Answer-to-Question-_9_

Part 1

Under the UK rules, a company can be UK resident if:

- it is incorporated in the UK - not applicable in this case as Hopkin is incorporated in the US

- it is centrally managed and controlled in the UK.

The central management and control test is a matter of fact and has previously been decided by case law - a famous case law being the DeBeers case.

Central management and control test generally looks at the highest level of control of the company, being the board of directors.

HMRC will generally look at each case individually and analise its factors and in doing so, they will generally have regard for the following:

- who is centrally managing and controlling a company
- where is the central management and controlled exercised.

Applying these questions to the current case:

- who is centrally managing and controlling Hopkins
    - the facts state that although decisions are made in a collegiate manner, Michael's ability as a chairman is the decisive factor on major issues.
    - additionally, Michael's plan once he moves to London is to simply call or text the relevant directors. This is another factor indicating that Michael is exercising control and that the other members of the board are merely rubber stamping his decisions.
    - the above are a clear indication that the control over the company is

exercised by Michael.

- his move to London would therefore impose a risk of Hopkins becoming UK resident.

- where is the central management and controlled exercised
    - as Michael appears to control the company, his move to London would impose a risk of the compny becoming UK resident, especially if he makes any decisions with regards to the company in the UK.
    - moreover, Michael is considering whether the other directors should also fly to London for board meetings.
    - once board meetings are held in London, HMRC can argue that the company is centrally managed and controlled in the UK.

Recommendation:

- all board meetings should be held in the US and none in the UK
- all directors should make strategic decisions for Hopkins and not rubber stamp Michael's decisions.
- Michael should attend the board meetings in person
- Michael should not make any strategic decisions in the UK.

Part 2

The overseas workday relief (OWR) is relevant for an individual who is UK tax resident and to whom remittance basis applies.

A UK resident is taxed on his worldwide income and gains on an arising basis.

Residency is determined by the statutory residency tests, which state that an individual is resident if he meets none of the atomatic overseas tests and he meets one of the automatic

UK tests or the sufficient ties tests.

Where the individiual is also non-UK domiciled, then he can claim the remittance basis in respect of is foreign income and gains and these will be taxed in the UK to the extent they are used and enjoyed in the UK.

Michael is expected to spend 240 days in the UK which would make him UK resident under the first automatic UK test.

There are no indications that Michael would be a UK domiciled individual, so the assumption is that he is a non-UK domiciled and that he will claim the remittance basis.

OWR is available in the first three tax years provided certain conditions are met:
- Michael is UK resident - condition met
- Michael is taxed on the remittance basis - presumably he will so condition should be met
- duties of employment are wholly or partly carried on outside the UK

Under OWR, Michael's earnings which relate to his duties performed outside the UK (Germany and the US) will only be taxed in the UK if he remits them into the UK. He will however be taxed in the UK on an arising basis on the proportion of salary related to his UK duties.

A just and reasonable split of his earnings must be made, which will usually be made on the basis of the number of days spent in the UK and overseas.

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Answer-to-Question-_8_

REPORT

Subject: UK Acquisitions Ltd - UK tax considerations
Prepared by: Tax Adviser

Part 1

Under the UK rules, a company is UK resident if:

- it is incorporated in the UK
- it is centrally managed and controlled in the UK.

Acquisitions Ltd (AL) is incorporated in the UK which means that it is a UK resident company under UK law.

Part 2

On acquisitions of shares of UK company, stamp duty is payable by AL at a rate of 3%.

Part 3

Under the UK legislation, dividend income can be exempt from UK corporation tax provided certain conditions are met and the dividend income falls into an exempt class.

Exemption under the UK statute are given for small companies (s931B CTA 2009) as well as for companies which are not small (s931D CTA 2009).

In the absence of information to determine whether AL is a small company, it is assumed that AL is a large company for dividend exemption.

For large companies, dividend income is exempt from UK CT if:

- it falls into an exempt class
- no deduction for the dividend is given in the territory from where the dividend originates
- the distribution is not specifically excluded from exemption under CTA 2010.

Exempt classes:

- ditribution from controlled companies
- distributions in respect of shareholdings which are 10% or less
- Distributions derived from transactions which are not designed to obtain a tax advantage
- dividends in respect of shares accounted for as liabilities.

Where a dividend is exempt under the UK legislation, an election can be made to bring it within the charge to corporation tax.

Generally, dividend payments may be subject to withholding tax at 20%.

Withholding tax can be further reduced or elimiated by a relevant double tax treaty between the UK and France.

There is however the EU Parent Subsidiary Directive under which dividends paid to a parent company located in the EU is exempt from withholding tax. Therefore, as AL's parent company is located in France, the dividend payment would be exempt from withholding tax.

If AL lends funds to its French parent company, the payment of interest to the UK may be subject to withholding tax under the French rules.

Withholding tax can be further reduced or elimiated by a relevant double tax treaty between the UK and France.

However, there is the EU Interest and Royalties Directive which exempts payments of interest from withholding tax where the payment is to an EU country (the UK in this case) and the parent company holds at least 25% of AL. These conditions are met therefore the interest payment from France to the UK would be exempt from withholding tax under the Directive.

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Answer-to-Question-_3__

To:
From:
Subject: Octagon Group - UK tax considerations
Date:

Dear Derek,

Thank you for your email.

Please find below some considerations with regards to the CFC regime and the Singapore LLP.

Singapore LLP

The classification of the LLP as opaque or transparent is relevant for UK tax purposes as it determines how the income generated by the LLP is taxed in the UK.

For entities which are transparent the member is regarded as being entitled to the income as it arises and charged to UK tax on their share on that basis.

For entities which are opaque, the member is generally tax on the distribution made by the LLP.

When considering entity classification due regard is given to case law, and more importantly to the Memec case which has established the following factors:

- does the LLP have a legal existance separate from that of the persons who have an interest in it?
- does the LLP issue share capital or something else, which serves the same function as share capital?
- is the business carried on by the LLP itself or jointly by the persons who have an interest in it that is separate and distinct from the entity?
- are the persons who have an interest in the LLP entitled to share in its profits as they arise; or does the amount of profits to which they are entitled depend on a decision of the entity and its members, after the period in which the profits have arisen, to make a distribution of its profits
- who is responsible for LLp's debts - the LLP or the persons having an interest in it?
- do the assets used for the business beneficially belong to the LLP or to the persons who have an interest in it?

Some of these factors may point into one direction while others may point in another, however, an overall conclusion is reached by analysing all the above factors together.

HMRC generally pays particular attention to the third and fourth factors.

CFC regime

A CFC is a non-UK resident company wich is controlled by a UK resident company.

As Octagon Group is looking to acquire the entire share capital of Nonagon, they will be treated as controling the Nonagon foreign group of companies therefore these companies will be CFC's for UK tax purposes.

Profits of a CFC can be apportioned to the UK and subject to a CFC charge provided the their relevant profits pass through certain gateways and do not fall into any of the entity exemptions.

There are five exemptions:

- tax exemption
- exempt period exemption
- low profits exemption
- low profits margin exemption
- excluded territories exemption.

An initial view to these exemptions is that:

- Germany is on HMRC's list of excluded territories therefore a CFC charge would not arise as its profits are exempt under the Excluded Territories exemptions. Ireland and Cayman Island are not however on that list.
- The Tax exemption would not apply to the Irish and Cayman Island entities as the tax paid locally is not at lest 75% of the corresponding UK tax.

Further information is needed to determine whether any of the other exemptions would apply to them. Information such as the following would be required to determined the application of exemptions:

- accounting profits and taxable profits of the entities

- level of non-trading income
- operating expenses

If none of the CFC exemptions apply to the Irish and Cayman Island entities, then the CFC gateways must be considered.

There are five gateways:

- pofits attributable to UK activities
- non trading finance profits
- trading finance profits
- solo consolidation (not relevant for your group)
- captive insurance (not relevant for your group)

Irish company

- relevant gateway seems to be be non-trading finance profits but to determine whether this is applicable we would need to understand whether the income is derived from UK capital contributions.
- under this gateway, its profits may be exempt either 100% or 75% provided certain conditions are met, and here we would need to understand whether the loans made by the entity are qualifying loans and whether the business premises used locally are occupied with a sufficient degree of permanence.

Cayman Island company

- most likely the relevant gateway for this entity is Profits Attributable to UK activities.
- this company has little substance locally so we would need to understand where its significant people's function is located, whether the company is capable of functioning on its own.

I trust the above is helpful but please let me know if you want to discuss further,

Kind regards,

Tax Adviser

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Answer-to-Question-_2_

Part 1b

The question states thate we may accept that Fiona is non-UK domiciled. I have therefore not considered the new deemed-domicile rules, which would apply to Fiona given that she has been a UK resident for 15 years out of the previous 20 tax years.

Fiona is a UK resident therefore subject to UK tax on an arising basis.

As a non-UK domiciled individual, Fiona can elect for the remittance basis to apply to her and UK tax will only be applied to her foreign distribution to the extent this is remitted to the UK.

Should remittance basis be claimed, Fiona will lose the entitlement to personal allowance and annual exempt amount.

Fiona has been a long term resident, which means that if she claims the remittance basis she will be subject to a remittance basis charge (RBC) of £90,000.

When she claims the remittance basis, she must nominate the distribution and the RBC will be paid in respect of it.

To claim the remittance basis, Fiona must:

- claim it on her self-assesment tax return
- must fill in the supplementary pages (SA 109)
- the questions on SA 109 will cover the status conditions for claiming the remittance basis and allow to make a declaration on the following:
    - her residence status
    - her domicile status
    - her claim for remittance basis
    - whether she is over 18 years old at the end of the tax year
    - her nominations of foreign income and gains

Part 1a

Fiona is a UK resident therefore subject to UK tax on an arising basis.

Her distribution will therefore be subject to UK income tax.

Given the level of the distribution, it is unlikely that Fiona's personal allowance will be available to her.

Given the level of the distribution, income tax would be applied at the additional tax rate of 45%.

Part 3

The shares and the office building are capital assets, therefore giving rise to capital gains.

As a UK resident, Fiona will generally be subject to capital gains tax on the disposal of her foreign assets, provided she does not claim the remittance basis.

As assets are located in Italy, Italy may also claim taxing rights, in which case a double taxation would arise on the same assets. Should that be the case, double tax relief (DTR) can be obtained either under the double tax treaty (DTA) otherwise the UK will give unilateral relief.

Under the UK rules, DTR is the lower of the Italian tax suffered and the UK tax on the foreign income.

As the UK has a double tax treaty with Italy, the DTA must be consulted to determine where her shares and office building will be taxed.

The shares and the office building are capital assets, therefore giving rise to capital gains. Under the OECD model treaty, Article 13 concerning the taxation of capital gains:

- gains derived by a resident of the UK from the allienation of immovable property (office building) and located in Italy, may be taxed in Italy. Therefore, given that the OECD model treaty gives taxing right to Italy over this property, Italian tax law must be checked to confirm the method of taxation. Fiona should obtain DTR in respect of any Italian tax suffered on the property.

- gains derived by a resident of the UK from the alienation of shares my be taxed in italy provided at any time during the 365 days preceding the sale, these shares derived more than 50% of their value directly or indirectly from immovable property. If this condition is not met, then such shares can only be taxed in the UK. In Fiona's case, it is unlikely the condition will be met, therefore the shares will only be subject to UK tax and not Italian tax. DTR is not relevant in this case as no taxation should occur in Italy.

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Answer-to-Question-_1_

Part 1

F(no2)A 2017 introduced new rules with regards to the utilisation of carry forward losses.

Such losses must be split between losses arising pre-April 2017 and post-April 2017

Trading losses

Pre April 2017 losses

- these are losses arising in an accounting period beginning before 1 April 2017
- such losses can be utilised against profits of the same trade

Post April 2017 losses

- these are losses arising in an accounting period beginning after 1 April 2017
- provided certain conditions are met, losses arising after April 2017 can be utilised against total profits, rather than only against profits arising from the same trade.

There is now a restriction of the amount of carry forward losses that can be utilised:

- the first £5m of profits can be relieved in full by carry forward losses
- after £5m, only 50% of the profits can be relieved by carry forward losses.

Part 3

Permanent establishment

As a UK resident company, Maude Plc is taxed on its worldwide profits. This means that the profits of its Italian PE would be subject to UK CT.

Similarly, where losses are generated by the Italian PE, these can be utilised in the UK against Maude Plc profits, unless a branch exemption election is made.

If a branch exemption election is made, losses of the Italian PE will no longer be available for utilisation in the UK.

Such an election is irrevocable and applies to all current and future PEs.

However, an election will not become effective until any losses carried forward from the previous 6 years (also knows as opening negative amount) in the Italian PE are utilised. Such losses must be used against future profits of the Italian PE.

Idian subsidiary

Losses of the Indian subsidiary cannot be utilised in the UK.

French subsidiary

As the subsidiary is located in the EU, losses can be utilised in the UK provided certain conditions are met.

These conditions are:

- equivalence condition - meaning that loss corresponds to a loss recognised by the UK statute
- the EEA tax loss condition - this is relevant in the context of a non-EEA company carrying on a trade in the EU through a PE.
- the qualifying loss condition - this condition mainly refers to the fact that the loss canno be utilised in th UK if it has been utilised in France.
- the precedence condition - this condition refers to the fact that the loss arising in France cannot be avilable in the UK if such loss has already been surrendered to another

territory outside France.