
Answers

1 Report to Ladang Bhd

From Tax Firm
To Board of directors, Ladang Bhd (LB)
Date 8 June 2022
Subject Report on tax issues

Below are tax issues relating to LB's proposed disposal of its stake in Ladang Toppe Sdn Bhd (LTSB).

(a) Income tax treatment of rental income

Given the services provided by LTSB, the rental income is treated as a business source. Under such a tax treatment,

- LTSB is eligible for a wider scope (compared with the rental income treatment) of deductible expenses [under s.33(1), Income Tax Act 1967] being expenses wholly and exclusively incurred in the production of the gross rental income.
- The basis of income recognition is the accruals basis.
- LTSB is eligible for capital allowances (CA) in respect of plant and equipment used in the business of renting and any unabsorbed CA can be carried forward to be set off against the same business source.
- LTSB is also eligible to claim a current year business loss against its aggregate income, failing which, any unabsorbed loss may be carried forward for ten years of assessment to be set off against business income in future.

(b) Industrial building allowance (IBA) and CA

LTSB's eligibility to claim IBA or CA in respect of the RM80 million construction and fitting out costs is tabulated as follows:

		Expenditure RM'000	Eligibility for IBA/CA
1	Lecture halls	35,000	Being buildings used for an approved educational institution, these buildings qualify as deemed industrial buildings [paragraph 42B, Schedule 3, Income Tax Act 1967]. LTSB owns these buildings which are used as lecture halls by Toppe University Malaysia (TUM). As LTSB is not the owner-operator, it fails to qualify for IBA under the law [para 16B(1), Schedule 3, Income Tax Act 1967].
2	Other buildings	15,000	These buildings are used for other facilities in the branch campus. They do not qualify as industrial buildings, neither do they constitute plant. Therefore, the RM15 million does not qualify for IBA or CA.
3	Plant and equipment	30,000	These are assets used in the business of rental. They constitute qualifying plant expenditure for CA.

(c) Real property company (RPC) status of LTSB

(i) Determination of RPC status

LTSB is a controlled company because it is owned by two shareholders only, LB and Toppe University UK (TUUK).

Upon incorporation on 5 January 2018, LTSB's only asset is cash of RM30 million from the capital contribution. It was not an RPC on that date.

On 6 January 2018, LTSB acquired real property of 100 acres of land worth RM20 million. It is necessary to determine its RPC status on this date. Applying the 75% rule, it yields 40% (RM20 million out of total tangible assets of RM50 million [RM30 million + RM20 million] consisting of cash and property). It is therefore not an RPC on 6 January 2018.

On 10 May 2019, LTSB acquired an additional real property of one acre of land to improve its access to the main road. It is therefore necessary to re-assess the RPC status at this point. Applying the 75% rule, the outcome is 80.76% [(RM20 million + RM1 million)/RM21 million + RM5 million]. LTSB therefore became an RPC on 10 May 2019.

On 30 April 2020, the completion of the buildings and the fittings on the land owned by LTSB represents an enhancement cost. It is not necessary to re-assess LTSB's RPC status.

(ii) Acquisition date and acquisition price

LB is deemed to have acquired RPC shares in LTSB on 10 May 2019 (i.e. the day LTSB became an RPC).

The acquisition price as at the date of acquisition is calculated as follows:

75% x RM21 million (i.e. defined value of real property) = RM15.75 million.

(d) Disposal of shares in LTSB

Refer to Appendix A.

(e) RPGT versus income tax

Arguments for charge to income tax

- The short holding period (5 January 2018 to 1 July 2022) is a strong indicator of a profit-seeking motive.
- Taking up a share in LTSB to manage educational institutional premises was entirely unrelated to LB's plantation business.

The intention must have been a quick disposal to realise gains: hence revenue in nature and subject to income tax.

Arguments against charge to income tax (for capital gains treatment)

- It was a long-term investment with a joint venture partner, TUUK, to manage the properties, to start a new business in property management.
- The company (LTSB) has been run as a subsidiary.
- There has been no repetition of similar transactions in the past, and LB has no history of dealing in shares.
- There is no related interest.
- LB did not look for a buyer: it was approached by the real estate investment trust (REIT).
- LB will dispose of the shares for consideration mainly in the form of REIT units, so LB still maintains a strong connection with the business.

All the above arguments suggest that there was no profit-seeking motive when LB acquired the shares in LTSB.

Conclusion

On balance, the transaction is clearly one of capital investment, there was no profit-seeking motive, therefore the gains are capital in nature.

Computation of income tax if the disposal of LTSB shares is deemed revenue in nature

Refer to Appendix B.

(f) Deductibility of expenses

Penalty for early repayment of bank loan

The bank loan relates to the capital structure of the business. Any expense relating to loans is therefore capital in nature.

Additionally, the penalty is not related to the earning of revenue income, as it is an expense incurred for not fulfilling a loan requirement.

Therefore, it is not deductible against LB's income from operating a plantation business.

Professional fees

Searching for investments is capital in nature because it is searching for a source of income or searching for an asset. Hence it is capital in nature and accordingly is not deductible against the plantation business profits.

(g) REIT distributions

IQ REIT is an approved listed REIT. When it distributes to LB as a unit holder, it is governed by provisions [s.109D, Income Tax Act 1967] to withhold tax as specified. However, the withholding provisions do not include a Malaysian resident company. As LB is a Malaysian resident company, it will receive distributions from IQ REIT without any tax withheld at source. LB in turn will be required to report the REIT distributions as one of its income sources in its annual tax return. The REIT distribution will be aggregated with other income to compute its chargeable income and be subject to tax at the rate of 24%.

(h) Income tax treatment of proposed bonus issue

From the perspective of LB, issuing bonus shares represents an appropriation of retained earnings to share capital. Therefore, it has no income tax effect. Any incidental expenses incurred in the bonus issue exercise are not tax deductible, as they relate to the capital structure of the company.

In the hands of the shareholders of LB, their shareholding vis-à-vis other shareholders remains exactly the same, accordingly it is not income in nature. Therefore, the bonus issue has no income tax implications.

Appendix A

Computation of real property gains tax (RPGT) arising on disposal of LTSB

	RM'000	RM'000
Disposal consideration (1 July 2022) (170 million + 90 million)		260,000
Less: Acquisition price (10 May 2019) [calculated in (c)(ii)]		(15,750)
Chargeable gain		<u>244,250</u>
Disposal in the fourth year		
RPGT at 20%	<u>48,850</u>	

Appendix B

Computation of income tax if the disposal of LTSB shares is deemed revenue in nature

	RM'000	RM'000
Disposal consideration		260,000
Less: Acquisition price (30 million x 75%)		(22,500)
Chargeable gain		<u>237,500</u>
Income tax at 24%	<u>57,000</u>	

2 Hippiie Sdn Bhd (HSB)

(a) Investment tax allowance (ITA)

How ITA works

ITA is an additional deduction from the business statutory income (SI), i.e. after capital allowances. It is quantified at 60% of the qualifying capital expenditure. Each year of assessment (YA), the amount of ITA which may be utilised or set off is restricted to 70% of the SI. Any amount thus absorbed is credited to an exempt account, out of which exempt dividend may be distributed. Any amount unabsorbed may be carried forward indefinitely to be set off against income from the same business source.

Computation of SI from HSB's business:

	RM'000	YA 2022 RM'000	YA 2023 RM'000	YA 2024 RM'000
SI		0	7,500	19,700
YA 2022				
Qualifying capital expenditure (QCE)	<u>7,000</u>			
60% of QCE	<u>4,200</u>			
ITA utilised	<u>0</u>	0		
ITA c/f	<u>4,200</u>			
SI for YA 2022		0		
YA 2023				
QCE	<u>31,000</u>			
60% of QCE	<u>18,600</u>			
Add: ITA b/f	<u>4,200</u>			
	<u>22,800</u>			
Less: 70% of SI	<u>(5,250)</u>		(5,250)	
Unabsorbed ITA c/f	<u>17,550</u>			
SI for YA 2023			<u>2,250</u>	
YA 2024				
QCE	<u>0</u>			
60% of QCE	<u>0</u>			
Add: ITA b/f	<u>17,550</u>			
	<u>17,550</u>			
Less: 70% of SI	<u>(13,790)</u>			(13,790)
Unabsorbed ITA c/f	<u>3,760</u>			
SI for YA 2024				<u>5,910</u>

(b) Income tax compliance requirements

(i) HSB's own tax

YA 2022

The first YA for which HSB is required to furnish an estimate of tax is YA 2022 because it fulfils the following:

- It is a newly-commenced company;
- It has a paid up capital of RM50 million, i.e. exceeding the RM2.5 million threshold; and
- It has a basis period of eight months (1 May 2022 to 31 December 2022) which exceeds the requisite minimum six months.

HSB should furnish the estimate of tax within three months from the commencement of operations on 1 May 2022, i.e. by 31 July 2022.

As HSB has no statutory income for YA 2022, its estimate of tax is zero. No instalments of tax are payable.

YA 2023

This being the second YA, HSB should furnish an estimate of tax not later than 30 days before the beginning of the basis period on 1 January 2023, i.e. by 2 December 2022.

As the estimate of tax for the preceding YA is zero, the initial estimate of tax for YA 2023 may be zero.

HSB may then revise its tax estimate, in the sixth or preferably the ninth month, depending on its cash flow, to about RM1.8 million (forecast statutory income of RM7.5 million at 24%).

YA 2024

HSB should furnish the estimate of tax by 2 December 2023, i.e. not later than 30 days before the beginning of the basis period on 1 January 2024.

The minimum estimate of tax required is 85% of RM1.8 million which is RM1.53 million. In the sixth or ninth month, HSB may revise its estimate of tax up to the amount of RM4.728 million, i.e. based on the forecast statutory income of RM19.7 million at 24%. This will improve HSB's cash flow by deferring tax instalments until after the sixth or ninth month.

(ii) 600 engineers

As an employer, HSB is required under the law [s.83(2), Income Tax Act 1967] to give notice in the prescribed form to the Director General of Inland Revenue (DGIR) regarding a newly-appointed employee who is likely to be chargeable to tax. The notice is to be given not later than 30 days after the commencement of the employment.

Each month, HSB is required [under s.107(1), Income Tax Act 1967] to deduct from the remuneration payable to the employee, on account of tax, in amounts as directed by the DGIR pursuant to rules, whether or not the tax has been assessed.

Upon cessation of employment, HSB, as an employer, is required [under s.83(3), Income Tax Act 1967] to notify the DGIR in the prescribed form not less than 30 days before the cessation of employment where the employee is retiring or leaving Malaysia. Hence, this notification will be applicable to the engineers who will leave Malaysia upon their cessation of employment. For the employees who are Malaysian and not leaving Malaysia upon cessation of employment with HSB, notification is also required unless they have obtained continuous employment in Malaysia and will continue to be subject to the monthly tax deductions.

(c) Tax treatment of the employees

The remuneration is payable to the 600 engineers for performing their employment duties physically in Malaysia. They exercise their employment in Malaysia. Therefore, the remuneration from employment is derived from Malaysia [s.13(2)(a), Income Tax Act 1967].

All 600 engineers, whether they are recruited locally or from outside Malaysia, will reside in Malaysia for at least two years continuously because they are employed on a two-year contract, during which they are discouraged from leaving Malaysia while on leave.

They will therefore qualify for tax residence because they have physical presence in Malaysia of more than 182 days under s.7(1)(a) in a basis year. Failing that, they will qualify under the linked-to-182-consecutive-days rule under s.7(1)(b) because their social visit/s will be unlikely to exceed 14 days which would breach the temporary absence threshold as they will remain in Malaysia while on leave during the two-year tenure.

3 (a) The BGB Group

(i) Implications of the proposed restructuring and alternative recommendations

Proposal A

Implications:

This proposal entails consolidating the cleaning business under one company. The management has decided to use Bersih Services Sdn Bhd (BSSB) as the surviving company moving forward. When the cleaning businesses are combined, the total adjusted business income would be RM2.5 million (BSSB's income of RM3.5 million + Tak Kotor Sdn Bhd's (TKSB's) adjusted loss of RM1 million). As BSSB does not have any unabsorbed tax losses and capital allowance (CA), the adjusted income would then be taxed at the prevailing corporate tax rate of 24%.

Recommendations:

Instead of choosing BSSB as the surviving company, TKSB or Cleanwork Sdn Bhd (CSB) should be considered to be the surviving company so that the future profits can be sheltered by the unabsorbed tax losses and CA in these companies. As TKSB has a larger amount of unabsorbed tax losses and CA, it would be more tax efficient if TKSB were used. If TKSB is the surviving company, as TKSB has unabsorbed tax losses and CA of RM6 million and RM4 million (RM10 million in total), TKSB will be able to use these balances to shelter the combined annual taxable income of RM2.5 million over the next four years and, hence, should not be in a tax paying position for these periods.

Proposal B

Implications:

Currently, Bersih Group Berhad (BGB) is an investment holding company (IHC) and the dividend source will be taxed as deemed business income as a listed IHC. With the transfer of the chemical supplies trading business from Kimia Dagang Sdn Bhd (KDSB) to BGB, the company will cease to be a listed IHC for tax purposes as the investment income is less than 80% ($2 \text{ million} / (2 \text{ million} + 1.8 \text{ million}) = 52.6\%$) of its total gross income. The trading business will be taxed as a separate business income without any shelter of unabsorbed tax losses and CA.

Recommendations:

As CSB has unabsorbed tax losses, consideration should be given to transfer the chemical supplies trading business to CSB so that it can utilise the tax losses. BGB will remain as an IHC and there should be no tax downside to this. However, as the previous business of CSB is that of cleaning services which is different from trading chemical supplies, it would not be able to utilise the unabsorbed CA since the utilisation of CA is restricted to the same business source only. As CSB has positive retained earnings, the profits made by the company following the transfer of the trading business would be able to be distributed to BGB without any restriction.

Another option is for KDSB's trading business to be transferred to TKSB to accelerate the utilisation of the tax losses. However, this would mean that the tax losses in CSB will remain unutilised. If the tax losses are not utilised, the amount can no longer be carried forward after ten years.

Proposal C

Implications:

The liquidation of CSB, TKSB and KDSB would mean that any unabsorbed tax losses and CAs would be lost.

Recommendations:

Based on the revised proposals recommended under A and B above, the companies which will be dormant will be BSSB and KDSB. There are no unabsorbed CAs or losses in either company. These two companies should therefore be liquidated instead, meaning that no unabsorbed tax losses or CAs would be lost.

(ii) General anti-avoidance provision

Adopting one option over another based on tax considerations would appear to be tax avoidance. However, the restructuring proposals have commercial substance, hence should not be seen as a sham, and once adopted, have legal import. It is also a manifestation of the choice principle: that one is entitled to choose an alternative way of achieving a business outcome leading to a different tax treatment.

The use of TKSB as the surviving company to utilise the unabsorbed tax losses and CAs should have commercial rationale. With the consolidation of the business, TKSB will then be responsible to entire markets in Peninsular Malaysia. In addition, it also houses the management team which means less movement of people to implement the restructuring, providing another commercial rationale.

(b) Mark

(i) Aggregate income for the year of assessment 2021

	RM'000	RM'000
Apartment – passive rental		
Rental income	2,000	
Less: Agent fees	(3,000)	
Less: Quit rent and assessment	(1,200)	
Adjusted loss (cannot be carried forward)	(2,200)	
Adjusted income		0
Factory – business income		
Advance rental (RM10,000 x 24 months)	240,000	
Less: Repainting (initial expenses)	(0)	
Less: Maintenance and support services expenses	(40,000)	
Less: Quit rent and assessment (RM10/12 x RM24,000)	(20,000)	
Adjusted income/statutory income	180,000	
Less: Unabsorbed tax losses brought forward	(30,000)	
		150,000
REIT distribution income (final tax of 10%)	0	
Less: Interest expenses – not deductible	(0)	0
Interest income		0
Dividend income		0
Aggregate income		150,000

(ii) Tax treatment of expenses regarding apartment and factory

Apartment

- Expenses incurred to renew the tenancy or for a change of tenant are tax deductible. Therefore, the agent fees incurred by Mark to find a new tenant after the previous tenant moved out are allowable.
- In relation to the quit rent and assessment, even though the property was vacant for 11 months in 2021, on the basis that the property is maintained in good condition and is ready to be let out, the expenses incurred during the period when the property is vacant can also be given a tax deduction. Therefore, the full year amount is allowed as a tax deduction.
- As the total expenses incurred exceed the income received for the year of assessment 2021, the adjusted loss of a passive property rental cannot be carried forward and will be permanently lost.

Factory

- The maintenance expenses and support service fees are incurred to earn the rental income and, therefore, are tax deductible.
- As the rental business only commenced from March 2021, Mark is only entitled to claim quit rent and assessment expenses from March 2021 onwards. Therefore, the quit rent and assessment for the first two months is not tax deductible.
- The repainting cost incurred prior to the property being let out is treated as initial expenses and, therefore, not tax deductible.

4 (a) Income tax treatment of RSH PLT

(i) Taxable person, residence status and how RSH PLT's profits are to be taxed

RSH PLT is a limited liability partnership (LLP). An LLP is regarded as a taxable person and, therefore, the profits derived by the LLP are taxed at the LLP level.

In determining the residence status of RSH PLT, the tax residence status of the partners is not relevant. The residence status of the LLP is determined based on where the management and control of the business are being exercised. Management and control refer to the authority in deciding policies to be followed by the LLP and are considered to be exercised in the place where the partners meet to discuss management of the business of the LLP. As all the partners' meetings are to be held in Malaysia, RSH PLT should be a tax resident in Malaysia.

First basis period of RSH PLT, submission of tax estimates and tax instalments

The basis period of RSH PLT will be based on its accounting period. As RSH PLT commenced its business on 1 May 2022 and will close its accounts on 30 April 2023, the first basis period will be from 1 May 2022 to 30 April 2023.

As a taxable person, RSH PLT is required to submit its first tax estimate within three months from the commencement of operation, i.e. by 31 July 2022. The first tax instalment will be payable in the sixth month of the basis period, by 15 October 2022, followed by 11 monthly instalments thereafter until September 2023.

Applicable tax rate

As a resident LLP, the applicable tax rate would depend on whether RSH PLT can meet the small and medium enterprise (SME) definition to qualify for a preferential tax rate. This would depend on whether the total capital contribution of the LLP exceeds RM2.5 million. For RSH PLT, each partner is required to make a capital contribution of RM0.8 million, giving a total of RM2.4 million (RM0.8 million x 3). However, in the case of Hanita's contribution via transfer of property, the market value of the property of RM1 million should be used instead. If the value of the capital contribution of Hanita is substituted with the market value of the property, the total contribution of the LLP would be RM2.6 million ((RM0.8 million x 2) + RM1 million). In which case, it cannot avail of the preferential tax rate under SME. Hence, the applicable tax rate would be 24%.

(ii) Tax treatment of arrangements between partners and RSH PLT

Capital contribution

The capital contribution is a capital transaction and, therefore, should not have income tax implications for either the partners or RSH PLT.

Profit distribution

The profits paid, credited or distributed to partners of the LLP are exempt from income tax. There is no withholding tax on the profit distribution.

From RSH PLT's perspective, the profit distribution is not a tax deductible expense.

Fixed salary to partners

The fixed salary payable to partners which is stipulated in the LLP agreement should be an allowed tax deduction against the business profits of RSH PLT.

The salary will be taxed as employment income of the partners.

New passenger car provided to Hanita

As this is a benefit-in-kind provided to the partner, RSH PLT will be eligible to claim capital allowance restricted to qualifying expenditure of RM50,000, being a non-commercial motor vehicle.

Tutorial note: *The applicable initial and annual allowance rates of 20% each are available.*

Hanita will be subject to tax on the car benefit, being a benefit-in-kind which forms part of her employment income.

Special allowance

The special allowance given to the partners on the successful win of court cases is a verbal agreement not stipulated in the LLP agreement. In this case, the special allowance payable would not be eligible for a tax deduction at the LLP level.

Notwithstanding that the special allowance is not tax deductible, it would still be regarded as part of the taxable employment income of the partners.

Transfer of laptops from Sue

As Sue is only entitled to one-third of the profit distribution of RSH PLT, Sue cannot be said to have control over it. Therefore, the controlled transfer provisions are not applicable. RSH PLT will be able to claim capital allowances based on the purchase consideration of the laptop of RM10,000 at an accelerated initial and annual allowance of 20% each.

For Sue, in relation to her sole proprietorship business, she would need to compute balancing adjustments in relation to the disposal of the laptops.

(b) Service tax treatment of RSH PLT

(i) Taxable person and applicable taxable services

An LLP is a taxable person and if RSH PLT provides taxable services which exceed the respective threshold, it is required to be registered for service tax. The determination of the registration threshold is either based on the historical or future method. Being a newly commenced business, the historical method will not be applicable.

RSH PLT is providing two types of taxable service, namely legal services and accounting services which fall under two separate sub-categories of taxable service under Group G. The registration thresholds for both legal and accounting services are RM500,000 respectively. However, as both services fall within Group G, in determining the threshold, the revenue of both services should be combined. In this particular case, the expected annual turnover from the provision of taxable services of the LLP is RM2.1 million (RM2 million + RM0.1 million) for the year ending 30 April 2023 and, therefore, RSH PLT would have exceeded the registration threshold. RSH PLT would need to be registered for both services in relation to the provision of legal and accounting services.

Timeframe for registration and when RSH PLT should start charging service tax

RSH PLT would be liable to be registered for service tax not later than the last day of the month following the end of the month where the total value of all taxable services in that month and the 11 months immediately succeeding the month will exceed the prescribed threshold.

As RSH PLT commenced business on 1 May 2022, it would need to apply for service tax registration no later than 30 June 2022.

The effective date of registration shall be the first day of the month following the month the notification of liability is received or any earlier date agreed by the Director General but not earlier than the date it becomes liable to be registered. In this case, if the registration for the service tax is submitted on or before 30 June 2022, the effective date is 1 July 2022. RSH PLT will then be required to charge and collect service tax from that date onwards.

(ii) Accounting and legal services provided to Banyak Macam Sdn Bhd (BMSB)

As both accounting and legal services are registered as taxable services for RSH PLT, the provision of both services should be subject to service tax. This is notwithstanding that the value of the accounting services provided by RSH PLT is below RM500,000.

In relation to the legal services provided to BMSB, even though this is provided free of charge, there is a requirement to charge service tax. The value for charging service tax shall be determined based on the open market value of the taxable service, i.e. provided in the ordinary course of business to a person not connected with the taxable person.

It should be noted that intra-group relief is not applicable as both RSH PLT and BMSB are not within the same group of companies.

			Marks
1	Ladang Bhd (LB)		
(a)	Income tax treatment of rental income		
	Significant features of business source treatment	1 x 3 + 1.5 x 1	Available 4.5
			Maximum 4
(b)	Industrial building allowance (IBA) and capital allowances (CA)		
	Lecture halls	1 + 1	2
	Other buildings		1
	Plant and equipment		1
			Available 4
			Maximum 3
(c)	Real property company (RPC) status of Ladang ToppeSdnBhd (LTSB)		
(i)	Controlled company		1
	On 5 January 2018		0.5 + 0.5
	On 6 January 2018	0.5 x 4	2
	On 10 May 2019	0.5 x 4	2
	On 30 April 2020		0.5 + 0.5
			Available 7
			Maximum 5
(ii)	Acquisition date		1
	Acquisition price		1
			2
(d)	Disposal of shares in LTSB		
	Sale consideration		0.5 + 0.5
	Acquisition price		0.5
	Real property gains tax (RPGT) rate		0.5
			2
(e)	RPGT versus income tax		
	Arguments for capital gains		3
	Arguments for revenue gain		2
	Conclusion		1
	Income tax computation		2
			Available 8
			Maximum 6
(f)	Deductibility of expenses		
	Penalty for early repayment of bank loan		2.5
	Professional fees		2
			Available 4.5
			Maximum 4
(g)	Real estate investment trust (REIT) distributions		
	No withholding tax and reason		1
	Report in tax return, at standard tax rate	1 + 1	2
			3

			Marks
(h) Income tax treatment of proposed bonus issue	LB		1·5
	LB shareholders: not taxable, reason		1·5
		Available	3
		Maximum	2
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
2 Hippie Sdn Bhd (HSB)			
(a) Investment tax allowance (ITA)	How it works	0·5 x 8	4
	Computations	0·5 x 14	7
		Available	11
		Maximum	10
(b) Income tax compliance requirements			
(i) HSB's own tax	YA 2022		3·5
	YA 2023		2
	YA 2024		2
		Available	7·5
		Maximum	5
(ii) 600 engineers			
On commencement			2
Monthly tax deduction			1
On cessation			3
			6
(c) Tax treatment of employees			
Reason derived from Malaysia			2
Reason tax resident			3
			5
			4
			25

		Marks
3	(a) The BGB Group	
	(i) Implications of the proposed restructuring and alternative recommendations	
	Proposal A	
	Tax treatment if Bersih Services Sdn Bhd (BSSB) undertakes the business	1
	Use of company with tax balance, i.e. Cleanwork Sdn Bhd (CSB) or Tak Kotor Sdn Bhd (TKSB)	1
	Choice of TKSB and reason	2
	Proposal B	
	Tax impact to Bersih Group Berhad (BGB) with acquisition of trading business	1
	Consider transfer of business to CSB	1
	Utilisation of tax losses and not capital allowances (CA)	1
	Consider transfer of business to TKSB (alternative 2 marks)	
	Proposal C	
	Tax impact if TKSB, CSB and KDSB liquidated	1
	Revised proposal on entity to be liquidated	1
	Available	9
	Maximum	7
	(ii) General anti-avoidance provision	
	Principles on anti-avoidance	2
	Application to alternative cleaning business scenario	2
	Available	4
	Maximum	3
	(b) Mark	
	(i) Aggregate income for the year of assessment 2021	
	Apartment unit (rent income, fees, quit rent, loss treatment)	2
	Factory (rent income, repainting, maintenance support, quit rent)	2
	REIT distribution income (final tax, interest expense treatment)	1 + 0.5
	Interest income	0.5
	Dividend income	0.5
	Utilisation of tax losses	0.5
		7
	(ii) Tax treatment of expenses regarding apartment and factory	
	Apartment	
	Agent fees	0.5
	Quit rent and assessment: full amount, reason	0.5 + 0.5
	Loss cannot c/f	0.5
	Factory	
	Support service fees/maintenance	0.5
	Quit rent and assessment	0.5
	Repainting cost	1
	Available	4
	Maximum	3
		20

	Marks
4 (a) Income tax treatment of RSH PLT	
(i) Regarded as a taxable person and the profits are taxed at LLP level	1
Determination of residence status – management and control, residence of partners not relevant	1·5
Basis period	0·5
Submission of tax estimate	1
Payment of tax instalments	0·5
Applicable tax rate	2·5
Available	7
Maximum	5
(ii) Tax treatments of arrangements between partners and RSH PLT	
Capital contribution	
Capital in nature, no income tax implications	0·5
Profit distribution	
Partners – exempted from income tax, no withholding tax	1
RSH PLT – not deductible	0·5
Fixed salary	
RSH PLT – tax deductible, stipulated in LLP agreement	1
Partners – taxed as employment income	0·5
New passenger car provided to Hanita	
RSH PLT – capital allowance restricted to RM50,000	1
Hanita – taxed as benefit in kind under employment income	0·5
Special allowance to partners	
RSH PLT – not deductible as not stipulated in LLP agreement	1
Partners – still taxable	0·5
Transfer of laptops from Sue	
RSH PLT – controlled transfer not applicable, QE based on purchase consideration	1
Sue – balancing adjustment applicable	0·5
Available	8
Maximum	7
(b) Service tax treatment of RSH PLT	
(i) LLP is a taxable person	0·5
Basis of determining the annual threshold	0·5
Registration threshold for both services	1
Determination of threshold on combined basis	1
Timeframe for registration	1·5
When start to collect service tax	1
Available	5·5
Maximum	5
(ii) Taxable person and applicable taxable service tax	
Accounting services subject to service tax even though below registration threshold	1
Legal services – subject to service tax even though free, value based on open market value	2
Intra-group relief not applicable	1
Available	4
Maximum	3
	20