Comparative analysis

	Compensation for loss of employment	Gratuity
Tax provision	S13(1)(e)	S13(1)(a)
Exemption for ill-health	Yes	Yes
Exemption for other requisites	RM10,000 for every completed year of service	Total exemption if all requisites are satisfied 0r RM1,000 for each complete year of service
Anti-avoidance provision	No exemption for compensation paid to non-service director of controlled company	None

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Comparative analysis

	Compensation for loss of employment	Gratuity
If taxable, basis period in which taxable	In the basis year it first becomes receivable	In the basis year it first becomes receivable
Tax treatment, generally stated	Partial exemption (RM10,000 for each completed year of service)and the remainder taxable in one year(Note 1)	Partial exemption(RM1,000 for each completed year of service with the last company) and the remainder taxable in one year

Note 1 :*includes a period of employment in a business where the employer has changed but the management and control of the business remains substantially with the same person or persons.*

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June 2023Q2

5 June 2023

- Siraf, his wife Ling, a housewife, and Jeff, their 12-year-old child, are all resident in Malaysia.

Employment

- Siraf has been employed by ABC Sdn Bhd (ABC) since 1 March 2010. In 2023, he draws a monthly salary of RM15,000 with the normal rate of Employees' Provident Fund (EPF) contribution payable by him.
- On 10 May 2023, ABC announced that they will be launching a voluntary separation scheme (VSS) to take effect on 1 July 2023.
- Siraf has been given the choice of opting either for VSS or early retirement. In both scenarios, ABC will pay him RM160,000 by 31 July 2023.
- On 4 August 2023, Siraf will reach 48 years of age. He will be withdrawing RM250,000 from the EPF and RM68,000 from the unapproved provident fund established and maintained by ABC for its employees. Siraf has not made any contributions into the unapproved provident fund.

3

June 2023Q2

6 June 2023

Following my meeting with Siraf on 5 June 2023, please prepare notes on the following:

(a) Early retirement or voluntary separation scheme (VSS)

- In relation to the amount of RM160,000 receivable by Siraf from ABC Sdn Bhd, explain with supporting calculations, the tax treatment for Siraf in accordance with the Income Tax Act, including how and when the taxable amount arising from gratuity or compensation for loss of employment, as appropriate, is treated, under the following two alternatives:
  - early retirement;
  - VSS.
- Recommend with reasons which option Siraf should take.

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June 2023Q2

(a) Early retirement or voluntary separation scheme (VSS)

Early retirement

A gratuity on retirement, other than ill health, is exempt from income tax [under para 25, Schedule 6, the Income Tax Act (ITA) 1967] if the individual has

– reached 55 years or statutory age for retirement, or retirement age of between 50 to 55 years under an employment contract or collective agreement; and

– continuously worked with the same employer for ten years or more.

Siraf will have worked continuously from 1 March 2010 to 30 June 2023 (i.e. for more than 13 years) with ABC Sdn Bhd (ABC), but is only 48 years old on 1 July 2023. Therefore, Siraf does not qualify for full exemption [under para 25(1), Schedule 6, ITA 1967]. However, he qualifies [under paragraph 25D, Schedule 6, ITA 1967] for the exemption of RM1,000 for every completed year of service.

Therefore RM147,000 (160,000 – 13,000) is subject to tax in the year in which the amount is received, i.e. year of assessment (YA) 2023 as the amount is receivable by 31 July 2023.

VSS

The law [para 15(3), Schedule 5, ITA 1967] prescribes that any payment made under a separation scheme is included as a compensation for loss of employment.

As compensation for loss of employment, it is eligible for an exemption of RM10,000 for every completed year of service.

As Siraf will have worked continuously with ABC for more than 13 years, RM130,000 (RM10,000 x 13) is tax exempt.

The balance of RM30,000 (RM160,000 – RM130,000) is taxable when the sum is received, which is by 31 July 2023, i.e. in YA 2023.

5

June 2023Q2

Our recommendation

The gratuity of RM147,000 is taxable, while compensation of only RM30,000 is taxable, both in YA 2023.

We therefore recommend that Siraf should opt for VSS as the amount of compensation subject to tax is a substantially less (i.e. RM117,000) than the gratuity.

6

Section 13(1)(a) –Employee Share Scheme Benefits (PR 11/2012)

- A benefit is derived from a share scheme if :

  (a) the right to acquire shares in a company exists,and

  (b) the right is exercised within the relevant period
- The perquisite is taxed in the year the option was exercised.

The lower of:	RM
Mkt value of share on the date the scheme is exercisable **or**	xxx
Mkt value of share on the date the scheme is exercised	
Less: Price paid for the share (if any)	(xxx)
Perquisites under Para13(1)(a)	xxx

Any subsequent changes in the value of the shares after the share scheme has been exercised will not influence and affect the taxable employment income.

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Dec 2021Q3

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

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Dec 2021

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.

9

Dec 2023 Q2

Current remuneration package

Alicia's current remuneration package as a production manager with Electron Sdn Bhd (ESB) is:

- Monthly gross salary of RM13,000;
- Annual leave passage to Europe worth RM8,000;
- Employer's contribution to the Employees' Provident Fund (EPF) of 12%.

As an employee, Alicia is required to make an 11% contribution to the EPF.

Secondment remuneration package

If Alicia is to take up the secondment offer, she will need to leave for Kumandra on 29 December 2023. Her secondment offer is as follows:

- Monthly gross salary of RM14,000;
- Monthly overseas allowance of RM4,000;
- Paid home leave passage for two weeks, twice a year, worth RM5,000 per trip;
- Annual personal tax of RM43,000 in Kumandra would be borne by the employer.

She has calculated that the additional expenses she needs to incur living in Kumandra would be RM45,000 annually. Her salary will be paid into her bank account in Kumandra and she will remit RM3,000 per month to settle her Malaysian commitments. After deduction of living expenses, the balance of her income would be kept in Kumandra, to be remitted to Malaysia upon her return, which is expected to be in three years' time, by 23 December 2026. Thereafter, Alicia expects to remain in Malaysia for the whole of 2027. In view of the appreciating Kumandran currency, she expects to make a foreign exchange gain of RM20,000 upon the remittance of her income.

Both remuneration packages will remain the same throughout the three-year period.

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Dec 2023 Q2

(a) Comparative tax and financial position

(i) If Alicia accepts the secondment offer to Kumandra:

- **Determine her residence status in Malaysia for each of the years of assessment 2024, 2025 and 2026;**
- **Explain the taxability of the income derived from Kumandra; and**
- **Explain the income tax treatment of her income remittances to Malaysia during her secondment period.**

(ii) Compute Alicia's annual Malaysian tax liability if she is to continue with her current employment in Malaysia.

(iii) Compute Alicia's total disposable income for the three-year period under the two scenarios.

Notes:

1. You should treat Employees' Provident Fund contributions by the employer and employee as disposable income.
2. You should list all items referred to in the question, indicating by the use of zero (0) any item which does not impact the calculation.

(5 marks)

11

Dec 2023 Q2

(a) (i) Income tax implications for the proposed secondment to Kumandra

Tax residence status

Alicia will leave Malaysia on 29 December 2023 and will make a two-week trip back to Malaysia twice every year, as provided by the employer.

Year of assessment (YA)	Tax residence status analysis
2024	Alicia will be in Malaysia for only 28 days (through the home leave of two weeks x 2 times) and that period is not linked from the consecutive physical presence of 182 days in the preceding year. Therefore, she will be regarded as a non-resident. Additionally, Alicia does not qualify as resident under s.7(1)(c) as she does not have the necessary 90 days in Malaysia in 2024 to complete the 'resident or 90 days in three out of four immediately preceding YAs' requirement.
2025	Similar analysis to YA 2024.
2026	As Alicia is expected to return to Malaysia by 23 December 2026, she will have nine days' physical presence in Malaysia in the basis year 2026 that will be linked to the consecutive physical presence of at least 182 days in the ensuing basis year 2027. Hence, she will likely be a tax resident for YA 2026 [under s.7(1)(b)].

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Dec 2023 Q2

Taxability of employment income derived from Kumandra

The secondment to Kumandra would mean that Alicia will be exercising her employment entirely outside Malaysia. Hence, the employment income from Kumandra would not be derived from Malaysia.

In YA 2024 and 2025, as Alicia is likely to be a non-resident, she will be exempt [paragraph 28, Schedule 6, Income Tax Act 1967] from Malaysian income tax on her employment income derived in Kumandra, even if the income is remitted to Malaysia during that period.

However, as Alicia will likely be tax resident in YA 2026, any foreign income remittance to Malaysia will be subject to Malaysian income tax. Nonetheless, foreign income remitted by a resident individual will be exempt up to 31 December 2026 on the basis that the income has been subjected to tax in Kumandra. It is important that Alicia should remit the balance of her employment income by 31 December 2026 to qualify for this tax exemption.

As the remitted foreign income is not taxable, the foreign exchange gains arising therefrom should consequently not be taxable.

(ii) Computation of Alicia's annual Malaysian tax liability if she continues employment in Malaysia

	RM
Gross salary (12 x RM13,000)	156,000
Leave passage (RM8,000 – RM3,000)	5,000
Gross/statutory/aggregate/total income	161,000
Less: Self relief	(9,000)
Less: EPF contribution (maximum)	(4,000)
Chargeable income	148,000
Tax liability	
First RM100,000	10,700
Balance RM48,000 at 24%	11,520
	22,220

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Dec 2023 Q2

(iii) Computation of disposable income under the two scenarios

	Continue employment with ESB RM	Secondment to Kumandra RM
Salaries		
(RM13,000 x 12 months x 3 years)	468,000	
(RM14,000 x 12 months x 3 years)		504,000
Overseas leave passage benefit (RM8,000 x 3 years)	24,000	
Home leave passage (RM5,000 x 2) x 3 years, fully expended (see tutorial note)		0
Employer's contribution to EPF (12% x RM468,000)	56,160	
Overseas allowance (RM4,000 x 12 months x 3 years)		144,000
Additional cost of living abroad (RM45,000 x 3 years)		(135,000)
Foreign exchange gain		20,000
Tax liability in Malaysia (RM22,220 x 3 years)	(66,660)	0
Tax liability in Kumandra (borne by employer) (see tutorial note)		0
Disposable income	481,500	533,000

Tutorial note: The home leave passage given, and the tax borne, by Alicia's employer under the secondment are not seen as benefits, nor do they produce additional disposable income, as Alicia would not receive these had she continued with her employment in Malaysia.

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Dec 2023 Q2

(iv) Analysis and recommendation

Based on the computations above:

– While Alicia has to pay for her own taxes in Malaysia, she would benefit from her employer's EPF contributions.

– In addition, Alicia is required to contribute 11% to the EPF as an employee in Malaysia, further enhancing her savings.

– The disposable income under continued employment in Malaysia is RM51,500 less (RM533,000 – RM481,500).

Therefore, it is recommended that Alicia should take up the offer for secondment to Kumandra. Nevertheless, other considerations for making her final decision include:

– Alicia will be away from home/family: she can only come back for short trips in Malaysia twice a year;

– Exposure and experience would be gained from working abroad, in setting up a new manufacturing facility;

– There would be no EPF contributions during the secondment period: this would impact her retirement savings;

– The additional disposable income from her secondment employment may be used to repay the apartment loan; and

– By remaining in Malaysia, Alicia can be with her family and yet enjoy annual leave passage overseas.

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