly related to the acquisition of the kitchen equipment which are fixed assets of the business. Thus, it may be argued that the fee forms part of the capital cost of the equipment.

On the other hand, it may be argued that the payment is related to assessing the business process efficiency and thus incidental to the normal operations of a restaurant. The upgrading of the equipment is incidental to the running of the business, the fee neither forms part of the value of the asset, nor does it enhance the value of the assets per se. Thus it may be argued that the RM200,000 is a revenue expense.

(ii) Consequences of non-compliance

If NumberWan fails to deduct the 10% and remit it to the DGIR within the stipulated one month, a penalty equal to 10% of the withholding tax will be imposed. The withholding tax and the 10% penalty is a debt due to the Government.

If NumberWan fails to remit the withholding tax and the 10% penalty, the technical fee will not rank for tax deduction (if the payment is a revenue expense) or as qualifying plant expenditure (if the technical fee is capital expenditure attributable to the kitchen equipment). The DGIR will nevertheless still pursue payment of the debt due to the Government of RM22,000 [(200,000 x 10%) + (200,000 x 10%) x 10%].

Consequences of late compliance before the due date for the tax return

If NumberWan pays the withholding tax and the penalty **before** the due date for submission of the tax return (i.e. 31 January 2015 – within seven months after the end of the basis period) for the year of assessment 2014, the amount will still qualify for tax deduction [under s.33(1)] or as qualifying plant expenditure [under paragraph 2(1) of Schedule 3] in respect of the technical fee when filing the tax return. However, the penalty will not be deductible.

Consequences of late compliance after the due date for the tax return

If NumberWan remits the withholding tax and the penalty **after** the due date for submission of its tax return for the year of assessment 2014 (i.e. 31 January 2015), NumberWan is prohibited [under s.39(1)(j)] from taking a tax deduction on submission of its tax return on or before the due date of tax filing as the withholding tax and the attendant penalty have not been paid when the claim for the tax deduction was made.

If NumberWan claims a tax deduction in respect of the technical fee in the said return, the claim is incorrect in law. The DGIR then reserves the right to deny the deduction and impose a penalty for an incorrect return [under s.113(2)].

However, when the withholding tax and penalty is paid after the due date of filing, a claim can be made for the withholding tax after payment is made by submitting a revised tax computation. Similarly, the penalty will not be deductible.

4 (a) Labuan entity

(i) Trading and non-trading activities

Labuan trading activities include banking, insurance, trading, management, licensing, shipping or any other activity which is not a Labuan non-trading activity.

Labuan non-trading activity means an activity relating to the holding of investments in securities, stock, shares, loans, deposits or any other properties by a Labuan entity on its own behalf.

Imposition of tax

Trading activity
- Tax is charged at 3% upon the chargeable profits (net profits per audited accounts) of a Labuan entity [s.4(1) upon the filing of a return]; or
- the Labuan entity may [under s.7(1)] elect to be charged to a lump sum tax of RM20,000 for the year of assessment [no return is required].

Non-trading activity
The Labuan entity is not chargeable to tax on its income from a Labuan non-trading activity for the year of assessment [s.9].

(ii) Exemptions

Labuan company
1. Dividends received by a Labuan company are exempt.
2. A Labuan company is exempt from the withholding tax provisions in respect of the following payments made:
   - royalties paid to a non-resident company or another offshore company;
   - interest paid to a non-resident company [other than to a non-resident licensed to carry out banking operations in Malaysia] or another offshore company;
   - technical fees paid to a non-resident or another offshore company for technical services or assistance; and
   - other gains and profits [under s.4(f)] paid to a non-resident.

3. A Labuan company is exempt from indirect taxes: Labuan is a free port.
4. All instruments executed by a Labuan company in connection with its offshore business activity are exempt from stamp duty.

Management personnel

1. An individual who is a non-Malaysian citizen who receives director's fees from a Labuan company is exempt from income tax on 100% of the director's fees received.
2. An individual who is a non-Malaysian citizen employed in a managerial capacity with a Labuan company in Labuan, co-located office, or marketing office [which may be located elsewhere in Malaysia to facilitate business meetings but which cannot be used for exercising trading activities on behalf of the Labuan company] is exempt from tax on 50% of her/his gross employment income.
3. A Malaysian citizen exercising employment with a Labuan company in Labuan is exempt from tax on 50% of any gross housing allowance and gross Labuan Territory allowance received.

Other persons receiving income

1. Any person rendering 'qualifying professional services' (i.e. legal, accounting, financial and secretarial services) in Labuan to a Labuan entity is exempt from tax in respect of 65% of the statutory income from such a source.
2. Dividends distributed by a Labuan company out of its income from offshore business activities or income exempt from tax is exempt from tax.
3. Interest received by a resident person [other than to a resident licensed to carry out banking operations in Malaysia] from a Labuan company is exempt from tax.
4. The following income received from a Labuan company by a non-resident is exempt from tax:
   – royalties;
   – interest;
   – technical services; and
   – other gains or profits [under s.4(f)].

(iii) Impact of an election to be taxable under the Income Tax Act 1967

1. Upon election, a Labuan company [with effect from the year of assessment 2009] will be dealt with under the Income Tax Act 1967 rather than the Labuan Business Activities Tax Act 1990. The said election is irrevocable.
2. It will hopefully be able to access double tax treaty benefits under the treaties where Labuan entities have previously been specifically excluded from availing themselves of the treaty benefits.

[**Tutorial note:** *To date, 14 countries have specifically excluded Labuan entities from accessing treaty benefits under their respective double tax agreements with Malaysia. They are Australia, Chile, Germany, Indonesia, Japan, Luxembourg, the Netherlands, Republic of Seychelles, South Africa, South Korea, Spain, Sweden, Switzerland and the UK.*

The introduction of the provisions to enable Labuan companies to elect to come under the purview of the Income Tax Act 1967 is an attempt to facilitate such Labuan companies to access treaty benefits. Nevertheless, it is still up to the countries concerned to decide whether they will henceforth allow the Labuan entity (which has thus elected) to access treaty benefits.

A Labuan company which has so elected is also allowed to have a controlling shareholding in a Malaysian company without prior approval from the authorities.

It will be able to claim s.110 tax credit in respect of a franked dividend upon filing its income tax return to the IRB.]

(b) Mr Dee

A payment made pursuant to a voluntary separation scheme (VSS) is deemed to be a compensation for loss of employment [paragraph 15(3) of Schedule 6] for which there is an exemption of RM10,000 for every completed year of service.

On 1 August 2013, Mr Dee will have 12 complete years of service, so the income subject to tax will be:

	RM
Compensation for loss of employment RM15,000 x 12	180,000
Less Exempt RM10,000 x 12	(120,000)
Income subject to tax	60,000

If Mr Dee waits until 31 January 2014 to retire, his retirement gratuity of RM195,000 (13 x RM15,000) will be fully exempt from tax. This is because Mr Dee has been employed with the same employer, Big Company, for more than ten years, and he is retiring at the age of 55.

It is therefore recommended that Mr Dee continues his employment until 31 January 2014 to retire, as he will both receive a higher lump sum (RM195,000 compared to RM180,000), and save the tax chargeable on RM60,000, as well as receiving a further six months' salary from Big Company.

5 Pokok Sdn Bhd (Pokok) and Batang Bhd (Batang)

(a) Date of acquisition by Pokok

Although the sale and purchase agreement was signed on 2 November 2012, the sale was conditional on approval from the State Government. This is therefore a conditional contract [pursuant to paragraph 16 of Schedule 2]. For a conditional contract, the date the condition is satisfied will be taken as the date of disposal.

The requisite approval from the State Government was obtained on 1 May 2013. Therefore, the date of disposal by Batang, and by the same token, the date of acquisition by Pokok, is 1 May 2013.

(b) Retaining money

Pokok is required to retain the whole of the money received, i.e. RM250,000, or 2% of the total value of the consideration, whichever is the lower amount, and remit it to the Director General of Inland Revenue (DGIR).

2% of RM15 million is RM300,000, which is more than RM250,000, the cash consideration. Hence, Pokok must retain the entire cash consideration of RM250,000 and remit the money to the DGIR within 60 days after the date of disposal.

As the date of disposal of the conditional contract is 1 May 2013, Pokok has until 30 June 2013, i.e. 60 days from 2 May 2013, to pay over the money to the DGIR, worked out as follows:

2 May 2013 to 31 May 2013 =	30 days
1 June 2013 to 30 June 2013 =	30 days
	60 days

(c) Real property gains tax (RPGT) payable by Batang

		RM
Disposal price		15,000,000
Less Acquisition price		12,000,000
Chargeable gain		3,000,000
Acquisition date	1 September 2010	
Disposal date	1 May 2013	
Disposal in the third year		
Therefore, RPGT at 20%		
Less Exemption [pursuant to PU order 434 of 2011]		

A/B x C =

$$\frac{(3,000,000 \times 20\%) - (3,000,000 \times 5\%)}{3,000,000 \times 20\%} \times 3,000,000$$

$$= \frac{600,000 - 150,000}{600,000} \times 3,000,000 \qquad (2,250,000)$$

Chargeable gain	750,000
RPGT at appropriate rate 20%	150,000

(d) (i) Income from the letting of Block A

Block A, although originally a warehouse, is used by the tenant as a factory in the manufacture of bubble-tea. As the owner, Pokok is entitled to claim industrial building allowance in respect of a building used as an industrial building by a tenant.

As no services are provided to the tenant, the income from letting out Block A is treated as rental income [under s.4(d)].

(ii) Income from the letting of Block B

Block B, also originally a warehouse, will be used as offices. No industrial building allowance will be due.

However, Pokok will be providing a range of ancillary services such as broadband, printing, photocopying, meeting rooms, video conferencing, a small kitchen and security services. Therefore, the income from the letting of Block B will be eligible for the business-source treatment [under s.4(a)], i.e. qualifying for capital allowance for assets used in the business, and being able to register a business loss if the expenses exceed the gross income.

		Marks
1	Medico Sdn Bhd	
(a)	**Income tax deductibility of interest expense**	
	Acquire medical equipment	
	Funds laid out for business assets	½ + ½
	Deductible	½
	Remaining funds used for investment and loan	½
	Interest restriction applies: not deductible against business income	½ + ½
	Investment in Klean shares	
	Deductible against dividend income only	½
	Dividend will be single-tier, reason	½ + ½
	Therefore, income exempt so interest not deductible	½ + ½
	Loan to Klean	
	Deductible against interest income	½ + ½
	Excess permanently lost; no loss in case of non-business source	½ + ½
	Available	7½
	Maximum	7
(b)	**Transfer pricing issues and implications**	
	Medico and Klean are related companies, reason	1 + ½
	Loan to Klean below market rate	½
	Klean's service charge below third party rate	½
	Transactions not at arm's length	1
	Implications:	
	Attract scrutiny	½
	Upward income adjustments for both Medico and Klean	1
	Additional tax assessments	½
	Penalties for incorrect returns	½ + ½
	Advice, adopt market rates	½ + ½ + ½
		8

		Marks
(c)	**Financing methods**	
	Outright purchase	
	Tax treatment: RM3 million is QPE	½
	CA at 20% + (14% x 4) = 76%, 24% unrelieved yet	1 + ½
	Interest expense allowable	½
	Relative merits/demerits: High cash outflow upfront	½
	Ownership status	½
	Will incur repair and maintenance cost	½
	Operating lease	
	Tax treatment: Lease payment 100% deductible	1
	No interest cost involved	½
	Relative merits/demerits: Cash outflow highest at RM6 million	½
	No repairs and maintenance cost	½
	No ownership of assets	½
	Finance lease	
	Tax treatment: Generally, lease payments allowed 100% when incurred	½
	Even where lease payments are uneven, the amount paid each year is deductible	1
	Relative merits/demerits: Staggered cash outflow	½
	Significantly cheaper than operating lease	½
	Possibility of acquiring assets at end of lease	½
	Appendix: Cash outflow	1½
	Tax deduction/CA	2
	Ownership status	½
	Recommendation	
	Finance lease method	1
	Justification	1½
	Available	16½
	Maximum	16
	Professional marks	
	Format and presentation of letter	1
	Clarity, effectiveness of communication including logical flow	2
	Appropriate use of appendix	1
		4
		35

		Marks
2	**Pelaburan group of companies**	
(a)	**Reinvestment allowance (RA)**	
(i)	5 conditions: 1 mark x 5	5
(ii)	**Computation of RA**	
	YA2013	4
	YA2014	5
		9
(b)	**Qualifying for group relief**	
(i)	Related companies; ≥ 70%	½ + ½
	Current and immediately preceding basis period	1
	Common accounting date	½
	Issued capital ≥ RM2·5 million	1
	Not benefited from any tax incentives	½
	Why tax incentive condition not satisfied	1
		5
(ii)	Measure/action that can be taken as a remedy, how and why	2
(c)	**Group relief**	
(i)	**Loss surrendered by Subsidiary One**	
	70% of current year loss	1
	RM1·8 million at 70% = RM1·26 million	½
	Remainder c/f	½
		2
(ii)	Loss claimed by:	
	– Pelaburan: Defined aggregate income	1
	– Subsidiary Two: Defined aggregate income	½
	Any permutation but subject to RM1·26 million	½
		2
		25

			Marks
3	**(a)**	Miss Smart	
	(i)	Why the foreign expert is a non-resident	1
		Why the technical fee is derived from Malaysia	2
			3
	(ii)	Withholding mechanism explained	2
		How much tax? 10% of gross and why	1
			3
	(b)	NumberWan	
	(i)	Capital nature of technical fee: arguments	2½
		Revenue nature of the technical fee: arguments	2½
			5
	(ii)	**Consequence of non-compliance**	
		Penalty of 10%	1
		Debt due to the Government	½
		Not eligible for tax deduction	½
		Not eligible for qualifying plant expenditure (QPE)	½
		Still need to pay debt due to Government	½
		Consequence of late compliance before the due date	
		Can qualify for tax deduction	½
		Can qualify as QPE	½
		Penalty is not deductible	1
		Consequence of late compliance after the due date	
		Loses eligibility for tax deduction	1
		If deduction is taken, incorrect in law	1
		Potential penalty for incorrect return	½
		Ability to submit revised computation once WHT paid	1
		Penalty is not deductible	½
			9
			20

				Marks
4	(a)	**Labuan company**		
		(i)	Trading activities: ½ mark for each activity, up to	1½
			Non-trading activities	1½
			Tax treatment:	
			– Trading activities	
			3% rate	1
			On election: RM20,000	1
			– Non-trading activities	1
				6
		(ii)	Tax exemptions:	
			Labuan company: ½ mark for each item, up to	2
			Management personnel: ½ for each item, up to	1½
			Income from a Labuan company: ½ for each item, up to	1½
				5
		(iii)	2 effects, 1 mark each	2
	(b)	**Mr Dee**		
		VSS:		
		Compensation for loss of employment		1
		Tax treatment		2
		Retirement gratuity – tax treatment		2
		Recommendation, reasons		2
				7
				20

			Marks
5	**(a)**	**Date of acquisition by Pokok**	
		Conditional contract, reason	1½
		Condition satisfied when approval obtained	1
		Identify date of acquisition as 1 May 2013	½
			3
	(b)	**Compliance requirement**	
		Requirement to retain money and pay to DGIR	1
		2% of RM15 million compared to cash consideration	½
		The lower, i.e. RM250,000, is withheld and remitted	½
		Remit within 60 days	1
		Identify date as 30 June 2013	1
			4
	(c)	**Computation of RPGT**	
		Disposal price	½
		Acquisition price	½
		Disposal in the third year	1
		Appropriate rate applied	½
		Calculation of exemption	1½
		Tax at appropriate rate	1
			5
	(d)	**Letting of property**	
		(i) **Block A**	
		Building used as factory by the tenant	1
		Pokok, as owner, qualifies for IBA	1
		No ancillary services, therefore rental is not business income	1 + 1
		(ii) **Block B**	
		Used as offices, no IBA	½ + ½
		But ancillary services provided directly by the owner	½ + ½
		Treated as business income	½
		Implications, e.g. availability of CAs/business losses	1½
			8
			20