Answer-to-Question-_1_

The term "resindence" is one of the most important in contects of using benefits arose from the concluded Double tax agreements (hereinafter "DTA". The respective DTA could be used only for the residents of the contracting states. The residents are defined in the Article 4 of OECD Model DTA. For the purposes of Digital economy, we will need to use highly probable the sentence for companies - Article 4 (3) of Model DTA, as for the corporations.

The basic rule is the principle of effective place of management ("POEM"). This approach was redefined based on the judical case Oceanic Trust, under which the POEM is in the state where the most senior managemenet is placed. Similar approach were used in judical cases Laerstate and Bywater Investments, under which residence was treated based on the place where the main "decision making" director was located.

The US Model Treaty has a different approach and ther residence shall be done only by mutual agreenet (Art 4(5) US DTA)

However the Digital economy has totally different characteristics, the basic principles provided by the DTA's as described above are not sufficient. Therefore, OECD discussed and prepared material under BEPS solely for the challeges done by Digital economy - Action 1 BEPS. The digital economy is the result od a transformative process brought by information and communication technology. Technologies are cheaper, more powerful and widely standardised,improving the business processes etc.

Digital technology was defined under characterisation, data available and new nexus. A new nexus is in the new form of a significant economic digital presence (which is impacting the standard meaning of a residence and physical presence). Further the following options were analyzed:
- a withholding tax on certain types of digital transaction;
- and an equalization levy.

Therefore OECD under BEPS recommend to modify the exceptions to PE status . espetially in deffinition of preparatory and auxiliary activities. Plus, OECD suggested to introduce the new paragraph no.9 to

Article 5 of Model DTA as a digital PE (it is still in the status of suggestion, only auxiliary and preparatory activities were modified).

Other challenge related to the digital economy is the collection of VAT/GST.

In connection with the digital economy, the OECD Transfer pricing economy was updated.

In the meantime there were a few cases of unilateral solution to tax digital economy and its activities as a "Netflix tax" or EU digital package (suggestion) including 3% WHT on digital sales. However, firstly introduced its own rules UK in 2018 and its tax rate levied on 2% on in-scope digital activities. Another non-European example can be India which introduced 6% equalization levy on revenues earned by non-residents from online advertising and related activities.

Due to the described challenges, the new OECD rules known as Pilar 1 was introduced. These rules are applicable to the multinationals groups with the global revenues exceeding 20 billion and proifitability 10% (i.e. profitability = probit before tax/revenues). The principle is to tax activities based on the market principle. Pilar 1 comprises the user participation, marketing intangibles and significant economic presence. Simultaneously focuses on the allocation of the taxing rights and seeks to udertake a coherent and concurrent review of the provit allocation and the nexus rule in the meaning of significant economic presence.

USA under the presidend Donald Trump introduced their own rules GILTI (= Global intangible taxed income) - the activities have to generate 10% profitability if intangible assets which are easily movable are present in the respective activities. Gilti is intended to discourage moving intangible assets and related profit to countries with tax rates below 21% US tax rate. This rule applies to any US shareholder. In the oposit FDII rule was introduced as well to the foreign sales for US based entities without creating PE because the profit is deemed to be created based on the US intangibles used. The both rules gives the minimal level of taxation.

For the sake of completeness, the UN model treaty introduced the new

Article 12A - fees for technical services.

In conclusion, digital economy introduced many new challenges which cannot be easily resiólve by using standard rules in ART 4 of DTA and new nexus in the significant economic presence was took in place and modified the taxation rules for digital activities.

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Answer-to-Question-__2_

The Debt financing is usually used for the financing within the Multinationals entities and groups. OECD discussed this topic within its BEPS project (Base erosion and profit shiffting prepared with the goal of elimination tax evasion and tax avoidance) - namely Action 4 Limiting Base Erosion Involving Interest Deductions and Other Financial Payments. The main risks are the following:
- goups placing the higher levels of third party debt in high tax countries (to reduce the tax base there);
- Groups using intragroup loans to generate interests deductions in excess of the gourp's actual external interest expense;
- groups using third party or intragroup financinf to fund generation of tax exempt income.

Generally, interests and loans are usually limited on the level of Debt or Interests. For debt limitaion is debt/equity ratio used. On the oposit, for Interest is used the acceptable percentage of the profit.

OECD recommend using the fixed rate ration rule which limits an entity's net deduction for interests and payments economically equivalent to interest to a percentage of its earning before interests, taxes, depreciation and amortization (EBITDA). This percentage was recommend within the corridor of possible ratios of between 10% and 30%. However, the countries could possibly introduce any group ratio rule or equity escape rule.

Following the described BEPS Action 4, **EU introduced its own directive ATAD** under which those rules took in place. This directive is from 2016. Members counties had to implement it into their local legislation by 2019. The main limitaion is 30% EBITDA and fixed treshold EUR 3,000,000 (recalculated to the national legistaions under agreed FX rate, for example for hte Czech Republic this treashold was settled as CZK 80,000,000).

The countries could introduce the carry forward principle (with or without timing limitation) for using the tax non-deductible interests in the future). All the possible scenarios of this rule could be found within the EU countries.

Some countries, for example Germany, introduces only the limitation under the ATAD rule as 30% an fixed treshold EUR with no other specific local rules or calculation. But we can find the mixture of the older local rules for interest deductibility and new ATAD rule on the top of tax deductible interests - this mixture and quite complex rule is introduced for examble in France or the Czech Republic. Namely the Czech republic is still using the dept/equity ratio with specific purposive rules (i.e. for which puprope is the debt financing used). Solely ATAD rule 30% and CZK 80,000,000 treshold is used for the tax deductible interests after domestic rules was applied. Therefore, we cafind cases which would not be impacted by ATAD due to lower amount, but was treated as tax non-deductible under the local domestic rules. So, it is more strict combination of rules which will hit the smaller entities and groups than ATAD.

OECD mentioned also less BEPS risks, such as:
- de-minimis treshold;
- an exclusion for interest paid to third party lenders on loans used to fund public-benefit projets;
- or the carry forward of disallowed interest expense and unused capacity fot the use in the future years (as mentioned above - this rule was used in some EU countries under ATAD including more described Czech Republic.

On the top of the BEPS Action 4 (and connecting ATAD rules), the Transfer pricing guidelines should be used for the correct calculation

of interests within the multinational groups. The interests should be calculated based on the Arm's Lenght principle (i.e. as would be settled between the independent entities).

For the sake of completeness, OECD has a special rules for the payment of interests in Article 11 of Model DTA with tax sharing rule and limitation of taxation in resident country (10% for OECD Model DTA; UN model DTA does not take in place any percentage limitation). In this connection we are using beneficial ownership principle for the recipient of interest income - beneficial owner is the one who is able to use and enjoy the income - related judical cases Indofood, Prevost Car, Velcro Canada or Tiger Securitization. Plus ALP transfer pricing rule is included in Article 11 (6) OECD Model DTA. However, these points are more connected with other topic related to interests.

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Answer-to-Question-_3__

The double taxattion treaty was introduced in connection with increasing of international export/import to mittigate disadvantages arose from the double taxation in the residence and source state. The main goal was break the boarders and simplified international business activities.

We can distiguish between the economical double taxation (the two different persons are taxed in tge resoect of the same income or capital) and juridicial double taxation (the taxation is in the hands of more than one state).

Double taxation treaty were introduced to solve the juridicial double taxation only. If states want to solve economical double taxation, they must do so in bilateral negotiations.

The DTA's are resolving the following types of conflict:
- residence vs residence conflict (rules are included in Article 4 of Model DTA)
- residence vs source conflict

- source vs source conflict - also known as pay rule and use rule; can be resolved by Mutual Agreement procedure (more in article 25 of Model DTA and BEPS Action 14)

In this topic we are speaking mainly about the Capital export neutrality (CEN) and Capital import neutrality (CIN).

CEN required that the sellers and/or investors faces the same tax rate wherever he sells his goods, thus maeximizing the choice of outbound investment opportunities. I.e. the taxpayer will always have to pay the same amount of taxes as he would have had to pay if he were taxed only in his state of residence. CEN can be achieved if the full credit system is introduced in all the countries.

Disadvatages:
- credit method for the elimination of double taxation is a quite high administrative burden for the tax payers and tax authorities.
- full credit system is very expensive for the states and may tend to bancrupcy for the state with the lower taxation.
- States can also used the partial credit system.

CIN requires sellers and/or investors in a particular location to dase the same tax rate no matter where they are located, thus maximising the choice of inbound suppliers, customers and capital investments (i.e. savers). To achieve the full CIT requers to use exemption method in all states, which is not realistic.

We have the followind method to avoid the double taxation:
- **credit method** - Article 23B of Model DTA
    - full (the full tax paid in the other state is credited against domestic tax liability)
    - partial (only partial credit is used in the amount of calculated tax which should be paid in the residence state from respective activities)
- **exemption method** - Article 23A of Model DTA
    - one type of exemption is the exemption wiht progression - revenues are exempted and excluded from the tax base, but we must use the progressive tax rate (as if there revenues are included).
- **deduction** - last method to mitigate the double taxation; not

specifically mentioned in the DTA, usually used for the tax whichcannot be credited under DTA.

The important is the paragraph 32.3 of the Commentary to Article 32 on the OECD Model DTA, under which the state of residence must grant the relief from the double taxation.

We know many kinds of Model DTA, the main are the following:
- OECD Model treaty - which is the most common
- US Model treaty - which is used once one contractual state is the USA
- UN Model treaty - which is used for developing countries. This model DTA is more protective to the developing countries and take the higher impact on the source taxation.

All the treaties should be interpreted under the Vienna Convention, Art. 31 and 32. Article 31 requires:
- treaty should be interpreted in zhr light of its objects and purpose;
- treaty must contains preamble and annexes;
- should be interpreted tofgether with the context.

Article 32 include using the supplementary documentation to interpret.

The interpretation of the treaties were discussed in many judical cased. The main is MEMEC case which introduces the following principles:
- purposive approach should be taken;
- broadly accepted principles should be considered rather tha domestic principles;
- Article 31 of Vienna Convention should be applied;
- supplementary documentation could be used;
- Foreign decision can have a persuasive impact, but not legally binding.

The Macklin judical case confimed of using the Vienna Convention, art 31 in case of US DTA.

Other case is for example Anson case.

In conclusion, the concluded DTAs are mittigating the risks and barriers for the internation trade activities. They are mittigating the double

taxation (juridica). However, the enviroment is changing and we can consider it as basic principles which are evolving by such activities as OECD Beps projet with goal to avoid the tax evasion and tax avoidance.

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Answer-to-Question-__6_

Dear All,

We understand that Danica is the tax resident of State X, because its effective place of management is in the state X (based on the Article 4 (3) of the Model DTA) . Further, Danica doesn't have any othe activity in the State Y. Simultaneously, Laurio is resident of State Y.

Taxing of lands has its own rules under the Article 6 the taxation of incime from immovable property. The sole taxation is only in the source country, i.e. income from lands located in the state X will be taxed only in the state X. Similarly,income from lands situated in the State Y will be taxed only in this State Y. The concept of immovable property is by the reference of the state in which the property is situated.

The rules for interests are included in the article 11 of Model OECD. The principle is sharing of the tax rights. Interests may be taxed in the residence state, but there is a limitation and the taxation should not exceed the 10% in the state of residence (Article 11 (2) of Model Treaty.

For the rest of income we need to use the Article 13 of the Model DTA concerning the taxation of the capital gains.

To define the basic terms: movable property is easily the property which is not immovable.

For the lands we must in the every case used the situs principle and therefore, income from lands in X will be taxed in the State x and the

same for lands located in state Y will be taxed only in the state y. This conclusion is valuable for both cases requested in the question 1 and 2.

Under the Article 13 (1) gains derived

The different rule under Article 13 (3) will be used for the interests - gains from the allienation of shares which at any times during the 365 days preceeding the allienation derived more than 50% of their value directly or indirectly fro immovable property, situated in that state may be taxed in that state. However, the highest amount relates to the lands situated in the state Y (in the amount of USD 400M) and therefore the capital gains may be taxed in the state X.

If Laurico resell the shares within one week after the main transaction, the rule on the Article 13 (3) cannot be used and the capital gain should be taxed under the basic rule in the Art 13 (1) - i.e. the situs principle.

From the gains from movable property (Article 13 (2)) which is the part of PE located in another state may be used in the another state.

Conclusion, the taxing rights if Laurio enter into the arrangement (option 1) is under the source principle. The gains from state S (interests from state S is taxed in the state of residence of allienator(under Art 13 (5)

For the option 2 if Laurion not acquire shareholding in the various companies, we will use the rule under the Article 13 (3), i.e. shareholding of the more of 50% of immovable property in any 365 days before the allienation ant the taxing rights will have state Y because lands in the total amount of USD 400M are situated in state Y and it represents more than 50% of the total value.

Yours sincerelly,