Answer-to-Question-_1_

Ireland has been an attractive location from perspective of being a holding company since it provides easy access to European Countries as well as to the US, it is an English speaking country and also has attractive tax laws. The key features of Ireland as holding company are as follows:

- The tax rate applicable to corporates is 12.5% (for companies engaged in trading activities) and 25% for others

-Attractive incentives for companies engaged in R&D activites viz. deduction of 25%of qualifing expenditure incurred on R&D activites; tax rate of 6.5% for KDB

- Ireland has entered into tax treaties with multiple jurisidictions including US, UK, various European countires which enables the companies to seek relief from double taxation

- Ireland has submitted instrument for ratification of MLI which ensures that BEPS recommendations are implemented in its tax treaties

- Ireland provides unilateral tax relief as well in case there exists no tax treaty with respective jurisidiction

- Ireland also provides tax credit in respect of taxes paid on dividend income paid in overseas country

- The provision pertaining to Bilateral APA has been introduced

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in Ireland tax regulations which enables tax payers to obtain certainity in respect transaction to be undertaken with group company established in overseas jurisdiction

- Ireland has introduced transfer pricing provisions effective 2019 thereby subjecting non trading and capital transactions to transfer pricing provisions, ebolishing grandfathering provisions to transactions pertaining to period prior to 2010 and implementation of regulation requiring maintenance of transfer pricing documentation in accordance with Action 13

- Ireland has introducted CbCR provisions requiring companies operating in Ireland to make notification to goverment on meeting prescribed thershold of consolidated turnover of £750 million

- Ireland has agreed to implement OECD Proposal on Pillar 2 - thereby implementing tax rate of 15% for the MNC earning consolidated revenue of £750 millions in atleast 2 outof 4 tax preceeding tax years

- Ireland has introduced CFC regulations thereby subjecting undistributed profits of companies established in jurisidiction outside Ireland and who's business operations are controlled from Ireland, to taxes at rate of 12.5% or 25% depending on nature of business activity

- The regulations pertaining to automatic exchange of information with tax authorities of other jurisdiction has been agreed by Ireland

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- The provisons pertaining to exit taxes are applicable in case of offshore transfer of assets from Ireland which results in company falling outside perview of tax laws of Ireland.

- Dividend paid by Irish companies is subject to withholding tax of 25%. However, withholding is exempt in case of payment being made to non resident/ non ordinary resident individual which are residents in country with which Ireland has entered into DTAA. Similary the dividend paid to overseas company with which Ireland has entered into DTAA is exempt from dividend withholding taxes.

- Dividend income received by Irish company would be subject to taxes at the rate of 25%. However, in case the company paying dividend derives more than 75% of its distributable income from trading activity or the Irish company is holding less than 5% of shareholding in that company and the company is established in jurisidiction with which Ireland has entered into DTAA then dividend is taxable at the rate of 12.5% in the hands of Irish company

- The royalty and interest paid by Irish company to the company established in country with which Ireland has entered into DTAA and which subjects taxes on said income on residential basis then the said income is not subject to withholding taxes in Ireland

- Ireland has favourable provisions in respect of PAYE provisions for temproray foreign employees working in Ireland

Taxation of income and capital from foreign subsidiary

The income earned from foreign subsidary would be in the nature

of royalty, intrest, etc. In accordance with OECD regulations, beliving that the activities are caried out in Ireland, the said income would be subject to taxes in Ireland in the hands of Holding company at the prescribed rate. However, credit (including unilateral) would be provided in respect of taxes paid in respective foreign jurisdictions.

Further, capital income would also be subject to taxes in Ireland in respect of Capital gains. Credits would be provided in respect of said income in Ireland while computing taxable income in the hands of Holding company. The capital gain tax would be levied as corporation tax though computation would be undertaken in accordance with provisions of Capital Act tax. However, profits in respect of development assets would be subject to capital gain tax.

Remmitance from Holding company to US Company

The remittance can be in the form of dividend, provision of loan facilitiy, buy back of shares, etc.

The remittance should be undertaken subject to compliance in accordance with FEMA regulations as well as company act in respective jurisdiction. Further, in respect of dividend paid from Ireland, the same shall be exempt from dividend withholding taxes on account of existence of DTAA between USA and Ireland.

Consideration of debt financing of holding company and subsidiary

In case of debt financing, it shall be essential to evaluate tax implication on interest payment. In this regard, in accordance

with tax provisions in Ireland, in case of payment of Interest by Ireland company to overseas company, the same would not be subject to taxes provided :

- the interest is paid in ordinary course of business

- the interest is paid to country with which ireland has entered into taxtreaty

- the said country has incorporated regulations to tax receipt of interest income.

Further, in respect of receipt of interest income in Ireland, the same would be subject to taxes. Additionally, tax credit (including unilateral tax credit)is provided in respect of taxes paid in overseas jurisidictions.

Additionally, the group would have to ensure that the terms of loan including rate of interest meets the arm's lenght criteria as per transfer pricing provisions. Further, compliance with Interest limitation rules is to be ensure to avoid disallowance of interest expense incurred towards intercompany borrowings.

Answer-to-Question-__2_

1. In the facts of the case, Miriam is a Irish domiciled and resident individual.

In respect of her earlier approach to comute to Ireland on weekly basis, she was eligible for cross bored worker relief which resulted in non-taxability of employement income earned by her outside Ireland. In order to claim cross bored relief, following conditions are to be satisified:

- The resident is employed by an employer of overseas jurisidiction and she has continued employment of more than 13 weeks

- She travels to work in overseas jurisidiction on weekly basis to ensure that she spends atleast a day in a week in Ireland

- The employment is governed by overseas law and taxes on same have been paid in overseas jurisdiction.

In the proposed approach, it has been mentioned that she intends to be remianing Ireland for foreseable future and would not be comuting to work in France. In this regard, pressuming that her employment is continued to be governed in accordance with tax regulations France and her employer would be the entity in

France, she would be subject to taxes in France. Further, since she would be resident and domiciled in Ireland, her employement income earned in Ireland would be subject to PAYE in Ireland. In this regard, in accordance with applicable DTAA between France and Ireland she would be entitiled to claim credit of taxes paid in France.

Further, the employer would be required to get himself registered in Ireland. Miriam would be subject to USC and PRSI in Ireland and hence the employer would have to ensure that the same has been discharged appropriately.

2. In respect of proposed decision of Brian to move to Ireland and working remotely from Ireland for UK University,it is important to note that for year under consideration Brian is a UK domiciled and resident individual. In accordance with UK regulations, Brian would be subject to taxes on said income in UK.

In this regard, his decision to permanently relocate to Ireland would qualify him as an resident in Ireland. In accordance with Ireland tax regulations, in case of a non-domiciled individual, who is resident in Ireland, the income earned overseas and remitted in Ireland would be subject to taxes in India.

In view of the same, Brian would be required to pay taxes at rate of 20%/ 40% in Ireland alongwith USC and PRSI in Ireland. In respect of the proposed activity, the employer would also be required to register itself in Ireland and provide relevant details to Irish authority pertiaing to its employement.

Further, cross border relief can be sought by Brian in respect of the income earned by Brian from its employment with UK university provided he is willing to travel to UK once a week - this would ensure that relief would be provided in respect of income earned in UK. In case Brian is not able to commute to UK on a weekly basis, he would be entitled to seek credit for taxes paid by him in UK, in respect of income remitted in Ireland.

3. Subseuent to relocation of Miriam and Brian to Ireland, Miriam would be subject taxes on worldwide income in Ireland since she is domiciled and resident in Ireland. Whereas, since Brian would be a non-domiciled and Resident in Ireland, he would be subject to taxes in Ireland only in respect of Income earned in Ireland and foreign income remitted in Ireland. Further, only remittance in nature of income is subject to taxes and capital remittance are not.

In this regard, Brian should ensure that he is able to sell the property before he is relocating, thereby resulting in non-taxation of proceeds from sale of home in Ireland. In case he is not able to sell the house and he decides to lease the house on rent, he should create a seperate bank account outside Ireland where the rental income can be deposited. It would be however essential to note that since Brian intends to permanently rellocate to Ireland, likely the said amount would be required to be remitted to Ireland, thereby subjecting it to taxes in hands of Brian in Ireland.

The taxes would also be levied in UK in respect of gains from disposal of home / rental income and credit can be sought in Ireland in respect of same.

Answer-to-Question-_3__

The enclosed memo captures the tax implications in respect of royalty and licence income earned in Ireland by Waterville as well as R&D incentives avaialble in Ireland

Ireland has introduced favourable tax regulations to encourage MNCs to undertake R&D activities in Ireland. The incentives in respect of R&D activites which would benefical the Waterville group in Ireland are as follows:

- Ireland is the first country globally to introduced provisions pertaining to 'Knowledged Development Box' alligned with OECD's modified nexus approach which taxes income from R&D activites at the rate of 6.5%

- Deduction is avaiable to the extent of 25% of qualifing R&D expenses incurred by MNC

- There exists provisions which enables companies to charge the expenses incurred towars aquisition of IP over period of 15 years viz. 7% for first 14 years and 2% in last year

- The intrest expense incurred for acquistion of IP is allowed as deduction for computing taxable income of corporates

- The regulations permits the employees performing R&D activities to seek R&D tax credits of company, provided the applicable tax

rates exceeds prescribed rates

- For the purpose of qualifying to seek benefit of aforesaid regulations, the tax laws requires company to satisfy the following:

- existance of substance in Ireland

- company shoud employee individual holding appropriate qualifications for undertaking R&D activities

- The company should be undertaking frequent and regular transactions in respect of R&D activities

- The activities in respect of explotiation of intangible should be undertaken in Ireland

- The functions in respect of DEMPE activity should be remunerated appropriately depending upon activities undertaken by respective jurisidiction

Tax implication for Waterville Ireland

In the facts of the case, it has been mentioned that currently R&D expenses have been evenly split between US and Ireland company.

Further, effective from January 2023 , Waterville Ireland will license IP to group company and charge royalty and license income in return.

The OECD regulations in Action 8-10 prescribes allocation of profits to jurisdiction where each of DEMPE activity has been performed.

In this regard, basis the facts mentioned it is evident that DEMPE activity in respect of IP is carried on in US as well as in Ireland. The same is evident that though the CFO is established in USA, significant DEMPE activity are performed in Ireland too - eg. the 2000 employees are undertaking R&D activity, the event in Cork would further results in marketing of IP, etc.

In view of the same, the receipt of IP by Waterville Ireland would be subject to taxes in Ireland at the rate of 12.5%. Further, Ireland can inturn further make payment of royalty to US in respect of contributions made by Waterville USA.

The group can also adopt Profit Split Methodology to allocate profits in respect of IP between Ireland USA. In order to prevent dispute with respect to attribution of income pertaining to IP, the group can consider entering into Bilateral APA.

Answer-to-Question-5

The Ireland US tax treaty requires that intercompany transactions are undertaken at arm's lenght price i.e. price at which independent parties would have undertaken. In case Jola Inc is not able to established that the transaction of transfer of IP was undertaken at arm's lenght price, there can be transfer pricing adjustment proposed in US which could result in double taxation for the group since there would be no corresponding adjustment in respect of said amount in Ireland.

In this regard, to mitigate the risk of double taxation the company can request for:

Correlative tax adjusment in accordance of Article 9 of OECD guidelines

Relief under Mutual Agreement Procedure ('MAP')as perscribed under DTAA

The above alternatives would require application to be filed with respective Competant Authority (CA) since the relief is not granted on automatic basis and requires negotiation between CA of both jurisidictions. While filing the application the company should consider providing following information:

- The legal, commercial and economic basis for undertaking the said transaction

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- The basis of determination of arm's lenght remuneration as well as transfer pricing policy for transaction under consideration

- Detais of functions performed, risks assumed and assets acquired by respective entities in respect of transaction under consideration

- The details of roles played by respective entities

- The rationale established by the group for the purpose of aquisition of Jola Inc.

Additionally following details can be submitted to demonstrate arm's lenght nature of transaction under consideration

- The process adopted to compute the arm's lenght price viz. comparable database, method adopted, tested party, comparable companies, financial years, etc

- The copy of agreement between US and Ireland outling the transaction under consideration

- The quantum of tax adjusment proposed by the US tax authorities

- Copy of tax rulings/ OECD guidelines demonstrating appropriateness of methodology adopted by company to compute arm's lenght price

- Provide details of impact of said ruling on other tax years of Irish company.

While making claim for tax relief, it shall be essential to note that no tax relief would be provided in respect of interest/ penalities levied in the US.

Basis the said details and merits of case, the Ireland CA would determine arm's lenght price and permit Twingo Plc to recompute its taxable income and file revised returns.

It isimportant to note that the outcome of proceedings would be basis discussion betwee Ireland and US CA and there will be no assurance that conclusion for elimination of double taxation would be established.

Answer-to-Question-8

The close company is a Irish reident company which is comprised of five or fewer participators or the participators who are directors (without any limit on number of directors). The said provisions were introduced to prevent anti avoidance of taxes by creating a company in Ireland to seek benefit of tax rate of 12.5%.

In case a company is established as close company, following transaction are treated as distribution:

- interest paid to directors or their associate in excess of prescribed threshold,

- certain benefit in kind to directors/ participator

Further, loans to their participator or their associate which is subsequently written off is treated as income in the hands of the participator. The loans provided to participator or their associate is required to be grossed up and income tax is to be paid in respect of the same.

In respect of aforesaid transactions which are regarded as distribution, it is important to note that the said expenses are not allowed as deduction while computing taxable profit of company.

Further, the said income is included in the hands of participator for the purpose of calculation of taxable income. The resident individual is required to pay taxes at marginal rate alongwith USC and PRSI on total distribution.

Accordingly, considering that Julia would reside in Ireland for a foreseable future which would make her an resident in Ireland, she should take above provisions into consideration in case she intends to shift to Ireland and establish a close company. The tax rate applicable to Julia would be 20% / 40% depending on the amount of income earned and would also be subject to USC and PRSI.

2. In case of establishment of Irish holding company, Julia would be assessed independently from Irish company. The expenses paid to Julia by Irish company would not be treated as distribution but the income in hands of Julia on which taxes will be withheld. Julia would be entitled to seek credit of taxes so deducted while filing her return of income. More importantly, the expenses so paid by the company would be allowed as deduction while computing taxable income of the company as well.

3. The dividends paid by Irish company is subject to dividend withholding taxes in Ireland. However, the regulations exempts divident payment made by Irish company to a non-resident of Ireland in case it is a resident of jurisidiction with which Ireland has tax treaty. Accordingly, taxes paid by Irish company to resident of Ireland is subject to witholding tax of 25%.

In this regard, in case of dividends payment to non-resdient

individual, taxes will not be withheld in Ireland, but non-resident would be subject to taxes in its resident jurisidiction for dividend income.

In case of payment to resident, the dividend would be subject to taxes in hands of resident and credit can be sought in respect of taxes withheld by the holding company. In order to ensure that ROI company is considered ROI tax resident Ireland, Julia should ensure that she is able to obtain that place of effective management of said compnay is in ireland. This can be done by ensuring, board meetings are held in Ireland, the company has bank account in Ireland, there are qualified employees working for company in Ireland, etc.