Answer-to-Question-_1_

Answer 1.1)

Beta Bank braches are in Hong Kong (IGA Model 2) and Jersey (IGA Model 1). Lets call these are BBHK and BBJR.

BBHK and BBJR will be classified as a Financial Institution because they provide discretionary portfolio management and custodian services. Based on the definition of financial institutions (providing Custodial [BBHK and BBJR provide this service], Depository, Investment [BBHK and BBJR provide this service], Insurance services) contained in the IGA 2 and IGA 1 applicable in Hong Kong and Jersey respectively.

As these branches are holding financial accounts (custodial and investment) they will be further classified as Reporting Financial Institutions.

BBHK - As per IGA 2 between HK and US, it will be classified as Reporting Model 2 FFI and it will select this classification on its W8 form.

BBJR - As per IGA 1 between Jersey and US, it will be classified as Reporting Model 1 FFI and it will select this classification on its W8 form.

[FFI = Foreign Financial Insitution]

Both will need to be registered on the US FATCA portal to obtain their Global Intermediary Identifier Number (GIIN), since these are branches, the GIIN will contain 'BR' letters.

These banks will be required to perform due diligence on the new and pre-existing accounts and identify which of them are reportable.

Under CRS also, these are similarly classified as Financial Institutions, for same reason as providing financial services covered under CRS regulation

Under FATCA / IGA the Reportable accounts are accounts where the account holders are reportable persons
1) Account Holder is a US Person
2) Account Holder is undocumented and has US Indicia
3) Closed Account with US Indicia
4) Account Holder is classified as Non Partiicpating FFI
5) Account Holder is classified as Passive NFFE and has atleast one US Substantial Owner (>10%)

Under CRS, the Reportable Accounts are accounts where the account holders are reportable persons

1) Account Holder is an individual with tax residency in a reportable foreign jurisdiction (the HK / Jersey tax autorities will provide the list of participating and reportable jurisdictions with which they have concluded CRS arrangements)

2) Account Holder is a Passive NFFE with tax residency in a reportable foreign jurisdiction, or it has controlling persons who have tax residency in reportable foreign jurisdiction

3) Undocumented account with indicia in reportable foreign jurisdiction

4) Closed account with indicia in reportable foreign jurisdiction

Under FATCA IGA 2 in HK, the BBHK shall submit its report to the US Tax Authoritity. If some clients do not provide consent, it will submit their details as aggregated pools. Later on, upon request from the US Tax Authroity, the HK Authority may request BBHK to submit the details of the non-consenting reportable persons to the HK Authority, and the HK Authority would then exchange the information with the US Tax Authority

Under FATCA IGA 1 in Jersey, the BBJR shall report the details to the local tax authority in Jersey, which will then exchange the information with the US Tax Authority

Under CRS, the BBHK will submit the infomation to HK Tax Authority, and BBJR will submit the information to the Jersey Tax Authority

Answer 1.2)

Under FATCA, the clients are required to self-determine their classification wrt the FATCA / IGA 2 / IGA 1 rules applicable to the jurisdiction where they are established.

As the clients of Beta Bank are high net worth clients domiciled in Asia, the client classifications shall depend on whether the client is opening the account directly as an Individual / Natural Person, or whether the client is opening the account via a investment company / similar.

The individual client shall be fatca-classified as US v/s Non-US based on them being a US Person or Not a US Person. In general, a person is a US Person if he is a US Citizen, Green Card Holder, Born in US (unless the citizenship is renounced). US persons shall declare using W9 form, while Non-US Persons shall declare using the W8Ben form. The CRS classification is also ndividual, reportable is a tax resident in a foreign reportable jurisdiction

The Entity clients established under the laws of US will be classified as US Person, they will declare using W9 form. Entities that are Non-US may be classified based on the nature of their activities - financial v/s non-financial. Non-Financial clients may be further clasified as Active v/s Passive entities based on whether over 50% of their income is is from passive sources or over 50% of their assets are generating passive income. Financial clients may be classified as per the IGA in their jurisidction (eg., Participating FFI in Non-IGA Countries, Reporting Model 1 FFI in IGA 1 Countries, Reporting Model 2 FFI in IGA 2 Countries).

Clients may also be classified based on the nature of activities, Registered Deemed Compliant FFIs or Certified Deemed Compliant FFIs if their nature of activities falls into respective categories.

Especially in IGA Countries, the clients may also be classified as Non Reorting IGA FFIs based on their nature of activities if this falls into the activities decribed in the respective IGAs.

Especially under FATCA Regulation, the clients may also ve classified as Owner Document FFIs whether the entity decides to report the owner directly to the US Authorities

Under Common Reporting Standards, the classification standards of financial v/s non financial are similar to FATCA and IGA Model 1, and the non-financial entities are further clasified as active v/s passive based on the threhold of atleast 50% income being passive and atleast 50% assets generating passive income. However, the unique aspect under CRS is that Financial Entities based in Non-Participating Jurisdictions are also classified as Passive NFFEs, and their beneficial owners are looked through and reported. The Active Non Financial Entities are classified into sub-categories such as government entity, listed entity, or entitity related to listed entity. The Financial entitiy are classified based on their nature of activities into Investment Entity (Type A - Investment Managers, Type B - Professionally Managed Investment Entity, Type C - Other Investment Entitites). Specifically under CRS, the US Specific classification such as ODFFIs do not apply in the global context, and wih regard to local regulations / licenses as mentioned in the local guidance, the entities may be classified as financial entity by default if they have such a license even though the entity may not have actually provided the licensed acivity.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-_2__

Answer 1

The Corporate Criminal Offence (CCO) regulations are aimed at deterring the corporates from indulging in tax evasion either as the entity itself, or via its associated persons or agents. The CCO regulations were established by the HMRC in advent of several cases where the US Institution and its assciated persons where found to have evaded tax liabilities via unethical or even fraudulent means

The CCO in summary recognises that evasion of tax liability is a criminal offence, and also the facilitation of tax evasion is criminal offence. The CCO regulations prescribe that tax planning is legal and ethical while tax evasion is unethical and illegal where the actions were carried out with the primary motivation to evade the tax libilities rather than having a reasonable commercial or other relevant consideration.

The CCO Regulations place the responibility on the entity (and its key responsible persons) to establish an effective monitoring mechanism to ensure that the entity does not engage in such practices. The management can no longer use the defence of unawareness if the entity is found to have engaged in such practices. However, such a program needs to be established in proportion to the risks involved in the business acitivities. Eg, a small shop selling ice creams may have a simpler mechanism of maintaining invoices and a simple procedure to document the tax libility while a group managing a large business spread across offices and jurisdictions would need to have a much more elaborate program.

Hence, the CCO regulations require the entities to asess the risks involved (motivation, opportunity, and means for tax evasion to occur), setup the prevention / governance programme in relation to those risks, perform the due diligence to ensure the evasion does not occur, with committment directly from the top management, train the staff involved on their roles and responsibilities, and review based on experience.

The CCO Regulations prescribe that the entity itself or its associated persons or its agents may be the persons held responsible. Associated persons are any persons connected with the entity, such as its employees, contractors, service providers, agents etc. The Agents are those who specifically have the authority to conclude agreements in the name of the entity.

The Entity and its management shall be held responsible for the actions of itself, its associated persons and its agents. For this purpose, the entity is required to perform due diligence on its associated persons and agents to ensure they do not engage in such practices. Also, it is required to ensure via legal contracts, that any sub-contracters/agents abide by the CCO regulation.

The entity may be held liable under CCO, if any UK Tax Evasion occurs in the UK or outside UK by the entity or its associated persons or agents. The entity may also be held liable if any foreign country tax evasion occurs in the UK by the entity or its associated persons or agents.

The entity here includes a permanent establishment. Thus a UK PE of a foreign entity is in scope, same as a PE of the UK Entity in foreign jurisdiction being in scope.

Dual Criminality means
a) the other jurisdiction where the crime occured treats it as a criminal offence the same as the UK would have if it had lead to UK Tax Evasion
b) the other jurisdiction where the facilitaion of such a crime occured, treats it as a criminal offence the same as UK would have if such facilitaion would have lead to UK tax evasion.

Under Dual criminality, the UK may charge persons for foreign tax evasion if that act was carried out or was facilitated in the UK, even if the other jurisdiction doesn't prosecute such persons. Similarly, the other jurisdiction may charge persons carrying out such offences in their territories if such offence lead to UK Tax Evasion. In such instances, the UK and the other jurisdiction authority may chose to extradite the charged persons to stand trial.

Answer 2

The UK Bank levy is applied on the risky assets of the banks, and is aimed at deterring the banks from holding riskier assets, thus promoting a safer portfolio for the banks to minimize the risk of another financial crisis in future as the GFC of 2008. This applies only on large banks with asset size of atleast 30 billion pounds. There has been a debate whether this really leads to delevaraging of risks in banks or simply reduces the attractiveness of UK as a financial centre, since the amount of levy cannot be accurately pre-determined since it is based on nature of risk of the assets rather than tax on the profits which can be more accurately computed, and it places UK banks at a disadvantage vis-a-vie non UK Banks.

Annualised rates for Bank Levy in UK are 0.16% in 2018 and will be reduced to 0.10% by 2021. The aim is to reduce the bank levy so as to protect the attractiveness of UK as a financial centre while increasing / applying the corporation tax surcharge on entities making high profits to address the impact of revenue on the tax authorities. Thus it will transition from a behavioral change intrument to a revenue generating instrument for the tax authorities

Corporation surcharge is a tax on profits rather than the assets and can be more easily and accurately determined, and is only applicable only if the bank makes profit.

The DTR relief shall be available where the UK Bank has a Permanent Establishment in a foreign jurisdiction which has an equivalent Bank Levy. The bank levy in the other jurisdiction should be applied to the risky assets of the bank and the PEs of foreign banks established in such jurisdictions. The rate of levy should be atleast equal to the UK rate of levy and the application of DTR should not result in Foreign PE of UK Bank substantially paying a lower Levy to such foreign tax authority versus if only the UK levy was applicable. In such a scenario, the UK Authorities shall allow the UK Banks to disregard the assets of its PE in such foreign jurisdictions from the computation of assets for application of Uk Bank Levy

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Answer-to-Question-_3__

The US applies a global taxation regime wherein when a Non-Resident Alien (such as a payee resident in a foreign jurisdiction) receives an FDAP income (such as interest or dividend) from a US Payor, the US Payor needs to apply witholding at a rate of 30% (generally, but this differs for partnerships) or at reduced rate where the tax treaty between US and the Jurisdiction of residence of such payee indicates that a lower rate of tax is applicable, which may even be zero for some jurisdictions. Ofcourse, the payee needs to provide a valid W8BenE documentation to claim reduced rate of withholding under the treaty.

This allowed some intermediaries to take unfair advantage of the unbalanced nature of the global network of tax treaties. Eg., a resident in a jurisdiction with 15% treaty rate, would receive 85% of the income, and if such an intermediary enters into a back-to-back arrangement with another payee who would have had to suffer 30% rate of witholding had it directly received the US income, this allows the interemdiary an enviable advantage wherein the intermediary and the payee may enter into a commercial (derivative) arranegment for the payee to effectively suffer a rate lower than 30%.

This is the background for the introduction of 871m regulations. This regulation specifies that when an intermediary makes a payment of a manufactured dividend, on back of a US Sourced income, such manaufactured dividend shall also be subject to the 30% US witholding.

The 871m currenly applies to simple NPCs and ELIs of 0.8 alpha or greater where the arrangement is a back to back derivative such that the US Sourced income received by an interemediary is substantially passed on to the payee in form of manufactured dividend. The 871m shall be applicable for any securities lending transation, specified Notional principal contracts, specified equity linked instruments, sale repurchase transaction, or substantially similar transactions that reference an underlying US security

The dividend equivalent means dividend from an underlying security persuant to seurities lending or sale-repurchase transaction, or a payment that references dividend from underlying security persuant to specified notional principal contract, or specified equity linked instrument, or any other substantially similar payment. Such payments are treated as in-scope for the 871m withholding

The delta computation is critical at the start of the contract ie., when it is priced and sold, or when it is materially altered.

The responsibility for witholding is by default on the payor, unless the payee is a qualified intermediary assuming primary withholding responsibility wherein it would calculate the amount to be withheld and
deposit the tax with the US Tax Authorities on its own. However, for receiving such dividend equivalents without 871m witholding, the QI additionally needs to sign up as a QDD (Qualified derivaties dealer). The QDD is then responsible to perform the due diligence on the payee, identify the rate of tax witholding applicable, and apply the

witholding accordingly. The QDD is subject to additional supervision by the US Authorities to ensure it is capable of discharing its responsibilities in an effective manner, and to ensure ongoing compliance.

If the intermediary receiving such dividend equivalent payment is not a QDD, then the witholding agent will apply the 871m witholding, and the non-QDD will also apply the 871m withlding, leading to a cascade of witholding making the transaction uneconomincal. Hence, it is important for the QIs to consider signing up as QDDs if they wish to engage in such financial traansactions on a regular basis.

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Answer-to-Question-_5__

The Japanese Govt Bonds can be bought by market making participants who are mandatorily required to participate in bond offers to a proportion of atleast 1/x of the amount of bonds offered where x is the number of such market participants. This is to ensure enough liquity in the market for effective dicovery of a market price for the bonds. Such market making participants may puchase bonds on principal positions or acting as Agents.

Once purchased, the Japanese Government Bonds can only be held (custody) by a agent licensed by the Japanese authorities, wherein the agent meets the strict regulatory requirements that qualify the agent to apply for the license to hold goverment bonds. The is specified by the Japanese authorities so that the capital gains or losses earned by the bond holders can be effectively computed and taxed. If the Japanese Govt would not have made this rule, the bond custodians may not have been able to effectively manage the capital gain / loss computations.

Hence, the Bank Gamma would have two options.

First is to itself estabish its branch in Japan, obtain the market making license for Japanese Government Bonds on principal / agency basis, and then offer either cutodial service to the clients or offer derived instruments to clients such a partipatory notes or other derivatives to offer economical exposure to the clients towards the market performance of the bonds and the coupon income associated with such bonds. In direct holding the bank would be held responsible to compute gains/losses and apply the tax. In the derivative offering the bank itself would be the taxable entity as the Japanese government bonds would be held in its own name, while the impact of such tax would be imputed into the payments wrt the derivative instrument

Second option is to enter into a sub-custodian arrangement with authorised custodian agent in Japan. The japanese custodian agent would then be responsible to compute the capital gains on the bonds and apply the taxes accordingly. Or the Bank Gamma could enter into a derivative with another holder of such bonds to take economic exposure and then let its clients buy such economic exposure to such bonds

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Answer-to-Question-_6__

German tax authorities apply taxes on the dividends paid by german corporates. There is a differential in tax withholding if the recepient is a German Holder of securities versus if the recepient is a Non-German Holder of the securities. This provides an arbitrage opportunity for a German to hold such securities, and offer a sale-repurchase or stock borrowing and lending arrangement to a non-german party and make manufactured dividend payments such that the non-german would be able receive a higher income than if it had held the securities on its own name.

In such situations, the german authorities now require the german holder making manufactured dividend payments to non-german holders to apply the appropriate witholding to prevent the non-german holders from using the arbitrage opportunity as described above.

Where the borrower of the security is a german and lender is non-german, and assuming that the dividend is received by the german during the duration when the german was holding the borrowed security, the german borrower would be held responible to ensure appropriate adjustment is made when making the manufactured dividend payment to the non-german.

When the the borrower is non-german and lender is german, and the dividend is received by the non-german when the non-german was holding the security, the non-german would suffer the witholding due to its non-german status. Now, it would adjust the payment made to the german lender such that the german lender would not be at disadvantage. This means that the german lender would have two options.

First is that the german lender will receive the payment net of withholding from the non-german and will seek the adjustment from the german tax authorities. This will be a risk since it may not be able to provide complete docuentation to the tax authorities since it was not the party subject to witholding. Even if the german lender is sucessful in receiving the documents from borrower and then sucessful in receiving the tax adjustment from the garman tax authorities, the german lender would still face a cash flow delay and ultimately a cost due to inability to use that money for economic acitivity. The second option is that the german lender will seek the adjustment from the borrower such that the borrower suffers the witheld tax instead of the lender, or atleast until the german lender is able to claim the adjustment.

For this reason, the clauses in the credit agreement need to ensure that the gross-up clause, the tax documentation clause, and the indemnified tax clause are appropriately worded.