Answers

1 Report to MurahBestMost

From Tax Firm
To Partners, MurahBestMost
Date 8 December 2021

Expansion of MurahBestMost (MBM) business

We refer to our meeting on 7 December 2021, and your request for our assistance in respect of the proposed expansion of MBM's business from the Klang Valley to the rest of Malaysia. We have identified the tax issues MBM should be mindful of and have made recommendations as to your next steps.

(a) From partnership to company

We note that in the past three years, the partnership of Ali, Anand and Ah Lian under MBM has been operating the business of whole food meals for takeaway and delivery. You have done well in the Klang Valley; and now you are ready for expansion to the rest of Malaysia.

You are considering incorporating a company to replace the partnership.

We have explained below the reasons why MBM should incorporate a new limited company to take over the partnership business.

Under a company structure:

– each shareholder has a limited personal liability, except for the director's personal liability for the company's tax,
– remuneration paid to a director-shareholder is tax deductible for the company although taxable in a director-shareholder's hands,
– the Employee Provident Fund (EPF) contributions are deductible for the company and not taxable on the director-shareholder, and
– dividends distributed to a director-shareholder are tax exempt.

To support our advice, we have appended a table at appendix A showing the differences between a partnership and a limited liability company in respect of the above aspects.

(b) One company for each state

– In view of the likelihood of disposing of the branches in the other states of Malaysia, it is advisable to hold each branch operation under a separate company. This will facilitate a clean exit by disposing of the shares in the particular company, rather than selling the branch business assets. It also affords the flexibility of selling the whole or part of the operation by selling 100%, 51%, or 49% of the shareholding to achieve the intended outcome.
– Another benefit is that each company can potentially avail of the dual tax rate regime.
– Selling business assets will invariably lead to balancing adjustments where capital allowances have been claimed, while selling of shares has no income tax exposure, neither will there be real property gains tax as the companies will not be real property companies.

(c) Central kitchen and industrial buildings allowance

You have indicated that you intend to spend RM1·7 million setting up a central kitchen under the Klang Valley operation.

Our advice is to incorporate a new company to hold this kitchen, rather than include it in the existing Klang Valley operation. This is because the central kitchen will have substantial business volume with the branches. Having a separate entity will facilitate proper commercial dealings between the various arms of the business. Also, having its own separate and distinct entity will allow it flexibility in going into other related ventures without involving the Klang Valley operation.

Approximately RM600,000 will be incurred in renovating the rented building to render it amenable for kitchen set-up. As the kitchen will be preparing food for supply to the Klang Valley operation as well as to all the branches, it is involved in manufacturing food. The building thus used is an industrial building. The amount of RM600,000 to be incurred on renovating the building will therefore qualify as qualifying building expenditure for the purposes of industrial buildings allowance (IBA). In the year of assessment in which the renovation is completed and the building is used in producing meals, an initial allowance of 10% and an annual allowance of 3% may be claimed. As the central kitchen will generate substantial business income, it is envisaged that the capital allowances will be utilised in each year of assessment.

(d) Holding and management company

Instead of having a management company and a separate holding company, we suggest that you have one single company which is the holding company and performs the central services of finance, accounting and human resources to support the branches. The reasons for this are:

(i) If there is a separate management company, the holding company will likely only receive dividend income, which, being single-tier dividends, will be specifically tax exempt [paragraph 12B, Schedule 6, Income Tax Act 1967]. It will have no gross income from which expenses of maintaining a corporate head office may be deducted.

(ii) Even if the holding company were to derive other investment income such as interest or rent, it will be labelled an investment holding company (IHC). An IHC is defined in tax law [s.60F, Income Tax Act 1967] to mean a company whose activities consist mainly in the holding of investments, and not less than 80% of its gross income is derived therefrom.

(iii) The combining of the investment-holding function with the other services functions will potentially preclude the company falling to be treated as an IHC, provided the fees generated by the management services exceed 20% of total gross income of the company.

(iv) In terms of commercial substance, the holding company, with the management and the board of directors, is well-placed to render or enable a well co-ordinated rendering of the services relating to finance, accounting and human resources. In addition, having both operations under one company would reduce administration and compliance costs.

(v) Your suggestion that the fees charged for the management services will be based on time-cost is in fact best practice and should satisfy the intra-group transfer pricing rules and prevent allegation by the tax authorities of non-arm's length practices.

(e) Free meals

The serving of free meals to the homeless and the poor constitutes a withdrawal of stock under the law [s.24(2), Income Tax Act 1967]. The market value of the free meals served should be treated as gross income of the business.

[**Tutorial note:** *On the basis that the market value of the free meals is treated as gross income from the business, the cost of preparing the meals is tax deductible in arriving at the adjusted income.*]

As the free meals are not in the form of cash to an approved organisation, they will not qualify as approved donations deductible from aggregate income.

(f) Tax rates

We should bring to your attention that a dual tax rate regime applies in certain circumstances. The conditions which require to be met for a company in a group to qualify for this regime are the conditions for a small and medium enterprise (SME):

– Incorporated in Malaysia;

– Tax resident in Malaysia;

– Paid up ordinary share capital at the beginning of the basis period not exceeding RM2·5 million;

– Gross income from business/businesses not exceeding RM50 million; and

– No related company exists (parent company, subsidiary, or fellow subsidiary) with a paid up ordinary share capital at the beginning of the basis period exceeding RM2·5 million.

For companies which qualify, income tax will be charged on the chargeable income at 17% on the first RM600,000, and 24% on the balance.

(g) Tax computation

Attached in appendix B is a sample tax computation for year of assessment (YA) 2022 based on your forecast figures.

– End of report –

Appendix A

Comparison of partnership and company

	Partnership	**Company**
Personal liability.	Unlimited liability.	Limited to the share of equity, except for the director's liability for the company's tax.
Deductibility of remuneration and EPF contributions for partners or director-shareholders.	The partnership is not a taxable entity. The provisional adjusted income relating to each partner is taxable in the partner's name. Remuneration and EPF contributions are not deductible in arriving at the provisional adjusted income of the partner.	Remuneration and EPF contributions are fully deductible in arriving at the adjusted income of the company, which is the taxable entity.
How remuneration is treated in the hands of partners or director-shareholders.	In the hands of the partner, remuneration paid to them is treated as part of their share of profits from the partnership and is taxable in their personal capacity as business income.	In the hands of the shareholder, remuneration received by a director-shareholder is taxable as director's remuneration in their personal capacity as employment income.
How profits allocated/received are treated in hands of partners or director-shareholders.	Profit allocated to each partner, whether or not actually distributed, is taxable in the hands of the partner.	Dividends received by each shareholder are specifically exempt [paragraph 12B, Schedule 6, Income Tax Act 1967] in the hands of the shareholder.

Appendix B

Sample tax computation of income of MBM for the Klang Valley operation for YA 2022

		RM'000	**RM'000**
Profit before tax			3,000
Add: Free meals at market value		460	
Depreciation		80	
			540
Adjusted income			3,540
Less: Capital allowances:			
Kitchen IBA: Initial allowance	600,000 x 10%	60	
Annual allowance	600,000 x 3%	18	
Kitchen equipment	1,100,000 x (20% + 14%)	374	
Other assets		20	
			(472)
Statutory/total/chargeable income			3,068
Tax charged on first RM600,000 at 17%			102,000
Tax charged on remaining RM2,468,000 at 24%			592,320
			694,320

2 Rahim

Below are the notes prepared for the meeting with Rahim next week.

(a) Residence status

As Rahim has been away from Malaysia for the last 16 years except for about 30 days in each of those years, it can be concluded that he was non-resident for the past 16 years of assessment (YAs).

For YA 2021, he will have a total stay of 93 days (30 September to 31 December) in Malaysia. This means he will likely be non-resident for YA 2021 as he was not present for 182 days and he does not have a record of at least 90 days presence in Malaysia in three out of four immediately preceding YAs.

The only way to achieve residence status in YA 2021 is to link the 93 days in 2021 to a consecutive period of 182 or more days in the following year 2022. Since Rahim and his family have returned to take up residence in Malaysia, he expects to remain in the country for the next 182 days. However, he expects to go to Australia in January and May 2022 for board meetings. These absences will not qualify as temporary absences because they will not be 'connected with his service in Malaysia and owing to service matters or attending conferences or seminars or study abroad', neither are they for ill-health or social visits.

Therefore, he should avoid travelling to Australia for the board meetings in the first six months of 2022 to ensure his status of resident in Malaysia for YA 2021.

(b) Income from the Australian company

Royalties

Royalties are payable to Rahim because he created the brand for the design company while founding the Australian design business. The brand resides in Australia, thus the royalties are sourced from Australia, not Malaysia. Therefore, the royalties payable to him are tax exempt [paragraph 28, Schedule 6, Income Tax Act 1967] by virtue of being foreign-sourced income.

Director's fees

– Under Malaysian tax laws [s.13(2)(d), Income Tax Act 1967] director's fees payable by a Malaysian resident company are deemed derived from Malaysia. As this is a non-resident company, *prima facie*, this payment is not derived from Malaysia.

– Also, as a director, attending board meetings is a significant part of his duties and responsibilities, as control and management of a company is exercised when and where board meetings are held.

– Rahim has to return to Australia to attend board meetings. On balance, director's fees are derived from where the board meetings take place, and this is not Malaysia.

– Therefore, director's fees are not derived in Malaysia and should not be subject to tax in Malaysia.

Design fees

– The designs are created at Rahim's base in Malaysia and delivered to the overseas company. Hence, the design fees are derived from Malaysia and should be subject to tax in Malaysia.

– The fact that the income has not been received in Malaysia does not detract from that conclusion.

– The design fees constitute Rahim's business income derived from Malaysia and are duly assessable to income tax in Malaysia.

(c) Disposal of commercial property

– Disposal of a landed property in Malaysia for capital gains is subject to real property gains tax (RPGT).

– Using the proceeds to establish a non-profit design school is a mode of application of gains: it does not offer Rahim any relief or exemption. There is no specific exemption applicable in this circumstance.

– As an individual, Rahim is entitled to an exemption equal to 10% of chargeable gains. Additionally, as he is a citizen of Malaysia and he has held the property for ten years, i.e. more than five complete years, the rate applicable to his real property gains is 5% of chargeable gains after the 10% exemption.

– Rahim will have to submit an RPGT return as the disposer within 60 days after the date of disposal, i.e. 14 January 2022.

(d) Settlement income

The gift of property by Rahim's father to Rahim's son constitutes a settlement caught under the law [s.65, Income Tax Act 1967], because the following conditions are satisfied:

– The transfer of property was not made for valuable consideration;

– The settlor is alive at the time of the settlement; and

– It was made to a relative, i.e. his grandson, who, as at 1 January 2021, was below the age of 21 years, and obviously unmarried, as the grandson is only 12 years of age in 2021.

Such being the case, the income derived from the settled property will be deemed to be that of the settlor, not the relative. So, even though Rahim had access to the rental income and in fact has deposited the income into his bank account jointly held with his son, neither he nor his son is assessable to income tax on the income.

(e) Computation of aggregate income

	RM	Notes
Director's fees (last quarter of 2021)	0	
Business: Design fees	120,000	Expenses incurred wholly and exclusively in the production of design fees are deductible, and capital allowances may be claimed for assets used in the business.
Royalties (last quarter of 2021)	0	
Rental income from Kuantan property	0	
Trustee remuneration	24,000	Income for rendering a service; derived in Malaysia as trustee's duties were performed in Malaysia.
Trust distribution received (tax credit: RM14,400)	60,000	Tax credit is set off against tax charged.
Gain from disposal of commercial property	0	
Aggregate income	204,000	

3 (a) Manjit

(i) Taxable benefits from the share options and free shares

Employees stock option scheme (ESOS) granted on 1 September 2018

The ESOS share options granted to Manjit constitute a taxable benefit to him. The taxable benefit is determined by comparing the difference between the lower of the market value of the shares on the date the options are exercisable or the market value of the shares on the date the scheme is exercised and the price paid for the shares. The benefit is considered as part of the gross income from an employment in the relevant period in which the rights are exercised.

Notwithstanding that Manjit has been granted 10,000 ESOS share options, as only 50% of the entitlement are being exercised, he will only be taxed on that portion. The taxable benefit is calculated as follows:

	RM
Market value of shares on date exercisable (i.e. 1 July 2019)	1·80
Market value of shares on date of exercise (i.e. 31 October 2020)	2·50
Lower of the two	1·80
Less: Price paid for the shares	(1·20)
	0·60
Number of shares exercised	5,000
Taxable benefits as perquisite	3,000

The taxable benefits would be taxed in the year of assessment (YA) 2020.

Consideration for release of the balance of the ESOS rights

The consideration for the release of the ESOS rights constitutes a perquisite and is considered part of the gross income from employment. As the consideration of RM8,000 was received in 2021, this will constitute a taxable benefit for the YA 2021.

Free share award

The free shares received by Manjit in his new role as the managing director constitute a taxable benefit. The computation of the taxable benefits is based on the number of shares given at the value of the shares when Manjit is entitled to them, i.e. 1 July 2021. The value of the shares when the shares were actually issued is disregarded. Based on this, the computation of the taxable benefit is as follows:

Number of shares (50,000 shares) x the value of shares as at 1 July 2021 (RM3·50) = RM175,000

The taxable benefit will be taxable in YA 2021.

The balance of the 50,000 shares to be given in 2022 upon fulfilment of the annual profit requirements will not be taxable until the profit requirement is met in YA 2022.

(ii) Tax treatment of the repurchase of shares to fulfil the ESOS obligations

The shares repurchased by Getah Maju Berhad (GMB) from the Bursa Malaysia are regarded as treasury shares. A special tax deduction [s.34D, Income Tax Act 1967] is accorded on the cost incurred in acquiring the treasury shares to fulfil GMB's ESOS obligations.

At the time when the shares are repurchased, no tax deduction will be accorded. The special deduction is given at the time when the employee exercised the ESOS. The amount deductible is computed based on the cost of acquiring the treasury shares which are transferred to the employee less any amount payable by the employee for such treasury shares.

As the shares are repurchased by GMB for RM1·70 per share, the amount of tax deduction allowed to GMB when Manjit exercised his ESOS on 31 October 2020 is calculated as follows:

Number of shares exercised (5,000 shares) x {cost of acquiring treasury shares (RM1·70) – amount paid (RM1·20)} = RM2,500

The tax deduction is given to the company in the basis period for YA 2020.

(iii) Stamp duty treatment

The transfer of shares by Manjit to his sister is subject to stamp duty based on RM3 for the value of every RM1,000 or part thereof. As the transacted price is lower than the market value, the value of the shares used for stamp duty would be based on the market value of the shares (i.e. RM80,000). The stamp duty payable is RM240 (RM3 x RM80,000/RM1,000).

(b) Tutup Mulut Sdn Bhd (TMSB)

(i) Sales tax on importation of production equipment

Even though Tutup Hidung Sdn Bhd (THSB) is not registered for sales tax, the importation of production equipment into Malaysia is subject to sales tax. The sales tax would be payable when THSB clears the equipment from customs control at the port.

The sales value to compute the sales tax payable would be based on the value of the taxable goods for the purpose of customs duty, including any customs duty and excise duty payable on such taxable goods. The value for customs duty purposes would be the value of the goods including freight and insurance, i.e. the cost, insurance and freight (CIF) value.

Based on the above, the sales tax payable would be computed as follows:

	RM
Value of the goods	800,000
Freight cost	10,000
Insurance cost	5,000
	815,000
Customs duty at 10%	81,500
	896,500
Sales tax at 5%	44,825

(ii) Direction to be treated as a single taxable person

As the expected annual sales turnover of both TMSB and THSB are below RM500,000 individually, there is no requirement for the entities to be registered for sales tax.

However, under the sales tax legislation, where the Director General of Customs is satisfied that any separation of business activities is artificial, a direction can be made requiring the persons named in the direction to be treated as a single taxable person effective from the date specified in the direction. Based on this direction, the single taxable person will be registered for sales tax effective from the date specified in the direction.

In assessing whether any separation of business activities is artificial, the extent to which different persons carrying on those business activities are closely bound to one another by financial, economic and organisational links would be considered.

In the present case, TMSB has set up a new subsidiary, THSB, to undertake the new production lines to contain the financial risk of the project under a separate company. However, the new production lines are carried out within the same premises as well as being managed by the same management team. Based on this, while the company could justify the need to carry out the manufacturing activity under a separate entity for its internal risk management purposes, due to the economic and organisational links between TMSB and THSB, there is a basis for the Royal Malaysian Customs Department (RMCD) to direct that both TMSB and THSB be treated as a single taxable person for sales tax purposes. On a combined basis, the expected annual turnover would have exceeded the RM500,000 threshold, and therefore, required to be registered for sales tax.

The direction for registration for sales tax as a single taxable person can only be made prospectively, in this case effective from 1 December 2021. Therefore, there is no basis for the RMCD to require TMSB to pay the sales tax on the sales made prior to the date of the direction.

4 Musang King Sdn Bhd (MKSB)

(a) No-gain-no-loss treatment

Conditions

In order for MKSB to qualify for no-gain-no-loss approval by the Inland Revenue Board (IRB), MKSB has to demonstrate to the IRB that it has satisfied the following conditions:

- The transfer of the land is between companies within the same group, i.e. with more than 50% shareholding. In this instance, MKSB, ASB and BSB are a 100% shareholding group;
- MKSB must be able to demonstrate that the transfer is to bring about greater efficiency in operations for the group;
- The consideration for the transfer consists of shares in the transferee company or substantially of shares (i.e. at least 75%) in the transferee company, with the balance in money payment; and
- The transferee companies, i.e. ASB and BSB, are resident companies in Malaysia.

Preservation of status

The IRB can withdraw the approval within three years from the disposal date if:

- The transfer was made wholly or partly for some purpose other than to achieve operational efficiency;
- The transferee company ceases to be in the same group of companies as the transferor company; or
- The transferee company ceases to be resident in Malaysia.

Therefore, to preserve the no-gain-no-loss status, the group must ensure that they do not breach any of the above.

Acquisition date and acquisition price

Under the no-gain-no-loss provision, the transferee company would be deemed to have acquired the land at an acquisition price equal to the acquisition price paid by the transferor company plus the permitted expenses incurred by the transferor company and less any compensation, recoveries or deposit received by or forfeited (as the case may be) by the transferor company. In other words, the transferee companies, i.e. ASB and BSB, would inherit the acquisition price of the transferor company (MKSB).

	ASB	BSB
Acquisition price	**RM'000**	**RM'000**
Original acquisition price incurred by MKSB	2,000	2,000
Add: Permitted expenses	0*	100
	2,000	2,100

* It should be noted that the store construction cost cannot form part of permitted expenses as at the time of disposal, the store is no longer reflected in the state of the property due to the fire.

The date of acquisition would be based on the date of the agreement, unless the transfer requires approval from the Government or State Government, in which case the date of acquisition would be deferred to the date when the governmental approval is obtained. In this case, notwithstanding the agreement date of 15 June 2018, as the State Government approval was only obtained on 18 December 2019, the date of acquisition of the land would be 18 December 2019.

(b) Tax treatment of the replanting cost

The cost of replanting durian trees with the same crop incurred by ASB is specifically allowed as a tax deduction under the tax legislation [s.34(6)(d), Income Tax Act 1967].

As the expense incurred on planting durian trees on Parcel A is only RM200,000, ASB is entitled to a tax deduction for that amount only, regardless of the amount stated in the invoice issued in its name.

As a tax adviser to ASB, I would advise the company to only claim a tax deduction based on the actual amount incurred of RM200,000; the balance of the amount was not incurred by ASB. I would recommend that ASB obtain a revised invoice for RM200,000 for the replanting cost incurred for Parcel A only. I would advise ASB against claiming the higher amount. Should ASB insist on claiming, I will inform ASB that I will resign from being the tax agent for the company.

If ASB insists on claiming the RM500,000, and the IRB subsequently discovers that the claim is excessive due to the 'falsified' invoice, the IRB would disallow the excessive amount and impose a 300% penalty (on the tax undercharged) on account of wilful evasion.

(c) Real property gains tax (RPGT) treatment on the sale of ASB shares

(i) RPGT payable on the sale of shares

As ASB acquired the Parcel A land from MKSB on 18 December 2019, and prior to the acquisition of the land, ASB only had RM2 in assets, ASB became a real property company (i.e. the real property owned by the company is more than 75% of the total tangible assets of the company) on 18 December 2019.

The RPGT payable is computed as follows:

	RM'000
Disposal price	3,000
Less: Acquisition price (60% x RM2,000,000)	(1,200)
Chargeable gain	1,800
RPGT payable at 30% (within three years of acquisition)	540

(ii) Compliance requirements

As the disposer, MKSB is required to:

– File a RPGT return as a disposer within 60 days after the date of disposal;

– As RPGT is not under self-assessment, the IRB will issue an assessment for the RPGT liability, where the company is required to settle the RPGT payable, net of the tax withheld by the acquirer within 30 days from the date of the assessment.

As an acquirer, the non-Malaysian resident is required to:

– Furnish an acquirer's return within 60 days after the date of acquisition;

– Deduct and remit the lower of 3% of the total value of the consideration, i.e. RM90,000 (3% x RM3 million), or cash consideration, i.e. RM2 million, to the IRB within 60 days of the date of acquisition.

In this case, notwithstanding that the total consideration of the transfer is RM3 million, as the cash consideration received is RM2 million, the amount of RPGT to be deducted and remitted to the IRB by the non-Malaysian resident is RM90,000.

(d) Appeal on the RPGT assessment

If MKSB is aggrieved by the RPGT assessment, it can file an appeal in a prescribed form within 30 days after the date of the assessment. As the assessment was dated 20 November 2021, it would need to file the appeal by 20 December 2021.

As the shareholding in ASB of 60% was divested on 30 June 2021, ASB would cease to be in the same group of companies with the transferor company, i.e. MKSB. Even though the IRB approval for the transfer (10 June 2018) as well as the agreement for the transfer of land (15 June 2018) was obtained more than three years prior to the date of the divestment (30 June 2021), for RPGT purposes, the date of disposal of the Parcel A land is taken to be 18 December 2019 (as determined above).

Hence, ASB would cease to be a subsidiary of MKSB within three years of the date of disposal.

Based on this, the IRB is right to withdraw the no-gain-no-loss approval in relation to the transfer of Parcel A to ASB. Therefore, MKSB has no valid basis to appeal.

(e) Tax implications arising from BSB's decision to transfer the land to inventories

When BSB decides to embark on the property development business, Parcel B is reclassified to inventories. Under the RPGT legislation, where the land is taken into trading inventory of the transferee company, i.e. BSB, and the market value at which the asset is so taken exceeds the acquisition price of the land inherited from the transferor company, the taking in shall be deemed as a disposal and the excess would constitute a chargeable gain accruing to BSB. In this respect, BSB would be required to file a RPGT return on the deemed disposal.

When computing the taxable income of the property development business, the value of the land transferred to inventories will be based on the market value as at the date of transfer.

			Marks
1 MurahBestMost (MBM)			
(a) From partnership to company			
(i) Comparison of partnership and company	1 x 4		4
(ii) Reasons why MBM should incorporate	1 x 4		4
(b) One company for each state			
Exit strategy, flexibility			1·5
Can access dual tax rate regime			0·5
Tax treatment: sale of assets v sale of share, not RPC hence no RPGT	0·5 x 4		2
		Available	4
		Maximum	3
(c) Central kitchen and industrial building			
Separate company to hold, why			1 + 1
Industrial building, why, IBA			1·5 + 1·5
		Available	5
		Maximum	4
(d) Holding and management company			
One company for both roles, why	1 x 3		3
Commercial substance, reduce admin and compliance costs	1 + 0·5		1·5
Recommendation			1
		Available	5·5
		Maximum	5
(e) Free meals			
Withdrawal of stock – market value			1
Why not deductible donation			1
			2
(f) Tax rates			
Conditions for SME	0·5 + 0·5 + 1 + 1 + 1		4
Tax rates			1
		Available	5
		Maximum	4
(g) Sample tax computation			
Add free meals market value			1
Non-deductible: depreciation			0·5
Adjusted income (correct stage and name, not for correct figure)			0·5
CA	0·5 x 4 subject to maximum		1·5
Statutory/total/chargeable income (correct stage and name, not for correct figure)			0·5
Correct two-stage rates of tax	0·5 x 2		1
			5
Professional marks			
Format and presentation of the report			1
Clarity and effectiveness of communication including logical flow			2
Appropriate use of appendix			1
			4
			35

		Marks
2	**Rahim**	
(a)	**Residence status**	
	NR for YA 2021, reason	1
	How to achieve residence status	1
	Why not temporary absence	1
	Suggestion	1
		4
(b)	**Income from overseas company**	
	Royalties	1·5
	Director's fees	2·5
	Design fees	3
		7
(c)	**Disposal of commercial property**	
	Subject to RPGT, and why no exemption	1
	RPGT treatment: individual, citizen, more than five years, rate	2
	Compliance requirement	1
		4
(d)	**Settlement income**	
	Conditions for settlement	4
	Deemed income of settlor	1
		5
(e)	**Computation of aggregate income**	
	Director's fees	0·5
	Design fees	1·5
	Royalties	0·5
	Rental under settlement	0·5
	Trustee remuneration	1
	Trust distribution	1·5
	Gains from disposal of commercial property	0·5
	Available	6
	Maximum	5
		25

					Marks
3	**(a)**	**Manjit**			
		(i)	**Taxable benefit from the share options and free shares**		
			ESOS scheme		
			Basis of tax treatment		1·5
			Calculation of taxable benefit + timing		1·5
			Consideration for release of ESOS rights		
			Basis of tax treatment + timing		2
			Free share award		
			Basis of tax treatment		1·5
			Computation of the taxable benefits + timing		1·5
			Treatment of balance of 50,000 shares not given yet		1
				Available	9
				Maximum	8
		(ii)	**Tax treatment for re-purchase of shares**		
			Repurchased shares regarded as treasury shares		0·5
			Timing of claim of the treasury shares		1
			Basis of computing the special deduction		1
			Calculation of the special deduction		1
				Available	3·5
				Maximum	3
		(iii)	**Stamp duty treatment**		
			Stamp duty rate		1
			Value to be used for stamp duty calculation		1
					2
	(b)	**Tutup Mulut Sdn Bhd**			
		(i)	**Sales tax on importation of equipment**		
			Subject to sales tax on importation even though not registered		0·5
			Sales tax payable at point of importation		0·5
			Basis to calculate sales value		0·5
			Calculation of sales tax		1·5
					3
		(ii)	**Single taxable person**		
			Not required to be registered if viewed individually		0·5
			DG can direct for persons to be treated as a single taxable person		1
			Circumstances for giving such direction + application		2·5
			Whether can collect back sales tax		1
				Available	5
				Maximum	4
					20

		Marks
4	**Musang King Sdn Bhd**	
(a)	Conditions to qualify for no-gain-no-loss relief (each condition x 0·5)	2
	Withdrawal within three years + the three circumstances (0·5 mark each)	2
	Acquisition price (Parcel A and B)	2·5
	Date of acquisition (0·5 each for agreement date, government approval date and application)	1·5
	Available	8
	Maximum	7
(b)	Replanting tax treatment	0·5
	Should claim lower amount	1
	Advice to be given and what to do if MKSB not agreeable	1
	Consequence if higher amount is claimed by MKSB	1
	Available	3·5
	Maximum	3
(c)	**(i)** ASB regarded as RPC	0·5
	Disposal price	0·5
	Acquisition price	1
	Tax rate	1
		3
	(ii) Obligation as disposer – file return + pay upon issue of notice less withholding	0·5 + 1
	Obligation as acquirer – file return + withholding	0·5 + 1
	Available	3
	Maximum	2
(d)	Appeal procedure	1
	Whether there is basis for appeal	2
		3
(e)	Deemed disposal when taken to inventory, including basis of treatment	2
	Land cost – property development business	1
	Available	3
	Maximum	2
		20