Answer-to-Question-_1_

Part 1) Residency of Gabriel for tax year 2023-24 and tax year 2024-25

Dear Gabriel,

As per the facts provided to us, please find below our advice in relation to your UK tax residency for the years ended 5 April 2024 and 5 April 2025.

UK Statutory Residency Rules (Finance Act 2023, schedule 45)

There are hierarchy of tests in the UK to determine tax residency of an individual, these are to be applied in the specific order.

1. Automatic Overseas Test (AOT)

There are 5 automatic test(2 relevant only on death during the tax year and hence not relevant here) - these are discussed below.

a) In case taxpayer is resident in any of 3 preceding tax years - stay less than 16 days in the UK - not applicable in your case

b) in case taxpayer is not resident in any of the preceding 3 tax years - stay less than 46 days - you spent 90 days in tax year 2023-24 and 140 days in tax ear 2024-25 ; hence you do not meet this test.

c) Full time overseas employment - there are some conditions to meet this test which does not seem to be satisfied in your case

- stay in the UK less than 91 days during tax years - not satisfied for tax year 2024-25.

- work days in the UK less than 31- does not meet for both the tax years.

Accordingly, you do not meet any of AOT tests.

2. Automatic UK Test (AUT)

There are 4 automatic test(1 relevant only on death during the tax year and hence not relevant here) - these are discussed below.

a) Stay in the UK for 183 days or more - Not satisfied in your case for both the tax years.

b) UK home test -

conditions for this tests are as follows -

i) - Home in the UK for all or part of year - your long term lease on property in the UK (assumed permanently available to you) - this should be satisfied for both tax years.

ii) - spend sufficient amount of time during tax year which means at least 30 days during tax years - this should be satisfied for both tax years.

iii)at least 91 days continuous period (out of which 30 days at least during tax year) - where you have home in the UK and either (A) no home overseas or(B) not spend more than 30 days in the overseas home.

It seems you are spending most of the time in Canada home and hence this condition may not be satisfied in your case.

c) UK full time worker- This condition is satisfied when (along with fulfilment of other conditions) when you spend 75% of total number of work days in the UK over a 365 days period.

From the limited information provided this condition does not seem to be satisfied as you are spending significant time outside the UK (Canada or else where).

Since you do not satisfied any of the above tests, your residency needs to be worked out by using sufficient ties test.

3. Sufficient ties test

There are five ties to be tested

1. Family - You family tie seems to be outside the UK and hence does not satisfy this.

2. Accommodation - you have accommodation in the UK and this should be satisfied.

3. Work tie - you spend more than 40 days workdays in the UK and should be satisfied.

4. 90 day tie - for tax year 2023-24 and 2024-25 this is not satisfied as you did not spend **more than 90 days** in the preceding two years (2024-25 stay of more than 90 days is not relevant here as preceding year relevant.

5, Country tie- not relevant for tax year 2023-24 as you were not resident in the UK before that.
Before we move to 5 tie - residency for tax year 2023-24 is below as it is relevant for 5th tie.

Conclusion for 2023-24 You meet two ties for tax year 2023-24 and stay is 90days -non resident for 2023-24 as it does not meet minimum 120 days as per para 19.

Since you do not meet residency for tax year 2023-24, country tie not relevant for 2024-25.

Conclusion for 2024-25 You meet two ties for tax year 2024-25 and stay is 140 days - hence resident for 2024-25 as it does meet minimum 120 days as per para 19.

PS: Days above are counted as number of times you are in the UK at midnight as per para 22.

Part 2)

Trading activities of a non-resident are taxable in the UK only where non-resident has a UK source/ permanent establishment as per section 6 of ITTOIA 2005.

For UK tax residents, global income is taxable including overseas trading income. Accordingly, for tax year 2024-25, your total trading income where arising in the UK or outside will be taxable (special provisions for non-domicile residents which are discussed in the next part).

For non-UK tax residents, income is taxable where the trade is carried on. Trade in the UK is established as per the main activities are carried. This concept of source of trade has been established in few UK tax case laws like Hang Seng UK Limited and Firestone Tyre Rubber.

The portion of your business activities which are attributable to time spend in the UK for business will be taxable in the UK for tax year 2023-24 where you are not resident in the UK..

Part 3)

Concept of domicile

Domicile under common law

1. Domicile of origin - Which is generally established from domicile from father at birth

2. Domicile of dependence - which is generally established from father's domicile status till the age of 16.

3. Domicile of choice - From age of 16, person can choose his domicile as per the country where they have permanent ties with.

A person can have only 1 domicile and it is very difficult to shift this.

Also, deemed domicile for income tax and capital gains purposes is created if you are tax resident for 15 tax years out of 20 proceedings tax years.

Taxation of non-domicile tax payers

For non-domicile UK tax residents, income can be elected to be taxable only when income is remitted to the UK (remittance basis taxation). An yearly election under section 809B of ITA 2007 can be made in the tax return. When this remittance election is made, income is not taxable on arising basis but on remittance basis.

On making such a election, you will not get benefit of personal allowance (annual GBP 12,570 for tax year 2023-24 and 2024-25) and annual exemption limited under capital gains provisions (GBP 6,000 and GBP 3,000 for tax year 2023-24 and 2024-25 respectively).

Please note that if you are tax resident for more than 7 years our of 9 tax years there is remittance basis charge of GBP 30,000 if remittance election is made. This charge is GBP 60,000 is you are resident for 12 years out of 14 tax years.

Recommendation -

If you continue to remain non-UK domicile you should avoid bringing foreign income in the UK. in case this is not permissible, established a new bank account for different types of foreign income / capital to identify the source which will trigger the tax rates for UK tax purposes otherwise order under section 809Q of ITA 2007 will establish the character of income remitted to the UK.

Please let me know in case you would like to discuss this further.

Kind regards,
Tax Advisor

Answer-to-Question-__2_

To: Finance Director

From: Tax Advisor

Date: ___2024

Subject- Implications of expansion into the UK by DU Australia

Part 1

Concept of Permanent Establishment

Non-resident companies are chargeable to corporate tax in the UK as per section 5 of CTA 2009. The relevant part for the present case is where non-UK resident company carries on trade in the UK through a permanent establishment(section 5(2)(b)).

A PE for UK corporate tax purposes is defined under section 1141 of CTA 2010. The definition while does not mirror OECD Article 5, is some what similar.

As per section 1141, a PE of a foreign company is established in the UK if

(a) foreign company has a fixed place of business through which it carries on business in the UK - known as Fixed Place PE

(b) agent acting on behalf of the company habitually exercise authority (secure contract or plays principal part in negotiation of the contract) on behalf of foreign company - known as Dependent Agent PE.

Section 1142 to 1143 provides some exceptions to the definition of the PE which are summarised as follows:

1. Independent agent acting in the ordinary course of business.

2. Activities in the nature of preparatory and auxiliary in nature.

Applicability in your case

Option -1

Where independent contractors provide services as an independent agent, this should not trigger PE implications in the UK. Following factors have been provided by HMRC for establishing the status of independency which should be keep in mind while contracting with the independent agent

- Lack of control/ active involvement of the principle.
- Principal negotiations of contract by the agent.
- Agent habitually exercising authority on behalf of principal.
- Number of principals for which agent is working for.

In your case, based on the information provided to us, it seems independent agent exemption can be taken.

Option 2-

Where the employees are travelling to the UK for 4 months for concluding new contracts, they may trigger the following PE for DU Australia.

- Fixed Place PE - where they have place at their disposal in the UK. While as per OECD commentary, the thumb rule is 6 months in a 12 month period to create fixed place PE, this needs to be tested for each individual case depending on the facts.

- Dependent Agent - As employees will be concluding contracts on behalf of DU Australia in the UK, they would trigger Dependent Agent PE in the UK.

Option 3-

Manufacturing facility in the UK would trigger Fixed Place PE under section 1141 of CTA 2009.

Consequences of PE in the UK

- Profits attributable to the PE will be taxable in the UK.
- PE needs to undertake corporate tax compliances like a company including filing annual corporate tax return.
- Register for UK VAT under UK VAT laws.

Other corporate tax implications

1. Compliance with UK transfer pricing provisions (loan seems to be arms length as per the details provided by you).

2. Whether this will shift Central Management and Control of Australia company to deem it as UK tax resident (not seem relevant here but to keep in mind for the future.

3. Interest restriction rules in the UK
- CIR rules (discussed in the next part)
- Unallowable purpose rules
- UK Anti-hybrid rules

4. UK withholding tax implications.

5. Loss relief rules for UK loss group.

6. Implications on cessation of PE under CTA and TCGA 1992.

Part 2

Overview of UK corporate restriction rules (CIR)under Part 10 of TIOPA 2010.

UK new CIR rules which were introduced in 2017 under the backdrop of BEPS AP 4 restricts UK interest deductions above the interest capacity computed under the provisions. The rules are very complicated and involved inter related application of accounting treatment, UK tax group, global group finance position. There is a de-minimus of interest expense of GBP 2mn.

In summary, following steps are involved to work out the disallowance under the UK CIR rules.

Step 1 - Determine worldwide group for CIR purposes. This include worldwide group including UK and non-UK companies within the group.

Step 2 - Determine Aggregate Net Tax Interest Expense (ANTIE) which is basically finance expense for the UK group.

Step 3- Tax EBITDA - This is again computed for UK group on aggregate basis.

Step 4 - Interest allowance - this can be worked under two methods

- Fixed Ratio Method (default method)- Interest capacity is lower of
(a) 30% of Tax EBITDA; and
(b) Aggregate Net Group Interest Expense (ANGIE) which broadly is finance expense for the worldwide group.

-Group Ratio Method (on election basis)- Interest capacity if lower of

(a) Group ratio * Tax EBITDA;
(b) Qualifying Net Group Interest Expense (QNGIE) - this is ANGIE subject to some adjustment under section 414 of TIOPA 2010.

Step 5 Interest capacity (IC)- This is higher of GBP 2Mn or interest allowance under step 4.

Step 6- Disallowance - ANTIE - IC (restricted to nil)

Step 7 - Allocation of disallowance (if any) to UK group companies.

Impact of the proposed loan

UK company/ UK PE in the present case will incur UK annual interest expense of GBP 3.5Mn.

As there is no other UK tax interest expense (understand group has no existing business presence in the UK), the disallowance if any will be computed keeping in mind the above steps discussed above as ANTIE exceeds the deminimus of GBP 2mn.

Where there is a disallowance interest restriction return (IRR) would need to be submitted and other compliances under CIR under schedule 7A of TIOPA 2010 including nomination of entity to file return on behalf of the CIR group.

Please let me know in case you would like to discuss this further.

Kind regards,
Tax Advisor

Answer-to-Question-_4__

Part 1

File note for the meeting with Trees Limited group

Transfer pricing provisions - basic conditions

UK transfer pricing principles are applicable in case of transactions (provisions) where there is a UK tax advantage and other conditions under Part 4 of TIOPA 2010 are satisfied.

The conditions for applicability of transfer pricing provisions are as follows:

1. There is a actual provision by means of transactions or series of transactions.

2. Participation condition under section 148 is met which basically is applicable for transaction between related parties. There are special provisions relating to financial transactions.

3. Transaction is not at arms length. Arms length is computed as per OECD TPG principles. (section 164 TIOPA 2010)

3. The provisions results into a UK tax advantage.

The result of satisfaction of the above conditions would be that transaction will be deemed to be at arms length and necessary adjustments would be required to be made in the tax computation.

There are no safe harbour provisions in the UK Transfer pricing law.

However, there is exemption for small and medium sized enterprise group from UK's transfer pricing rules (does not seem to be applicable here).

Special conditions for financial transactions - Thin capitalisation rules

Thin capitalisation rules means that the borrowing of the company are not aligned with the capital structure and there is more debt in comparison to equity. While there is no specific provision on how much debt a company can take, as per HMRC a thumb rule can be 1:1 debt equity ratio and 3:1 interest cover ratio. This is not a law but in general guidance and specific facts need to be look at while determining the impact of thin cap.

Also, OECD TPG Chapter X on financial transactions should be taken into account for arms length in case of financial transactions.

Section 152 and 153 of TIOPA 2010

<u>Inter company loans</u>

Where the transaction between company relates to issue of security, arms length price would need to be computed keeping in mind all of the below factors.

- whether a loan can be made in the absence of related party involvement.
- Amount of loan which can be taken in the absence of the above relationship.
- Rate of interest which can be agreed between independent parties.

For the above borrowing company needs to be looked in isolation without the impact of related party influence (s.152(6)).

<u>Guarantee of inter company loans</u>

Where the transaction between company relates to loan on which guarantee is provided by the related party, arms length price of guarantee fees would need to be computed keeping in mind all of the below factors.

- whether a guarantee would be give in the absence of related party involvement.
- Amount of loan on which guarantee can be given in the absence of the above relationship.
- Arms length price of guarantee fees .

Another factor to keep in mind is whether is the guarantor general business decisions to provide guarantees on loan [s. 153(4)].

Applicability to Trees Ltd

1. Option 1- Bank loan of Trees Ltd - Thin cap rules need to be kept in mind regarding overall debtedness of trees Limited. Since an independent third party is ready to provide loan, the transaction should not have any adverse tax implications from transfer pricing perspective.

On a separate point, CIR implications and other interest deductibility rules to be kept in mind.

2. Option 2 - Interest expense of GBP 9mn of loan can be allowed as tax deduction to Trees Limited. However, the balance interest on GBP 3mn will be disallowed as it is arising out of guarantee by Trunks BV and the same would be deemed as dividend (non deductible) to the parent company.

3. Option 3 - Interest expense on loan of GBP 9mn of loan can be allowed as tax deduction to Trees Limited as it could obtain only that much as an independent party. However, the balance interest on GBP 3mn will be disallowed as it is arising out of special relationship.

Corresponding adjustment made be made under section 182 of TIOPA 2010.

Further there would no withholding on the excess interest (above transfer pricing principles) as per s. 187 of TIOPA 2010).

Part 2 Advance Thin Capitalisation Agreement

Thin capitalisation rules are very complex in practical application and there is a facility to obtain certainty from HMRC on the application of these rules in the facts of the case.

SP1/ 12 provides guidance on the process of ATCA. Situations in which companies can approach HMRC for ATCA includes as under:

1.Acting together rules under transfer pricing law.
2.intra group funding under treaty.

ATCA agreement is generally for 5 years and agreed on a prospective basis.

Answer-to-Question-_5_

Part 1

Concept of domicile under common law

Domicile is a very British concept and generally not there in other countries. A person can have only domicile at a time which is different from tax residency which a person can have multiple as per tax law provisions.

Domicile can be established under three categories

1. Domicile of origin - This is established at birth. It is generally established from domicile from father at birth and not place of birth of the person. In case the parents are not married, in such a case domicile is established through mother's domicile status.

2. Domicile of dependence - which is generally established from father's domicile status (mother in case parents are not married) till the age of 16. Domicile of a minor can change if father domicile is shifted till the age of 16.

3. Domicile of choice - From age of 16, person can choose his domicile as per the country where they have permanent ties with.

A person can have only 1 domicile and it is very difficult to shift this. Leaving the country simply does not change the domicile status. A person is required to severe all ties with the country and acquire a new domicile so that they can established domicile has been shifted.

There are few old case laws in the UK which have discussed extensively on this issue and in summary have held that for shift the domicile outside the UK, person needs to severe all ties with the UK and plan to permanently settle outside the UK where they acquire a new domicile.

Relevant case laws on the issue.

1. Re Clore deceased.
2. Gaines Cooper
3. Morgan v Cliento

HMRC has also provided a guidance on the factors which needs to be looked at while establishing the change in domicile. All factor needs to be looked in wholesome and it does not depend on a single criterion. Factors are provided as under:

1. intention of the individual
2. sale of properties in the UK
3. acquiring new properties in new country
4. acquiring voter id in new country
5. closing bank account in the UK
6. closing social ties like social club membership etc.
7. tax residency in new country

8. nationality in new country
9. business interests
10. family interests

Applicability in Jessica's case

While Jessica has decided to leave the UK permanently, there are few factors which hints she still has a tie with the UK and it seems difficult that HMRC will see this as a change in domicile from the UK.

Jessica has lived all her life in the UK, has family in the UK, retaining home in the UK, retaining her social interest in the UK. These are all relevant factors in determining the UK domicile status and hence it seems difficult in Jessica's case.

Part 2

Recommendations -

As discussed above, Jessica needs to severe all ties with the UK. She can consider the following further actions to achieve foreign domicile.

1. Sell properties in the UK.

2. Close social ties through UK memberships

3. Acquire new permanent place (Spain or Cyprus) which she intends to be domicile and have permanent ties with that country and establish that she will permanently settle there.

4. Keep stay in the UK to minimum - occasional visits should be fine

5. While visiting for medical reasons should be fine here, if she can, she can transfer that function as well to new country.

6 Shift her valuable furniture outside the UK as well or sell it.

Answer-to-Question- 9

To: Mistry Group Limited
From: Tax Advisor

Subject: Implications of UK Controlled Foreign Companies (CFC) implications on Mistry Group Limited for AP 2024

Date ___ 2024

A. Factual background

1. Mistry Group Limited (Mistry UK) is UK based group in the business of designing of commercial properties.

2. Mistry Group has certain subsidiaries outside the UK in Malaysia Morocco, Mauritius and the US. We understand that all the subsidiaries are wholly controlled by Mistry UK.

3. We understand that all the above subsidiaries are tax resident in their home country and do not trigger UK residency rules (i.e. not controlled and managed from the UK).

B. UK CFC - relevant law and impact on Mistry Group Limited

CFC rules are provided in chapter 9A of TIOPA 2010. CFC rules are anti-avoidance rules which are introduced to bring back the profits within the UK tax net which have been artificially diverted outside the UK by incorporating companies outside the UK.

A CFC is defined as a non-resident company which is controlled by UK person or persons. The definition of control is discussed in chapter 18 of Chapter 9A and covers various situations/ tests. Since Mistry UK wholly controls all the subsidiaries, it will be in the definition of control for CFC purposes.

Exemptions under CFC laws.

There are five exemptions under CFC legislations. Even if one of the exemptions are satisfied, the entire profits of the CFC will not be within UK CFC charge and other exemptions are not required to be tested.

Exemptions under CFC law

1. Exempt period exemption (EPE)(Ch-10)

This exemption is to exempt profits of new CFC into the group for a temporary period of 12 months. The conditions needs to be met as per s. 371JB of TIOPA 2010 which includes that
- There is no CGC charge in the next accounting period
- Not within UK CFC charge before the acquisition for at least 1 year
- Company is carrying on business before the relevant time.

New US subsidiary may be able to satisfy the above but given 2024 is first year of trading may not meet the last condition.

-

2. Excluded territory Exemption (Ch-11)

this is for territories specified in SI 2012/3024 which also meet other conditions - income condition, IP condition and tax avoidance condition.

There is a simplified ETE condition for US companies and only tax avoidance condition is required to be met (relaxation from income and IP condition). Screen Inc should be able to meet ETE and its profits would be exempt from CFC charge.

3. Low profit exemption (Ch12)

Subsidiaries with low profits under s.371LB will be exempt under low profit exemption. Low profit threshold is GBP 500,000 out of which non trading income is no more than GBP 50,000.

Glass Limited (Mauritius)should be qualified under Low profit exemption. There is also an anti-avoidance condition to be met, which is assumed met in this case.

4. Low margin exemption (Ch 13)

This exemption is for high volume low margin business where accounting profits is no more than 10% of operating expenditure.

Glaze Admin Limited (Mauritius)should be qualified under Low margin exemption. There is also an anti-avoidance condition to be

met, which is assumed met in this case.

5. Tax exemption -

no applicable in the present case and not discussed.

Applicability for Screen Limited

Screen Limited does not seem to satisfy exemption conditions so its profits needs to be tested under CFC gateways.

If none of the exemptions are satisfied, there are five gateways (two specific for banking and insurance industry and not relevant in your case) under which profits of the CFC can pass through

1. trading profits gateway
2. Non trading financial profits gateway.
3. Trading financial profits gateway,

financial profits are not relevant in the present case and not discussed.

Trading profit gateway (ch 4) is applicable once pre gateway conditions under ch 3 are tested. In summary, it exempt CFC profits wherein CFC are carrying its own business without contribution of UK SPFs and the motive is not to divert profits outside the UK.

Inn the present case, Screen Limited to have its own staff and assets and can function as a standalone entity without support from UK parent. Hence, conditions under s. 371 CA should be satisfied and there should not be any CFC charge.

HMRC reporting

For Glaze Admin Limited, a disclosure should be made under CT 600B form which supplements annual corporate tax filing under CT 600 and details regarding its exemption is provided.

It is encouraged to make a disclosure on CFC exemptions in the tax computation as well (not technically required for most exemption but recommended for transparency purposes.