Answer-to-Question-_6_

Denis and Emma's salaries and stock options

Salaries

Based on the Article 15 of DTA which is mirroring OECD MTC 2017, salaries, wages and other simular reminutations of resident of Contracting State in respect of employment income shall be taxed only in that State unless the employment is exercised in the other contracting state.

Considering that Gallant Inc is resident of Harmonia, the excemption to the general provicion (paragraph 2 of the Article 15) is not applicable.

From the given facts Denis and Emma are residents of Iveria. Therefore whether Harmonia may tax their employment income or not depend on the fact whether the work was exercised in Harmonia or not.

Facts state that Denis and Emma only traveled to Harmonia once a year for a team building for one week. Based on the paragraph 1 of the OECD commentary to the Article 15 of MTC "employment is exercised in the place where where the employee is physically present when performing the activities for which the employment income is paid.".
The probability that team building will be quilified as the activities for which the employment income is paid is low. Hovewer additional facts and circumstanses should be evaluated. If this activities based on the employment agreement provisions

will not be qualified as above mentioned, then only Iveria has taxing rights on this income based on DTA. Hovewer, if this income will be quilified as above mentioned, the only period of phisical presense in Harmonia
may be taxed in Harmonia. And whole amount of income, as in most countries woardwide income of residents taxable in residense state, will be taxable in Iveria.

Additionally Denis and Emma have rigts to applie to credit/exemption method based on Article 23 for eliminating double taxation on their income.

Stock options

Based on the Article 15 of DTA which is mirroring OECD MTC 2017, salaries, wages and other simular reminutations of resident of Contracting State in respect of employment income shall be taxed only in that State unless the employment is exercised in the other contracting state.
As the wording of paragraph 1 of article 15 of DTA includes "other simular reminutations" not only ordinary salary payments should be covered by this article. From the facts it is clear that these stock options have been given for good performed work during employment activities.
There is an separete part in commentaries for Article 15 dealing with treatment of employee stock options
Paragraph 12.1 of OECD commentaries to Article 15 states that "Article allows State of source to tax the part of the stock option benefit that constitutes remuneration derivered from employment rexercised in that State even if the tax is levied at letter time".

The quiestion whether these activities exercised in the source State adressed in above part.

Hovewer employment income should be distinquished from capital gaine. Based on commentaried when stock options granted to employee for employment activities it is concidered as employment income and covered by Article 15. Hovewer once it will be exercise (12.2 of commentaries) Article 13 should be applied.

Compensation that Emma might receive from non-complete agreemt with Gallant Inc

This income should be considered as employment income as it is agreedn in the employment agreement and should be taxes in the state where the work might be exercises if this provision will net be in the agreement.

Answer-to-Question-_7_

General information DTA

Conclution of DTAs aim develop economic relations between countries by prevention of double taxation without creation of double non taxation, exange of information between countries, assistace in the collection of taxes, non-discrimination of nationals on Contracting States and etc.
Based on provisions of DTA it allocate taxing rights between States. Hovewer there is anouther view that DTA limmits taxing rights of States.
There are two links between income/tax payers and goverments - sourse and residense which givese rights to States tax income of persons. It is general approach that States taxes worldwide

income of its residents (in some States - citizens).Hovewer if there existing DTA between states person may use Article 23 for elimination of double taxation, i.e redusing taxes paid to State by the amount paid in source State.
It is normal that each state is interested in increasing it portion of collected taxes, as most income of State budgeted comes from collected taxes.

Hovewer, concluding DTA both States comes to compromise, and allocate rights between each other. Therefor the terms of agreemet should be interested and acceptable by both States.

Magnolia concluded OECD model for its treaties. There is an option for developing countries to use UN model, as it gives more rights to source countries (which is mostly developing countries). But as I said above the agreement should be interesting for both Contracting States and it is hight likely that some states (like US) has more pover in negatiation of the agreemet.

Importanse of PE definition.

Article 7 of DTA deals with business profit. Based on this article "Profit of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent extablishment situated therein".
From this paragraph we can see that main criteria for allocating taxing rights between Contracting States is whether the person having business profit has PE in Sourse State or not.

In 2000 article 14 which covered income from independend personal

services deleted and it means that provisions of Article 7 covers business income of all persons covered by Traty, exept the items income which are deals with separately in other Articles.

PE definition

PE definition is given in the Article 5 of DTA.
Based on Paragraph 1 of this Article PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
Paragraph 2 includes to this definition expecialy "...f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources."

For Magnolia it is esential to understang what should be considered as "fixed place". As the provisions of MTC do not gives exat explanation of this term. What period of works creates PE, may it be 1 day, or it should be 300 days.
Based on parahraph 28 of commentaries to Article 5, fixed plase can be exis if there is " certain degree of permanency". The commen aproach of States to concider PE established whin it caries the business in the State for the period more that half year. Hovewer some busineses by nature carrued on for shourt period of time. Therefore there is a need to evaluate PE creation based on each case and based on all circumstanses.

Provisions with readard to bart f of paragraph 2 of article 5 of DTA

OECD in commentary to Article 5 gives additional draft provisions that may be agreed between Stated to be included in their DTAs.

Commentary 48 c) gives the option to inclyde duration which will create PE for a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

Conclusion

As above mentioned PE is a key factor in DTA which allocates taxing rights to source State. Hovewer DTA is areement between both States. Therefor Magnolia should evaluate following while changinh its DTAs:

1. Whether it is acceptable to the other Contracting State.
2. Considering the number of DTAs there is a need to consider which ones will be beneficial to change. And whether Magnolia can use MLI for this purposes. MLI considered in forse only if both States inluded respective provisions with regard to respective State.
3. Evalute busines and find optimal duration which may create PE. May it will be benefisial to inlude instead one month, two or three.

Answer-to-Question-_4_

Conclution of DTAs aim develop economic relations between countries by prevention of double taxation without creation of double non taxation, exange of information between countries, assistace in the collection of taxes, non-discrimination of nationals on Contracting States and etc.
Hovewer exchange of information may be achived throw Model Agreement on Exchange of infomation on Tax Matters developed by

OECD and introdused in 2002.

Article 26

Article 26 gives grount to Contracting States to exchange information as administrative assistance. This article on one hand works as support to the other Articles of MTC (will be discussed bellow) as well as support States in prevention of tax avoidance.

Based on paragraph 1 of the Article 26 "The competent authorities of the Contracting States shall exchange such information as is foreceebly relavant for carrying the provisions of this Convention or to the administration of the dommestic lawws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention."
There is notable the purpose - "for carrying the provisions of this Convention or to the administration of the dommestic lawws". Also it should be noted that this Article deals not only with taxes mentioned in the Article 2 of the Convention, but with "every kind and description imposed on behalf of the Contracting States".

Paragraph 2 deals with confidenciality of information obtained by one Contracting State and provided to other Contracting State. Paragraph 3 provide provisions based on which Contracting State is not bound to go beyong its own internal law and administration practice in putting information at the disposal of other Contracting States.

constucted to permit Contracting State to decline to supply in requested information solely because it has no domestic interest in such information.
Paragraph 5 imposes a positive obligation on Contracting state to exchange all types of information. For instanse by overriding bank secretacy.

Integratin of Article 26 with other DTA articles

Article 27 deals with assistance for the purposes of collection of taxes, but information for this purposes is exchanged based on the Article 26. Article 25 deals with Mutual Agreement prosedure (paragraph 6 of OECD commentaries to Article 25), but this arcticle agrees on disscusions between tax autorities of States. Hovewer exchange of information for MAP purposes are governed by Article 26.
Also provisions of the Article may be used for the purposes of Article 12 (for the information concerning the amount of royalty transmited, with regard to beneficial owner information indicated in Articles 10-12, For purposes of Articles 7 and 23A/B (on adjustments to the profit atributable to PE), Article 15 (with regard to days spend by individual).

Fishing expeditions

Paragraph 5 of the commentaries for the Article 26 say that "foreseeable relevance" is intended to provide for exchnge of information in tax matters to the widest posible extend and, at the same time, to clarify that Contracting State are not at liberty to engage in fishing expeditions or to request

information that is unlikelt to be relavant to the rax affairs of the given tax payer.
It mean that the requeste state do not have a right to request any information that may be available or posible to obtain of the taxpair without the reasonable psibility that this information will be relavant (no matter the is it immaterialy relavant or not).
The commentary say that requesting State should should provide the an explanation as to foreseable relevanse of the requested information. Otherwise, other State has a right to decline the request.

There is some comments on the fishing expeditions in Model Agreement on Exchange of infomation on Tax Matters. Which say that the requested information doesnt constituted as fishing only becouse the nase or address of the tax payer missing, as well as speled wrong.

Answer-to-Question-_5_

Nexus for taxation
There is two common links which used by States to levy taxes on the persons. Connection of person to the State and connection of the income to the staes.
First one motly covered by residense, situs, citysenship definitions. Second link the income to the state where it arise.

Sourse taxation

The theory of residense taxation is that the state of residense give required invirement for the person to live, exist, secure enviroment and ets. The sourse state gives relavant economic inviroment to earn income.
The main source of income for goverments is the taxes collected. Mostly sorce states is Developing countries and it is vital for them to collect taxes to grow and develope.

As non-residents do not have registration, at some times do not have any presense (expesialy when the income earned is passive) in the state the Countries impove taxes throw the agent (local tax residents). Which withold taxes from the income of the non-resident person and transfer it to the source state budget. Dividend, interest and royalty income is passive income types.

DTA
Articles 10-12 of OECD and UN MTCs deals with passive income. OECD version of 10 -12 Articles allocate taxing rights between both states. Articles say that the income may be taxes in residense State. And may also be taxes by Sourse State. Hovewer pargraph 2 of Article 10 limmits taxing rights of Sorse state if the the beneficialy owner of the dividends is resident of the other State and covered provision of part a)(which limits up to 5 %) of this paragraph or part b)(which limits up to 15 %)of this paragraph

Article 11 limits the taxing rights of Sorce State up to 10% if the benefiary owner of the interest is resident of other State.

Article 11 limits the taxing rights of Sorce State to 0% if the benefiary owner of the interest is resident of other State.

"Beneficial owner" is a anti avoidance provision which dealing with treaty shoping, and expecialy with Conduit companies.

UN model, which gives more weight to source principle that does OECD, in article 12 do not gives taxing rights only to Residense state.

CFC
It was common tax planig practice of enterpreneurs to swift passive income to low tax jurisdictions only with purpose to pay lower taxes. To prevent this practises OECD added to BEPS procet Artin 3 which deals with this practises.
This provision sugest contries implement domestic law on CFC. which give taxing rights to beneficeal owner residense state.