PLEASE NOTE THAT SINGAPORE INCOME TAX IS REFERRED TO AS ITA IN THIS ANSWER SHEET.

Answer-to-Question-_1_

Facts -

a) baymark is incorporated and managed from Country Z.
b) Warehouse is in country W.
c) marketing consultant and cloud based server and services in Singapore to oeprate e-commerce platform.
d) Order is placed from webiste in Singapore.
e) payments in Country Z.
f) Slaes - 30% in Singapore, 15% inZ, 10% in W and 45% in others.
g) Z and Singapore has DTA.
h) Z has opted for MLI
h) W has no DTA.
i) Country Z and Singapore has OECD model DTA and has signed MLI with Article 12 concerning commisionnaire arrangements and DAPE.

Implication as per Singapore ITA read with DTA and MLI with country Z

a)a) According to Section 2 of ITA, A company is considered to be tax resident of Singapore if the control and management of the company is based in Singapore.

b) Please note that as per the case law of De beer case consolidated mines limited vs hower that the control and the management is the question of facts.

c) In the given stance, Baymark will NOT be resident of Singapore as it is managed from Country Z.

d) However, Please note that Baymark has marketing consultant based out of Singapore which majorly targets the entire South east Asia.

e) Further, the cloud servers and services to operate e-commerce is based out of Singapore.

f) As per Article 5 of DTA, there is no fixed place PE or service PE based out of Singapore.

g) However, Article 12 of the DTA read with MLI, the Dependent agent PE has been broaden now. It includes broadened terms such as if the person is habitually concluding the contracts or has played a principal role leading to the conclusion of the contracts in other contracting state on behalf of foreign company without material modification by foreign company, then such foreign company shall deemed to have PE in other country and provisions of Article 7 of DTA will apply accordigly.

h) There are possible exception to such MLI provision which includes that if the independent agents are providing such agency service, then such MLI provision is not applicable.

i) However, please note that if such agent is acting exclusively or almost exclusively on behalf of such foreign company, then, it is not considered as independent agent.

j) In this given question, please note that Baymark has engaged the marketing consultant based in Sinagpore. Further, it farms the Singapore based servers to operate the interactive e-commerce platform from where ALL the customer places their orders. We have assumed that there is no other way of placing the sales order. Further, cloud based server and services are taken from Singapore.

k) In this regard, the activities of marketing consultant and cloud based server and services for e-commerce platform indicates that contracts are habitually concluded from Singapore and hence, the provisions of MLI are triggered in this scenario.

l) Given the same, Baymark has a DAPE in the Singapore and therefore, all the profits which are attributable to the Singapore DAPE will be taxed in Singapore as per Article 7 of DTA between Sinagpore and Country Z.

m) Please note that taxes paid in Singapore which are attributable to the DAPE of Baymark will be allowed as tax credit while computing the taxable income of Baymark in Country Z as per provisions of DTA.

n) DAPE of Baymark in Sinagpore will be allowed to attribute the expense which is related to the sale of such products. It is assumed that

o) Please note that while the directors of Baymark are based in Country Z, no major substantial business activity is conduted from Country Z. Marketing, e-commerce, online sale contract and cloud services are based in Singapore, while manufacturing and warehouse and dispatch are based in Country W. Given the same, if the safer to assume that majority of the profits related to the sale of products will be allocated to Singapore and expense related to manufacturing and warehousing will be allowed as tax deductible expense of such DAPE.

Implication as per Singapore ITA read and country (no DTA)

a) Please note that Baymark will have a fixed place PE in Country W due to manufacturing and warehouse in Country W.

b) It can be argued that tax administration of Country W will tax the profits attributable to Country W.

c) Country W has no DTA with Singapore. However, please note that as per Section 13(12), the exemption may be availed for the profits which as attributable to PE of Baymark in Country W.

d) Further, as per Section 50A, if any income is taxed outside Singapore and SIngapore has no DTA with sucn country, then, as per Section 50A of the ITA, Baymark's DAPE will be allowed tax credit of taxes paid in Country W.

Answer-to-Question- 2

Facts -

a) Lionheart is tax resident of Singapore
b) Decision makers (Kai and Mei) are based out of Singapore.
c) Lionheart has outsourced manufacturing in Country A.
d) assemby and storage in Country B.
e) Lionheart sells to wholly owned Subsi in A, B and Singapore.
f) proceeds in foreign bank account. limited amount transferred to Singapore.
g) no formal TP policy.

Implication -

<u>Lionheart tax residency and implications in Singapore -</u>

a) According to Section 2 of ITA, A company is considered to be tax resident of Singapore if the control and management of the company is based in Singapore.

b) Please note that as per the case law of De beer case consolidated mines limited vs hower that the control and the management is the question of facts.

c) In the given stance, Lionheart will be resident of Singapore only as oer Section 2(1) of ITA. As per Section 10(1) of ITA, a company being a tax resident of Singapore will be taxed on the income derived from Singapore and received in Singapore from foreign source. Such income shall be taxed at the rate of 17% as per Singapore corporate tax rate.

d) Please note that as per the facts provided, proceeds from sale are banked in foreign bank account. In this regard, reference can be made to case law of CIR vs Hang seng Bank limited wherein it is held that focus is ensured on what taxpayer has conduted to earn profit and banking of proceeds is relevant.

e) Please note that factory located in Country A and warehouse located in country B can be classified as permanent establishment as per Article 5(2) of DTA read with local income tax provisions of ITA.

f) The consequence of the same is that profit attributable to the

permanent establishment of Lionheart in Country A (factory) and Country B (Assembly) shall be taxed in respective countries as per local income tax provisions in country A and Country B respectively. The same is governed by the provisions of Article 7 of DTA.

g) Given the above, Singapore will have no right to tax the profits attributable to the PE based in Country A&B due to treaty benefit available as per DTA.

h) Lionheart will be eligible for the tax credit under Section 50Aof the ITA read with the relevant provisions of DTA.

Taxation in country A

a) Lionheart will have a permanent establishment in Country A as per the provisions of Article 5 of DTA. Given the same, the business profits attributable to Country A will be taxed in Country A as it taxes the local sourced income read with Article 7 pf DTA.

b) Greenhouse is the tax resident of Singapore.Given the same, its income will be taxed in Country A.

c) Any income of Greenhouse which is remitted to Singapore will enjoy the exemption benefit of Section 13(8) and Section 13(9) provided that arms length pricing of sale transaction between Lionheart and Greenhouse is justified to tax authorities of Singapore and COuntry A.

Taxation in country B

a) Lionheart will have a permanent establishment in Country B as per the provisions of Article 5 of DTA. Given the same, the business profits attributable to Country B will be taxed in Country B as it taxes the local sourced income read with Article 7 pf DTA.

b) Oceanview is the tax resident of Singapore.Given the same, its income will be taxed in Country A.

c) Any income of Oceanview which is remitted to Singapore will enjoy the exemption benefit of Section 13(8) and Section 13(9) provided that arms

length pricing of sale transaction between Lionheart and Oceanview is justified to tax authorities of Singapore and COuntry A.

Issues related to remittance of proceeds

a) Please note that as per Section 10(25) of ITA, any income remitted from outside of SIngapore will be subject to Income tax in Singapore. However, the tax authorities has provided relief vide Section 13(8) and 13(9) of ITA which exempts such income from income tax suject to fulfillment of three following conditions

1) Such income is subject to tax in other country
2) The headline tax on such income is minimum of 15%
3) The comptroller is satisfied that such tax exemption shall be beneficial to such resident in Singapore.

Please note that as per the facts provided, proceeds from sale are banked in foreign bank account. In this regard, reference can be made to case law of CIR vs Hang seng Bank limited wherein it is held that focus is ensured on what taxpayer has conduted to earn profit and banking of proceeds is relevant.

In this regard, it is assumed that Country A and Country B satisfies that minimum tax requirement of 15%. Given the fact that COuntry A and COuntry B taxes locally sourced and worldwide income of residents, we can assume that Comptroller will be satified and grant tax exemption on the income remitted to Singapore.

Transfer Pricing issue

a) Please note that Lionheart has to wholly owned subsidiary in Country A and Country B.

b) Since, there is no formal TP policy and communications are conducted in the very informal manner, the tax authorities of Country A and Country B may allege that there is an attempt to shift profits and the Arms length pricing of the finished goods sold by Lionheart to Greenhouse and Oceanview can be questioned.

c)Alternatively, the Comptroller in Singapore may also question this

arrangement that such transactions are not at Arms length and may proceed to investigate the same.

d) Further, the treaty benefits available and exmeptions provided by Singapore may be denied to Lionheart if the proper Transfer pricing documentation is not made.

Answer-to-Question- 3

Facts -

a) Orchid is tax resident of SIngapore.

b) purchase two commercial building in 2015. One in Singapore, one in Country Z. Long term investments. 15 million each.

c) In 2021, both building valued at 28 Mn prior to refurbishment. Refurbishment cost is 12 mn in equal share.

d) planning, finance and marketing in Singapore by directors.

e) in 2024, leased to international companies (non residents in sinagpore) for 9 mn each.

f) Country Z and Sinagpore has DTA based on OECD model.

Income tax implications -

PART 1

Tax residency and Implications

a) According to Section 2 of ITA, A company is considered to be tax resident of Singapore if the control and management of the company is based out of Singapore.

b) Please note that as per the case law of De beer case consolidated mines limited vs hower that the control and the management is the question of facts.

c) In the given stance, Orchid will be resident of Singapore only as per Section 2(1) of ITA. As per Section 10(1) of ITA, a company being a tax resident of Singapore will be taxed on the income derived from Singapore and received in Singapore from foreign source. Such income shall be taxed at the rate of 17% as per Singapore corporate tax rate.

d) In the given case, the rental income of both commercial building is received in Singapore. Given the same, both income shall be chargeable to tax as per Singapore income tax provisions subject to conditions of Section 13(8) and 13(9) of ITA.

e) Please note that net rental income is chargeable to tax after deduction of qualifying expenses.

f) In this regard, please note that only expenses which are incurred wholly and solely for the purpose of producing such rental income is qualfied as deductions.

g) please note that deemed rental expense of 15% of the gross rental income received can NOT be claimed as deduction as the buildings are used for non-residental purposes.

h) Further, please note that Section 14N of the Income-tax ITA allows that tax deduction for certain capital expense such as renovation and refurbishment can be allowed over a period of 3 years subejct to the capping of SGD 300,000 per 3 year period.

i) However, the budget 2023 has waived such limit to one year from YA 2024 instead of 3 years.

j) from YA 2025, the scope of R&R expediture is expanded to include the deisgner and professional fees. Further, it fixed the relevant R&R capital expendiure period from YA 2025 till YA 2027 for all businesses.

Country Z tax implications

a) Please note that Country Z will claim that Orchid has fixed place permanent establishment in Country Z through such building and same can be classified as permanent establishment as per Article 5(2) of DTA read with local income tax provisions of ITA.

f) The consequence of the same is that rental income attributable to the permanent establishment of Orchid in Country Z shall be taxed in country Z as per local income tax provisions in country Z. The same is also governed by the provisions of Article 7 of DTA.

g) Given the above, Singapore will have no right to tax the profits attributable to the PE based in Country A&B due to treaty benefit available as per DTA.

h) Further, Orchid will be eligible for the tax credit under Section 50A of the ITA read with the relevant provisions of DTA.

i) Please note that as per Section 10(25) of ITA, any income remitted from outside of SIngapore will be subject to Income tax in Singapore. However, the tax authorities has provided relief vide Section 13(8) and 13(9) of ITA which exempts such income from income tax suject to fulfillment of three following conditions

1) Such income is subject to tax in other country
2) The headline tax on such income is minimum of 15%
3) The comptroller is satisfied that such tax exemption shall be beneficial to such resident in Singapore.

Please note that as per the facts provided, rental income is received in Singapore .

In this regard, it is assumed that Country Z B satisfies that minimum tax requirement of 15%. We have assumed that COuntry Z taxes locally sourced income. Given the same, we can assume that Comptroller will be satified and grant tax exemption on the income remitted to Singapore.

PART 2

a) In case Orchid is not a tax resident of Singapore, then, please note that we assume following facts and the conditions.

Condition 1 - Directors are resident and based in Singapore. all planning, financing and marketing is done from Singapore.

i) In this scenario, the According to Section 2 of ITA, A company is considered to be tax resident of Singapore if the control and management of the company is based in Singapore.

ii) Please note that as per the case law of De beer case consolidated mines limited vs hower that the control and the management is the question of facts.

iii) In the given stance, Orchid will be resident of Singapore only as per Section 2(1) of ITA.

The implications will remain same as we have discussed in Part 1 above and the same is not repeated again here.

Condition 2 - Directors are not resident and live outside of SIngapore. all planning, financing and marketing is done outside Singapore.

i) In this scenario, the According to Section 2 of ITA, Orchid is not considered to be tax resident of Singapore if the control and management of the company is not in Singapore.

ii) Rental income from Singapore building will be taxed in Singapore as per Section 12 of ITA.

iii) Rental income from Country Z will not be taxed in Singapore.

Answer-to-Question- 6

Tax residency of James before 2023 -

a) James is domiciled in COuntry R and hence, will be tax resident of country R.

Tax implications -

a) Worldwide income of james will be taxed in Country R.

b) rental income and consulting services which are sourced from Singapore will be taxed in Singapore.

c) Tax credit of taxes paid in Singapore will be allowed to James in Country R as per DTA between Country R and Singapore.

d) Capital gains for Country R, Q and Sinagpore will be taxed in Country R.

Tax residency Post 2023 -

Quantitative test -

a) Accoridng to Section 2 of the ITA, James shall fulfill the minimum creiteria of 183 days of stay or continously for 3 years to be tax resident of Singapore.

b) In this case, the offer is for 2 years and hence, James will be tax resident of Singapore as he spent 9 weeks only outside of Singapore.

Qualitative test -

c) As per Aticle 4.2 of DTA, we shall follow the following tie breaker rule -

- Permanent home
- Center of Vital interest

- Habitual Abode
- Citizenship status
- Mutual agreement Procedure between two coutries

d) Given the above, James has sold his house in country R and sya in apartment in Singapore. Given the same, he is tax resident of Singapore as per Article 4.2 of DTA.

Tax implications of James -

a) Employment income - The same shall be taxable in Singapore as per Section 10(1) of ITA.

b) rental income - rental income from Singapore is taxed in Singapore. rental income from Country R and C are taxed in source country due to creation of PE of james in such country. Such income is exempt in Singapore due to Section 13(7A), Section 13(8) and 13(9) of ITA.

c) Income from concultancy - Such income shall be subject to tax in Singapore if the same is remmitted to Singapore. We understand that Country Q doesnt tax foreign source income and has no DTA with Singapore.

d) With regards to Income being remitted to Singapore, please note that exemption provisions of Section 13(7A)of ITA may trigger and exemption can be garnted by the comptroller.

e) Capital gains for Country R will be taxed in Country R. Capital gains for Country Q will be taxed in Country Q. Singapore may also tax the same due to non-availability of Section 13 exemption but allow the unilateral tax credit as per Section 50A.

Answer-to-Question- 7

Scenario 1 - The same will qualify as ‘International service’ and no GST will be charged on the same. It is directly benefitting the Hongkong company and research is performed outside of Singapore and it completely overseas.

Scenario 2 - The service is delivered in Singapore to the CEO of KARPA. The service is provided in person and is delivered in Singapore. GST is applicable.

Scenario 3 - Please note that the service is performed in Singapore as research is done in Singapore and will be benefitting the person in Hongkong. service is delivered outside Sinagpore, GST is not applicable.

scenarion 4 - GST will be applicable as it is provided to SIngapore company.