Answers

Marks

1 LOMA JSC

(a) Corporate income tax (CIT) for the years 2010 to 2012

Unit: VND million

Years ended 30 June	Description	Non-real estate activities	Utilisable losses	Real estate and project transfer	Marks
2010	**Non-real estate activities**				
	Other income	35,000			
	Offset with trading loss	(50,000)			
	Remaining trading loss	(15,000)			1
	Offset with manufacturing income	100,000			
	Remaining manufacturing income	85,000			1
	Loss from 2006 carried forward (must be used due to 'consecutive requirement', despite exemption)	(85,000)			1
	Assessable income	0			0.5
	Tax liability (25%)	0			0.5
	Remaining utilisable losses				
	2006 (300,000 – 85,000)		(215,000)		0.5
	2007, 2008, 2009 (30,000 + 20,000 + 10,000)		(60,000)		0.5
	Real estate activities				
	Utilisable losses (must be separately accounted)			(20,000)	1
2011	**Non-real estate activities**				
	Other income	20,000			
	Offset with trading loss	(15,000)			
	Remaining other income	5,000			1
	Offset with infrastructure loss	(95,000)			
	Remaining infrastructure loss	(90,000)			1
	Offset with manufacturing income	75,000			
	Remaining infrastructure loss	(15,000)			1
	Assessable income	0			0.5
	Tax liability (25%)	0			0.5
	Remaining utilisable losses				
	2006 (forfeited after five years)		0		1
	2007, 2008, 2009 (non-separable)		(60,000)		0.5
	2011 infrastructure loss		(15,000)		
	Real estate activities				
	2011 income			30,000	
	Offset with 2010 loss			(20,000)	
	Assessable income			10,000	1
	Tax liability (25%)			2,500	0.5
2012	**Non-real estate activities**				
	Offset against activities in the year				
	Other income	10,000			
	Trading loss	(15,000)			
	Remaining trading loss	(5,000)			1
	Manufacturing income	90,000			
	Remaining manufacturing income	85,000			1
	Offset previous year loss to this year's income (same activities)				
	2012 Infrastructure income	15,000			
	2011 Infrastructure loss	(15,000)			
	Assessable income	0			1
	Tax liability (exempt)	0			0.5

Years ended 30 June	Description	Non-real estate activities	Utilisable losses	Real estate and project transfer	*Marks*
	Offset previous year loss to this year's income (different activities)				
	Losses in 2007 – 2009 (non-separable)	(60,000)			
	Remaining 2012 manufacturing income	85,000			
	Assessable income	25,000			1
	Tax liabilities (5%)	1,250			0.5
	Utilisable losses		0		0.5
	Real estate activities				
	Capital gain from project transfer			45,000	
	Offset with 2012 real estate loss			(20,000)	
	Assessable income			25,000	1
	Tax liability (25%)			6,250	0.5
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Tutorial note: *The method and the preferred order for offsetting losses from previous years are in accordance with the principles set out in Articles 9 and 18 of Circular 123/2012/TT-BTC.*

(b) Capcon JSC and Caprec Ltd

(i) Capcon JSC's taxable gain for the year ended 30 June 2012

Assets	Agreed contribution value VND million	Book value VND million	Capital gain VND million	Maximum amortisation period	Taxable gains VND million	
Land use right (LUR)	50,000	20,000	30,000	10	3,000	1
Equipment	30,000	15,000			15,000	0.5
Intangible asset (franchise)	40,000	24,000			16,000	1
Inventory	10,000	8,000			2,000	0.5
Shares in FPT (listed on the stock market)	10,000	12,000			0	1

Caprec Ltd's deductible expenses for the year ended 31 December 2011

Assets	Agreed contribution value VND million	Remaining useful life	Deductible expenses in the year VND million	
Land use right (LUR)	50,000	20 [40 – (40*20,000/40,000)]	1,250 (50,000/20*6/12)	1
Equipment	30,000	3 [5 – (5*10,000/25,000)]	5,000 (30,000/3*6/12)	1
Intangible asset (franchise)	40,000	8 [10 – (10*6,000/30,000)]	2,500 (40,000/8*6/12)	1
Inventory	10,000	1	10,000	0.5
Shares of FPT (listed on the stock market)	10,000		0	0.5
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Tutorial notes:

1. *According to Article 7.14 of Circular 123, except for the gain from the land use right (LUR) which can be amortised over ten years, other gains will be taxable in the year in which they arise, i.e. for Capcon Ltd the year ended 30 June 2012.*
2. *The Circular is silent on the treatment of a loss arising from a capital contribution, and it is unclear if such a loss can be offset against the gain. The question required that the taxable gain was calculated under the most prudent approach, which means no offset should have been used.*

Marks

(ii) According to Article 7.14 of Circular 123, if Capcon JSC transfers the shareholding of Caprec Ltd before the end of the ten-year period that it registered with tax authorities, Capcon JSC will be required to declare the whole remaining (unamortised) gain from the land use right (LUR) in the year of transfer as income from real estate transfer, i.e. in this case in the year ended 30 June 2013. 2

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2 Marty Bui and Dion Tran

(a) Taxable income for the year 2012

Marty

		Amount USD	Taxable VND	Exempt VND	
Salary	($8,000*2*4.5)	72,000	1,512,000,000		1.5
Living allowance	($2,500*2*4.5)	22,500	472,500,000		1.5
Cash housing allowance	($1,500*2*4.5)	13,500	283,500,000		1.5
Wedding gift			100,000,000		1
Air fares	(VND100 million/2)			50,000,000	1
School fees (up to 15 May)	(VND20 million*4.5)			90,000,000	1.5
Termination allowance		88,000	1,512,000,000	336,000,000	3
Business income			500,000,000		0.5
Total taxable/exempt income			4,380,000,000	476,000,000	

Dion

		Amount USD	Taxable VND	Exempt VND	
Salary	($15,000*12)	180,000	3,780,000,000		1
Living allowance	($3,000*12)	36,000	756,000,000		1
Bonus		36,000	756,000,000		0.5
Air fares	(VND100 million/2)			50,000,000	1
School fees	(240 million*2 – 90 million)			390,000,000	1
Kindergarten fees			240,000,000		1
			5,532,000,000		
Taxable housing allowance – lower of:					
– Actual housing (VND63 million*12 months)	756,000,000				
– 15% of gross taxable income from Delta Ltd of VND5,532 million	829,800,000				
Taxable housing allowance			756,000,000		2
Total taxable/exempt income			6,288,000,000	440,000,000	
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Tutorial notes:

1. *Delta Ltd gave Marty and Dion each a return air fare, so the total cost should be allocated half to each of them. However, air fares for expatriates returning home (one trip per year) are exempt from tax.*
2. *Before their marriage, the school fees of Marty's son should be allocated to him.*
3. *Marty is entitled to 5.5 months severance allowance, of which one month (i.e. half a month for each of the years 2007 and 2008) is exempt.*
4. *The kindergarten fees for Dion's daughter are taxable (only school fees are exempt).*

Marking note: Credit will be given to answers which allocated common income (e.g. the wedding gift, etc) to both Marty and Dion.

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(b) **Tax liabilities for the year 2012**

	Marty VND	Dion VND	
Taxable income (from (a))	4,380,000,000	6,288,000,000	
Personal deduction	(48,000,000)	(48,000,000)	1
Dependant deduction	(7,200,000)	(50,400,000)	2
Assessable income	4,324,800,000	6,189,600,000	
Monthly average	360,400,000	515,800,000	1
Monthly tax liability (G*35% – VND9·85 million)	116,290,000	170,680,000	1
Annual tax liability	1,395,480,000	2,048,160,000	1
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Tutorial note: *The dependent relief for Marty's son should be allocated 4.5 months to him and 7.5 months to Dion as she earned the higher taxable income.*

3 **SMTM Construction Co Ltd (SMTM)**

(a) **(i)** **Foreign contractor tax (FCT) treatment**

SMTM will be subject to FCT on the income earned from carrying out the contract in Vietnam. 0.5

Under the deemed method, both portions of FCT, corporate income tax (CIT) and value added tax (VAT), are calculated as a deemed percentage of taxable revenue depending on the activity that SMTM carries out under the contract. MT JSC is required to withhold, declare and pay the FCT on behalf of SMTM. 1.5

Approach (1)

If SMTM carries out all the construction, supply and service works by themselves without any sub-contracting, the whole contract will be subject to FCT at the deemed rate of 2% CIT plus 3% VAT (30% value added*10% VAT rate). 1

The taxable revenue will be the whole contract value. According to Circular 60, even if the amount of works can be separable, the lump sum tax rate will apply on the whole contract value. 1

The value of the domestic supply will not be deducted from taxable revenue as only sub-contracted works are deductible under Circular 60. 1

Approach (2)

If SMTM sub-contracts all the works except the service parts, then the taxable revenue will be the service value only. 1

The value sub-contracted to local sub-contractors will be excluded from the taxable revenue of SMTM as the content and value of the sub-contracted works are clearly stated in the contract between SMTM and MT JSC. 1

The tax rates will be the rates for services, i.e. 5% CIT plus 5% VAT. 1

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(ii) **FCT liabilities under the two approaches**

	USD	USD	
Approach 1			
– CIT taxable revenue:			
USD million (5 + 1 + 2 + 1 + 0.5 + 0.5)/(1 – 2%)	10,204,082		1.5
– CIT: USD10,204,082*2%		204,082	0.5
– VAT taxable revenue:			
USD10,204,082/(1 – 3%)	10,519,672		1.5
– VAT: USD10,519,672*3%		315,590	0.5
Total FCT liabilities		519,672	

	USD	USD	*Marks*
Approach 2			
– CIT taxable revenue:			
USD million(1 + 1 + 0.5 + 0.5)/(1 – 5%)	3,157,895		1
– CIT: USD3,157,895*5%		157,895	0.5
– VAT taxable revenue:			
3,157,895/(1 – 5%)	3,324,100		1
– VAT: 3,324,100*5%		166,205	0.5
Total FCT liabilities		324,100	
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(b) FCT treatment of online training and technical support

Training activities performed outside Vietnam are not subject to FCT, except for online training which is still subject to FCT (in accordance with Circular 60). Accordingly, SMTM will still be subject to FCT on the online training activity. 2

	USD	USD	
Approach 2			
– CIT taxable revenue:			
USD(3,000,000 – 200,000 saving)/(1 – 5%)	2,947,368		1
– CIT: USD2,947,368*5%		147,368	0.5
– VAT taxable revenue:			
USD2,947,368/(1 – 5%)	3,102,493		0.5
– VAT: 3,102,493*5%		155,125	0.5
Total FCT liabilities		302,493	
Total FCT saving (324,100 – 302,493)		21,607	0.5
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4 Na Huong JSC

Value added tax (VAT) treatment (based on Circular 06/2012/TT-BTC, Article 5)

Transaction 1

The services performed in Vietnam for VND200 million (VND500 million*40%) are subject to VAT. 1

The services performed in Laos for VND300 million (VND500 million*60%) are not subject to VAT as these services are provided outside Vietnam. 1

Na Huong JSC is required to declare VAT on the VND200 million but is not required to declare VAT for the services performed in Laos. 1

Transaction 2

The interest charged on the loan of VND900 million (VND10 billion*9%) is subject to VAT. 1

The interest received on the advance of VND50 million (VND1 billion*5%) is not subject to VAT. 1

Na Huong JSC is required to declare VAT on the VND900 million interest from the loan, but is not required to declare VAT for the interest on the advance. 1

Transaction 3

The compensation received in cash of VND1 billion is not subject to VAT. 1

The supply and compensation of 11 tons of goods are subject to VAT. 1

For both the sale and compensation in goods, Na Huong JSC must declare VAT, as according to Circular 06, Na Huong JSC must charge VAT on the compensation in goods as if it were a sale. 1

Transaction 4

The (internal) transfer of non-current assets at book value to NH JSC, a 100% owned subsidiary, is not subject to VAT. 1

The (internal) transfer of non-current assets at a revalued amount to HN JSC, an affiliate, is subject to VAT. 1

Na Huong JSC is required to declare VAT for VND14 billion to HN JSC, but is not required to declare VAT for the VND10 billion transfer to NH JSC. 1

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Transaction 5	
The revenue from the agency sale of air fares and the related commission revenue are not subject to VAT.	1
The commission revenue for the insurance agency activity with PruManu is also not subject to VAT.	1
Na Huong JSC is not required to declare VAT for any of these revenues.	1
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5 DLY Co JSC (DLY)

(a) Value added tax (VAT) returns for the period July to December 2012 (Circular 06, Article 15.2.c)

July 2012 return: DLY can temporarily declare the whole VAT input of VND4 billion (VND44 billion/(1 + 10%)*10%) as deductible.	1
August 2012 return: No relevant transactions – do nothing.	0.5
September 2012 return: As DLY can only provide a bank payment voucher for 50% of the purchase, DLY is required to reduce the deductible VAT input for July by VND2 billion (VND22 billion/(1 + 10%)*10%).	1
October 2012 return: DLY should not do anything.	
For the input VAT to be deductible, any payment in excess of VND20 million must be made via a bank; the deposit of cash of VND11 billion to the seller's account is not treated as a payment via a bank, and thus the corresponding input VAT of VND1 billion (11 billion/(1 + 10%)*10%) would become non-deductible. However, no adjustment should be made as the whole adjustment was made in the September return.	2
November 2012 return: No relevant transactions – do nothing.	0.5
December 2012 return: DLY can increase the input VAT deduction by VND1 billion (11 billion/(1 + 10%)*10%) corresponding to the payment of VND11 billion made via a bank.	1
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(b) Appropriate transfer pricing method

Transaction 1: The most appropriate method would be the comparable unit price (CUP) method, as the comparable selling price of similar goods is available.	2
Transaction 2: The most suitable method would be the cost plus (CP) method, as the total cost and the usual mark-up on cost are available.	2
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