Answer-to-Question-_4_

1. Gry's tax residence in 2022/23 and 2023/24

Gary is a Uk national and was resident in the UK before his assignment in Germany. He would have been taxed on his worldwide income and gains prior to this assignment.

He was assigned to work in Germany from 1 June 2022 which is the 2022/23 tax year and spent 21 months in Germany.

His tax residence will be determined by the application of the statutory residence tests (SRT) thus:

The SRT determines the residence of an individual and comprises the

Automatic overseas tests
automatic UK tests
Sufficient ties test - only applied after the first two tests

Applying these tests to Gary,

<u>Automatic overseas test (AOT)</u> - Gary is a leaver so the first AOT applies to him as he was resident in the UK for one or more of the tax years before the current tax year. However he does not meet this test as he spent more than 16 days in the 2022/23 tax year in the UK.

The second AOT does not apply to him as he was resident in the UK in the previous tthree tax years

The third AOT will also not apply as he did not meet the criteria

We look at the <u>Automatic UK tests (AUT)</u>

Gary fails the first AUT as he spends less than the required 183 days in the UK in the tax year.
= 6 April to 1 June = 56 days
Time spent visiting his family = 40 days
Time spent working in the UK = 15 days
Total days spent in the UK = 56+40+15 = 111 days

For the second AUT, Gary had a home in the UK for the year as his family remained in their home in the UK. However he also had a home in Germany as his employer provided him with a rental apartment for the duration of his assignment - he was present there for more than 30 days in the tax year. Hence he does not meet this test.

He does not work full time in the UK in the tax year, hence he does not meet the third AUT.

We consider the <u>sufficient ties test</u>

As Gary is a leaver, we consider the five tests:

Family tie - Gary's wife and kids are still UK resident in the 2022/23 tax year, hence he has a family tie in the UK.

Accomodation tie - He has a place to live in the UK, hence he does have an accomodation tie in the UK.

Work tie - Gary will have a work tie for the 2022/23 tax year as he has done more than 3 hours of work a day in the UK for at least 40 days in the tax year.

period from April to June = 56 days less weekends of 16 days = 40 days
plus extra 15 days spent working in the UK
Total work in the UK = <u>55 days</u>

90-day tie - Gary will have a 90-day tie for the 2022/23 tax year as he has spent more than 90 days in the UK in either or both of the previous tax years - 2021/22 and 2020/21.

Country tie - Gary will not meet the country tie test as the UK was not the country he was present in for the most number of days in the tax year.

Based on the above, and using table A as Gary is a leaver, Gary has 4 ties and spent 111 days in the UK in the tax year. He needs at least 2 ties.

Hence Gary will be considered UK resident for the taax year 2022/23.

In this tax year, split year rules will also apply and the year will be split into a UK part and an overseas part.
Uk part = 6 April to 1 June
Overseas part = 1 June to 5 April 2023

Case 1 of the split year rule will apply - Starting full-time work overseas

For the tax year 2023/24, in considering the sufficient ties tests, Gary will meet the Family tie, the accomodation tie and the 90-day tie(as he spent more than 90 days in the UK in the previous tax year 2022/23) .

He will not meet the work tie - he works only 25 days in the UK in the tax year.
He will not meet the country tie - the UK was not the country he was present in for the most number of days in the tax year.

He will however have spent 65 days in the UK in the tax year - 40 days visiting family and a further 25 days after his return.

Based on the above, and using table A as Gary is a leaver, Gary has 3 ties and spent 65 days in the UK in the 2023/24 tax year. He needs at least 3 ties.

Hence Gary will be considered UK resident for the tax year 2023/24.

In this tax year, split year rules will also apply and the year will be split into a UK part and an overseas part.
Uk part = 1 March to 5 April
Overseas part = 6 April to 28 February

Case 6 of the split year rule will apply - Ceasing full-time work overseas

2. If Gary's assignment was extended to 31 March 2024, he will spend less than 46 days in the UK in the 2023/24 tax year and will need at least 4 ties to be considered Uk tax resident. As he has only 3 ties within the tax year, he will be non-resident for the 2023/24 tax year.

As a non-resident individual, only his UK source income will be taxable in the UK. He will be able to opt for the remittance basis if he wishes.

Answer-to-Question-_2__

1. An individual can have only one domicile at a time and the domicile is different from nationality or residence status although these can impact it.

There are three types of domicile
- Domicile of origin - this is usually passed on from your father when you are born.
- Domicile of choice - An individual can acquire a domicile of choice once they turn 16 if they are already living in a country other than your country of origin and intend to remain there permanently or indefinitely.
- Domicile of dependence - This follows that of the person on whom you are legally dependent, until one is of age and can legally change their domicile.

Applying this to Emily, she has a domicile of origin in Sweden as she was born to swedish parents and in sweden. She does not appear to have acquired a domicile of choice in the UK as she retains property in sweden, spends a significant time - 3 months out of the year in Sweden and appears to retain all ties to sweden, she also works from sweden.

Emily also plans to return to Sweden eventually - hence she retains her domicile in sweden.

2. As a UK resident but non-domiciled individual, Emily can opt to use the remittance basis (RB) of taxation which will exempt her foreign income and gains from UK tax except those incomes and

gains are brought into the UK.

Using the RB will mean that she loses her personal allowance - although as an additional income earner, she will not have had the PA to use. She will also lose her annual exempt amount for capital gains purposes. Also, all her income will be charged at the non-savings rate.

As she came into the UK in 2006, she has spent more than 12 years in the UK and will be liable to a remittance basis charge of £60,000.

Where she does not use the RB

	Non-savings	Savings	Dividend	Total
Salary	300,000			
UK dividend income			15,000	
French dividend income			50,000	
Swedish dividend income			30,000	
Taxable income	300,000		95,000	395,000
Less personal allowance	NIL			
	300,000	0	95,000	

Tax liability

37,700 @ 20%	7540
Savings allce	NIL
112,300 @ 40%	44920
150,000 @45%	67,500

Dividend allowance 1000 @0%	NIL
94000 @ 38.1%	35,814
Income tax	£155,774

Capital Gains Tax

Gain on disposal of shares in swedish company = 200000 - 20000 = 180,000
Gain on disposal of shares in UK company = 30,000 - 10,000 = 20,000
Gain from Qualifying life assurance policy = 25,000

Total gains = 225,000
Less AEA = 12,300

At the rate of 20% = 212,700 x 20% = £42,540

Hence the total liability = 42,540 + 155,774 = **£198,314**

Where she uses the RB

	Non-savings
Salary (100% of her time*)	300,000
UK dividend income	15,000
French dividend income remitted	50,000
Gains from UK share disposal	20,000
Taxable income	385,000
Less Personal allowance and AEA	not applicable

Tax liability

37,700 @ 20%	7540
Savings allce	NIL

112,300 @ 40%	44920
Dividend allowance 1000 @0%	NIL
235,000 @45%	105,750
Tax liability	158,210
Add remittance basis charge	60,000
Total tax liability	**£218,210**

* as the overseas work is not txable in Sweden, the entirety of her employment income will be captured under UK tax.
In the 2021/22 tax year, Emily should use the arising basis of taxation and not the RB as using the arising basis will be most beneficial to her.

Answer-to-Question-_1__

To: The board of Cumulus Ltd
From: ADIT
Ref: UK CFC implications of the Stratus Inc acquisition

1. **The UK CFC Implications of the Stratus Inc acquisition**

A controlled foreign company (CFC) is a non-Uk resident company that is controlled by a UK resident person.

By virtue of this definition, Stratus Inc is a CFC of Cumulus Ltd.

This means that the profits of Stratus Inc may be chargeable to tax in the UK at the corporation tax rate of 19%.

The CFC regime however has five exemptions which may apply. Where any of these apply, they serve to exempt the entire profits of the CFC from the UK tax charge

- The Exempt period exemption - the accounting period does not end during an exempt period of the CFC so this does not apply.

- The excluded territories exemption - this will apply if the CFC is resident in an excluded territory for the accounting period under review. We are not told that Stratus Inc is in an excluded territory so this does not apply.

- The low profits exemption - This applies where the CFCs accounting profits are no more than £500,000 and the amounts of those profits representing non-trading income asre no more than £50,000. Based on the information provided for the year to 31 December 2021, the accounting profit for Straus Inc was

£10million. This is above the £500,000 threshold and therefore the loe profit exemption does not apply.

- The low profits margin exemption - This applies to a CFC if the accounting profits are no more than 10% of the CFC's operating expenditure.

Accounting profits = £10,000,000
Operating Expenditure = £5,000,000

= 10.000,000/5,000,000 x 100% = 200%
The Accounting profits are more than 10% of the operating expenditure so this exemption will not apply.

- The tax exemption - This will apply where the local amount of tax paid in Utopia is at least 75% of the corresponding UK tax.

UK tax = 19% x £10million = £1,900,000
Tax in Utopia = £1,000,000

The local tax in Utopia is less than 75% of the tax payable in the UK. Hence the tax exemption will not apply.

As none of the exemptions apply, we will consider the CFC charge gateways.

- Chapter 4 - profits attributable to UK activities
- Chapter 5 - non-trading finance profits
- Chapter 6 - trading finance profits
- Chapter 7 - profits derived from captive insurance business
- Chapter 8 - cases involving solo consolidation

Chapters 7 and 8 will not be applicable here as the company is neither into banking nor insurance. Also, the profits of the company are not finance profits, hence chapters 5 and 6 will also not be applicable. Chapter 4 may however apply.

To determine whether chapter 4 applies, we consider the Chapter 3 safe harbor initial tests:

- whether the CFC holds any assets or bear risks under an anti-avoidance arrangement - No
- whether the company does not have UK activities - Straus Inc does not have any UK activities presently
- whether the CFC has the ability to manage its own business - Yes
- whether the CFCs assumed total profits consists of either non-trading finance profits or property business profits

Based on the above, the Chapter 4 gateway should not apply as the safe harbor conditions are met, Hence, the profits of Straus Inc will not be subject to UK corporation tax.

2. **The UK permanent establishment implications of expanding Stratus Inc's activities into the UK.**

A company has a permanent establishment (PE) in the UK if and only if:

- it has a fixed place of business ther through which the business of the company is wholly or partly carried on, or
- an agent acting on behalf of the company has and habitually exercises the authority to do business there on behalf of the company.

A fixed place of business includes an office, a branch, a workshop, a place of management etc.

There are however exemptions to the PE:

- where the company carries on business through an independent

agent acting in the ordinary course of the agent's business
- where the fixed place of business is maintained for the purpose of carrying out activities that are of a preparatory or auxiliary nature **or** the agent careies on activities that are of a preparatory or auxiliary nature
provided these activities are not part of a fragmented business operation.

Applying this to Cumulus Ltd's strategy to start selling Startus Inc's products in the UK,

- Establishing a representative office - As this office will be established to use as a base for market research, it can be deemed to be used for activities that are of a preparatory or auxiliary nature. Hence, it will not create a fixed place of business in the UK for Dtratus Inc. Also, the staff that will be sent from Utopia to work in the representative office will be assessing demand for the heating units. This is tantamount to the collection of information for the company and therefore can be considered activities that are of a preparatory or auxiliary nature. Hence, it will not create a dependent agent PE in the UK for Stratus Inc.

- After demand is proven, Stratus Inc will engage professional salespeople. To the extent that these UK-based salespeople are not employed by either company but are independent in nature and perform similar role for other groups, they may not create a PE for Stratus Inc in the UK. Please note however, that:
- the transactions carried out for Stratus Inc must be carried out in the ordinary course of the agent's business
- the remuneration received by the salespeople from Stratus Inc must not be less than what is customary for their business.
- decisions regarding the salespeople must be handled by them and not by Cumulus of Stratus in any form. i'e there should not be control from either company.

Where all these are met, there will not be a PE created for Stratus Inc. in the UK.

3. **How Stratus Inc could migrate its tax residence to the UK and UK tax implications for doing so**

A company is resident in the UK in one of two ways:
- By incorporation
- By central management and control (CMC) - The CMC is established by case law. According to the De Beers v Howe Cas of 1906, a company is resident where its real business is carried on and the real business of the company is deemed to be where the central management and control lies.

Stratus Inc is incorporated in Utopia and will always be reisdent there by virtue of this incorporation.

In order to migrate its tax residence however, it will have to change its place of CMC. To do this, the following can be done:

- most or all of the board of Stratus Inc can take up residence in the UK
- the board of Stratus Inc can meet in the UK
- strategic decisions regarding the business will be taken in the UK

Migrating the company to the UK may however lead to dual residence. Where there is a double tax agreement between the UK and Utopia hoiwever, this can be managed by an agreement between the competent authorities of both countries.
Where there is no DTA, the company may need to self assess itself and pay taxes in these countries and this may lead to double taxation.

Answer-to-Question-_8__

To: Tamara
From:ADIT
Ref: UK tax treatment of disposals and reporting obligations

You were a UK resident who became non-resident for 4 yesrs before moving back to the UK.

The temporary non-residence rules will apply. You are regarded as temporarily non- resident as:
- you lived solely in the UK for a period of time
- you were resident for at least 4 out of the 7 tax years before you became non-resident
- you became non-resident immediately after living in the UK
- youm resumed your UK residence within 5 years.

Your assets were sold on 6 October 2022, during your period of non-residence.

The proceeds from disposal of any assets which you held prior to becoming non-resident will become taxable in the UK in the 2023/24 tax year which is the year you resume your UK residence.

The proceeds from the disposal of the Rolex watch will not be taxable except it is remitted to the UK.

The disposal of your UK shares in April 2020 and April 2021 will trigger Stamp duty charges regardless of when they are disposed or where you are at that time.

For the residential property, this will suffer CGT calculated using the default method as:

Sales proceed = £450,000
Add Incidental costs = £5,000
less Market value as at 2015 = (£350,000)

Gain on disposal = £105,000

The costs of enhancement of £25,000 which were done in 2013 will not be available as a deduction as this was carried out before 2015. Residential property for Non-residents was not liable to CGT at that time.

The valuation has also been done for 2015.

This will be declared on your tax return and charged to CGT.

Relief will however be available as this was your principal place of residence and you will be charged to CGT at the lower rate of 10%.

Answer-to-Question-_5__

The Diverted Profits Tax (DPT) is a separate tax in the UK and it is used to stop companies from creating tax advantages especially within multinational groups using transactions that lack economic substance or companies that avoida UK taxable presence thereby exploiting the Permanent establishment rules.

The DPT is applicable in three scenarios:

- where a UK company is involved with entities or in transactions lacking economic substance
- where a non UK company is involved with entities or in transactions lacking economic substance
- where a non UK company avoids a UK taxable presence

Applying this to the Rose Ltd Group,

- Duff Ltd is UK resident
- provision is made between Duff Ltd and Slash ltd for a transaction which will result in an effective tax mismatch outcome
- the participation condition is met as Rose was directly participating in the management of both companies
- the insufficient economic substance condition is met by Slash Ltd as it has only two part time employees and very little activity. The monies paid to Slash Ltd may not be justified as it is over and above the substance of the entity.
- Based on revenue size, Duff and Slash are not small or medium entities in the period.

The conditions are met for the DPT to apply to this arrangement and it should be noted that Slash Ltd is resident in a low-tax jurisdiction where tax rate is at 8%.

Based on this, the DPT charge at 25% will be imposed on Duff for the taxable diverted profits in the period and this will amount to:

25% x £50million = <u>£12,500,000</u>

Despite the fact that dividends from Slash may be paid to Rose in the Uk, this will not preclude the DPT from being charged especially as the Dividend will most likely be exempt under the dividend exemptions for controlled companies).

2. To the extent that Duff meets the criteria belowin any accounting period,

- Duff Ltd is UK resident
- provision is made between Duff Ltd and Slash ltd for a transaction which will result in an effective tax mismatch outcome
- the participation condition is met as Rose was directly participating in the management of both companies
- the insufficient economic substance condition is met by Slash Ltd as it has only two part time employees and very little activity. The monies paid to Slash Ltd may not be justified as it is over and above the substance of the entity.
- Based on revenue size, Duff and Slash are not small or medium entities in the period.

Therefore, the company has a duty to notify the HMRC to that effect. To do so,
- the notification must be made in writing to the HMRC
- within 3 months beginning at the end of the accounting period

to which it relates

The HMRC will then evaluate and if the DPT applies issue a preliminary notice must state:

- the accounting period to which it relates
- the basis for which the DPT may apply
- how the proposed tax is calculated
- who will be liable to pay the DPT