Answer-to-Question-_1_

1)

The OECD Report on Attribution of Profit to Permanent Establishments 2010 contains general guidance in Part I and specific guidance pertaining to the application of the authorised OECD Approach to the permanent establishments (PEs) of banks in Part II.

The Report highlights that the attribution of 'free' capital to a PE can have a significant impact on the amount of profit attributed to it. Therefore, in accordance with the authorised OECD approach, it is important for the attribution of 'free' capital is carried out in accordance with the arm's length principle, to ensure that an appropriate amount of profit is attributed to the PE.

There are various different approaches which can be taken to attribute free capital to the PE of a bank, which all have their own separate strengths and weaknesses and vary in how closely the approximate the arm's length principle. The most appropriate capital attribution approach will differ depending on the specific facts and circumstances of each case.

There are 4 key approaches highlighted in the 2010 OECD Report.

The first of these is the capital allocation approach. This approach involves allocating the bank's actual 'free' capital to the PE by attributing assets and risks across the bank and then risk-weighting the assets in accordance with the Basel standardised regulatory rules. Capital is then allocated to the PE on the basis that it would hold the same proportion of 'free' capital as the PE's risk-weighted assets compared to the whole bank's risk-weighted assets.

The advantages of this approach are that it uses the Basel regulatory rules to risk-weight assets. The Report highlights that this standardised approach is a reasonable proxy for measuring risks under the arm's length principle. This approach is also advantageous because it provided an internationally accepted and consistent way of measuring risk.

However, there are a number of issues when applying this approach. Firstly as the capital allocation approach seeks to attribute the actual capital of the enterprise, in actual fact it may distribute the benefits of synergy across the enterprise in a way with minimises the possibility of double taxation. Another concern is whether temporary surpluses (possibly arising from a sale of a business venture) should be excluded from the total 'free' capital calculations. This exclusion would have the potential of distorting the capital allocation figures across different businesses and make comparability more difficult.

Another approach to allocating 'free' capital is the economic capital allocation approach. This approach allocates capital according to the bank's economic capital rather than regulatory capital measures.

The advantages of this approach are that it does conform to the authorised OECD approach as it is still based on measuring risks like the capital allocation approach. Additionally, it has the advantage of not being skewed from being tailored to be a regulatory measure of capital and is instead relies on the bank's own measures of risk.

The key disadvantage for this approach is that although this approach relies on a bank's own measures of risk, such measures have not been sufficiently 'well developed' to be relied upon yet. However, this may change in the future.

The third key capital allocation approach is the attribution of 'free' capital to the PE as that would be attributed to independent banking enterprises carrying on the same or similar activities under the same or similar conditions in the PE's host jurisdiction. This approach is known as the thin capitalisation approach.

The key advantages of this method are that it is in accordance with the authorised OECD approach as capital is attributed in accordance with the arm's length principle. Additionally, if any material differences between the economically relevant characteristics of the PE and of host country banks, reasonably accurate comparability adjustments can be made to correct for these to ensure the arm's length standard is met.

The key issue with this approach is that it nay prove difficult to compare the PE hypothesized as a separate enterprise, with independent enterprises in the host country. In general, the OECD Report highlights that the PE of a large banking enterprise would be unlikely to be comparable to a small independent banking enterprise that it would likely be compared to under the thin capitalisation approach.

The final capital attribution approach is the safe harbour approach (quasi thin capitalisation/regulatory minimum approach). This approach requires the PE to have atleast the same minimum amount of 'free' capital as the host country's regulatory body would set for an independent banking enterprise.

The advantage of this approach is that it provides an administratively simple way of ensuring the PE has at the very least the same amount of 'free' capital as the regulatory minimum for an independent bank operating in the same jurisdiction.

However, there are a number of issues with this approach. Firstly it is not an authorised capital attribution approach by the OECD because it ignores important conditions - namely that PEs generally have the same creditworthiness as the banking enterprise as a whole. Another issue with this approach is that the effect of only attributing the regulatory minimum amount of capital to countries which have banking PEs will result in an excess amount of 'free' capital being allocated to the head office.

Despite these issues, the 2010 OECD Report highlights that this approach may be acceptable as a safe harbour as long as it does not attribute profits to the PE that are beyond the range that would be attributed if one of the other authorised OECD approaches had been applies.

In conclusion, the attribution of capital is a key step in the attribution of profits to a banking permanent establishment. This is because under the authorised OECD approach, it should be attributed (like any other PE) with enough capital to support the functions it undertakes, assets it employs, and risks it assumes. The methods highlighted above demonstrate that it is difficult to develop a single internationally accepted approach to the attribution of 'free' capital, however overall, the OECD accepted approaches which should produce a reasonable analogue of the arm's length result, and they should be applying after consideration of the relevant facts and circumstances of each case.

2)

The capital attribution impacts on the interest expense of the branch because once the capital has been attributed to a PE in accordance with the authorised OECD approach, a comparison needs to be made with the actual capital allocated to the PE by the bank.

Where the amount of capital allocated by the bank is less than the arm's length amount, an appropriate adjustment may be made to the interest expense claimed by the PE. This will ensure that the interest claimed by the PE reflects the amount of capital that it actually needs to supporting its lending activities.

Any potential adjustment will be made in accordance with the rules of the PE's host country.

3)

The OECD Report highlights that the authorised OECD approach rests upon a full functional and factual analysis to determine the key entrepreneurial risk-taking functions and other functions to determine an arm's length level of profit.

Although both 'middle' and 'back office' are terms employed in the banking sector and are typically associated with a lesser reward when compared to 'front' office rules, the OECD report does not define these terms.

The existence of these functions needs to be carefully considered in order to ensure to ensure an appropriate level of profit is attributed to various parts of the banking enterprise.

Therefore although they may be badged as 'routine' by the financial or credit institution, the functional analysis should evauluate the services on their own merits on whether the reward these services recieve is accordance with the arm's length principle. For example, on further evaluation, it may be determined that these back-office or middle-office functions contribute to the the Key-entreprenerial risk-taking functions (for example regarding the subsequent management of risks associated with financial assets (usually loans). If it so determined, it is likely to be attributed a greater than routine reward under the arm's length principle.

Answer-to-Question-_2_

1)

Under the French Financial Transaction tax rules that were implemented in 2012, a tax is applies any acquisition for consideration of an equity security as defined in the 'Monetary and Financial Code', or of an assimilated security as define in the same code, once said security is listed for trading on a French, European, or foreign regulated market as defined in the same code, when the acquisition results in a transfer of ownership as define in the code, and when said security is issued by a company with registered offices in France and a market capitalisation exceeding €1bn as of 1 December of the year prior to the relevant tax year.

Under Part II of Annex 1 to the AMAFI 19-03EN French Financial Transaction Tax Guidelines, Point 3 contains the provisions by which the French Financial Transactions Tax will not be applicable to market making activities.

In particular, the market making exemption for the French Financial Transaction Tax applies to acquisitions made in the context of market making activities.

Under the AMAFI guidelines, acquisition is taken to mean the purchase, including purchase by exercising an option or a forward purchase which has been previously defined in a contract, the exchange or the allotment, in consideration for contributions of equity securities as defined in the Monetary and Financial Code.

The market making activities are defined as the activities of an investment firm or credit institution or entity in a foreign country, or local company that is a member of a trading platform or a market in a foreign country when the firm, institution or entity in question acts as intermediary and participates in the following transactions on financial instruments as defined in the Monetary and Financial Code:

a) Either in the simultaneous communication of firm, competitive buy and sell prices, of comparable size, with the result of providing liquidity to the market on a regular and continuous basis

b) In the contact of its normal activity, when executing the orders given by clients or in response to client buy and sell requests

c) To hedge positions related to the execution of transactions under points a and b.

Therefore, firstly the relevant entities that can apply the exemption include investment firms or credit institutions that are local or in a foreign country. The legislation also includes French company's that are members of global trading platforms which may involve the company acting as an intermediary and participating in the activities as described as market making.

The exemption in particular applies exempt transactions involved in the global trading aspect of banking enterprises. Investment firms and financial institutions will be utilising trading platforms to communicate pricing of transactions with customers, therefore they should not be held liable for taxes on every transaction they are engaged in as part of this.

2)

Statutory taxpayer will have to complete the relevant filings for French Financial Transaction tax and is ultimately the party held liable to report and pay any amounts due under the French Financial Transaction tax provisions.

The economic taxpayer may be held liable to the taxation. If the statutory taxpayer isn't the final 'part' of the transaction.

Answer-to-Question-_3__

1)

The UK Corporate Criminal Offence rules make it a criminal offence for a relevant body to fail to prevent the criminal facilitation of tax evasion by associated persons.

Under the Corporate Criminal Offence rules, if the relevant body fails to have reasonable prevention procedures in place to prevent the criminal facilitation of tax evasion, it will be held criminally liable.

For these purposes, the prevention procedures means procedures that are designed to prevent persons act in the capacity (for or on behalf) of a persons associated with the relevant body from committing tax evasion facilitation offences.

There are six key principles that are outlined in the Corporate Criminal Offence rules to inform organisations seeking to avert the criminal facilitation of tax evasion by associated persons.

They are as follows: monitoring and review, due diligence, proportionality of risk-based prevention procedures, communicating (and training, reporting and identification.

Monitoring and review consists of the organisation having reasonable procedures in place to monitor whether associated persons of the relevant body have the capacity to assist or aid with the criminal facilitation of tax evasion. A reasonable relevant body should also regularly review these procedures to ensure they are fit-for-purpose to identify criminal facilitation of tax evasion by associated persons.

Due diligence consists of the relevant body performing adequate checks of persons that could possible be associated with it. This not only consists of employees but also agency and contractors who may have the capacity to act for or on behalf of the relevant body. Relevant checks could include identification of previous criminal offences, which may indicate past behaviour of criminally facilitating tax evasion.

Communication and training involves the relevant body supporting staff with knowledge about the Corporate Criminal Offence rules and ensuring that regular training sessions are arranged to help staff to identify if the offence may have been committed, or to prevent the offence from arising in the first place.

Identification relates to procedures put in place to identify criminal facillitation of tax evasion by the associated persons. Reasonable prevention procedures would involve training staff on how the offence is commmited and why it is important for the relevant body.

Risk-based prevention procedures should be proportional depending on the risk. If the relevant body has assessed that associated persons have a minimal risk of committing criminal facilitation of tax evasion, it may may more relaxed prevention procedures than a sector where the relevant body is more likely to employ associated persons who are tasked with engaging in tax evasion or planning which may be a criminal offence. Reasonable prevention procedures should therefore be in proportion to the risk.

Finally, reporting is a key pillar of the reasonable prevention procedures as it ensures that HMRC and other relevant bodies are informed of any criminal facilitation of tax evasion by associated persons as soon as possible. The relevant body should have adequate procedures in place to report the facilitation offence as soon as it is uncovered.

If these criteria are met, the reasonable prevention procedures will result in the relevant body not being held criminally liable for the failure to prevent the criminal facilitation of tax evasion by associated persons.

Reporting the criminal facilitation may not prevent the relevant body from being held criminally liable, however it may aid the relevant body by being taken into account as part of its defence in any prosecution or factored into any potential fines or penalties or serious crime orders levied against the relevant body.

2)

An organisation which identifies one or more acts of criminal facilitation should report this self-report the relevant information to HMRC as soon as possible.

The information can be reported using a government gateway portal online to HMRC.

Information to be reported includes the following:

1. Jurisdiction where the tax evasion took place.
2. Details of the representative reporting the information (including role, name).
3. Details of the relevant body that the information is being submitted on behalf of.
4. Full details of the tax evasion offence (dates and amounts)
5. Details of directors (names, roles) responsible for the relevant body who can act as contacts.

As outlined earlier, the reporting of the criminal facilitation may not prevent the relevant body from being held criminally liable, however the reporting may be taken into account as part of its defence in any prosecution, or factored into any potential fines or penalties or serious crime orders levied against the relevant body.

Answer-to-Question-_5_

The mandatory automatic exchange of information in the field of taxation adopted in the EU Directive 2018/822 is a measure intended to be an effective means to enhance the correct assessment of taxes in cross-border situations and to fight fraud.

Mandatory disclosure under DAC6 requires EU member states to require intermediaries to file information that is within their knowledge, possession or control on reportable cross-border arrangements to their competent authorities.

Under the EU Directive, a reportable cross-border arrangement means any cross-border arrangements that contains at least one of the hallmarks as set out in Annex IV of the Directive.

An intermediary is defined as any person that designs, markets, organises or makes available for the implementation or manages the implementation of a reportable cross-border arrangement. An intermediary will also be any person who would know, or could be reaonsable expected to know that they have undertaken to provide aid, assistance or advice regarding the design, marketing, or organisation for the implementation or managing the implementation of a reportable cross-border arrangement.

A hallmark is defined as a 'characteristic or feature' of a cross-border arrangement that presents an indication of a potential risk of tax avoidance.

There are 5 categories of hallmarks which are classified under Annex IV as Generic hallmarks, and Specific hallmarks. Hallmarks under categories A, B, and some under category C require the 'main benefit' test to be satisfied to become reportable. The main benefit test is that the purpose (or one of the main purposes) of the arrangement was to obtain a tax advantage. Therefore hallmarks met under categories D and E require reporting under the DAC6 rules regardless of whether the main benefit test is met or not.

The 5 categories of hallmarks are as follows:
A) Generic hallmarks linked to the main benefit test - which targets promoted arrangements to avoid taxation.
B) Specific hallmarks linked to the main benefit test - which targets specific contrived arrangements which may be as the result of tax avoidance arrangements.
C) Specific hallmarks related to cross-border arrangements - these are arregements which involve tax planning to minimise taxation such as treaty shopping or transfer of assets at undervalue.
D) Specific hallmarks concerning automatic exchange of information and beneficial ownership - arrangements which limit tax transparency and obfuscate beneficial ownership.
E) Specific hallmarks concerning transfer pricing - these are arrangement which are related to base erosion and profit shifting.

Each member state requires the intermediates to file the relevant information to their relevant competent authorities within 30 days of the following, whichever comes first:
a) on the day after the reportable cross-border arrangement is made available for implementation
b) in the day after the reportable cross-border arrangement is ready for implementation
c) when the first step in the implementation of the reportable cross-border arrangement has been made.

Regarding the timelines for the new rules on mandatory disclosure applying to EU member states under DAC6, the relevant deadlines are as follows:

25th June 2018 is the date from which the EU member states must implement DAC6 mandatory disclosure rules to start the gathering of information.

31st December 2019 is the deadline by which member states must adopt and publish the DAC6 laws regulations and administrative provisions to comply with the EU Directive.

Information gathered between 25 June 2018 and 30th June 2020 will be need to be gathered for the first information exchange.

1st July 2020 is the deadline by which the DAC6 mandatory disclosure rules will apply.

31st October 2020 is the date by which the first information will be automatically exchanged between competent authorities of EU member states.

Answer-to-Question-_6_

1)

In 2016, the UK Bank Levy rates were 0.16% on short-term liabilities and 0.08% on long-term liabilities and equity.

In 2021, the UK bank levy rates will be changing to 0.1% on short-term liabilities and 0.05% on long-term liabilities and equity.

2)

The territorial scope of UK bank levy changed by limiting the UK bank levy to the UK assets of UK banking groups (i.e. UK headquartered banks). Therefore, UK headquartered banks will no longer be charged to the UK bank levy on their global liabilities.

The measures contained in the Bank Levy anti-avoidance legislation are designed to prevent the reduction or avoidance of a potential liability to the UK bank levy provisions.

The scope of the legislation refers throughout to 'relevant entity' and 'relevant group' which is defined in the legislation.

The anti-avoidance in regards to UK bank levy applies if the following conditions are met:
1. Arrangement are entered into by one or more entities
2. The main purpose, or one of the main purposes of the entity, or any of the entities, in entering the arrangement or any part of them is to avoid or reduce a charge or assessment to the bank

levy.

If the anti-avoidance legislation applies, the bank levy would be charged or assessed such that the effect of the avoidance arrangements would be absent.

As such, this could involve the introduction of a charge or assessment to bank levy where the arrangements sought to avoid the charge or assessment to UK bank levy. Otherwise, if the arrangement is caught by the anti-avoidance legislation, the UK bank levy would be charged or assessed to eliminate the contrived reduction of the charge or assessment to the bank levy.

The anti-avoidance rules however will not apply under Para 48 of Part 5 of Schedule 19 to the 2011 Finance Act if the aim of such arrangements which result in the avoidance or reduction to the charge of assessment of under Schedule 19 if the aim of such arrangements is to comply with the aim of the UK Bank Levy. Namely such arrangements have been made by the bank to move away from a high-risk funding model and raise a set amount of revenues.

3)

A foreign bank levy may be considered an equivalent foreign levy in order to obtain double taxation relief (DTR) in the UK.

To be considered an equivalent foreign levy for DTR purposes, the foreign bank levy must meet the following conditions.

Firstly, the foreign bank levy must meet the conditions for the design of bank levy as set out in the IMF's 2010 paper - "A fair and substantial contribution by the banking sector".

Secondly the foreign bank levy must be charged on the assets or liabilities of the bank. If the levy is charged on the profits, income or gains of banks, it will not be considered an equivalent foreign levy.