Tax Planning (cont'd)

Trading stock

↓

Permanently about to cease business

↓

Transfer / sold to another co. to be used as stock in trade

↓ S35(5)

Transfer price = consideration / increase value (subject to market value) if disposer has unabsorbed CA / tax losses

1

1

Single or separate businesses

- Important as utilisation of CA cannot be set off against income from another business source
- Depend entirely on the nature and interdependence of such activities
- Case law: *' if one or two activities cannot be stopped without affecting the framework of the other ->same business'*

2

2

Single or separate business

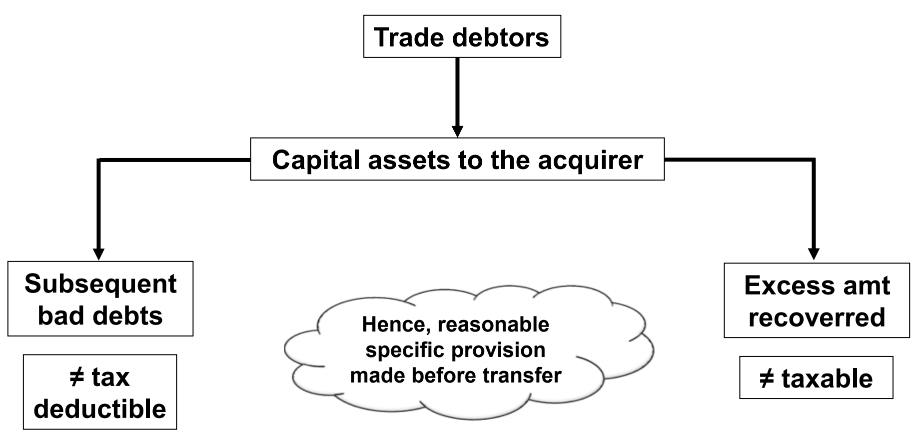
Whether sharing the same characteristics of the following:

- Core ingredient of the existing business
- Overall control and management
- Manufacturing processes is entirely/almost the same?
- Using the same equipment and expertise?

3

3

Tax planning (cont'd)



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4

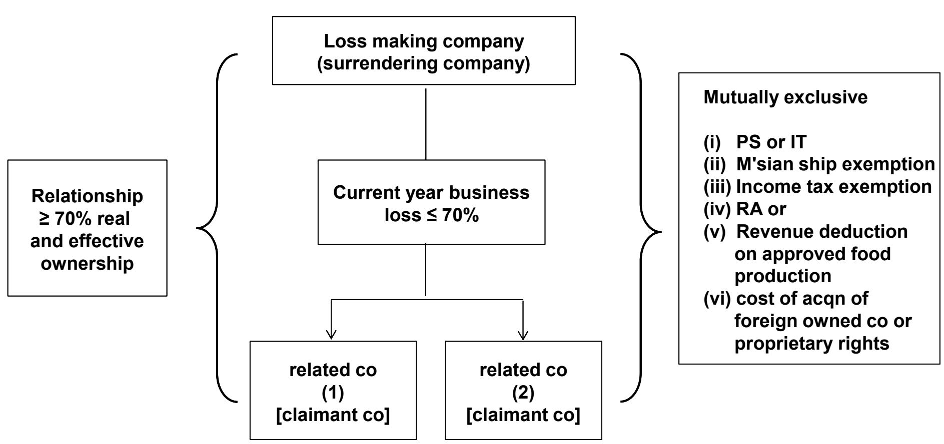
Tax planning (cont'd)

- **Current year biz loss**
  = allowed against all sources of income
  = can surrender ≤ 70% to related company (if conditions fulfilled)

- **Unabsorbed biz loss (carried forward up to 10 YAs after its incurrence)**
  = can only be used to set off against the aggregate statutory business income
  = unabsorbed tax losses cannot be transferred, hence investor should buy up the equity of the co. with tax losses and then introduce profit-making business into the tax-loss co.
  = must have commercial reasons to do so (take note of Section 140 anti avoidance)

June 2022 Q3(a)(i), consolidation of the business under one company

GROUP RELIEF



WEF YA2019,claimant co that has unabsorbed ITA & current year loss from pioneer biz under PIA is restricted to participate in group relief.

GROUP RELIEF (Cont'd)

Conditions(for surrendering & claimant companies):
(1)Tax resident + incorporated in M'sia *(including the medium companies wef YA2022)*

(2) Related co throughout that yr + 12 month period prior to that YA
(surrendering co must have commenced business for a period of 12 months)

(3) PUC > RM2.5 million

Marc/June 2021 Q1©

(4)Common 12 mth period ending on the same day

(5) Make an irrevocable election to surrender or claim the biz loss in their respective tax return

(6) Subject to income tax at 24%

(7) Claimant co has defined aggregate income (DAI) for that YA.
Does not permit the claimant Co. to claim the biz loss > its DAI

7

7

GROUP RELIEF (Cont'd)

- **WEF YA2019** ,the transfer of adjusted losses to a related company only applies to surrendering company which first commences its operation (i.e. start-up company).

- Surrendering of adjusted losses by the surrendering company is restricted to 3 consecutive YAs, whether or not any adjusted losses are surrendered:
  - (i) It commences immediately following the YA which consists of a basis period of 12 months the company first commences operation.
  - (ii) If the basis period for a YA the surrendering company first commences operation is less or more than 12 months, the surrendering company is allowed to commence surrendering its adjusted losses immediately after the second basis period for the YA the surrendering company first commences operation and the second basis period consists of a period of 12 months.

FRS 38 - 8

8

GROUP RELIEF (Cont'd)

Defined aggregate income

Aggregate income

-S44(1)	(a)	Current year loss	XX
	(b)	Prospecting expenditure / pre-operating biz expenditure	(X)
	(c)	Donations	(X)
	(d)	Other donations	(X)
Defined Aggregate Income			XX

GROUP RELIEF (Cont'd)

Penalty

- incorrect information on adjusted loss surrendered
- adjustment on claimant Co.
- penalty imposed on surrendering Co.

  = amount of tax undercharged by claimant Co.

June 2021 Q1©

(c) Group relief

(i) Explain how the EM group will fulfill the qualifying conditions for group relief;

(ii) Determine the first YA in which the companies will qualify for group relief;

(iii) Identify, with reasons, the surrendering company and the claimant companies; and

(iv) Based on the forecast figures, explain how group relief is computed and can be deducted by the claimant companies for YAs 2024 and 2025.

(c) Group relief

(i) **How the conditions are fulfilled**
EM group qualifies for group relief because EMH, EMM and EMT fulfil the following conditions:

- They are all resident and incorporated in Malaysia;
- They are all related companies as defined, i.e. EMH holds 100%, i.e. more than the requisite 70%, of EM! EMT;
- All three companies have ordinary paid-up capital of more than RM2·5 million and therefore are subject to tax standard rate of tax at 24%;
- The companies are related throughout the current YA and the immediately preceeding 12-month period;
- The companies all have a 12-month basis period ending on the same day, i.e. 30 June;
- The companies will not benefit from any tax incentives or tax exemptions during the relevant YAs.

June 2021 Q1©

(ii) **First YA eligible for group relief**
As the first YA, i.e. YA 2022, has a basis period of nine months, the first YA which the EM group will qualify for group relief will be the third YA, i.e. YA 2024.

This will duly fulfil the conditions that the surrendering and claimant companies must be related companies throughout the basis period for YA 2024 as well as the 12-month period immediately preceding that basis period, i.e. YA 2023.

(iii) **Identify the surrendering company and claimant companies**
EMM, being the company registering a current year business loss, is the surrendering company.

EMH and EMT qualify as the claimant companies as they are related companies and they both have defined aggregate income.

June 2021 Q1©

Forecasts of profit and loss, which approximate defined aggregate income and adju loss, are as below:

	Profit/(loss) RM'000 EMM	Profit RM'000 EMT	Profit RM'000 EMH
YA 2022	(3,000)	1,200	500
YA 2023	(2,000)	3,300	2,850
YA 2024	(4,650)	1,500	2,800
YA 2025	(1,830)	2,900	3,000
YA 2026	4,200	5,000	1,700

June 2021 Q1©

(iv) Computation and deduction of group relief for YAs 2024 and 2025

EMM may surrender not more than 70% of its current year business adjusted loss to its related companies, i.e. EMH and EMT. The order of priority of claim may be ascertained by the companies. For illustration, assume the order of priority is the first claimant is EMT and the second claimant is EMH.

	Adjusted loss (RM)	70% (RM)	Claimants	Amount (RM)
YA 2024	4,650,000	3,255,000	EMT	1,500,000
			EMH	1,755,000
				3,255,000
YA 2025	1,830,000	1,281,000	EMT	1,281,000
			EMH	0
				1,281,000

Alternative answer

For illustration, assume the order of priority is the first claimant is EMH and the second claimant is EMT.

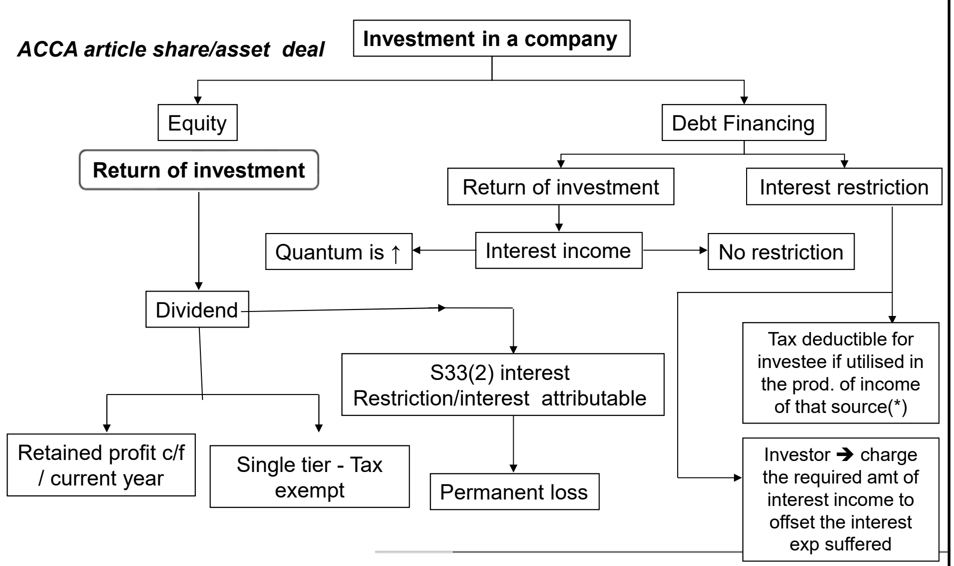
	Adjusted loss (RM)	*70% (RM)*	*Claimants*	*Amount (RM)*
YA 2024	*4,650,000*	*3,255,000*	*EMH*	*2,800,000*
			EMT	*455,000*
				3,255,000
YA 2025	*1,830,000*	*1,281,000*	*EMH*	*1,281,000*
			EMT	*0*
				1,281,000

June 2021 Q1©

EMM will carry forward the balance of 30% of the current year loss for YA 2024 and YA 2025 as unabsorbed loss to be deducted against statutory income (SI) of the business in future. Any unutilised loss will be disregarded if it is not absorbed within ~~seven~~ 10 YAs after its incurrence.

Tax planning (cont'd)

ACCA article share/asset deal



Dec 2022 Q1

1 December 2022

1. Kool Chicks Sdn Bhd (KCSB) is a company incorporated and tax resident in Malaysia, with a paid-up share capital of RM11 million. It closes its accounts annually to 30 September. KCSB operates a poultry farm producing eggs and meat for the domestic market.
2. In 2013, KCSB acquired a 100% shareholding in Wangi Bakery Sdn Bhd (Wangi) which then operated eight outlets in Malaysia. Thereafter, Wangi increased its range of products in the outlets to include moon cakes and roast chickens.
3. Business flourished, and Wangi opened more outlets to meet demand. As at 30 September 2022, there were 100 outlets.
4. In a sustained policy of increasing market share and brand recognition, Wangi incurred the following expenses during the year ended 30 September 2022:

	RM'000
New enhanced website (to enable online orders)	95
Design fees for packaging Wangi products (to build brand name)	128

Dec 2022 Q1

Design fees for packaging Wangi products (to build brand name) 128

5. Since October 2022, KCSB has held negotiations with Mystery Buyer (MB), an unrelated party, with a view to selling Wangi's entire business operations for a total consideration of RM20 million, analysed as follows:

	RM'000
Plant, machinery and equipment	6,900
100 business premises	9,100
Customer database	1,200
Brand name	2,800
Total	20,000

Net current assets such as inventory, cash and receivables will not be transferred.

It is envisaged that after the disposal of the business assets, Wangi will become an investment holding company; Wangi will invest the RM20 million proceeds in rental properties, shares in small profitable companies and bank deposits, all in Malaysia.

6. Alternatively, rather than purchasing the business assets, MB is amenable to buying the shares of Wangi (a share deal); it will acquire KCSB's 100% shareholding in Wangi for RM20 million.

Dec 2022 Q1

7. As at 30 September 2022, Wangi had unabsorbed capital allowances of RM1·8 million to be carried forward to year of assessment (YA) 2023.
8. The board of directors of KCSB has requested advice from Tax Firm on the attendant tax issues in the proposed sale of Wangi's business. For complete understanding, they would also like to know how MB will be impacted by an asset deal as opposed to a share deal.
9. The disposal is due to happen on 31 March 2023. Wangi expects an adjusted loss of approximately RM1 million for YA 2023.
10. The 100 business premises have all been owned for more than five complete years, and each of them has a market value below RM100,000. The total gains from the disposal of the premises will amount to RM3·5 million.

Dec 2022 Q1

(b) Mystery Buyer (MB)

Explain the tax treatment of MB's acquisition of Wangi by way of:

(i) an asset deal; or
(ii) a share deal

in relation to:

- exposure to stamp duty (in respect of business premises and shares only);
- unabsorbed CA from YA 2022 and plant, machinery, and equipment;
- 100 business premises;
- customer database;
- brand name.

You should present your analysis in a table format in an appendix.

Dec 2022 Q1

Comparative tax treatment

	Tax issue	Asset deal	Share deal
1.	Stamp duty	Stamp duty will be leviable on the transfer of the 100 business premises. As each of the business premises does not exceed RM100,000 in market value, the effective rate of stamp duty will be 1%, i.e. RM9·1 million at 1% = RM91,000.	Stamp duty will be leviable on the transfer of shares in Wangi for RM20 million at RM3 for every RM1,000 or part thereof, i.e. RM20 million at 0·3% = RM60,000.
2.	**Unabsorbed CA and plant, machinery and equipment**	A new business will be formed by MB to carry on the bakery business. The unabsorbed CA of RM1·8 million relate to the business operated by Wangi, and not to MB's business. The plant, machinery and equipment acquired for RM6·9 million will be used in the new business. It will constitute qualifying plant expenditure for the new business, duly eligible for initial and annual allowance from YA 2023 onwards.	The Wangi bakery business will continue to operate as one and the same business, albeit under a new ownership. The unabsorbed CA of RM1·8 million may be brought forward and duly absorbed against adjusted income of the Wangi business for YA 2023 et seq. The plant, machinery and equipment of Wangi will continue to qualify for CA going forward based on the remaining residual expenditure. There will be no change of ownership of the assets.

Dec 2022 Q1

3.	100 business premises	The new business will acquire the business premises. It will need to assess whether it satisfies the threshold to be a real property company.	There is no transfer of chargeable assets as they continue to be owned by Wangi, which company is now owned by MB, instead of Kool Chicks Sdn Bhd.
4.	Customer database	The new business has acquired a new asset in the form of the customer database. However, the definition of 'plant' in the Income Tax Act [Paragraph 70A, Schedule 3] specifically excludes an intangible asset to constitute 'plant'. Therefore, the new business will not qualify for CA in respect of the RM1·2 million.	The customer database has been built up over the years of operations, for which deductions of manpower costs have been taken. The issue of the customer database being an asset or 'plant' does not arise.
5.	Brand name	For tax purposes, brand name is similar in nature to goodwill. It is capital in nature and is an intangible asset. It is not tax deductible. It similarly does not qualify as 'plant' and therefore does not qualify for CA.	The brand name has been built up over the years of operation by Wangi. As the business continues as one and the same, there is no transfer, therefore no tax issue arises.

Advantages of SME

- Lower income tax rate of 15%/17%/24% on the first RM150,000/RM450,000 of its CI
- Can claim CA on small value assets and not limited to RM20,000 per YA
- Exempted to file tax estimate for first two YAs (no need to meet the criteria of gross income <=RM50 million)

SME= incorporated in Msia;+
= Tax resident in Msia;+
= PUC at the beginning <= 2.5million;+
= Gross income from business<= RM50 million;+
=NO related companies having PUC > 2.5.million
= at least 80% M'sian incorporated companies and or/Citizen

Tax planning (cont'd)

Distinction

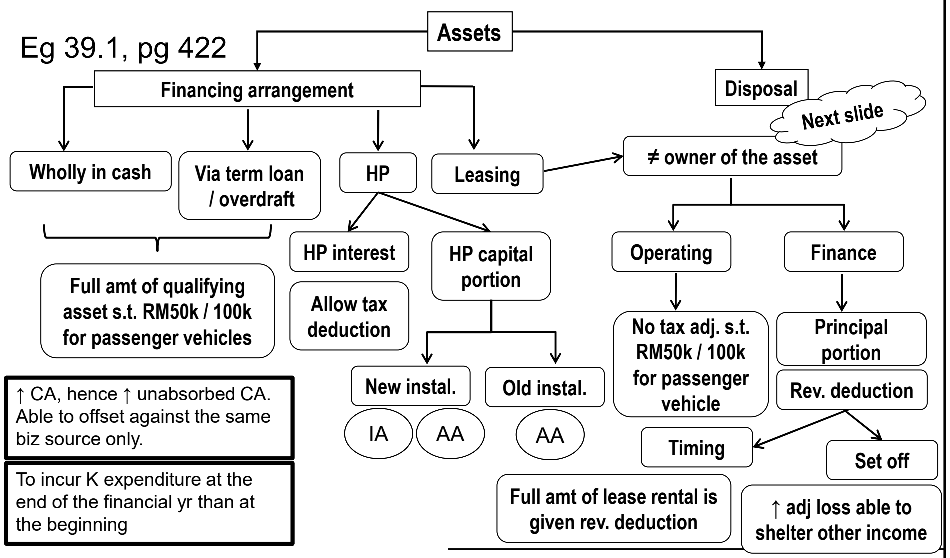
Business income

- Availability of CA
- Availability of current yr loss
- Carry forward unabsorbed loss
- Biz income can be offsetted against unabsorbed biz loss even though different sources

Investment income

- Deductibility of expenses = wholly & exclusively test
- Excess = permanent loss
- Current year loss ≠ offset against other income

Tax planning (cont'd)



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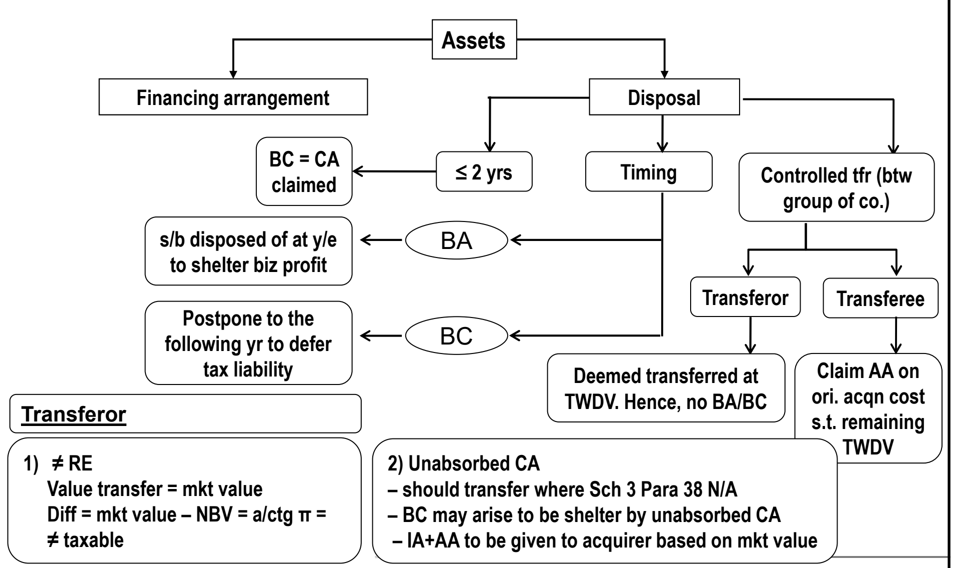
Tax planning (cont'd)



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26

March 24 Q1

Notes of the meeting between Fahmi and your tax director on 5 March 2024

- JKSB, a company incorporated and resident in Malaysia and wholly owned by Malaysian citizens, currently manages six car parks in shopping malls. It closes its accounts annually to 31 December.
- JKSB's ordinary paid up share capital is RM2 million.
- JKSB's principal activity is managing car parks. The current car parks are all in shopping malls; however, the four additional car parks it will manage are all open-air car parks in the city fringes. JKSB leases the car park premises from the car park owner at a fixed pre-determined annual rental, with an option to renew for up to ten years. JKSB is responsible for all installations, repair and maintenance of the car park premises, and JKSB is permitted to sub-lease the right to operate the car parks to another party or sub-let part of the car park space.
- JKSB is now exploring the ancillary activity of sub-letting part of the open-air car park space to food truck operators. JKSB will provide services such as the supply of water, electricity, lighting and security to the food truck operators. The lease rent relating to the food truck zone which JKSB will charge is RM75,000. Initially, a loss is expected, but Fahmi is confident that once established, the take-up rate will increase and bring in a profit.
- In addition to the lease rent, JKSB is also required to pay 2% of gross car park revenue and food truck rental income to the car park owner. Fahmi is concerned that this may be viewed as a share of profit to the owner and hence will not be tax deductible for JKSB.

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March 24 Q1

- JKSB also expects to incur substantial capital expenditure, for example, on perimeter fencing, booths, lighting, etc. In particular, RM1 million is ear-marked for the installation of lighting systems in the shopping mall car parks to indicate the occupied/vacant status of each bay to facilitate the counting of available bays and locating vehicles, among other functions.
- Given the enlarged operations, JKSB will need to raise additional equity capital of about RM8 million by December 2024.
- In the meantime, Fahmi is unsure whether it is preferable to group all ten car parks (six existing and four new open-air) under the single entity of JKSB (Proposal 1) or form four separate companies (each with a share capital of RM2 million) to operate each of the four additional car parks (Proposal 2). He adds that despite the anticipated initial losses on the food truck operations, overall each additional car park will be profitable immediately and expects to be in a taxable position from the first year of assessment. Fahmi does not rule out the disposal of one or more of the four open-air car park operations before the expiry of the lease contract with the car park owner.
- Fahmi informed Tax Firm that in the floods during the year 2023, JKSB has lost some of the business receipts and records relating to the expenditure incurred on the new car parks. He wants to know whether JKSB can still proceed to claim the deductions and capital allowance for the year of assessment 2023 based on memory and estimates.

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March 24 Q1

Revenue			
Average annual parking fees per car park:			
Existing car parks	800,000 x 6 =	4,800	
Additional car parks	1,500,000 x 4 =	6,000	
Total			10,800
Rental income from food trucks			300
Gross revenue			11,100
Interest income			124
Expenditure			
2% of gross revenue to car park owner			222
Lease rental for ten car parks			1,200
Car park operations expenses (all tax deductible)			700
Capital expenditure (CA):			
– Surveillance cameras and equipment (each item costing less than RM2,000)		300	
– Lighting system for parking bays		1,000	
– Other qualifying plant expenditure (10% for food truck zone)		2,700	
Total CA		4,000	
Expenses (excluding rent) relating to food truck zone			260
Cash donation to an approved organisation			50

March 24 Q1

To: Tax associate
From: Tax director
Subject: Jaga Kereta Sdn Bhd (JKSB)
Date: 6 March 2024

Hi

Please prepare a letter to Fahmi which addresses the following issues:

(a) Jaga Kereta Sdn Bhd (Exhibits 1 and 2)

(i) Capital allowances

Assuming JKSB incurs capital expenditure of RM4 million in the year of assessment (YA) 2025, as detailed in 'Exhibit 2: Forecast revenue and expenditure', for each item of capital expenditure listed, explain whether it qualifies for capital allowances, and if so, the rate(s) of capital allowance which will apply.

(7 marks)

(ii) Share of gross revenue paid to car park owner

Comment on the validity of Fahmi's concern about the deductibility of the 2% share of gross revenue paid to the car park owner by establishing the true nature of this payment in the context of the relationship between JKSB and the car park owner.

(3 marks)

March 24 Q1

(b) Treatment of rental income (Exhibits 1 and 2)

(i) State, with reasons, how the rental income from sub-letting car park space will be treated for income tax purposes.

(2 marks)

(ii) Illustrate the treatment identified in part (b)(i) with a sample tax computation of total income for JKSB for YA 2025, based on the forecast figures provided in Exhibit 2.

(10 marks)

(c) Structuring proposals for existing and additional car parks (Exhibits 1 and 2)

(i) Fahmi would like to understand the differences in tax treatment for Proposal 1 (grouping all ten car park operations under the single entity of JKSB) and Proposal 2 (incorporating four new companies to operate each additional car park).

Prepare a comparative analysis which sets out the differences in tax treatment for Proposal 1 and Proposal 2. You should present your analysis in a table with columns for 'Proposal 1' and 'Proposal 2' explaining the differences in tax treatment in respect of the following:

- Status as a small and medium enterprise (SME) and the consequential implications on:
  - tax rates; and
  - capital allowance treatment of small value assets.
- Tax compliance requirements:
  - tax estimates; and
  - filing of tax returns.

March 24 Q1

- Mode of exit from individual companies or the entire group:
  - asset deal or share deal; and
  - impact on income tax treatment.

(9 marks)

(ii) State, with reasons, your recommendation as to which proposal to adopt, highlighting any other practical points to consider.

(4 marks)

(d) Claim for expense deduction with no supporting documents (Exhibits 1 and 2)

(i) Explain the law relating to the keeping of business records.

(2 marks)

(ii) With reference to the fundamental principles of ethics, explain whether JKSB can claim expense deductions and capital allowances based on memory and estimates, suggesting any alternative ways JKSB could substantiate the claims.

(3 marks)

I look forward to seeing your draft letter.

Tax director

March 24 Q1

(a) Jaga Kereta Sdn Bhd (JKSB)

(i) Capital allowances

Surveillance cameras and equipment

Under the law [paragraph 19B, Schedule 3, the Income Tax Act 1967], business assets costing less than RM2,000 each constitute small value assets (SVAs). Capital allowances (CA) at 100% may be allowed for such SVAs in the year of assessment (YA) in which qualifying plant expenditure (QPE) is incurred. The total QPE of SVAs allowable for a YA is restricted to RM20,000, except for small and medium companies (SME) where there is no such restriction. An SME is defined as a resident company incorporated in Malaysia with a share capital not exceeding RM2·5 million and annual business revenue not exceeding RM50 million.

Although JKSB operates a business and has annual business revenue of RM11·1 million for YA 2025, it does not qualify as an SME as it has a paid up ordinary share capital of RM10 (2 + 8) million, which exceeds the RM2·5 million threshold.

Only RM20,000 of expenditure on SVAs incurred in YA 2025 therefore qualifies for the 100% CA. The remaining RM280,000 (RM300,000 – RM20,000) will be subject to the normal rates of 20% + 10% in YA 2025, and 10% for each of the seven YAs thereafter.

Lighting system for parking bays

The lighting system performs an active function of indicating the occupied/vacant status of each car bay, enabling:

- the collation of information to inform the availability of car bays; and
- the locating of parked vehicles.

Hence the functional test is satisfied and the lighting system qualifies as plant for CA purposes. The normal rates of 20% + 10% for YA 2025 and 10% for each of the subsequent seven YAs apply.

March 24 Q1

Other qualifying plant expenditure

As these have been established to be plant, the normal rates of 20% + 10% for YA 2025 and 10% for each of the subsequent seven YAs apply.

(ii) Share of gross revenue paid to car park owner

Although the payment is expressed as a percentage of gross revenue, it is merely a measure or a basis by which an additional payment for the leasing of the car park is arrived at.

JKSB and the car park owner are not business partners as the owner plays no part in JKSB's business. Accordingly, it can be argued that the 2% is not a share of profit for the car park owner.

The lease agreement provides for the lease rent to be paid in two forms: a fixed amount and a variable portion, based on 2% of the gross revenue of the car park operation. Hence, the 2% is in substance an additional lease rent based on the volume of business in addition to the pre-determined fixed lease rent for the car park.

Both sums are lease rent for the use of the car park premises, and being expenses incurred to produce the car park income, both qualify for tax deduction by JKSB.

March 24 Q1

(b) Treatment of rental income

(i) In sub-letting a part of the car park space to food trucks, JKSB will be providing services such as utilities, lighting and security. The activity is thus rendered a business activity. Therefore, the rental income from sub-letting is treated as a business source, separate and distinct from the business of operating car parks.

(ii) Illustrative tax computation

To illustrate the tax treatment identified in (b)(i), refer to Appendix A which features a sample tax computation for JSKB for YA 2025, based on forecast figures.

(c) Structuring proposal for existing and additional car parks

(i) With reference to the question of whether it is preferable to group all car parks under the single entity of JKSB, or incorporate four new companies to take charge of one new car park each, we have prepared a comparative tabulation to facilitate a comprehensive view of the respective tax treatment. Please refer to Appendix B for this analysis.

(ii) Our recommendation

Proposal 2 is recommended based on the following reasons:

- All five companies will be SMEs, meaning that they will each enjoy the preferential tax rate regime, saving income tax;
- All five companies will be able to benefit from better cash flow arising from the 100% CA claim on SVAs;
- All five companies can take advantage of the immediate tax deduction for the full capital expenditure incurred;

March 24 Q1

- All five companies can take advantage of the immediate tax deduction for the full capital expenditure incurred;
- The four new companies will be able to access the two-year moratorium for providing tax estimates for YAs 2025 and 2026.

There will be an additional compliance burden due to the need to furnish five tax returns each year instead of one, but this will be outweighed by the tax savings and benefits identified above.

If Proposal 2 is taken, upon exit from individual companies or the entire group, the share deal, rather than asset deal, will apply. It is worth noting that the real property company status of the disposing company will need to be determined for real property gains tax purposes.

(d) Claim for expense deduction with no supporting documents

(i) The law [s.82, the Income Tax Act 1967] stipulates that every person carrying on a business must keep sufficient records for seven years to enable the income or loss to be readily ascertainable. Failure to do so, without reasonable excuse, will render the person guilty of an offence.

(ii) In this case, the loss of records is due to flooding, which may be sufficient to justify that JKSB has a reasonable excuse.

Nevertheless, claiming deductions and CA based on memory is not acceptable and would pose a threat to the fundamental principles of the ACCA *Code of Ethics and Conduct*, notably integrity and professional competence and due care. JKSB should endeavour to reconstruct the records by liaising with its bank, suppliers and vendors to build a reasonable basis for the claims. JKSB must try to get third party verification for the expenditure incurred, as this will be more reliable and acceptable to the Inland Revenue Board (IRB).

March 24 Q1

Appendix A

The following computation of total income illustrates the treatment of the business income from both the car operations and the sub-letting to food trucks.

Computation of total income for YA 2025

	RM'000	RM'000
Business: Car park operations		10,800
Less: Lease rental for car park operations (1,200,000 – 75,000)	1,125	
2% of gross revenue	216	
Car park operations expenses	700	
		(2,041)
Adjusted income from car park business		8,759
Less: Capital allowances (CAs):		
Small value assets (SVAs) (20,000 x 100%)	20	
SVAs ((300,000 – 20,000) x (20% + 10%))	84	
Lighting system (1,000,000 x (20% + 10%))	300	
Other QPE related to car park operations (2,700,000 x (20% + 10%) x 90%)	729	
		(1,133)
Statutory income		7,626

March 24 Q1

Rental business income	300	
Less: 2% of gross revenue	(6)	
Lease rental expense for food truck zone	(75)	
Food truck zone expenses	(260)	
Adjusted loss	41	
Unabsorbed CAs carried forward (2,700,000 x (20% + 10%) x 10%)	81	
Adjusted/statutory income from rental business		0
Statutory income from businesses		7,626
Interest income		124
Aggregate income		7,750
Current year loss from rental business		(41)
Approved donation in cash (max 10% of aggregate income = 775,000)		(50)
Total income		7,659

March 24 Q1

Appendix B

Comparative tax treatment of Proposal 1 and Proposal 2

	Proposal 1 (All ten car parks grouped under single entity JKSB)	Proposal 2 (Four separate companies to operate each of the four additional car parks)
Status as small and medium enterprise (SME)	JKSB will not be an SME as the share capital will rise to RM10 million after the additional RM8 million call up of equity capital by December 2024.	As all five companies will have paid up share capital of RM2 million, carry out a business activity, and derive business gross revenue not exceeding RM50 million, all five companies have the SME status.
Tax rates	The normal tax rate of 24% for companies will apply on the chargeable income (CI) of JKSB.	All five companies will be eligible for the dual-rate tax regime for SME. This means 17% for the first RM600,000 of CI, and 24% for CI in excess of RM600,000.
CAs on SVAs	The 100% CA for SVAs is restricted to QPE of RM20,000 only. Any amount of qualifying plant expenditure (QPE) in excess of RM20,000 will be subject to normal CA rates over eight YAs.	As SMEs, all five companies will be able to claim 100% CA on unlimited QPE on SVAs.

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Tax estimates	Need to ensure that the tax estimate of JKSB (required by the 9th month of the YA, i.e. September 2025) is sufficient to take account of the new car park income to avoid the 10% penalty on an excessive shortfall of more than 30%.	The four new companies will be SMEs: they qualify for the two-year moratorium in furnishing tax estimates. This means the four new companies do not have to furnish tax estimates for YA 2025 and YA 2026.
Filing of tax returns	Only one annual tax return to be filed.	Five tax returns to be filed each year – this will increase the compliance cost.

	Proposal 1 (All ten car parks grouped under single entity JKSB)	Proposal 2 (Four separate companies to operate each of the fo additional car parks)
Mode of exit: asset deal or share deal?	If any car park operation is sub-leased or otherwise disposed of, it will be an asset sale.	This will involve a share deal.
Impact on income tax treatment	Balancing adjustments (balancing allowance/balancing charge) for CA purposes will have to be made **Tutorial note:** As the business is expected to be profitable, the issue relating to the loss and CA carry-forward does not arise.	There will therefore be no balancing adjustments.