Answer-to-Question-_1_

Blue Octopus Pty Ltd ("Blue Octopus") is an Australian resident company and hence liable to tax on its worldwide income as per the Australia tax law.

Deduction (general or specific) is available to an Australian resident company only if it is incurred in producing the assessable income with few exception. The exempt income and non-assessable non-exempt ("NANE") income does not form part of the assessable income.

Foreign income tax offset ("FITO") is available only if foreign income tax is paid on the foreign source income and it is included in the assessable income of the Australian resident company.

The amount received by Blue Octopus will be treated in Australia as per its taxation law in the following way:

a. As per Section 768-5, if a Australia resident company has a non-portfolio interest (equity interest of more than 10%) in a foreign company, then dividend from foreign company is treated as NANE income of Australian resident company.

In this regard, dividend of $30,000 form its wholly owned subsidiary in the Cook Islands will be treated as NANE income as Blue Octopus holds 100% of the equity interest in the subsidiary and satisfied the conditions of Section 768-5. Blue Octopus cannot claim any FITO as the income is treated as NANE. Blue Octopus cannot claim general deduction under section 8-1, however, it can claim debt deduction under section 25-90.

As per Section 23-AI, dividend from a previously attributed controlled foreign company ("CFC") income is treated as NANE income of Australian resident company.

The dividend income from the subsidiary is paid to Blue Whales from a substantial term deposit, held for two years with a bank in the Cook Islands. It is possible that the term deposit income of the subsidiary Cook Island was attributed to Blue Whales in the past years as per the CFC rules. The CFC rules is applicable when a Australian company has control over the foreign company and the foreign company fails the active income test.

In case the term deposit income was previously attributed to Blue Whales, then the dividend income will be treated as NANE income and Blue Whales will be able to claim the withholding tax paid by the subsidiary in Cook Island on dividend for avoidance of double taxation. Further, Blue Whales can claim both general deduction under section 8-1 and debt deduction under section 25-90 in relation to the dividend income.

b. As per Section 768-5, if a Australia resident company has a non-portfolio interest (equity interest of more than 10%) in a foreign company, then dividend from foreign company is treated as NANE income of Australian resident company.

In this regard, dividend form its wholly owned United States subsidiary will be treated as NANE income as Blue Octopus holds 100% of the equity interest in the subsidiary in United States and satisfied the conditions of Section 768-5. Blue Octopus cannot claim any FITO as the income is treated as NANE. Blue Octopus cannot claim general deduction under section 8-1, however, it can claim debt deduction under section 25-90.

As the subsidiary in United States is carrying on business activity, we can assume that CFC rule was not applicable to the subsidiary and income was not previously attributed to Blue Whales. Hence, Section 23-AI is not applicable.

c. Interest income received from a term deposit which Blue Whales had in Shanghai will form part of the assessable income of Blue Whales. The net foreign interest income (including foreign tax) will form part of the assessable income of Blue Whales and Blue Whales will be able to claim FITO of the withholding tax paid by the bank in Shanghai. Further, it claim general deduction as per Section 8-1 and debt deduction as per Section 25-90.

d. As per Section 768-505, capital gain income from sale of shares of a foreign company is treated as NANE income of Australian company if the Australia company holds non-portfolio interest (equity interest of more than 10%) for atleast 12 months in period of last 2 years from the disposal of shares. It is not required to have non-portfolio interest on the date of disposal of shares. Further, the amount of NANE will be provided based on active business asset use percentage of the foreign company. If the asset is used in active business of the foreign company and the percentage is more than 90%, the whole capital gain income will be NANE income, if less than 10%, the whole capital gain income will be assessable income, and between 10%-90&% the capital gain income will be NANE income based on the proportion of active business asset use percentage.

Assuming that the company in Vanuatu is having 100% active business asset and Blue Whales held atleast 10% of the shares in the company for 12 months in the period of last 2 years, then the capital gain income from sale of shares of the company based in Vanuatu will be treated as NANE income of Blue Whales as per Section 768-505. No FITO will be available and Blue Whale cannot claim any general deduction as per Section 8-1 or debt deduction as per Section 25-90.

In case, Blue Whales does not satisfy the conditions of Section 768-505, the capital gain income from sale of shares will be assessable income of Blue Whales. However, FITO will be available and Blue Whale can claim any general deduction as per Section 8-1 or debt deduction as per Section 25-90.

e. Royalty income received for certain intellectual property rights, associated with a trademark owned and maintained in Ireland will form part of the assessable income of Blue Whales. The net foreign royalty income (including foreign tax) will form part of the assessable income of Blue Whales and Blue Whales will be able to claim FITO of the withholding tax paid by the payer in Ireland. Further, it claim general deduction as per Section 8-1 and debt deduction as per Section 25-90.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-2

Resonate Inc. ("Resonate") is a Singapore incorporated and resident company and hence liable to tax only on Australia sourced income and income from disposal of taxable Australian property as per the Australia tax law.

The following assets are considered taxable Australian property on which capital gain can arise:

i. direct interest in a real estate situated in Australia;

ii. direct interest in mining, quarrying or any prospective rights on minerals, petroleums or quarry situated in Australia;

iii. indirect interest in the above two conditions. Indirect interest is creating by holding non-portfolio interest;

iv. capital assets used by a permanent establishment in carrying on its business in Australia; and

v. any right or option to acquire any of the above asset.

Double taxation agreement ("DTA") is a comprehensive agreement between two countries generally on income and capital wherein it allocates the taxing rights to the residence state or source state. The main aim of DTA is to avoid double taxation and prevent tax evasion.

As per the Australian domestic law, the withholding tax on interest is 10%, royalty is 30% and dividend is 30%. However, the withholding tax rate can be reduced based the rate provided in the DTA as it is an internationally accepted principle that DTA prevails over domestic law. However, a taxpayer needs to satisfy the stipulated conditions in the DTA and should have a valid tax residency certificate of the payee for claiming the DTA benefit. Sometimes it can happen that a income is taxable in Australia but not taxable as per the DTA between Australia and the payee country and hence it will not be subject to withholding tax. Further, if an income is not taxable in Australia as per its domestic law then there is no need to apply the DTA.

The treatment of income flowing to Resonate are as follows:

a. The eight storey biding in Perth is a real estate and hence a taxable Australian property. The Australia withholding tax regime only covers dividend, interest and royalty and does not cover rent. This is one of the thing which the Australia government should consider to include in its domestic law. However, the rental income will be taxable in Australia as the source of income is in Australia.

As per Article 6 of the Australia-Singapore DTA, the rental income falls under income from immovable property and the taxing right is given to Australia as the immovable property is situated in Australia.

In the event of disposal of the eight storey building, Resonate will be liable to pay capital gain tax as it is a taxable Australian property and Article 13 - Capital gain of the Australia-Singapore DTA also holds the same view that it will be subject to capital gain tax in the country where the property is situated i.e. Australia based on its domestic law. Resonate will be able to claim on the tax paid in Australia.

b. The fully franked dividend received by Resonate will not be subject to withholding tax as per Australian tax law.

As per Article 10 - Dividend of the Australia-Singapore DTA, the taxation is generally provided to the country from where the profit has been derived. However, as per the Australian domestic law, the franked dividend is not subject to withholding tax.

In the event of disposal of shares in the mining company, Resonate will be liable to pay capital gain tax as per the domestic law as it form part of taxable Australian property. As per Para 4 of Article 13 - Capital gain of the Australia-Singapore DTA, gains from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in Australia will be taxed in Australia based on its domestic law. Hence, we can conclude that it will be taxable in Australia and Resonate will be able to claim credit on the tax paid in Australia unless it does not form part of Resonate's assessable income as per Singapore tax law.

c. As per its domestic law, unfranked dividend from mining company will be subject to withholding tax of 30% in Australia provided that it is not conduit foreign income (Division 802).

As per Article 10 - Dividend of the Australia-Singapore DTA, the taxation is generally provided to the country from where the profit has been derived and as per the Australian domestic law, the unfranked dividend is subject to withholding tax. However, the withholding tax rate will be 5% based on Article 10 provided Resonate is the beneficial owner of the dividend i.e Resonate has the discretion in relation to the application of dividend. Please refer Canadian decision of Prevost.

In the event of disposal of shares in the mining company, Resonate will be liable to pay capital gain tax as per the domestic law as it form part of taxable Australian property. As per Para 4 of Article 13 - Capital gain of the Australia-Singapore DTA, gains from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in Australia will be taxed in Australia based on its domestic law. Hence, we can conclude that it will be taxable in Australia and Resonate will be able to claim credit on the tax paid in Australia unless it does not form part of Resonate's assessable income as per Singapore tax law.

d. Business income will be taxable in Australia as per its domestic law as the sales are made in Australia.

Business income from its activities in promoting and selling products in Australia will be taxable in Australia only if Resonate has a permanent establishment ("PE") in Australia as per Article 5 of Australia-Singapore DTA. As the contract is not entered into by the distribution company in Australia (no agency PE) and the facts provided does not show any sign of fixed place PE in Australia, the business income will not taxable in Australia as per the DTA.

In order to eliminate this kind of arrangement, Australia has introduced Diverted Profit Tax ("DPT") provision in its domestic law wherein it will not be overridden by the treaty.

We assume that Resonate does not own any building in Australia in relation to promotion and sale of products in Australia.

e. As per its domestic law, interest from the Australian bank paid to Resonate will be subject to withholding tax of 10% in Australia.

As per Article 11 - Interest of the Australia-Singapore DTA, the source taxation is generally provided to the country where the debtor is located and we consider other factors such as located of underlying asset, location of guarantor, place where legal action can be take and place where the contract is entered into. However, the withholding tax rate is the same i.e 10% based on Article 11 provided Resonate is the beneficial owner of the interest.

Resonate can claim withholding tax credit in Singapore as the interest income will be considered in its assessable income as per the Singapore law.

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Answer-to-Question-3

As per the Australia tax law, fringe benefit is a benefit provided to an employee or an associate of an employee by an employer, or an associate of an employer or by a third person who has entered into such arrangement with the employer, in the course of employer. The benefit is no work related and it confers a private benefit to the employee. The employer pays the fringe benefit tax ("FBT") of 49% (in the year 2017) on the taxable amount of the benefit provided to employee. The tax period of FBT is from 1 April to 31 March.

There are various category of fringe benefit in which we need to look at the exemption available in that category and use the valuation method provided in that category to calculate the taxable value.

a. The salary of $125,000 received by Michelle will be subject to PAYG and the employer will deduct tax from the salary for which Michelle will be able to claim the credit while filing the tax return.

b. The company car provided to Michelle seems to be for private use of Michelle and hence falls under the category of car fringe benefit. Assuming that the exemption provided under car fringe benefit is not applicable, with the application of statutory cost method for valuation,

Taxable value = Statutory fraction*Base value of car*(Number of days used in FBT year/total number of days in FBT year) - Recipient's payment

= 20%*56,000*(122/366)-0

= $373.33

The car is not used for more than 4 years and hence it has not reduced by 1/3. As the car is owned by the Company, the base value of the car is taken the cost of the car to the Company.

The exemption provided is that if the car is used Michelle regarding work-related, incidental private use and the times of private use is infrequent or irregular or minor.

We have not used the operating cost valuation method due to the limitation in information.

c. Payment of Michelle's monthly telephone bill will be exempted from fringe benefit tax assuming that its taxable value was less than $300 and it was infrequent and difficult to record.

d. The loan made to Michelle for zero interest will fall under the loan fringe benefit. Since the company is not satisfying any of the exemption,

Taxable value = Loan provided * (Statutory interest rate-Market interest rate)* (Number of days used in FBT year/total number of days in FBT year) - Recipient's payment

= 200,000 * (5.45%-0%)*(91/365) - 0

= $ 2,717.53

e. Payment of Michelle's subscription to a professional computer magazine will be exempted from fringe benefit tax assuming that the magazine is work related and will help her in her job.

f. Payment of 5% of Michelle's base salary to the IT Specs Super Fund will be exempt from taxation and no PAYG tax will be deducted. When Michelle will be receiving the IT Specs Super Fund, it will be taxable in the hands of Michelle.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-5

The following taxes will be applicable:

1. Capital Gain Tax

As per the Australia domestic law, the following assets are considered taxable Australian property on which capital gain can arise:

i. direct interest in a real estate situated in Australia;

ii. direct interest in mining, quarrying or any prospective rights on minerals, petroleums or quarry situated in Australia;

iii. indirect interest in the above two conditions. Indirect interest is creating by holding non-portfolio interest;

iv. capital assets used by a permanent establishment in carrying on its business in Australia; and

v. any right or option to acquire any of the above asset.

Based on the present facts, both the house and apartment are real estate and on disposal will be subject to capital gain tax.

The expenses incurred in improving both the properties will be considered capital in nature and will be added to the purchase price of the asset, assuming that the expenses incurred improved the economic life of the house and apartment.

As per the Australia tax law, deduction can be claimed if the expenses are incurred in producing the assessable income. Assuming that both the house and apartment were rented and Linda included that rental income in its assessable income, the interest was rightly deducted by Linda then.

Capital gain = Sales consideration - (Purchase price + Improvement cost)

House = 2,100,000 - (600,000+25,000) = $1,475,000

Apartment = 3,600,000 - (900,000+300,000)= $2,400,000

2. Goods and Service Tax

Linda will also be liable to pay goods and service tax on sale of property of 6% only if it is not an input taxed supply.

Input taxed supply are of the following types:

a. Residential rent;
b. Residential premise; and
c. Financial supply;

Generally, GST is paid on by the supplier on the taxable supply or taxable importation and claims an input tax credit on the creditable acquisition and creditable importation. GST is a destination based tax and it is applicable where the goods or services are consumed.

In the present case, if Linda is registered for GST or required to be registered for GST then it can calculate the GST based on following two methods:

a. Normal method

Net amount = GST liability - Input tax credit

House = [2,100,000*(1/11) - (600,000*1/11)]
= [190,909 - 54,545]
= $136,364

House = [3,600,000*(1/11) - (900,000*1/11)]
= [327,272 - 81,818]
= $245,454

b. Margin scheme

No input tax credit available on margin scheme and GST is paid on the margin (Sales consideration - Purchase price).

House = (2,100,000-600,000)*6% = $90,000

Apartment = (3,600,000-900,000)*6% = $162,000

Hence, Linda should apply for the margin scheme provided when she purchased the same was applied that time also.

3. Stamp duty

Linda might need to paid stamp duty on registration of the assets based on the Stamp Duty Act in Australia.

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Answer-to-Question-6

As per the Australian tax law, a trust is considered a resident in Australia if the trustee is a resident in Australia or the central management and control of the trust is in Australia.

Central management and control means the place where strategic decisions are taken (Refer the decision of FCT vs. Bywater Industries Pty Ltd).

In Australia, the tax is paid by the beneficiary on trust income and in case of a non-discretionary trust, a trustee resident in Australia is liable for tax on trust income. Australia applies a look-through approach like partnership wherein the partners are liable to pay the tax. The tax rate is 30%.

As trust is not a separate legal entity and does not issue any shares, it is sometimes difficult to attribute the income to various beneficiaries based on their interest in the trust. Further, specific rules apply in computing the taxable income of the trust as per the domestic law.

The beneficiary/trustee will be able to carry forward the losses and can set-off it with the profit in future years.

Capital gain tax will be charged on alienation of interest in trust, that do no issue shares, as long as the value of these interests is derived principally from taxable Australian property.

The anti-avoidance law in relation to target trust arrangement is the transferor trust rules. It is applicable if the transferor transfers assets or properties to a non-discretionary foreign trust at a value less than arm's length consideration or no consideration. It is not applicable if the transferor transfers assets or properties to a family trust, martyry trust, family health care trust, etc.

As per the transferor trust rules, the income of the overseas trust is attributed to Australia if the information if available in relation to the income and expenses of the overseas trust. In case, no information is available, the income will be attributed based on the market value of the property and asset transferred before the date of transfer.