



FINAL EXAMINATION
NOVEMBER 2023

COURSE TITLE	REVENUE LAW
COURSE CODE	ATAX3513
DATE/DAY	16 FEBRUARY 2024 / FRIDAY
TIME/DURATION	03:00 PM - 06:00 PM / 03 Hour(s) 00 Minute(s)

INSTRUCTIONS TO CANDIDATES :

1. Please read the instruction under each section carefully.
2. Candidates are reminded not to bring into examination hall/room any form of written materials or electronic gadget except for stationery that is permitted by the Invigilator.
3. Students who are caught breaching the Examination Rules and Regulation will be charged with an academic dishonesty and if found guilty of the offence, the maximum penalty is expulsion from the University.

(This Question Paper consists of 6 Printed Pages including front page)

*****DO NOT OPEN THE QUESTION PAPER UNTIL YOU ARE TOLD TO DO SO*****

This question paper consists of FOUR (4) questions. Answer ALL questions in the answer booklet provided. [80 MARKS]

QUESTION 1

(20 Marks)

- a) It is generally accepted by the courts that there is no single, standard definition of the word 'income'; and for income tax purposes, it may be determined, according to the context in which the word is used. As the word 'income' can take multiplicity of forms, even the courts would not venture to define or codify it, much less, consider it wise to do so.

Required:

Discuss the concept of income in the context of 'gains or profits from a business for whatever period of time carried on' and 'rents' and the different tax treatment accorded to such income. (10 marks)

Note: Your discussion should make reference to the relevant provisions of the ITA, the salient features of the Public Ruling No. 12 of 2018 (Income from Letting of Real Property), as well as the facts, arguments and the decision of the American Leaf Blending Co. Ltd. v Director General of Inland Revenue [(1979) 1 MLJ 1] and the impact the different treatment of the income has on the tax liability.

- b) Mr Narendra Gupta ('Gupta'), an Indian citizen, is a postgraduate in marketing management, and a qualified aircraft engineer. He is the regional chief executive officer of an Indian company, The Bharat Aircraft Supplies Ltd. ('BAS') that supplies parts and components for various types of aircrafts operated in the South East Asian countries. BAS, incorporated in and operating from Chennai, India, is a subsidiary of the American Aviation Co. Inc., based in Seattle, United States of America.

BAS does not have an office in Malaysia but Gupta found Malaysia rather convenient and attractive and chose to operate from Kuala Lumpur from a rented office. He works on a work pass issued by the Malaysian Immigrations Department and uses the address of the rented office as his official correspondence in Malaysia. His job requires him to travel to the various South East Asian countries under his charge, meeting the aircraft operators, arrange for supplies, and provide technical and management support in respect of the utilisation of these aircraft parts and components. Gupta's job requirements in each of the different territories are qualitatively different and specific to the problems facing each of the aircraft operators in those territories. These works performed in the various territories have no nexus to the duties he performed in Malaysia.

During the **THREE (3)** years i.e., 2020 - 2022, that he was in Malaysia, his duties included compiling and preparing various detailed reports on the supply and sale of the aircraft parts including reports on the dynamics of the aviation industry in the region to assist marketing and planning. The reports are sent to BAS monthly. The reports are to be prepared in the country where the parts are supplied but sometimes, owing to work overload and time pressure he will bring the work to Kuala Lumpur, complete it and submit it to BAS.

Gupta has a daughter studying in New Zealand. He used two of the paid leave of **THREE (3)** weeks each in the years 2021 and 2022 in New Zealand, to be with his daughter. Gupta is entitled to **THREE (3)** weeks fully paid leave under his contract of employment with BAS, signed in Chennai, and he can choose to spend it wherever he wishes. In filing his tax returns for the years of assessment 2020 to 2022, Mr

Gupta did not report the income from work performed outside Malaysia. However, when the notices of assessment for those years were issued to Gupta, he was surprised to note that the Inland Revenue Board [IRB] has included the income for the whole period both in Malaysia and outside Malaysia as income derived from an employment in Malaysia. Gupta is very much puzzled and has approached you for some clarification.

Required:

- i) What do you think are the possible reasons Mr Narendra Gupta completed his Malaysian income tax return by not including the income from his employment for the period he was outside Malaysia? (5 marks)
- ii) Explain to Mr Narendra Gupta the possible basis for the Malaysian Inland Revenue Board to have assessed his income, from the exercise of his employment both in Malaysia and outside Malaysia for the years of assessment 2020 - 2022. (5 marks)

Note: You are required to make reference to the relevant provisions of the ITA and applicable case law or laws (stating briefly the facts, arguments and decisions in those case or cases) in your discussion and explanation. You should disregard any provisions of the double tax agreements between Malaysia and the relevant countries, if any.

QUESTION 2

(20 Marks)

- a) '... there is a clear distinction between the carrying on of a lawful business in the course of which acts prohibited by statute may, or may not, be committed, and the setting up of an enterprise every act and step of which is a criminal offence.'

Per Murnaghan, J C. Hayes v R. J. Duggan [(1927) AC 193]

Required:

Discuss the above dicta in the context of the taxation of income with reference to sections 3 and 4 of the Income Tax Act, 1967 (ITA) and the case of C. Hayes v R. J. Duggan [(1927) AC 193]. (10 marks)

Note: You are required to state briefly, the facts, arguments, and the decision in the case of C. Hayes v R. J. Duggan [(1927) AC 193] in your discussion.

- b) Mr Ah Long was laid off in 2021 when his employer closed his business owing to the Covid-19 epidemic. Unable to find a job, he decided to go into a business venture. He imported from Taiwan a few used units of 'fruits' gaming machines. These are automatic coin-operated machines with revolving drums bearing representation of various kind of fruits. When a coin is inserted and a lever is pulled to activate the drums in the machine, the combination of fruits appearing when the drums come to a stop will determine whether the patron loses the coin he inserted or is lucky to win between **TWO (2)** to **TWENTY (20)** coins.

While the combinations that give a winning position are entirely a matter of chance, the odds are usually not in the player's favour – and therein the possibility of gains to be made by the owner of the machine. The paper works and the legal requirements for a license to start a business using the gaming machine was exceedingly tedious. Mr Ah Long was put off by this, and he decided to go ahead without the license. He went to various pubs, clubs and massage parlour operators in Kuala Lumpur and decided to place these machines in a discrete corner, at their business premises. The premise owner and Mr Ah Long will share the takings from the machine in the ratio of 30:70.

Mr Ah Long made substantial gains from these machines, and he imported more machines, this time from the United States and placed it in several locations in the country, in the later part of the year 2022. In filing his tax returns for the year of assessment 2022, he did not report the gains from the operation of these machines because he figured that since their operation is illegal the income too is illegal and should not be taxable. He also did not want to alert the authorities in any way on his illegal operations by declaring the income in his tax returns.

Required:

With reference to the ITA and the relevant case laws, discuss the taxability of the income from the gaming machines by Mr Ah Long, including the issue of the illegality of the operations on its accessibility for income tax. (10 marks)

QUESTION 3

(20 Marks)

Babyway Ltd ('BL') is a company incorporated in United Kingdom. BL manufactures baby products such as milk bottles, pacifiers, napkins, and wet wipes. All the manufacturing activities are carried out in the United Kingdom. To expand its business globally, BL incorporated a subsidiary, Babyway Sdn Bhd ('BSB') in Malaysia in 2020 to carry out the sale of its baby products in Malaysia.

In 2020, BSB's Board of Directors comprised of **FOUR (4)** British nationals. Mr Johan, a Malaysian citizen, and resident was employed by BSB as a general manager to assist in the day-to-day management of the business in Malaysia. However, he was not involved in any of the major decision makings while he was a manager. All major decisions of BSB were made by the Board of Directors during their meetings held in London. The accounts are closed to 30 April each year.

In May 2021, Mr Johan was appointed to join the board of directors of BSB. All the board of directors' meetings were still held in London, except for one which was held on 20 November 2021 in BSB's office in Kuala Lumpur where several important strategic business decisions were made. BL is BSB's parent company. As BL's business operations are in London, shareholders' meetings of BSB are typically held in London. Due to unsatisfactory performance of Mr Johan recently, BL intends to exercise its voting powers to remove Mr Johan as a director from the board of directors during the next shareholders' meeting. At the same time, the directors of BSB wanted to minimise BSB's tax liability in Malaysia. They decided to engage a top tax consultant firm in Malaysia to assist them in their tax planning and to reduce BSB's tax liability.

Required:

Advise Babyway Sdn Bhd on its resident status in Malaysia in YAs 2020, 2021 and subsequent years, specifically elaborating on the following matters:

- i) To identify the relevant provisions of the ITA on corporate residence status. (3 marks)
- ii) To identify and discuss the basis year for a year of assessment on corporate residence status. (2 mark)
- iii) To identify and discuss the key factor in determining corporate resident status in Malaysia. (3 marks)
- iv) To identify and discuss whether place of physical operations will affect a company's corporate resident status with reference to relevant case laws. (3 marks)
- v) To identify and discuss whether the place of residence of the directors will affect a company's corporate resident status, with reference to case laws. (3 marks)
- vi) To identify the resident status of Babyway Sdn Bhd in Malaysia in YA 2020, 2021 and subsequent years. (3 marks)
- vii) To discuss and elaborate on control by shareholders in the context of corporate resident status. (3 marks)

QUESTION 4

(20 Marks)

- a) i-Shares Sdn Bhd ('i-Shares') is an investment holding company and closes its financial accounts on 31 December each year. i-Shares submitted its income tax return form ('ITRF') for the year of assessment ('YA') 2012 on 30.6.2013. i-Shares disagreed with certain guidelines published by the Director General of Inland Revenue ('DGIR') in preparing its tax computation for the YA 2012. Sometime in 2022, a director of i-Shares approached you for advice on filing an appeal to the Special Commissioners of Income Tax.

Required:

Discuss whether i-Shares Sdn Bhd may file an appeal to the Special Commissioners of Income Tax and the timeline for doing so. (4 marks)

- b) Floorworks Sdn Bhd ('Floorworks') is in the business of manufacturing tiles and closes its financial accounts on 31 December each year. Floorworks did not furnish its ITRF for the year of assessment ('YA') 2020. A best judgment assessment was made by the DGIR. A civil action was pursued to recover the amount of income tax payable for YA 2020. In an application for summary judgment against Floorworks, the DGIR claimed that the relevant notice of assessment had been posted to the last known address of Floorworks. Floorworks has denied receiving the notice of assessment. There was no evidence adduced by the DGIR that the said notice of assessment was actually posted.

Required:

With reference to the ITA and relevant case laws, advise Floorworks Sdn Bhd on the following:

- i) Its potential liability for failing to submit the ITRF for YA 2020; (6 marks)
- ii) Whether there is any basis for challenging the service of the assessment as claimed by the DGIR. (6 marks)
- c) New Valley Sdn Bhd ('New Valley') commenced business on 1.1.2016 and closes its financial accounts on 31 December each year. New Valley submitted its ITRF for the YA 2017 on 30.6.2018. Subsequently, New Valley realised that the ITRF for YA 2017 was submitted without claiming a deduction of business expenses incurred in 2016. In January 2023, New Valley approached you for advice on claiming the deduction of business expenses which it incurred in 2016.

Required:

With reference to the ITA and relevant case laws, advise New Valley Sdn Bhd on whether it may claim the deduction of business expenses which it incurred in 2016 and the procedure for doing so. (4 marks)

UNIRAZAK
UNIVERSITI TUN ABDUL RAZAK
*** END OF QUESTION PAPER ***
Copying, modifying, or reprinting, is not permitted.