

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2026

MODULE 2.09 – UNITED KINGDOM OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Streamflow Digital Ltd – Briefing for the board (year ended 31 December 2025)
To: The Board of Directors

Current exposure to UK Corporation Tax

Residence and scope

Streamflow is incorporated in the UK and would ordinarily be UK resident under domestic law (CTA 2009 s14). You have stated that Streamflow is treated as resident in Aurelia under the UK–Aurelia double tax agreement (DTA). Where a company is treaty-resident outside the UK, it is treated as non-UK resident for the purposes of the Corporation Tax Acts (CTA 2009 s18). The UK corporation tax charge is therefore limited to UK-source profits/gains that UK domestic law brings into charge (CTA 2009 s5) and which the treaty permits the UK to tax (typically including profits attributable to a UK PE under Article 7, rents from UK immovable property under Article 6, and gains from UK immovable property under Article 13(1)).

Digital platform trading profits (business profits)

Under treaty principles, business profits of a non-UK resident company are generally taxable in the UK only to the extent attributable to a UK PE (Articles 5 and 7). On the current facts Streamflow has no UK employees or other agents and no UK business premises used for the platform business. A UK PE is therefore unlikely. Streamflow's platform trading results should not give rise to a UK corporation tax charge at present (even if the activities become profitable). Correspondingly, the £15m operating loss should not be available to offset UK-chargeable profits, as it is not a UK-tax loss.

UK property business

Streamflow owns a freehold commercial building in London which is let to an unrelated tenant and provides no additional services. This is expected to constitute a UK property business (CTA 2009 Part 4, including s205). A non-UK resident company is within the charge to UK corporation tax on UK property business profits (CTA 2009 s5). Under treaty principles, rental income from UK immovable property is typically taxable in the UK under Article 6 and does not require a PE.

On the figures provided (and ignoring capital allowances and any financing costs, which are not given), the indicative annual UK property business profit is:

- Rent: £2.4m
- Less: management and maintenance costs: £0.5m
- Net profit: £1.9m

Compliance and key deadlines (accounting period ended 31 December 2025)

Corporation tax returns are governed by FA 1998 Sch 18. If HMRC has not issued a notice to deliver a return, Streamflow must notify chargeability (FA 1998 Sch 18 para 2); in practice HMRC expects prompt registration once a company is within the charge.

FA 1998 Sch 18 para 2 supports the statement that, where a company is chargeable to corporation tax for an accounting period and has not received a notice to file, it must notify chargeability within 12 months of the end of the accounting period. However, there is a separate notification requirement under FA 2004 s55, generally requiring a company to notify HMRC within three months after the start of the accounting period in which it first comes within the charge to corporation tax.

For a period ending 31 December 2025:

- The corporation tax return is generally due 12 months after the period end (FA 1998 Sch 18 para 14): 31 December 2026.
- Corporation tax is generally due 9 months and 1 day after the period end (TMA 1970 s59D): 1 October 2026, unless quarterly instalments apply.
- With UK taxable profits of approximately £1.9m and no associated companies, Streamflow may fall within the quarterly instalment regime for large companies (broadly profits exceeding £1.5m, adjusted for associated

companies: TMA 1970). If so (and assuming a 12-month period starting 1 January 2025), instalments would typically fall due on 14 July 2025, 14 October 2025, 14 January 2026 and 14 April 2026.

Late notification or filing may give rise to penalties and interest. A voluntary approach to HMRC may assist in mitigating penalties.

Exposure to Digital Services Tax (DST)

Scope and thresholds

DST applies to certain large businesses providing in-scope digital services, including social media platforms, where value is derived from UK users (FA 2020 DST provisions, including Sch 8). Streamflow earns revenues from targeted online advertising and monetisation of user data linked to a social media platform, which is expected to be in scope. Streamflow is stated to be stand-alone and therefore treated as a “group of one” for these purposes.

The thresholds appear to be met: worldwide in-scope revenues of £750m exceed the £500m threshold, and UK user-linked revenues of £200m exceed the £25m threshold.

Indicative liability (standard method)

DST is a tax on revenues (not profits) and can apply even where the business is loss-making. Under the standard method, DST is charged at 2% on UK user-linked revenues above the £25m allowance:

$$(\text{£}200\text{m} - \text{£}25\text{m}) \times 2\% = \text{£}3.5\text{m}.$$

Administration and deadlines (year ended 31 December 2025)

Key deadlines (based on the statutory/guidance framework) are:

- Register within 90 days after the end of the first DST accounting period in scope: 31 March 2026.
- Pay DST generally within 9 months and 1 day after the period end: 1 October 2026.
- File the DST return generally within 12 months after the period end: 31 December 2026.

Additional UK Corporation Tax exposures from future plans

Disposal of the UK property

If Streamflow disposes of the UK commercial property, any gain should be within the charge to UK corporation tax on chargeable gains, as non-resident companies are chargeable on gains from disposals of UK land. Under treaty principles, gains from UK immovable property are typically taxable in the UK (often Article 13(1)). The disposal would be reported through the corporation tax return for the accounting period in which the disposal occurs.

UK PE risk if UK activities expand

If Streamflow expands its UK footprint (for example, by establishing a UK sales office or employing UK staff), a UK PE may arise under treaty Article 5 (fixed place PE and/or dependent agent PE).

The UK domestic definition of a PE for corporation tax purposes includes a fixed place of business through which the business is wholly or partly carried on (and also includes certain dependent agent situations). If Streamflow occupies the London building as an office and carries on business activities from that location, this is capable of meeting the domestic PE definition.

Under the OECD Model approach, a fixed place PE broadly requires:

- a place of business (e.g. an office);
- that is fixed (a distinct place with a degree of permanence);
- that is at the disposal of the enterprise; and
- through which the enterprise carries on its business (i.e. not merely preparatory or auxiliary activities where the treaty contains the Article 5(4) type exclusions).

On these facts, if the London building ceases to be simply an investment property and is instead used to house staff performing sales/marketing functions that form part of Streamflow’s revenue-generating business, there is a material risk that the office constitutes a PE under both domestic and treaty concepts. Conversely, if the activities carried on from the office are limited to preparatory/auxiliary functions (e.g. limited back-office support) and the treaty contains

the OECD Model Article 5(4) exclusions, the PE risk is reduced; however, in practice sales offices often go beyond preparatory/auxiliary functions.

If a PE arises, the UK would be entitled to tax profits attributable to the PE under Article 7, requiring an arm's length profit attribution analysis (functions, assets and risks) and increased UK compliance and transfer pricing support.

Governance and residence monitoring

Under UK domestic law, Streamflow is incorporated in the UK and would ordinarily be UK-resident. However, you have assumed Streamflow is treated as resident in Aurelia under the treaty tie-breaker and therefore treated as non-UK resident for the purposes of the Corporation Tax Acts.

On the future plans provided, corporate residence should not migrate to the UK because the fact pattern states that Streamflow's board and senior management teams will remain in Aurelia. Provided central strategic decision-making (central management and control in the case law sense) continues to be exercised in Aurelia, the treaty residence position should remain stable.

Nevertheless, residence is fact-sensitive. If, contrary to the stated intention, high-level decision-making were to shift to the UK (for example, if key board decisions were habitually made in the UK or effective management moved here), HMRC could argue UK corporate residence under domestic principles and/or a different treaty outcome. If Streamflow became treaty-resident in the UK, UK corporation tax exposure would expand materially (potentially to worldwide profits, subject to any available reliefs).

Recommended next steps

- Regularise UK corporation tax compliance for the UK property business and quantify any historic underpayments/penalties exposure (including whether quarterly instalments apply).
- Confirm DST compliance for the year ended 31 December 2025, including the UK user revenue methodology and whether an alternative calculation election is beneficial.
- Obtain UK tax input before any UK expansion to manage PE and profit attribution risks.
- Maintain contemporaneous documentation supporting governance arrangements and treaty residence in Aurelia and keep these under review as facts evolve.

Yours faithfully
Tax Adviser

Question 2

Dear Karl

Many thanks for your email.

I note your recent move to Italy. I also note you already have a home in Berlin, and that your wife, and 2 minor children all live there. Your residence will be determined by the statutory residence test. Within this test there are various 'tests' which may apply. The tests are hierarchical. The highest level tests are the automatic UK resident tests and the automatic overseas residence tests. The automatic overseas tests have primacy and if you satisfy any of the automatic overseas tests then you are not UK resident. The first automatic overseas residence test which I will consider is the full time working abroad test. This may apply where you are leaving the UK for full time employment abroad. Unfortunately on the facts this seems unlikely to be satisfied, since I note you intend to spend 50 days working in the UK each tax year for A1 Byte Ltd. To satisfy this test, your UK work days would need to be limited to a maximum of 30 days.

You will not satisfy the other 'automatic' non-residence provision which is that you spend less than 16 nights in the UK in any tax year, given that your work and attendance at sporting events means it is likely that you will spend at least 60 days in the UK each year.

As you have not satisfied the automatic overseas tests it is necessary to consider the automatic UK residence tests.

Automatic UK tests

The First automatic UK test is that you will be UK resident for the tax year if you spend 183 days or more in the UK in the tax year. As you intend to spend only 60 days in the UK in 2026/27 and subsequent years, you will not meet this test.

Turning to the Second automatic UK test; you will be UK resident for the tax year if you have, or have had, a home in the UK for all or part of the year and the following conditions all apply:

- there is at least one period of 91 consecutive days when you had a home in the UK;
- at least 30 of these 91 days fall in the tax year when you have a home in the UK and you've been present in that home for at least 30 days at any time during the year; and
- at that time either, you had no overseas home, or if you had an overseas home, you were present in it for fewer than 30 days in the tax year.

As you intend to spend more than 30 days in your Italian home in 2026/27 you will not meet the conditions of the second automatic UK test.

The Third automatic UK test relates to full-time working in the UK. It provides that you will be UK resident for the tax year if all the following apply:

- you work full-time in the UK for any period of 365 days, which falls in the tax year;
- more than 75% of the total number of days in that 365 day period when you do more than 3 hours work are days when you do more than 3 hours work in the UK; and
- on at least one day which must be both in the 365 day period and the tax year you do more than 3 hours work in the UK.

As you will spend the majority of your time living abroad and will only work in the UK on 50 days you will not qualify under this test.

This leaves the ties test to determine your residence. You will be a leaver under these provisions so that 5 ties are relevant.

1. Accommodation
You will have accommodation in the UK which you will retain. This counts as one tie.
2. Family
As your wife and 2 minor children are non-resident you will not have a tie under this condition.
3. 90 day tie

As you will have spent more than 90 days in the UK in one of the two previous tax years you will have a tie under this test.

4. Work tie

This condition is triggered by reference to a 40-day threshold. For these purposes, a person works in the UK if he does more than 3 hours work in the UK.

As you have to work at least 50 days in the UK for more than 3 hours a day you will have a tie under this condition.

5. Country tie

I expect you will spend more days in Italy rather than the UK so that you will not have a tie under this criteria.

I estimate you are likely to have 3 ties. Your position will be determined by reference to the leaver provisions, i.e. those taxpayers who have been UK resident in at least one of the last 3 tax years. This will mean you would only be able to remain in the UK 45 days.

If you reduced your UK workdays to 39, you would not have the work tie and you would be able to remain up to 90 days. Provided you do not exceed 39 'work days' you might spend up to 90 days in the UK and not be UK resident. In addition, you could continue to do some work on the other 11 workdays, but must not work for 3 hours or more.

2027/28 and 2028/29

I note that it is intended that your eldest child attend UK boarding school in 2027/28. If a child is under the age of 18 and in full-time education in the UK, they will not be treated as resident in the UK for the purposes of the family ties test of the SRT, if they spend fewer than 21 days in the UK outside term-time.

For the purpose of the SRT half-term breaks are regarded as term-time.

Provided your child leaves the UK to return to Berlin when on term holidays they will not be counted as a family tie. In addition, your child can stay in the UK for up to 3 weeks outside term time without generating a tie. So on some half terms breaks your child could stay in the UK with you.

In 2028/29 you will lose the '90 day tie', so that if you worked 50 days in that tax year you would only have two ties, so that you might spend up to 90 days in the UK in 2028/29 without triggering UK resident.

2029/30

After you have become non-resident for 3 complete tax years you will be treated as an arriver under the connecting ties test. This means you will be able to spend more time in the UK and still qualify to be treated as non-resident. From that year you could have up to 2 ties and spend up to 120 days in the UK that tax year. This would enable you to work more in the UK e.g. 50 days and trigger the work tie, but still be non-resident.

Finally I have not mentioned the tie-breaker provisions of the UK-Italy treaty at this point.

UK income tax, capital gains tax and inheritance tax

From 2025/26 the non-domiciled regime has been abolished. You will be liable to income tax and capital gains tax on your worldwide income and gains.

If you become non-resident on 6 April 2026, then for 2026/27 and subsequent years you will only be subject to UK tax on your UK source income, e.g. UK rental income or employment income earned from A1 Byte Ltd in respect of duties you perform in the UK. You will also be subject to tax on UK dividends and interest, however no liability will arise on these elements as they are classified as 'disregarded income'. ITA07/s811 provides that a non-UK resident's income tax liability is limited to the sum of:

- tax deducted from, or treated as deducted from, or tax credits on 'disregarded income', and
- the tax liability leaving out the disregarded income and with no personal allowances or double taxation relief taken into account.*

'Disregarded income' is savings and investment income which includes dividends income.

*(The first calculates the tax due as normal on all the non-resident's taxable income in the UK, taking account of the personal allowance if the individual is entitled to this as a non-resident (and any other personal reliefs the individual may be entitled to as a non-resident, as per ITA 2007, s. 811(6)).

The second computation calculates the tax due excluding certain types of income (disregarded income: see below) and also the personal allowance (and any other personal reliefs available) and adds to this liability any tax that has been deducted at source on the disregarded income. This computation will calculate the maximum tax the non-resident will pay.)

The effect is that the liability of a non-UK resident in respect of savings and investment income is limited to the income tax deducted from it or treated as deducted or paid in respect of it (at the savings rate, dividend rate, or basic rate, as appropriate)

Thus if A1 Byte Ltd pays a dividend while you are non-resident no 'additional' tax liability will arise on the dividend.

Inheritance tax

2025/26

The core of the new test is that a person will be "Long-Term Resident" in a given tax year (and so exposed to IHT on their worldwide assets) if they have been UK tax resident in 10 or more of the preceding 20 tax years.

As you have been UK resident for at least 10 years you will be treated as a Long term resident and be subject to UK inheritance tax on your worldwide assets. Thus for example your foreign property such as your shares in Opus Ltd, plus your Berlin and Italian properties will all be chargeable to UK Inheritance tax.

You will be entitled to a tax credit, in respect of foreign inheritance tax paid (up to the amount of any UK IHT charged in respect of the non-UK situs asset).

2026/27, 2027/28 and 2028/29

After Karl has left the UK he will remain a long term resident and be fully within the charge to inheritance tax. He has 12 years of consecutive UK residence. He will only cease to be Long Term UK resident after 3 years.

2029/30

If Karl is non-resident from 6th April 2026, he will cease to be a Long Term Resident on 6 April 2029, as he will no longer meet the criteria of being UK tax resident in 10 or more of the preceding 20 tax years. From 6th April 2029 he will no longer be liable to UK Inheritance Tax on his worldwide Assets, instead he will remain liable to inheritance tax only on his UK assets.

Temporary Non Residence Rules

The temporary non-residence rules are explained at RFIG21510:

When an individual returns to the UK after a period of temporary non-residence, they may be charged to tax on certain income received (or remitted to the UK) in that period of temporary non-residence.

An individual will be regarded as temporarily non-resident if:

- following a residence period where they had sole UK residence, 1 or more residence periods occur for which they do not have sole UK residence
- in 4 or more of the 7 years immediately preceding their year of departure:
 - they had sole UK residence for the tax year; or
 - the year was a split year that included a residence period for which they had sole UK residence; or
 - their period of non-residence is a period of 5 years or less

For these special rules not to apply, the individual's period of non-residence must exceed 5 years.

Where an individual is within the scope of the temporary non-residence rules, they will become liable to tax in the year or part year (in the case of a split year), of their return to the UK on certain income and gains arising during periods when they were temporary non-resident. These include distributions from closely controlled companies (and an overseas company which would have been a close company had it been UK resident) and capital gains.

For individuals who become UK resident on or after 6 April 2026 after a period of temporary non-residence, the charge will apply to the full amount of the dividend or distribution, including any part that relates to trade profits that arose in the period of temporary non-residence.

Karl must therefore not become UK resident again for more than 5 complete tax years, otherwise certain income and gains would be taxable in the year of his return, for example dividends from Opus Ltd and AI Ltd.

Best regards
Tax Adviser

PART BQuestion 3

To Oakridge tax director

Transfer pricing treatment of intra-group loan

The UK transfer pricing rules are in TIOPA 2010 Part 4. Broadly, where a provision is made between connected parties that differs from the arm's length provision and gives rise to a potential UK tax advantage, the company's taxable profits are computed as if the arm's length provision had been made (TIOPA 2010 s147).

For financing transactions, UK transfer pricing can apply not only to the interest rate but also to the quantum of debt and the other terms and conditions of the loan. The legislation expressly contemplates that the arm's length provision may involve a different amount of debt and/or different terms (TIOPA 2010 s152). In practice, this is how the UK addresses "thin capitalisation": by applying the arm's length principle to the debt capacity and pricing.

The Advance Thin Capitalisation Agreement (ATCA) framework allows taxpayers to agree parameters for determining the arm's length amount of interest with HMRC in advance of filing the relevant returns. Given the existence of an ATCA, it seems reasonable to conclude that the loan is within scope of the UK transfer pricing rules.

For 2025, the ATCA caps arm's length related-party debt at £80m at 6%.

Arm's length interest = £80m × 6% = £4.8m.

Actual related-party interest paid = £6.0m.

Therefore, £1.2m (£6.0m – £4.8m) of the related-party interest is disallowed for UK corporation tax purposes under the transfer pricing rules. This is a permanent transfer pricing adjustment: it is not a CIR attribute and it is not available for later "reactivation" under the CIR rules.

For 2026, no transfer pricing disallowance should arise because the related-party loan balance is expected to reduce to no more than £50 million and the 6% interest rate remains within the ATCA parameters.

Corporate Interest Restriction

CIR applies at a group level to interest and can restrict the interest brought into account for UK Corporation Tax purposes. The CIR rules do not contain a motive test. Therefore, the lack of tax avoidance motive is irrelevant.

Importantly, the CIR computation uses the amounts of interest and financing costs brought into account for UK corporation tax purposes. Therefore, the CIR analysis should be performed after applying the transfer pricing adjustment above (i.e., the related-party interest is taken as £4.8m, not £6.0m).

In short, the CIR position for 2025 (actual) and 2026 (estimated) is as follows:

2025

£1.3m restriction (in addition to the £1.2m disallowed under the transfer pricing rules).

2026

No CIR restriction. The 2025 CIR restriction can be reactivated in full (so the £1.3m restricted in 2025 can be included as a tax-deductible interest expense for Pine Ltd). £0.2m of unused interest allowance can be carried forward to future periods.

A detailed breakdown of the CIR calculation for both years is provided below:

2025Step 1: Aggregate net tax-interest expense ("ANTIE")

Accordingly, the CIR computation should use the **post-TP** (ATCA-adjusted) related-party interest figure of £4.8m.

Pine: deductible related-party interest £4.8m + bank interest £1.5m = £6.3m

Walnut: interest income = £0.5m

UK group net tax-interest expense = £6.3m – £0.5m = £5.8m.

Step 2: Fixed ratio method (default) and debt cap

Under the fixed ratio method, the basic interest allowance is the lower of 30% of aggregate tax-EBITDA and the fixed ratio debt cap.

$30\% \times \text{tax-EBITDA (£15m)} = £4.5\text{m}.$

The fixed ratio debt cap is based on ANGIE (plus any b/f excess debt cap). ANGIE = £40m, so the debt cap is not limiting compared to £4.5m.

So the group's basic interest allowance (and interest allowance on these simplified facts) is £4.5m.

Step 3: Restriction and carry forward

Net tax-interest expense £5.8m – allowance £4.5m = £1.3m disallowed for 2025.

This disallowance will be allocated to Pine Ltd as the only UK company with an interest expense.

The £1.3m becomes a company attribute and can be carried forward for potential reactivation in a later period by Pine Ltd. Where a group has unused interest allowance in a later period it must generally reactivate the maximum possible amount (subject to limits).

Potential elections for alternative method

A group ratio election is required for the group ratio method to apply. Under the group ratio method, the basic interest allowance is the lower of the group ratio percentage $\times$ aggregate tax-EBITDA and the group ratio debt cap.

Group ratio percentage = $\text{QNGIE} / \text{group EBITDA} = 35 / 200 = 17.5\%$

Group ratio allowance = $17.5\% \times £15\text{m} = £2.625\text{m}$

Group ratio debt cap is based on QNGIE (here £35m), so it is not limiting.

Because £2.625m is lower than the fixed ratio allowance of £4.5m, a group ratio election would worsen the outcome (greater disallowance). Therefore, no group ratio election should be made on these facts.

CIR position for year ended 31 December 2026, and carry-forward at 31 Dec 2026

2026

ANTIE

Pine: related-party interest £3.0m + bank interest £2.0m = £5.0m

Walnut: interest income = £0.5m

ANTIE = £5.0m – £0.5m = **£4.5m**.

2026 fixed ratio allowance and debt cap

$30\% \times \text{tax-EBITDA £20m} = £6.0\text{m}$

Debt cap not limiting (ANGIE £41.3m, based on £40m plus a £1.3m excess debt cap carried forward (i.e. the £1.3m interest restriction arising in 2025)).

So there is no 2026 restriction ($4.5\text{m} < 6.0\text{m}$).

The group's interest reactivation cap is the group's interest allowance for the period less its aggregate net tax-interest expense.

Reactivation cap = £6.0m – £4.5m = £1.5m

The brought-forward disallowed amount from 2025 is £1.3m (allocated to Pine Ltd). This can be reactivated in full in 2026 because £1.3m is below the £1.5m cap. Therefore, Pine Ltd may deduct its in-year interest (£5.0m) plus the reactivated amount (£1.3m), i.e. total deductions of £6.3m in 2026.

This means that in 2026, Pine Ltd can deduct £6.3m (£5m in-year interest expense and £1.3m CIR reactivation).

At 31 December 2026:

- Remaining disallowed amount carried forward: nil (1.3m fully reactivated).
- Remaining unused interest allowance: £6.0m – £4.5m – £1.3m = £0.2m. This is unused interest allowance carried forward as a group attribute and it expires after five years.

Note the group will need to file a full interest restriction return to carry forward the unused allowance.

Question 4

To: Jennifer Brookfield
Foreign Income and Gains ("FIG") regime

Summary

On the understanding that you have been non-UK tax resident in the ten tax years to 5 April 2026, the FIG regime will be available to you in the tax years from 2026/27 to 2029/30.

Under the FIG regime, you would not be subject to any foreign income/gains that you realise in the relevant period, even if these funds are brought to the UK. Further details of this are included below.

Any foreign income and gains arising after this four-year qualifying period will be fully chargeable to UK income tax and capital gains tax. You would, however, be able to claim double tax credit for any foreign tax paid on foreign income and gains, to prevent double taxation.

For the tax years in which you are able to benefit from the FIG regime, you would be able to also claim Overseas Workday Relief ("OWR") on employment income for duties performed outside the UK, subject to certain conditions and restrictions.

If you are planning to dispose of any assets that you currently hold overseas whilst UK tax resident (e.g. your 60% share in AI Inc), we would advise that these transactions are carried out in periods in which you are able to benefit from the FIG regime. This would ensure that any foreign capital gains realised would be outside the scope of UK tax.

Regarding, the sale of your share of your US property, CGT may be due if a non-UK gain is realised, unless it takes place within a tax year you are able to claim the FIG regime.

Rental income from the property would be eligible for the FIG regime, until 6 April 2030.

On the basis that your portfolio will be cashed in within the FIG qualifying period, any gains arising to fund the planned purchase of your UK property will be exempt.

Foreign Income and Gains Regime

Overview

The FIG regime was introduced from 6 April 2025, replacing the former remittance basis system. It provides a time-limited exemption from UK tax on foreign income and foreign capital gains for 'qualifying new residents ("QNR")'.

An individual is eligible for this regime as a QNR on the basis that the following conditions are met:

- Must be UK tax resident for the tax year in question; and
- Must not have been UK tax resident for the previous 10 consecutive tax years.

A new resident may benefit from the FIG regime for up to four consecutive tax years, beginning with the first year in which they qualify. If the individual is non-resident for any of those years, the 'lost' year cannot be used later.

During the FIG period, certain foreign income and gains are fully exempt from UK tax. These sums may be remitted to the UK tax-free.

The types of income and gains that are covered by the FIG regime, and are therefore exempt from UK tax, are:

- Profits of trades carried on wholly outside the UK;
- Overseas partnership profits related to foreign trade;
- Non-UK property rental income;
- Foreign interest and dividends;
- Foreign Royalties and other IP income;
- Offshore income gains; and
- Most foreign pensions and social security benefits.

Income is disqualified income if it is:

- certain income arising under the settlements legislation

- income from a security treated as situated in the UK where there has been a share exchange involving a non-UK incorporated close company – see section 138ZB TCGA 1992 and
- transferred income streams treated as income – see section 809AZB ITA 2007 and
- performance income
- certain types of pension income

For each tax year in which the FIG regime is claimed, individuals will lose their UK personal allowance and UK annual capital gains tax exemption. It is therefore imperative to ascertain whether the FIG claim is the most tax-beneficial treatment on a year-by-year basis.

In a year for which an individual makes any FIG claim/elections, they would be unable to claim foreign income or foreign capital losses against UK tax.

Once an individual is no longer eligible to claim the FIG regime, they are subject to tax on their worldwide income/gains (i.e. on an arising basis).

Application of FIG regime to your circumstances

General

As we understand you have been non-UK resident for over 10 consecutive tax years, you will satisfy the key condition to be treated as a qualifying new resident in 2026/27.

You will have access to the FIG regime for four consecutive tax years starting from 2026/27, provided you remain UK tax resident. As such, you should have access to the FIG regime from 2026/27 to 2029/30.

Any non-UK income/gains that you receive in the tax years 2026/27 to 2029/30 will be outside the scope of UK tax. In addition, any non-UK income/gains that you receive in this period can be remitted (i.e. brought into the UK with no additional charge to UK tax).

Once your four-year eligibility window closes, you will become subject to tax in the UK on your worldwide income and capital gains as they arise. As the FIG will no longer apply, you will once again be entitled to the UK personal allowance (depending on income levels) and capital gains tax annual exempt amount.

After the FIG period ends, you may claim foreign tax credit relief on foreign-taxed income, including US-taxed US employment income, to prevent double taxation. This relief is given only where foreign tax has actually been paid and only up to the level of UK tax on the same income.

Employment income received from AI Inc

On the basis that your income from AI Inc is foreign employment income, this will be relievable under the OWR rules. However, it should be noted that this may not receive full exemption from UK tax. This is detailed further below.

Potential sale of shares in AI Inc

If you decide to dispose of your 60% shareholding within the first four years of UK tax residence, and the FIG regime is claimed, any gain realised would be outside the scope of UK CGT. This is on the assumption that the shares in AI Inc do not derive more than 75% from UK land and property.

You would also be able to remit the proceeds of the sale to the UK with no additional UK tax charge.

If you were to dispose of your shareholding in periods where you are unable to claim the FIG regime (i.e. after 5 April 2030), the gain will be taxed in the UK on the arising basis, subject to the normal UK CGT rules.

If the sale of the shares occurs in periods where the FIG regime cannot be claimed, any gains arising from the sale may be eligible for Business Asset Disposal Relief ("BADR") and taxed at 10% up to the first £1,000,000 of gains.

Double tax relief can be claimed against any tax paid on the sale in the US. This relief is equal to the lower of the tax paid in the US and the tax due in the UK on that specific gain.

Sale of US property

If you were to sell your US property in ten years this would be outside the period of eligibility for FIG so would be subject to capital gains tax in the normal way. The gain would be calculated as the difference between sales proceeds and the original purchase price. You would receive relief for any US capital gains tax paid on the disposal.

US Rental Income

Any US rental income received in the qualifying FIG period would not be subject to UK tax, subject to a claim being made.

UK Property Purchase

In order to fund your UK property purchase, you are intending to liquidate your portfolio and realise capital gains on the assets held within the portfolio.

If you were to liquidate your portfolio within the first four years of your UK tax residence, a claim can be made under the FIG regime to exempt the non-UK gains from UK CGT. The proceeds from the sales of the non-UK assets can subsequently be brought to the UK without a charge to UK tax.

Any UK gains arising from any UK shares held within the portfolio will be subject to UK CGT regardless of whether a claim is made.

Administration of FIG Regime

The FIG regime does not apply automatically. You must make a claim via your Self-Assessment tax return for each qualifying year, on the basis that this relief is the most tax-beneficial course of action.

Income and gains must be nominated separately on your UK tax return, and all foreign source to which relief should apply must be included.

Overseas Workday Relief ("OWR")

Overview

From 6 April 2025, newly UK resident employees may be eligible for OWR on employment income which relates to employment duties performed outside the UK during a tax year for which they are a 'qualifying new resident'. Broadly, an individual falls within the rules of a qualifying new resident if, like the FIG regime, they commence UK tax residency after 10 consecutive years of non-UK tax residency.

Similarly to the FIG regime, OWR is available for the first four years of UK tax residency.

Broadly, OWR can exclude from UK tax a portion of non-UK employment income that corresponds to duties performed outside of the UK in a qualifying year. HMRC expects a workday apportionment on a 'just and reasonable basis' to determine the overseas portion. The element of the employment income that relates to UK workdays will be subject to UK tax.

In a qualifying year, the OWR is capped at the lower of 30% of qualifying employment income or £300,000.

Making an election for OWR to apply is not automatic and must be made on a year-by-year basis.

Making an OWR election in a tax year leads to the loss of the UK personal allowance and CGT annual exempt amount for that year.

After four qualifying years, similar to the FIG regime, the opportunity to claim OWR also ceases to apply.

Application of OWR to your circumstances

On the basis you will continue to receive foreign employment income once you return to the UK, OWR may be relevant to your affairs.

If you were to make an election for OWR to apply, and on the basis that an element of your work will be carried out overseas, you would be able to receive relief for your non-UK employment income in respect of your non-UK workdays, capped at the lower of £300,000 or 30% of the total employment income. The element of income that relates to your UK workdays will remain taxable in the UK.

Double tax relief will also be available if the employment income subject to tax in the UK is also subject to tax in the US.

Once you are no longer able to claim the FIG regime (i.e. from 6 April 2030), any remuneration you receive from this source whilst UK tax resident would be subject to UK tax, regardless of where the work is carried out.

PART C

Question 5

Entity classification

For UK tax purposes, overseas entity classification is determined by reference to the entity's legal characteristics and the economic/legal entitlement of members to profits, rather than by adopting the overseas tax classification. HMRC's approach is summarised at INTM180010 and INTM180020, and in RI 279 (transparent vs opaque; factors such as separate legal personality, who carries on the business, and whether members are entitled to profits as they arise or only on distribution).

Applying those factors to DFLLC:

- DFLLC has separate legal personality and contracts/holds assets in its own name (points towards opaque);
- profits may be retained and members receive value only via distributions at the manager's discretion (also points towards opaque rather than members being entitled to profits "as they arise");
- limited liability and manager-managed features are consistent with corporate-style treatment.

HMRC's published entity list and commentary for US LLCs (including post-*Anson* discussion) indicate HMRC will generally treat Delaware LLCs as opaque, while noting classification can be fact sensitive and dependent on the LLC agreement and relevant state law (see INTM180030/INTM180050). On the facts given, it is reasonable to conclude HMRC is likely to treat DFLLC as opaque.

Application of Hybrid Mismatch Rules

The UK hybrid and other mismatches rules are in TIOPA 2010 Part 6A. On the assumed facts, the UK payer obtains an interest deduction while there is no taxable inclusion anywhere because DFLLC is treated differently across jurisdictions. The relevant analysis is under Chapter 7 (hybrid payee deduction/non-inclusion mismatches).

Hybrid entity A "hybrid entity" is defined in TIOPA 2010 s259BE, broadly where the entity is regarded as a person for tax purposes in one territory but not in another. Assuming DFLLC is opaque in the UK but transparent in the US, DFLLC is a hybrid entity for Part 6A.

Gateway conditions (s259GA)

Chapter 7 applies if Conditions A–E in s259GA are met (HMRC overview at INTM555010). In summary:

- there is a payment under an arrangement (annual interest) (Condition A);
- the payee is a hybrid entity (DFLLC) (Condition B);
- the payer is within the charge to UK corporation tax (Northbridge) (Condition C);
- it is reasonable to suppose there is a deduction/non-inclusion mismatch attributable to hybridity (Condition D), given the stated US/Euronia treatments and the assumption that the interest is not taxed anywhere; and
- Condition E is satisfied because Northbridge and DFLLC are within the same group under common ownership/control via EHC (control group limb).

Mismatch outcome and extent (s259GB / s259BC)

A hybrid payee deduction/non-inclusion mismatch is quantified under s259GB by comparing the payer's relevant deduction with the amount of "ordinary income" arising in respect of the payment in a permitted period, to the extent the excess arises because the payee is a hybrid entity. "Ordinary income" is defined in s259BC.

On the stated assumption that the interest is not brought into charge to tax in any territory, the ordinary income amount is nil. The mismatch therefore equals the amount of Northbridge's relevant UK deduction for the interest for the payment period.

UK counteraction (s259GC)

Where the payer is within the charge to UK corporation tax, the counteraction is in s259GC: deny the payer a deduction for the payment period to the extent of the mismatch (HMRC confirms the deduction denial for the payer jurisdiction at INTM555110). Accordingly, Northbridge should disallow the interest expense in its UK corporation tax computation to the extent of the mismatch (expected to be 100% here). The annual interest is £6 million and Northbridge's UK corporation tax deduction should be denied by £6 million, assuming a full year's interest.

Question 6

UK transfer pricing implications

The UK transfer pricing rules are contained within Part 4 TIOPA 2010. The OECD Transfer Pricing Guidelines are a key interpretative text.

The rules apply where there is a provision between associated enterprises that departs from the arm's length position and gives rise to a potential UK tax advantage (s.147 TIOPA 2010). In practice, this means the rules operate as a "one-way street". Under the UK rules, transfer pricing adjustments can only increase taxable profits or reduce losses. For financial transactions, the arm's length provision is not limited to the interest rate. The UK rules consider the amount of debt advanced and the full suite of terms and conditions attaching to the debt and may involve asking whether independent parties would have entered into the arrangement at all (s.152 TIOPA 2010). This is particularly relevant to the debt quantum point flagged by the treasury analysis.

The following transactions are within the scope of the UK transfer pricing rules:

- Controlled transaction 1 - Atlas ParentCo's intra-group loan to Atlas UK (£100m, 7-year unsecured, 4%).
- Controlled transaction 2 - Atlas UK's intra-group loan to Atlas SubCo (£60m at 8%).
- Controlled transaction 3 - Atlas UK's guarantee of Atlas SubCo's third-party bank loan (£40m, 5-year), where the guarantee reduces the bank rate from 6.0% to 4.5% and no guarantee fee is charged.

Transaction 1

The interest rate of 4% is only part of the analysis. The treasury conclusion that third-party lenders would only have been prepared to lend £70m to a borrower with Atlas UK's characteristics suggests that the *quantum* of £100m is not arm's length.

Under an arm's length analysis, Atlas UK may be treated as having borrowed only the level of debt it could have raised independently (i.e. the loan would be delineated as a £70m loan for transfer pricing purposes). The practical UK consequence is that Atlas UK's interest deductions may need to be restricted, not because the coupon is wrong, but because the borrowing exceeds an arm's length amount.

Separately, the stated allocation of £20m to working capital, when group policy says working capital is normally funded via short-term revolving credit facilities, raises an accurate delineation issue. The working capital element may need to be analysed as a short-term revolver (or a series of renewed short-term facilities) rather than being priced and documented as part of a single seven-year term loan. This could affect the arm's length pricing and terms attributable to that slice, including the possibility of different fees, covenants, or repayment expectations that would apply under a true working capital facility. Such an analysis is consistent with Chapter 10 of the OECD TPG (including the example at paragraph 10.37).

Transaction 2

Atlas UK is the lender and the interest is taxable in the UK. The arm's length question is therefore whether the 8% coupon is supportable given SubCo's characteristics and the broader funding context.

The fact that the bank would have charged SubCo 6% absent the guarantee provides a useful reference point (while acknowledging it may not be an appropriate internal comparable, given different terms and the nature of third-party pricing). This may suggest that the 8% charged by the UK is above an arm's length interest rate. If 8% is above arm's length, Atlas UK's UK taxable income is higher than it would be at arm's length, so there is no UK tax advantage (meaning a UK transfer pricing cannot be made). Therefore, this transaction may be considered low-risk from a UK transfer pricing perspective (although the group and their tax advisors will need to consider any transfer pricing implications in Germany).

Transaction 3

The guarantee provided by Atlas UK is a provision for UK transfer pricing purposes.

The facts demonstrate clear economic value: the guarantee reduces the bank's interest rate from 6.0% to 4.5%. Not charging a fee is therefore likely to understate Atlas UK's UK taxable income and may give rise to a UK tax advantage. An arm's length analysis would consider whether an independent guarantor would charge a fee and how that fee would be priced.

The interest saving is a useful starting point for considering the arm's length pricing for the guarantee because it provides a ceiling on what the borrower would rationally pay (a fee that removes the entire benefit would be unlikely

to be arm's length). Other approaches could include an expected loss/cost of capital framework or benchmarking against comparable guarantee fees.

Information to include in the local file

Given the Atlas group's consolidated revenue exceeds €750 million, Atlas UK should maintain robust transfer pricing documentation in a local file format consistent with the OECD Chapter V / Annex II approach and UK "specified records" expectations for large groups. The local file should be prepared contemporaneously (and updated annually) so it can be provided promptly to HMRC on request.

For these financial transactions, the local file should typically include:

Transaction identification and contracts

A clear description of each controlled transaction (ParentCo loan; SubCo loan; guarantee)

- This should identify the parties, amounts, dates and purposes of the Atlas ParentCo loan, the SubCo intra-group loan and the guarantee arrangement, and should explain how each transaction fits within the group's treasury framework.

Copies of key legal documents including the executed intercompany loan agreements, any schedules/side letters, and the guarantee documentation provided to the bank.

Functional analysis / delineation

The economically relevant characteristics and an accurate delineation analysis.

- This should cover maturity, repayment terms, security, covenants, currency, payment mechanics, and the allocation of the ParentCo loan between acquisition funding and working capital.
- It should also explain, by reference to the group's financing policy, whether the working capital element is more appropriately delineated as a short-term revolving facility (or a series of renewals) rather than a seven-year term loan, and what the implications are for pricing and terms.

A functional and risk analysis relevant to treasury and financial transactions.

This should describe which entity makes and controls the key decisions, which entity bears and manages credit and funding risk, and which entity has the capacity to assume those risks. For the guarantee, it should clearly set out what risk Atlas UK is assuming and what benefit is being conferred on SubCo.

Arm's length method selection + support

The arm's length pricing methodology and supporting evidence for each transaction.

- This should explain the selected methods for benchmarking interest rates (including credit analysis and comparables) and the method for determining an arm's length guarantee fee.
- It should also explain how the observed third-party pricing evidence (6.0% without guarantee vs 4.5% with guarantee) has been used in the analysis.

Debt capacity / quantum evidence

The treasury analysis supporting the **£70m** standalone debt capacity, forecasts/cashflow support, and how that feeds into the arm's length provision under **s152** (amount and whether independent parties would lend/borrow that quantum on those terms).

Financials / computations

Summary schedules reconciling the financing positions to the accounts and UK tax computations (interest expense, interest income, any TP adjustments or confirmations of no adjustment).

Question 7Application of double tax relief to the Freedonia PE profits for 2025

Orion is UK resident and within the charge to UK corporation tax. As a UK-resident company, Orion is chargeable on its worldwide profits (CTA 2009 s5). The profits attributable to a foreign permanent establishment are therefore brought into Orion's UK corporation tax computation on the default basis, computed on UK tax principles. On the facts, Orion's total taxable trading profits are £8m, including £2m attributable to the Freedonia PE (on UK principles).

The UK–Freedonia treaty (assumed to reflect the OECD Model) allocates and limits taxing rights between the two states. Under the OECD Model, Article 5 defines a PE and Article 7 allocates taxing rights to Freedonia (as the source state) on the PE profits, but it does not prevent the UK (as the residence state) from also taxing those profits under its domestic law.

Orion should be able to claim foreign tax credit relief for Freedonia corporate tax suffered on the PE profits, under the UK double tax relief rules (TIOPA 2010 Part 2). The credit is capped. Orion cannot credit more than the UK corporation tax attributable to the same profits (i.e. UK tax on the UK-measured PE profit). Here, the Freedonia PE profit is £2m and Freedonia tax paid is £400,000 (20%). As the UK corporation tax rate is higher than 20%, the UK tax attributable to £2m will exceed £400,000, so Orion should be able to credit the full £400,000 but will still suffer a residual UK "top-up" on the PE profit. Using the headline UK Corporation Tax rate (25%), Orion will ultimately be liable to £100,000 UK CT on the PE Profits after double tax relief (£500,000 - £400,000).

The 2024 PE loss fact is consistent with the default worldwide basis (i.e. no foreign PE exemption election applying in that year). Because the PE is not a separate legal entity, its results form part of Orion's trade; as a result, a PE loss can reduce Orion's overall trading result for the period under the default computation. If the trade (on a worldwide basis) is loss-making overall, Orion may be able to claim relief for that trading loss against total profits under CTA 2010 s37. However, CTA 2010 s37(5) prevents a s37 claim where, in the loss-making period, the company carries on the trade wholly outside the UK. On the facts, Orion is described as a UK trading company that has "expanded its operations" into Freedonia, which supports the assumption that the trade is carried on partly in the UK and partly overseas, so the s37(5) restriction should not prevent relief on these facts.

The foreign PE exemption regime

A UK-resident company may elect for profits and losses attributable to its foreign PEs to be exempt from UK corporation tax under the foreign PE exemption regime (CTA 2009 s18A). If the election applies, foreign PE profits (and losses) are excluded from the UK corporation tax computation, broadly removing the need to compute foreign tax credits for exempt PE profits. The election is irrevocable and is made at company level. It applies to all of that company's foreign PEs (including those established in future years), so Orion's expectation of creating additional foreign PEs is relevant to the decision.

The exemption election is subject to a transitional rule: any net foreign PE losses in the prior look-back period that have not been matched by subsequent PE profits create an 'opening negative amount', and PE profits remain taxable (with credit relief) until that amount is matched; on these facts, the 2025 PE profit more than offsets the 2024 PE loss so the opening negative amount should be nil and the exemption could apply immediately from the first exempt period.

The election is often beneficial where foreign PE profits are expected to be consistently taxable overseas at a lower rate than the UK, because under the default credit method the UK will typically levy a residual "top-up" (as in 2025: 20% Freedonia tax vs a higher UK rate). Exemption would remove UK tax on those PE profits, eliminating that top-up. A further advantage is administrative simplicity: exemption reduces the ongoing compliance burden of tracking foreign taxes and computing/claiming credit relief each year for PE profits (although PE profit attribution on UK principles will still often be needed for other purposes).

The main disadvantage is the loss-side trade-off: once exemption applies, foreign PE losses arising thereafter are generally excluded from the UK computation and therefore are not available to shelter UK taxable profits. Orion has already experienced a £1m PE loss in 2024 (relieved under the default regime). While that historic outcome is not the decisive factor for 2025, it highlights that early-stage overseas expansion can be volatile; and because the election applies across all foreign PEs, the board must consider whether anticipated future PEs may be loss-making in initial years. If so, remaining within the default regime could be preferable to preserve the potential UK cash-tax benefit of loss relief, even though Orion would continue to suffer UK top-up tax on profitable PEs in lower-tax territories.

On the stated facts, Freedonia taxes at 20% and the PE is expected to remain profitable. That points toward exemption being beneficial in relation to Freedonia because it would remove the recurring UK top-up on PE profits. However, because Orion expects to establish further PEs, the decision should be supported by modelling expected

profit/loss profiles and local tax rates of those future PEs, to balance (i) the value of UK loss relief against (ii) the recurring UK top-up tax that exemption would eliminate.

Question 8

The common law concept of domicile requires that every individual has a domicile in a specific legal jurisdiction, for example in England and Wales or in Scotland. Under English law, whilst an individual must always be domiciled somewhere, it is only possible to have one domicile at a time. Common law domicile does not, however, equate to habitual residence and the place where a person is domiciled is not automatically simply the jurisdiction of their habitual residence or their citizenship.

There are three types of domicile:

1. “Domicile of Origin”: A domicile of origin is acquired at birth. It is usually that of the individual's father. Domicile of origin, is particularly adhesive, however, it may be displaced by domicile of dependency or choice.
2. “Domicile of Choice”: A domicile of origin may be displaced by a domicile of choice in another jurisdiction. To acquire a ‘domicile of choice’ the individual must have attained the age of 16 and be physically present in that jurisdiction and have a fixed and settled intention to live there permanently or indefinitely.

If an individual does establish a domicile of choice in another country, and that domicile of choice is abandoned for any reason without being replaced by the acquisition of another domicile of choice, their domicile of origin automatically revives. This rule applies (whether or not the person has any present links with that country). The domicile of origin then remains their domicile until they have a fixed and settled intention to acquire another domicile of choice.

3. “Domicile of Dependency”: An unmarried child under the age of 16 has a domicile of dependency which normally follows that of their father.

“Deemed” domicile: “15 out of 20 rule”

The definition of domicile has been extended for certain UK tax purposes.

From 6 April 2017, an individual will become deemed domiciled if they have been resident for 15 out of the 20 years ending with the tax year immediately preceding the relevant tax year. The individual becomes deemed domiciled at the beginning of the 16th tax year (whether resident or not in that year).

Analysis

Common law domicile

Michael's parents had both moved from Manchester to New South Wales shortly before Michael's birth. There is nothing in the question to indicate that they wished to settle permanently in Australia at that point. Indeed as the couple later moved from New South Wales to New Zealand for two years, it suggests that there is unlikely to be sufficient attachment to a particular jurisdiction at the time of Michael's birth to indicate that his father had acquired a domicile of choice in Australia at that point. On this basis Michael is likely to have been born with an English ‘domicile of origin’.

Turning to a consideration of ‘domicile of dependency’ It is perhaps possible that at some point before Michael had attained the age of 16, that Michael's father had acquired a domicile of choice in Australia, however, again this appears unlikely, as his parents have maintained a UK flat which they view as a potential final home.

While further investigation into his parents circumstances would be necessary, for example a detailed review of their facts and circumstances and particularly their intentions in the period before Michael attained the age of 16, it appears likely that Michael was born with an English domicile of origin and that he retained this until the age of 16.

It is possible that Michael acquired an Australian ‘domicile of choice’ in the period from attaining the age of 16 until he left Australia, to live in Japan. However, there is little evidence in the question to support this, for example he has never acquired an Australian property and left Australia shortly after university.

Factors such as an individual's intentions (for example, where they intend to retire), their wills, citizenship, permanent place of residence, and business, social and family commitments etc. will be taken into consideration when determining whether a domicile of choice has been acquired.

In conclusion, although Michael was brought up mainly in Australia and went to university there, the fact he left Australia at a relatively young age (in his early twenties) and lived several years in Japan, before departing directly from Japan to London, suggests he may not have acquired a domicile of choice in ‘Australia’. As to does the fact Michael has not yet decided on where he would like to settle if he were to return to Australia. In summary, the

information gathered suggests that Michael was born with an English domicile of origin, which he has retained. Nevertheless, as the question of domicile requires a comprehensive multifactorial analysis, further detailed investigation is required to arrive at a more definitive determination.

Deemed domicile

As Michael became UK resident in May 2012 he has only 11 prior years of UK tax residence in 2024/25, he therefore does not meet the condition to be treated as 'deemed domiciled'.

Question 9Prior to 5th April 2025

Prior to 5th April 2025, Mr Lefebvre as a remittance basis taxpayer would not be assessed on income or gains arising in Lefebvre Inc a non-resident company. If Lefebvre Inc had paid dividends in this period Mr Lefebvre, would only be taxable on those dividends to the extent these were remitted to the UK.

Post 6th April 2025

Post 6th April 2025, following the abolition of the remittance basis, Mr Lefebvre would be subject to tax on the worldwide arising basis. Thus he would be liable to taxation on an arising basis if Lefebvre Inc paid dividends. However, it is also necessary to consider the Transfer of Assets Abroad anti-avoidance legislation, that if applicable would assess the undistributed income arising in Lefebvre Inc on Mr Lefebvre on an arising basis.

HMRCs guidance explains that in broad terms there are certain basic features which must be present before a charge can arise under the transfer of assets abroad legislation:

- there must be a relevant transfer
 - there must be income that becomes payable to a person abroad as a result of the transfer and/or one or more associated operations
 - there must be an individual who is the subject of a potential charge
 - the individual must be UK resident
- Where these features are present, and the detailed conditions for one of the charges are met, the provisions impose a charge to income tax on the individual to whom the income is treated as arising.

The transfer of assets provisions impose a charge to income tax on individuals who have:

- power to enjoy income, S.720 ITA 2007 (**the 'income charge'**) or
- receive or are entitled to receive capital sums, or
- receive benefits

as a result of a 'relevant transaction'.

The charges only apply if a 'relevant transfer' occurs, and they operate by reference to the income of a person abroad that is connected with the transfer or another relevant transaction.

Turning to the circumstances of Lefebvre Inc, Mr Lefebvre's subscription of £100 million for 100 \$1 A ordinary shares, would potentially qualify as a 'relevant transfer'. In this regard there is no requirement that the transfer is made from the UK to offshore, offshore to offshore transfers are currently within the ambit of the legislation.

The second condition is also met, as because of the 'relevant transfer', rental income arose in Lefebvre Inc.

The third and fourth conditions are also met, Mr Lefebvre is an individual subject to a potential charge and he is a UK resident. There is no requirement that the 'Transferor' Mr Lefebvre, be UK resident at the time of the transfer.

Where these four conditions are met, the ToAA legislation imposes a charge to income tax under S.720 ITA 2007 (**the 'income charge'**) where the individual has 'power to enjoy' the income. As Mr Lefebvre is the sole shareholder of Lefebvre Inc, he can exercise his power as shareholder to ensure a dividend is paid to him, so therefore, Mr Lefebvre has 'power to enjoy' the income.

'Motive defence'

A charge to tax under the ToAA legislation may be avoided where the 'motive defence' is satisfied.

HMRCs guidance at INTM602800 sets out the motive defence:

An individual is not liable to income tax in a year by reference to the relevant transactions if the individual satisfies an officer of HM Revenue and Customs that Conditions A or B are met.

The two conditions are mutually exclusive. It is not possible for a case to get into Condition B unless Condition A is not met.

Condition A

Condition A is that it would not be reasonable to draw the conclusion, from all of the circumstances of the case, that the purpose of avoiding liability to taxation) was the purpose or one of the purposes for which the relevant transactions or any of them were effected.

Condition B

If Condition A is not met, then Condition B is that all the relevant transactions were genuine commercial transactions and it would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions was more than incidentally designed for the purpose of avoiding liability to taxation.

When determining whether the conditions are satisfied, all the circumstances of the case are to be considered, including the intentions and purposes of any advisor who designs, effects or provides advice in relation to any relevant transaction.

Conclusion

In relation to Lefebvre Inc, Mr Lefebvre clearly satisfies the ToAA conditions and prima facie fails to qualify for exemption under either condition A or B of the motive test. Condition A is failed as avoiding UK taxation was a purpose of the structuring of the acquisition of property, and condition B is failed since the transaction included a number of steps inserted purely for UK tax avoidance motives. HMRC may therefore argue that the underlying income of Lefebvre Inc may be assessed on Mr Lefebvre on an arising basis.