Question 1. Evaluate the current position regarding the "separate legal entity" principle, and the attribution of profits methodology. through the lens of the permanent establishment (PE) concept.

Introduction:
As the globalisation is enonomously improving all over the world and the relations amongst the countries is being tightened, volume of the cross-border transactions and foreign investments within the international sphere of business is being effected accordingly. In this regard, the international organizations (e.g. United Nations, OECD and etc) who are dealing with the effective management of the taxation of the businesses are improving the respective tax policies, as well as the states, i.e. respective government bodies thereof, are improving there statutory tax laws according to the international standards.

Analysis:
So that, in light of effective improvement of the globalisation, the businesses are carrying on their activities or investing capitals across the borders of the territories where the are established. Whilst doing that, the businesses are viewing the effectiveness of tax, legal factors along with the economic factors. In respect of analysis of the effectiveness from taxation point of view, the businesses are analyzing the respective provisions of the domestic tax laws of the states (e.g. the domestic tax law of the state where the business was established, the domestic tax law of the state where the business intends to carry on its activities or invests its capital) and international tax agreements between the contracting states (i.e. DTA - double tax agreements). Furthermore, OECD and UN model tax treaties provides respective provisions in order to analyze the cross borders transactions (business and investment transactions) and to define respective taxation thereof.

Whilst analyzing taxation of the cross border transactions, one of the main tests that businesses must perform is testing occurrence of permanent establishment (PE) in the corresponding State. The article 5 of the OECD model treaty provides respective provisions regarding the PE. Most of the domestic tax laws also envisages respective provisions relating to PE in the State. The provisions in the domestic tax laws are mainly similar to the respective provisions in the OECD and UN model tax treaties. As such, paragraph 1 of article 5 of the OECD model stipulates that:

"...the term permanent establishment means a fixed place of business through which the business of an enterprices is wholly or partly carried on..." Also paragraph 2 of the stated article also stipulates the factors which are included into the definition of PE, such as:

"...a place of management
a branch
an office
a factory
a workshop
a mine, an oil or gas well,a quarry or any other place of extraction of natural resources"

Apart from this, the article also provides the exemptions and respective commentaries are providing the extensive explanation of the definitions therein.

Based on the facts and circumstances test, once it is determined that the business has got PE in the correspondent state, which may lead to consideration of the resident in that state. Once the PE status is determined, the business may be registered in the state in the respective authorities and respective activities relating to the PE may be taxed in the State.

Depending on the legal formation/registration of the PE in that State, the circumstances of the taxation may vary. As from legal point of view the branches are considered the continuation of parent company. In that case, the parent companies' worldwide income shall be subject to the corporate income tax whereas the branches' income may also be subject to the corporate income tax in the State where the PE arises. To avoid the double taxation inheriting from such matters, the OECD provides relief tax methods (mainly,credit, exemption and deduction methods). Whilst transferring the fund from the branch to the parent company remittance tax obligation may arise as well.

Once, the PE is registered as a separate legal entity (e.g LLC.)where the stakeholder of such legal entity is the parent company, the PE's income shall not be included into the definition of the worldwide income of the parent company. As such, the income derived by the PE shall be subject to the corporate income tax where it is registered. Once the net profit of the LLC is distributed to the stakeholder(s) shall be subject to the withholding tax.

Conclusion:
within the framework of cross-border transactions the business is to be analyzed the PE statuses in the corresponding State. Upon to the PE status thereof, the legal formation and respective tax consequents of the PE in that State are to be determined accurately. Once the PE is registered as a separate legal Entity (i.e. Limited Liability Company, subsidiary), the business must ensure that the profits attributed to the PE is not included into the worldwide income the parent company, which may subject to WHT in that state in lieu.

Question 2: Recent developments arising from globalisation, digitalisation and increased tax competition present challenges to the corporate income tax. What are the implications of these developments for the future of the corporate income tax.

Introduction:

Along with the enlargement of the scope of globalisation, currently the technology are also being developed constantly. The constant improvement of the technology gives rights to the business to perform their cross border transactions in a more effective way. Nowadays, digitalisation is the main point that the international businesses invest. This enormous change in the historic performance of the transactions, also makes the states and international organisations to look through the tax provisions to cover such points and avoid misunderstandings.

As depending on the PE status of the businesses and/or legal formation of the PEs, the taxation of the transactions may differ.

Furthermore, based on the subjective numerical tests and/or objective facts and circumstances tests the business may identify the residency statuses in the State where the transactions are performed across the territory where such businesses are established. As such based on the stated tests, the cross border transactions may be analyzed as per the respective provisions relating to the residency and source taxation.

Analysis:
Digitalisation of the businesses, or application of the technology to the businesses may create confusions for the tax payers as well as competent tax authorities of States from taxation point of view.
As the structure of performing the transactions through the technology, may create "grey areas" for occurrence of PE in the state or not. To understand if PE is arose in the State, one needs to understand the business through technology within technological framework, along with the legal framework.

The businesses may derive income through Digitalisation mainly in two ways: a) online sales transactions (goods and services), b) licensing - giving the rights to use the software. (which are royalties).

Looking at the process within the technological framework, it should be taken into account that the process are mainly consists of three main elements:
a) Server
b)Owner of the software
c) Buyer of the goods and/or services, beneficial of the license.

Using the software the buyers may get to the enjoy the benefits which the owner of the software suggests. However, looking within the technological framework of the process, it is notable that the software cannot be used if server is not applicable. So that, does this mean that the PE arises where the server is located?

In the framework of the globalisation, the scenarios form legal point of view may vary from each other. As such:

a) Owners of the Servers and Owners of the softwares can be different persons in different States where the owner of the software may rent a space in the server. Triangual situations may occur within such transactions in case of the buyer is in another country. Depending on the nature of the agreements between the owner of the server and owner of the software (conditional and unconditional) the PE testing may be vary.

b)The owner of the Servers and software can be the same person.

Conclusion:

The OECD and UN tax treaties are being constantly improved with respect of identification of PE of the businesses who heavily involve Digitalisation into its business, or identify the definition of digital PE. Once the PE is determined, the income derived from online sale/ or licensing may be taxed in the source state where the buyer is located. The relief methods within such matters can be determined based on the DTAs, if applicable.

3. When interpreting a double taxation agreement (DTA), where a term is not defined in the DTA itself, should the parties look first to the context or to the domestic meaning? What does "context" mean in such circumstances?

Introduction:

In the background of increasing cross-border transactions view of the businesses, it should be noted that States conclude international tax agreements to define the effective taxation of the cross-border transactions between contracting States. Generally such agreements are referred to as Double tax agreements (DTA) where such treaties provide multilateral provisions relating to the identification of the rights for taxation the cross border transactions.

Analysis and conclusion:

In some cases, the interpretation of the provisions of the DTAs by the contracting states may differ. Such variances of the interpretations may happen between the tax payer and the respective tax authority of the State, and respective tax authorities of the contracting States.

Conflicts in interpretation of the provisions by the taxpayer and tax authority.

In respect of the analysis of the cross-border transactions from taxation point of view, DTAs may override the meaning of the same provision if applicable in the domestic tax law.

Conflicts interpretation of the provisions by the tax authorities of the respective contracting states:

If the conflict is happened between the contracting states, initially the tax authorities of the contracting states may discuss and mutually agree on the definition of the context. In case of the agreement is not obtained, if the contracting states are members of the OECD or UN, the may rise the issue to the respective body thereof for further discussions.

Conclusion:
The provisions of the model conventions and their incorporation into a majority of bilateral have helped the business to benefit as a widely-accepted guide to the interpretation and application of the provisions of existing bilateral conventions.

There can be cases where the taxation can be eliminated through the domestic provisions (e.g. relief of double taxation.)

4. What is the difference between "tax competition" and "harmful tax competition"?

Introduction:
As the business are providing its activities across the borders of the territories where the

are established, along with the economic factors they also assess the competitiveness of the tax systems whilst deciding to make investments. Considering that the tax systems, international tax agreements, tax ratios and etc. are vary from each others State by State it increases the competitiveness of the States form taxation point of view.

Analysis and Conclusion:
Using the loop-holes in the tax laws, "making the situations "questionable"" the tax payers are structuring their businesses for the objective of earning more revenue decreasing the tax costs. Tax avoidance is one of the main points the tax payers are "hungry" for.

Depending on the economic targets of the states, the states may provide tax incentives to captivate more foreign investments. (e.g. tax holidays, lower tax rates and etc.). Providing such incentives may increase the tax competition amongst the States, as it may affect the inbound and outbound of the capitals/inflow and outflow of the businesses.

Furthermore, there are territories where such territories are free of tax and which may generally are referred as tax heavens.

Such incentives are the main basis for shifting the profits to avoid the tax and eliminate the tax costs by the tax payers. Whilst doing that, the tax payers are analyzing residency and source taxation consequences.
Currently, the states and international organizations are working on the BEPS projects to eliminate the tax avoidance/evasions by the tax payers.

Question 6.

Introduction:
Based on the facts provided in the question Number 6 of the Module 1 - Principles of international taxation.

Analysis:

Considering the fact that,
- Most land determines the corporate tax residence on the basis of the place in of incorporation.
- The directors are based in Noveland, the those directors are making the essential decisions for the business.

Potential issue in this regard:
- The risk for the double tax residence of the companies. Accurate fact and circumstances test is to be performed. There may be a huge risk that the company may also have a residency status in Novaland based on the effective management test, as the directors are based in Novaland. Based on the test in the event of determination of residency in Novaland as well, the issue relating to double residence of companies may arise.

Paraghrapgh 3. 21 of the OECD commentaries stipulates that, special rules as to the preference must be established.

As historically the states were determining the residency based on the Place of effective management (POEM), currently the states are dealing with such situations based on mutual agreement procedures (MAP). The states is to be agreed the residency status and respective taxation and relied methods based on the double taxation agreement.

Considering the fact that,
- Marai's directors are based in Novaland:

Potential issue in this regard:

the Article 16 of the OECD convention stipulates that:
"Directors' fee and other similar payments derived by a resident of a contracting State in his capacity as a member of the board of directors of a company which is a resident of the other contracting state may be taxed in that other State."

Further to determination of the residency of the company (as stated above that the risk of double tax residency is to be clarified based on the mutual agreement), it needs to noted that the OECD provisions treats the services to be provided by the Directors as performed in the State of residency of the company.

Considering the fact that,
- Marai also sells retail airline tickets through and agent in Novaland.

Potential issue in this regard:
It needs to be identified if the tickets are being sold through an independent or dependent agent. If the tickets are being sold through dependent agent who is acting on behalf of Marai Ltd, the risks relating to having agency PE needs to be tested. Once the agency PE is tested successfully, the attribution of the profits from sale of tickets shall be determined accordingly.

Considering the fact that,
- Marai Ltd also advertises the products of several suppliers of luxury goods in magazines which it supplies on its aircraft. It receives advertising fees from these suppliers.

- Paraghrapgh 8.1 of the OECD convention explicitly envisages that "advertising that the enterprise may do for other enterprises in magazines offered abroad ships or aircraft's that it operates or at its business locations (i.e. ticket offices) is ancillary to its operation of these ships or aircraft and profits generated by such advertising fall within the paragraph."

Further to the determination of residency based on mutual agreement between the states of Most land and Novaland, the revenue derived from advertisement services provided in Marai's operations shall be subject to income tax accordingly.