Answer-to-Question-_1_

1)Option 1

Under option 1 USCo will be purchasing from unrelated 3rd parties and selling directly to 3rd parties located in EU. This will be treated as a foreign branch of USCo.

Unincorporated branch will be an extension of USCo and not a separate legal entity.

It will be subject to 21% US tax on all its income as USCo is a corporate.

USCo is subject to 15% tax on its direct exports to EU.

Foreign tax credit (FTC) will be avialble against any US tax due. This will create a residual libaility as foriegn tax is lower than US tax.

Tax Advantages/Disadvantages of branch form are;
-USCo can deduct foreign losses against US source profits
-Transfer of assets to a branch is a non-taxable event
- USCo shareholders can claim direct credit for foreign taxes directly on the income of the branch.

2) Option 2

FCo is a wholly owned foreign subsidiary which has been formed, managed and controlled in country X.
A foreign corporation is a controlled foreign corporation (CFC) if a US shareholder owns 50% or more of the voting power of all classes of shares.

FCo will be taxable on its subpart F income, the income from sales to country Y will be treated as subpartF as these are made to outside of its country of incorporation.

Tax Advantages/Disadvantages of Subsidiary form are;
- Subsidiary genearlly allows US company to avoid the residual US tax on low tax foreign source income via a dividends recieved deduction.
- This option provides more control ovet the timing of income recognition.
- This option may make it easier to justify management fees and other intercompany charges.
-
-Transfers of appreciated property can trigger gain recognition.
-USCo shareholders must pay tax on dividends received from a foreign subsidiary when compared to the branch option.

Answer-to-Question-_2_

Mary is citizen of country X and her main home is there and also is closely conected to country X.

She is not a lawful permanent resident of the US in any of the the 2 options. This eliminates the Greencard test.

Under the Substantial Presence Test (SPT), Mary will be US resident if she is in the US for more than 183 days in a given year, OR if she is physicaly present in the US;
1) 31 days during the current year
2) 183 days during the 3 year period that includes,
    i) all days in current year
    ii) 1/3 of the days in previous year

iii) 1/6 of the days in pre-previous year

OPTION 1

Under option 1 Mary stays for 9 days for a family vacation and based on the first year residency rules (as this ther first year she has been ti the US) 10 days or less can be ignored if the individual had a closer conncetion to the a feorign country, which she has.

She is then resident for a business trip for 180 days, this will be her residence start date for US tax purposes, and as these are less than 183 days she is not tax resident in the US.

Also, US tax authorities allow for the connection exeption where Mary is resident for less than 183 days and her tax home and family are in country X.

However, as a non resident of US engaged in US trade or business is taxed on their effectively connceted income (ECI). The perforemance of personal services in the US, even for a single day is treated as being enagaged in US trade or buisness. Mary will be taxaable on her income if any allocable to those days.

The commercial traveller exception does not apply to Marie as she is present for more than 90 days in the US.

If country X was a treaty country then there is a much broader commercial traveller exemption as provided in Article 14. If Mary was resident for less than 183 days then she will not be taxbale on any income allocable to those days if this income was not paid by a US trade or business with a permanent estatblishment in the US. There is no income limitation. Therefore if X was treaty country then Mary would not have been taxable for her country X income.

OPTION 2

Under option 2 Mary the same basis applies to the 9 days as in option 1.

Under the SPT she is resident in the US in 2022 for 140 days, this is more thsn the 31 days, and taking into account 1/3 of the days in 2021 which equal 57 days. The total days are 140 plus 57 days, equal 197 days. Based on this she will be tax resident in the US.

Similar to option 1 she will be taxable on her personal service income for the whole year as she is deemed resident for 2022.

If X was a treaty country then although she is present for more than 183 days, the tie breaker rules will be applicable. Under these rules in Article 4, if Mary is resident in both countries then she will be deemed to be resident in the country where her permanent home is located. Her permanent home is not in the US so she will not be taxable in the US.

Answer-to-Question-_3_

1)
FCo is classed as a per se corporation so it will not be eligible for check the box election under hybrid/reverse hybrid entity classification rules.

FCO is a foreign corporation for US tax puposes operating through a branch in the US. This is an extension of FCo and not a separate legal entity.

Goods purchased in X, FCo leases warehouse in US, so there is a US trade or business and it has a permanent establishment (PE).

Income of the branch will be taxed @ 21% on the US source income. Deductions of direct costs and indirect expenses can be made from the profits but not payments to foreign headquarters for management fees or royalties. US branch losses can be offset against the foreign country operational profits depending on the local rules of X.

Branch profit tax (BPT) is applicable at 30% on the net income of the branch.

If X is treaty country then BPT would be reduced to 5%.

2)

If the US sales are carried out through an independent agent like the then this will not constitute a US PE.

However, from the scenario it s clear that USCo does not represent any other company other than FCo. Therefore, USCo is a dependent agent of FCo and also it does not have the power to bind US customers for FCo sales.

The tax consequenses will not change if USCo is used as an agent and USCo will be considered a PE for US tax purposes.

Answer-to-Question-_4_

1)

A non-resident alien purchasing a US real estate is subject to US taxation on the income or gains derived from the property.

Currently the proeprty is leased to the tenant on triple net basis which totals $250000. This amount will be treated as deemed rent payment along with the annual rent of $500000. Therefore the total rent paybale is $750000.

Rental income is FDAP (Fixed, determinable, annual, periodical) and the tenant must withhold 30% of the gross rental. in this case the tenant must withold $225000.

If no elction is made then Johan acnnot deduct the $400000 deprecition expense against the renatl income.

There will be no requirement to file a tax return if no election has been made.

2)

Johan can make an election to treat the FDAP rental income to be treated as ECI which will allow him to dedeuct the expenses incurred in the rental business.

He will also be able all the property taxes, insurance and maintenence expenses associated with the property.

He will need to file a tax return and pay the taxes based on his ECI from property for the year.

Answer-to-Question-_7_

1)
Christine (C) is a citizen and resident of country X and non-resident in the US.

Applying all the US residency tests C is not a US resident as she does not hold a green card or substantialy present in the US.

However, as a non resident of US engaged in US trade or business is taxed on their effectively connceted income (ECI). The perforemance of personal services in the US, even for a single day is treated as being enagaged in US trade or buisness. Mary will be taxable on her salary allocable to those days.

Under the commercial traveller exception a non-resident alien which C is, is excluded from US tax if they are present in the US for less than 90 days and they recieve less than $3000 for their US services.

The commercial traveller exception does not apply to C as her income allocable to 1 day in the US is (1500000/365) $4109.

2)
If country X was a treaty country then there is a much broader commercial traveller exemption as provided in Article 14. If Mary was resident for less than 183 days then she will not be taxbale on any income allocable to those days if this income was not paid by a US trade or business with a permanent estatblishment in the US. There is no income limitation. Therefore if X was treaty country then Mary would not have been taxable for her country X

income.