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# Answers

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1 AV JSC Co

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(a) Corporate income tax liability for the year ended 31 March 2012

	Working	VND million	
<b>A Accounting profit before tax</b>		<b>500,000</b>	<b>0.5</b>
<b>B Determination of taxable income</b>			
<b>1 Adjustments to increase profits before tax</b>		<b>9,620</b>	
1.1 Adjustments to increase revenue (issued invoice not in income statement)		5,000	2
1.2 Expenses related to revenue not taxed in this period (expense accrued in 2011)		120	1.5
1.3 Depreciation of assets not in accordance with regulations		0	1.5
1.4 Non-deductible interest expenses		750	1.5
1.5 Expenses without supporting invoices/vouchers	(W1)	1,000	W1
1.6 Penalty for violation of administrative regulations	(W2)	500	W2
1.7 Non-deductible employment expenses	(W3)	2,250	W3
1.8 Accruals and provisions which are not actually paid (warranty)		0	1.5
1.9 Gain/loss on foreign exchange revaluation	(W5)	0	0.5
<b>2 Adjustments to decrease profits before tax</b>		<b>5,700</b>	
2.1 Non-taxable profits		1,000	1.5
2.2 Revenue which has been taxed in prior years (taxed in 2011)		200	1.5
2.3 Expenses related to the revenue to be taxed in this period	(W4)	4,000	W4
2.4 Gain/loss on foreign exchange revaluation	(W5)	500	W5
<b>3 Total taxable income</b>		<b>503,920</b>	
<b>C Determination of corporate income tax (CIT)</b>			
1 Total CIT at common tax rate (25%)		<b>125,980</b>	<b>0.5</b>

Workings

W1. Expenses without supporting invoices

	VND million	
Purchases of sand as per list of purchased goods without invoice	0	1
Expense invoices with no supporting documents	1,000	0.5
	<u>1,000</u>	

W2. Tax audit penalties

Recollection of under-declared FCT (non-deductible but provided for in 2011 income statement so no adjustment required)	0	1
Penalty for late declaration	300	0.5
Penalty for under-declaration	200	0.5
	<u>500</u>	

W3. Non-deductible employment expenses

Bonuses for members of the board of directors	2,000	1
School fees for child of Vietnamese citizen employee	250	1.5
Special occasional payments	0	1.5
	<u>2,250</u>	

W4. Expenses related to revenue taxed in the period

Advance lease payment (lease does not commence until 1 April 2012)	0	1.5
Related cost of machine sold in trade (invoice issued 31 March 2012, so sale taxable in this year)	4,000	1.5
	<u>4,000</u>	

## W5 Gain/loss on foreign exchange

	Non-deductible/ (non-taxable) VND million	Deductible/ (taxable) VND million	
Realised gain		(500)	0.5
Unrealised gain from receivables	(200)		0.5
Unrealised loss on account payable		150	0.5
Unrealised loss on foreign loans		2,800	0.5
Unrealised gain on overseas investment (not in income statement)	0		0.5
Unrealised gain on cash at bank	(300)		0.5
	<u>(500)</u>		<u>26</u>

**Tutorial notes:**

1. Under Circular 18/2011, where the cessation of use period is less than 12 months, depreciation expenses are still deductible.
2. Interest for a legal capital contribution is not deductible.
3. A list of purchased goods without invoice is sufficient documentation for deductibility.
4. Circular 18 specifically states that school fees for children of expatriate staff are deductible but does not specifically mention the same about school fees for children of Vietnamese citizens. As such, it can be logically interpreted that school fees for children of Vietnamese citizens are not deductible.
5. Special occasional payments, as provided for in the financial policy of the company although not in the nature of salary/wages, are now deductible under Circular 18.
6. Provisions, including warranty provisions, are fully deductible provided they are made within the 5% cap under Circular 228.
7. Interest from tax-exempt bonds and dividends from a subsidiary/securities for trading received by an economic organisation are all exempt from CIT.
8. According to Circular 18/2011, where revenue is taxed while expenses have not yet been incurred, the taxpayer is allowed to estimate and accrue the corresponding expenses as deductible in the year (for matching purposes).

**(b) Change of assessment period (Circular 18/2011/TT-BTC)**

Where a taxpayer wishes to change the assessment period for corporate income tax (CIT) purposes from its financial year to the calendar year (or vice-versa), the assessment period of the conversion year must not exceed 12 months.

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Accordingly:

- the assessment period for the year 2012 would be: from 1 April 2012 to 31 December 2012. 1
  - the assessment period for the year 2013 will be: 1 January 2013 to 31 December 2013. 1
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**2 Mr Nam Tran****(a) Tax treatment of share award**

As the shares were awarded to Nam for his employment with AXM, the income from the shares will be subject to personal income tax (PIT) in Vietnam as employment income.

1

The taxable income is the value recorded in the accounting books of the employer (AXM), i.e. VND10,000 per share, not the market price (VND50,000 per share)

1

The share value is not taxed at the date of the award (1 January 2012), but only when the shares are sold, i.e. on 30 May 2012.

1

In the tax finalisation for 2012, AXM (and Nam) must also include this income in the PIT finalisation return.

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**Tutorial note:** Also acceptable is that the income is declared by AXM (and Nam) in the May 2012 return, i.e. the month when shares were sold.

**(b) (i) Residency for 2012**

In 2012, the number of days spent in Vietnam by Nam is 132 days, as follows (day in and day out calculated as one day):

From	To	Number of days	
1 January 2012	20 January 2012	19	
7 February 2012	15 April 2012	68	
16 April 2012	31 May 2012	45	
	TOTAL	<u>132</u>	3

According to Circular 84/2008, his residency is determined by: the number of days in Vietnam, and the number of leased house days in Vietnam.

Therefore Nam should be treated as tax resident in Vietnam for the calendar year 2012 because: 1

- although he spent less than 183 days in Vietnam in calendar year 2012, his number of leased house days (including apartment and hotel days, regardless of whether leased by the company or himself) in Vietnam is 132 days (more than 90 days).

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**(ii) Responsibilities for declaring tax****(1) AXM**

- As AXM know that Nam will only spend 87 days (19 + 68) in Vietnam during his employment period with the company, AXM can select to file tax for Nam as a non-resident in Vietnam. 1
- For a non-resident, the employer can declare on a monthly basis and in theory is required to finalise tax on an annual basis (under Circular 28/2011). The deadline for non-resident monthly tax declaration is the 20th of the subsequent month, and for annual tax finalisation on the 90th day of the subsequent year. 1.5

**Tutorial note:** Also acceptable is that a non-resident is not required to finalise tax under Official Letter 451 on PIT finalisation 2009.

**(2) VSC**

- VSC is required to withhold PIT before making payment to Nam, and to file tax on the independent service income paid to Nam. 1
- The deadline for tax declaration by VSC is the 20th of the subsequent month after payment. 0.5

**(3) Nam Tran**

- As Nam received income from more than one source in the year 2012, he is required to combine all his income and finalise PIT on an individual basis with the tax authorities. 1
- The deadline for tax finalisation is before performing the migration procedures for exiting from Vietnam (Circular 28/2011).

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			Marks
<b>(iii) Nam Tran's tax liability for 2012</b>			
<b>Taxable income</b>		<b>Equivalent VND</b>	
Annual salary (USD15,000 * 3.5 months * 21,000)		1,102,500,000	1
Annual allowance (USD1,000 * 3 full months * 21,000)		63,000,000	1
Annual bonus (USD20,000 * 21,000)		420,000,000	0.5
Relocation allowance (USD10,000 * 21,000)		210,000,000	1
Air fares (non-taxable)		0	0.5
Shares awards (VND10,000 * 10,000 shares)		100,000,000	0.5
Gross training fees from VSC (VND180 million/(1 – 10%))		200,000,000	1
Total taxable income before housing		2,095,500,000	
Annual taxable housing – lower of:			
– 15% of gross taxable income from AXM of VND 1,895,500,000	284,325,000		0.5
– Actual housing (VND30 million * 3.5 months)	105,000,000	105,000,000	0.5
Total annual taxable income		2,200,500,000	
Monthly taxable income (for five months in Vietnam)		440,100,000	0.5
Monthly personal deduction		(4,000,000)	0.5
Monthly assessable income		436,100,000	
Monthly tax liability (G * 35% – VND9.85 million)		142,785,000	0.5
Annual tax liability (for five months in Vietnam)		713,925,000	0.5
Tax on transfer of shares (withheld by securities) (0.1% * 52,000/shares * 10,000 shares)		520,000	1.5
Total tax liability		714,445,000	
			10
			<b>25</b>

**Note:** Although it is clearly stated in the question that candidates can ignore special tax exemption etc, full credit is given to candidates who did take into account such tax exemption (such as the 50% reduction in transfer of shares).

### 3 (a) VNED and DUP

#### (i) Foreign contractor tax (FCT) treatment

##### Fees collected by VNED from domestic senders

The fees that VNED collected from domestic senders for delivery to overseas recipients are income earned by DUP from services performed (and consumed) in Vietnam. 1

Accordingly, the fees would be subject to FCT in Vietnam as income from services. Under the deemed method, the FCT rates are value added tax (VAT) 5% and corporate income tax (CIT) 5%. 1

Taxable revenue is the total revenue earned by DUP without any deductions (according to Circular 134/2008). 1

##### Fees collected by DUP from overseas senders

The fees that DUP collected from overseas senders for delivery to Vietnamese recipients are income earned by DUP for services which can be argued as being performed and consumed outside Vietnam. 1

As such, the fees would not be subject to tax in Vietnam under the FCT regime and the taxable revenue will be zero. 1

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#### (ii) Calculation of FCT if borne by VNED

Fees collected by VNED from Vietnamese senders	VND million	VND million	
CIT:			
– Taxable revenue: 42,000/(1 – 5%)	44,210		1
– CIT: 44,210 * 5%		2,210	0.5
VAT:			
– Taxable revenue: 44,210/(1 – 5%)	46,537		1
– VAT: 46,537 * 5%		2,327	0.5
Total FCT		4,537	3

**(iii) Calculation of FCT if borne by DUP**

Fees collected by VNED from Vietnamese senders	VND million	VND million	
VAT: $42,000 \times 5\%$		2,100	1
CIT:			
– Taxable revenue: $(42,000 - 2,100)$	39,900		1
– CIT: $39,900 \times 5\%$		1,995	1
Total FCT		4,095	3

**Note:** The fees that DUP collected from overseas senders are not subject to FCT, as discussed in (i) above.

**(b) VIGLACONST JSC****(i) Foreign contractors tax (FCT) risks from contract**

According to the FCT regulations, only goods delivered at the bordergate are not subject to FCT. But as per the contract, the delivery point is within Vietnam territory (i.e. at VIGLACONST JSC's (VIGLACONST) site in Dang Xa, Gia Lam, Hanoi) and the price covers domestic transportation to the delivery point. Therefore, Ginie Ltd would be treated as conducting business activities in Vietnam and consequently the whole contract would be subject to FCT. 2

As the contract is silent on who will bear the FCT, normally VIGLACONST can argue that Ginie Ltd will be responsible for the FCT. VIGLACONST should have withheld FCT before making payment to Ginie Ltd. 1

However, as VIGLACONST failed to withhold tax, and Ginie Ltd has insisted not to bear the FCT, VIGLACONST would be held responsible for the FCT by the tax authorities. 1

In calculating the FCT due, the amount must be grossed up because the tax would now be borne by VIGLACONST. The value of each separable activity (supply of equipment plus delivery, contractual penalty, interest) will be subject to a different FCT rate. 1

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**(ii) FCT calculation**

	USD	
Supply of services + delivery		
VAT: $1,000,000 \times 3\%$	30,000	1
CIT: $(1,000,000 - 30,000) \times 2\%$	19,400	1
Penalty		
VAT: exempt	0	0.5
CIT: $50,000 \times 2\%$	1,000	0.5
Interest		
VAT: exempt	0	0.5
CIT: $10,000 \times 10\%$	1,000	0.5
Total FCT	51,400	4
		<b>20</b>

**4 Thanh Hung Ltd****(a) Value added tax (VAT) payable****(i) Total declaration VND50 million VAT payable:**

– To Hai Duong: $\text{VND}800 \text{ million} \times 2\%$ deemed rate (Circular 129) = VND16 million	1
– To Vinh Phuc: $\text{VND}1,000 \text{ million} \times 2\%$ = VND20 million	1
– To Hanoi: $(50 - 36) = \text{VND}14 \text{ million}$	1
	3

**Tutorial note:** Simple allocation at 2% based on the revenue of the respective factories is used because the aggregate VAT payable to the provinces does not exceed the total VAT payable under the headquarters' VAT declaration (Circular 129/2008 and Circular 28/2011).

**(ii) Total declaration VND30 million VAT payable:**

– To Hai Duong: $30 * 800 / (800 + 1,000 + 200) = \text{VND}12 \text{ million}$	1
– To Vinh Phuc: $30 * 1,000 / (800 + 1,000 + 200) = \text{VND}15 \text{ million}$	1
– To Hanoi: $30 * 200 / (800 + 1,000 + 200) = \text{VND}3 \text{ million}$	1
	<u>3</u>

**Tutorial note:** Apportionment of the total VAT payable by the headquarters based on the revenue of the respective factories is required because the aggregate VAT payable to the provinces exceeds the total VAT payable under the headquarters' VAT declaration (Circular 28/2011).

**(iii) Tax declaration VND30 million VAT refundable:**

As no VAT is payable by the Hanoi headquarters, the company is not required to pay VAT to other provinces where its factories are located.

– To Hai Duong and Vinh Phuc: nil	1
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**(b) Treatment of invoice**

Input VAT relating to materials which are damaged (unusable) is not deductible (point 1.2 S. III part B of Circular 129/2008). 1

The declaration of the invoice as deductible input VAT in the VAT return for April 2012 is not compliant with current VAT regulations. 1

Thanh Hung Ltd should amend the April 2012 VAT return to reduce the deductible input VAT by VND30 million and pay the additional VAT to the tax authorities as soon as possible. 1

Apart from paying the additional VAT of VND30 million, Thanh Hung Ltd should self assess the penalty for late payment of tax (and penalty for under-declaration if relevant) and pay this to the State Budget. 1  
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**(c) VAT refund and under-declared VAT**

As the invoice was wrongly declared in December 2011, Thanh Hung Ltd should amend the VAT return for that month. 1

The amendment will result in additional VAT payable of VND400 million from December 2011 (i.e. reducing deductible input VAT by VND200 million and increasing output VAT by VND200 million). 1

Thanh Hung Ltd should immediately return the refund of VND300 million to the tax authorities, and pay additional VAT of VND100 million to the tax authorities. 1

In addition, Thanh Hung Ltd should self assess the penalty for late payment of tax and penalty for under-declaration (if relevant) and pay these to the State Budget. 1  
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**5 TD Vietnam – Transfer pricing****(a) Definitions**

– 'Arm's length price' is the price of the products in an objective transaction between parties who are not related.	1
– 'Independent transactions' are transactions between parties who are not related.	1
	<u>2</u>

**(b) Requirement to disclose related parties transactions:**

– TD Vietnam (TDV) is required to submit Form GCN-01/QLT in Circular 66 providing information about its transactions with TDG to local tax authorities.	1.5
– The form must be submitted at the same time as the enterprise submits its corporate income tax (CIT) finalisation return, i.e. 90 days after the financial year end.	1.5
	<u>3</u>

	<b>Marks</b>
<b>(c) Three categories of information</b>	
– General information on TDV and TDG.	1
– Information about the transactions of TDV (especially transactions with TDG).	1
– Information about the method used for determining arm's length price in transactions with TDG (as declared in Form 01 above).	1
	<u>3</u>
<b>(d) Power of the tax authorities</b>	
– The tax authorities have the right to impose (or deem) the following for tax determination purposes if TDV fails to provide sufficient information about the transactions with TDG:	1
o Taxable income (in TDV's case most likely the deductible expenses).	0·5
o Corporate income tax (CIT) liability.	0·5
	<u>2</u>
	<b><u>10</u></b>