**Question 1**

Mango PL is a resident of Singapore. The tax consequences arising out of various structures / transactions undertaken by Mango PL are explained below:

**1. Transactions between Pawpaw PL (resident of country Z) and Mango PL**

Article 5 of the DTAA stipulates that existence of a subsidiary in a contracting state should not be presumed to give rise to a PE of the parent company.

Accordingly, in country Z, Mango PL will not be presumed to create a PE in Country Z subject to the other provisions of article 5.

**Sale of produce by Pawpaw PL to Mango PL**

It is given that all of Pawpaw's produce is sold to Mango PL.

In this connection, the transfer pricing regulations of both the countries will come into picture since Pawpaw PL is controlled by Mango PL.

The arm's length nature of the transactions between Pawpaw PL and Mango PL will need to be demonstrated in Singapore as well as Country Z. In the event, the transactions are not priced on arm's length basis, this may give rise to transfer pricing adjustment and double taxation of income which will need to be resolved by taking recourse to Article 9 and Article 25 of the DTAA.

Subject to the above, the profits of Pawpaw PL will be taxed in country Z and not Singapore.

**Payment of dividend by Pawpaw PL to Mango PL**

The dividend paid by Pawpaw PL will be deemed to arise in Country Z.

It is given that Country Z applies a tax of 20% on dividend paid to the non-residents.

As per the DTAA between Mango PL and Pawpaw Pl, the withholding rate of dividend can be reduced to 5% since Mango PL holds the beneficial ownership of all the shares in Pawpal PL (Article 10).

In Singapore, based on provisions of Section 13(8) and subject to conditions as per Section 13(9), such dividend may be exempt even if it is remitted to Singapore.

In order to avail the exemption under Section 13(8), the dividend should be
- subject to tax in Country Z and
- the headline tax rate of Country Z should be 15% or above.

If the dividend income satisfies the above conditions, it shall be exempt in Singapore. Mango PL will also be eligible for tax credit of the withholding tax paid on the dividend (as per Section 50) and can also claim credit for underlying taxes paid in respect of the dividend income by Pawpaw PL even if the DTAA between country Z and Singapore does not provide for this. (Unilateral tax credits as per Section 50A)

**2. Structure in Country B - Sale through a retail office:**

It is given that Mango PL operates through a retail office in Country B.

As per Article 5 of the DTAA between Country B and Singapore, it needs to be examined whether such office will constitute a PE of Mango PL in Country B.

The PE is defined as a fixed place through which the business of enterprise is wholly or partly carried on and includes office.

However, this article also provides a list of activities which can be considered to be of a preparatory or auxiliary nature and not constituting a PE.

The preparatory and auxiliary activities include maintenance of a premises solely for the purpose of storage, display and delivery of the merchandise belonging to the enterprise.

However, whether the activity of sales carried on by the retail office can be considered to be of an auxiliary of preparatory nature needs to be considered.

It will be difficult to argue that the activity of sales (which will form a part of the core business functions of any entity) is merely preparatory or auxiliary. It also needs to be examined where the decisions related to sales are taken.

Hence, it is likely that such retain office may constitute a PE of Mango PL in Country B.

Thereafter as per the DTAA between Singapore and Country B, the profits attributable to the PE will be determined based on the arm's length principle and shall be taxed in Country B (Article 7).

Singapore would need to give relief for double taxation suffered by Mango PL by granting tax credits or exempting the income (possibly by applying Section 13(8)(b).

**3. Structure in countries other than countries X & Y (sale through independent agents)**

It is given that Mango PL sells produce in all countries (except X & Y) through independent agents.

As per Article 5 of the DTAA, Mango PL will not constitute a PE in other countries if the business of Mango PL is carried on in the other countries through the agents of independent status acting in the ordinary course of business.

Provided that the agents appointed by Mango PL are legally as well as economically independent, the profits arising to Mango PL from sale of produce in other countries will be taxable in Singapore only (Article 7).

**4. Structure with respect to Countries X and Y:**

It is given that Mango PL owns orchards in countries X and Y from which it sells the fruits to the customers.

It is necessary to understand the taxability of the income from sale of produce in Countries X & Y.

As per the DTAA between countries X & Y, the income from an agricultural property held in those countries can be classified as income from immovable property (Article 6 of the Model Tax Convention).

However, it is also essential to examine whether Mango PL constitutes a PE in countries X & Y.

This would need to be determined in light of provisions of Article 5 to determine whether Mango PL carries on any business in Countries X & Y through a fixed place of business. It may be noted that as per the domestic law of Singapore, PE includes a plantation or a farm. Accordingly, if the PE definition as per DTAA also states that a plantation or a farm constitutes a PE, the same will need to be taken into account.

It is given that Mango PL sells in all countries (except B) through independent agents.)

Accordingly, assuming that the DTAA is identical to RECD model treaty, it may be contended that Mango PL would not constitute a PE in Countries X & Y.

However, income generated from the sale of produce may be taxed in Countries X & Y.

**Question 2**

**Determination of residence status of David as per domestic laws**

It is given that David is considered as a resident of Gorath as per the domestic laws of Gorath.

It needs to be examined whether David will be treated as a resident of Singapore as well according to the domestic laws of Singapore.

Section 2 of the Income Tax Act lays down qualitative and quantitative tests for determining the residence of the person.

The qualitative test stipulates a person to be a resident of Singapore if that person resides in Singapore except for such temporary absence there from as may be reasonable and non-inconsistent with a claim by such person to be resident in Singapore.

The quantitative test determines a person to be resident of Singapore if that person is physically present or exercises employment (other than as a director) in Singapore for 183 days or more in the year preceding the year of assessment ('YA').

In the given question, David stays in Gorath for three full years (excluding one month each in other two countries).

So on the qualitative and quantitative tests, David will be regarded as a resident of Singapore as per domestic laws.

**Determination of residence status as per the Double Taxation Avoidance Agreement ('DTAA")**

In the event of dual resident individuals, the DTAA provides for a tie breaker rule which takes into account following factors:

1. The state in which the individual has permanent home available to him
2. If the individual has permanent homes available to him in both the states, then in which state the individual has centre of vital interests (economic and personal ties)
3. If the centre of vital interests cannot be determined or the individual has no permanent home in any of the states, then where is the habitual abode of the individual
4. The state of which the individual is a national
5. In the event, the conflict cannot be determined using the above tests, the competent authorities can solve the issue using mutual agreement procedure

It is given that David has resided in Singapore for 3 years (except for 2 months spent in other countries.) Accordingly, it is reasonable to assume that David will have a permanent home available to him in Singapore.

Whether David has a permanent home available to him in Gorath is not clear. If David has a permanent home in Gorath, we would need to analyse the second step of the tie breaker rule (such as where his economic and personal relations are closer) and so on until David may be determined as a resident of one of the States.

However it will be in the interest of David to be treated as a resident of Singapore as is explained in the tax treatment below.

**Tax treatment of various incomes assuming David to be resident of Singapore**

**1. Salary income for work performed in Singapore**

Section 10 (1)(b) is the charging section for income derived from gains or profits from any employment.

Accordingly, the salary income for work performed in Singapore shall be taxable in Singapore.

Under the DTAA,even if David is considered a resident of Gorath, Gorath will not be entitled to tax the salary income of David since it accrues to him in respect of employment carried in Singapore.

**2. Salary income for work performed in Gorath for Singapore employer for one month**

The employment rendered in Gorath will be considered as an extension of employment in Singapore and accordingly, David will be taxed on the salary income earned in respect of employment in Gorath.

Under the DTAA, article 15 (Employment income) will restrict Gorath from taxing the salary income on account of the following:

1. David's stay in Gorath is less than 183 days in the fiscal year
2. David's salary is not borne by an employer resident in Gorath

This is on the assumption that the employer of David does not carry business in Gorath through a permanent establishment ('PE') and hence the salary of Gorath is not borne by that PE.

**3. Salary income for work performed in Santomino for Singapore employer**

The employment rendered in Santomino will be considered as an extension of employment in Singapore and accordingly, David will be taxed on the salary income earned in respect of employment in Santomino.

It may be noted that under Section 13N, exemption is available to not-ordinarily resident individuals ('R-NOR scheme') in respect of employment income.

David will qualify to be a Not Ordinarily Resident Individual, since he is resident of Singapore.

However, in the current situation, David will not be entitled to the R-NOR scheme since he does not fulfil the condition of being not physically present in Singapore for at least 90 days in the year preceding the YA. It is given that David is outside Singapore only for 2 months.

**4. Interest income**

Interest income from Singapore:

It is likely that this income is exempt in Singapore (Section 13 (1)(zd)if
- It is derived after 1 January 2005
- The deposit is held in approved bank or finance company

Interest income from Gorath**:**

This income can be taxed by Gorath as per the DTAA. However the withholding rate will be restricted to 10% as per Article 11.

In Singapore, even if this interest is remitted, it shall be exempt as per Section 13(7A) subject to following:

- The income is derived after 1 January 2004
- The exemption is beneficial to David in the view of the Comptroller

Interest income from Santomino:

It is given that Santomino does not impose any income tax. So this income will be tax free in Santomino.

This income, even if remitted to Singapore, shall be tax exempt, as per Section 13(7A) subject to following:

- The income is derived after 1 January 2004
- The exemption is beneficial to David in the view of the Comptroller

**It needs to be noted that the above tax treatment would undergo a change if David is considered as a resident of Gorath in light of additional details(based on the application of tie-breaker rule, for e.g. David also has a permanent home in Gorath).**

**In that event, Gorath will tax David on the worldwide income (i.e. salary for work in Gorath, Salary for work in Santomino, interest from bank deposit in Singapore, Gorath and Santomino, however subject to following limitations as per the DTAA:**

**- The salary income for employment rendered in Singapore shall be taxable in Singapore (Gorath may either exempt this income or grant a tax credit)**

**Question 3**

Introduction:

It is given that Bico (Resident of Brynland) has transferred the shares of Mico (resident of Milovia) to a new Singapore company.

We have herein not examined the tax consequences of the share transfer, however the consequences arising after the share transfer:

Advantages sought through the new structure:

1. It is given that Milovia and Brynland have no treaties with each other due to which the dividends paid by Mico (Milovia) to Brynland will attract a tax rate of 30% in Milovia, for which no tax credit may be available as per the domestic laws of Brynland (the question does not clarify whether Brynland grants unilateral credit)

2. It can be seen that the new structure is aimed to reduce the tax rate on the dividends by interposing a Singapore entity (which would be required to be resident in Singapore in order to avail the benefits) so that:

- The new entity would be eligible to the DTAA between Milovia and Singapore

- As per the DTAA (which is identical to RECD model), the dividends paid by Mico will be taxed at a reduced rate of 5% taking argument that the dividends are paid to a resident having beneficial ownership of 100% shares in Mico

- In Singapore, these dividends may either be exempt (Section 13(8) and Section 13(9) or a tax credit would be given to the withholding taxes paid on the dividends as per the DTAA. As per Section 50A, a unilateral credit on the underlying taxes in respect of the dividend may also be given in respect of the dividend income.

- Furthermore, based on the DTAA, capital gains arising from subsequent transfer of shares of Mico will be taxable in Singapore as per the DTAA and in view of the fact that Singapore does not tax capital gains, the gains would actually be tax free in both the countries.

**Risks in the structure:**

**1. Resident status of the new company:**

Whether the new entity will become a resident in Singapore or no would depend on where its control and management is located. Unless it can be demonstrated that it is located in Singapore (for. eg. the board of directors hold meetings in Singapore, all decisions for the company's control and management are taken in Singapore), this company will not be eligible to the treaty benefits.

**2. Beneficial ownership concept:**

The reduced rate of withholding for dividend will apply only if the income is paid to a resident of the other contracting state who is the beneficial owner of the shares.

Beneficial ownership should not be construed in narrow domestic sense, but would be interpreted in the light of purpose thereof.

A person would be beneficial owner of shares if that person is entitled to all the incomes from that property, without any constraints as to pass on this income to any third party.

So this concept will not just cover trustees, nominees, but also can cover other conduit arrangements.

Accordingly, it is possible that the new entity may not be considered to be a beneficial owner of the shares (and assumed to hold the shares in trust for its parent company) and accordingly may not be entitled to the treaty benefits.

**Question 4**

**Residency status of Jono PL:**

It is given that Jono PL ('Jono') is incorporated in Singapore and all the directors of Jono stay in Singapore and hold their meetings in Singapore. Hence, it can be said that the control and management of Jono is situated in Singapore and Jono will be considered as resident of Singapore.

**Chargeability of the income from professional services rendered:**

As per Section 10, income tax is chargeable on income of any person
- accruing or derived from Singapore or
- received in Singapore from outside Singapore

In respect of gains, profits from any trade, business, profession.

Income from services rendered in Singapore:

Hence, the income derived in respect of services provided to clients in Singapore will be taxed in Singapore.

Income from services rendered overseas:

It is given that half of the income from overseas work is not remitted to Singapore and remains in foreign bank account. This income shall be taxable after it is remitted to Singapore. As per the administrative concession granted by the Inland Revenue Authority of Singapore (IRAS), the expenses incurred to earn this income can be carried forward and deducted from such income.

In respect of the services rendered overseas by the employees of Jono, it is necessary to examine whether these employees create a PE of Jono in respective countries. This would depend on whether the offshore locations are at disposal of the employees, the duration of the stay of the employees at such locations (Article 5 of the DTAA)

In the event a PE is established in the overseas countries, the profits attributable to the PE will be taxable by those states (Article 7) and Singapore would need to relieve the double taxation by either exemption or tax credits.

As per Section 13(8), an exemption is available to any income derived from professional, consultancy and other services rendered outside Singapore if the Comptroller is satisfied that the income is derived from outside Singapore.

The IRAS has clarified that the income from professional services will be deemed to arise from outside Singapore if the services are rendered through a fixed base outside Singapore. The fixed base should be available/at disposal of resident in Singapore and the services rendered should not be of a preparatory or auxiliary nature.

Furthermore, as per Section 13(9), exemption is available if such income

- is subject to tax in the territory from which it is derived
- the country from which it is derived should have a head line tax rate of 15% or above

However exemption is also granted if the above income is not taxable in the other territory on account of substantial activity criteria.

Subject to the fulfilment of the above conditions, this income from professional services rendered overseas and remitted to Singapore, may be exempt in Singapore.

**Question 5**

**Determination of the residency status of Polly**

Section 2 of the Income Tax Act lays down qualitative and quantitative tests for determining the residence of the person.

The qualitative test stipulates a person to be a resident of Singapore if that person resides in Singapore except for such temporary absence there from as may be reasonable and non-inconsistent with a claim by such person to be resident in Singapore.

The quantitative test determines a person to be resident of Singapore if that person is physically present or exercises employment (other than as a director) in Singapore for 183 days or more in the year preceding the year of assessment ('YA').

In the question, it is given that, Polly has worked overseas for 6 months. Accordingly, even if the quantitative test may not be fulfilled (if her stay in Singapore in a particular year does not exceed 183 days), on qualitative test laid down by Section 2, Polly will be considered to be a resident of Singapore.

**Tax treatment of various items of income earned by Polly:**

**Salary earned from accounting firm in Singapore:**

This income will be taxable in Singapore Section 10(b) since the employment is rendered by Polly in Singapore.

**Income from share investments in Singapore:**

As per Section 13(1)(za), any dividend paid by a company resident in Singapore is tax exempt in hands of the shareholder.

Accordingly, local dividend will be exempt in Polly's hands.

**Income from share investments overseas:**

As per Section 13(7A) any income from sources outside shall be exempt in the hands of the resident individual if:

- It is received after 1 January 2004
- The Comptroller is satisfied that the tax exemption will be beneficial to the individual

Accordingly, even if the dividend income is remitted to Singapore from overseas, Polly will be exempt from the tax on the same.

**Income from sale of interest in the accounting firm:**

Whether the income from sale of interest in the accounting firm is of revenue nature or capital nature needs to be examined since Singapore does not levy any taxes on capital gains.

The six badges of trade, as initially determined by Her Majesty's Revenue and Customs (HMRC UK) and advocated by IRAS, would be required to be examined.

The six badges are as follows:
- Whether the subject matter of realisation is usually traded as a part of business or trade
- Frequency of the transactions
- Duration/tenure of holding
- Subsequent activities carried on to add value to the subject matter
- Circumstances of sale
- Motive

In the given situation, even if Polly has sold the interests within a short duration (i.e. one year after acquisition), it appears that the gain resulting on such sale tilts more towards being of a capital nature on account of following:

- Polly has not indulged in such transactions previously
- It is reasonable to assume that at the time of acquisition of interest, Polly did not intend on making a profit by selling the interest
- Purchase and sale of goodwill generally may not be considered as a transaction undertaken on a routine basis

Accordingly, the gain may not be liable to tax in Singapore.

**Income from salary from overseas client:**

This income cannot be considered to be income derived from employment exercised in Singapore.

As per Section 13(7A) any income from sources outside shall be exempt in the hands of the resident individual if:

- It is received after 1 January 2004
- The Comptroller is satisfied that the tax exemption will be beneficial to the individual

Accordingly, such income, even after remittance, will not be taxed in Singapore.

The other country may tax the salary income as per the domestic laws and as per the DTAA between that country and Singapore.

If the DTAA is based on RECD Model, the following will need to be examined:

- Whether Polly's stay in that other country is 183 days or more
- Whether the salary is borne by a resident of that country

On the balance of facts, such income will stay taxable in that country.