

Answer-to-Question-_1_

Part 1

To determine the tax residency position of Alex we first need to look at the local tax legislation of Sweden and Cyprus.

As per the facts provided Alex is a tax resident of Sweden for 2021.

In accordance with the income tax Law in Cyprus, the tax residency of an individual is determined on the basis of his/hers physical presence in Cyprus which since its more than 183 days, it makes her a tax resident also of Cyprus (Alex spent 200 days in Cyprus).

Hence we have a dual residency situation which can be resolved by referring to the double tax treaty of Sweden and Cyprus.

The relevant provision is Article 4 par 2 of the DTT which provides for tie breaker rules for individuals.

The first step is to look at the State in which the individual has a permanent home available to him. As per the facts, Alex moved to Cyprus on 15 Jan 2021 and the employer has provided residency for Alex in Cyprus. We assume that Alex does not have a permanent home available to her in Sweden.

Hence under the tie breaker rules, Alex is a tax resident of Cyprus and will be taxed on her worldwide income in Cyprus.

Part 2

Salary from X plc - income from employment will be taxable in the source country which is Sweden.

Article 15 par 1 has an exception where if the employment is exercised in Sweden then Sweden also has taxing rights over the employment income. As per the facts Alex has spent 150 days in

Sweden and it appears that this was for the employment purposes of X plc as well.

As a Cyprus tax resident she will also be taxed in Cyprus.

As she may be considered as ordinarily resident of Cyprus Alex and the employer will have to contribute to the Social Insurance Scheme of Cyprus. If a bilateral arrangement exists with Sweden it may be exempted from paying social insurances in Sweden.

The income will be subject to GHS in Cyprus.

Any income tax paid in Sweden can be used as a credit against the Cyprus income tax liability created on the same income in Cyprus. The credit relief will be the lower of the actual tax paid and the Cyprus tax liability hence no refunds are available. If an exemption is provided as per Article 23, then Cyprus will not tax the employment income.

The relief/exemption is not available for GHS.

Salary from CypCo Ltd - Salary from Cypco will only be taxed in Cyprus. Social insurance contributions/deductions and GHS will also become applicable.

The employer will have to make calculations and withhold and pay income tax for Alex under the PAYE system and pay that together with SIC and GHS by the end of month following the month that they are due.

Director fees from Swedish companies are governed by Article 16 OECD MTC and allows the source state (Sweden) to also tax this income. Cyprus will also tax this income.

GHS will be applicable

Credit relief or exemption will be available as explained before but not for GHS.

Rental income from overseas sources will be subject to SDC in

Cyprus at the rate of 3% on 75% of gross rental income. GHS will also be applicable on this income.

Additionally, the rental income will also be taxed under income tax rules at the gradual rates in Cyprus. As this is a business asset she will be able to claim capital allowances and there is also a deduction of 20% on the gross rental income available for general expenses.

The withholding tax of 10% may be set off as a credit or exemption depending on the provisions of Article 23.

If the income is exempt then no tax in Cyprus.

If the credit method is available then any credit will be first used to reduce the income tax liability created and then the SDC liability.

The credit relief will be the lower of the actual tax paid and the Cyprus tax liability hence no refunds are available.

Gains from sale of shares in Cyprus listed cos - sale of listed shares are exempt from both SDC and income tax in Cyprus. No taxing rights are allocated to Sweden on this income.

Gains on disposal of the tourist apts in Ghana - in Cyprus capital gains tax is only applicable for immovable property situated in Cyprus.

However, under the badges of trade one needs to examine whether there is evidence that this may be a trading activity and be taxed under income tax.

Based on the facts available and the long term ownership of the tourist apartments (since 2012 so 9 years) it does not appear that this is a trading activity.

The income will therefore be exempt from income tax.

Part 1

Option 1

Merger

One company (Fail Ltd) will be dissolved without liquidation and the assets and liabilities will be transferred to Super Ltd in exchange of shares issued to the shareholders of the dissolved entities. Any cash consideration cannot exceed 10% of the nominal value of the shares issued.

This option could also work in the same way but with dissolving Super Ltd instead and Fail Ltd being the surviving entity.

share exchange

The 3 individuals with 40% of the shares can give the shares held in Sigma Ltd to Super Ltd in exchange of Super Ltd issuing shares to them. There will not be any transfer of assets and liabilities and Sigma Ltd will become 100% subsidiary of Super Ltd.

Any cash consideration will have to be limited to 10% of the nominal value of the issued share capital.

Option 2

Merger - new company

The two companies (Super Ltd or Fail Ltd) will be dissolved without liquidation and the assets and liabilities will be transferred to a new company (NEWCO) in exchange of shares issued to the shareholders of the dissolved entities. Any cash

consideration cannot exceed 10% of the nominal value of the shares issued.

share exchange

The 3 individuals with 40% of the shares can give the shares to the NEWCO in exchange of NEWCO issuing shares to them. There will not be any transfer of assets and liabilities and Sigma Ltd will become 100% subsidiary of NEWCO.

Any cash consideration will have to be limited to 10% of the nominal value of the issued share capital.

Option 3

Merger - upward

One company Sigma Ltd will be dissolved without liquidation and the assets and liabilities will be transferred to Super Ltd in exchange of shares issued to the shareholders of the dissolved entities. Any cash consideration cannot exceed 10% of the nominal value of the shares issued.

Subsequently, another merger where the Super Ltd (or Fail Ltd) will be dissolved without liquidation and the assets and liabilities will be transferred to the remaining entity in exchange for shares issued to the shareholders of the dissolved entity. Any cash consideration cannot exceed 10% of the nominal value of the shares issued.

Tax exemptions

No income tax or SDC on the transfer of the assets

Losses carried out to the new entity and available.

Consideration should be given to the limitation of the tax losses. Under income tax if there is a change of ownership, the company needs to continue the operations for a further 3 years otherwise the b/f losses will be lost.

No deemed distribution provisions

No balancing statement, capital allowances continue

No capital gains tax on the immovable property

No VAT implications

No stamp duty

No mortgage fees

No land transfer fees

Part 2

The reorganisation will have to be submitted to the Tax Department for approval.

It is probable that some conditions will be placed by the Tax Department as anti avoidance measures.

Tax clearance will have to be obtained.

The consent of the shareholders will need to be obtained.

If the immovable properties are mortgaged then the banking institution will have to provide consent for the change of ownership to the new entity.

The dissolution without liquidation will have to be notified to the Registrar of companies.

Tax clearance will be required for the dissolved entity and all the filings to be in place and any outstanding tax liabilities paid. All fees to the Registrar of companies, municipalities and other similar taxes will have to be settled.

Part 3

If we consider that the accounting losses of Fail Ltd amounting to €80,000 are available to be utilised against future profits

then one could make the argument that the value of this asset is equal to

€80,000 x 12.5% = €10,000

The losses we assume are less than 5 years old, if not then the losses will have to be adjusted based on the facts and circumstances.

Sikma and Super Ltd will be a 75% losses group and surrendering of tax losses will be possible

However, Sikma Ltd will not be able to utilise the available losses as it is still expecting to generate its own losses for a further 3 years.

There is, therefore, the possibility that some of the €80,000 taxable losses will be lost under the 5 year rule and this will have to be calculated and adjusted based on expectations.

Income tax losses are not available to be utilised against Special Defence contribution tax liabilities.

Any cash consideration over the 10% threshold of the nominal value of the share capital, will fail the approval of the approved re-organisation.

If that happens then the change of ownership will be captured under the Capital Gains tax as a sale of the immovable property and any chargeable gains taxed at the rate of 20% (reliefs available)

Any undistributed assets of the last 5 years prior to liquidation, will be subject to deemed distribution provisions and taxed under SDC at the rate of 17% plus 2.65% for GHS.

Answer-to-Question-_3_

Part 1

Cyprus capital gains tax is calculated on immovable property situated in Cyprus or on shares which derive their value by more than 50% from immovable property situated in Cyprus.

The option to sell the UK shop to the Cyprus developer is not captured by the Capital Gains Tax in Cyprus

There are no capital allowances for Land and no balancing statement to account for.

For any property which was provided as a gift and which was acquired period to 1.1.1980, we need to use the value as at 1.1.1980 - Land in Lythrodontas

Sales consideration		Plot Nicosia 600,000	Agricultural Land 600,000	
Indexed cost Plot (300) x 1.3 Land (260 + 40) x 1.3		(390,000)	(390,000)	
Capital allowances		NA	NA	
Exemptions				
General exemption		(17,086)	(25,629)	
		192,914	184,371	
Capital Gains Tax at 20%		38,583	36,874	

Part 2

The deductible cost will be based on the acquisition value of the property which is 600k euros.

The value will be adjustable by the indexation allowance.

any selling costs, agency fees from individual registered agents can be deducted but not indexed.
Any renovation expenses can be indexed and deducted from the cost.
Private residence relief will be available as well as described further below.

Available exemptions relief's

The only remaining relief available to Kenneth is the relief for the private residence. This is a maximum of EUR 85,430 but will be reduced by the general and agricultural relief obtained.

the available relief is therefore:

UK Shop option - EUR 85,430
Plot Nicosia - EUR 68,344
Land - EUR 60,161

If there are any available capital losses from any other property then these will be available as well.

Conditions

To claim the private residence relief:

He needs to reside at the private residence for a period of minimum 5 years

If he has left to the UK and has leased the property out he needs to sell the property within 12 months otherwise the exemption does not apply.

Part 3

Based on the facts it seems that Kenneth by returning home he will become a tax resident of the UK. he is also a UK domicile.

Hence,

He is taxed on income tax on his Cyprus sourced income at the gradual rates. He is entitled to 20% general expenses deduction. there is no loan.

He will also be able to claim capital allowances as he will be carrying out a business by renting out the property.

SDC is not applicable as he is neither a CY tax resident or a CY domicile.

GHS will not be applicable as he not a tax resident in Cyprus.

Answer-to-Question-_4_

The BEPS project started back in 2012 when the G20 have agreed to combat tax evasion/avoidance through legitimate planning techniques which artificially and significantly reduced the tax income in countries where the value was created.

After long and hard deliberations the OECD (an organisation with more than 100 member countries) which was tasked with development of appropriate measure which would combat base erosion and profit shifting activities came up in 2015 with the so called BEPS action points.

The EU had obviously played a key role in the development of these action points and soon after the release from the OECD, the EU issued the ATAD directive which requires all EUMS to adopt into local legislation.

In 2019 and 2020 there were new legislations that had been implemented and in force as a direct result of the above efforts:

1. CFC rules - CFC aims to tax the undistributed profits of low tax foreign companies (or foreign PEs) owned by Cyprus resident companies which are in low tax jurisdictions.
2. Interest limitation rules - impose a limitation to the Excess Borrowing Costs that a Cyprus group can use as tax deductible expense. The aim is to avoid shifting profits from high tax jurisdiction countries to low tax jurisdiction countries through the use of related party loans.
3. General anti abuse rules (GAAR) - the GAAR is a final resort in the tax legislation of Cyprus which aims to strengthen the legal arm of the Tax Department so that it has the necessary tools to combat an artificial arrangement with no real economic reasoning. Its a more general measure to capture what is not specifically in the legislation like CFC or ILR.
4. Exit Taxation - allows Cyprus to be able to tax assets that are currently owned by Cyprus resident companies for examples which move their based are relocated to another jurisdiction at the market value of the exit date.
5. Hybrid mismatches - allows Cyprus to tax hybrid arrangements e.

g. an income is exempt from tax in Cyprus and is also tax deductible from the paying company. Conversely, any expenses that are deductible in Cyprus may be exempt in the recipient country. Cyprus will be able to tax the income or disallow the deduction of expense as the case may be. (avoidance of double deduction or deduction with no inclusion)

Actions 1-3 (ATAD I) are in force from 1.1.2019 and 4-5 (ATAD II) from 1.1.2020. Cyprus is now fully compliance with the EU ATAD directive.

Answer-to-Question-_5_

Domicile concept only applies to physical persons. There are three definitions of domicile and you can only have one at any point of time.

Domicile of origin

Domicile of origin is given at birth and is the domicile that you farther has at the time of your birth.

Domicile of choice

Domicile of choice if you have chosen to live outside of Cyprus if you maintain or acquire a domicile of choice outside of Cyprus and you have not been a tax resident in Cyprus for the past 20 years.

Domicile of choice if you have chosen to live outside of Cyprus and you acquire or maintain an domicile of choice outside of Cyprus and you have not been a tax resident from 1995 to 2015 (20 years prior to the legislation coming in force)

Deemed domicile

Deemed domicile you obtain automatically if you are a tax resident in Cyprus for at least 17 years of the last 20 years.

Non domiciled individual tax resident implications:

The special contribution for defence provisions do not apply.

Hence any income from rental, interest or dividends in Cyprus or from abroad are exempt from SDC in Cyprus.

Additionally, the deemed distribution provisions do not apply either and the Company does not have to submit the TD623 forms for dividends declared if the 100% shareholder is non domicile.

The non-dom will have to prepare and submit form TD624 to corporations to notify them that he is a non-domiciled individual and no SDC should be deducted at source.

Similarly he should be doing the same thing for any interest deposit accounts or other assets which may be considered as falling under the SDC provisions and avoid any deduction at source.

As a tax resident of Cyprus you are taxed on your worldwide income at the gradual rates as normal on the following types of income.

1. Employment income
2. Rental income
3. Income from trade or profession
4. Savings income (e.g. interest)
5. Trading Goodwill
6. Deemed benefit 9%
7. Royalty income

Interest income is either taxed under SDC or under income tax. If interest is from trading activities or closely connected with the trading activities of the individual, the income is taxed under the income tax laws and is exempt from SDC.

If the interest income is from investment non trading nature, then the income is taxed under SDC and is exempt from income tax.

For General Health Services, the domicile status is irrelevant. A non-domicile but tax resident in Cyprus individual will be taxed under the GHS depending on the type of income.

For Capital gains tax, the domicile status is irrelevant. He will be taxed on any immovable property situated in Cyprus and available relief's will be available.