Answer-to-Question-_1_

ACo is a UK resident, BCO is a Hong Kong resident company and DCo is a China resident company. All the companies should be regarded as related entities for the Chinese tax purposes which means that all the transactions should be conducted at arm's length. If there is no genuine business purpose of the transactions between BCO, Aco and DCo, the tax authorities in China can claim that the main purpose of the transactions is the treaty shopping an the tax avoidance in China, and can deny treaty benefits on the basis of GAAR in China and UK-CN DTT and HK-CN DTT provisions(EIT law and EIT regulations, Circular (2009) No. 2 and SAT Order (2014) No 32).

It is assumed that the patent was contributed in kind by ACo to Bco and there will be no royalty payments between Aco and Bco, otherwise royalty payments should be subject to withholding tax exemption under UK-HK double tax treaty. The royalty payments from DCo to Bco will be subject to Chinese EIT at 10% which can be reduced to 7% under CN-HK double tax treaty if Bco is regarded as the beneficial owner of the royalty. Based on Gonggao (2018) No 9, Bco can be denied a beneficial owner of the royalty on the basis that there are no employees who can manage the entity, there is no substantial business activities at Bco, other than holding patent. As a result the CN-HK DTT benefits will be denied and the transaction will be recognised as the payments of royalties between DCo and ACo subject to 10% wht under EIT in China. Royalties should be treated as tax deductible costs to DCo as long as the royalty is set at arms length. The part of the royalty which is outside ALP will be denied and treated as deemed dividend subject to EIT tax rate at 10%.

The dividend paid to ACO should be subject to 5% wht under Article 10 UK-CN DTT assuming the dividend was paid after 12 months holding period lapsed as Aco hold more than 25% of shareholding in DCo. Otherwise, 10% WHT might apply under UK-CN DTT. Dividend paid to Chinese partner should be WHT free.

Interest should be calculated according to arms length rules otherwise part of the interest will be non tax deductible and treated as deemed dividend subject to 10% tax under EIT in China. The debt should meet the thin cap ratio of debt to equity 2:1 based on the EIT and Caishua (2008) No 121. Interest paid to Aco should be subject to 10% under Article 11 UK-CN DTT assuming ACo is the beneficial owner of interest, i.e. there is no loan agreement between ACo and third country entity and 50% of interest is not transferred to low tax jurisdiction (Gonggao (2018) No 9).

Seconded employees will not create a PE to Aco in China (Article 5 UK-DTT), however their remuneration will be subject to Individual Income taxation in China as they stay longer than 183 days in China (Article 15 UK-CN DTT).

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Answer-to-Question-_5__

HCo is a UK resident, GCo is a Chinese resident. Both entities are the related parties for the purpose of EIT in China as Hco hold 55% of shares at GCo. Hco is owned by the investment institution established by the UK government, which grants the business office and pays salaries to 2 directors.

HCo owns 55% of shares in Gco since 2016. The dividend was distributed in November 2019, which is more than 12 months since establishment of GCo.

Reduced WHT under article 10 of CN-UK DTT applies only if the recipient is regarded as the beneficial owner of the dividend. Under Gonggao (2018) No 9 the beneficial owner is an entity, which:

- has substantial business activities,
- has sufficient assets and experienced employees,
- is not obliged to transfer at least 50% of the payment to third country with no /or very marginal taxation,
- has no royalty/ loan agreement with third country entity which terms are similar to the loan / royalty agreement with CN entity.

If the entity does not itself meet the BO requirements, it should be verified if the parent entity of the dividend recipient can be claimed as the beneficial owner (Gonggao (2018) No 9). Moreover, if the ultimate parent is the UK government, or listed company, the dividend recipient will be regarded as the beneficial owners of the dividend payments from China.

Based on the above, given Hco holds more than 25% of Gco shares for the period longer than 12 months, and the ultimate beneficial owner is the UK government, HCo should be regarded as the beneficial owner of the dividend and the dividend should benefit from reduced 5% WHT under CN-UK DTT.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-_7__

Mco is a UK resident holding 24% of QCO. Mco is owned by Ms.D a UK resident. Mr B owns 30% of QCo. It is assumed that the value of shares in QCO is not derived in more than 50% from the immovable property located in China.

Given the QCO is owned by Mr B in 30% and in 24% by Mco which is 100% owned by his wife, the total direct and indirect shareholding at the hand of the related parties is 54% for the period of longer than 12 months.

Consequently, based on Article 13 (5) CN-UK DTT, the sale of 4% of shares by Mco will be subject to capital gain at 10% tax based on the EIT in China as Mco holds indirectly more than 25% of QCo shares for the period longer than 12 months. However, if the value of transferred shares is derived in more than 50% from real estate located in China, the capital gain will be also subject to 10% WHT in China.

RCo will need to withheld the WHT at 10% from the capital gain calculated as a difference between RMB 200m and the tax costs base of the shares sold by Mco.

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Answer-to-Question-_3__

Eco is a Chinese resident. Fco is a talent agency a UK resident. Wendy is an actress a UK resident. The contract between Eco and Fco (on behalf of Wendy) is for one year and will be preformed in China.

Based on Article 17, Wendy's income of RMB 6.5m will be subject to IIT in China at 30% as she provides personal services in China.

Based on Article 5 UK-CN DTT, FCO will not have a PE in China and RMB 3.5m will not be subject to EIT in China as it has no fixed place of doing business in China and does not provide services in China. The services are provided by Wendy.

Employees sent by Fco to China will not create the PE to FCO under Article 5 of UK-CN DTT as they will stay only 2 days in a year in China. Therefore the dress and modelling services fee of RMB 200k will be subject to tax in the UK. According to article 14 of CN-UK DTT, remuneration of 5 employees will be subject to tax in the UK, as they stay less than 183 days in China and their remuneration is paid by Fco. Eco do not pay their remuneration, but pay only for the Fco services.

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Answer-to-Question-_2_

Based on EIT Law and EIT Regulations, an entity incorporated in other country can be regarded as a Chinese resident if the place of the effective management is located in China.

Based on Circular No. 82 (2008) issued by SAT, the place of the effective management is in China if:
1) the senior management responsible for the management of business operations of the entity is located in China;
2) the personnel and financial decisions are made in China;
3) accounting books, properties, corporate seals, etc. are located in China;
5) the half of the senior management / directors are located in China.

If the above conditions are met, place of effective management of foreign entity will be in China and therefore the entity will be regarded as Chinese resident for tax purposes.

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