

SINGAPORE CA QUALIFICATION EXAMINER'S REPORT

MODULE: Taxation (TX)

EXAMINATION DATE: 10 December 2018

Section 1

General comments

The Taxation module is an open-book examination, with an attached appendix containing relevant tax rates and allowances.

There appears to be a recurring theme of quite a number of Candidates reproducing in verbatim the provisions of the statute and/or other reference materials in their answers to some of the questions. For some of these Candidates, they did not extend any analysis based on the facts of the case presented to them in the question. Candidates need to realise that in an open-book examination, credit cannot be given for merely reproducing or regurgitating content from reference sources. To earn the marks, they need to apply the tax laws and principles specifically to the facts of the case and to arrive at a reasoned conclusion or recommendation.

The examination was designed to allow for sufficient time for Candidates to complete the paper and have time to check through the answers, but it was noted that there were Candidates who were not able to complete the examination, based on certain questions which were left blank or were partially completed, and these tend to be the final question, which indicates that these Candidates might have overspent their allotted time on the earlier questions.

Future TX Candidates are strongly advised to improve on time management, to allocate a proportionate time for each question, not to dwell too long on certain questions and lose the opportunity to secure marks on other questions.

Section 2

Analysis of individual questions

Question 1

Part 1(a) was reasonably well attempted and most Candidates were able to do well for this question. The difference in CPF reliefs under the 2 compensation packages was the key differentiator from a tax perspective and quite a few Candidates omitted the discussion on this, which cost these Candidates precious marks. Most Candidates were able to score well on the tax computation but Candidates lost marks by incorrectly computing the approved donations or leaving it out altogether, and not including reliefs such as NS-man relief and course fee relief.

Candidates scored very well on **Part (b)** on taxability of retrenchment package. Some Candidates had incorrectly identified payment in lieu of notice as non-taxable and labelled compensation for loss of employment as taxable.

Part (c) presented a common occurrence in practice as more companies and businesses would send their staff overseas to undertake projects outside of Singapore and to develop more business opportunities in foreign jurisdictions.

Candidates did poorly for this question as they did not differentiate the tax clearance requirements for work pass holders and Singapore citizens/PRs. A few Candidates did not address the latter part of the question on the responsibilities of the employer in reporting the earnings of the employees affected by tax clearance. While Candidates mentioned that the Singapore company should report the Singapore work pass holder's full compensation in the IR8A, Candidates did not state that the reason was because the staff on work pass were still employed by the Singapore company and the services would benefit the Singapore company.

Question 2

Question 2 presented various cross border situations.

Answers for **Part (a)** were generally poor, with many Candidates who did not expand in depth on the various transfer pricing implications, and it was noted that the following points were not highlighted in most of the Candidates' answers scripts:

- If total service fee is more than \$1million, transfer pricing documentation needs to be prepared;
- A fine will be imposed if Project Advisory Pte Ltd (PA) does not comply with transfer pricing requirements under Section 34F of the Income Tax Act; and
- If PA is unable to substantiate that the related party transaction is conducted at arm's length, the Comptroller can make an adjustment on the price and the adjustment is subject to a 5% surcharge.

Only a few Candidates pointed out that PA can claim a tax deduction for payments to PA (Z) Co Ltd (PAZ), and PA has to consider Singapore withholding tax on its payments to PAZ.

Part (b) was not well attempted, where many Candidates were confused and stated that a permanent establishment will be created in Singapore instead of Country Z.

Part (c) was very well attempted and for subsection (i), most Candidates were able to identify the correct withholding tax rate to be applied. However, there were a few Candidates who incorrectly stated that since the avoidance of double taxation treaty

prevails over domestic tax, then the higher withholding tax rate of 15% should be applied.

Candidates were able to secure marks for subsection (ii) but those who lost marks did not apply the case facts which stated that in PA's case the dividend is used for payment of the amount owing to PAZ and the amount due is incurred in respect of a trade or business carried on in Singapore.

Question 3

The answers to **part (a)** was geared towards section 13Z on the exemption of gains or profits from disposal of ordinary shares, and the various badges of trade to determine if the various tranches of shares were taxable.

Answers were generally poor because Candidates did not address either of the above 2 points which resulted in the loss of substantial amount of marks. Some Candidates did not correctly identify the period of holding for the various tranches of shares disposed and arrived at the wrong conclusion for qualifying for s13Z exemption as a result. Future TX candidates are advised to draw a timeline to help map out the various dates where the transactions had taken place, in order to better visualise the period of holding as this is a key element towards arriving at the correct answer.

Candidates were unable to secure marks in cases where the various badges of trade were listed and described at great length, but there was no reference or application to the case facts.

Candidates generally faltered in the computation as very few Candidates identified the 1st and 3rd tranches of the sale of shares as potentially being subject to tax.

The quality of answers for **part (b)** were mixed, where Candidates were able to identify that the scheme will be construed as tax avoidance under Section 33 of the Income Tax Act. However, the common mistake made by Candidates was the inability to differentiate the consultancy and training business from the trading business, and highlighting the differences between the two businesses. For the consultancy and training business, there was no change in business activity with the same set of staff conducting business and therefore no bona fide reasons other than to gain a tax advantage. This is as opposed to the fact pattern for the trading business which had commercial reasons for setting up of the new company because the trading business is a new principal activity and new staff will be employed.

Question 4

This question tested Candidates predominantly on Goods and Services Tax (GST) with a minor section on withholding tax.

Part (a) was reasonably attempted although most Candidates spent a disproportionate amount of time explaining retrospective and prospective registration requirements, and did not elaborate on criteria for exemption from GST registration.

Although it was specifically stated in the question that the price for the audit fees and electronic components is inclusive of GST, a surprisingly large number of Candidates were unable to compute the input tax claimable on these 2 items, by erroneously multiplying the price by 7% to obtain the wrong value of input tax claimable. Most Candidates correctly identified the subscription fees and private car expenses as blocked GST expenses but there were Candidates who computed input tax claimable on these blocked GST expenses and lost marks on these mistakes. The costs and benefits of registering for GST were also not explained in depth.

Performance for **Part (b)** was mixed. Most Candidates identified the delivery to the Singapore customer as a standard rated supply and 7% GST needs to be charged, but there were Candidates who failed to mention this.

Most Candidates did not point out that as the Singapore customer was not registered for GST, it could not claim the input tax and the GST will be a business cost for the customer.

Part (c) dealt with a cross border transaction. Only a few Candidates were able to state the correct withholding tax rate of 15% as the US engineer is a non-resident professional. The majority of Candidates incorrectly stated 17% as the withholding tax rate. Most Candidates omitted the fact that the US engineer can also elect to be taxed at 22% on the net income.

Candidates did not highlight that there is no Singapore-USA avoidance of double taxation agreement and therefore there is no treaty relief for the US engineer.