KATE NICHOLLS - ISSUE WITH CAMERA RIGHT FROM START AND ID PROCESS - WILL CALL ADIT AS SOON AS END EXAM

PART A

Answer-to-Question-_1_

To: Cupful Ltd Shareholders
From: K Nicholls

This memo sets out the tax residency and PE implications relating your proposed new strategies:

1)

Background to corporate tax resdiency -

Corporate tax resideny is determined either through incorporation in the UK or through central management and control (CMC). CMC looks at the highest level of control and typically this is where the board of directors sit.

Central management and control has been developed through case law and there have been some pivotal cases such as the De Beers case which says a company is resident where the real business is carried on and where CMC actually abides. There is also the Bullock V Unit Construction case which says that CMC is a question of fact and all facts and circumstances should be considered in the round.

As Cup was incorporated in the UK it will always be UK resident through incorporation but it residency could change through CMC not being in the UK.

A company could therefore be considered tax resident in 2 countries and subject to tax in both of those countries. In this case, assuming there is a double tax treaty in place and this follows the OECD Model, there should be a tie breaker clause which looks at other factors - including place of effective management (POEM) and aims to decide treaty residence and which state has the ability to tax. POEM looks more closely at the day to day running of the business. If it cannot be decided through these means there is also a mutual agreement procedure (MAP) where the competent authorities discuss and decide themselves.

The UK gives unilateral tax relief of any overseas tax paid on the same income in the UK. This is called double tax relief and is given at the lower of:

* Overseas tax suffered
* UK tax paid

Background to PEs -

UK resident companies are taxable on their worldwide income and gains as they arise. This includes any income from overseas PEs.

PEs are created either by:

* A fixed place of business through which a busienss is wholly or partly carried on

* Agent acting on behalf of the company and habitually exercises authority to do so

Examples of a fixed place of business:

* Place of management
* Branch
* Office
* Factory

However, there are specific exemptions when acitivties are preparatory or auxillary in nature. Examples of this include:

* Storage, display, or delivery of goods
* Maintenance of stock for purpose of storage display or delivery
* Purchasing of goods or collecting information.

It should be noted that these should not be part of fragmented business operations.

Additionally, there is an exemption for indepedent agents. That is, that they are carrying out the business of an agent and are acting in the ordinary course of business and are remunerated ast not less than customary.

Profits of a PE are taxable in the UK under the seperate and identifiable enterprise rule. That is, profits are calculated as if the PE was a UK company enagaged in similar or same activities with the same credit rating.

Application to your proposed strategy -

1 - Chip relocating to Vastland alone is unlikey to change the residence of Cupful as the board meetings are still held in the UK. Assuming the board meetings and the majority of decision making are still made in the UK and Chip flys to UK board meetings this is unlikely to alter the residence on it's own.

Chip is likely to create a PE in Vastland through the dependant agent condition. He is an agent habitually execrising ability to carry on business and this is shown as he is able to conclude sales. The Vastland PE will be taxable to UK CT at 19%.

2 - An office is specifically mentioned as a fixed place of business and so this will constitute a PE in Bigland. Profits will be taxable in the UK.

Cerise also moving outside the UK could potentially alter the corporate residence as this is now 2/3 board members who are not UK resident. However, as board meetings still in the UK there is an arguement that CMC is still from the UK.

3 - Charlotte remaining in the UK has no impact on corporate residency i.e. it strenghtens reasoning for UK residency to remain.

4 - Chip and Cerise returning to UK for regular board meetings helps strenghten idea that CMC is from UK however, as mentioned previously, rubber stamping should be avoided. So all of the decision making should only be in the UK - not made abroad and

then just signed off in the UK.

5 - If it is a company that is incoporated in France then this will not be a PE as it is a company in its own right. The profits will be taxable abroad. However, if it is not an incorporated company then it is still unlikely to constitute a PE as the activities are preparatory or auxillary in nature as it is to do with storage and delivery of goods. Additionally, they are carried out by a third party i.e. an indpendant agent which is specifically excluded as a PE.

If it found that the corporate residence of Cupful move to non-UK it may be dual resdient. The DTT would then need to be looked at to determine where treaty residence is situated. I would think likely it would remain UK but if for some reason it didn't, this would be company migration as it is ceasing to be UK resident. In this case the company would need to inform HMRC and make an agreement to pay any outstanding tax.

Cupful would also be subject to an exit charge in this case where:

* Assets disposed of at market value (MV)
* Loan relationships deemed disposed of at fair value (FV)
* Chargeable assets uplifted to MV

An exit charge payment plan may be available where charge is split into 6 equal instalments - with the first due 9 months and 1 day after the end of the accounting period.

2)

In order to mitigate Cupful becoming non-UK resident they should continue to have their board meetings held in the UK. The majority of the board members should be UK resident so they should either prevent Chip and Cerise moving, or hire more board membrs who are UK resident so the majority are UK resident. If Chip and Cerise still move, they should travel to the UK to physically sit in the board meetings and should, where possible, not dial in from anywhere else.

Rubber stamping should be avoided. This is where the majority of the work/thinking behind decisions are made elsewhere and then just agreed in the UK. All of the genuine decision making and strategy decisions should be made in the UK.

Detailed board minutues and records of decisions should be kept as evidence.

Additionally, as there is a possible dual residence issue here, POEM and the day to day running of the business should also be kept in the UK.

Answer-to-Question-2

1)

Residence in the UK is determined by the statutory residence test (SRT). It is a 3 tier hierachial test with the automatic overseas and UK test taking priority over the sufficient ties test.

The tests are -

Automatic overseas test

* Resident in UK in 1 of 3 previous tax years (a leaver) and in UK <16 days
* Resident in UK in none of 3 previous tax years (an arriver) and in UK <46 days
* Work full time overseas and
    * <91 days in UK
    * <31 UK work daays (>3 hours work)
    * No significant breaks from overseas work

Automatic UK test

* Spend >183 days in UK
* Had UK home for all or part of year and all apply:
    * 91 consecutive days where had home in UK
    * 30 days fall in tax year and been present in home > 30 days
    * No overseas home or if you did, present < 30 days

* Work full time in UK and more than 75% work days are UK work days

If an individual does not meet these tests we look to the sufficient ties -

* Family - spouse or minor child UK resident
* Accommodation - place to live in UK >91 days
* Work - >40 UK work days (>3 hours)
* 90 day - spent >90 days in UK in either of previous 2 tax years
* Country (only for leaver) - UK contry in which spent most number of days.

Application to Nathalie (N) 2023/24 -

N is an arriver and looking to spend >46 days in UK so not automatic overseas through second test. First test is not relevant. She is not working full time overseas and so is not automatic overseas resdient.

Then we look to automatic UK test. She is not spending >183 days in UK. She will have a home in the UK (it does not have to be owned) and she will be in this home >30 days in the year. She does however have an overseas home and it looks like she will spend > 30 days in it. So she will not be automatic UK resident under second test. Additionally she is not working full time in UK so none of these tests are met.

We then look to the ties -

Family - no mention of spouse and child is not minor
Accommodation - yes
Work - yes as >40 UK work days
90 day - yes we are told 95 days in previous year

She therefore has 3 sufficient ties so she will be able to spend up to 91 dats in UK without becoming resident. If she spends the 95 days proposed then she will be UK resident for 2023/24.

Application to Nathalie (N) 2024/25 -

N is now a leaver as she has been UK resident in one of three previous years and >16 days in UK. Second test is not relevant. She is not working full time overseas and so is not automatic overseas resdient.

Then we look to automatic UK test. She is not spending >183 days in UK. She will have a home in the UK available >91 days (it does not have to be owned) and she will be in this home >30 days in the year. She does not however have an overseas home as she sells it before the tax year starts and so she is automtically UK resident for 2024/25.

2)

UK resident individuals are liable to UK tax on their worldwide income and gains on an arising basis.

Non-UK resident individuals are only liable to UK tax on UK sourced income or UK situs assets.

UK resident and non-UK domicile tax individuals have the option to be taxed on the remittance basis. This can be elected on the individuals tax return each year i.e. it can be elected for each year depending on whether it produces a better tax answer for the individual.

If claimed, UK income and gains are still taxed on the arising basis but overseas income and gains will not be subject to UK unless they are remitted to the UK. If the remittance basis is claimed an individual will lose their pesonal allowance (PA) - although, if their income is >£100,000 this will be tapered away and so is not relevant for everybody - and their capital gains annual exempt amount (AEA).

If unremmited foreign income is <£2,000 per year the remittance basis applies automatically and the PE and AEA remains available.

The remittance basis is free to use for arrivers to the UK in their first 7 years of UK residency but when they have been UK resident in 7 out of preceeding 9 tax years there is a charge of £30k. This increases to £60k where UK resident 12 out 14 preceeding tax years. The remittance basis charge can be paid out of overseas income and not considered a remittance so this would be good tax planning for some individuals.

The remittance basis will be able to be used by N and a charge will not be applicable to her.

If she claims the remittance basis then the income from the

Canadian property (if paid directly into an overseas bank account) will not be subject to UK tax. If it is remitted to the UK then it will be liable to UK tax. Double tax relief will be available on the lower of the overseas tax paid on the remitted income or the UK tax payable.

Regardless of the remittance basis, any gains made on the UK listed securities will be liable to UK CGT on an arising basis as they have a UK source.

Overseas work day relief (OWR) is available to individuals in their first 3 years of UK residency following 3 consecutive years of non-residency (arrivers) so any employment income N may have can be split between UK duties and overseas duties by reference to number of work days. UK duties will be chargeable in full in UK but, as long as overseas portion of income not remitted to UK, it will not be taxable in the UK. It should be noted that this is for employment income only and is not trading income. OWR is not available for formerly domicile residents.

3)

If the remittance basis is claimed then overseas trading income is not taxable in the UK providing it is wholly carried on abroad.

We are told that 25% of activites are performed in Canada and then 75% at clients location. If the clients location is not the UK then 100% will be performed abroad and the income apportioned to that will not be liable to tax in the UK - as long as it is not remitted to the UK.

However, if the clients location is in the UK, this the duties will not be wholly abroad and therefore the whole amount will be taxable in the UK.

PART B

Answer-to-Question-3

From: K Nicholls

2 Mount Cherry

Guildford

To: FD of Alpha

1 Cherry Tree Lane

London

Date 7 June 2023

Dear FD of Alpha

This letter sets out the CFC rules and how they may apply to your company.

Background

CFC rules are designed to help capture arrangements where entities are resident abroad but are controlled from the UK and are therefore not liable to tax in the UK. They are avoiding paying UK tax.

The profits of any CFCs (defined below) found to be chargeable profits i.e. fall into any gateways that are mentioned below will then be apportioned back to any UK resident companies owning >25% of the CFC. These are charegbale at 19% CT rate and come in as a liability rather than income.

CFCs are non-UK resident companies which are controlled by a UK resident person. Control has various definitions:

* 50% test of control - UK person is entitled to 50% assets and distributable profits on winding up

* JV - where UK person holds greater than or equal to 40% of CFC and overseas holds betwwen 40-55%.

* Associated enterprise - Where UK resident company along with assocaited enterprises (>25% direct or indirect) holds > 50%

* Accoutning standards test.

There are 5 statutory exemptions which could fully exclude the profits of a CFC. Only one of these need to be met:

* Exempt period - a company coming within UK control for the first time will be given a 12 month grace period. This will only be available if the subsequent period condition is met - that is

that a CFC charge does not apply in the subsequent period.

* Excluded territories - there are a list of excluded territories provided by HMRC.

* Low profits - if taxable total profits <£50k or taxable total profits <£500k and non-trading finance income <£50k this will apply.

* Low profit margin - if CFC accounting profits no more than 10% of relevant operating expenditure.

* Tax exemption - if local tax is at least 75% of corresponding UK tax amont.

If none of these are met we look to see whether the profits of the CFC fall into any of the following Gateways. If they do they are chargeable profits.

* Profits attributable to UK activities
* Non-trading finance profits
* Trading finance profits
* Captive insurance business ^
* Solo consolidation ^

^ Not relevant.

There are however some exclusions to these which will be considered as and when they apply to your situation.

In brief, the main exemption is whether the arrangements are designed to reduce or avoid tax the 'motive' test.

There is also a finance company exemption which may apply to non-trading finance profits. These could potentially exclude 75% or 100% of profits.

To exclude 75% profits would have to be from a qualifying loan relationship. The conditions for this are:

* CFC is creditor
* Debtor is connected compan
* Which is not liable to UK tax
* And is conttolled by same UK resident company which controls CFC

To exlucde 100% profits the relationship should also be from qualifying resources.

Application to Alpha

1 -

I assume this is a 100% owned subsidiary and is therefore a CFC as it is tax resident in another country but controlled from the UK through Alpha. Please confirm that is has not been purchased in the past 12 months and therefore the exempt period exemption should not apply. The Cayman Islands is not on the excluded territories list and so will not meet this exclusion. It is, however, likely to get the low profits exemption as profits are

<£500k. Please confirm that non-trading finance income is <£50k. I do not have enough information to confirm the low profit margin exemption annd the tax exemption will not be met as no tax is payable in the Cayman Islands.

In summary, it should fall into one of the statutory exemptions (low profit margin) and no profits will be chargeable.

2 -

Again i have assumed that this entitiy is 100% owned. As it is non-UK resident and and controlled from the UK it will be a CFC. I have assumed it was not purchased within the past 12 months and will not fall under the excluded territories exemption. Charlie Ltd is likely to fall under the low profit margin exemption as profit margin is <10%. Additionally, Turkey is on the excluded territories list.

I do not have enough information to comment on the tax exemption or low profits exemption but it should meet at least 1 statutory exemption and therefore have no chargeable profits.

3 -

Again i have assumed that this entitiy is 100% owned. As it is non-UK resident and and controlled from the UK it will be a CFC. I have assumed it was not purchased within the past 12 months and will not fall under the excluded territories exemption.

France is on the excluded territories list and so this exemption will apply regardless of the fact it does not meet the low profit exemption. Additionally, it is likely to meet the tax exemption as, while I do not have the exact figures, French tax at 23% is at least 75% of UK tax (which is currently 19% increasing to 25% from 1 April 2023).

In conclusion, this is a CFC but will fall within a statutory exemption and have no chargeable profits.

4 -

I have assumed that this entitiy is 100% owned. As it is non-UK resident and and controlled from the UK it will be a CFC.

As Echo is coming under UK control for the first time it will benefit from the exempt period exemptin in its first year. However, the subsequent period condition must be met that no CFC charge should arise in the subsequent period. Looking at the other exemptions, the UAE is not on the excluded territories list, it does not fall within the low profits exemption as profits >£500k, and I do not expect it to fall within the low profit margin exemption of <10% but please confirm this. Additionally, as UAE tax is only 9% this is unlikely to to reach the 75% of UK tax that would be needed to get the tax exemption. Therefore, in the subsequent period we would need to consider the Gateways explained above to determine whether any profits would fall into these. An analysis would need to be done and there may be a CFC charge in the subsequent period. If this is the case you wouldn't be able to use the exempt period exemption.

In summary, all of the subsidiaries you have mentioned are considered CFCs but all of them except Echo are likely to fall within a statutory exemption and no chargeable profits will arise. We should consider Echo's position in more detail.

Please do not hesitate to reach out should you have any further questions.

Kind regards

Katy

PART C

Answer-to-Question-6

To: Directors of Art Pring GmBH
From: K Nicholls

This memo outlines UK tax implications and filing obligations for CT and VAT for Art Print GmBH in light of your PE in the UK.

1)

Corporate tax obligations

UK resident companies are liable to UK CT on their worldwide income and gains. UK PE's (as in this case) are also liable to UK CT on worldwide income and gains as they arise. UK CT is currently 19% but is increasing to 25% for period beginning on or after 1 April 2023.

Art Print will need to file a self-assesment corporate tax return in the UK with HMRC. This will be due 12 months after the end of the accounting period. Tax is due 9 months and 1 day after the end of the accounting period if it is a small company (which I assume it will be in it's infancy). Large or very large companies need to pay tax by installments. Interest and penalties may arise if tax is paid to HMRC late.

While seperate financial accounts will not need to be prepared and filed with Companies House, the consolidated accounts of Art Print GmBH should be submitted each year.

The profits of the PE will be taxable on the distinct and seperate enterprise principle in that it will be taxed as if it were a UK resident company engaged in the same or similar activities under the same conditions. For these purposes we would assume that the PE has the same credit rating as a UK company and the PE has same equity and loan capital as could reasonably be expected.

Transactions between the PE and any other part of the non-UK resdient company are treated as taking place on an arms length basis.

2)

VAT obligations

Import VAT will be due on the import of the watches to the UK as the UK is not the place of supply. This is to stop disparity of trade. The watches will arrive at the UK border and then an officer will decide what VAT will be payble (either 0%/5% or 20% - it would likely be 20% for watches). Some companies are able to defer this payment and have a credit line so that the import VAT does not need to be paid straight away. Instead, they will be able to offset it against any export tax on the next VAT turn. This is called PVA - postponed VAT accounting.

It should also be noted that customs duty will also be payable.

There is a requirement for companies with a fixed place of business (which is the case here) to register for VAT once UK sales rise about £85,000.

If a company has no fixed place of busines they should register for VAT immediately as there is no limit and they would otherwise not be able to reclaim any VAT.

VAT returns should be filed monthly or quarterly in arrears.

Answer-to-Question-9

There are 3 types of domicile:

* Domicile of origin - this is taken from father at birth, or the mother if the parents weere unmarried

* Domicile of dependance - for minor children (under 16) this follows that of their father i.e. if his changes due to domicile of choice then the child's domicile will follow that

* Domicie of choice - this is where an individual severs all ties with a country and intends to permenently reside in another. In practice this is quite difficult to achieve.

You will only ever have one domicile. If, for any reason, domicile of choice is revoked then domicile of origin will take back over.

In the UK you can also be deemed UK domicile. This is seen in 2 circumstances:

1 - formerly domicile resident (FDR). This is where an individual is born in the UK, has a UK domicile of origin and is UK resident for that tax year.

2 - long term resident (LTR). This is where an invidual has been resident in the UK for at least 15 out of the preceeding 20 tax years.

Applying this to Filipa (F):

F is likely to have a domicile of origin of Denmark as this would have been taken from her father at birth. Although F's father did seem to obtain a UK domicile of choice later in life, it is unlikely this would have happened when F was born as he was only in the UK on a short-term assignment at that point.

F is however likely to have a domicile of dependence of the UK as when she was 12 her father had likely become UK domicile through choice through British citizenship and permenant UK home.

It is unlikely that F has obtained a UK domicile of choice as she does not intend to reside in the UK permenently.

F would never considered to be FDR as she does not have a UK domicile of origin.

She also would not be LTR as she has not been UK resident for at least 15 out of the past 20 years.

The taxation of overseas trusts is all about residence or non-residence.

If a trust is UK resident it will be taxed on overseas income and gains as they arise. However, if a trust is overseas resident (as in this case) it will only be taxed on on its UK sourced income and UK situs assets. The overseas income would not be taxable by HMRC.

In this case, HMRC would look to tax the settlor of the trust. This would only be possible if it is a settlor interest trust. A settlor interested trust is one where the settlor (or spouse for IT purposes, or spouse/children/grandchildren for CGT purposes) is also a beneficiary.

If F is a beneficiary:

If the settlor is UK resident UK domicile then IT and CGT tax will be charged on income and gains as thet arise. If the settlor is UK resident non-domicile and they are taxed on the remittance basis then only income tax on income as it arises will be taxed in the UK. CGT would not be due.

If F is not a beneficiary or is non-resident or dies, the beneficiaries of the trust will be taxed:

If the beneficiary is UK resdient UK domicile they will be taxed on income and gains as they are recieved. If the beneficiary is UK resdient non-dom and they elect to be taxed on the remittance basis, only income and gains as far as they are recieved and remitted will be taxed.

It should also be noted that as F settled into the trust while she was non-UK resident and it contains residential property that it is a protected property trust. This is assuming that no other settlements were made while she was non-UK resident.