Answer-to-Question-_1_

As defined under Sec. 957 of the Code, a foreign corporation is a Controlled Foreign Corporation "CFC" if more than 50% of the voting power or total stock is owned by US Shareholders on any day during the taxable year of the foreign corporation.
US Shareholders is defined under Sec. 7701(a)(30) and includes US citizens, US residents and domestic corporations among others. Sec. 951(b) defines a US Shareholder as holding 10% or more.

Part 1)

<u>FlexCo</u>: For the purposes of determining whether a foreign corporation is a CFC, under Sec 318(a) where a corporation is owned as holding more than 50% of a company it is treated as owning 100% of the corporation resulting in a look-through basis of the ownership. Consequently, for US CFC purposes Alkem indirectly holds 50% of Flex and also directly holds 10% of FlexCo.
Alkem is a US Shareholder by virtue of being a domestic corporation and **FlexCo is a CFC.**

<u>FlemCo</u>: **FlemCo is not a CFC** as Alkem holds exactly 50% in FlemCo which is not sufficient for US purposes to be a CFC.

Part 2)

<u>F1</u>: Ownership interests would indicate that F1 is more akin to a

transparent vehicle given that USCo is not considered as holding stock. Prima facie it would seem that F1 may be considered a disregarded entity and consequently would not be a CFC for US purposes. Instead USCo would be subject to tax on its allocable share of F1's E&P (being 100%). We are told that F1 is an eligible entity, should F1 check-the-box to be treated as a corporation for US purposes then the analysis would change and F1 would be a CFC.

Part 3)

F2: Prima facie F2 is not a CFC by virtue of DCUS holding only 49% with the remaining 51% being held by non-US nationals. We are told that a non-US officer of DCUS has the sole authority to exercise powers ordinarily exercised by a board of directors. Sec 957 (a)(1) states that the total combined voting power of all classes of stock of such corporation entitled to vote - based on the governing documents of F2 it would seem that DCUS holds voting power albeit it is not entirely clear. F2 is not a CFC.

Part 4)

Both DCX and DCY are US Shareholders by virtue of being domestic corporations.
Stock ownership through foreign entities directly or indirectly is treated as being owned proportionately by its shareholders.

FCo1 is a CFC - it is more than 50% held by DCY and DCX indirectly holds more than 50%.

FCo2 is a CFC - FCo1 holds more than 50% of FCo2 and as such is treated as holding 100% of FCo2. Consequently, on a look-through basis FCo2 is a CFC.
FCo3 is a CFC - the chain of direct ownership is greater than 50% and as such the chain is considered as holding 100%. DCY is considered as holding 75% of FCo3 and FCo3 is therefore a CFC.

Part 5)

There are 200 shares of FCo and therefore to satisfy the 10% shareholding to be considered a US Shareholder for US CFC purposes, a US person must hold more than 20%.

As a result Ms T holds 9% and Mr P holds 5%. Deeming them both non-US Shareholders based on their direct holdings.

USLP holds 36% and CalCo holds 10% - together these US Shareholders hold 46% which is not enough to bring FCo into scope as a CFC.

However, we also know that Mr P is a 20% partner in USLP therefore, Mr P indirectly holds 7.2% of FCo.

Under the constructive ownership rules (318(a)), Mr P holds 12.2% which is greater than 10% and therefore Mr P is a US Shareholder.

FCo is a CFC as it is held 51% by US Shareholders (USLP 36% + CalCo 10% + Mr P 5%).

Part 6)

For US CFC determination purposes, we only consider US Shareholders holding greater than 10%. Prima facie only Dom B and Dom C meet this criteria and together hold 42% (32% + 10%) which alone are not sufficient for FX Co to be a CFC.

However, Dom A directly holds 9% in FXCo but also indirectly holds 1% via Dom C. Dom A directly and indirectly holds 10% (9% directly + 1% indirectly) and is therefore a US SHareholder under Sec. 951(b).

FXCo is a CFC as 52% is held by US Shareholders (A = 10% + B = 32% + C = 10%).

Answer-to-Question-__2_

To: Sam and Brian
From: Your Tax Advisor
Date: Today
Subject: US tax implications

Dear Sam & Brian

Please find below US tax implications of the areas discussed.

US tax residency position

Sam:

- 2022: During 2022 you were a Non Resident Alien and spent a total of 100 days in the US - you had no presence in the US prior to 2022. Although you spent greater than 31 days in the US during 2022, you did not spend greater than 183 days when considering 2022, 2021 and 2020 - as such, you did not meet the critieria to be resident under the Substantial Presence Test ("SPT"). As a NRA, you will be subject to tax on any Fixed, Determinable, Annual or Periodic ("FDAP") income or income effectively connected to a US trade or business.

- 2023: Under Sec. 7701(b)(2)(ii) - residency starting date for individuals admitted for permanent residence starts on the first day on which you were present in the US whilst a lawful permament resident. I understand this was 1 Jan 2023, as a result, effective 1 Jan 2023, you are a lawful permanent resident and will be considered US tax resident and subject to tax on your worldwide income. For the sake of completeness, given you were not resident in prior years under the SPT your residency start date is 1 Jan 2023. This analysis would change were you to have met the SPT in prior years.

Brian:

- 2022 & 2023: You will be considered US tax resident if you meet the Substantial Presence Test ("SPT") as defined under Sec 7701(b)(3). Given you did not spend greater than 25 days in the US in 2022 or 2023 you will be well below the SPT threshold. You will be considered a Non-Resident Alien ("NRA") for US purposes on the basis that you are neither a US citizen nor US resident. For the sake of completeness, the first threshold under SPT is spending at least 31 days in the US during a calendar year which you did not.

As a NRA, you will be subject to tax on any Fixed, Determinable, Annual or Periodic ("FDAP") income or income effectively connected to a US trade or business.

Taxation of dividends and compensation and eligibility for treaty benefits

Eligibility for treaty benefits:

You will both be eligible to claim treaty benefits by virtue of being individuals and therefore qualified persons for the purposes of Art 22(2)(a) - Limitation of Benefits provision.

Trident (USA) is not a CFC.

Sam:

From 1 January 2023, you are a US resident and under Art 1(4) of the treaty, the US reserves the right to subject its residents and citizens fully. This is known as the "savings clause" - as a result, treaty benefits will be limited given you are taxed on your worldwide income in the US. Where you have tax liabilities in Country Z, Country Z may allow tax credits for US tax paid albeit this is something you should consider.

- *Salary of EUR 200,000 from Trident Consulting during 2022*

In the absence of a DTA, the threshold for personal services related to employment is very low and you would have been taxed on your pro-rata salary during 2022. However, given a DTA is in place, the threshold for salary being subject to the US is higher.

Under Art 14(2), income from employment exercised in the US (the days spent in the US seeking to expand Trident) is only subject to US tax if (i) you spent more than 183 days in the US in any twelve month period; (ii) the remuneration was paid by a non-resident; (iii) the non-resident employer is not carrying on business in the US via a Permament Establishment ("PE").

I need additional information related to the exact days spent in the US out of your total 100 however, it would seem as though you may be this thresholder under Art 14(2) by virtue of having spent more than 183 days in a twelve month period - 2022 straddling time spent during 2023. As a result, the pro-rata share of your salary would be subject to US tax (EUR 200,000 x 100/365).

From 2023, this income will be subject to tax in the US by virtue of you being subject to US tax on your worldwide income.

- *Salary of USD 50,000 from Trident USA*

You will be subject to US tax given this is US sourced income derived from employment duties.

- *Dividends*

During 2022, you will not be subject to any withholding tax from the Trident Consulting dividends by virtue of being a NRA during 2022 and the dividends being foreign source.

2023 onwards, you will be subject to dividend withholding tax in Country Z as a result of the dividends being paid to US resident under the treaty. Under the treaty, this will be limited to 15% (Art 10).

Brian:

- *Salary of EUR 200,000 from Trident Consulting during 2022*

In the absence of a DTA, the threshold for personal services related to employment is very low and you would have been taxed on your pro-rata salary during 2022. However, given a DTA is in place, the threshold for salary being subject to the US is higher.

Under Art 14(2), income from employment exercised in the US (the days spent in the US seeking to expand Trident) is only subject to US tax if (i) you spent more than 183 days in the US in any twelve month period; (ii) the remuneration was paid by a non-resident; (iii) the non-resident employer is not carrying on business in the US via a Permament Establishment ("PE").

Given your presence in the US was not substantial, you will not be subject to US tax on any pro-rata salary as you will not meet the 183 days. This will be within Country Z's scope to tax.

- *Dividends from Trident Consulting*

For 2022 & 2023, as you were a NRA for US tax purposes the dividends received by Trident Consulting (a Country Z corp), will not be subject to US tax. These are foreign source diviends and not within scope of US taxation (i.e. FDAP).

- *Dividends from Trident USA*

Dividends received from Trident USA will be US source and subject to US withholding. US withholding tax will be limited to 15% under Art 10 of the treaty. The 5% rate is only applicable to corporate shareholders.

Bank account signatories

As a signatory to a US bank account, Sam will be subject to FBAR filings. There are relevant thresholds applicable where a US bank account had a certain amount at any time during the year albeit the monetary amount is quite small.

FBAR filings are generally quite cumbersome.

Yours faithfully,
Your Tax Advisor

Answer-to-Question-_4__

1)

Bill is a US citizen and therefore subject to tax in the US on his worldwide income. Sec 911 and the election for Foreign Earned Income Exclusion may be applicable.

Stellar Finance will default to a corporation for US tax purposes by virtue of its shareholders having limited liability and not being responsible for the liabilities of the company.

In the absence of additional information, Stellar is not a CFC and Bill is not a US Shareholder of Stellar. As a result, we do not need to consider subpart F or GILTI considerations for Bill as a result of his 5% holding in Stellar.

On payment of a dividend by Stellar Bill will currently be subject to US tax by virtue of him being a US citizen.

Bill held the shares in Stellar for more than 12 months and therefore the gain on sale of the shares will be subject to long term capital gains rate which is a more favourable rate than US graduated rates of tax.

Bill may be eligible for a tax credit in Country X on the US tax paid. Bill will not be eligile to claim for any tax suffered in COuntry X (at 10%).

2)

Stellar may consider checking the box to be treated as a partnership for US tax purposes. This is on the basis that Stellar is an eligible entity and not a per se corporation. Foreign eligible entities may elect to be treated as a partnership where it has two or more member and at least one member does not have limited liability - this is the case for Stellar.

On election to be treated as a partnership, the tax treatment for Bill will change as Steller will not be treated as separate from its owners. Bill will be subject to US tax on its allocable share (5%) of Stellars

Given interest received up to now has been reinvested into the business there is no deemed dividend amount albeit where this income is not reinvested, Bill will be subject to US tax on his allocable share.

3)

Form 8832 specifying the effective date which can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed. THe election cannot be changed for 60 months after made.

Answer-to-Question-_7__

1) US tax implications for Mr T

Mr T is an individual who is a citizen and tax resident of Country T. For US tax purposes, Mr T is a Non-Resident Alien ("NRA") and will only be subject to US tax on any Fixed, Determinable, Annual or Periodic ("FDAP") income or income effectively connected to a US trade or business.

<u>Rental Income</u>

Mr T holds a US Real Property Interest by virtue of owning a New Year condominium (Sec 897(c)).

Under Sec 871(a), FDAP income is subject to 30% tax on the gross income derived (and includes rental income). Whereas income effectively connected with a US trade of business subjects 'profits' to tax rather than gross income amounts.

In the absence of any elections, Mr T will therefore be subject to tax in the US at the rate of 30% on the rental income of $5,000 monthly. The tax is withheld by the tenants and paid to the IRS.

Under Sec. 871(b) a NRA may elect to treat real property income as income connected with a US business - the resulting effect is that Mr T will be taxed on his rental 'profits' and able to deduct expenditure incurred in connected with his US business of renting condominiums. That is, the monthly amount subject to tax would be $3,500 ($5,000 - $1,500). Additionally, Mr T would then be subject to marginal rates of US tax (Sec. 871(b)(1)) which includes the deduction of personal allowances to the extent applicable. The overall US tax liability for Mr T would reduce as a result of this election.

The disadvantage to this election is that Mr T is then subject to annual US filing requirements which as a non-resident may be burdensome. This is not the case for FDAP income as the tax is withheld at source by the rentor.

Tax on sale

As Mr T is NRA, Foreign Investment in Real Property Tax Act ("FIRPTA") is relevant on the sale.

Under FIRPTA, on sale of US Real Property, it is considered as though an individual made the 871(d) election to treat the income as effectively connected.

Under FIRPTA, where a NRA sells US Real Property the buyer of the US Real Property must withhold tax of 15% on the gross proceeds. In this case this would be 15% of $1.8m.

The actual tax liability for Mr T will be the gain on disposal - Mr T has held the condominium for more than 12 months and will be subject to long term capital gains in the US. The gain on disposal if $300,000 and this amount is subject to 20% long term capital gains.

The difference between the tax withheld by the buyer and Mr T's actual tax liability will be refunded by the IRS when assessed.

There is an option to obtain a withholding tax certificate prior to the sale to avoid this cash flow issue albeit the process of timely and often hard to obtain prior the sale going through.

There is no treaty between US and Country T and therefore potential treaty benefits are not applicable.

2) US tax implications for Apollo Holdings LLC

Apollo Holdings LLC ("Apollo") is a Delaware LLC and for US purposes will default to a transparent entity (either disregarded or a partnership). We are told that Apollo is owned by Mr S, given there is only one owner - Apollo will default to a disregarded entity for US purposes and Mr S is taxed on its allocable share (being 100%) in Apollo's US trade or business.

As a US LLC, Apollo is an eligible entity and although defaults to a disregarded entity may elect to be treated as a corporation for US purposes. The tax analysis would differ.

Rental Income

- Disregarded entity: As a disregarded entity, Mr S will be considered as undertaking a trade or business in the US via Apollo and subject to US tax on Apollo's US trade. The tax implications are as above for Mr T without making the 871(d) election.

The rental income of $5,000 is reduced by the $1,500 expenditure and $3,500 is subject to US tax.

Mr S would be subject to tax on these rental profits in accordance with Art 6 of the treaty the US has taxing rights given the income is derived from US real property.

- Corporation: In the absence of additional information, treated as a corporation it would seem that Apollo would be considered a US Real Property Holding Company on the basis that its only asset is the US Real Property Interest (or at least greater than 50% of its assets are the New York Condominium).

Where Apollo is a US Corp, the rental profits would be subject to US federal tax at 21% and then subject to dividend withholding tax of 15% under the treaty Art 10 as not owned by a corporate shareholder.

<u>Tax on sale</u>

The sale would fall under FIRPTA where Apollo is a disregarded entity and corporation and be subject to the same limtiations as for Mr T.

As a disregarded entity, treaty benefits are dependent on whether Apollo would be a qualified person under Art 22 Limitation on Benefits which would be case under Art 22 (2)(e).

Answer-to-Question-_8__

1)

Bluestar Advisors plc is a "per se" corporation and will be a corporation for US tax purposes. It is not eligible to elect for other treatment.

Bluestar Trading Strategies Management Ltd (Bluestar Trading) is <u>not </u>a "per se" corporation and so it an eligible entity but will default to a corporation for US tax purposes on account of the members having limited liability and are not responsible for the liabilities of the entity. It is however an eligible entity and may elect for differing US tax treatment (disregarded entity as only one owner).

Bluestar LP is <u>not </u>a "per se" corporation and so is an eligible entity and will default to a partnership for US tax purposes on account of one member having unlimited liability. Bluestart LP will default to a partnership and not a disregarded entity as there is more than one member.

2)

Bluestar Advisors plc is a CFC. Gretchin is a US citizen wholly owning the company.

Bluestar Trading Strategies Management Ltd is a CFC. Not a PFIC.

Bluestar LP: Not a CFC or PFIC.

3)

Bluestar Advisors plc: No elections possible as the company is a "per se" corparation as listed in the regulations §301.7701-2(b)(8). No impact on answer within 2).

Bluestar Trading Strategies Management Ltd: As above, Bluestar trading is an eligible entity (as it is not a "per se" corporation) and may classify itself as a corporation or disregarded entity for US purposes. If it does make an election, the election will be as a disregarded entity (and not partnership) as the business entity only has one owner. Should Bluestar Trading elect to be a disregarded entity the company would no longer be a CFC as transparent for US purposes, Gretchin would be taxed on allocable share (100%).

Bluestar LP: As above, Bluestar LP is a partnership but may elect to be a corporation for US purposes. On election as a corporation, it seems likely that Bluestar LP would be a PFIC given the passive nature of the investments and the types of returns expected (dividends).