



Chartered Institute of Taxation

Excellence in Taxation

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- Tick box if you have answered in accordance with Scots Law
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Please tick which Advisory Paper you have attempted (if not already ticked below)

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| <input type="checkbox"/> Taxation of Owner-Managed Businesses | <input type="checkbox"/> Taxation of Individuals |
| <input type="checkbox"/> VAT on UK Domestic Transactions, IPT & SDLT | <input type="checkbox"/> VAT on Cross-Border Transactions & Customs Duties |
| <input type="checkbox"/> Inheritance Tax, Trusts & Estates | <input type="checkbox"/> Advanced Corporation Tax |
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Advisory

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- For those candidates on the Indirect Tax Route you must sit the VAT on UK Domestic Transactions, IPT & SDLT Advisory Paper.
- For those candidates on the Indirect Tax Route you must sit the VAT on Cross-Border Transactions & Customs Duties Advisory Paper.

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To Michael Atkinson
From Anne Adwer
Date 5 May 2012
Subject PAYE review

Dear Michael

Thank you for your email and introduction.
I hope you are settling in ok.

~~There~~ Self employed vs Employed.

There is no legislation to confirm whether
a ~~person~~ worker is employed or self-employed.
Case law over the years has built up
several factors to consider.

HMRC also have a employment
indicator tool you can ~~use~~ use
and they are based by the outcome of
this if filled in correctly.

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Factor of Mutuality of Obligations

This considers whether the worker has to accept work or the employer needs to provide work. If either no this would be a sign of employment. As Fred is contracted to do at least 20 hours a week this would indicate ~~an~~ employment.

Control

This factor considers whether the worker has control into how and when they do the work. It looks like Fred does have autonomy over the days he works and job order. Although he is provided with certain work to do. This is a sign of self-employment.

Equipment

A self-employed person usually provides ~~the~~ their own equipment to carry out the work. In a case ~~where~~ where the ~~the~~ equipment is quite specialised

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This is not always the case. If Fred is provided with all tools and van then it is a sign of employment.

Paymaster

Fred looks to have one paymaster of ~~4~~ 4 rail Ltd this is a sign of employment.

Profit

A self employed person can profit from working more efficiently. Fred is paid a fixed rate so not the case for him. This is another sign of employment.

Integration

A employed person is integrated into the work force. ~~What~~ whereas a self employed may need a visitor pass for example. I do not have enough information to comment on this for Fred.

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Substitution

A self-employed worker can usually provide a substitute worker an employee cannot. I would need more information Lee for Fred about what his contract says and what actually happens in practice. Just because the contract says a substitute can be used HMRC would want to see it happen in practice to be convinced.

Ahead loss

A self-employed person has to make good faults work in their own time and also has risk of not being paid. It looks like he is always paid on a regular date and has no risk of not being paid. I would need more information about fault work and what happens ~~is that~~ is with this.

Termination

An employment contract has a notice period where self-employed does not as much. The one month notice period looks to be another sign of employment.

Contract

A self-employed person provides a contract of services whereas an employment is on a contract of service. The factors for Fred look to lean to more of a employment. I would need to consider additional factors before I can make a conclusive decision.

Classed as employee

If he is considered employed he would be subject to tax and class 1 NIC or hit earnings. He should of been included on real time information payroll submission with PAYE operated and included on a full payment submission (FPS)

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on or before each payment date of 15th of the month.

There would of been employer class 1 NIC due at 13.8%.

The PAYE should of been paid by the 14th after the tax month, ie 14th or 22 if paid electronically.

As the van procedures for restricted use. As long as he did not have unrestricted personal use of it this would not incur a benefit in kind. If it was this would be required to be reported on a form P11D by 6 July following the end of the tax year. Class 1A NIC would be payable at 13.8% of the van's fuel benefit. As

HMRC

HMRC can make a determination under regulation 72 to collect the correct tax & NIC from Fred. If they

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feel he should of known he was an employee. They can do this (or) formally through a settlement agreement.

If they feel it is the employers fault for not operating PAYE they can do this through a Regulation 80 determination. They will consider a regulation 72 first as they consider do this if they go after the employer first through a regulation 80.

Interest

There will be interest due on the unpaid PAYE liabilities. The first tax month would not be a default, the next 3 will be 1% of unpaid PAYE, next 4th, 5th, 6th at 2%, 7th, 8th, 9th at 3% and 10th 11th 12th at 4%. Any amount outstanding after 6 months will incur a 5% penalty and a further 4% and 5% after 12 months at 5%.

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Correction

If it is confirmed he is an employee
The payroll entry for the 2016/17
tax year will need to be corrected
with an earlier year update for
his gross pay, less the NIC figures.

The amount reported in the 2017/18
tax year can be corrected with
a corrected year to date figures FPS

For pay periods that have not be
reported by a later an an
adjusted FPS can be submitted

I hope this answers your question
If you have any further queries
please let me know

Kind regards

Aime Adendor

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Memorandum

To Tax Partner

From Tax Advisor

Re:

UK Income Tax issues for Astrid in relation to secondment in UK

NIC

~~Under §83(2) of the EA Article 1(b) when a person is employed by a~~
As she will be doing work in two members states of more than 5% of their time they will be classed as a multi-state worker.

Astrid will remain habitually / ordinarily resident in ~~Sweden~~ Sweden for social security purposes. These laws do not follow the tax rules for residence.

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The ~~new~~ EU legislation rules will succeed the domestic rules for social security purposes.

Under 883/2004/EC Art 13 a person who pursues an employment activity for one employer in two or more member states shall remain in the social security legislation of their residence if they perform a substantial part of their activity there.

If they do not pursue a substantial amount in their country of residence they will be part of the social security of the legislation of the ~~country~~ member state where the registered office is.

Astrid looks to perform a substantial amount of her time in Sweden ie are 25% look to be around 60%.

and even if this was not the

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Case be registered office of Alpha plc looks to be in Sweden. so she would continue to remain in the Swedish social security system.

She should apply for a certificate of coverage from the Swedish authorities. formal document A1.

~~Her~~ Astrid's ~~the~~ earnings in relation to her employment with Alpha plc will not be subject to Class 1 NIC and will be subject to the Swedish social security.

Tax

PAYE must be operated under real time information in relation to UK duties. The only exception is where the duties are only incidental to overseas duties or they are exempt under a double taxation treaty.

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The duties of a director can never been considered incidental a PAYE should be operated from day 1 from these earnings

Tax should be deducted and a full payment submission done on or before payment date.

The PAYE should be paid by the 16th of the next month ie 19 or 22 if paid electronically.

~~Under the~~ Residence

Under the statutory residence test FA2013 Sch 45:

The first automatic test is not relevant as she has never been tax resident

As she fails the second test, ~~the~~

~~with~~ Residence in UK is based on your location at midnight.

She will therefore be in the UK for Tuesday and will have 52

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UK days of residence This is over the ~~year~~ limit for the second test of less than 46 so this test is not satisfied.

She does not satisfy the third test as will be working in the UK for over the 31 days allowed. (100 days).

We then move onto the automatic UK tests she will not satisfy the first UK test as will not be in UK over 183 days.

She will also not satisfy the second test as has no home in the UK. She will not satisfy the third test as she will not spend 75% of her time working in the UK.

We then need to consider the sufficient test as she was not UK tax resident for any of the last 3 tax years she

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Will be an arder. As she will be in the UK 52 days she will need all the tax to be UK resident.

She will not have a family tie as her husband and children will remain in Sweden.

She will not have an ~~access~~ ~~order~~ tie as doesn't have a place to live in the UK

She will have a work tie as spends at least 183 days working in the UK

She will not have a 90 day tie as not resident in any of last 3 tax years

The country tie is not relevant here.

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She will therefore not be UK full resident and will only be taxable in the UK on her UK income.

Her duties should be apportioned on a just and reasonable basis and only UK duties should be subject to PAYE.

This can be done under a 1690 direction.

Travel

~~As she~~ on the exemption that she is Swedish domiciled or at least non UK domiciled.

Her travel costs to and from the UK are tax & NIC exempt payments where paid for or reimbursed by the employer under ITEPA 2003 s373. There is no reporting requirement in relation to these.

As long as the journey ends

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within 5 years of the legacies,
which should be the case as
long as the role doesn't exceed 3
years or over 5.

This will not be considered a
temporary workplace as will only
at least 60% of the time there.
It will be a place of ordinary
work that is expected to exceed 200
months.

It will be a permanent work
place throughout the secondment.

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Memorandum

To UH Ltd payroll manager

From Tax Advisor

Date

RE UK social security & payroll obligations.

Residence

For social security purposes residence is not in align with that for tax purposes. A individual will be resident for social security purposes where they are ordinarily / habitually resident. Paul will remain resident for social security purposes during the secondment.

Where there is not a social security reciprocal agreement. ~~There~~ The employee can become subject to the social security of the other country.
Under domestic law, where the employer has a place of business in the UK and the

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earner is ordinarily resident in the UK and immediately before the commencement of the employment the earner was resident in the UK.

~~Class~~ They will remain subject to the social security system of the UK for the first 52 weeks. Class 1 NIC will be payable during this period. Following which the earner will be subject to the social security system of the other country.

An E1 Appendix 7b agreement can be ~~used~~ applied for from HMRC and the employer can equalise the social contrib for the employee so they are not worse off than before they left.

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The employer or employee can also pay class 3 or class 2 (which will soon be abolished) to ensure the employee continues to accrue rights whilst away on the secondment.

As the company is willing to pay this for Paul this should be grossed up into the EP Appendix 7b agreement.

~~As Paul is non-resident~~ PAYE

As Paul will be non-resident throughout the secondment and will not be performing any UK duties his pay will not be subject to UK tax. A NT code has successfully been applied for from HMRC with a form P85.

The pay will still be subject to class 1 NIC for the next 52 weeks, and this should be deducted through real time information on a full payment submission (FPS) should be

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submitted on or before the payment date. No tax will be deducted in to the NIC code.

Accommodation

Where an employee performs his duties wholly outside the UK and E-UK domiciled, in case of foreign employer, and is a UK resident.

If the employer pays for or reimburses the costs of accommodation and utilities tax will be a tax A NIC exempt payment and there is no reporting requirement.

If a round sum allowance is paid this will be subject to tax A NIC and need to be reported through PAYE with a FPS on or before the payment date. There is an exemption to tax if all the allowance does is reimburse the cost.

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It would be more beneficial to pay the amount for the accommodation as will not be subject to the tax equalisation agreement.

The travel costs for Paul and his wife will be tax & NIC exempt payments where the employer reimburses the costs. There will therefore not need to be included in a equalisation agreement.

~~AA~~ Equalisation

An EP appendix 6 agreement will need to be applied for ~~for Paul~~ that will ensure Paul is not tax worse off than the second one. A hypothetical test will be calculated.

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To Aldo Smith
From Jeremy Bragg
Date 3 May 2017
Subject New employee proposal

Dear Aldo

Thank you for your email. I shall detail my response to your various queries below.

Golden Handshake Hello

The payment for past, present or future services is subject to tax as employment earnings. It does not matter that Julian is not on the payroll. This amount can therefore not be paid tax free.

You will need to get the relevant payroll information for Julian. Such as, his form P45 or ~~starter etc~~ get him to fill out a starter checklist. As he has not left his current employment.

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XXXX

The £10,000 Golden Hello will be subject to PAYE and need to be reported through the real time information ~~is~~ system. With a full payment submission (FPS) made on or before the payment date.

The £10,000 will be subject to tax and class 1 NIC deductions. If you are wanting to give him £10,000 you will need to gross up this payment for tax and NIC.

As he has not left his current employer he should be put on a BR code and HMRC will notify you as and when it has needs changing this will deduct tax at 20% on the full amount of the payment.

Based on 2017/18 NI limits the gross payment would be as follows:

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680 @ 0%

Relocation Expenses

A alternative option would be to pay for Julian's relocation costs you can pay for or reimburse up to £8,000 in relation to relocation without any tax or NIC liabilities and no reporting requirement.

Any amount reimbursed in excess of this amount would be treated as a benefit in kind and need to be reported on a form P11D by 6 July following the end of the tax year. Class 1A NIC would be due on the excess at 13.8%.

This exemption is only available for actual costs reimbursed to you it would be advisable to request copies of invoices / receipts.

If you ~~are~~ pay him a round sum of say £8,000 for relocation expenses.

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This amount could be treated through PAYE subject to tax & class 1 NIC.

The costs of relocation. already can relate to disposing of old property. ~~tax~~ costs in acquiring new property. bridging loans and temporary accommodation.

Repayable Golden Hello

If the amount has to be repaid, the point at which he leaves it will no longer be earnings and he will be able to get tax relief on the repayment.

Loan

You could loan him £10,000 this would be tax & NIC exempt as ~~£10,000~~ £ it does not exceed £10,000 so there would be no benefit in kind. You or repaying requirements. After three months you could write off

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The loan and it would be a taxable benefit a. had for JMW subject to class 1A NIC and repayable on a term P11D for tax purposes.

This would be a interest free employer related loan. As ~~below~~ ~~the~~ not exceeding £10,000 this is effectively tax free.

Corporation tax

The golden rule would be tax allowable deduction for corporation tax purposes as wholly & exclusively for the purpose of the trade and secondary class 1 NIC due on the payment or class 1A NIC due on the above items would be tax deductible as could be education expenses.

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Admin

~~the~~ MUD's would need to be submitted by 6 July following the end of the JSA year or from PUD(b) member who need to be submitted by ~~the~~ 6 July. Class 1A MC would need to be paid by 19 or 22 if paid electronically.

FPS must be submitted on or before payment date and PAYE due paid by 16 days after end of tax month ie 19th or 22nd if paid electronically.

I hope this answers your question if you have any further queries whatever kind regards

Jeremy Bees

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To Bob Travers

From Joe Green

Date 3 May 2017

Subject Non-resident director

Dear ~~Joe~~ Bob

Thankyou for your email. I will detail my answers to your various queries below.

Residence

Under the statutory test an individual will be automatically non-resident if they meet the automatic overseas test.

If none of these are satisfied they will be tested against the automatic UK tests.

If none of these are satisfied ~~the~~ the sufficient test will be considered. Which are family tie, accommodation tie, work tie, 90 day tie and country tie.

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~~During the~~

Prior 2016/17

During these years John spent 50 days in the UK. As he would not be often UK resident in any of the prior years tax years the first automatic overseas test does not apply.

The second is not satisfied as the 50 days exceed the ~~50~~ less than 46 days allowed.

On the paper of the prior year he was not satisfied the third automatic overseas test if asked less than 91 days if not the automatic UK test would need to be considered.

He would not meet any of these ~~and would not meet~~ as no time in UK, not in UK over 183 days and not done sufficient work in the UK. He would not have sufficient ties as in UK 50 days would be a visitor and would need to tie.

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He would be non-UK resident for these tax years only taxable on his UK income. Relief given against New Zealand liability for UK tax paid

2016/17

He would not meet any of the 3 automatic overseas test as in UK weekly 1/4 days. He would not satisfy the automatic UK test as he has been over 183 days and not had sufficient work days. He would again need to be UK tax resident would be non-UK - tax resident for 2016/17 only taxable on his UK earnings. A credit would be given on 2 accounts against the tax liability for UK tax paid.

2017/18

Again he would not satisfy any of the criteria test as in UK 130 days and working 35 days

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He would not satisfy the home test of the 183 day test as the sufficient hours within the UK for work. Therefore none of the 3 automatic UK tests would be satisfied.

~~As before he was~~

Under the sufficient test tests he is on an order and would need 2 hrs as was in UK for 130 days ie over 120 limit for 2 hrs.

He would not have a family tie as they remain home in New Zealand.

He would have a accommodation tie as has UK home that would be available to him for a continuous period of 91 days.

He would not have a work tie as the 35 days worked in the UK for at least 3 hours is below the 60 days required.

He would ~~not~~ satisfy the 90 day test as ~~not~~ been ~~UK~~

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resided in any of last 3 tax years.
The country tie is not relevant for
him.

He would therefore not be UK
tax resident as only had 1 tie. If
he did 5 max work days he would
of been UK tax resident for the
year.

In the UK for 114 days in 2016/17

He therefore has the two UK ties
required and would be UK tax resident
for 2017/18. He would be dual resident
for 2017/18 being resident in UK and New Zealand

Article 4 Residence

Under the UK / New Zealand tax treaty,
where an individual is resident in
both countries. The state which
will get taxing rights is determined
in Article 4(2).

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This states they will be tax resident where they have a permanent home. Where he has one in both states ~~his~~ residence will be where his centre of vital interests are.

Tim has a home in UK and New Zealand but as his family are in New Zealand his centre of vital interests will ~~remain there~~ be in New Zealand.

Therefore ~~he~~ under the tax treaty he will be tax resident in New Zealand for 2017/18. He will be taxable in the UK only on UK income.

PAYE

^{calculated}
PAYE should be ~~reported~~ from day 1 in relation to UK duties. Unless the duties are merely incidental to overseas duties or being ~~only~~ ~~tax~~ exempt under a FTA treaty,

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UK duties are not considered incidental and should be subject to PAYE.

ADC Ltd has a UK tax presence and PAYE will be operated.

Article 16 (2) of the treaty is not relevant here even though Jan is in UK under US3 days. He is employed by a UK employer with a UK tax presence. Therefore PAYE will be operated.

Contract

Unless there is a dual contract, with a contract for non-UK duties PAYE should be operated on his total pay. If dual contract, duties that relate solely outside the UK would not be subject to PAYE. It needs to be ensured that this is achieved.

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what happens and the non-UK contract doesn't include UK duties performed. Otherwise HMRC would see this to be subject to PAYE.

Overseas workday Relief (OWR)

As Jim has ~~not~~ been non-UK tax resident for 3 consecutive years out of the last 5, he would be eligible to claim OWR for 3 tax years.

As his pay is paid into an overseas bank account this condition is satisfied, he would then only be subject to UK tax on UK workdays and all workdays that are performed outside the UK would not be subject to PAYE.

His earnings should be apportioned between UK days. Over total days, and PAYE applied to this amount.

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This would only apply to his general duties. PAYE must apply to his total pay relating to his director duties.

A direction under S690 can be applied this is a conditional payroll scheme and will only apply PAYE to UK duties.

He would then only be taxable in the UK on UK income ~~and~~ ~~related funds~~

In a year where he is UK tax resident he would be taxable on his worldwide income unless the residence basis is claimed. If claim entitlement to personal allowance and various exemptions would be lost. Foreign income would be taxable in the UK in the year it is received.

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For example the bill on his New Zealand credit card will not be remitted to the UK if the credit card is a New Zealand one. If a UK credit card paying these amounts would be a remittance.

We should elect a special mixed fund bank account overseas to pay all income from employment into it. It can only contain employment income ~~and~~ such as pay, securities income and bank interest. With these elected accounts remittances are added up throughout the year and checked a ~~one~~ remittance and at the end of year so much simpler. The remittance would be employment down first.

PAYE deducted and UK benefits are automatically credited to the UK as if they were earned from a UK company.

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NIC

There is a statutory exemption for directors where they are only in the UK for 10 hours a tax year for board meetings which only last up to two days. If that cases HMRC will not apply Class 1 NIC to pay.

As Jim has other duties and is employed by a UK employer he will be subject to UK NIC on his earnings.

As he is habitually ordinarily resident in New Zealand he should check that part of the treaty and discuss with the New Zealand advisors to get a certificate of coverage to remain in the New Zealand social security system.

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I hope this answers your question
but if you have any further
please let me know.

kind regards

Jeremy

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PPT plc

Residence of Emily's landlord

2016/17

Emily will
Residence

In 2016/17 Emily will be UK
for residence and Germany. She
will have for ~~the~~ have a dual
residence for 2016/17

~~Under~~

Under the Article 4 of UK/
Germany tax treaty - Where an
individual is resident in both
countries tax rights will go to
the country where they have
a permanent home. For 2016/17
as her only permanent home is
in the UK by the treaty it
would be UK tax resident
for 2016/17

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2017/18

She is not UK tax for 2017/18 and will be tax resident in Germany under domicile rules.

She will therefore be subject to tax in Germany for 2017/18 and only taxable in the UK on her UK duties

Share

Emily will be a internationally mobile employee.

There will be no tax charge on the grant on share options

Her current options give the below total

~~300,000~~

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$$30.6.14 \quad 2000 \times \text{€}2.00 = 4000$$

$$30.6.15 \quad 2000 \times \text{€}2.50 = 5000$$

$$30.6.16 \quad 2000 \times \text{€}3.50 = 7000$$

$$16,000$$

It will need to be made sure that additional options will not exceed the €30,000 limit.

Any loss charge from the exercise of options (secondary issue) will be deemed to have arisen evenly over the period from grant to exercise.

The amount subject to tax will be the market value at exercise less any amount paid by the employee.

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As PPT, it is a listed company
 the ~~the~~ shares are readily convertible
 assets (RCA) ~~the~~

They will be subject to PAYE.
 Tax ~~with~~ and class 1 NIC
 will be deducted and can
 reduce the employer pay to
 nil there is no 50% reduction
 as with usual PAYE deductions.

As amount ^{not restricted to the expense} ~~is~~ 90 days after
 the fact you will be certainly
 benefit in kind and the
 amount will be subject to
 class 1 NIC as earnings.

A portion of the share that relate
 to non-UK days in a non-UK
 period will be undragable
 foreign revenue.

Foreign drugable centres will.

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else to the job of money
and non-UK bus

Specific taxable income will
be tax exempt subject to PAYE
and for security income (all
exchangeable foreign income)

Annual return must be submitted
to HMRC by 6 July following
a tax or expense return
must be submitted which
understand options in
evidence.

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