Answer-to-Question-_1_

Dear Mr Cavandish,

A CFC is described as a non-uk company controlled by a uk person or persons.

If a company falls within the CFC rules then there are 5 exemptions which could apply. if one of the exemptions are met then the company is not liable to any CFC charge.

there are also 5 gateways which could apply to companies.

There are 5 initial exemptions to the CFC charge. these exemptions are would not make a cfc charge liable if a company falls within them:

1. exempt period - first 12 months of an acquired group is outside the scope of CFC charge.

2. Exempt jurisdiction - if a contry is in the exempt jurisdiction list then no cfc charge will arise

3. exempt tax - if the overseas tax is 75% of uk tax then no cfc charge will arise

4. low profits - if the profits of a companys are less than £50k or profits less than £500k and less than £50k is non-trading interest

5. low profits margin - this is when profit margin is no more than 10% of its relevant expenditure

Apart from the initial exemption there are 5 further gateways which could also apply if none of the exemptions are met. these gateways are:

- profits attributable to uk activites

this gateway does not apply if a safe harbour is met:

1). cfc does not hold ass4ets or bear risks and the main purpose is not to reduce tax

2). CFC doies not have any uk managed assets and no uk managed risks

3). CFC can ensure its business would still be operating if uk managed assets stop being uk managed

4). CFC profits consist of only trading finance profits or property bysiness profits.

there are also further information on signigficant people function in the business.

- non-trading finaance profits

This applies where:

-non-trading finance profits that are attributable uk companies

-non-trading finance profits arise from invesrtment in cfc OF UK monetary assets

- arrangements alternative to a dividend payment

there is a particualr exemption here which applied to a 75% exemption on a aualifying loan relationship.

furthrmore leases to uk resident companies would also fall within the scope of this gateway.

- tradingf finance profits

this is specific to finance prifits which have been diverted from UK. this also applies to profits and funcds of assets derived from uk conncected capital.

- captive insurance

This is relavent to the insurance business so should not apply to you.

- solo consolidation

this is related to the banking business so should not apply to you.

<u>Pressure</u>

when looking at presssure it is a CFC as it is a no uk resident company which is owned by uk persons (PSI PLC).

As trading profits are £400k and intrest recieved in £40k this would fall within the low profits exemption. as the pfofits are under £500k with non-trading income under £50k. so this means there would be no CFC charge attributable to Pressure.

<u>Tyres ltd</u>

The thing we would need to note here is if psi have control over Tyres. for CFC purposes there are 4 methods to determine control.

control means is a person controls a company by means of holding share of possession of voiting power in or in relation to company or any other company. person has the power to secyre the affairs of the company and are conducted in accorandce with persons wishses. control can be 50% geneally.

if any of the above apply then ctontrol would exist.

from the information proviuded it is unsure whether there is control here as control simply does not need to be from percentage ownership rather this could be on distributions, board members or rights.

if no other connected company controls any part of Tyres then it is unlikely tyres would fall within the CFC rules as it is not controlled by UK resident company.

ebven if control did exist and Tyres was a CFC it would be exempt under the low profits exemption as long as its non-trade profit is less than £50k.

Tread

Tread is a non-uk resident company and is controlled by a uk resident company for this reason it would fall within the category as a CFC. There are two possible exemptions which can apply to Tread as the tax rate is 17% this is more than 75% of uk tax (19%*75%=14.25%). further more the exempt jurisdiction could also apply to singapore.

either way there would be no cfc charge on Tread.

Tube

Tube is a CFC as it is no-uk resident and it is owend by uk Persons. however, Tube would fall within the low profits margin exemption as the operating expenses is no more than 10% of profit margin.

therfore there will be no CFC charge on Tube

Grip

____Grip is a non-uk company which is controlled by a UK resident therefore it is a cfc.

When looking at the exemptions the low profit, exempt period and low profits margin will not apply.

we can look at the tax exemption and the jurisdiction exemption. in reagrds to the tax exemption we would need to understand the tax rate in Hong Kong and if this is more than 75% of uk tax. furthermore if Hong kong is a exempt jurisidciton then this will also be exempt from CFC charge.

There is some input from the UK on this business but there non of the profits would be attributable to the UK as this seems like geenral business assistance.

<u>CFC ChaRGE</u>

____aNY RELEIEF FROM corporation tax attributbale to any foreign tax which applying the corporation tax assumptions would be given to the cfc BY VIRTUE OF double tax relief

The CFC charge is 20%.

<u>DPT</u>

tHERE are also diverted profits tax rules which could apply and this captures payments which lack ecomonic substance and could also be bought into charge.

I hope the above is useful. if you would like to discuss please let me know.

Yours sincerly,

Tax agent

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Answer-to-Question-_2__

Part A

The statutory residency test (SRT) is a test to determine if an individual is uK resident. this test is comprised of 3 tests:

1. overseas test
2. uk test
3. sufficient ties test.

I have assumed patrick will be in the UK for 144 days - this includes the 80 days currently plus debruary and march and 5 days of april.

Overseas test

firstly we will look at the overseas test. if any of the following conditions are met then Patrick will not be uK resident:

1. resident in the uk for 1 of the last 3 tax years and are present in the uk for fewer than 16 days
2. not resident in the uk for the last 3 tax years and in the uk for less than 46 days
3. work abroad for an average of 35hours per week and are in the uk for fewer than 91 days of which 31 days are working in uk.

point 1 will not apply as Patrick left the uk on 6 april 2017 and this was more than 3 years ago and he has not been resident in the uk for last 3 years.

Point 2 will also not apply as although Patrick has not been uk resident in the last 3 tax years he will be spending more than 46 days in the UK.

for the 2019/20 point 3 will not apply as Patrick is retired.

UK Tests

as non of the automatic tests apply We would now look at the Uk testt. this test is built up of 3 parts and if any apply Patrick will be considered uk resident.

1. in the UK for 183 days or more.
2. have a uk home.
3. work full time in the uk.

From my calculation up until the end of the 2019/2020 tax year patrick is likely to spend 144 days in the uk so this is under the 183 day threshold. so Patrick will not meet point 1.

Point 2 looks at a uk home. From my file notes i can see Patrick has a uK home as well as a Monaco home. so in theory paatrick would meet this condition. however, there are further points which need to be looked at for a uk HOME. In particular the test is met where:

1. period of 91 consecutive days & 30 days fall within the tax year; when
2. have a uk home and spend at least 30 days in it; and either
3. have no overseas home; or

4. have an overseas home but use than home for less than 30 days in the year.

from the itinal look of the information provided it seems than you stay in the Monaco home more than you do in the UK home. however, due to your accidrnt it is likely you will be in the uK for more time than you wopuld be in Monaco but you will not be staying in your uk home rather you would be in the hospital.

as long as you are spending more time in your Monaco home than the UK home you should not met the UK home test.

As Patrick is retired point 3 will not apply to him as he will not be working in the uk.

<u>Sufficient ties test</u>

As none of the UK tests apply we would now need to consider the sufficient ties test. the sufficient ties test is split between leavers of the uk and arrivers of the uk. In this siutation you would be considered as an arriver as you have not been resident in the uk in the past 3 tax years.

as part of the sufficient ties test there are 5 potential ties which can occur:

1. family - if you wife or minor childern are resident in the uk. as your children are adults and your wife is not uk resident as she has only spent 100 days in the uk this will not apply to you.

2. accomodation - a place to live in the uk made available to yourself. as you have a uk HOME this test will be met.

3. work - as you are retired this test will not apply to you.

4. uk presence - more than 90 days in the uk in either the previous 2 tax years. 2018-2019 you spent 95 days in the uk so on this basis you would meet this test.

5. country - more days in the uk than in any other country. this would apply to you however, this test is only relevant to people who have been resident in the uk for 1 of the last 3 tax years.

so in total you have 2 ties - accomodation and uk presence. you need to have 2 ties and be in the UK for over 120 days to be considered uk resident.

In conlcusion as you will be resident in the UK for 144 days this is over the 120 threshold and you have 2 ties in the uk you will be considered uk resident.

Part b

A uk resident is taxed on his worldwide income and gains.

while you were non-resident in the 2018/19 tax year you had 2 transactions a sale of shares generating a capital gain of £5m and a dividend recieved of £1m.

There are some anti0avoidance rules in respect of temporraty non-residence. this applies for individuals whom leave the uk and make sizeable transactions and try to shelter than income from uk tax and then return to the uk.

however these rules would restrict this so if an indiviodual leaves the uk and makes a transaction if that indibidual returns back to the uk within a period of 5 years he will be considered as temporary non residence and this would mean any gains would be chargeable to UK tax at 20% due to CGT.

The £1m dividend you recieved not be liable to uk tax.

depending on your domiciel status you could potentially be a remittance base user and this would mean you income and gains from overseas activities would not be liable to uk tax unless you remit those earnings into the uk or enjoy them in the uk.

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Answer-to-Question-_3__

Part A

PE Definition

A permeanent establisghment (PE) is defined by potentially 2 ways. this could be either a fixed place of business or an agent.

A fixed place of business in the uk could be a branch, office, factory, workshop or a building site or contrrsuction that lasts for more than 12 months . this list is not exhastive. the fixed place of business is a place where the companies business is carried out.

An agent is someone acting on behalf of the company and habitually exercises authority in the uK to carry out business activities on the companies behalf.

However, we would alos need to consider what is not considered a PE.

An independant agent is not considered as a PE if they are acting in the ordindaty course of the business and if they represent other companies also.

In terms of a fixed place of business or agent the activites carried out are of preparatory or auxilliary nature and are not part of a fragmented business operation.

For reference preparatory and auxilliary means use of facilities or maintainance of stock for storage, displace or delibery of goods, market reseach etc.

Fragmented bsuiness operation is activtiies which are carried out by a company or person who is closely related to the company or the activites are more than ancillary.

Offices

An office in a country would constitute a fixed place of business from the above definition. this would mean it is likely a PE would arise in those countries.

Warehouse

The warehouse could be constituted as a fixed place of business as it is a physical premises. however, as the warehouses are a place of storage and delievery this may be preparatory and auxilliary and not ancialliary to the business.

As a fixed place of business does not include activities which are preparatory or auxilliary in nature. and the holding of stock and delvery seems to be meet this defnition.

therefore it is unlikely that a PE would arise from the warehouses. however, this should be checked regularly to make sure the acitvities in the warhrebouse do not change which could create a PE

Sales Team

The sales team are working on behalf oF ILT and are therfore not indepedant agents ratehr they are dependant agents.

They are negotiating contracts so it is very unlikely thier roles are preparatory or auxilliary as this is key to the business.

therefore a PE would be created by the presence of the sales team.

Overall it would seem the sales team and the offices would create a PE whereas the warehouse would not create a PE due to it not carrying out major activites.

Part B

A company would fall within the regime of transfer pricing if they are a large company. a large company is defined as having more than 250 employees and either more than 43m euro balance sheet or 50m euro turnover.

From the information provided the group meets the above conditions and meets the definition of a large company.

Transfer pricing rules

Any transactions between ILT and its subs should be done at arms length. this means that transactions should be done on the same basis as unrelated parties would conduct a similar transaction.

There are a few particular transactions which have been mentioned which include royalties, management recharged and loans.

In terms of the royalties we would need to consider if the 5% royalty is an arms length payment. there could be benchamarking performed to capture if a similar roylaty is at 5% this would look at unconnected parties to see if the 5% is arms length or not.

The management recharges should not just be based on revenues as there is a possibility that ILT Group LTD may have assisted a group company with low revenues more than a group comp[any with high revenues so this would need to be considered.

In respect of any inter-company loans we would need to consider the Thin capitalisation rules. when considered if a tp ADJUSTMENT IS REquired we would need to look at 3 things:

1. would the loan have been made to the group company from a third party
2. would the amount of loan the group company recieved be given by a third party
3. would the same interest rate be given by a third party.

in essence we need to consider would the loans have been made by a third party bank to the group companies on the amount and rate. If the amount or rate would not have been given by a third party lender then a TP adjustment would be required.

Documentation filling requirements

tHE documentation required for TP purposes would be a local file, master file and a country by country return. i will cover country by country return slightly later.

A local file can be produced for an entity in a particular jurisidiction and lay out the inter-group transactions which it has been partipant to and what tp methods have been conducted on those transactions.

Current documentation

The draft intercompany agreements need to be finalised and put in place to make sure the transactions between group companies are at arms length.

Country by country

A country by country is required where uk parents of groups whom have a consolidated revenye of 750m eurors. the country by country reports include revenue, profits and taxes paid and this is required 12 months after the end of the accountring period.

From the above ILT Group would need to file a cBcr RETURN. ILT would need to decide which entity will be filling the return. for uk companies you are required to provide the unique tax reference number and full names of all the uk group entities.

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Answer-to-Question-__6_

Part A

A UK subsidiay would be liable to UK tax on its worldwide gains and income wherease a UK branch would only be liable to UK tax on its uK attributed income.

A company is resident in the UK if it is incporated in the uk OR ITS central managed and controlled in the UK. as the subsiirary will be incporated in the UK it will be resident and taxable on its worldwide gains and income.

Abranch is not seen as a seperate legal existance from its parent.

BOTH a branch and a subsidiary will be liable yto UK CT.

A benefit of setting up the branch is electing to use the branch exemption. the branch exemption would apply to all your branches and is irrovocable and what this would do is that if the tax rate in the UK is lower than China then it would be benefifal to only tax the branch in the UK and not rtaxed in china as well. this was more profits would be recibed. this would only be beneficial if the branch s profit making and all you branches are pfofit making. with this method there is restrictions on loss refleif.

Another benefit of a branch is that if the company is unsuccessful then it would be easier to wind up a branch and close operations. furthermore, a branch is good becasue it is likely there will be initial losses for the company and these can be used by the parent. whereas for a subsidiary if they cannot use the losses it would be carried forward by the subsidiarty.

furthermore, there are more filling requirements of a uk subsidiary than a uk BRANCH.

There are various exit charges for UK subsidiaries deciding to leave. if the uk sub is unsuccessfuly then various exit charges would apply but they would not apply to a branch. there would be deemed disposals at MV for stock, assets.

As you are in the development of pharmaceutical bysiness by setting up a subsidiary you could claim various reaseach and develpoment credits as i would presume you do have varioius R&D funcitons/

both a branch and a subsidiary would need to produce thier tax returns 12 months from the end of the accouting period. both would need to pay payment on accounts 9 months and 1 day from the end of the accouting period provided they do not fall within the quartley installments payments regime.

Part B

If shanghai Medco sales are over £85,000 then it shoudl register for VAT. it is also benefically to register for VAT as when buying goods you can claim your vat back and it is much easier when exporting as you will be.

Sales to the uk

Sales to the UK will be a UK place of supply. these should be supplied iwth the standard UK VAT rates as the input VAT (VAT ON the goods sold) can be claimed by the customer.

Sales to Europe

____Sales from the UK to EU will create a UK place of supply. This is known as Dispatches. the goods going ro an EU country sill be at zero rate if the eu customer has a VAT number and if the EU customer does not have a VAT number then UK rates should be charged.

____Sales to US

____gOODS WILL be leaving the uk AND THERFORE will be a UK plce of supply and going to US. this is considered as an Export as goods from the UK will be going to NON-EU country.

Under exports evidence is required for the movement of goods and this can be in the form of a bill of landing. the items will be zero rated for VAT purposes.

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Answer-to-Question-_9__

Part A

A compaby is uk resident if it is incporated in the UK or itds central management and control are in the UK.

As HWL and EWL was not incporated in the uK we would need to look at teh central management anc control of the company.

Julia owns EWL but the day to day business is run by Willow who is the COO and is in Canada SO THIS IS very important when looking at the residency as the main decisions for EWL are being made in Canada.

It would be key to understand the nature of hwl AS IT HAS NO employees and no office it seems to be in the British virgin islands for maybe tax or other non-commercial reasons. this could mean that the potential move of Juila could change the residence of HWL. However it seems to be just s hoolding company and therefore the activites of Julia should not change the residency of HWL

EWL have a very large workforce in Canada and also has factories and offices in Canada. so there is a large presence.

When looking at central management and control there are various case laws that we can refer to. In the De Beers case it was determined that a company is resident where its business is carried out and the business is carried out where the central management and control reside.

Although Julia will be in the UK and she is a key figure for the company as she owns it it seems that the residence of the company should not change as there is influcene and exercise in canada and the main business is carried out there. it is unlikelt Julia move to the uK would make the company uk resident as there is not activity being conducted in the UK at the moment. there could be rise to a potential PE in the UK with Julias presence.

As part of the double tax treaty there would be a tie breaker clause and the tie breaker clause would look at the place of effective management . the key authorities would look at the place where the place of effecive management is and decide where it is tax resident.

There is also the MAP procedyre this is the mututal agreement procedure. this would mean the UK and Canada tax authoritiues would agree where the company is resident on the fact for example place of management and decisions which are key.

Part B

foreign incorporated companies can remain non-uk resident by a few ways:

1. Holding board meetings in the overseas jurisdiction. this means any board meetings which are held are not done in the UK as this coul show that decision making is done in the uk AND potentially change the residency.

2. A board of director or other senior member of the company should not move to the UK and exercise matters of the company and make key decisions of the company while in the UK. As this would show that key central management and control is in the UK. furthermore this would also show highest decision making is in the UK which could lead the company to have auk residcency.

However the foreign incporated companies should not:

1. hold board meetings in the UK

2. Have senior members such as CEO and other executives move to the UK.

3. make key strategic business decisions from the UK

Part C

A PE can be created by a fixed place of business or a agent. a fixed place of bussiness is an office, workshop, warehouse etc. this list is not exhastive. a fixed place of business is where the companies activties are wholly or partly carried out.

An agent is someone actining on behalf of the company and has habitually exercised in the uk authority to carry on business activities from the overseas company.

From the information provided it seems as though Julia has a fixe place of business as the group is thinking of acquiring a small office for her use. this would create a PE through a fixed place of business.

Juilia has other activities such as identify and nurture key business oppurtunities and talk to potential business partners. This activties seem as they are of a preparatory and auxillity nature as she is not conducting key business activties or making key business decisions in the uk. so this part of her activties is unlikely to cause a PE. however as she is a senior person of the business and cloesly related this may still constitute a PE.

In conlsusion there would be a UK pe through the fixed place of business due to the office. In regards to her activities them seem to be preparatory and auxilliary but they do seem to be part of a fragmented business operation as she is closely related to the business so there will be a PE