Institution **CIOT - ATT-CTA**
Course **CTA Adv Tech Taxation Major Corps**

Answer-to-Question-_1_

1/

The main options for the sale are: (a) disposal of Jessamyn (J), (b) asset sale by J and then extraction of proceeds from J.

There could be a hive-down of the assets into another group company, but this would not materially improve the tax planning and would give rise to degrouping charges as (as discussed below) the assets are not trading and the SSE is not available.

<u>Disposal of J</u>

Here, Robalex (R) sells its shares in J to the buyer.

This is a disposal of a chargeable asset, and a chargeable gain will arise, which will be taxable to CT.

Assuming that the disposal takes place for the market value of the underlying properties of £3m, the gain would be as follows:

| | | | |
|---|---|---|---|
| Proceeds | 3000000 | | |
| ADD | | | |
| Degrouping | 100000 | | |
| | | | |

| DEDUCT | | | |
|---|---|---|---|
| Base cost | 1000000 | | |
| Indexation | 75822 | | |
| Enhancement | 1250000 | | |
| | | | |
| | | | |
| Gain | 774178 | | |
| Tax | 147094 | | |

Indexation only applied to original acquisition cost, as subsequent investment after Dec 17. Indexation not rounded as shares.

In this case, the gain would be increased by the intra-group transfers made to J. Currently, J, R and Newline (N) are all part of the same gains group, as they R wholly owns J and N. This means that transfers of chargeable assets like land between the group members takes place on a no gain no loss basis. The consideration paid by J is irrelevant.

This is relevant to the properties acquired. Wye View (WV) was acquired by J from N in April 2018. This transfer was deemed to be at N's historic indexed base cost in the property.

J therefore acquired the property with base cost of:

| Cost | 525000 | | |
|---|---|---|---|
| Index (0.150) | 78750 | | |
| New Cost | 603750 | | |

In addition, for Beachside Cafe (BC), this was also acquired via intra-group so J's cost here is:

| Cost | 470000 | | |
|---|---|---|---|
| Index )0.047) | 22090 | | |
| New cost | 492090 | | |
| | | | |

Presumed that enhacnement exp - costs of developing - also incurred in Jan 17. In each case, indexation is rounded as propety is land.

As J is leaving the group within 6 years of receiving these properties in an intragroup transfer, degrouping charges will

arise.

These will be calcualteed as if J had made a market value disposal of the properties at the time of the transfer.

The degroping charges will therefore be:

| | WV | BA | |
|---|---|---|---|
| MV | 800000 | 550000 | |
| Cost | 603750 | 492090 | |
| Gain | 196250 | 57910 | |

These charges will be added to the consideration which R is deemed to have received for the sale of J, as reflected in the comp above.

It may be possible however to adjust these charges under s179ZA TCGA, on the basis that the value reflected by the charges is already covered by the value of J.

This claim will only take effect to the extent that the value of the intra-group transfers is reflected in the price paid by J (i. e. we look at how much value was put into J by the transfers).

In this case, J paid 50k less than MV for each property.

Therefore the value put into J was 100k from the transfers. S179ZA can cover the remaining degrouping charge through just and reaosnable adjustmnets, but not this, which is reflected in the comp above.

The substantial shareholding exemption (SSE) can apply to exempt the gains realised on shares from tax. The SSE would also exempt the degrouping charges arising.

The SSE applies where the R has held a minimum 10% interest in the ordunary shares and economics in J for a minimum 12 month period in the 6 years before disposal, and if J is a trading company.

In this case, the holdign requirements appear to be met, as R wholly owns J. However, in this case, the J does not appear to be

a trading comapny.

To be trading, J must not carry on non-trading activities to a greater than substantial extend. HMRC guidance indicates that they consider this to be 80%, looking at assets, director's time or turnover.

Although Robalex itself appears to have a trading element in property development, the 3 properties owned by J all appear to be investments. They are let out to tenants, and do not appear to be held as trading stock.

Therefore 100% of J's assets on its balance sheet look to be investments. As such, J should not qualify for the SSE, and the gain would be taxable.

Disposal of properties

The other option is for J to dispose of the properties directly.

In this case, J would realise a chargeable gain or loss on each property sold. Its base cost in each property is as calculated above, being the indexed base cost for the two properites it received by intra-group transfer, and regular cost for RIver View.

The gains would therefore be:

| | RV | WV | BC |
|---|---|---|---|
| Proceeds | 1500000 | 850000 | 650000 |
| Cost | 750000 | 603750 | 492090 |
| Index (0.276) | 207000 | | |
| Gain | 543000 | 246250 | 157910 |
| | | | |

THe total gain is therefore £947,160, on which CT of £179,960 would be payable.

In this case, J would not be able to get any of the benefit of the cash it actually paid to acquire the properties, as its base cost is merely the indexed base cost from the intragroup transfers.

In addition, R does not obtain any benefit from the base cost it

has in R through its purchase and

J could then dividend these proceeds to R free from tax, or otherwise R could liquidate J.

Third option:

Alternatively, R could transfer the properties  to N via an intra-group transfer. THis is CT tax neutral as it is NGNL.

N could then sell the properties directly, realising the same gains as J would but removing the need for the intragroup loan

-------------------------------------------
--------------ANSWER-1-ABOVE---------------
-------------------------------------------

---

-------------------------------------------
--------------ANSWER-2-BELOW---------------
-------------------------------------------

Answer-to-Question-_2_

2/ DTR / IP / TP

<u>Permanent establishments</u>

MBH SA has two PEs, one of which is loss-making. Under the current structure, the benefit of the losses could not be received in the UK as it is a PE of a Spanish company and so not eligible for group relief.

To get the benefit of the losses, it would be necessary to transfer the French PE to one of the UK companies in the group.

This would be advantageous in that the losses arising to the French PE could then be set off against the Uk profits, which would not be the case now.

However, presumably MBH is currently able to benefit from the French PE losses. It may therefore be beneficial to keep the French PE at MBH, as the losses here offset income taxed at 25%. If the PE was transferred to the UK, it would only offset taxes at 19%.

There is therefore currently more benefit in having the French PE offset Spanish tax, which is the highest tax rate in the group other than French tax. The most beneficial position for the losses is therefore in Spain, so long as Spain has the profits to be offset against the French losses.

However the Portuguese PE is likely tax inefficient at MBH level. Presuming that MBH is taxable on the profits of the PE, there is likely double tax in that Portugal will levy 21%, and Spain the excess of 4% (presuming credit is given in Spain for the 21%).

The situatoin could be improved by transferring the Portuguese PE to a UK company.

---

THe UK company prima facie be subject to tax on the PE profits, as UK companies are subject to UK tax on worldwide income and gains. However, credit releif would be available in the UK on the lower of UK tax paid and Portuguese tax paid.

Given the Portuguese tax rate is currently higher than the UK tax rate, credit should be available for all the Portuguese tax, and so there should not be any tax leakage by transferring the Port PE to a UK company.

This would therefore reduce the effective rate of tax.

In future, if the profits increase in France, Fairchester may want transferring the French PE and making an exemption election under s18A. This would mean that the profits arising from the French PE would be exempt from UK tax, and so avoid dobule tax. It would also apply to the Port PE, as it covers all PEs, and is irrevocable.

The concern with this is that there are significaint losses in France. The exemption election would only take effect once the losses of the previous 6 years (TONA) have been offset by taxable profits in France.

Therefore a s18A election would take some time to take effect in future. If it were made, there should be no streaming of the Port PE, as the tax rate in Portugal is lower than France, so preferable to have the TONA set off by profits taxed at a lower rate.

CFC

The CFC regime will apply to MBH SA and all of its non-UK subsidiaries post-acquisition. This applies where a non-UK company is controlled by UK persons, which will be the case here as Fairchester (F) is UK.

This regime will not apply to the UK companies in the group.

This means that the profits as identifid by gateways of MBH and its subs could be apportioned to the F company holding MBH, and taxable for that company at CT rates (with no loss offset).

---

In this case, MBH itself does would likely not be a CFC, as its local tax rate is 25%. The actual tax payable by MBH would need to be compared to the UK equivalent tax (as opposed to comparing headline rates), but this should mean that MBH is not a CFC as it is taxed at at least 75% of the UK equivalent. In addition, Spain is an excluded territory.

However MBH Bulgaria (MBHB) may also qualify for an exemption. Bulgaria is not an exempt territory, the local tax rate of 10% means the tax exemption is not available.

However MBHB's profits of £400k are beneath the low profits threshold of £500k, of which no more than £50k can be non-trading. On the basis that all profits reeived by MBHB relate to the IP it holds, it should be non-trading and this exemption can be relied upon.

However it is close to the limit, and so may be a CFC in future.

Diverted profits tax (DPT) and Income Tax

MBHB holds all IP in the group, even though the IP appears to be developed in the UK throiugh MBH Developer. This is potentially a concern under the DPT regime. If these arrangements between MBH UK and MBHB lack economic substance and give rise to an effective tax mismatch, the DPT regime can apply to give a tax charge to MBH UK equal to 25% of the profits which have been diverted.

At the moment, DPT is likely not a concern, as the UK entity is a SME and so is exempt from DPT. This is because of the MBH group's small overall turnover and that the employees in the group are below the limit of 250 (currently 135). All entities in the MBH group are currently aggregated for these tests by virtue of being linked enterprises, eacch being under 50% control of MBH.

However, once it joins the Fairchester group, it will cease to be a SME as it will be aggregated with Fairchester as a linked enterpises, and so the employee threshold will be breached.

This means that DPT will become a concern after the takeover. Here, the arrangements appear to be in place so the IP receipts are only taxable at 10%, below the UK CT rate of 19%. There is no indication that there is significant substance behind MBHB holding the IP.

Therefore, post transaction this is potentially caught by DPT with tax payable at 25% on the diverted profits.

In addition, there is a special tax regime for offshore intangibles held witha  UK source. Under this regime, MBHB itself could be subject to UK income tax in respect of amounts received on the UK source IP. THis would be relevant as the IP is all developed in the UK.

This income tax could be recovered from UK group members.

<u>Transfer pricing (TP)</u>

As above, TP is likely not a current concern given that the entities in the MBH group are all SMEs, given the lower turnover and that employees are beneath the limit of 250.

This means that the arrangements are not currently subject to the UK TP regime. HOwever, this will not be the case afterwards.

The UK TP regime applies to connected party transactions which take place at other than arm's length. WHere this is the case, any comapny with a UK tax advantage is required to adjsut their tax return to unwind the tax advantage claimed.

This is relevant to arrangements such as the recharge of IP to MBH UK. If MBH UK is paying a greater than arm's length fee, it could be required to adjust its returns to reflect a smaller fee, increasing its taxable profits.

MBHB could then make corresponding adjustments under the MAP procedure in the UK Bulgaria tax treaty to reflect the lower income received.

<u>Admin / Other</u>

All of the companies acquired will reduce the limits in the Fairchester group further in terms of paying tax by QIPs, which will then be £100k for large companies and £1.33m for very large. This will make it more likely that companies in the group need to pay via QIPs.

---

The tax treaties with Spain should be explored to see if there is any withholding tax on extracting profits from Spain by dividend or interest. Assuming it is based on the model treaty, WHT due would e

It amy also be beneficial to move the UK companies under other UK companies, so as to benefit from the SSE, and so taht extraction of proceeds can be carried out tax neutrally in the UK (i..e through dividends). If these are taxable in SPain, this reorg would improve the overall tax position.

-------------------------------------------
--------------ANSWER-2-ABOVE---------------
-------------------------------------------

------------------------------------------
--------------ANSWER-3-BELOW--------------
------------------------------------------

Answer-to-Question-_3_

3/

Allowances:

| | General | Speci al | Enhance d FYA | Enahnced FYA special | Car | CAs |
|---|---|---|---|---|---|---|
| TWDV | Nil | Nil | | | | |
| ADD | | | | | | |
| Plant | 960000 | | | | | |
| Reinfor cement | 120000 | | | | | |
| Electri cal | | 165000 | | 165000 | | 165000 |
| AirCon | | 75000 | | 75000 | | 75000 |
| Solar panels | | 37500 | | 37500 | | 37500 |
| Vans | | | 156000 | | | 156000 |
| Car | | | | | 35000 | |
| | | | | | | |
| BALANCE | 1080000 | 277500 | | | 35000 | |
| WDAs | 145800 | - | | | 1575 | 147375 |
| TWDV | 934200 | 277500 | | | | 580875 |

Plant added to general pool at cost on starting. No enhanced FYA as not bought new.

The vans are general pool assets, as not covered by car high emissions rules. Enhanced FYA claimed as presume bought new.

Director's car special pool asset as high emission. No enhanced FYA available.

No CAs for fixed mezzanine, building structure as part of the

building.

Electrical supplies, AirCon are integral features and therefore special pool. Solar panels also special pool by definition. Enhacend FYA at 50% claimed, no WDAs on balance as FYA claimed.

Reinfocement of floors eligible for general pool allowances as part of the cost if installing the general plant.

WDAs pro rated down for short AP.

SBAs allowed for building structure, fixed mezz (as no CAs and part of land). No SBAs for land cost.

TOtal SBAs of 2660000, at (3% * (9/12)) = 59850. TWDV c/f is 2600150.

| CT loss | (269000) | | |
|---|---|---|---|
| ADD BACK | | | |
| Deprec | 215000 | | |
| DEDUCT | | | |
| CAs | (580875) | | |
| SBAs | (59850) | | |
| Adj loss | (694725) | | |

Deferred tax calcualted as NBV at end minus TWDV at end:

| Item | NBV | TWDV | | |
|---|---|---|---|---|
| Plant | 820000 | 830400 | 10400 | |
| Motor | 130000 | 35000 | (95000) | |
| Building | 3350000 | 2789150 | (560850) | |
| | | TOTAL | 645450 | |

Strip out value of land as permanent differen.ce
645450 * 19% = 122,634 deferred tax liability.

----------------------------------------
--------------ANSWER-3-ABOVE--------------
----------------------------------------

------------------------------------------
--------------ANSWER-4-BELOW---------------
------------------------------------------

Answer-to-Question-_4_

4/

Cirrus

| Profit acc | 4250000 | NOTES | |
|---|---|---|---|
| ADD BACK | | | |
| Debt | 750000 | 1 | |
| | | | |
| DEDUCT | | | |
| Dividend | 5000000 | 2 | |
| Adj profit | Nil | | |
| | | | |
| | | | |
| | | | |

1/ No debit allowed for write-down on debt from German sub. This is a connected loan relationship, so relief for impairments not allowed.

2/ Dividends should be exempt on the basis that paid by an entity from controlled company (given Cirrus should be large - expect that group should have more than 50 emplyoees, and balance sheet). Therefore added back

Cumulus

| Loss acc | (150000) | NOTES | |
|---|---|---|---|
| ADD BACK | | | |
| | | | |
| Pension provision | 50000 | 2 | |

| DEDUCT | | | |
|---|---|---|---|
| Expense relief | 9500 | 3 | |
| Bonus | (1000000) | 1 | |
| | | | |
| Adj loss | (790500) | | |
| Group relief claim | 790500 | 4 | |
| Loss c/f | NIL | | |

1/ The bonuses only deductible in period if paid within 9 months of year. 1.5m paid in year should be deductible in previous AP, as paid within 9 months so no relief in current AP.

The 2.5m to be carried forward is to be paid within 9 months, so is deductible in current AP.

Therefore balance is 1m to be deducted in current AP (1.5m add back minus 2.5m deduction).

2/ Add back increase in provision for pension creditor, as only deductible when actually paid.

3/ Cumulus cannot claim DTR via credit relief as no tax to offset. Instead, should claim expense relief so the withholding tax suffered increases loss.

4/ Cumulus should jointly claim with Stratus to group relieve its loss for the year (so that there are not any potential restrictions for future years - CY claims not restricted).

As below, gro

Stratus

| Profit acc | 3500000 | NOTES | |
|---|---|---|---|
| ADD BACK | | | |
| Client entertain | 250000 | 1 | |
| Legal fees | 20000 | 2 | |
| Deprecitation | 500000 | 3 | |
| Furniture | 50000 | 4 | |

| | | | |
|---|---|---|---|
| Fencing + hardware | 250000 | 5 | |
| Refund | 10000 | 7 | |
| | | | |
| DEDUCT | | | |
| CAs | (775000) | | |
| | | | |
| Adj profits | 3805000 | | |
| DTR - WHT | (100000) | 6 | |
| DTR - PE | (57000) | 7 | |
| | | | |
| Group relief | (709500) | 8 | |
| | | | |
| | | | |
| TTP | 2,938,500 | | |
| | | | |

1/ Gift of alcohol to clients not allowed, as client expenditure, and food/drink never allowed. Stationery costs also disallowed as although has logo, exceeds allowable cost of £50 so all added back.

2/ Legal fees on new lease disallowed as capital.

Costs on Xmas party allowed as staff entertainment - benefits may arise.

3/ Deprecitaion disallowed as capital expenditure.

4/ Office furniture only deductible as revenue if estimated life is less than 1 year (or perhaps between 1-2 dependings on factors). Furniture likely lasts longer than 2, so capital expenditure and disallowed. Relief via CAs.

Security payments, window cleaning and redecoration allowable as revenue expense and wholly & exclusively for purposes of business.

5/ Fencing and hardware costs disallowed as capital.

Replacement windows revenue expense and so fully deductible (assuming no improvement - but double glazing etc. is fine).

6/

double tax relief available on WHT suffered. This is limited to UK tax on equivalent income (190000) or the tax suffered

---

(100000), so here credit for tax suffered). Excess can be carried forward.

7/

DTR also available for profits of overseas PE, as taxable in both UK in overseas. This is capped at overseas tax (60000) or UK tax suffered on income (57000), so here only 57k of relief.

10,000 refund deducted as should be included in YE20 under accruals basis.

Capital allowances

| | General | Enahnced FYA | CAs | | | |
|---|---|---|---|---|---|---|
| TWDV | 2500000 | | | | | |
| ADD | | | | | | |
| Furniture | | 65000 | 65000 | | | |
| Hardware | | 260000 | 260000 | | | |
| | | | | | | |
| BALANCE | 2500000 | | | | | |
| WDAs | 450000 | | 450000 | | | |
| | | TOTAL: | 775000 | | | |

Fencing not eligible for CAs as part of property.

Enahnced FYAs at 130% claimed for hardware and futniture.

2/

CT payments are determined by a company's augemented profits, being their profits plus dividends from subsidiaries.

There are 6 companies in the Cirrus group. Therefore thresholds for CT payment purposes are: £250k for large, and £3.333m for very large.

For companies that have not previously been large or very large, grace period threshold is £1,666,667.  If comapnies that have not previously paid in instalments.

For Cirrus, its augmented profits are £5m, however it is not due to pay any tax as it does not have any tax profits.

Stratus will be large in this period, and will exceed the grace period.

S will therefore need to pay its tax liability for YE21 in quarterly instalments of £738,526 each, from 14 July 2021, 14 Oct 21, 14 Jan 22 and then a balancing payment in 14 April 22.

As S has only paid £650000, it should pay the extra amounts due for each quarter as soon as possible, as late payment interest will be running.

For YE22, Stratus will also be required to pay in instalments, preuming that it remains large. It will therefore need to pay instalments begingin from 14 July 22

-------------------------------------------
--------------ANSWER-4-ABOVE---------------
-------------------------------------------

---

-------------------------------------------
--------------ANSWER-5-BELOW---------------
-------------------------------------------

Answer-to-Question-_5_

5/ IFAs + RDEC + disposals

1/

All of the goodwill acquired yb Flowers (F) represents "relevant IP", and amortisation depends on when it was acquired and created.

The Azalea (A) goodwill constitutes "old" goodwill as it was made, and axquired before April 2002, and is treated as a chargeable asset for CT purposes. This means that no amortisation is available.

The Begonia (B) goodwill was acquired after April 02 but before 8 July 2015. This means that amortisation is allowed. However, this is on the basis that the acquisition was not from a related party, as acquisitions between December 2014 to July 2015 from related parties did not qualify for amortisation.

The Crocus (C) goodwill was acquired after 8 July 2015, but before 1 April 2019. No amortisation is availalbe for goodwill acquired in this period, so no amortisaiton for C goodwill.

The registered trademarks are non-relevant IP. Therefore the C trademarks can be amortised either at 4% p.a. or the amortisation in the accounts, whatever is greater.

2/

Under the new rules, amortisation for relevant IP (i.e. non customer related like trademarks etc) is permitted as before, so either at 4% of amortisation in the accounts.

Amortisation for non-relevant IP (customer related like goodwill, customer lists etc.) is available, but only to the extent that this goodwill is purchased with qualifying IP (QIP).

QIP is patents, designs and copyrights. If this is the case, amortisation of the relevant IP must be claimed at 6.5% WDA per annum, however the amount of amortisation is restricted to 6 times the expenditure on the QIP.

---

If expenditure on QIP is less than 6 times overall expnediture, amortisation is limited pro rata.

3/

<u>Software</u>

The acquisition of software intangible is liekly the purchase of non-relevant IP. An intangible for tax purposes follows the accounts, so long as the software is recognised in F's accounts as such, it will be an intangible.

If it is recognised in the accounts, F will acquire the software at a cost of £500k, and can then claim amortisation on this amount.

Amortisation can either be the amount in the accounts (likely the cost of the software written down over its usable life), or 4% p. a, being £20,000 for the first year.

This amortisation would be treated as an trading IFA income loss, and so deductible against trading profits.

The above applies so far as the software is recognised in F's accounts. If it is not (i.e. the company elects for it to be excluded), it is possbile to claim capital allowances instead.

These would be available at 18% p.a. on a WDA basis, as a general pool item.

It would therefore be preferable to treat the software as a general item and claim capital allowances if possible.

OTherwise amortisation is available.

<u>Expenditure on software development</u>

THe expenditure itself should qualify as a revenue deduction against the profits of F  for the period.

The expenditure will also be R+D qualifying expenditure, if the RDEC is available. This means that 13% of the expenditure is available as a direct tax reducer against the CT liability of F for the period.

---

This would therefore be £130,000, and would directly decrease F's taxes. This amount of £130,000 would however be treated as a taxable receipt for F, and so would itself increase the CT liability by £24,700.

The net benefit of the RDEC is therefore £105,300.

If F does not have profits to full use up the RDEC, the use of the RDEC is limited by a seven-step statutory process.

In short, the RDEC would be capped at 81%, and then F's PAYE expenditure for YE2022.

Any remainder is then deemed to offset F's other CT liabilities, and any remainder after that is payable by HMRC to F in cash, providing a direct ccash benefit.

The expenditure also creates a new IFA. Provided it will likely create new economic benefits for F and can be used in its business, this should be recognised on its balance sheet.

Disposal of A goodwill

As above, the A goodwill is a chargeable asset for CT purposes, and its disposal is treated the same as the disposal of any other chargeable asset.

This means that we calculate the gain arising on the sale of the goodwill, deducting: (a) the base cost (price originally paid), (b) costs of acquisition, (c)indexation on (a) and (b), and (d) the costs of disposal.

Any enhancement expenditure is also deductible in working out the gain or loss, but is perhaps unliekly to arise for goodwill.

F will then realise a capital loss or capital gain. This is then netted off against other gains or losses for the period, with capital losses carried forward and gains subject to CT at 19%.

The A goodwill will then enter the new IFA regime for the purchaser, with amortisation only available if F also sells QIP.

Rollover relief may be available if F buys another qualifiyng chargeable asset in the 4 years post-disposal, and would need to be claimed within 2 years.

Disposal of B goodwill

---

The B goodwill is subject to the IFA regime. This means that F will realise an IFA income gain or loss on the disposal.

To work out the gain or loss, we take the tax written down value of the goodwill. This will be the original acquisition cost of the B goodwill, minus any amortisation claimed to date.

These proceeds are then taxable as income for F.

The nature of the income depends on whether the B goodwill is held for a trading or non-trading purpose. In this case, as F's trade is developing and selling off garden centres, it would appear to be a trading IFA.

This means that the proceeds are taxable as trading IFA income gains, and are essentially treated as extra trading profits.

If a loss was realised, it would be a trading IFA income loss, and would offset trading profits.

Rollover relief is also available for the disposal of B goodwill, but the amount of any amortisation claimed remains taxable (rollover only applies to the gain arising based on the original cost, not TWDV).

-------------------------------------------
--------------ANSWER-5-ABOVE---------------
-------------------------------------------

---

-------------------------------------------
--------------ANSWER-6-BELOW---------------
-------------------------------------------

Answer-to-Question-_6_

6/

Felix Inc (F) will have a UK tax liability either if it is deemed to be tax resident in the UK, or if it carries out a trade through a permanent establishment in the UK.

Residency is assessed, as per the De Beers case, through central management and control (CMC). This looks at whether the strategic decisions of F are taken: if the key strategic decisions are being taken in the UK, then it will be UK resident by virtue of its CMC.

This generally looks at where the board of directors sits, and the tax residency of each. In this case, 2 of the 4 directors are UK tax resident. This is unhelpful as 50% of the directors being UK resident implies that there is an element of CMC in the UK.

However the fact that the UK directors only spend 10% of their time on F makes it more likely that CMC is perhas witht he other directors who are not in the UK but Ruritania.

We would need to seek further information on how much input the UK directors have to decision-making, and how much time the non-UK directors have as well. There is at least a risk that CMC is in the UK and it is tax resident however.

If F is UK tax resident through its CMC, it will be a dual-resident company as it is also resident in Ruritania. We would then look to Article 4 of the Ruritania / UK treaty to determine residence, to prevent F being resident and taxable in both.

This would require us to look at where the place of effective management (POEM) of F is. This POEM test looks at a level down from CMC, and looks at where day-to-day control rests. Again, we would need further detial here, but there is the potential for F to be UK resident under the tie-breaker.

---

The fact that the UK directors spend so little time on the company perhaps implies that both POEM and CMC sit in Ruritania, but further detail is needed.

If this is the case, the treaty would mean that F is solely resident in Ruritania, and is not UK tax reisdent.

F could however still have a UK tax liability through carrying on a permanenet establishment (PE) in the UK. As there is a treaty in place between Ruritania and the UK, we would look to article 5 to determine if there is a PE.

There can be a PE either through F carrying on a trade through a fixed place of business, or a dependent agent in the UK, as they are agents of F, carrying on business in the UK through the offciecs of Hilari and not independent agents.

The three members of staff seconded to the UK could theoretically be dependent agents or fixed branches of F. However in this case, they are not working for the trade of F but for Hilari Ltd.

This is confirmed by HMRC guidance at INTM 264440, and so the secondment in itself should not give rise to a PE, unless the staff members are actually working on F's business.

F's procurement team are more liekly to give rise to a PE. This is through both the agent and branch limbs.

This is because the procurement team have the habitual authority to conclude contracts on behalf of F in the UK, on behalf of F. This constitutes a dependent agency and no exceptions are avialale.

The small office can also constitute a fixed place of business. OECD guidance indicates that the fact that the office is part of another entity's office is immaterial, so long as it avaialble to the staff in the UK. THere is a degree of permanence, and so this will likely be a fixed place of business in the UK.

The fact that F pays a market rent for the space weighs in favour of this being a branch.

The suppliers being in the UK should not give rise to a PE, as these should be independent agents of F, as they are just providing their services to F in the normal course of their

business.

The management consultancy contract, and staff being in the UK could also constitute a PE through being a branch, by the rented office being a fixed place of business.

However in this case, it appears that the office is only availalbe for 3 months. This likely lacks the degree of permanence required for a branch, and thereofre should not be a PE.

In each case above, none of the employees are independent agents as they are all employed by F.

However, the procurement team opeartsions are likely to be considered a PE under article 7 of the treaty. This will give F UK tax exposure.

Admin

F's UK PE will be treated as if a standalone UK company for CT self-assessment purposes, and its profits computated on the separate enterprise principle, whereby the PE is treated as a standalone entity.

F will generally be bound by the actions of the UK PE, although not by any mistakes made in the PE's tax reutnr unless F consented.

Within three months of coming within the scope of UK CT, F should notify HMRC of its chargeability to UK tax. This would have been when it first started its procurement team operations.

Failure to have done so will give rise to a penalty, based on the unpaid tax 12 months after the end of F's first UK AP, with the level of penalty depending on the behaviur behind the failure.

The PE will also cause the first UK AP of F to begin, which will generally end 12 months later. 12 months after the end of each AP, F must file a UK tax return via form CT600 (deadline extended to 3 months after HMRC send a CT603, if later).

HMRC can enquire into these returns, generally within 12 months

---

of their due dates.

F must keep correct and complete UK records for 6 years after each AP to evidence its tax filings.

F must pay its UK corporation tax at certain dates, generally being 9 months and 1 day after each AP, but perhaps in instalments depending on its size.

If F does not pay on time, other UK entites in its group like Hilari could be required to pay on its behalf.

Depending on its size, F may need to publish its tax strategy on its website, to set out its general approach to tax.

F might also need to seek relief from double taxation. If taxed in Ruritania on the UK PE's income, a double tax relief claim could