THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2025

MODULE 2.09 – UNITED KINGDOM OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

For UK tax purposes, the residence of a company is determined by reference to its central management and control (CMC).

A company is deemed to be tax resident in the UK if it is incorporated in the UK (unless overridden by a treaty), or if it is centrally managed and controlled in the UK. As Garden Ltd was incorporated in the UK, it should be considered UK tax resident, unless its central management and control is in another jurisdiction which also applies a similar test.

CMC is a factual test, and is determined with reference to several case law tests, which require that judgement is exercised by the directors (i.e., not just rubber stamping) and CMC is determined to be where the decisions are actually made. The parent/shareholder may influence the directors without removing CMC.

Under SP1/90, HMRC have set out that when considering CMC, they will look at:

- Whether the directors actually exercise CMC
- If they do – where do they exercise it?
- If they do not – who exercises CMC and where?

The concept of central management and control was established in De Beers Consolidated Mines Ltd v Howe in 1906, where it was held that a company is resident where its real business is carried on, which is where the central management and control actually abides.

Key principles from case law include:

- CMC is a question of fact. It is determined by where the highest level of control and strategic decision-making takes place, not necessarily where day-to-day operations occur.
- In Unit Construction Co Ltd v Bullman, it was held that CMC was in the UK because UK-based directors made decisions, even though the company was incorporated abroad.
- In Wood v Holden [2006], the court found that CMC was not in the UK because the foreign directors exercised genuine decision-making authority, even though they followed UK tax advice.

In the case of Garden Ltd, although it is UK incorporated, the relocation of the CEO and CFO to Jardinia, and the fact that all board meetings and strategic decisions would be made there, strongly suggests that CMC will shift to Jardinia.

Where Garden Ltd is deemed resident in both the UK and Jardinia under local domestic law, it will be dual resident, subject to the application of the tie breaker clause in the treaty.

In the case of Garden Ltd, there is some ambiguity as to where central management and control is currently exercised. Board meetings are held in both the UK and Jardinia, and strategic decisions are increasingly made in Jardinia.

The potential appointment of a Jardinian Managing Director and relocation of the CFO to Jardinia would likely push the CMC to Jardinia, such that Garden Ltd would become Jardinian tax resident under the concept of CMC.

If a company is incorporated in the UK but is centrally managed and controlled in another jurisdiction, it may be considered tax resident in both jurisdictions under local law. As such, the company is dual resident, and therefore the provisions of the treaty need to be considered to determine the residence of the company.

The treaty considers a number of factors (including the place of effective management), and where the company is determined to be resident under treaty is conclusive for UK tax purposes (i.e., the treaty may override UK domestic law and so the company would be treated as not UK tax resident for the purpose of all UK taxes covered by the treaty).

Garden Ltd would then be considered resident in both the UK and Jardinia under domestic law and so will be dual resident. The UK–Jardinia double tax treaty should apply in this situation, which contains a tie-breaker clause that assigns residence to the jurisdiction where the company's place of effective management is located. This is a narrower concept than CMC and focuses on where key management and commercial decisions necessary for the conduct of the business are made.

Given the facts presented, it appears likely that the place of effective management should be Jardinia (on the assumption that board meetings are held in Jardinia going forward), and therefore that Garden Ltd should be considered Jardinian tax resident under the treaty. As such, it would cease to be UK tax resident.

Part 2

If Garden Ltd ceases to be UK tax resident, it may trigger an exit charge under the UK's Corporation Tax rules.

UK residents are subject to Corporation Tax on their worldwide income, whereas non-resident companies are only taxable on profits from trade under a UK permanent establishment (PE), or from UK real property, or real property companies. If Garden Ltd continues to carry on a trade in the UK, it may still have a UK PE.

Where Garden Ltd ceases to be UK tax resident, it will be deemed to dispose of all its assets and reacquire them at market value at the moment immediately before it ceases to be UK tax resident.

Where there is a latent gain in these assets, the gain should be triggered and will be subject to UK Corporation Tax. The base cost for each of the assets needs to be considered in order to calculate the gain on the deemed disposal. UK warehouse – the base cost of the UK warehouse should total the £800,000 acquisition value, plus the £400,000 improvement works, as these would be considered capital expenditure, which is included in the base cost for calculating the gain.

Distribution Centre – the base cost here should only include the £1 million acquisition value, as the annual upkeep cost should not be considered a capital expense.

IP rights – the IP rights were acquired for £5 million, but Garden Ltd is recognising £500,000 of amortisation per year for both accounting and tax purposes, so after nine years, the base cost should be £500,000 (being £5 million – 9 x £500,000 = £4.5 million of amortisation).

Certain assets may be excluded from the exit charge, such as UK land and property (which remains taxable under non-resident rules), or assets used in a UK PE.

As such, Garden Ltd should suffer an exit charge on the EU distribution centre and on the IP rights, but not on the UK warehouse, on the basis that this is UK property and therefore is excluded from the calculation of this charge.

Asset	Market value	Base cost	Gain
UK warehouse	£2,000,000	£1,200,000	£800,000 (excluded)
EU distribution centre	£1,500,000	£1,000,000	£500,000
IP rights	£3,000,000	£500,000	£2,500,000

Therefore a gain of £3 million should be realised, which is subject to tax at the UK CT rate of 25%, resulting in an exit charge of £3 million x 25% = £750,000.

Under certain conditions, Garden Ltd may elect to defer the exit charge and pay it in instalments over six years under CTA 2009 Sch 3ZB. The key relevant conditions are that Garden Ltd must continue to hold the assets, and that the transfer of residency must be to an EU or EEA country (which would be the case here, given the potential migration is to Jardinia).

There is a potential clawback of this deferral where Garden Ltd disposes of the assets within the six years following the migration.

There are also various anti-avoidance provisions which may apply, and so it is important that the commercial and non-tax reasons for the migration are well documented. There may also be implications for the company's transfer pricing policies, where it undertakes transactions with related parties.

Question 2

To: Tax Partner
From: Tax Adviser
Re: Tax implications for Jake and Ella.

Part 1

UK tax residency is determined by application of the UK statutory residency test (Sch45 FA2013), the tests are hierarchal.

Automatic overseas

Jake has been UK resident in one or more of the previous three tax years (2022/23), and would be automatically non-resident if present in the UK for fewer than 16 days. Jake exceeded this day count. Jake did not satisfy the work abroad condition. The automatic overseas tests are not satisfied for 2024/25.

Automatic UK

Jake would be automatically UK resident if present in the UK for 183 days or more during 2024/25. Jake spent less than 183 days in the UK and the first test is not satisfied.

The second test requires consideration of whether Jake has a UK home. Jake has a family home in the UK which is available to him, however he only spent 26 days at the home in 2024/25 (less than the 30 days required). Further he spent more than 30 days in homes in other jurisdictions. The second test is not satisfied.

The third test is not satisfied as Jake does not work full time in the UK.

Sufficient ties

As neither automatic overseas nor automatic UK test are met, we must consider sufficient ties:

1) Family – Yes, Rose is a minor child. She is UK resident – the exception for the purposes of the sufficient ties test does not apply, as she spends more than 20 days in the UK outside of term. Jake sees Rose on 76 days in 2024/25 in the UK, satisfying the tie.
2) Accommodation – Yes, Jake has a house, that is available for continuous period of at least 91 days and he spent 26 nights during 2024/25.
3) Work – No, Jake did not work in the UK during 2024/25.
4) 90-day – Yes, Jake spent greater than 90 days in the UK in 2022/23, whilst UK resident.
5) Country – No, Jake spent 90 days in another jurisdiction.

Jake has three ties - family, accommodation and 90-day tie in 2024/25.

Day count

A day counts as presence in the UK, when present at midnight. Jake has been present at midnight 26 times at his home and a further night in a hotel. This is 27 days.

Deemed days

Jake visited the UK on 49 occasions without staying at midnight, (50 days were intended however on one occasion due to travel disruption Jake stayed in a hotel, which is thus included in the day count, above.). Deeming rules apply as:

- Jake has been UK resident in one or more of the previous 3 tax years – (2022/23).
- He has at least 3 UK ties for 2024/25 (family, accommodation and 90-day tie).
- He has been present in the UK on more than 30 days in 2024/25, without being present at midnight (Jake has 49 “qualifying days”).

As Jake exceeded 30 days, all subsequent days are treated as days in the UK. Therefore, Jake has 19 deemed days. Overall days spent in the UK, is 46.

Exceptional circumstances

Travel disruption is not considered exceptional circumstances and will not reduce the day count.

Application of table A

As Jake has been UK resident in one or more of the previous 3 tax years (Table A) applies. Jake has three ties and spent 46 days in the UK. Jake is UK resident for 2024/25.

Part 2

Deemed domicile –s.835BA(4) ITA 2007

Jake has spent many years in the UK and it must be considered if he is deemed domicile. Deemed domicile, under the 15/20 rule, begins from the start of the 16th consecutive tax year of residence.

Applying the 20 years look back test, Jake was deemed domicile from the start of 2023/24. However, he was non-resident for 2023/24. Jake would need to be non-resident for 6 years to break the deemed domicile and he remains deemed domicile in 2024/25.

20-years look back - 2023/24

	Resident years	Non-resident years
2003/04-2004/05		2
2005/06-2010/11	6	
2011/12-2013/14		3
2014/15-2022/23	9	
Total	15	5

20-years look back - 2024/25

	Resident years	Non-resident years
2004/05		1
2005/06-2010/11	6	
2011/12-2013/14		3
2014/15-2022/23	9	
2023/24		1
Total	15	5

Jake will be taxed on the arising basis on his worldwide income and gains in 2024/25 and will be unable to use the remittance basis.

Treatment of remittances during 2023/24

Anti-avoidance rules apply regarding "temporary non-residence" (s.832A ITTOIA 2005). Jake is temporary non-resident as:

1) He had sole UK residence for at least four of the seven tax years before becoming non-UK resident.
2) There was a residence period that was not sole UK residence (2023/24).
3) He returned to the UK and resumed sole UK residence within five years – Jake is UK resident for 2024/25 and not resident or treaty resident in any other jurisdiction.
4) He remitted foreign income to the UK during his non-residence, which arose in a tax year when the remittance basis was used.

Jake remitted £100,000 of interest income that arose whilst UK resident and claiming the remittance basis. This is taxable in 2024/25. It is not relevant that Jake is unable to claim the remittance basis, due to his deemed domicile, as the income arose in a year the remittance basis was used.

The £50,000 inheritance represents clean capital and is not taxable.

Ella

Ella has UK domicile and taxable on the arising basis. Ella received a dividend during 2023/24 from Star Designs Ltd, whilst non-resident. The Income Tax liability on the dividend would been limited by s.811 ITA 2007.

Ella has been temporarily non-resident, as she was resident in at least four of the seven tax years prior to 2023/24, and was non-resident for less than five years. A dividend received from a close company, of which Ella owns more than 5% and was paid from pre departure profits, is caught by the temporary non-residence rules and taxable in 2024/25.

Part 3

From 6 April 2025, the concept of domicile and remittance basis of taxation has been abolished. A new regime, “Foreign Income and gains regime” (“FIG”), will be in force.

The new regime allows foreign income and gains arising in the first 4 tax years of residence (regardless of domicile status under the old rules) to be non-taxable in the UK. From the 5th year, the individual would be fully taxable in the UK on their worldwide income and gains. However, neither, Jake nor Ella would benefit from this four-year period, as a qualifying new resident must not have been UK resident in the prior 10 years.

A temporary repatriation facility will apply from 2025/26 to 2027/28, whereby a previous remittance basis user (such as Jake) can designate unremitted foreign income and gains as at 5 April 2025 and pay a flat rate of UK tax (12%, or 15% for elections made in 2027/28) on the amounts, regardless of if they are remitted.

PART B

Question 3

To: Tax Director, Corinth Group
From: Tax Adviser
Date: [Dec 25]
Subject: UK Tax Treatment of Loan Relationship Transactions and FX Hedge

Part 1

The UK loan relationship rules are contained in Part 5 of the Corporation Tax Act 2009 (CTA 2009). These rules govern the tax treatment of profits and losses arising from loan relationships for companies within the charge to UK Corporation Tax.

A loan relationship exists where a company is a party to a money debt arising from a transaction for the lending of money (s.302 CTA 2009).

The fundamental principle is that tax follows the accounting treatment (s.307 CTA 2009). Therefore, credits and debits recognised in the company's profit and loss account under generally accepted accounting practice (GAAP) are brought into account for tax purposes, subject to specific statutory adjustments.

Scenario 1 – Alpha waives loans owed by Delta and Gamma

The companies in this scenario should be considered "connected" under s.466 CTA 2009 as they are all 100% owned within the Corinth Group.

The waiver of the loans owed to Alpha Ltd by Delta Ltd and Gamma Ltd involve connected companies (per the definition in s466). Under s.356 and s.358 CTA 2009, the accounting entries for these releases should be overridden for tax purposes.

For Alpha Ltd, any debit arising from the impairment or release of the loans is not deductible because the debtor and creditor are connected.

For Delta Ltd, any credit arising from the release of the liability is not taxable. This ensures that no tax advantage arises from intra-group debt forgiveness (and therefore the waiver between UK companies is tax neutral).

The position for Gamma Ltd should also be considered under local law; there will be no UK Corporation Tax implications for Gamma Ltd.

Scenario 2 – Alpha transfers a loan receivable from Epsilon to Zeta

Alpha Ltd transfers a $3 million loan receivable owed by a non-UK group company, Epsilon SA, to Zeta Ltd with a fair value of $1 million.

As Alpha Ltd and Zeta Ltd are within the same group (defined under s170 TCGA 1992), the loan relationship should be transferred at its notional carrying value, such that no gain or loss arises to Alpha Ltd and Zeta Ltd inherits Alpha Ltd's tax basis in the loan.

Given that the debtor (Epsilon SA) is also a connected company, any impairment losses should not be treated as tax deductible, and any reversal of such impairment should not be taxable.

Zeta Ltd now holds a foreign currency asset. Under s.328 CTA 2009, any foreign exchange gains or losses arising on this monetary item will be brought into account for tax purposes as part of the loan relationship rules.

The position with respect to interest deductibility should be considered by Zeta Ltd on a prospective basis, but as the entities are in the same group, it is expected that there should be no net impact on for example, any CIR disallowance.

Part 2

Designated currency election

Depending on the other assets and liabilities held by Zeta Ltd, it may be possible to make a designated currency election, so that it is treated as having a USD functional currency for tax purposes.

In order to be permitted to make such election, Zeta Ltd would need to qualify as an investment company, and meet either the significant proportion condition, or the consolidation condition.

'Investment company' is defined in s17(3a) of CTA 2010 as a company whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived from those investments.

Where Zeta Ltd is an investment company, it would need to either meet the consolidation condition or have a significant proportion of its assets and liabilities denominated in USD. As the Corinth Group is UK headed, it is unlikely that the consolidation condition would be met.

It should therefore be determined whether a significant proportion of a company's assets and liabilities are denominated in the designated currency. This is not clearly defined and should consider the wider position of Zeta Ltd (including the impact of monetary and non-monetary assets).

Further work would be needed to confirm that the conditions are met, but where a valid designated currency election is made, Zeta Ltd's foreign exchange gains and losses would be computed for tax purposes in USD from the date of the election.

To make the election, Zeta Ltd must specify the date on which the election is to take effect, and the election may not be made retroactively.

<u>Foreign exchange contract</u>

If Zeta Ltd enters into a foreign currency forward contract to manage the exchange risk on the loan from Epsilon SA, this forward will generally fall within the derivative contract rules in Part 7 CTA 2009.

By default, the tax treatment of the derivative follows the accounting treatment, so gains and losses on the forward contract will be recognised in the profit and loss account and taxed accordingly. As a monetary asset, the derivative contract would be recognised in the accounts at fair value with any movements in fair value recognised.

Where these movements flow through Other Comprehensive Income in the accounts, there should be no impact of such movement for tax purposes. However, where movements flow through the income statement, this can create volatility if the foreign exchange hedge and the underlying loan are not aligned for tax purposes (i.e., due to the requirement to recognise the related party loan at amortised cost for tax purposes).

To mitigate this, Zeta Ltd may elect to apply the Disregard Regulations (SI 2004/3256). These regulations allow companies to disregard certain fair value movements on hedging instruments for tax purposes, provided the hedge is designated for accounting purposes. Instead, the tax treatment is aligned with the underlying hedged item, which should help to reduce any tax rate volatility.

Given that the hedging instrument in this case is a foreign currency forward contract, the relevant provision would be Regulation 7. If the foreign currency forward contract only covers part of the expected loan proceeds, then only that portion should be impacted by such election.

The election must be made by the later of six months from the start of the accounting period where fair value accounting first applies, or six months from the forward contract being entered into.

The previously disregarded gains and losses on the forward contract would be brought back into account for tax purposes at the point where there is a termination event. In this case, that is likely to be when Zeta Ltd ceases to be party to the loan.

Question 4

To: Tax Partner
From: Tax Adviser
Re: Thunder Trust

Part 1

The residence status of Thunder Trust for UK tax purposes is determined by the residence of the trustees. The trustees are treated as a single person for tax purposes. Thunder Trust's current trustees are all UK residents; therefore, the Thunder Trust is UK resident for Income Tax and CGT.

Under proposal A there is a mixed residency status of the trustees. If at least one trustee is UK resident (John and Maria) and at least one trustee is a non-UK resident (Fernando and Alice), then consideration must be given to the residence of the settlor at time of creating the trust.

The settlor of Thunder Trust was neither UK resident nor domiciled at the time of creating the trust. Therefore, the Thunder Trust would be treated as non-UK resident for Income Tax and CGT under proposal A.

Part 2

Proposal B would appoint Mr. Jones as the sole trustee of Thunder Trust, and he is non-UK resident. The general position for determining residency of trusts would mean the Thunder Trust would be non-UK resident, (as all trustees non-UK resident).

However, there is an exception to this general rule, outlined at s.475(6) ITA 2007 and s.69(2D) TCGA 1992. Thunder Trust would be considered UK resident if Mr. Jones acts as Trustee for Thunder Trust, in the course of a business which Mr. Jones carries on in the UK via a branch or agency there.

Mr. Jones is a non-corporate trustee and therefore consideration is regarding branch and agency, rather than permanent establishments. However, the tests applied have been confirmed by HMRC to be similar.

There are three questions that must be considered, which will depend on the facts and circumstances on a trust-by-trust basis:

1) Is the trustee carrying on a business in the UK?

   Mr. Jones is undertaking the business of providing professional trustee services for a fee and he is carrying out those business activities in the UK.

2) If the trustee is carrying on business in the UK, is that via a branch or agency in the UK?

   Mr. Jones has a UK office which will constitute a branch in the UK. Mr. Jones also has employees who work through the UK office, such that he may also have agents in the UK. However, as branch is satisfied this is not considered further.

3) If so, is the trustee carrying on the activity of being a trustee of the Thunder Trust in the course of its business through a branch or agency?

   Mr. Jones has indicated that he would not be carrying out activities related to the Thunder Trust through the UK office. However, Mr. Jones will be meeting the UK beneficiaries. "Carrying on the activity of being a trustee" has been considered by HMRC and in line with the commentary to the OECD MTC, it refers to core activities of a trustee and not those which are auxiliary or preparatory. Generally, core activities are considered to include activities such as setting the over-arching investment strategy and deciding how trust income is dealt with. HMRC guidance notes that meetings with beneficiaries may be considered only auxiliary activities, however it will depend on the individual circumstances.

On the facts it appears Thunder Trust will be non-resident under proposal B, however there is insufficient detail to conclude conclusively, and further information will be required regarding the extent of the trustee activities in the UK.

Part 3

Exit charge

If Thunder Trust were to become non-UK resident, the trustees would be deemed to have disposed of and immediately reacquired all the settled property at its market value immediately before the exit from the UK – s.80 TCGA 1992.

There is different treatment for each of the assets held by the Thunder Trust.

UK land acquired after 6 April 2019

The UK land was acquired on 6 April 2020. This interest in UK land, would be subject to the non-residents CGT charge under s.1A(3) TCGA 1992 and taxable on disposal even after exit from the UK.

The interest in land would be subject to the exit charge, however an election can be made to defer the gain, s.80A TCGA 1992. If the election is made the exit charge gain is treated as accruing at the same time as the gain on any subsequent disposal.

Antiques/painting

The exit charge would apply to the antiques and painting, and a deemed disposal needs to be calculated using the market value at the date of exit.

Due date

The due date for payment of the exit charge is the 31 January following the tax year of exit.

Income Tax and CGT after migration

Whilst Thunder Trust was UK resident it was liable to Income Tax and CGT on its worldwide income and gains.

If Thunder Trust is non-resident in 2024/25, then the liability to UK tax is restricted to UK source income and the extent of the liability depends upon the residence of the beneficiaries.

Non-UK resident trusts will not be liable to UK CGT except on disposal of UK land or property (or assets deriving their value from such) or if trustees carry on a trade in the UK and dispose of assets in the UK used for that trade. In certain circumstances, capital gains made by overseas trusts can be charged on the settlor or beneficiaries.

PART C

Question 5

Part 1

The transfer of the trade, including tangible and intangible assets, should generally be tax neutral on the basis that RAM Ltd and Apex Ltd are within the same group.

Two companies are in the same group if one company is a 75% subsidiary of the other, or both are 75% subsidiaries of a third company. In this case, as RAM Ltd is to be incorporated as a 100% subsidiary of Apex Ltd, these rules should apply (assuming that RAM Ltd is UK resident in the UK as Apex Ltd is).

From a VAT perspective, if RAM Ltd and Apex Ltd are in the same VAT group, the transfer should be ignored.

Alternatively, a transfer of going concern is outside of the scope of VAT provided that certain conditions are satisfied. This includes that the assets are to be used by RAM Ltd in carrying on the same kind of business, and that the business is capable of operation in its own right. This is expected to be the case and therefore there should be no VAT on the transfer.

There are no real estate assets to be transferred as part of the restaurant management trade, so no stamp duty land tax (or equivalent) should arise on the transfer.

Part 2

As Apex Ltd is a UK company, this sale should be subject to UK Corporation Tax, unless the Substantial Shareholding Exemption (SSE) under Schedule 7AC TCGA 1992 applies.

The SSE exempts chargeable gains on the disposal of shares where two key conditions are satisfied:

1) The substantial shareholding condition: the disposing company must have held at least 10% of the ordinary share capital of the company being sold for a continuous period of at least 12 months within the six years prior to disposal.
2) The trading condition: the company being disposed of must be a trading company or the holding company of a trading group throughout the relevant 12-month period and at the time of disposal. A trading company is one that carries on trading activities and does not have substantial non-trading activities.

In this scenario, Apex Ltd will not have held the shares in RAM Ltd for 12 months. However, under paragraph 15A, the trading history of Apex Ltd may be attributed to RAM Ltd where a trade is transferred as part of a genuine commercial reorganisation.

RAM Ltd is therefore treated as having carried on the transferred trade during the period it was carried on by Apex Ltd, enabling the trading condition to be satisfied and allowing SSE to apply to the disposal.

As assets have been transferred to RAM under s.171 and RAM Ltd will leave the group within six years, a degrouping charge may arise under TCGA 1992 s.179. This charge is calculated as though the assets transferred had been disposed of at market value immediately before RAM Ltd leaves the group.

However, where the departure occurs because the shares in RAM Ltd are sold and the disposal qualifies for SSE, the degrouping charge should be added to the consideration for the shares and therefore exempted under SSE.

The sale of shares by Apex Ltd is treated as exempt for VAT purposes, and therefore no VAT should apply on the sale.

As the sale of RAM Ltd is a sale of UK shares, UK stamp duty at 0.5% of the chargeable consideration should arise. The document of transfer should be submitted to HMRC for stamping and the stamp duty paid within 30 days of the acquisition.

Part 3

As a general rule, the UK does not levy non-resident Capital Gains Tax on the sale of UK shares by a non-UK tax resident company.

There is an exception where 75% or more of the value of the shares is derived from UK real property. In this case, it is not clear whether this condition is met.

However, regardless, for any UK Corporation Tax to be chargeable on a gain realised by Corner Inc if Apex Ltd is considered property rich, Corner Ltd would need to hold at least 25% at the time of disposal or must have held such an interest at any time in the two years prior to disposal.

Currently, Corner Inc only owns 10%, so these rules would not be in point. It should be confirmed that Corner has not held a shareholding of 25% or more during the last two years.

As above, the sale should be exempt from UK VAT, and UK stamp duty should arise on the sale of shares in a UK company, which would be payable by Bravo Ltd.

Question 6

To: Corporate Director, Harper Engineering Ltd
From: Tax Adviser
Subject: Proposed Expansion into Hessovia

Following your request, this report considers whether Harper Engineering Ltd's proposed activities in Hessovia could create a permanent establishment (PE) and compares the UK Corporation Tax implications of operating through a PE versus a Hessovian subsidiary.

Part 1

Under Article 5 of the OECD Model Tax Convention, a PE arises where a business has a fixed place of business in a jurisdiction through which its activities are wholly or partly carried on. There is an exemption under Article 5(4) where the activities carried on are preparatory or auxiliary in nature.

The initial phase of the expansion involves leasing a warehouse and sending UK-based employees to Hessovia to conduct marketing. Warehousing for storage and delivery, and activities such as market research, are generally considered preparatory or auxiliary and therefore should not normally create a PE.

However, the anti-fragmentation rule introduced by BEPS Action 7 restricts reliance on the preparatory or auxiliary exemption where the activities of the company, combined with those of a closely related enterprise in the same jurisdiction, form part of a cohesive business operation.

In this case, Harper Engineering Ltd's German affiliate already operates a PE in Hessovia. If Harper's warehouse and marketing activities complement the German affiliate's operations, Hessovian tax authorities could argue that the combined activities are core to the group's business, thereby creating a PE for Harper Engineering Ltd.

If the expansion progresses to establishing a manufacturing facility or retail outlet, these activities would clearly constitute a fixed place of business and create a PE under both domestic law and the OECD Model.

Accordingly, while the initial phase may not immediately result in a PE, the risk increases significantly if the activities are integrated with those of Wizards GmbH or move beyond preparatory functions.

Part 2

Permanent establishment

If Harper Engineering Ltd operates through a PE, the profits attributable to that PE will be subject to UK Corporation Tax, with double tax relief potentially available for any tax payable in Hessovia. This is because a UK tax resident company is subject to UK Corporation Tax on its worldwide income and profits.

The UK does provide an exemption relief for UK PE profits, and Harper may elect under section 18A CTA 2009 to exempt PE profits from UK tax. This exemption can be advantageous where there are profits arising in Hessovia, but it removes the ability to offset PE losses against UK profits and will exempt all profits and losses of any PE globally, which may reduce flexibility for wider expansion plans. Regardless of the election, profits must be calculated on an arm's length basis in accordance with UK transfer pricing rules and OECD principles.

Any future disposal of the Hessovian trade may be taxable in the UK, unless a branch exemption election has been made.

Subsidiary

If Harper instead incorporates a Hessovian subsidiary, the subsidiary's profits should generally not be subject to UK Corporation Tax, provided it is not centrally managed and controlled in the UK. In order to demonstrate this, strategic decisions and board meetings should take place in Hessovia, and the subsidiary's directors should exercise genuine control.

Any dividends received from a Hessovian subsidiary should be exempt from UK Corporation Tax under Part 9A CTA 2009, provided no deduction is available in Hessovia. However, any losses incurred by the subsidiary would not be offsetable against UK profits.

On the basis that a subsidiary would likely qualify as trading, the subsidiary should likely qualify for the Substantial Shareholding Exemption and therefore any gain on disposal would likely be exempt from UK Corporation Tax.

The UK's Controlled Foreign Company rules must also be considered, in particular, whether there are any entity level exemptions available. However, to the extent that the Hessovian subsidiary is managed independently of the UK and does not rely on UK oversight, it is unlikely that a CFC charge should arise.

Question 7

To: Craig
From: Tax Adviser
Re: UK tax liability in 2024/25

Craig is non-resident in 2024/25, generally non-residents are not liable to UK Capital Gains Tax (CGT), even on disposals of assets situated in the UK. However, there are exceptions to this general rule. Craig is entitled to the UK personal allowance as a UK national.

Disposal of house

Since 6 April 2015, UK CGT has been charged on disposals of UK residential property by non-UK resident individuals. The disposal of the house in southern England will therefore suffer CGT, but only on the part of the gain arising after the 5 April 2015.

There are three methods which can be used to calculate the chargeable gain arising. The default method will apply unless an election is made for an alternative basis.

Default method

The default method requires the property to be rebased at the 5 April 2015 valuation and the chargeable gain is the difference between the sales proceeds and the rebased property valuation.

	£
Disposal Proceeds	950,000
Disposal costs	(20,000)
Net disposal proceeds	930,000
MV 5 April 2015	(800,000)
Gain	130,000

Straight line time apportionment

This method relies on the original cost, and time apportions the gain or loss, so that only the post 5 April 2015 portion is chargeable.

	£
Disposal Proceeds	950,000
Disposal costs	(20,000)
Net disposal proceeds	930,000
Acquisition cost	(500,000)
Costs of acquisition	(50,000)
Enhancement costs	(100,000)
Gain	280,000

Time apportioned post 5 April 2015 gain (280,000 x 112/160) = 196,000

Total ownership April 2011 to August 2024, which is a period of 160 months. The period from 5 April 2015 to disposal August 2024 is 112 months.

Retrospective method

This method uses the original cost to calculate the gain. This method is not favourable, as there would result in the full gain being taxable.

	£
Disposal Proceeds	950,000
Disposal costs	(20,000)
Net disposal proceeds	930,000
Acquisition cost	(500,000)
Costs of acquisition	(50,000)
Enhancement costs	(100,000)
Gain	280,000

Considering each of the calculations, an election would not be favourable, and the default method should be used, resulting in a chargeable gain of £130,000.

Disposal of shares in Bricks Ltd

From 6 April 2019, a non-UK resident is chargeable to UK CGT at the disposal of shares in a company that satisfies certain criteria:

- The shares must be in a property rich company; this means that at least 75% of the gross assets of the company consist of UK land and property.
- Non-UK residents must satisfy the substantial indirect interest test (i.e. own at least 25% of the shares, for more than an insignificant period, at any point in the two years prior to disposal).

If at the time of the disposal at least 90% of the land owned by Bricks Ltd is used for a qualifying trading purpose, the gain will not be chargeable. A letting company is not considered to be a qualifying trade.

As the holding in Bricks Ltd is less than 25% investment this will not be a substantial indirect interest. Therefore, the disposal is not chargeable to UK CGT.

Disposal of artwork

As a non-resident the disposal of artwork will be non-taxable in the UK.

Capital gain computation

	£
Gain on disposal of English house	130,000
Less losses brought forward from previous NRCGT	(40,000)
Less Annual exempt amount	(3,000)
Total taxable gain	87,000
37,700 – 12,430 = 25,270 x 18%	
(25000 income -12570 (personal allowance) = 12,430)	4,548.59
61,730 x 24%	14,815.20
Total tax liability	£19,363.80

Question 8

To: Tax Partner
From: Tax Adviser
Re: Grace's death estate and spousal election

Part 1

Grace was UK domiciled and therefore the entire estate would be subject to IHT, regardless of where the assets were situated.

Grace has left her estate to Neil, who is her spouse. Transfers between UK domiciled spouses are exempt from IHT. However, where an individual is UK domiciled (Grace) and their spouse is non-domiciled (Neil), transfers of value are only exempt up to £325,000.

Grace's death estate will therefore benefit from her nil rate band (£325,000), plus the restricted spousal exemption (£325,000).

The spousal exemption is a lifetime limit. Therefore, although Grace provided Neil a cash gift during 2015, which is more than 7 years ago, it will be deducted from the spousal exemption.

IHT calculation

	£	£
UK estate		880,000
Foreign estate		1,650,000
Total estate		2,530,000
Spousal exemption	325,000	
Less Cash gift (2015)	(200,000)	
Revised exempt amount	125,000	(125,000)
Nil rate band		(325,000)
Total estate		2,080,000
IHT on estate (40%)		832,000
Double tax relief		150,000
IHT due		£682,000

The amount of double tax relief available on the overseas apartment is the lower amount of the foreign tax suffered (£150,000) and the UK IHT charged on the foreign asset (the estate rate):

- The estate rate: 832,000/2,530,000 x 100 = 32.9%
- UK tax on overseas apartment: 1,650,000 x 32.9% = £542,850

Therefore, the lower amount is the foreign tax suffered. The overseas tax paid is therefore capable of being fully deducted against the UK IHT due.

The IHT must be paid within six months of Grace's death.

Part 2

Neil could make an election to be treated as deemed UK domiciled for IHT purposes. This would mean that that the chargeable transfer received by Neil on Grace's death, would benefit from an uncapped exemption. However, all of Neil's worldwide assets will be liable to UK IHT on his death.

The election cannot be revoked but will cease to have any effect if Neil leaves the UK and is non-resident for at least four consecutive tax years.

In deciding whether an election is worthwhile, there are several planning points that should be considered.

The election is generally most favourable where the UK domiciled spouse has the greatest wealth. If Neil has significant assets and these are held offshore, it would be preferable for Neil to retain his non-Dom status and protect those foreign assets.

Neil acquired a holding in an open-ended investment company whilst in the UK. These holdings despite being UK assets, would be excluded property if Neil was non-UK domiciled at the date of death.

As Neil is considering returning to Thailand, then consideration should be given to his age and own health situation. The election may still be beneficial for Neil to make, as it will cease to have impact after four years overseas.

Overall, it may be beneficial for Neil to postpone making a final decision until he has decided where to reside and it may be clearer if the death election would be advantageous. If Neil wishes to make the election, he should make the election in writing to HMRC within two years of Graces death.

Question 9

To: Energy Hubz Tax Team
From: Tax Adviser
Re: Gemma’s tax return

Remittance basis/Overseas Workday Relief (OWR)

Gemma is non-UK domiciled and therefore able to claim the remittance basis on her tax return. By making a claim, she would only be taxed on her overseas income, if remitted to the UK. However, she would lose entitlement to the UK personal allowance.

A claim should be made for OWR, such that, earnings from duties performed outside the UK are treated as overseas income for the remittance basis and only taxable if remitted to the UK.

This will apply if:

- Gemma is a remittance basis user for 2024/25 (a claim is recommended).
- She has earnings attributable to non-UK employment duties (30 days working overseas).
- She has been non-UK resident for three consecutive tax years and 2024/25 is one of the three tax years immediately following that period of non-residence (this is satisfied).

Generally, a day count is used to attribute earnings, such that 30/230 of Gemma’s salary will be attributed to overseas earnings. The remaining earnings are attributable to UK employment duties and taxable in the UK. Gemma’s earnings have been paid into her offshore bank account and she should retain this money outside the UK in a nominated “qualifying account”.

House/car

Gemma has been provided with accommodation and a car by Energy Hubz. This will be reported on a P11D as taxable benefit by Energy Hubz and should be included on Gemma’s tax return.

Pension

Generally, only contributions to UK pension schemes obtain tax relief. However, Gemma will qualify for UK tax relief on her contributions to an Astraland pension, provided the scheme is a qualifying overseas pension scheme and Gemma meets the conditions for migrant member relief (MMR).

To be a qualifying overseas pension scheme, it must be regulated, recognised and open to residents in Astraland. Furthermore, it must be registered with the tax authorities who provide relief against Income Tax on contributions.

Gemma must be a relevant migrant member:

- She must have been non-UK resident when joining the scheme. This is satisfied.
- She must have been an existing member of the scheme, and continued to be a member, whilst UK resident. This is satisfied.
- She must have been entitled to tax relief on contributions to the scheme in Astraland. This is satisfied.
- She should have been notified by the overseas scheme administrator and received confirmation, that information relating to benefit crystallization events will be sent to HMRC. This should be confirmed.

Gemma has UK relevant earnings via her UK salary and was UK resident when she made the contributions. Gemma must also have notified the scheme administrator that she will claim MMR in the UK, which should be confirmed. If so, a claim for relief can be made on the tax return, (subject to the normal rules regarding pension annual allowance).

Share options

Gemma is an internationally mobile employee, as she is non-UK domiciled and using the remittance basis for part of the period between grant of the share option by Energy Hubz and the exercise (the relevant period).

The share option gain (Securities income, SI) is treated as accruing evenly across the relevant period, and the tax treatment involves statutory apportionment based on UK and non-UK workdays.

The gain will be split into three components:

- Unchargeable foreign securities income (“FSI”) – not taxable in the UK, relates to portion of the relevant period where Gemma was non-UK resident and performing duties outside the UK.
- Chargeable FSI – relates to relevant period where OWR applied and gives rise to earning charged in the UK on the remittance basis. As these are foreign shares, it would only be taxable if remitted to the UK.
- SI less FSI–taxable on the arising basis.