



Deloitte Tax Challenge 2015

Individual Category – Stage 2

Suggested Answer

Question 2

AB Sdn Bhd (financial year ended 31.12.2014)

Deposit

Deposit of RM1.8 million received by AB Sdn Bhd is not taxable as it is not income. It is refundable at the end of the lease on condition all requirements in the lease agreement have been fulfilled.

Rent

The rent of RM1.8 million for the period July to December 2014 is taxable as a rental source for year of assessment 2014. It is not business income as services are not actively provided by AB Sdn Bhd. Revenue expenses relating the rental source can be claimed as deductions such as repairs, assessments, quit rent and insurance.

Industrial building allowance (IBA)

The building which is used as a college by an educational institution licensed by the Ministry of Education qualifies as an industrial building. Paragraph 42B, Schedule 3 states “*Where in the basis period for a year of assessment a person has for the purposes of a business of his incurred capital expenditure on the construction or purchase of a building for a school or an educational institution approved by the Minister of Education or Minister of Higher Education or any relevant authority, that building shall be treated as an industrial building for the purposes of that business and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 42 an allowance equal to one-tenth of the qualifying expenditure for that year and for each of the nine following years of assessment*”.

AB Sdn Bhd, as owner, need not use it as a college to qualify for IBA. The lease of the building to a licensed educational institution is sufficient for AB Sdn Bhd to qualify for IBA. Paragraph 60, Schedule 3 states “*Where a person who owns a building grants a lease thereof and that building is in use as an industrial building, then, in the application of this Schedule to that person in relation to that building any reference to a business of his shall be taken to be a reference to the source in respect of any income to which that person is entitled under that lease, and any reference to a basis period (in relation to any such reference to a business) shall be taken to be a reference to the basis period in relation to that source*”. AB Sdn Bhd can claim RM5 million (1/10 of RM50 million) as IBA for YA 2014 and subsequent nine YAs. This issue had been appealed and decided by the SCIT and the High Court in favour of the taxpayer in the case of TSD Sdn Bhd v KPHDN. KPHDN has appealed to the Court of Appeal.

Question 3

Suggested Answer

Description of Expense	Deductibility	WHT applicable
<i>Installation Cost</i>	Installation cost is capital expenditure that is to be added to the cost of plant as qualifying expenditure.	Domestic rate – 10% Malaysia-China tax treaty rate – N/A
<i>Technical Fee</i>	Generally, it is tax deductible. However, if the WHT is not complied with, the US\$100,000 installation fee will not qualify as tax deduction unless WT has been paid.	Domestic rate – 10% Malaysia-Germany tax treaty rate – 7% To apply the lower rate of WT, the company should request from the German company a certificate of residence issued by the German revenue authority. Failure to deduct and remit WT by the company will mean a 10% penalty.
<i>Interest expense</i>	The loan is wholly used in the construction of a refinery and acquisition of the plant. Interest payable on the loan for the basis period for a year of assessment will be deductible. However, deduction of interest is to be made only when it is due to be paid i.e. on 31 December 2019 and the deduction of interest RM1.8 million is to be made in each basis period the interest is payable [Section 44(4) ITA]. In addition, the interest expense will not qualify as tax deduction unless WT has been paid. Court action may also be taken by IRB to recover the WT.	The interest expense payable to the holding company resides in Singapore would be subject to withholding tax at 10% based on the Malaysia-Singapore tax treaty instead of 15% based on domestic tax law. To apply the lower rate of WT, the company should request from the holding company a certificate of residence issued by the Singapore revenue authority. Failure to deduct and remit WT by the company will mean a 10% penalty. In addition, the interest expense will not qualify as tax deduction unless WT has been paid. Court action may also be taken by IRB to recover the WT.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/my/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte’s more than 220,000 professionals are committed to making an impact that matters.

About Deloitte Southeast Asia

Deloitte Southeast Asia Ltd – a member firm of Deloitte Touche Tohmatsu Limited comprising Deloitte practices operating in Brunei, Cambodia, Guam, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam – was established to deliver measurable value to the particular demands of increasingly intra-regional and fast growing companies and enterprises.

Comprising 270 partners and over 7,000 professionals in 25 office locations, the subsidiaries and affiliates of Deloitte Southeast Asia Ltd combine their technical expertise and deep industry knowledge to deliver consistent high quality services to companies in the region.

All services are provided through the individual country practices, their subsidiaries and affiliates which are separate and independent legal entities.

About Deloitte in Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte network”) is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication

© 2015 Deloitte Tax Services Sdn Bhd