Answer-to-Question-_6_

Memo on Popcorn Kernels Ltd's (PKL) expansion into Ireland

Date: 13 December 2023

From: Tax Advisor

To: Financial Controller

Thanks for reaching out for tax comments with regards to the PKL's recent expansion into Ireland, I set out below the permanent establishment (PE) implication and branch exemption election below:

PE implication

Whether a PE is triggered in Ireland by virtue of the company's contemplated activities would need to look at the definition of PE, which are set out in s.1141 CTA 2010, which is largely in line with the Art 5 of the UK/Ireland Double Tax Agreement (DTA, here we assume this is identical to the OECD Model Treaty).

There are 2 main types of PE:

- Fixed place of business (FPOB) PE - i.e. a fixed place of business through which PKL could partly or wholly carry on business in Ireland.

- Dependent agent (DA) PE - i.e. an agent who has general authority to conclude contract on behalf of PKL.

There is also a non-exhaustive list of PE which includes:

- a place of management

- an office

However, there are also exclusions that when satisfied, the PE would be disregarded:

i) where the PE only conducts preparatory or auxiliary activities - e.g. simply storage, display or delivery of goods, collection of information, etc.

ii) where the PE is of an independent status working in its ordinary course of business.

That said, if the activities of the PE, bringing together would be considered as a cohesive buiness operation, then the activities would not be regarded as "preparatory or auxiliary" in nature.

Applying to PKL's case,

We note that 2 sales directors are hired in Ireland since 1 Jan 2023 (1) visiting potential customers; (2) having authority to conclude contracts. Also, the management lease an office in Ireland for future operations in Ireland.

As the sales directors are hired by PKL, they are apparently DAPE of the company as opposed to persons of an independent status.

But for activity (1) - it can be argued that visiting potential customers are preparatory and auxiliary in nature and thus solely on activity (1), there may not be a PE arises.

For activity (2) - as the directors has the general authority to conclude contracts of behalf of PKL, it clearly beyond the PE threshold under the agency PE and this is not "preparatory and auxiliary" nature.

Therefore, once the sales directors concluded a sales contract in Ireland, a PE should have been created.

Moreover, the Irish office leased by PKL should prima facie fall within the definition of FPOB PE, as it is a place at the disposal of PKL with a certain degree of permanency.

Please note that there could also be more than 1 PEs created in Ireland or they may be considered as 1 single PE depending on the facts and circumstances.

Having a PE created in Ireland, PKL will then have a taxable presence in Oreland and subject to tax in Ireland.

Profits should be attributed to the Irish PE based on a functional analysis to be performed having regard the function performed, asset used and risk assumed, this is in line with the Authorised OECD Apporach.

Branch exemption

For business profits derived by a Irish PE (i.e. profits attributed to the Irish PE as above mentioned), Ireland should have the primary taxing right under Art 7(1) of UK/Ireland DTA, whereas UK should also have the right to tax those profits.

Therefore it will give rise to double taxation. As such Art 23A or 23B would kick in to offer any double taxation relief by way of tax credit or PE exemption. This is also the case under UK domestic law that PKL could either follow the default tax credit approach or make an election to exempt the Irish PE profits.

Since the UK levies 25% tax whilst Ireland only levies 12.5% tax, under tax credit method, the tax credit can be claimed in the UK by PKL will be capped at 12.5% actual tax paid for the profits attributable to Irish branch.

For year 22/23
Corresponding UK tax liability = 200,000 x 25% = 50,000
Irish PE's tax liability = 200,000 x 12.5% = 25,000 (tax credit amount)

For year 23/24
Corresponding UK tax liability = 1,500,000 x 25% = 375,000
Irish PE's tax liability = 1,500,000 x 12.5% = 187,500 (tax credit amount)

Thus in both tax years, there will not be additional UK tax saving by claiming branch exemption. As branch exemption would only be beneficial if the foreign tax paid is more than the corresponding UK tax liabiltiy on the PE's profits.

I would not suggest you to claim a branch exemption election as there are below drawbacks:

a. the election is irrevocable and applies to all current and future PEs

---

b. other PEs (e.g. because of future expansion) will bound by this exemption election if they make losses, those losses cannot be used to set off UK head office profits
c. there will also be total negative opening amounts giving rise to a long tracking period which can be an administrative burden

As such, credit method will not make your tax position worse off and you should not claim branch exemption to maintain a greater degree of flexibility.

Answer-to-Question-_1__

Memo on UK's anti-hybrid mismatch rules and their implications to the 3 proposed options of Caps Ltd (C Ltd)
Date: 13 December 2023
From: Tax Advisor
To: Financial Director of C Ltd

Part 1 - Overview of UK anti-hybrid mismatch rules

The UK anti-hybrid mismatch rules are set out under Part 6A of TIOPA 2010, which is an anti-avoidance rules combatting against any mismatch of different tax treatments by different tax jurisdictions (usually be the case) due to the below (non-exhasustive):

- financial instruments (e.g. one country treating it as debt but the other treats it as equity)
- hybrid entities (i.e. one country treating it as transparent; the other country treating it as opaque)
- multinational corporations (typically involves permanent establishments)
- dual resident companies (the same legal entity being regarded as tax resident in more than 1 jurisdictions).

The above tax mismatch would in the consequences leading to 2 typical situations:

- Deduction / Non-inclusion (D/NI) mismatch - where one jurisdiction offers deduction but the other jurisdiction does not tax the corresponding income
- Double deduction (D/D) mismatch - where both jurisdictions offer deduction for the persons's income

There are a series of mismatch rules designated by different chapters which the taxpayers should apply then in a statutory order start from Chapter 3 to Chapter 10 (with the exception of Chapter 4 should come first).

There is also an imported mismatch condition under Chapter 11.

Then one should look at whether the prescribed conditions are met to cosnider if the Chapter would apply.

If a chapter applies, then counteraction would take place to resolve the mismatch, there are 2 types of counteraction:
- Primary counteraction: to disallow the deduction offered (e.g. if a hybrid payer is UK resident)
- Secondary coutneraction: to make the corresponding amount being taxable (e.g. if a hybrid payee is UK resident)

As such, detailed analysis need to be performed to consider if an arrangement or tax precense of entity to consider anti-hybrid mismatch rules.

Part 2 - Potential impacts on the 3 proposed options

First of all, we note that Cappy Inc (C Inc) has checked the box in the US for the purposes of C Ltd in UK thus C LTd is a

transparent entity for US tax purposes. Please note that this should not alter the opaque status of C Ltd for UK tax purposes. It suggests that C Ltd will be a hybrid entity for the purposes of UK anti-hybrid rules.

Option a - Ordinary shares

C Ltd will issue ordinary shares to C Inc and distribute dividend annually. The dividend will be taxable in the US.

As C Ltd is a hybrid entity and pay dividend, Chapter 5 hybrid payee and/or Chapter 9 D/D hybrid entity should be looked at.

Please note that dividend distributed on ordinary shares by C Ltd should not be a deductible expense for UK tax purposes (here we assume this is a vanilla ordinary shares as opposed to shares with any other special features, e.g. redeemable / convertible elements). Though withholding tax will not apply for such distribution.

Dividend income will be taxable in the hands of C Inc. Thus there is no non-inclusion of income.

As such, there is no deduction and/or income non-inclusion under this option. Both Chapters 5 and 9 under the anti-hybrid rules should not apply.

However, this option does not provide any tax efficiency as dividend income is taxable but give rises to no deductible expense.

Option b - Loan from C Inc directly

The £40m finance will be provided by way of loan to C Ltd by C Inc.

There is no hybrid transfer, thus Chpater 4 should not apply.

It appears that the loan is a vanilla debt and this Chapter 3 for hybrid instrument should not apply.

We should then look at Chapter 5 hybrid payee mismatch.

First condition is met as there is an interest payment annually.

Second condition is also met as C Ltd is UK tax resident.

Third condition should also met as

- C Ltd should be able to obtain tax deduction in the UK (assuming that other tax rules re interest limitation do not apply, e.g. unallowable purposes and/or transfer pricing rules), the £0.5m interest expenses should be deductible for UK corporation tax purposes.

- As C Inc has treated C Ltd as transparent, the interest income from C Ltd should be an integral payment within C Inc, there would not be any taxable income arises for US tax purposes. Therefore, the income non-inclusion condition is met.

The last condition is also me as C Inc and C Ltd are related parties by cirtue of 100% holding relationship.

As such, Chapter 5 under the anti-hybrid mismatch rules apply.

Primary counteraction should apply as the hybrid payee is UK tax resident, such that C Ltd would likely be disallowed with the £500,000 annual interest going forward under this option.

Option c - Loan from C Inc via Deckel GmbH (DG)

The £40m finance will be provided by way of loan to C Ltd by C Inc via DG under a back-to-back arrangement.

There is no hybrid transfer, thus Chpater 4 should not apply.

It appears that the loan is a vanilla debt and this Chapter 3 for hybrid instrument should not apply.

Chapter 5 should then be considered:

First condition is met as there is an interest payment annually from C Ltd to DG.

Second condition is also met as C Ltd is UK tax resident.

Third condition appears NOT met

- C Ltd should still be able to obtain tax deduction in the UK (assuming that other tax rules re interest limitation do not apply, e.g. unallowable purposes and/or transfer pricing rules), the £0.5m interest expenses should be deductible for UK

corporation tax purposes.

- As DG has treated the interest income as fully taxable for Germany tax purposes, there is an income inclusion, i.e. the non-inclusion condition is met.

As such, Chapter 5 under the anti-hybrid mismatch rules do not apply.

Chapters 6-10 are not relevant as
- there is not PE involved
- payee is not hybrid entity
- no multinational companies involved
- no double deduction noted under Chapter 9/10.

However, Chapter 11 should be in point as the arrangment is imported via DG a third country entity.

First condition is met as this is clearly an imported mismatch arrangement.

Second condition is met as payee C Ltd is a hybrid entity

Third condition is met as the improted arrangement is one of a series of transaction (back-to-back loan)

Forth condition is met as in essence it should meet Chapter 5 hybrid payer mismatch if the loan has been structured as if it were under Option b.

Fifth condition should also apply as if Part 6A does not kick in,

---

there will be a D/NI condition triggered.

Last condition is met as DG, C Ltd and C Inc are all under the same group.

As such, by interposing DG into the loan arrangement, Chapter 11 imported mismatch should still apply.

Primary counteraction should apply as the hybrid payee is UK tax resident, such that C Ltd would likely be disallowed with the £500,000 annual interest going forward under this option.

Answer-to-Question-_3__

Quantum Innovations Ltd's (QIL) Address
Attention to Michaela, Finance Director

From Tax Advisor
Tax Advisor's Address

13 December 2023

Title: UK CFC Rules and the implications to 4 of your subsidiaries

Hi Michaela

Thanks for the information provided assting the CFC analysis, please see below our response.

Part 1 - CFC rules and implications to the 4 subsidiaries

CFC Rules are set out under Part 9A of TIOPA 2010, which are anti-avoidance rules applied to counteract any contrived arrangement to divert profits out of the UK through transactions or arrangements with insufficient economic substance and/or to no/low tax jurisdictions.

CFC is defined as non-UK resident company which is controlled by

UK resident persons (i.e. QIL).

As all the 4 subsidiaries are 100% subsidiaries of QIL, thus by virtue of the basic control rule under Chapter 18, all 4 subsidiaries are CFC of QIL.

An apportionment of CFC charge may be triggered if the shareholding of the UK resident persons exceed 25%, thus a full CFC charge pick up may arise if any of the 4 subsidiaries within the review scope are considered as CFC, BUT ONLY if there are CFC profits passing through any one of the 5 gateways (Chapters 4 to 8).

The conditions to be considered next would be whether any of the entity level exemptions (under Chapter 10 to Chapter 14) would apply, if any one of the 5 exemptions applies, there will not be CFC charge apportioned.

However, if none of the exemptions applies, the next line of analysis will be the Chapter 3 pre-gateway tests if any exclusions would apply such that the profits will not pass through any one of the 5 gateways under Chapters 4 to 8.

There are still other safe-harbours for some of the gateways which could limit the CFC exposure.

We note that only if the profits pass through any one of the Chapter 4-8 gateways will trigger a CFC charge to be taxable at the level of QLL.

Applying these to the QIL,

We should first look at the 5 exemptions, if any one of them apply

Chapter 10 - exempt period exemption is not applicable to all 4 subsidiaries as they all have been within the group for more than 12 months.

a. Quantum Leap Ltd (QLL)

Chapter 11 - excluded territory exemption should not apply as Bermuda is not an excluded territory on the list of SI 2012/3024.

Chapter 12 - low profits exemption should apply here as QLL only generates trading profits of £250,000 which is below the threshold of £500,000 accounting profits (or assumed taxable total profits). Here we assume the trading profits you've quoted are a close proxy to accounting profits or assumed toaxable total profits for CFC purposes.

As such, low profits exemption apply and there should be no CFC charge arises for QLL.

b. Long Leap Ltd (LLL)

Chapter 11 - excluded territory exemption should not apply as UAE is not an excluded territory on the list of SI 2012/3024.

Chapter 12 - low profits exemption should not apply here as LLL derives annual profits exceeding £500,000.

Chapter 13 - low profit margin exemption should not apply as LLL derives a profit margin of 60%, which is higher greater than than the 10% threshold.

Chapter 14 - tax exemption should not apply as well as the tax rate in UAE is only 9% which is significant below 75% of the UK corporation tax rate of either 19% or 25% (i.e. 14.25% or 18.75%).

Thus none of the 5 exemptions would apply.

When we look at the 5 gateways, it appears that only Chapter 4 gateways on trading profits attributable to UK activities are relevant as:
- it appears LLL only does not derive non-trading nor trading finance profits, i.e. Chapters 5 and 6 do not apply
- it appears LLL is not involved in captive insurance or banking business, thus Chapters 7 and 8 do not apply

The next test would be Chapter 3 pre-gateway test, to see if any of the 4 exclusions are applicable:

(i) motive test - whether the LLL transactions in UAE has a main or one of the main purpose of obtaining tax benefit, further information would be need to check if this is the main purpose

(ii) UK managed assets or risk - whether LLL has reliance on UK assets or risk which apparently be the case as the widgets are acquired from UK group company and they are delivered directly from the UK. This condition is not met

---

(iii) Whether LLL can stand on its own feet - with the only 2 employees managing £2.75m appears to be lack of economic substance and thus this condition is not met

(iv) Total profits consist no non-trading finance profits or property business profits

Therefore none of the pre-gateway test apply.

As the operations in UAE appears neither satisfying

- Economic value test
- Independenet companies arrangement
- Trading profit rules

The trading profits should pass throught the Gateway Chapter 4.

c. Evolve Quantumn Ltd (EQL)

Chapter 11 - excluded territory exemption could apply as India is an excluded territory on the list of SI 2012/3024. But we need to check if all other conditions are satisfied as we are not provided with profit level, we will consider other exemption

Chapter 12 - low profits exemption - as we are not provided with profit level, we will consider other exemption

Chapter 13 - low profit margin exemption should apply as EQL should only derive 1% cost plus remuneration, which should be within the 10% profit margin threshold.

Chapter 14 - tax exemption - no tax rate provided.

Thus Chapter 13 low profit margin exemption should apply for EQL.

d. Advanced Quantumn Ltd (AQL)

Chapter 11 - excluded territory exemption could apply as France is an excluded territory on the list of SI 2012/3024, which is also one of the 7 listed countries under para 4 of SI 2012/3024, we need not to look at threshold and IP condition. This exemption is likely to apply assuming there is no main purpose to avoid tax with AQL arrangement.

Chapter 12 - low profits exemption - profits exceed the threshold, thus not apply.

Chapter 13 - low profit margin exemption - not enough information to determine

Chapter 14 - tax exemption - no tax rate is above the 75% of the UK corporation tax rate of either 19% or 25% (i.e. 14.25% or 18.75%).

Thus Chapter 13 low profit margin exemption should apply for EQL.

Part 2 - CFC charge calcualtion

a. QLL - low profits exemption - no CFC charge

---

b. LLL

The CFC charge should be determined by considering the UK significnat people function, by way of functional analysis to consider how much of the profits out of the £2.75m should be severed to the UK part and that part will be the CFC charge.

c. EQL - low profit margin exemption should apply - no CFC charge.

d. AQL - either Chapter 11 or Chapter 14 exemption should apply - no CFC charge.

Best regards
Tax Advisor

Answer-to-Question-_2__

Part 1 - Alisha's UK Tax Residence for 2023/24

The Statutory Residence Test (SRT) is a series of hierarchical tests used to determine whether an individual is UK resident, this is set out in Sch 45 of FA 2013.

It start with Automatic Overseas Test (AOT), and then Automatic UK Test (AUT), lastly Sufficient Ties Test (STT). Each test has to be applied in order before next.

AOT

As Alisha has never been to the UK, she is an "arriver".

The first AOT (which only applies to individual resident in UK for one of the 3 previous years) should not apply.

For second AOT, as Alisha will spend 100 days for 2023/24 tax year (i.e. more than 45 days), this test is not met.

For third AOT, as Alisha will spend in the UK for more than 90 days and work in the UK for more than 30 days (here we assume she works for more than 3 hours a day), this test is failed.

AUT

The first AUT is failed, as Alisha will only spend 100 days in the UK which is less than 183 days.

For the second AUT, although Alisha will lived in a rented apartment in the UK which should be considered as her UK home, she will also have a home in Bulgaria which is available for her use for a 91 days period and she will likely to stay there for more than 30 days during 2023/24, thus this test is failed.

For the third AUT, Alisha will work full time in UK as well as overseas (likely most of the time in Bulgaria), as she will spend less than 1/3 of the time in the UK, it is reasonable to assume that she will also spend less than 75% working days during the year in the UK. Therefore, this test is not met as well.

<u>STT</u>

As Alisha is an arriver, only 4 ties would need to be considered for STT.

Family - she is single, but has a minor child (aged below 18) in the UK.

However, as her daughter is studying in boarding school in the UK and will only spend 4 weeks (4x7 days, 28 days) wither Alisha. Alisha will see her minor child for fewer than 61 days. This tie is not met.

Accomodation - she has a home in the UK (the rented apartment) and lives in there during her time in the UK. This this tie is met.

Work tie - as she is expected to spend 100 days in the UK (c. 14 weeks) and therefore, assuming she work in this 14 weeks (14 x 5 work days , 70 work days), it is more likely than not she would spend at least 40 work days in the UK. We've assumed you work more than 3 hours on each work days in the UK for this purposes.

90-days tie - as Alisha has never been to the UK before 2023/24, therefore she spent none of the previous 2 tax years in the UK, thus 90 days tie does not meet.

Against the above, Alisha would have spent 100 days in the UK and with only 2 ties. Therefore she is non-UK resident for the year 2023/24.

Split year treatment is only available to UK resident individual and therefore not in point for Alisha.

Part 2 - Neil's UK Tax Residence for 2023/24

Neil will move to the UK on 15 Jan 2024; start living in the UK in hotel from 15-30 Jan 2024; move into a UK flat on 31 Jan 2024; first working in the UK on 17 Jan 2024.

He will be in the UK for 82 days (17+29+31+5 days) in the tax year 2023/24.

His Jamaican property lease ends on 14 Jan 2024.

AOT

As Neil has never been to the UK, he is an "arriver".

The first AOT (which only applies to individual resident in UK for one of the 3 previous years), there it should not apply to Neil.

For second AOT, as Neil spend more than 45 days (82 days) as an arriver, this test is not met.

For third AOT, although Neil will spend in the UK for less than 90 days but he should be working in the UK for more than 30 days (here we assume he works for more than 3 hours a day), this test is failed.

AUT

The first AUT is failed, as Neil will only spend 82 days in the UK which is less than 183 days.

For the second AUT, although Neil will lived in a rented apartment in the UK which should be considered as her UK home, the apartment UK home is not available for him for a 91-day period. Therefore, this test is not met notwithstanding he will likely to stay there for more than 30 days during 2023/24.

For the third AUT, on the assumption that Neil will work full time in UK starting from 17 Jan 2024, there should be a 365-day period of work without significant break. On the basis that

---

Neil will be working in the UK for the next 365 days period, greater than 75% of his time will be working in the UK. And therefore, he should satisfy the third AUT and thus be regarded as UK resident in 2023/24.

As Neil is an "arriver" and UK resident in 2023/24, split year treatment under Cases 4-8 should be considered.

When looking at cases 4-8, if more than 1 of them are applicable, the test would ascertain the shortest overseas period for Neil.

Case 4 may be relevant as it appears he starts to have a home here on 31 Jan 2024, but that's not his only home at that time. Thus we should look at case 8. Case 8 applies here as he has both UK and Jamaican homes until 14 Jan 2024. It may be possible that when he moves into the UK home on 14 Jan 2024. The split year starts.

Case 7 is not in point as Neil doesn't have a spouse.

Cases 5 and 6 may also be relevant as Neil started full time work on 17 Jan 2024, but he might also have ceased his full time work elsewhere in an earlier date, but we do not have sufficient information on this.

All in all, it appears that case 8 would give the shortest overseas resident period, unless Neil has a shorter overseas period by virtue of case 6. If case 8 applies, the overseas period will be 6 Apr 2023 to 14 Jan 2024 and UK resident period will be 15 Jan - 5 Apr 2024.

Answer-to-Question-_7__

Green Global Limited's (GGL) Address
Attention to Finance Controller

From Tax Advisor
Tax Advisor's Address

13 December 2023

Title: UK CIR Rules and interest withholding obligation

Hi finance controller,

Thanks for reaching out for our tax advice on CIR rules and interest withholding tax (WHT) in respect of your contemplated finance transactions.

The UK CIR rules are set out under Part 10 of TIOPA 2010, whereby it is an anti-avoidance rules applicable to limit the excessive interest deduction for large companies.

The CIR rules only apply after all other interest limitation rules, including:

- unallowable purpose rules
- transfer pricing rules (including thin capitalisation)
- anti-hybrid mismatch rules

It basically look at the group's aggregated net tax interest expenses (ANTIE) and the interest capacity of the group to consider if any of the excessive interest would need to be disallowed.

There is a de minimis amount of £2m, in case your interest expenses is below this level, the entire amount of tax interest expenses would be allowed for CIR purposes, but it appears that your contemplated finance would incur interest expense (£10m) exceed this threshold and the full CIR rules will need to be reviewed.

The tax interest expenses should first set off with the tax interest income to derive net tax interest expenses (NTIE).

Then all the UK companies will aggregate their NTIE to derive ANTIE.

The next step will be to determine the tax-EBITDA for calculation of the basic interest allowance (BIA), we would need this figure to determine the tax EBITDA for the group.

Next we can either use fixed ratio (30%) or group ratio (V%) multiply by the tax EBITDA to derive the BIA.

Assuming there is no excess debt cap in prior years and the adjusted net group interest expense or qualifying net group interest expense will not provide a better result.

For our analysis, we carry on with using the 30% or V% of EBITDA will be the BIA. Where the V% will provide a better a better

result under the group ratio method of it offers a greater than 30% result which is due to the higher gearing.

This interest capacity will be the higher of the £2m de minimis amount or the BIA. Here we assume the BIA is the greater amount.

Then you will compare the ANTIE against the interest capacity to see if there is any disallowed interest.

Any disallowed interest will be available to be carried forward indefinitely, subjevt to a proper election to be made with HMRC and a full CIR return is furnished by the company.

The full CIR return will need to be filed within 12 months after the end of the accounting period.

Reactivation of disallowed interest is possible in later years if the interest capacity is greater than ANTIE in any future tax years.

Interest withholding obligation

There is interest WHT obligation for any outbound payment of yearly interest, the applicable tax rate under UK domestic tax law is 20%.

Therefore, the interest expenses payable to UK bank should not subject to this interest WHT.

For the German interest of £4m, there will be a WHT obligation arises prima facie at £0.8m.

However, as there is double tax agreement signed between UK and Germany, under Article 11 the interest WHT could be reduced to 10% on the basis that beneficial ownership requirement is satisfied. Besides, the principal purpose test (under Art 29) should also be met such that the arrangment is not for the main or one of the main purpose of obtaining tax benefit.

Therefore, assuming Art 11 applies, the WHT exposure could be reduced to 10% and thus tax liability will bevome £0.4m.

As there is a DTA passport with reference number provided, GGL needs not to withhold 20% but only 10% for interest WHT purposes.

For completness, GGL should still need to file CT61 return for the purposes of reporting the interest WHT.

Best regards
Tax Advisor