THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2021

MODULE 2.09 – UNITED KINGDOM OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Dear Mr Cavendish

PSI Group – Controlled Foreign Companies (CFC) Analysis

Further to your recent correspondence, please find below an explanation of the CFC regime and how it will affect the PSI Group.

Definition

A controlled foreign company (CFC) is defined in s.371AA TIOPA 2010 as a company which:

- is not resident in the UK, but
- is controlled by a UK resident person or persons.

Control means either the power to secure the affairs of the company as to how they wish, or, a holding of more than 50% (with one UK holder of > 40% plus non-UK holders of > 40% but less than 55%).

With the exception of Tyres Ltda, all of the PSI Plc companies are non-UK resident and are 100% owned by the UK company, therefore will be "controlled foreign companies". PSI Plc only has a 20% interest in Tyres Ltda and so fails the above control test and is therefore not a controlled foreign company.

The rules were introduced as an anti-avoidance measure, to prevent UK companies from diverting profits to low tax jurisdictions and thus avoiding the charge to UK tax.

Therefore, if a company meets the CFC definition and does not fall to be exempt under any of the entity level exemptions or "gateway tests" (examined below), its profits will be apportioned back to the UK company, based on their % holding (of at least 25%) and will be taxed in the UK at the main rate of Corporation Tax (currently 19%) – this is known as the "CFC Charge".

Exemptions & Applicability to the PSI Group

There are 5 exemptions contained in TIOPA 2010 Part 9A, s.371 that may apply to the PSI Group, in order to avoid the CFC charge, namely:

- Exempt period – a temporary 12-month period in which the CFC was in non-UK ownership before being purchased by the UK company.

  This will not apply to the PSI Group as all the companies have been owned for some time.

- Excluded Territories – a list of these countries is available on HMRC's website and should be checked against the applicable countries in this group.

- Low profits exemption – this applies where the total taxable profits are less than £50,000, or less than £500,000 with less than £50,000 relating to non-trading income.

  It would appear that Pressure Ltd in Bahrain will qualify for this exemption as its total taxable profits are £400,000 and interest receivable is £40,000, therefore this company will not come within the CFC charge and is exempt.

- Low profit margin exemption – this is where the profit margin is less than 10% of the operating expenses of the company and is most often relevant for relatively low value added, such as back office functions, local marketing and distribution operations and call or data processing centres.

This appears to be relevant to Tube Sp. Z.o.o. as this entity carries out back office and marketing activities and has an 8% profit margin, therefore it will be exempt from the CFC charge.

- Tax exemption – this is where the local tax amount is greater than 75% of the corresponding UK tax (after deducting any withholding taxes suffered).

  Given that the current Corporation Tax rate in the UK is 19%, the profits of the CFC must be taxed at a rate not less than 14.25% in its jurisdiction, in order to be exempt from taxation in the UK.

  Tread Pte, in Singapore, has a Corporation Tax rate of 17% (so is greater than 75% of the UK rate of 19%) - this would indicate exemption under this test and therefore there would be no CFC impact for this company, however further information would be needed to confirm this. Other tax rates are unknown.

It does not appear therefore that any of the exemptions will apply to the profits of Grip Ltd – it is not a recently acquired subsidiary so cannot benefit from the exempt period exemption, Hong Kong is not on the on the excluded territories list, it does not fall within the low profits or low profit margin exemptions and the rate of Corporation Tax is 10%, so it is unlikely to be within the tax exemption. Therefore, if any of the profits of Grip Ltd pass through any of the five gateways, those profits may be subject to tax under the CFC regime.

We must therefore consider the five gateways as below.

<u>Gateway Tests</u>

There are 5 main gateway tests per Part 9A TIOPA 2010:

1. Profits attributable to UK activities (Chapter 4) – possibly applicable here – see analysis below.

2. Non-trading Finance profits (Chapter 5) – interest on loans etc not for trading purposes – there is no information provided on the finance operations of the group, therefore presumed not applicable.

3. Trading Finance Profits (Chapter 6) – applies to profits derived from UK connected funding or interest free loans, which form the main business trading activity – not applicable here.

4. Captive Insurance (Chapter 7) – business activity is the provision of insurance services, so not applicable here.

5. Solo Consolidation (chapter 8) – designed for banks etc, so not applicable here.

The first gateway test “profits attributable to UK activities” may be the most relevant here to Grip Ltd, however, there are a number of exceptions and safe harbours from this test, which we must consider first.

The gateway will not apply if any one of the following questions/conditions are met (TIOPA 2010 s.371CA):

- Does the CFC hold assets or bear risks, the main purpose of which is to reduce or eliminate UK tax? Known as the “motive test” and the most important condition.

- Does the CFC have any UK managed assets, bear any UK risks?

- Does the CFC have the capability to carry on its business efficiently itself – ie can it stand on its' own two feet without the UK's help?

- Are the CFC's total profits only non-trading loan relationship or property profits?

If none of these apply, we must also consider the significant people functions test (SPF) - where are key business and management decisions made, who makes them and where are the risks managed or controlled from, are they UK or non-UK based? If the SPF is outside the UK, the profits will be excluded from the CFC charge by this gateway.

There are also various "safe harbour" conditions, which if all met, will exclude the company's profits from the CFC charge.

- Business premises – if the CFC has a physical presence in its territory of residence and not simply a "brass plate" entity. The premises must be the place where its main activities are carried out and has a reasonable degree of permanency (more than 12 months).

- Income – the CFC must have a relatively small proportion (less than 20%) of its income from the UK.

- Management expenses – management activity/expenditure does not exceed 20% of the CFC's total expenditure.

- IP – does the CFC derive its profits from IP transferred from the UK within the last 6 years?

- Export of goods – is a significant proportion (greater than 20%) of the CFC's income relate to the export of goods from the UK?

From the information given, it would appear that Grip Ltd may have the ability to carry on its business profitably itself, with minimal assistance from the UK, nor does it have any UK managed assets or risks. It recruits locally, receives no financial assistance and receives only some support services from the UK.

The company has a permanent physical presence in Hong Kong, presumably with an office and/or factory and its income seems to be derived from local sales. Even although UK directors visit Hong Kong, providing they do not get involved in any decision making and the local office makes its own management decisions – the SPFs will be outside the UK and therefore the company's profits of £850,000 will be exempt from a CFC charge in the UK.

<u>Conclusion</u>

To summarise, none of the groups overseas entities profits, will be subject to the CFC charge in the UK. However, each overseas company/territory should still be reported on PSI Plc's self-assessment tax return on pages CT600(B), identifying the relevant exemption, as covered above.

An annual review should be carried out of potential CFCs and their business activities, examining each exemption and gateway test to ascertain whether they apply for each entity.

We hope you find the above useful, but please do not hesitate to contact me with any further queries.

Thank you.

Yours faithfully

Tax Adviser

Question 2

Part 1

Patrick will “physically” spend 80 + 64 = 144 days in the UK in 2019/20.

Patrick’s residence will be determined by reference to the statutory residence test, which is set out in FA 2013 Schedule 45 Part 4.

Under the SRT a day is counted as a UK day if the person is in the UK at midnight. There are very limited exceptions where days in the UK do not count. One such exception is that days spent in the UK due to exceptional circumstances may be ignored. HMRC guidance explains how HMRC apply these provisions:

“What are exceptional circumstances?

Days spent in the UK may be ignored if the individual’s presence in the UK is due to exceptional circumstances beyond their control. This will usually only apply to events that occur while an individual is in the UK and which prevent them from leaving the UK.

Exceptional circumstances will normally apply where an individual has no choice concerning the time they spend in the UK or in coming back to the UK. The situation must be beyond the individual’s control.”

Patrick’s accident certainly would qualify as an exceptional circumstance which prevents Patrick from leaving the UK.

Relief for exceptional circumstances is limited to 60 days. Applying these rules Patrick may exclude 60 days he is prevented from leaving the UK for health reasons. It is very important that the medical opinion ‘prohibiting’ travel is documented in case HMRC argue that the exceptional circumstances only apply to his hospital stay.

Applying the relief for exceptional circumstances, Patrick is treated as spending 144 – 60 = 84 days in the UK in 2019/20.

It is very important to appreciate that whilst the deduction for exceptional days may reduce the number of days an individual is treated as being present in the UK, it does not apply to all conditions in the SRT. For example, it does not apply for the purposes of determining whether the country tie is met, see below.

Within the SRT there are various ‘tests’ which may apply. The tests are hierarchical. The highest level tests are the ‘automatic’ UK resident tests and the ‘automatic’ overseas residence tests. The automatic overseas tests have primacy and if Patrick satisfies any of the automatic overseas tests then he is not UK resident.

The SRT also distinguishes been “leavers” and “arrivers” to the UK. As Patrick left the UK in April 2017, 2019/20 is the third year after he left the UK. He is treated as a leaver under the SRT, as he has been UK resident in at least one of the three prior years.

The first automatic overseas residence test applies to “leavers”. Under this test Patrick will be non-UK resident for the tax year if he were resident in the UK for one or more of the 3 tax years prior to the current tax year, and he spent fewer than 16 days in the UK in the tax year. As Patrick spent more than 15 days in the UK he would not satisfy this test.

The second automatic overseas test does not apply to leavers, i.e. those who have been UK resident in any of the three prior years so I will not consider this further.

The third automatic overseas test applies where a person leaves the UK to take up full time employment abroad. As Patrick left the UK on his retirement this test does not apply.

As Patrick has not passed any of the automatic non-resident tests, the next tests that must be considered are the ‘automatic’ UK tests.

The First automatic UK test is that a taxpayer will be UK resident for the tax year if they spend 183 days or more in the UK in the tax year. Patrick fails this test.

Turning to the Second automatic UK test; a taxpayer will be UK resident for the tax year if they have, or have had, a home in the UK for all or part of the year and the following conditions all apply:

- there is at least one period of 91 consecutive days when they had a home in the UK;
- at least 30 of these 91 days fall in the tax year when they have a home in the UK and are present in that home for at least 30 days at any time during the year; and
- at that time either, the taxpayer had no overseas home, or if they had an overseas home, they were present in it for fewer than 30 days in the tax year.

As Patrick spent more than 30 days in his Monegasque home in 2019/20 he will not meet the conditions of the second automatic UK test.

The Third automatic UK test relates to full-time working in the UK. As Patrick is retired we do not need to consider this test.

As Patrick does not satisfy any of the automatic non-resident tests or the automatic UK resident tests, his tax resident status will be determined by the sufficient ties tests.

As explained above Patrick is classified as a “leaver” for the purpose of applying these tests.

The number of UK ties he has will determine how many days he may spend in the UK in the tax year without being UK resident. As Patrick is a ‘leaver’ 5 ties are relevant.

<u>Accommodation</u>

Any accommodation that is available for a taxpayer’s use whilst in the UK will be relevant for these purposes. The accommodation must be available to use for a continuous period of at least 91 days during the tax year and must actually be used for at least one night during that tax year, before it counts as a tie.

As Patrick resided in his UK home on his visits to the UK, his UK home will be treated as an accommodation tie for these purposes.

<u>Family</u>

As Patrick’s children are adults they will not constitute a tie under this condition.

To determine whether Jessica will constitute a family tie, her residence status must be determined without reference to the family tie she may have with Patrick.

Jessica’s Ties:

- Family tie: N/A
- Accommodation: Yes
- 90 Day: No
- Work tie: No
- Country tie No

Jessica has spent 80 days in the UK in the period 6 April 2019 to 1 February 2020 she will spend a further 20 days in the period 2 February to 5 April 2020. Thus she will spend 100 days in the UK in 2019/20 compared to 120 days plus 44 = 164 days in Monaco. She therefore will not have a country tie.

Jessica will spend 100 days in the UK, but 20 may be treated as exceptional, leaving 80 days. For the purpose of determining whether she constitutes a tie to Patrick as she has just one tie and has spent less than 90 days in the UK she will be treated as non-resident when determining Patrick's status. Patrick therefore does not have a family tie.

<u>90-day tie</u>

As Patrick spent 95 days in the UK in the immediately prior tax year, Patrick spent more than 90 days in the UK in at least one of the two previous tax years and will have a tie under this test.

<u>Work tie</u>

This condition is triggered by reference to a 40-day threshold. For these purposes, a person works in the UK if they work more than 3 hours in the UK.

As Patrick is retired he will not have a tie under this connecting factor.

<u>Country tie</u>

A country tie arises if a taxpayer spends more time in the UK, than in any other jurisdiction.

It is important to underline that exceptional days are not excluded for these purposes. Patrick will therefore spend 80 + 64 = 144 days in the UK in 2019/20. As he will only spend 120 days in Monaco he will have a country tie as he will have spent more time in Monaco than in the UK this year.

Patrick therefore has 3 ties (Accommodation, 90 day, Country tie).

The following table applies to leavers and explains the relationship between the number of ties a leaver has with the UK and the number of days they may spend in the UK without becoming resident here.

Days spent in the UK in the tax year under consideration	UK ties needed
16 – 45	At least 4
46 – 90	At least 3
91 - 120	At least 2
Over 120	At least 1

Where a taxpayer has 3 ties they may only remain in the UK for 45 days if they wish to be non-UK resident. As Patrick has 3 ties and spends 144 – 60 = 84 days in the UK in 2019/20 he will therefore be UK resident under the SRT.

<u>Part 2</u>

<u>'Temporarily non-resident' anti-avoidance provisions</u>

Anti-avoidance applies which may tax certain income and gains in the year of Patrick's return as is explained below. Where an individual is temporarily non-resident anti-avoidance legislation may apply so that certain income and gains arising in the period of non-residence are subject to tax in the year the individual returns to the UK. FA 2013 Schedule 45 Part 4 at para 110(1) provides that an individual is to be regarded as "temporarily non-resident" if: (a) the individual has sole UK residence for a residence period, (b) immediately following that period (referred to as "period A"), one or more residence periods occur for which the individual does not have sole UK residence, (c) at least 4 out of the 7 tax years immediately preceding the year of departure were either: (i) a tax year for which the individual had sole UK residence, or (ii) a split year that included a residence period for which the individual had sole UK residence, and (d) the temporary period of non-residence is 5 years or less. As Patrick has previously been UK resident we may assume he has been UK resident in at least 4 of the 7 years preceding the year of his departure 2017/18. He will have only been non-resident for 2017/18, 2018/19 and 2019/20 returning to the UK after just three years of non-residence. He will therefore be treated as temporarily non-resident if he is UK resident in 2020/21 as this is within 5 complete tax years of his departure.

Thus any gains arising on assets held at the date of departure but disposed of in the period of non-residence will be subject to UK tax in the year of his return to the UK i.e. 2020/21. Also any dividend income received from a close company of which he is a participator may also be within these provisions.

Turning to the income and gains specifically mentioned. In 2018/19 Patrick sold shares in his private company generating a capital gain of £5 million, this gain would be subject to tax in 2020/21. However, although that year Patrick also received a £1 million dividend from shares he held in a publicly listed company, this dividend would not be assessable as the company is not a close company.

PART B

Question 3

REPORT
To: Group Tax Director, ILT Group Ltd
From: Tax Manager
Date: today
Subject: Permanent Establishment & Transfer Pricing Review for the ILT Group Ltd

Introduction

This Report sets out the review undertaken for the Group relating to their International operations and what PE risks they may be subject to, along with how the Transfer Pricing legislation will affect them.

Background Legislation

A Permanent Establishment (PE) is defined in Article 5 of the OECD Model Tax Treaty as having either:

- a fixed place of business, through which the business of an entity is wholly or partly carried on; or
- an agent who acts on behalf of the company and who habitually concludes contracts, or plays a leading role leading to the conclusion of those contracts.

A fixed place of business can be:

- a place of management;
- a branch;
- an office;
- a factory;
- a workshop;
- a mine, an oil or gas well, a quarry or other place of extraction of natural resources; or
- a building site or construction or installation project (if lasts more than 12 months).

However, a company will not be regarded as having a PE if it carries on its business through:

- an independent agent acting in the ordinary course of their business; or
- if the activities are of preparatory or auxiliary nature.

Application to ILT Group Ltd

It is important to consider whether the activities of the Group will give rise to taxable permanent establishments (PE) in each country of operation. The definition of a PE should be checked under the domestic law and the Double Tax Treaty of each relevant country, but for these purposes it is presumed to be similar to that in the OECD Model.

A fixed place of business will exist, if the Group has a right to use a place in a country, with a degree of permanence. This could, for example, include a place of management, an office, a factory, or a workshop. It does not matter whether the Group owns the place, leases it, or uses space in a building owned by another group company.

From the information provided it appears likely that the current offices in Singapore, Brazil and Europe, would constitute fixed places of business and therefore would be subject to taxes and filing obligations in those jurisdictions.

However, if the Group only carries out ‘preparatory or auxiliary’ activities, then they will not be at risk of creating a permanent establishment. Examples of preparatory and auxiliary activities include:

- The use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to a company.

- The maintenance of a stock of goods or merchandise belonging to a company for the purpose of storage, display, or delivery.

- Purchasing goods or merchandise, or for collecting information for a company.

Therefore, it is likely that the holding of stock in the various warehouses would be classified as preparatory and auxiliary activities and not create any PEs.

For the expansion into China, once the ILT Group progresses beyond any preparatory activities to, for example, setting up an office or renting premises in China, or the sales team conclude contracts there, this will give rise to a permanent establishment. They should then register with the Tax Authorities there, to enable them to file returns and pay local taxes.

The sales teams’ activities across the globe will also need to be monitored closely – especially those employees who travel to promote the Groups’ learning courses.

Those employees, or “company agents” who act on behalf of the company and who habitually conclude contracts, or play a leading role leading to the conclusion of those contracts, will now create an agency PE. Basically, if they carry out the detailed negotiations or “rubber stamp” the deal, this will lead to the creation of a permanent establishment in that jurisdiction.

Consideration should also be given to the potential impact of the OECD’s BEPS project (Base Erosion & Profit Shifting), action point 7 on permanent establishments. This looks specifically at the definition of a PE and seeks to tighten the related tests for such, for example:

- The preparatory or auxiliary activities exemption test – is the activity essential and significant, or just supportive in nature as a whole? All exemptions will now be subject to this test.

- The “anti-fragmentation” rule, whereby the aim is to prevent companies or groups, splitting up business activities into several smaller operations, in order to avoid the 12-month rule, or splitting activities across separate legal entities, or those that are merely engaged in preparatory or auxiliary activities.

- Artificially avoiding PE status by using commissionaire arrangements ie. if a person sells the company’s products in his/her own name, but it is on behalf of the company who owns the products.

The Group should therefore monitor their activities closely, in order not to fall foul of the above tests.

<u>Transfer Pricing documentation and filing requirements</u>

The UK transfer pricing rules (TIOPA 2010 Part 4) require that transactions undertaken between connected persons should be undertaken at an arm’s length price (ALP). The UK transfer pricing legislation not only relates to cross border transactions, but also to transactions between connected UK entities.

Transfer Pricing (TP) legislation applies to large enterprises (more than 250 employees, greater than €50 million turnover or greater than €43 million of a balance sheet total). There are exemptions for SME's - if it has no more than 50 staff and either an annual turnover or balance sheet total of less than €10 million.

Thus, the ILT Group will fall into the large category and should adhere to the TP rules and BEPS Action Point 13 which focuses on TP documentation and CbC reporting requirements – a 3-tier approach (Master File, Local File and CbC Report).

Although the Group has some intercompany agreements in place and a general TP policy, this is not sufficient from a compliance perspective. It has intercompany transactions including a license fee for use of the Groups' I.P., management fees and some intercompany loans.

In order to be compliant and to support the arms' length principle, it should therefore:

- Implement intercompany agreements for each of the above transactions with all subsidiaries, carrying out a benchmarking survey in order to determine the best TP method to use, for setting an arms' length price for each transaction.

- Prepare a Master File for the Group, which is a high level global review of the Group and will include items such as: the Group structure, geographical locations in which it operates, overview of its supply chain, a general description of the Groups' TP policy, the types of intercompany transactions it has and its consolidated financial statements, etc.

- Prepare Local Files for each country in which it operates. This file will include a more detailed, country specific analysis of the intercompany transactions and will include items such as: the local organisation structure, key competitors, details of the controlled transactions, a detailed comparability and functional analysis, details of the TP method used and the local entity financial statements.

The Master File and Local Files do not need to be submitted to HMRC as part of the Corporation Tax Return, however there are penalties for failing to have any documentation in place - £3,000 plus possible tax geared penalties for lost revenue.

Documentation should be reviewed every year and updated as necessary, every 2-3 years at least.

<u>Country by Country Reporting</u>

Country by Country Reporting (CbCR) rules came into effect for accounting periods commencing on or after 1 January 2016. The rules impact worldwide groups where the consolidated group turnover is greater than €750 million.

The CbCR rules cover any UK resident Ultimate Parent Entity (UPE) of a worldwide group, therefore the ILT Group will satisfy the above threshold and will need to compete and file a CbCR.

A CbCR gives global tax authorities a view of the Groups' global revenue, profit, number of employees, taxes paid and accrued, share capital and value of tangible assets for each territory in which they operate. They can then use this report to cross reference the information in it with local filings and also exchange information with other tax authorities.

The report template can be found in the Appendix to the BEPS 13 report and the deadline for filing a CbC report is 12 months after the end of the period to which it relates.

Summary/Recommendation

To summarise our above findings, the ILT Group should:

- ensure they register/are registered with tax authorities where they have a fixed place of business and file all the relevant tax returns as required by local legislation;
- create a tracker to monitor their employees whereabouts, travel and activities, re contract negotiations, etc. in case they inadvertently create PE’s;
- monitor the third party contractors’ activities re selling the Groups’ products/courses;
- have intercompany agreements in place for all transactions between group companies;
- prepare TP documentation ie a Master File and Local Files for each jurisdiction in which it operates; and
- complete and file a CbCR by 31 March 2021 (for FY ended 31 March 2020).

Question 4

Domicile is a central concept for determining the liability of an individual to UK income tax, capital gains tax and IHT. The common law concept of domicile requires that every individual has a domicile in a specific legal jurisdiction, for example in England and Wales or in Scotland. Under English law, whilst an individual must always be domiciled somewhere, it is only possible to have one domicile at a time. Common law domicile does not, however, equate to habitual residence and the place where a person is domiciled is not automatically simply the jurisdiction of their habitual residence or their citizenship.

There are three types of domicile:

1. Domicile of Origin: A domicile of origin is acquired at birth. It is usually that of the individual's father. Domicile of origin, is particularly adhesive, however, it may be displaced by domicile of dependency or choice.

2. Domicile of Choice: A domicile of origin may be displaced by a domicile of choice in another jurisdiction. To acquire a 'domicile of choice' the individual must have attained the age of 16 and be physically present in that jurisdiction and have a fixed and settled intention to live there permanently or indefinitely.

   If an individual does establish a domicile of choice in another country, and that domicile of choice is abandoned for any reason without being replaced by the acquisition of another domicile of choice, their domicile of origin automatically revives. This rule applies (whether or not the person has any present links with that country). The domicile of origin then remains their domicile until they have a fixed and settled intention to acquire another domicile of choice.

3. Domicile of Dependency: An unmarried child under the age of 16 has a domicile of dependency which normally follows that of their father.

"Deemed" domicile: "15 out of 20 rule"

The definition of domicile has been extended for certain UK tax purposes.

From 6 April 2017, an individual will become deemed domiciled if they have been resident for 15 out of the 20 years ending with the tax year immediately preceding the relevant tax year. The individual becomes deemed domiciled at the beginning of the 16th tax year (whether resident or not in that year).

Analysis

It seems clear that Lara Lefevre's domicile of origin is French, as her Father was French and at her birth had strong intentions to return there. It is perhaps possible that prior to the age of 16, Ms Lefevre's father acquired a domicile of choice in the Netherland as the question mentions both her parents eventually settled in the Netherlands. If this is the case Ms Lefevre's domicile would have followed that of her father and she would have acquired a Dutch domicile of dependence. Regardless of whether a Dutch domicile of dependency was acquired prior to attaining the age of 16, it is likely that in any event, Ms Lefevre subsequently acquired a domicile of choice in the Netherlands given that she was born there and currently resides in Amsterdam. However, domicile is a complex concept, in which the intentions of the individual are key, so that further investigation is required to give a more definitive answer.

If Lara does come to the UK, it is unlikely that she would acquire a UK domicile of choice, given the move is intended to be for a limited duration only. Factors such as an individual's intentions (for example, where they intend to retire), their wills, permanent place of residence, and business, social and family commitments etc. will be taken into consideration when determining whether a domicile of choice has been acquired.

In conclusion, whilst Ms Lefevre's domicile is likely to be Dutch, if she remains in the UK, beyond the period envisioned in her initial plans, a detailed review of her domicile status would then become imperative.

The importance of tax residence and domicile

- Your exposure to UK tax depends both on your domicile and on your tax residence status.

- A person who is domiciled and resident in the UK will be subject to UK income tax and capital gains tax on all their income and gains worldwide. They will be subject to UK inheritance tax (IHT) on their worldwide assets.

- A person who is non-UK resident is only generally liable to tax on certain types of UK source income, and, since April 2019, is also subject to capital gains tax on both the sale of UK commercial and residential property. If the person is non-UK domiciled, IHT applies only to any of their UK assets (including residential property held through offshore structures), but if the person is UK domiciled (or deemed domiciled), IHT applies to their worldwide assets, even if they are not UK resident.

Non-UK Domiciled tax regime

UK resident but non-domiciled taxpayers may elect to pay tax on the remittance basis.

- The election for the remittance basis is made on the individual's tax return.

- Where a non-domiciled individual is taxed on the remittance basis they are assessed on their UK income and chargeable capital gains on an arising basis, however they are only taxed on their foreign income and capital gains to the extent these are remitted to the UK.

- An individual may elect for the remittance basis without charge for the first 7 years of their UK tax residency.

- Where an individual elects for the remittance basis they lose their personal income and capital gains tax allowance.

Investment Portfolio

The income and gains generated by Ms Lefevre's portfolio, to the extent they relate to non-UK situs assets will only be taxed if they are remitted to the UK. It will be necessary to review the portfolio to ensure that the income and gains arising on any UK shares and securities are taxed on the arising basis. Prior to coming to the UK an exercise might be undertaken to rebalance the portfolio to exclude UK assets.

Odin Ltd

Even though Odin has ceased trading, if that company were to pay dividends to Ms Lefevre at a time she was UK resident she would be subject to income tax on those dividends, if these were remitted to the UK to fund her living expenses.

Subject to Dutch tax advice, it would therefore be preferable if dividends were paid prior to Ms Lefevre becoming UK tax resident as these would then constitute capital which she could bring to the UK tax free after she became UK tax resident.

International property portfolio

Any dividends from UK property companies would be taxed on an arising basis, as would any capital gains arising on the disposal of shares held in those companies.

Planning

If possible, cash should be generated whilst Ms Lefevre is non-resident, which might then be earmarked and preserved as capital. Capital should be kept in separate offshore bank accounts and kept strictly segregated. In particular, there should be no addition to these accounts of offshore income and gains, arising during the time Ms Lefevre is UK resident. The preserved capital would then be available to be utilised by Ms Lefevre, after she becomes UK resident to fund her UK expenditure.

PART C

Question 5

Part 1

UK Withholding Tax

Withholding Tax (WHT) is an amount of tax deducted by the payer of an invoice and which is subsequently paid over to their tax authorities. It is a pre-payment of tax, or a way for Governments to tax the income at the time and at source (i.e. in the country in which the customer is resident), rather than trying to collect it at a later date.

Therefore, a non-UK resident company that receives a royalty from the UK, has a UK source of income, which will be subject to UK tax. Typically, this Withholding Tax is treated as a payment on account of the non-resident recipients final tax liability.

By withholding the tax, you are in effect acting as agent of the UK tax authorities.

The UK Withholding Tax rate on royalties is charged at the basic rate of tax, currently being 20%. This may be reduced under the terms of a Double Tax Treaty (DTT), however as Baritania does not have a DTT with the UK, the full 20% is due.

Payment and reporting obligations

Royalties are due at 6% on sales of £25 million which is £1.5 million
Withholding Tax to be withheld is therefore 20% of £1.5 million = £300,000

You will need to report the royalties paid and the tax deducted to HMRC on form CT61.

The CT61 should be filed within 14 days of the end of the return period in which the royalties are paid. The return periods for BarCo's CT61's will be the quarter end dates 31 March, 30 June, 30 September and 31 December.

The tax should also be paid within this timescale.

Part 2

Email to: Finance Director@BarCo.co.uk
Subject: Subsidiaries – Withholding Tax process

With reference to your recent request, I have set out below the information about the royalty, dividend and interest payments received by BarCo Ltd during the year ended 31 December 2020 and the process of applying for any applicable tax reliefs.

Depending on the local domestic laws of the other group companies, they may be required to withhold tax on the payments made to the parent company in the UK. However, it may be possible to reduce this Withholding Tax as far as 0% under the relevant Double Tax Treaty or an EU Directive.

Dividends Received

Article 10 of the relevant Double Tax Treaty sets out the taxing rights of each State, thus reference should be made to this, in order to determine the correct tax treatment of the dividend.

Dividends received from EU countries during the current year ended 31 December 2020 can apply the Parent Subsidiary Directive (PSD), which enables a nil rate of withholding tax to be applied to payments of dividends between associated companies within different EU member states.

Companies are defined as “associated” where one holds 10% of the share capital of the other for a minimum period of two years.

However, post-Brexit, this Directive no longer applies to reduce the rate of withholding tax to nil and so reference should be made to the relevant DTT between the two countries to see if it totally exempts dividends from WHT, as in the case of France or Spain for example, or whether it imposes a limit on the level of WHT that can be deducted.

If no DTT exists, then the local rate of WHT in the subsidiary’s country, will apply to the payment. The net dividend should then be remitted to the UK parent company, whilst the Withholding Tax deducted, should be paid to the relevant Tax Authority.

<u>Royalties Received</u>

Article 12 of the relevant Double Tax Treaty sets out the taxing rights of each State, thus reference should be made to this in determining at what rate of Withholding Tax should be deducted from the royalty payment.

Royalties received by BarCo from other EU countries during the current year ended 31 December 2020 would be able to apply the Interest and Royalties Directive (IRD), which enables the payment of royalties between associated companies within EU member states to be exempt from withholding tax.

The definition of “associated” is different in this case:

- whereby one company must hold at least 25% of the share capital or voting rights of the other; or

- a third company must directly hold at least 25% of the share capital or voting rights in both companies.

As with the PSD above, post-Brexit, this directive will no longer apply to payments made during the year ended 31 December 2021. Reference should therefore be made to the DTT between the two countries to establish any reduced rate of withholding tax that may apply.

If no DTT exists, then the local rate of WHT in the subsidiary’s country, will apply to the payment. The net royalty should then be remitted to the UK parent company, whilst the Withholding Tax deducted, should be paid to the relevant Tax Authority.

<u>Interest Received</u>

Withholding Tax on interest payments only applies to loans over 1 years’ old, so will apply in this scenario to the loan between the UK and the US subsidiary.

The UK:US Double Tax Treaty should be referenced– Article 11 reduces the rate of Withholding Tax on interest payments between the US and the UK to nil, therefore no deduction will be made for Withholding Tax on the interest payments made to the UK from the US.

Summary

To benefit from reduced treaty rates, a treaty application form will usually be required to be completed and stamped by the overseas EU/other Tax Authority, in advance of the payment being made, to enable the payer to make the payment at the reduced treaty rate or to be exempt. Most of the forms which are required should be available on HMRC's website.

This form can also be used to claim back some, or all, of the WHT suffered within the terms of the Double Tax Treaty, against the parent company's UK Corporate Tax liability at the year end.

I would recommend reviewing and identifying existing dividend, royalty and interest payments that are being paid cross border within the EU and consider what the Double Tax Treaty position will be for each. Also, a review should be carried out of the WHT applications already in place and what new treaty forms will be required in the jurisdiction of the paying company, to enable payments to be made with the benefit of the treaty rate.

I hope this helps answer your queries, but please do not hesitate to contact me if you require any further information.

Kind regards
Group Tax Manager

Question 6

Part 1

Non-resident companies trading in the UK

Shanghai MedCo will be subject to UK Corporation Tax if they carry on a trade in the UK through a Permanent Establishment (PE). We should consider the definition of a PE under the Double Tax Treaty between the UK and China, which is based on the OECD Model Tax Treaty and also under UK legislation (s.1141 CTA 2010).

Article 5 of the OECD Model Tax Treaty states that a PE is created when an overseas entity has:

- a fixed place of business, through which the business of an entity is wholly or partly carried on; or
- an agent who acts on behalf of the company and who habitually concludes contracts, or plays a leading role leading to the conclusion of those contracts.

A fixed place of business can be:

1. a place of management;
2. a branch;
3. an office;
4. a factory;
5. a workshop;
6. a mine, an oil or gas well, a quarry or other place of extraction of natural resources; or
7. a building site or construction or installation project (if lasts more than 12 months).

A company will not be regarded as having a PE if it carries on its business through an independent agent acting in the ordinary course of their business, or if the activities are of a preparatory or auxiliary nature, neither of which seems to be the case here.

Therefore when Shanghai MedCo start trading activities in the UK, by any of the above means, they will create a permanent establishment in the UK.

Branch

A PE, or branch, is cheaper and easier to set up than a legal entity, as it is an extension of the overseas parent company, plus it is more easily wound-up if the venture fails. A branch can also be converted to a subsidiary at a later date if required.

Therefore, if Shanghai MedCo were to set up a branch in the UK, this would be treated as a "fixed place of business" which would constitute a PE and thus be subject to UK Corporation Tax at 19% on the profits attributable to it (CTA 2009 s.19(3)).

A PE will have attributed to it, profits it would have made if it were a distinct and separate enterprise dealing on an independent basis with the head office, therefore transactions should be at an arms' length price.

General and administrative expenses for the PE are allowable in computing its profits subject to UK Corporation Tax, on the same basis as would apply to a UK resident company. No deduction is allowed for royalties or interest payments made to other parts of the non-resident company.

If a PE has start-up losses, these can be carried forward against future PE profits but may also be available against the non-UK profits of the Chinese entity, subject to their local legislation.

Shanghai MedCo should therefore register the branch with HMRC's self-assessment system, in order to submit tax returns and pay Corporate Tax as and when it becomes due. A branch does not have to file its' own financial statements, instead it must file the overseas parent company's consolidated financial statements at Companies House annually.

Local Entity

If Shanghai MedCo were to incorporate a local entity or subsidiary, this will be a separate legal entity to the overseas company and will be subject to tax on its worldwide profits. The normal UK rules for computing taxable profits will apply. If the entity incurs losses, these can be relieved in various ways, subject to certain rules.

Shanghai MedCo should register the subsidiary with Companies House, in order to submit its annual financial statements and HMRC's self-assessment system, in order to submit tax returns annually and pay their corporate tax liability as and when it becomes due.

Part 2

Shanghai MedCo will be liable to register for UK VAT if it has a fixed place of business in the UK, whether it creates a branch, or a separate legal entity.

They must register for VAT if the taxable turnover exceeds £85,000 in the next 30 days, or if in the previous 12 months, it exceeded this limit. A certificate of registration will then be issued to the company – this registration number must be quoted on all invoices.

VAT returns will then be required to be filed either monthly or quarterly and if applicable, an EC Sales List and Intrastat declarations may need to be completed for sales/purchases to/from the EU.

To determine the VAT treatment of goods, we must consider the place of supply rules as defined in s.7 VATA 1994. The place of supply for goods leaving the UK, is the UK and so we must consider the implications of that supply.

Transactions between UK registered businesses, will be subject to VAT at either the standard rate of 20%, the reduced rate of 5% or at 0%, depending on the type of supply. This output VAT on sales is recorded in the VAT return, with any input VAT on purchases, being offset against it, to arrive at a VAT payable or repayable position.

Goods leaving the UK to the EU can be zero rated, if the European customer provides his VAT registration number to the UK entity, this is known as a dispatch and recorded as such in the UK VAT return. The customer will then account for VAT at the point of importation.

However, post-Brexit, sales to other European countries will be treated as "exports", as the UK has become a third-party country from an EU perspective. Thus, the sale of goods to Europe will be recorded as exports for the UK VAT return and a zero rate of VAT will be applied.

Goods leaving the UK to a customer based outside the EU, in this case the U.S., will be treated as a 0% export, irrespective of the type of goods being sold. The company should ensure it has sufficient, appropriate customs documentation, bills of lading etc in place, to support the zero rate of VAT used.

Question 7

Administration

Prior to 6th April 2020 non-resident landlords were subject to income tax even where the property business was carried on by a non-resident company. From 6 April 2020 non-resident corporate landlords are subject to corporation tax. Therefore from that date, taxable profits will be determined by accounting periods rather than tax years.

The company's first return submitted under the corporation tax regime will commence on 6 April 2020 and end on the date the company prepares its annual accounts. Accounts and Form CT600 must be filed no later than 12 months after the end of the company's accounting period. The company's corporation tax liability is generally due to be paid within nine months and one day after the end of the accounting period, although an instalment basis applies for large companies (£1.5 million taxable profits) and very large companies (£20 million taxable profits).

Finance costs: Interest, etc.

A major difference between income tax and corporation tax treatment concerns the deductibility of finance costs including interest. Under income tax, finance costs, subject to transfer pricing rules, were deductible in full as an allowable property expense. However, in addition to applying transfer pricing, corporation tax provides relief for finance costs through its loan relationship provisions which are more complicated. The Corporate Interest Restriction (CIR) and the hybrid mismatch rules set out further conditions that may limit the deduction that may be claimed.

In particular, it is noted that the PPL group is highly leveraged and has an annual related party interest commitment of £10 million.

CIR

The CIR provides a choice of using either the Fixed rate method or the Group ratio method when applying the restriction. The taxpayer is free to choose the most favourable method.

Fixed ratio method

Using the fixed ratio method, the interest allowance is the lower of:

- 30% of the company's or group's UK taxable profits before interest, taxes, capital allowances and some other tax reliefs; and

- the company's or group's worldwide net interest expense.

Group ratio method

To use this method, it is necessary to:

- appoint a reporting company; and

- elect to use the method in a Corporate Interest Restriction return.

The interest allowance is the lower of:

- the ratio of the company's or group's worldwide net interest expense owed to unrelated parties, to the company's or group's overall profit before tax, interest, depreciation and amortisation multiplied by the company's or group's taxable UK profits before interest and capital allowances; and

- the company's or group's worldwide net interest expense owed to unrelated parties

Whichever method is used a de minimis limit of £2 million interest applies before relief for interest is restricted under the CIR.

As all of PPL's interest payments are related party it will use the fixed ratio method.

Applying the CIR, interest will be restricted to the higher of 30% of EBITDA and a £2 million de minimis limit:

£8 Million x 30% = £2.4 Million

Interest incurred £10 million, interest deduction restricted to £2.4 million.

The CIR rules contain a Public Benefit Infrastructure Exemption but this would not assist the PPL group as the group's borrowings are entirely related party.

Subject to relief for losses carried forward (see below) the CIR is likely to create a large corporation tax liability for the PPL group.

<u>Hybrid mismatch rules</u>

The Hybrid mismatch rules will also need to be considered. These rules may apply additional interest deductibility restrictions to certain cross-border arrangements that provide for either a double deduction for an expense, or deductions for an expense without recognising any corresponding taxable income. It will be necessary to consider the related party lenders position to determine if these provisions apply.

<u>Transfer pricing</u>

Transfer pricing was considered in our recent report. This should also provide comfort for corporation tax purposes that the terms of the related party borrowings are at arm's length.

<u>Losses</u>

Unrelieved income tax losses may be carried forward to the corporation tax regime and used to offset against future UK property business profits provided the company continues to carry on that UK property business.

Income tax losses are required to be used in priority to losses incurred on or after 6 April 2020. These losses cannot be group relieved or set off against chargeable gains. Under normal corporation tax rules restrictions apply where losses exceed £5 million.

<u>Capital allowances</u>

Capital allowance pools transfer across from the income tax regime to the corporation tax regime at their tax written down value as at 5 April 2020.

<u>Conclusion</u>

The PPL group will be significantly impacted by the switch from the income tax regime to corporation tax from 6 April 2020.

This is because under the corporate rules relief for interest paid to related parties is likely to be considerably restricted.

It is likely substantial tax liabilities may arise after income tax losses at 6 April 2020 are exhausted.

The group needs to consider whether its debt/business can be restructured to reduce the harmful impact of the restriction.

Any restructuring needs to bear in mind all relevant anti-avoidance rules.

Question 8

Suggestion 1: Trust ownership

Direct trust ownership of UK residential property was rarely suitable for non-domiciled taxpayers. This was because if held directly without the imposition of a foreign incorporated company, the property was subject to inheritance tax, including the 10-yearly anniversary charge. With the introduction of non-resident capital gains tax in respect of UK property, the use of an offshore trust to hold UK property has become even less attractive.

Further the occupation of the property by a beneficiary would potentially create a UK taxable benefit on the beneficiary broadly approximating to the value of occupation if the trust is in receipt of offshore income or gains.

An additional disincentive for the trust to acquire the property relates to possible remittance issues arising from the fact that the trust has been funded through Joseph Osborne's foreign income. The direct ownership by the trust, of Joseph's UK residential property, is therefore not considered further.

As direct ownership by the Melbourne Trust is likely to trigger unnecessary tax costs, direct ownership by Joseph is recommended. Indeed, many non-domiciled taxpayers who previously held UK residential homes through offshore structures, have now unravelled these structures and now directly own their UK homes. Where a UK home is owned directly any gain arising on subsequent disposal may, subject to detailed conditions, qualify for principal private residence relief.

Remittances

Where a non-domiciled but UK tax resident individual receives offshore income or gains then they are not assessable on such income or gains if they elect to be taxed on the remittance basis, until such time that, that foreign income or gain is brought to the UK. The rules regarding what is treated as being brought to the UK are very comprehensive and most remittances including constructive remittances are caught. Remittances involving loans and debts are caught by anti-avoidance provisions.

It is considered that there is a significant risk that Joseph's unremitted offshore income or gains arising in connection with the Dividend will be considered to have been transferred to the Melbourne Trust. (Section 809L ITA 2007).

Suggestion 2: A loan to be provided by the Trust on commercial terms

If a loan is provided by the trust on commercial terms, then this will be treated as a taxable remittance of the underlying dividend income used to make the loan. This is because as explained above Joseph's dividend income is likely to be treated as transferred to the trust, and the trust lending the money back to Joseph does not avoid a remittance, if Joseph brings the borrowed funds to the UK.

Further, any interest paid in respect of that loan arguably would have a UK source, in which case there would be a withholding tax obligation in respect of interest payments being made by Joseph to the trust.

In addition to withholding tax obligations, the Transfer of Assets Abroad anti-avoidance legislation would need to be considered. This legislation taxes income arising abroad on UK tax residents, where they have created offshore structures. This anti-avoidance provision may apply unless the taxpayer can establish that the structure was not set up for the purposes of avoiding a liability to UK taxation.

HMRC would likely argue that income arising to the Melbourne Trust would be within those provisions and potentially assessable on Joseph. It is important to note that the remittance basis prevents offshore income being assessed on a non-domiciled taxpayer under these provisions. However, any interest paid by Joseph to the trust would be likely argued to be UK source.

Given the dis-advantageous tax treatment described above we would not recommend that the loan be on commercial terms.

If interest were not charged, then Joseph would be liable to income tax on the benefit of an interest free loan being made by the trust. This benefit would be calculated at the official rate of tax. The quantum of benefit so calculated would be assessable each year the loan was outstanding and be subject to Joseph's marginal rate of tax.

It is important to emphasize that the official rate may rise in the future and tends to reflect current bank rates.

The income tax liability arising on the benefit of the advancement of the interest free loan, is in addition to the liability that would arise in respect of the remittance of Joseph's original transfer of unremitted foreign income or gain to the trust. Thus, in addition to the potential charge on the benefit of an interest free loan, the actual loan itself is likely to be treated as a remittance of Joseph's offshore income or gains.

In view of the above it is not recommended that the trust advances loans to Joseph for use in the UK.

<u>Suggestion 3: Purchase of the property with a deposit from the Trust Fund and the remainder to be funded by way of a mortgage from a UK bank</u>

The deposit from the Trust would be taxed on the remittance basis. Thus, it would be treated as a taxable remittance of income.

If solely secured on the UK property, the mortgage would not be treated as a taxable remittance. However, if the mortgage including interest was repaid by utilizing Joseph's offshore income or gains this would create a further taxable remittance, to the extent offshore income or gains were used to repay either capital or interest.

If the mortgage was secured on the property plus offshore income or gains, then the offshore income or gains used as collateral or security would be treated as giving rise to a taxable remittance in the UK. This would apply for example if assets held by the Melbourne Trust were offered as additional security.

If the property is acquired using a third-party bank loan solely secured on the property this would constitute a deduction for UK inheritance tax purposes.

<u>Conclusion</u>

It is no longer advantageous to hold UK residential property which will be occupied by the UBO through a foreign trust.

The attractiveness of an offshore trust is further diminished where it is in receipt of the settlor's unremitted foreign income or gains.

It is therefore recommended that Joseph directly holds the UK property.

The remittance of offshore income or gains into the UK will trigger UK income tax or capital gains tax liabilities.

The legislation is very broad in scope and applies to constructive as well as actual remittances.

Assets held by the Melbourne Trust should not be offered as collateral/security.

Recommendation

Joseph should purchase the property in his own name. Any bank finance raised should be secured on the property. If further security is required and Joseph has an asset acquired prior to becoming UK resident the use of this asset might be considered, as it should constitute ‘capital’.

Bank debt secured solely on the property should reduce the value of the asset for UK inheritance tax purposes.

The Melbourne Trust should not offer security/collateral.

Question 9

Part 1

EWL

We are advised that the Board of Directors of EWL formally meet at the Group's Toronto headquarters each month to ratify the decisions that Julia has made since their last meeting. We are also advised that Willow Gallop the group's Chief Operating Officer takes all the group's day to day decisions. Under the rubber-stamping principle there is a risk that if after coming to the UK, Julia continues to make all strategic decisions, that EWL will become UK resident.

However, in practice, provided Julia puts proposals to the board who meet and then collectively make decisions it is unlikely HMRC will challenge the residence status of that company, particularly, given the significant Canadian substance and the fact much control is being exercised from Toronto. In any event, even if under the case law test of central management and control, EWL were to be UK resident, Article 4 of the UK-Canada treaty provides that where a company is resident in both jurisdictions, the tax residence status of that company is to be determined where possible by mutual agreement between both States' competent authorities. This should ensure that EWL's residence status is awarded to Canada, given that the company is Canadian incorporated, day to day decisions are made in Canada, monthly board meetings are held in Toronto and the overwhelming business substance is in Canada.

HWL

Julia Henderson is the sole director of HWL. HWL has no offices or employees, so is unlikely to have any substance in the BVI, its country of incorporation. If Julia becomes UK resident, it is likely that in these circumstances the company's management and control will reside with Julia in the UK, so that the company would then become UK resident for corporation tax purposes.

Part 2

Corporate residence do's and don'ts

- Do ensure regular board meetings of foreign incorporated companies are physically held in the jurisdiction that it is intended that the offshore Co is resident in. In the case of HWL perhaps consider holding directors' meeting in Guernsey, to establish residence there.

- Do ensure the directors are non-resident 'senior individuals' actively involved in the business.

- Do ensure all key strategic decisions e.g. dividends, finance, buying and selling investments are made at those meetings.

- Do personally attend those meetings, particularly if an important decision is being taken.

- Do ensure Directors' meetings are documented, and Board minutes signed to record decisions discussed and taken.

- Do ensure notes of telephone calls are taken.

- Do not hold board meetings in the UK.

- Do not hold meetings in the UK where an important decision is taken.

- Do not dial into board meetings from the UK.
- Do not operate an offshore company's bank account from the UK.
- Do not issue instructions from the UK.
- Do not carry an offshore company's business card in the UK.

Part 3

The definition of "Permanent Establishment" (PE) is contained in the Corporation Tax Act 2010 at sections 1141-1153. The definition closely follows the OECD provisions. For the purposes of the Corporation Tax Act a company has a PE in a territory if it has a 'fixed place of business' there through which the business of the company is wholly or partly carried on, or an agent acting on behalf of the company has and habitually exercises there, authority to do business on behalf of the company.

For this purpose a "fixed place of business" can be:

1. a place of management;
2. a branch; or
3. an office.

A company is not regarded as having a permanent establishment in a territory by reason only of the fact that a fixed place of business is maintained there for the purpose of carrying on activities that, in relation to the business of the company as a whole, are only of a preparatory or auxiliary nature.

We are advised that Julia is intending to come to the UK to identify and nurture key business opportunities, potential partners and networks. These are to be used as a platform to establish the UK business. Julia is considering acquiring a small London office for these purposes, but does not intend to employ staff, nor sign any purchase or sales contracts in the UK in the period whilst she is UK resident.

As Julia is intending to acquire a London office it is possible that, that office will be considered to constitute a 'fixed place of business' in the UK, however as the preliminary activities are only preparatory, the office will not constitute a PE by reference to those activities. Nevertheless, we have been advised that currently Julia takes the Group's strategic decisions. If she continues to have significant input into those decisions while in the UK, the office may be held to constitute a "place of management" and fall to be treated as a PE under that criterion. Transfer pricing might then be applied to attribute an arm's length value for any management 'advice' provided to the Group from London.