<u>Question 1:</u>

Based on the information provided, Sing is a tax resident of Singapore on the basis that the control and management of Sing is in Singapore.

We now examine the tax consequences of the transactions Sing is involved in:

Sourcing of coffee bean in Africa and South America through employees by travelling to the various countries and purchasing them

The employees may create permanent establishment(PE) in these countries that they are visiting to purchase the beans. Whether they create a PE will be dependent on the activities carried out as well as whether these countries have comprehensive double taxation agreement (DTA) with Singapore.

Assuming that these countries have comprehensive DTAs with Singapore,
the typical definition of a PE would include:

- an office;
- branch;
- place of management;
- supervisory and installation projects lasting for more than 6 months;
- dependent agent who carries out business activities on behalf of the person.

The typical DTAs would exclude premises used for auxiliary or preparatory services.

Based on the information provided, Sing's directors do instruct the employees on where to travel to, the purchase price, quantity to purchase etc. The employees may be seen as an extension of Sing Co and this may create an agency PE in these jurisdictions since the employees may be viewed as habitually concluding contracts on behalf of Sing.

If so, the amount taxable should be limited to the profits attributable to the PEs under Article 7 of the DTAs.

Arranging for beans to be sent to Sing's rented storage facilities in each continent

Under typical DTAs concluded by Singapore, the maintenance of stock in storage facilities should not create PEs in these countries.

However, the maintenance of stock for the purpose of delivery on behalf of Sing would create PEs in the jurisdictions. It was mentioned that the staff in the storage facilities would deliver the beans to the countries on behalf of Sing.

As such, this would create a PE for Sing in the jurisdiction where storage facilities are.

Again, the determination of the profits would follow Article 7 and only the profits attributable to the PE would be taxed in the jurisdiction.

Basing 3 employees in zero taxation jurisdiction (ZTR)

It is not clear if the employees has an office where there is a fixed place where the business activities are carried out. If they have a fixed place of business in ZTR, Sing would be considered as having a PE in the ZTR.

Even if there is no office, these employees are likely to be seen as dependent agents for Sing in the ZTR and thereby creating a PE for Sing in ZTR. Under the OECD guideline, there are a few tests to determine the dependency of the agent. Amongst them, it is that of whether the agent receives and acts upon the instructions the principal. In this case, the employees in ZTR act under the instructions of Sing, with almost no decision power on their own, since Sing will determine the sale price of the beans.

However, given that ZTR is a zero taxation jurisdiction, Sing will likely suffer no taxes in ZTR.

Cash business proceeds in ZTR

Singapore's basis of taxation is that of territorial basis. Under section 10(1)(a), income would be taxable if it is accrued or derived in Singapore or received from Singapore from outside Singapore.

The IRAS has clarified that foreign sourced income will be determined by whether the income is earned from a fixed base outside Singapore. As such, the business proceeds will likely be treated as foreign sourced and will not be taxed unless they are remitted into Singapore.

Under S13(8) of the Income Tax Act (ITA), branch profits arising from trade, dividends and consultancy and professional income derived outside of Singapore but received in Singapore will be exempted from tax if :

(i) headline tax of the foreign jurisdiction from which the income is received is more than 15%; and

(ii) the income has been subjected to tax.

Given that the tax rate in ZTR is 0%, the income would have failed the conditions and would be taxable in Singapore.

If ZTR is a developing country, perhaps there is tax sparing credit to consider such that Sing Co can claim tax credit on the foreign income?

Question 2:

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______If Bill takes up a the new position, he would be considered a tax resident of Singapore under the definition of Section 2 of the ITA.

<u>Employment income</u>

He will be taxed on his employment income in Singapore, even those from the Xodaria and zero tax jurisdiction since this is considered as an extension of his Singapore employment contract.

His employment income in Xodaria will not be taxable under the DTA between Singapore and Xodaria since he is not present in Xodaria for more than 183 days and assuming that his employer in Singapore does not have a PE in Xodaria which bore his salary.

Before his move, he should be considered a tax resident of Singapore , given that he stays in Singapore for 183 days. His income would not be exempt under the DTA and he would be taxable in Singapore. However, he can claim credit for the Singapore tax suffered on his emplpyment income in Xodaria.

Dividend income

The Singapore dividend income would not be taxable in Singapore. The dividend income from Xodaria and zero tax jusridiction may be exempt under section 13(7A)(b) if the Comptroller is satisfied that the income is beneficial to Bill.

Before his move, the dividend income from Singapore and zero tax jurisdiction would be taxable in Xodaria, with credits given to him.

Rental income

The rental income derived from his property in Xadoria will not be taxable in Singapore since it is not considered to be sourced in Singapore. This is unless it is remitted into Singapore. Even if this is the case, section 13(7A)(b) may provide for an exemption if the Comptroller is satisfied that the income is benefial to Bill.

Before his move, he derived income from rental of apartment in Singapore. The rental income will be taxable in Singapore (source country) and possibly in Xadoria. He can claim a tax credit on the Singapore suffered on rental income received from Singapore.

Question 3:

Setting up subsidiary (Sollie) in Singapore by Bollie

(i) Singapore tax consequences

Bollie should not be seen as having a PE in Singapore by virtue that it incorporates Sollie in Singapore. This is explicitly stated in the typical comprehensive DTA between Singapore and its treaty partners.

Therefore, there is no adverse tax consequences for Bollie in Singapore.

(ii) Country M tax consequences - depending on the local taxation rules of Country M, it may be taxable on the profits of Sollie.

Subsidiary Sollie incorporated in Singapore

(i) Singapore tax consequences

Taxation of Sollie in Singapore

Sollie will be liable to Singapore income tax on its income accrued or derived in Singapore.

Sollie's main source of income should be from the profits derived from the development and sale of properties in Singapore. It is not clear what the principal activities of Sollie is or what the intentions of Sollie is after the sale of the properties.

In determining whether Sollie is in the business of sale of properties, one would typically look at the badges of trade. No single factor is conclusive and they have to be looked at as a whole.

The badges of trade are:

- nature of the object in question;
- motive when the object;
- frequency of transaction;
- period of ownership;
- circumstances leading to sale;
- anything done to enhance the object;

On a balance of factors, the profits form the sale of the property may be viewed as arising from Sollie's trade. This is on the following basis:

- Sollie sold the properties within 2 years, which is not considered a long holding period;
- Sollie does not have a voice of its own and takes instructions from its parent, Bollie, who has completed similar projects in Country M, indicating a likelihood that the transactions are

likely to be trade in nature as it appears that Bollie is in the business of developing and selling properties;

- no special circumstances leading to the sale of the properties - Sollie is likely selling the properties for profits.

Tax residency of Sollie

Sollie may not be considered a tax resident of Singapore. Under section 2 of the ITA, a company will be treated as a resident if its control and management are in Singapore. Based on the information available, the directors of Sollie does not appear to have decision making power in Singapore since they are required to follow instructions on Bollie on all matters.

Sollie may have problems assessing the DTAs if it is not considered as a tax resident of Singapore.

Profits extraction

If Sollie were to repatriate its profits to Bollie via dividend payment, there would not be any dividend withholding tax. Bollie will likely be taxable on the dividend. Bollie may be able to claim underlying tax credits on the dividend income, depending on Country M’s domestic tax rules.

Question 4:

The administration of tax residency in Singapore is a key step to ensuring that Singapore supports BEPS, which one of the aims is, preventing treaty abuse.

Tax residency is a key in determining whether the companies have access to tax treaties. In issuing the certificates of residences (which proves residency), the IRAS will typically look at the substance of the company and determine if the company is a conduit company. This is one of the ways to prevent treaty abuse.

However, this cannot be the only method which is used by Singapore in preventing base erosion and profit shifting. There must be other methods which Singapore is adopting.

Singapore is working hard to adopt the minimum standards set forth under the BEPS programme. It has now implemented the CbCr reporting and more recently,

has signed the multilateral convention, which allows for Singapore to amend/update the treaty provisions with its treaty parters more easily. This will mean that Singapore will be able to follow the recommendations by the OECD under the BEPS programme more swiftly as it will be able to adopt the recommendations into its tax treaties in a timely fashion.

In conclusion, the administration of tax residence for companies cannot be seen as the only way for Singapore to ensure that it does not facilitate base erosion and profit shifting by MNCs.

Question 6:

Tax incentives in Singapore is aimed at promoting Singapore's economy, without making Singapore into a tax haven. To achieve this, the government and its agencies have done quite a lot of work in ensuring the substance of the companies when awarding the incentives.

To be granted incentives in Singapore (be it administered by EDB, IE Singapore or Spring Singapore), the companies are required to have substance. The agencies will typically look at the headcount, revenue projections and the business plans for the companies before awarding the incentives. Upon the granting of the incentives, companies are also required to submit annual review reports so that the agencies can keep track of their milestones. The incentive may be revoked if the companies do not meet the milestones. With the development of BEPS, the agencies are also tightening the criteria for the incentive awards and evaluating the impact.

I agree that under the BEPS environment, the granting of tax incentives may be viewed as a way of creating unfair tax competition (i.e. attracting companies to low tax jurisdiction). However, this is only true if the companies do not have substance and are not carrying actual business activities.

Given the stringent process of selecting candidates for the incentive awards, I believe that Singapore would be able to defend itself in front of the treaty partners and international counterparts that it is transparent and careful in its award of incentives. Also, by awarding the incentives, it is not in any way trying to create unfair tax competition, but rather, promoting its economy and not compromising its tax sovereignty.

Therefore, I do not see the grantung of tax incentives as problematic under the light of BEPS. Singapore will need to be more diligent in administering its incentive programmes to achive its aim of promoting its economy and not being viewed as a tax haven.