
Answers

1 (a) (i)

Hoa Dien Ltd
Corporate income tax liability for the year ended 31 December 2007

	VND	VND (80,000,000)
Accounting profit/(loss)		
Adjustments		
Non-deductible items		
Fines for administrative offences (note – 8m was also accepted)	6,000,000	
Incorrect labour contracts	500,000	
Board of management fees	1,500,000	
Amounts advanced but not expended in full	750,000	
Expense for retraining female employees	0	
Expenses for advertising and promotion	0	
Broker's commissions	0	
Statutory audit fees	0	
Lease payments for assets	0	
General provision at the discretion of management (note – 15m was also accepted)	10,000,000	
Cost of goods sold	0	
Subtotal		18,750,000
Taxable loss		(61,250,000)
Tax liability		0

- (ii)** – The advertising, marketing and promotion expenses are deductible as they are below the 10% of reasonable expenses.
- The board of management fees are not deductible as they do not directly participate in the production and business of goods and services.
- The general provision funds must comply with the regulations on provisions to be a deductible expense. Even if they are related to the turnover or taxable income but lack proper documentation they are also non-deductible.

(b) Frankie Limited and Johnny Limited

(i) Taxable income as independent entities:

The taxable income of Frankie Limited is 0 (zero), as it is in a loss position for 2007.

The taxable position for Johnny Limited is VND53 billion (88 billion minus carry forward losses of 35 billion).

(ii) Combined taxable income:

The combined taxable income is VND53 billion (there is no ability to offset the two taxable incomes, i.e. 53 billion minus 15 billion).

(c) Resident Establishment

(i) A 'resident establishment' is a business establishment via which a company overseas conducts all or a part of its business activities in Vietnam, which earn income.

(ii) A representative in Vietnam will constitute a resident establishment where:

- s/he has the authority to enter into contracts in the name of the overseas company; or
- s/he though not competent to enter into contracts in the name of the overseas company, regularly delivers goods or provides services on its behalf in Vietnam.

(iii) Examples of other activities constituting a resident establishment are:

- a branch;
- an operational office, plant, factory or workshop;
- a warehouse for the receipt or delivery of goods;
- a mine, oil or gas field or other location or facilities for the exploration or exploitation of natural resources;
- a site relating to works of construction, installation or assembly or to the supervision of such works;
- an establishment providing services, including consultancy services;
- an agent.

Note: only TWO examples were required.

2 (a) Irregular taxable income comprises:

- income derived from the transfer of technology, except where it is a gift or donation; and
- lottery winnings;

provided that in the case of each payment the sum is in excess of VND15 million.

The rates of tax applicable are:

- 5% in the case of income derived from the transfer of technology; and
- 10% in the case of lottery winnings.

- (b) (i)** Foreigners are regarded as resident in Vietnam for more than 183 days in a consecutive twelve (12) month period after their arrival in Vietnam. Mrs Kim was resident in Vietnam in the years 2004, 2005, 2006 and 2007. If an individual is considered resident in the previous year, they will also be considered as resident in the period of the following year during which they are physically present in Vietnam. Therefore, Mrs Kim will be a Vietnamese tax resident and thus subject to personal income tax for the three (3) month period ended 31 March 2008.

- (ii)** The calculation below is based on gross amounts. As the question did not clearly state gross or net amounts, marks were awarded for calculations using net amounts.

Personal income tax liability Year 2008

	VND '000 Regular income	VND '000 Irregular income
Salary (AUD60,000 x 12,000)	720,000	
Housing allowance (AUD6,000 x 12,000)	72,000	
Company car (business only)	0	
Travel allowances (2,500 + 2,300) x 12,000	57,600	
Compulsory pension (not Vietnam source)	0	
Non-compulsory pension (AUD800 x 12,000)	9,600	
Director's fees (AUD12,000 x 12,000)	144,000	
Interest income (exempt)		0
Royalty income (USD15,000 x 16,000)		240,000
Bonus (paid after leaving Vietnam)	0	
Total	1,003,200	240,000
Per month (one-third – 1/3)	334,400	80,000

Note: all of the expenses (housing, donation and domestic maid) are non-deductible.

	VND	VND
Tax on regular income		
0% on first 8,000	0	
10% on next 12,000	1,200	
20% on next 30,000	6,000	
30% on next 30,000	9,000	
40% on remaining 254,400	101,760	
Tax on irregular income at 5%		4,000
Total monthly tax liability	117,960	4,000
Three (3) months tax liability	353,880	12,000
Total	365,880	

- (iii)** Payments in respect of social and health insurance made in accordance with the law are not taxable. In the case of a foreigner, this exemption extends to payments made to compulsory pension schemes overseas, provided that the scheme is similar in nature to social insurance in Vietnam. The exemption does not, however, apply to non-compulsory schemes, regardless of their nature.

3 (a) The four main taxes applicable to the activities of foreign contractors are:

- 1 Value added tax (VAT): applicable to goods and services which are subject to VAT.
- 2 Special sales tax (SST): applicable to goods and services which are subject to SST.
- 3 Corporate income tax (CIT): applicable to the income earned from business activities in Vietnam or income derived in Vietnam.
- 4 Personal income tax (PIT): applicable to the taxable income of individuals working for foreign contractors or sub-contractors doing business in Vietnam.

However, as the question was written in an expansive way, Import VAT, Import/Customs Duty, FCT and Licence Tax were also accepted.

(b) (i) K Larsen Limited FCT payable on the first contract payment

Construction and installation (not including materials)

	CIT taxable turnover	CIT
	USD12,000,000/12/(1 - 0.01) = 1,010,101	USD1,010,101 x 1% = 10,101
	VAT taxable turnover	VAT
	USD1,010,101/(1 - 0.01) = 1,020,304	USD1,020,304 x 0.01% = 10,203
Total		USD20,304
Services		

	CIT taxable turnover	CIT
	USD4,000,000/12/(1 - 0.05) = 350,877	USD350,877 x 5% = 17,544
	VAT taxable turnover	VAT
	USD350,877/(1 - 0.05) = 369,344	USD369,344 x 50% x 10% = 18,467
Total		USD36,011
Total monthly FCT obligation		USD56,315

(ii) As the Vietnamese contracting party, it is the responsibility of the JOC to:

- register the contract with the tax authorities;
- withhold the tax dues (CIT and VAT) from payments made to the foreign contractor (gross-up and calculate and declare); and
- remit the tax withheld to the tax authorities on the foreign contractor's behalf, within 15 days of making the payment to the contractor.

(iii) Either of the following changes to the contract arrangements would reduce the amount of FCT payable:

- If the maintenance of the equipment had been provided under a separate contract, for example as a purely sale/purchase contract for the delivery of goods (the equipment) at a Vietnamese bordergate which is not subject to FCT.
- If the part of the service component had been sub-contracted to a local Vietnamese entity, as the value of works performed by a Vietnamese sub-contractor is excluded from the taxable turnover for the purposes of FCT.

Note: only one suggestion was required.

4 (a) Nguyen Ltd – June VAT period

Service provided	Transaction value USD	Input VAT USD	Output VAT USD
Training course	17,500		1,750
Course books (5%)	1,500		75
Training course in Singapore (exported service 0% or invoiced in July)	18,000		0
Monthly service fee revenue from an FIE in Vietnam	3,000		300
Rent expense	1,500	150	
Wages to staff (not subject to VAT)	4,000	0	
Subtotals		150	2,125
Total VAT due (net)			1,975

Note: The training course conducted in Vietnam on 25 March (and assumed declared in April) and the software developed on 10 December both relate to VAT periods other than June 2007.

(b) In order to claim a refund for input VAT, the exporter is required to have the following:

- 1 A contract for the sale of goods or processing of goods (in the case of the processing of goods) or for provision of services to foreign organisations or individuals.

In the case of an authorised export, a contract authorising export and minutes of liquidation of the contract authorising export (if the contract has expired) or a periodical debt reconciliation statement between the principal and the authorised dealer, specifying the quantity and types of products, and the value of goods which were exported under the authorisation; also, the number and date of the export contract which the authorised dealer has signed with the foreign party; the serial number, date and amount stated in the source document for payment by the principal to the authorised dealer; and the serial number and date of the customs declaration of the goods exported by the authorised dealer.

- 2 In the case of an export of goods, a customs declaration with certification by the customs office of the actual physical export of the goods.

In addition, payment for the exported goods and services must be made via a bank or by another method specified in the export contract acceptable to the tax authorities as deemed to have been made via a bank; for example, by set off against a foreign loan or through a third party authorised by the foreign party to the contract.

- 5 Ho Hanh Ltd, as the body paying the income, is responsible for deducting personal income tax (PIT) from Mr Huong's remuneration at source and paying it over to the State budget through the tax office responsible for managing it.

Ho Hanh Ltd must calculate and deduct provisional tax on a monthly basis and issue a receipt to Mr Huong for the amount of tax deducted. It must submit a monthly declaration of tax deducted on behalf of all the individuals to whom it pays income, by no later than the 20th day of the following month and pay the tax over to the tax office by no later than the 20th day of that month.

As Ho Hanh Ltd is the only place from which Mr Huong has received income, it will also carry out the year-end tax finalisation on Mr Huong's behalf, provided he gives the company authorisation to do so in January 2008. Finalisation must be carried out and notification of any additional tax to be paid or excess tax refunded must be given to the tax office by no later than 31 March 2008. If additional tax is payable it must be paid over to the tax office no later than 31 March 2008; if a refund is due it will normally be set-off against the tax deductible in the next period under the provisional tax system.

Fundamentals Level – Skills Module, Paper F6 (VNM)
Taxation (Vietnam)

June 2008 Marking Scheme

1	(a)	(i)	Fines – 6,000,000	2·0	
			Salaries – Incorrect labour contracts – 500,000	1·0	
			Board of management fees – 1,500,000	1·0	
			Amounts advanced but not expended in full – 750,000	1·0	
			Expense for retraining female employees – 0	1·0	
			Expenses for advertising and promotion – 0	1·0	
			Broker's commissions – 0	1·0	
			Statutory audit fees – 0	1·0	
			Lease payments for assets – 0	1·0	
			General provision – 10,000,000	1·0	
			Cost of goods sold – 0	0·5	
			Tax liability – 0	0·5	
					<u>12·0</u>
		(ii)	Advertising, trade and promotion is deductible provided it is below the 10% deductibility cap	1·0	
			Board of management fees are not deductible if they do not directly participate in the production and business of goods and services.	1·0	
			General provision:		
			– not in accordance with the regulations	1·0	
			– lacking proper documentation	1·0	
					<u>4·0</u>
	(b)	(i)	Frankie Limited	1·0	
			Johnny Limited	2·0	
					<u>3·0</u>
		(ii)	Income cannot be combined for tax purposes	2·0	
			Ability to transfer losses	1·0	
			Condition	1·0	
					<u>4·0</u>
	(c)	(i)	Resident establishment	2·0	
					<u>2·0</u>
		(ii)	Authority to enter into contracts	1·0	
			No authority but delivers goods or provides services	2·0	
					<u>3·0</u>
		(iii)	Any TWO examples – 1 mark each		<u>2·0</u>
					<u>30·0</u>
			Total		30·0

2	(a)	Income from transfer of technology	1·0	
		Except as a gift or donation	1·0	
		Lottery winnings	1·0	
		In excess of VND15 million	1·0	
		5% re transfer of technology	0·5	
		10% re lottery winnings	0·5	
				<u>5·0</u>
	(b)	(i)		
		More than 183 days	1·0	
		Following period if resident previous year	1·0	
		Application to Mrs Kim	1·0	
				<u>3·0</u>
	(ii)	Salary	1·0	
		Housing allowance	1·0	
		Company car	1·0	
		Travel allowances	1·0	
		Compulsory pension	1·0	
		Non-compulsory pension	1·0	
		Director's fee	1·0	
		Interest income	1·0	
		Royalty income	1·0	
		Bonus	1·0	
		No deduction for expenses (3 x 1/2)	1·5	
		Per month basis (2 x 1/2)	1·0	
		Tax on regular income	1·0	
		Tax on irregular income	0·5	
		Total tax payable	1·0	
				<u>15·0</u>
	(iii)	In accordance with the law	1·0	
		Similar overseas compulsory schemes	1·0	
				<u>2·0</u>
				<u>25·0</u>
		Total		25·0

3	(a)	VAT	1.0		
		SST	1.0		
		(also 1 mark given for other valid tax including Import/Customs duty, FCT, licence tax and import VAT)			
		CIT	2.0		
		PIT	2.0		
					<hr/>
					6.0
					<hr/>
	(b)	(i)	Construction and installation:		
			CIT taxable turnover	1.0	
			CIT payable	0.5	
			VAT taxable turnover	1.0	
			VAT payable	1.0	
			Monthly CIT and VAT	0.5	
		Services:	CIT taxable turnover	1.0	
			CIT payable	0.5	
			VAT taxable turnover	1.0	
			VAT payable	1.0	
			Monthly CIT and VAT	0.5	
					8.0
					<hr/>
		(ii)	Register the contract	1.0	
			Withhold tax at source	1.0	
			Remit on behalf of FC	1.0	
Within 15 days of payment			1.0		
				<hr/>	
				4.0	
			<hr/>		
(iii)	Either suggestion with reason				
				<hr/>	
			2.0		
			<hr/>		

5	Deductions at source by body paying income – Ho Hanh Ltd	1·0	
	Paid to State budget via tax office managing it	0·5	
	Provisional tax on a monthly basis	1·0	
	Receipt for amount deducted	1·0	
	Declaration by 20th of month	1·0	
	Payment by 20th of month	1·0	
	Year-end finalisation	0·5	
	Subject to authorisation in January/first month	1·0	
	Carried out by 31 March	1·0	
	Additional tax paid by 31 March	1·0	
	Refund due offset against tax of next period	1·0	
	Total		10·0