Answer-to-Question-_1_

Report
To: Radcliffe Group Finance Director
From: Tax Advisor

Dear sir,

Part 1: Summary of UK Anti-Hybrid Laws

The UK's recently-introduced anti-hybrid laws are intended to prevent double-deductions, or deductions without matching inclusions in chargeable tax, that would otherwise arise as a result of mismatches between the UK's domestic tax legislation and that of other countries. It is targeted at mismatches that arise as a result of differing treatment of either:
- entities (primarily whether they are treated as opaque or transparent) or
- instruments/securities (primarily whether they are treated as equity or liabilities).

The legislation, at part 6A od rhw Taxation (International and Other Provisions) Act 2010, sets out a number of different scenarios it is targeted at, along with counteraction measures. The main ones are set out below.

All of them apply only where the parties to the transaction are related. Parties are related if one has a 25% investment in the other, or if a third person has a 25% investment in both of them.

MISMATCHES FROM FINANCIAL INSTRUMENTS

Mismatches in this category arise where a debt or other financial instrument is in place between twe related parties, and the terms of the instrument mean that the deduction available to the payer exceeds the taxable income of the recipient.

Counteraction:
- if the payer is within the charge to UK corporation tax, the deduction is reduced to match the income of the recipient.
- if the recipient is within the charge to UK corporation tax, the recipient's income is increased to match the payer's deduction.

HYBRID TRANSFER DEDUCTION/NON-INCLUSION MISMATCHES

This arises where the payer will receive a deduction but the recipient will not have taxable income. The counteraction is:
- if the recipient is within the charge to Corporation tax, its taxable income will be increased to match the payer's deduction; or
- if the payer is within the charge to Corporation tax, its deduction will be reduced to match the recipient's income.

HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

This arises where the nature of the payer means that the payment is treated as a deduction in its territory of resident, while the payee is not taxed on its receipt. This, and other hybrid entity mismatches, commonly occurs as a result of one territory treating an entity as a partnership or similar, while the other treats it as a company.

The counteraction is:
- if the hybrid payer is within the charge to corporation tax, its deduction will be restricted to the amount on which the payee is taxable.
- if the payee is within the charge to corporation tax, its taxable income will be increased to the amount of the payer's deduction.

HYBRID PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Thi is as per the previous category (including the methods of counteraction), but applies where the npayee, rather than the payer, is the hybrid entity.

DEDUCTION/NON-INCLUSION MISMATCHES RELATING TO TRANSFERS BY PERMANENT ESTABLISHMENTS

This applies where a payment, or a notional ('quasi') payment is made by a UK permanent establishment ('PE') of an overseas company to the company in its overseas jurisdiction, which would otherwise result in a deduction for the purposes of calculating the PE's UK corporation tax, but no corresponding taable income in the overseas company in its territory of residence.

Counteraction:
- the deduction for the PE is restricted to the income taxable in the hands of the company in the overseas jurisdiction.

MULTINATIONAL PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

This applies where
(1) the payee is an overseas-resident company and, under the rules of its territory of residence, it is treated as having an overseas PE (including in the UK);
(2) The payer is within the charge to corporation tax; and
(3) as a result, the payment is treated as deductible in the UK but not chargeable to tax in the payee's jurisdiction of residence.

The counteraction is that the payer's deduction is restricted to the extend of the mismatch.

HYBRID ENTITY DOUBLE DEDUCTION MISMATCHES

This is where the presence of a hybrid entity results in deductions in both the UK and the other territory allowing a deduction.

The counteraction is that the deduction in the UK is disallowed to the extent that it results in a double-deduction.

OTHER GENERAL RULES

In respect of the double-deduction categories, credit will be given where other transactions etc result in double-inclusion (i.e. a taxable receipt in both jurisdictions. This can be set off against the counteraction of the double-deduction, but cannot under the hybrids legislation create a UK deduction in itself.

Part 2: Application to Radcliffe Group's transactions

In relation to each of the transactions you have described, my opinion, based on the information available so far, is as follows.

I understand that all of the group companies are wholly under common ownership, so the cotrol group test for the hybrid legisltion to apply is met in all cases.

CHLOE LTD

This appears to be a hybrid instrument mismatch. For UK tax purposes (absent the hybrid rules), payments in relation to the debt are treated as interest, and hence are deductible for the purposes of calculating Chloe's Corporation Tax liability.

The foreign fisc treats the income as a dividend, and gives a 90% exemption for foreign dividends. For this reason, I would expect only 10% of the receipt in the foreign company to be taxable there.

This means that there is a Deduction/Non-Inclusion mismatch to the extent of 90% of the payments. If other conditions are met, the legislation will counteract this by disallowing 90% of Chloe's deductions.

Other UK legislation:
- Transfer pricing is unlikely to apply, as the loan is at arm's-length.
- Worldwide debt cap leglislation may apply if the indebtedness of the UK sub-group exceeds that of the US-headed international group.

RADCLIFFE INC/SITA LTD

This appears to be a multi-national payee deduction/non-inclusion mismatch.

UK legislation treats Sita Ltd as a company, and hence it gets a CT deduction for interest payable under the loan.

For US purposes, Sita Ltd is a branch. As it is not possible to pay interest to onesself, there will be no taxable income in the US.

The UK hybrid rules will counteract this by disallowing the deduction for Sita Ltd to the extent that it is not matched by an inclusion in the US taxable profits. The facts given suggest that this means the deduction will be fully disallowed.

Transfer pricing (thin-capitalisation) rules may also apply if the terms of the loan are not at arm's-length.

SWINTON LTD

There does not appear, from the information given, that a mismatch arises in this case under the terms of the UK hybrid legislation. If:
- the royalties are treated as revenue deductions/receipts in both jurisdictions; and
- both entities are treated as opaque (i.e. normal companies) in both fists,
then the arrangements will be out of scope.

Howevever, there are other pieces of UK legislation that might apply, including:
- Transfer Pricing may restrict Swinton Ltd's deductions if the royalty rate is not an arm's-length one.
- Diverted Profits may apply, with the same result (though potentially at a higher UK tax rate) if there is artificiality in the arrangements
- Controlled Foreign Companies Legislation may apply depending on the group structure (i.e. if the Ruritanian company is controlled by a UK person).

RADCLIFFE INC PERMANENT ESTABLISHMENT

This may be a Permanent Establishment Double-Deduction Mismatch if the US tax rules allow the full amount of the third-party deduction to be claimed for US tax purposes. More information would be required, and it may be necessary to consult with a US tax expert, to consider whether this would be the case.

If a mismatch does arise as a result of this arrangement, the legislation would counteract it by restricting the UK deduction to the extent that it results in a double-deduction.

GENERAL

As noted above, some relief may be available from the counteractions described if there are other transactions that produce double inclusion mismatches. There is no evidence to suggest these from the information provided, but assurance should be sought that these do not exist, in order to mitigate the risk of double taxation arising as a result of the application of the hybrid rules.

Please don't hesitate to let me know if you would like to discuss this further.

Yours faithfully,

Tax advisor.

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

Answer-to-Question-_2_

Memo
To: JS
From: Tax Advisor
Re Broup company residence position

Dear JS,

UK Company residency rules - general

The UK has two tests for company residence:

1) An incorporation test, which is a relatively straightforward, binary test of where the company is legally incorporated.

2) A test of Central Management and Control ("CMC").

This is more complicated, and has been tested in case law. It was first articulated in its current form in the De Beers case, in which a company owned and operated South African mines. Its board of directors, however, met and made strategic decisions in relation to the company in London. It was held that, even though the company's operations and day-to-day operational managemment were located in South Africa, its CMC, and hence its residence, were in the UK.

This led to a focus on where companies' board meetings are held. However, the test is not as simple as that, and it has been refined to look at where important strategic decisions are actually made, even though this may not be where the board meets. Two cases provide a contrast for this.

In Wood v Holden, the company's board met outside the UK, where the directors were resident, but the majority shareholder was resident in the UK. The directors included the shareholder's agent and the shareholder gave instructions to the board on decisions to take. It was held, however, that CMC was not in the UK because, although the shareholder was providing input and the board took these into account, the board were no mere 'ciphers' and they did substantively make decisions. Hence the company was not UK-resident.

In the Laerstate case, however, a director resigned from the company's board, which met in the Netherlands, and became resident in the UK. Here, he was held to exercise control from the UK, as he continued to exercise control; the remaining board members were not found - on the facts - to actually be empowered to take decisions and/or actually take them.

I will now turn to the three groups of companies described.

Telesis (BVI) Ltd ("TBVI")

I note that the directors of TBVI are described as 'nominees' and that you take an active role in the group's key strategic management decisions. If it could be interpreted that you are, in fact, making such decisions, and that the directors do not have actual authority to make them, or have such authority but do not habitually exercise it, then it is likely that, under the UK, the company's residence would be where you make the decisions. If this is in the UK, then the company's residence is likely to be in the UK. This would be in line with the Laerstate decision.

Another factor, which might lead HMRC to conclude, at least prima-facie, that the company is resident in the UK is that you control 100%of the company's shares. Although not determinative, this would suggest that your voice carries weight in decision-making that non-shareholder directors would not have.

In order to prevent TBVI from being treated as UK-resident, you would need to either:
- Ensure that the BVi boad members were taking substantive strategic decisions. This would presumably cause some difficulty in that you would potentially have to relinquish a significant degree of control over your own group. It would also be necessary to evidence that this were the case. Board meeting notes showing that the board were substantively taking decisions (preferably in your absence) based on information available to them, or gathered through work commissioned by them, would be helpful with this, as would email trails and other contemporaneous evidence showing the board carrying out or commissioning work to support strategic decision-making.
or
- ensure that you do not do any work in relation to the group, and particularly that you do not make or consider any strategic decisions, while in the UK.

Intermediary holding companies

I note that these companies are described as having little substance in their territories of incorporation. If CMC resides in the UK, then they will be dual resident (assuming these countries also have incorporation tests.

For the holding companies incporated in jurisdictions with OECD residence tie-breakers, taxing rights will be assigned to the territory where the company's Place of Effective Management ("POEM") is situated. Although this is not the same test as the UK's CMC test as it places a little more emphasis on day-to-day management, if there is no substance in the territories of incorporation, then it is likely that POEM will lie in the same place as CMC.

It is not clear whether the companies' boards sit in their territories of incorporation, BVI (e.g. consisting of the same directors as TBVI), or in the main operating company in Hamburg. If they meet in BVI, then the same considerations will applly as for TBVI in determining whether there is a UK CMC and hence residence.

If the directors meet in Hamburg or the territories of incorporation, then an additional consideration will be the extent to which their boards are influenced by the TBVI board. As subsidiaries of TBVI, their boards could technically be voted out by TBVI; this means that, prima facie, this company exerts control over them. It does not necessarily forllow that CMC rests with TBVI, however. It would be necessary to establish whether the subsidiaries' board substantively make strategic decisions, or whether they act on instructions from TBVI. If it is the latter, then their CMC, and hence residence, will follow that of CMC, so the comments above about your role in CMC will apply.

In order to ensure that the intermediate holding companies are not viewed as being UK-resident, the same advice would apply as for TBVI. To be more certain, it should also be ensured that there is evidence to demonstrate that the holding companies act independently of TBVI when making strategic decisions.

Telesis GmbH

It is not entirely clear from the facts given, but I assume this is the company that holds the German head office building and functions.

It appears that this company is incorporated in Germany. It also appears that its board meets and makes strategic decisions there. The only possibility of it being UK resident would be, as per the above, if you personally exert sufficient control over the directors of the company and their strategic decision-making that it could be said that CMC rests with you in the UK.

Given that you have indicated that the boards of the in-market commpanies are "strong", this appears unlikely. Even if it is the case, however, it is likely that the OECD residence tie-breaker will apply to ensure that residence is treated as being where POEM rests. Given that POEM gives more weight to the day-to-day management of a company, it is hard to imagine that a case could be made for POEM lying with you in the UK; if nothing else, you would not have the capacity/time to exert day-to-day control to the extent necessary to constitute a place of effective management.

UK-resident, non-UK domiciled individual's tax paying position

Based on the information you have given me, you will become UK-resident when you move to the UK. You will be unlikely to become domiciled in the UK, however, unless you intend to remain permanently or indefinitely. There are various tests and case law that apply to evidence this, but I will assume for the moment that these are met.

All UK-resident individuals are taxable on the whole of their worldwide income and gains on the 'arising' basis - i.e. they are taxable when they arise. However, UK residents who are not UK-domiciled may be taxable on the "remittance basis". This means that overseas incomme and gains only become subject to UK tax when, and to the extent that, they are remitted the UK. Broadly, "remitted" means "brought into" the UK, but there are certain other circumstances where a transaction/transfer may be treated as a remittance, e.g. paying somebody overseas for services rendered in the UK, or repaying an overseas lender in relation to debts secured on UK property.

You can remit capital that has not arisen as a result of income/gains during the time that you're resident in the UK without UK tax arising. In order to keeep this available, care should be taken to separate UK income/gains from pre-existing capital, as there are 'mixed funds' rules that mean, where such classes of assets are mixed, they are treated as arising from UK income/gains *first*, and therefore taxed. The easiest way to do this is to ensure that non-UK income/gains arising once you are resident in the UK are kept in different bank accounts from other capital.

A resident, non-domiciled individual can benefit from the remittance basis automatically (i.e. without election) if total non-UK income and gains are less than £2,000 in a tax year. If they are more than that, an election must be made in order to benefit from the treatment. You will also need to declare and nominate a source of income in respect of which the remittance basis will apply. Some taxpayers set up a very small overseas bank account for this purpose.

For the first 3 years of UK-residence, it is possible to benefit from Overseas Workday Relief. This means that income from any employment that is performed partly in the UK and partly outside the UK can be taxed under the remittance basis to the extent that duties are performed outside the UK. After the third year, all such employment is taxed on the arising basis. This can be avoided by ensuring that UK and non-UK employment duties are performed pursuant to two different employment contracts.

Long-term UK residents must pay an annual fee to continue to benefit from the treatment. If you remain in the UK for 7 years, this will begin to apply and you will have to pay £30,000 per annum to continue to benefit from it.

Note that you also lose your UK personal allowance if you elect into the remittance basis. Any income/gains that are remitted in order to pay this fee are not treated as remittances for the purposes of calculating UK tax. (This does not apply if you qualify for the remittance basis by virtue of having less than £2,000 of non-UK income/gains.)

These costs of electing into the regime may influence the decision as to whether it is worth proceeding.

I hope this is helpful in supporting your decision-making. Please don't hesitate to let me know if you have any further questions.

Yours sincerely,

Tax advisor

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

Answer-to-Question-_3_

- email -

From: Tax Specialist
To Janet Palmer
Re: Proposed secondment and tax issues

Dear Ms Palmer

As requested in your email of DATE, I am writing to set out my views on the matters you have raised. Please note that I am assuming that Bob will remain UK-domiciled.

<u>1) Bob's residence</u>

Bob may not be UK-resident in 2016/17 on the facts given. He does not meet the first automatic UK residence test as he will be present in the UK for less than 183 days in the year.

He is likely to be non-UK resident under the UK's 3rd automatic overseas test. He is going to be working full-time overseas, without any significant breaks from overseas work, and:
- he will be spending less than 91 days in the UK (you have told me he will be here for no more than 3 weeks)
- there will be fewer than 31 days on which he is working more than 3 hours in the UK.

Split-year treatment will not apply, as he will arrive on 6 April 2016.

If you wish to ensure that Bob will be UK-resident in the year, I would suggest you ensure that he does at least 31 days of work in the UK. It is likely that, by virtue of his ongoing ties to the UK, this would result in UK residence.

<u>2) Ace Developments (UK) PAYE requirements</u>

Ace Developments (UK) Ltd will be required to operate PAYE in respoecct of Bob's Salary in respect of functions carried out in the UK. This is by virtue of the fact that he will remain an employee of this company.

Bob's residence position does not make a difference to this.

<u>3) Bob's liability to income tax</u>

If he were UK-resident, Bob will be liable to tax in respect of his worldwide income, including in respect of his employment duties in Canada.

If he is not UK-resident, then he will be liable to UK tax in respect of duties performed in the UK but not in respect of duties performed in Canada.

If he is UK-resident, Bob may be entitled to receive tax-free reimbursement of his travel to his posting. Travel for his visits back to the UK are also exempt on condition that:
- he is absent from the UK wholly and exclusively for the purpose of performing employment duties
- the duties ca nonly be carried out outside the UK;

- the journey is from outside the UK or back

His spouse and children are also permitted to be reimbursed for two return trips between the UK and Canada tax-free.

There is no provision for Bob to receive reimbursement of UK mortgage expenses tax free.

4) National insurance

Generally, a person is subject to Social Security payments in the country in which work is performed. However, where there is a bilateral agreement such as the one described, a person can continue to pay contributions in the country of employment. A condition of this is that the individual remains employed in the UK.

There are time limits on eligibility for this treatment, which will depend on the terms of the agreement between the UK and Canada.

To ensure that UK social security benfits continue to accrue, the employer will need to obetain a certificate from the Canadian authorities to demonstrate that contributions have continued to be paid.

5) Liability to income tax

If Bob is UK resident and domiciled, he will still be subject to tax on his employment duties performed both in the UK and in Canada. If he is non-resident, he will be liable in relation to duties performed in the UK but not for those carried out in Canada.

Bob will not be able to claim any exemption from UK tax in respect of relocation expenses etc. as these do not apply where an employer is not based in the UK.

6) National insurance if Bob employed by Ace Developments

The treatment described above is only available if the employer is based in the UK, so Social Security payments will be required to be made in Canada.

7) Options if bilateral social securiukty agreement between Canada and UK does not preserve entitlement in the UK

If Bob wishes to continue to accrue entitlement to social security benefits in the UK, he may be able to pay voluntary UK NICs to preserve basic UK pension rights.

Healthcare benefits are generally not covered, so Bob/the company would need to ensure that adequate healthcare cover is put in place.

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Answer-to-Question-_6_

Part 1)

The UK's Controlled Foreign Companies ("CFC") provisions potentially apply where non-UK companies are controlled from the UK.

Controlled means that a UK person, or one or UK persons combined, owns at least 25% of a compnany's share capital, controls at least 25% of its voting rights, is entitled to at least 25% of ditributions, or would be entitled to at least 25% of its assets on wind-up.

If a company meets this definition, there are 5 exemptions that may prevent a CFC charge from arising.

If none of these applies, then we look to whether it passes through one of 5 gateway tests. If it does, then a CFC charge will apply.

This will be a wholly-owned subsidiary company, so it will meet the definition of a CFC. We therefore must look at the exemptions:

Exempt period exemption

This does not apply, as the company will be newly set-up. It can onlly apply to companies that were operating prior to becoming a CFC.

Excluded territory exemption

This applies if the country of residence is an excluded one, as set out in a statutory instrument. Ireland is not an excluded territory, so this doesn't apply.

Low profits exemption

This applies, boradly, if the accounting profits or assumed taxable profits of the CFC will be less than £50,000 per annum. It does not appear that this is likely to be the case.

There is an alternative £500,000 threshold for CFCs with trading activities, but this is unlikely to apply as the company will only have non-trade activities.

Low profit margin exemption

This applies if the profit margin of the CFC is less than 10%. This generally isn't applicable to finance companies.

Tax exemption

This applies if the tax on the CFC's profits in its territory of residence will be at least 75% of the tax that would be due in the UK. The Irish tax rate of 12.5% is less than 75% of the UK's rate, so this will not apply.

Next, we must consider which gateway, if any, the CFC's profits pass through. This is a finance company, so one of the finance profits gateways will apply. As it's not, essentially, carrying out banking operations, it will be the non-trading finance profits gateway under Chapter 5 of the legislation.

The CFC does not have incidental non-trading finance profits, so the "5% rule" (broadly, that incidental loan relationship profits in connection with a trade of the CFC) does not apply.

The company will not be taxed on finance profits in relation to:
- loans funded out of qualifying resources, that is funds that it has itself generated through ongoing activities, as oppose to funds provided to the CFC from the UK; or
- if it makes an election under Chapter 9 of the legislation, 75% of qualifying loan relationships, that is loan relationships with companies that are connected with the CFC and that are controlled by the same UK resident person or persons that control the CFC.

If the company makes a claim under Chapter 9 of the legislation, it may be able to claim exemption from 75% of profits

<u>Part 2)</u>

Withholding tax would not be payable on interest paid to an Irish finance company, as the UK's domestic legislation does not impose withholding tax on interest or similar payments made to Irish residents.

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Answer-to-Question-_8_

Memo
From: Tax Advisor
To: Giuseppina

Re: UK Domicile, Income Tax, Capital Gains and Inheritance Tax

Dear Giuseppina

1) Domicile

There are three kinds of domicile in English and Welsh law
- domicile of origin, which broadly is the domicile of your father. I am assuming your father's domicile was Italy.

- domicile of dependencer, which applies to a minor where parents/guardians move their domicile. It appears likely that your family's move from Italy to Dublin constituted a change to your domicile for this reason.

- domicile of choice. Under limited circumstances, an individual can choose to change their domicile. This broadly equates to a decision to remain in a place indefinately or permanently. We must consdier whether you have chosen to move your domicile to the UK.

There is case law that considers this question. Factors that have been brought out in legal cases include:
Cultural ties: in the Gaines Cooper case, reasons that the taxpayer was held to be domiciled in the UK included his attendance at cultural events, including Royal Ascot.

In the Clore case, the taxpayer had indicated to an attorney that he was homesick. This was seen as a factor indicating that he was domiciled in the place for which he was homesick.

Other factors indicating a UK domicile could include:
- ownership of property
- the presence of friends and family
- ownership of a burial plot in the country
- one's banking and credit card facilities being in the country.

The fact that you feel settled in London would tend to suggest that you have a English/Welsh domicile. However, you say that you expect to acquire property in Dublin. If this is with the intention of moving to that property in the future, and you would be able to evidence that, it might help to show non-UK domicile. The fact that you have a UK passport would also help.

If you wish to remain non-UK domiciled, you could also ensure that your banking arrangements are in Ireland and you could consider taking other steps such as buying a burial plot there.

Trust arrangements

There are unlikely to be significant UK tax benefits from transferring this property into a trust.

Yours sincerely,

Tax Advisor