Part A

Answer-to-Question-_1(1)_

As per Para 1.33 of the TPG, comparability analysis for determining arm's length involves accurate delineation of transactions between AEs and comparing the accurately delineated transactions with reliable comparables.

As United Resorts LLC, CWU, UMP and WSM are associated enterprises, the controlled transactions between them are accurately delineated as follows:

United Resorts LLC
- Licensing of the group trademark to CWU and WSM
- Receiving Royalty for licensed group trademark from CWU and WSM
- Provision of loan to CWU and WSM for construction of the resort
- Receipt of interest from CWU and WSM for the loan financed

Crystal Waters United Ltd (CWU)
- Receipt of loan from United Resorts LLC
- Receipt of license to use the group trademark from United Resorts LLC
- Receipt of intra-group services in the form of accounting, legal, human resources, procurement, stock control, reservations, marketing and promotion services from UMP
- Receipt of strategic management services from UMP
- Payment of interest to United Resorts LLC for the loan received
- Payment of royalty for use of group trademark to United Resorts LLC
-Payment of fixed share in revenue and profit to UMP for receipt of mentioned intra-group services

United Management Pty Ltd (UMP)
- Provision of intra-group services in the form of accounting, legal, human resources, procurement, stock control, reservations, marketing and promotion services to CWU
-Receipt of fixed share in revenue and profit to UMP for receipt of mentioned intra-group services.

White Sands Management Co Ltd (WSM)
- Receipt of loan from United Resorts LLC
-Receipt of license to use the group trademark from United Resorts LLC
-Payment of interest to United Resorts LLC for the loan received
- Payment of royalty for use of group trademark to United Resorts LLC.

Answer-to-Question-_1(2)__

The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (hereinafter referred to in this paper as "TPG")in chapter 2 provide that there are 5 transfer pricing methods that may be used in determining the Arm's length price:
- The Comparable Uncontrolled Price Method (CUP)
- The Resale Price Method (RPM)
- The Cost-Plus Method (CPM)
- The Transactions Net Margin Method (TNMM) and
- The Profit Split Method (PSM)

In order to consider the appropriate TP method for determining the arm's length price for the intra-group transactions, Chapter 2 of the TPG provides guidance that the appropriate method would be one where:

- None of the significant differences between the controlled transaction and the uncontrolled transaction would create a difference in the price or margin compared

- Reliable and suitable comprability adjustments could be provided to reduce the impact of such material differences noted

The analysis for the appropriate TP Method for United Resorts Group is provided below:

a) CUP Method

This method compares the prices of controlled transaction with the prices of the uncontrolled transaction.

CUP Method is a function of product charecteristics and requries that the product or service sold or provided are identical between the contolled and uncontrolled transactions

One should take into consideration internal and external comparables in finding the appropriate comparable price. It is the most direct method and is the preferred method under the TPG. However, it would be difficult to find comparable transactions given the tight specifications for productand functional charecteristics.

If comparable transactions are found, this method may be used in order to establish pricing for:

- Licensing of group trademarks made by United Resorts LLC to CWU and WSM.
- The interest on loan provided by United Resorts LLC to CWU and WSM and
- Intra Group Services provided by UMP to CWU

b) Resale Price Method
This method obtains the arm's length price by deducting the arm's length gross margin from the price at which goods/services are sold to end customers. It is normally used for distribution functions where the distributors do not add significant value.

However, there would be difficulty in obtaining comparable gross margins and there would be accounting issues based on the accounting standard followed by in the uncontrolled and controlled transaction.

Since there are no distribution activities done by any MNE in the United Resorts Group, the usage of this method is unlikely.

c) Cost Plus Method
This method adds an arm's length mark-up on the cost incurred in provision of services or sale of goods between the AEs.

This method may be used for finding the arms length price for the intra group services provided by UMP to CWU.

However, similar to RPM, there could be issues like finding a comparable transactions where the party is providing such services and has the same functional profile. And also, there could be accounting issues like the method used for absorbtion of overheads and also management efficiencies making the mark-up low for the comparable (in case the fixed costs are already recovered and the markup is based on marginal costs)

d) TNMM

This method compres the net margin earned by the AE to that of an independent enterprise. The net margin may be an appropriate profit level indicator (operating profit on costs, assets or sales based on the functional analysis of the tested party.

Given that it is based on net profits, it may not be as affected by product or functional charecteristics as is the other methods.

However, it may be affected by the accounting practices followed by the tested party and the party to comparable.

This method could be used for finding the arm's length price for strategic mananagement and quality control functions provided by UMP to CWU

e) Profit Split Method

This method is generally used when the profits generated by the relevant AEs are highly integrated or is using unique intangibles or contributing to unique intangibles.

This method may be used to price the compensation for the group trademark to each AE, from an understanding of who performs the DEMPE functions for this trademark.

Even though it is owned by United Resorts Group, it is exploited by CWU and WSM. Also UMP is conducting activities aimed at development of the group trademark.

Answer-to-Question-__1(3)_

The following issues may exist from a transfer pricing risk management perspective.

a) **Is DEMPE analysis for the group trademark done** - It is observed that even though United Resorts Group owns the intangible, it is also protected and developed by UMP by ensuring that CWU operates in a consistent manner. Also CWU and WSM are exploting the IP in getting better occupancy (80%) because of the brand. The tax authorities may call for a DEMPE analysis to justify the actual functions done by the AEs on the intangible.

b)**AEs are not compensated in arm's length** for their contributions to the intangible that is the group trademark.

c) **BEPS risk -** There may be BEPS risk in the way the transactions are structed, more clearly the loan provided to WSM (10% tax rate) is at 9%, while the loan provided to CWU (25% tax rate) is at 11%. This is albeit both the AEs having the same terms and conditions for the loan.

d) **The value provided by CWU to UMP for the intra-group services may not be arm's length**, as mainly it is observed that only low value adding IGS is provided by UMP to CWC for services like accounting legal human resources and stock control. More over, the strategic management and control services may be classied as shareholder activities, as the service made in this line by UMP to CWC is for the protection and development of the brand that any tangible value adding service benefit for CWU.

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Answer-to-Question-_2(1)__

As per Para 1.36 of the TPG, In carrying out Transfer Pricing Analysis, one should also carry out a functional analysis in order to determine the functions of the entities, the assets used in provision of these functions and the risks involved in transactions that they carry out. The functional analysis is important in order to choose the relevant transfer pricing methods and in carrying out comparability analysis.

It is important that global value chain is understood as well the contractual terms of the agrrement between AEs along with the product charecteristics, economic circumstances and the business strategies employed by the AEs for identifying all the comparability factors in accurately delineating the transaction and appropriate comparability analysis.

The functional analysis for Fastconnect telecommunications group is provided as follows:

Company	**Functions**	**Assets**	**Risk**	**Charecteriation**
Fastconnect HeadCo Ltd	- Deploying staff in each jurisdiction - Intra Group services for the group including provision of accounting, HR, procurement, supply chain management and legal services - Licensing of intangibles	- All intellectual property of the group including brand name - People Assets	- Supply chain risks - Development risk - Operatio risk - Transaction risk -Foreign currency risk - Risk related to IP	IP Holding Company High risk service provider

			- Market risk - Risk of competition - Intangible asset risk	
Fast Connect Sub 1	- Provision of Connection services	- Interconnection agreement with Fast Connect Sub 2 - Machines and tools for providing connection services - Know-how in provision of connection service	- Receivable risk - Transaction risk - Risk of failure in connection - Foreing currency risk - Receivable risk	Low risk service provider
Fast Connect Sub 2	- Provision of technical network services	- Know how in provision of technical network services - Machines and tools used for provision of technical network services	- Service risk - Risk in failure of network - Foreign currency risk	Low risk service provider
Fast Connect Sub 3	- Project management of new digital platform	- Know how in executing project management function - Tools and software for project	- co-ordination risk	Low risk service provider

		management function		

Answer-to-Question-_2(2)__

The following transfer Pricing issues may affect Fastconnect Group while preparing its TP documentation:

a) **The DEMPE of the intangible** - An analysis may have to be undertaken which accurately delineates the DEMPE of the group intangible with respect to the DEMPE functions performed by each AE including the assets used and risks assumed. This will be needed to justify the arm's length value of license fee receive by Fasconnect HeadCo from other AEs.

b) **BEPS Risk** - It is noted through the inter company agreement that Fastconnect Sub 2 with headline corporate tax rate of 15% is getting a definite 20% return on cost, while Fasconnect Sub 1 with a headline tax rate of 25% is getting its income on the basis of an undisclosed rate on sales revenue of Fasconnect Sub2's customers.

Moreover, the licensing fee charged by Headco will also be questioned for BEPS related analysis since its headline corporate tax rate is only 12.5%. A suitable justification for centralisation may need to be provided.

These risks may be analysed from the CbCR (if needed to be prepared) by the Group.

c) **The remuneration for IGS and IP may need to be seperately determined -** It is noted that HeadCo charges one service fee both for intra group services and licensing of IP. Since the IP and the IGS are not integrated and inexplicable, the remuneration for both may have to be determined seperately.

d) Contribution and benefits from the CCA - The CCA between all the AEs of the group for the development of the digital platform needs to be analysed for the purpose of TP documentation where it clearly need to differntiate and analyse who are the participants to the CCA, what are the expected benefits from the CCA and what are the contributions for each parties to accurately determine the arm's length price

e) Ex-post valuation of the returns from the CCA - Since the returns from the CCA for joint development of the digital platform is not ascertainable now, the Group may have to value the expected benefits from the CCA on an ex-post basis. This may have to be properly projected and documented for the purpose of TP documentation.

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Part B

Answer-to-Question-__3_

Advisory on tretment of profits from sale to Neptunian Government

Introduction

As per para 1 to Article 7 of the OECD Model Tax Convention on Income and Capital (MTC), an enterprise of a contracting state would have to pay tax on its business profits in another contracting state only if the enterprise as a Permanent Establishment (PE) in the other contracting state.

In the instant case of Starr group, it will be important to identify if it has a PE in Neptunia for the purpose of analysing if the group would have to pay tax in Neptunia on its business profits.

However, it is not explicitly provided if Swickland and Neptunia have a double tax treaty in place. For the purpose of the analysis it is assumed that both the contracting states have a double tax avoidance agreement in line with OECD Model tax Convention.

Analysis for the existance of a Permanent Establishment

Permanent Establishment (PE) is identified on the basis of the guidance provided in Article 5 of the MTC.

a) Fixed place PE - Para 1 to Article 5 explains that a PE means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Hence, if Starr group has a fixed place of establishment in Neptunia, then it may be constued that it has a PE in Neptunia. But in the instant case it is clear that Starr group does not have a fixed place of business at their disposal over any period of time during the year.

Moreover, the installed servers are under the disposal and ownership of Neptunian Government, the presence of which cannot be said to have a fixed place PE exposure for Starr Group.

Hence, Starr group may not have a fixed place PE in Neptunia.

b) Specific PE - Para 2 to Article 5 of the MTC, a PE shall include a place of management, branch, office, factory, workshop or any other place for extraction of natural resources. In the instant case, starr group does not have a place of management nor an office nor a branch, factory or any other place of management in Neptunia. It is clear that it has a fixed place only in Swickland. Hence, there may not be an incidence of PE as per para 2 of Article 5. More over para 2 would not be imposed unless para 1 is applicable.

c) Construction or Installation PE - As per Para 3 to Article 5 of MTC, a PE shall subsist if a foreign enterprise carries on a contruction or installation project in a particular state and that construction or installation project goes on for more than 12 months.

In the instant case of starr Group, the group only sold the servers to the government of Neptunia, it was not liable for installation of the servers which was done seperately by an unrelated local company in Neptunia by the name of Retro LTD.

Hence, a construction PE may not susbsit for Starr group in Neptunia.

d) Preparatory and Ausilliary Services - As per Para 4 to Article 5 of the MTC, if the activities provided by a foreign enterprise in another state is in the nature of prepartory or auxilliary services, then those services would not create an impact of PE.

In the instant case, it is understood that Starr Group is undertaking its core income generating activity of distribution of servers in Neptunia, and hence this activity may not be construed as a preparatory or auxilliary service.

e) Dependent Agent PE - As per Para 5 to Article 5 of the MTC, a PE shall subsist for a foreign enterprise in another state if in that state there is an agent for the foreign enterprise who habotually concludes contract or habitually plays the principle role in conclusion of contracts that are routinely concluded without material modification of the foreign enterprise and these contracts are in the name of the foreign enterpise for transfer of ownership or right to use property or for provision of services by the foreign enterprise.

In the instant case, starr group's five employees who are residents of Swickland travelled to Neptunia to conclude and negotiate the contract on behalf of the group for the distribution of servers to the Government of Neptunia. There was no dependent agent who is a resident of Neptunia who acted on behalf of Starr group.

Besides, with respect to installation of the servers it is not clear whether the contract that Neptunian Government had with Starr group is only for distribution of the servers or for distribution and installation.

However, taking cue from the question where Retro Ltd invoiced the Neptunian Government for the installation fees, it could be construed that such a legal power would subsisit with Retro Ltd only if the contract for installation was in their name.

Hence, it could be construed that Starr Group did not have a dependent agent in Neptunia with respect to the distribution of servers with respect to conclusion of the contract in its name and hence there may not be a possibility of a dpendent agent PE arising for Starr Group.

Conclusion

Based on the above points and analysis it may be construed that Starr group did not have a PE in Neptunia for the sole transaction of distribution of servers.

Hence, in the absence of the PE, taking legal recourse to Article 7(1) Of the MTC, Starr group may not be needed to offer any profits for tax in Neptunia and all the profits earned from the sale to Neptunian Government may be taxed only in Starr Group's country of residence which is Swickland.

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Part C

Answer-to-Question-_5(1)__

Few startegies for multinational groups to minimise the risk of transfer pricing disputes include:

a) **Complete Country-by-Country Reports (CbCR) accurately** - CbCR is applicable to multinational groups based on a threshold on consolidated group revenue. If CbCR is applicable it is advisable to file the same accurately as it can provide transparency to the tax administrations regarding the MNE group activities.

b) F**ollow the arm's length priciple set out in the TPG and domestic TP regulations** so that the chances of dispute with respect to application of TP rules with respect to different types of transactions (IP, financing, CCAs, IGS etc) are minimised.

c) **Make good TP documentation -** Accurately documenting the TP analysis performed including accurate delineation, comparability analysis, selection of tested party, the approriate method to use and the appropriateness of safe harbours etc are well understood and clear to the tax authorities.

d) **Perform Advance Pricing Agreements** for unique transactions invloving valuations of ex-post returns so that the chances of disputes later are minimised.

e) **Provide good contamporaneous information** that is consistent with the time period of the transaction

Answer-to-Question-_5(2)__

The Country-by Country Report (CbCR) was introduced in BEPS Action plan 13. It is a template for multinational enterprises to report annually and for each tax jurisdiction, the required financial information set therein.

The CbCR is to be filed by the Ultimate Parent Entity of the Group to its respective domestic tax authority, which will be circulated to the corresponding tax authorites for requisite information.

The CbCR provides good information to the tax authorities and especially helps them in understanding:

a) A high level assessment of transfer pricing risk in the MNE
b) A high level assessment of other BEPS related risk
c) It can also enable them to use high level statistical analysis on the shared data to analyse the risks from a tax perspective.
d) It also saves time of the tax authorities in picking the MNEs for audit, where MNEs with material differences in its group profit share or activities could be easily picked and time and effort of the tax authorities could be conncentrated on such large cases.

However, CbCR may be causing:
a) Additional compliance issues for taxpayers
b) Additional cost to tax authorities especially Low Capacity Jurisdictions to implement systems to collect and analyse CbCR data
c) The CbCR data may be impacted by the accounting standards followed by each jurisdiction

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Answer-to-Question-_8(1)__

The following factors should be taken into consideration in a TP risk assessment so that the TP risks do not materialise

a) Whether a full functional analysis of all entities in the MNE group are made along with their charecterisation, are made and if the functional analysis and charecterisation made is right

b) With respect to transactions involving intangibles, is functional analysis done for all DEMPE functions and is the FAR with respect to the DEMPE of the intangible accurately delineated.

c) Is the TP method chosen conforms with the guidance provided in chapter 2 of the TPG, are reasonable comparability adjustments made

d) In terms of a business restructuring, is pre and post restructuring FAR made accurately. Is the arm's length price for the restructuring itself and the considerations for post restructuring controlled transactions followed

e) With respect to intra-group services provided, are IGS approroately identified, are shareholder activities removed and does the IGS actually confer a benefit to the other AEs.

f) Are the safe harbours being applied correctly in line with the applicable domestic regulations.

g) In case of CCAs, are the contributions and risks made by each party conforming to the benefits derived individually, are there appropriate balancing payments made

h) Are intra group financing transactions accurately delineated

i)Are appropriate documentations made, and the three mandatory documents including the Master file, local file and CbCR made as per the specification in TPG annexure and the BEPS Action plan 13.

These factors if analysed properly reduces the risk of transfer pricing audits, adjustments and unnecessary litigations. Can also be a reputational benefit for the MNE as a whole in creating this culture of compliance.

Answer-to-Question-_8(2)__

As per Para 1.33 to TPG a comparability analysis is at the heart of determination of arm's length.

In such a way one can say that a functional analysis is at the heart of the comparability analysis. Any error at the time of functional analysis would make the comparability analysis wrong. Hence, it is very crucial to get the functional analysis right.

The main practical considerations in conducting a functional analysis are as follows:

a) Actual vs Contract - Identify the actual functions performed by each MNE instead of just going by the contractual terms

b) **Look for the economic ownership** of the assets used for accurately delineating the transaction

c) **Remuneration is not necessary** - Even if an MNE is performing a functions without remuneration, it need to be analysed in the functional analysis. The point is not the remuneration, but the economic significance of the transaction (eg. licensing of IP at no cost) d)**See the control and management of the risks assumed** and if the party to whom the risk is allocated acutally controls and manages the risk

e) Identify if the party to whom a risk is allocated has **financial capacity to assume the risk**

f) **Consider only economically significant risks**

g) While categorising functions from group synergies, check if there is a deliberate and concerted action and analyse the significance of such an action

h) Look for reasonableness in the functions performed by each MNE, its actual conduct and the level of assets and risks used in the provision of such functions.