Question 1 – 45 minutes

Question pedagogy

This question has been deliberately framed as a discursive requirement rather than a tax-technical advisory task. Its primary objective is to assess candidates' ability to construct and communicate a coherent, logical argument, supported by relevant authority and evidence.

Although the assumed technical content for this module is the Knowledge Level Income Tax & NIC syllabus, candidates are encouraged, where appropriate, to use their wider practical experience, professional knowledge and areas of specialism to illustrate their discussion. The requirement explicitly permits this approach.

Candidates should demonstrate an ability to discuss ideas, principles and concepts, rather than simply describe rules. The question therefore requires analysis, evaluation and professional judgement, together with the ability to communicate a reasoned position in clear and structured professional English.

The focus of the question is the distinction between tax planning, tax avoidance and tax evasion, and the way in which the courts distinguish between acceptable tax planning and unacceptable tax avoidance. A non-client specific requirement has been used so that candidates can focus on the underlying legal and ethical principles, including the role of statutory interpretation and the Ramsay principle, rather than the tax consequences of a particular transaction.

There is a wide range of valid approaches to answering a question of this nature. Any suggested structure, examples or authorities are illustrative only and should not be interpreted as exhaustive or prescriptive. Candidates should feel confident developing and applying their own professional writing style and line of reasoning.

The published Tax Landscape rubric applies. Responses are assessed holistically and not against a checklist of predetermined points or a model answer. Assessment focuses on the overall quality of analysis, reasoning, structure, communication and use of supporting authority.

The quality, relevance and coherence of the discussion are more important than the quantity of material presented.

Guidance for assessors

A failing answer might:

- Confuse the meanings of the concepts – eg reverse the meanings of evasion and avoidance.
- Demonstrate little or no understanding of the distinction between legitimate tax planning and unacceptable tax avoidance.
- Fail to explain the Ramsay principle or significantly misstate its effect.
- Make assertions without reference to legal principles, HMRC guidance or relevant authority.
- Have an unprofessional tone – eg uses colloquialisms, slang, unprofessional language or sentences that do not make sense.

A pass-level answer might:

- Correctly describe the three concepts in broad terms.

Published

- Demonstrate a basic understanding of how the courts distinguish between tax planning and tax avoidance.
- Correctly refer to the Ramsay principle and at least one other relevant authority, case or source of guidance.
- Show an awareness of the role of statutory interpretation and the courts' consideration of the purpose of the legislation and the realistic facts.
- Be readable and broadly well structured, even if not entirely coherent.
- Use formal English with a broadly professional tone.

A distinction-level answer might:

- Present a well-structured, clearly signposted and logically developed discussion.
- Integrate HMRC guidance, judicial reasoning and wider tax principles into a coherent analysis rather than discussing them separately.
- Explain not only what the distinction is, but why the distinction exists and how the courts approach it in practice.
- Demonstrate a strong understanding of the Ramsay principle and its significance in the interpretation of tax legislation.
- Use authorities selectively and purposefully to support analysis rather than simply listing cases or sources.
- Demonstrates an understanding of the interaction between taxpayer rights, statutory interpretation and anti-avoidance principles.
- Demonstrate control of tone and argument (not a data dump) using formal English with a consistent professional tone.

Importantly, a distinction answer does not require a larger number of cases or authorities. The distinguishing feature is the quality of analysis, synthesis and judgement demonstrated in using them.

Published

Criteria	Distinction	Pass	Borderline fail	Fail
Introduction	Clear, focused introduction. Frames the conceptual issue, identifies the contested boundaries between planning, avoidance & evasion, & clearly signals the structure of the discussion.	Introduces the topic clearly & identifies the broad issues. Some signposting of the discussion, though may lack precision or depth.	Basic introduction which identifies the topic but lacks clarity, focus or direction. Limited indication of how the discussion will develop.	Incomplete or unclear introduction. Fails to identify the context or purpose of the discussion.
Analysis & application	Insightful analysis explaining how courts & HMRC distinguish the concepts, with authority applied selectively & purposefully. Demonstrates understanding & applies principles effectively to illustrate the discussion.	Sound explanation of the distinctions between planning, avoidance & evasion, with appropriate application of legal principles. Analysis may be largely descriptive but is relevant & coherent.	Limited analysis. Some correct points but application is shallow or inconsistent. Tends towards description with weak linkage to the question.	Little or no analysis. Misunderstands or misapplies core concepts. Discussion is unconnected or largely irrelevant.
Critical thinking & synthesis	Excellent synthesis of case law, statutory interpretation & HMRC guidance. Demonstrates judgement, nuance and an understanding of the difficult boundaries between planning and avoidance. Acknowledges grey areas and areas of uncertainty	Demonstrates some critical thinking and recognises that the distinction between planning and avoidance is not always clear. Some attempt to link developments together, though synthesis may be uneven.	Limited critical thinking. Developments may be mentioned but not integrated into a coherent argument. Little explanation of why changes occurred.	Minimal or no critical thinking. No meaningful synthesis or evaluation of developments.
Evidence & support	Strong & selective use of relevant case law & HMRC guidance. Authorities are well chosen, accurately explained & clearly support the discussion.	Uses relevant authority (e.g. key cases or guidance) appropriately, though explanation may be brief or descriptive. Evidence broadly supports the discussion.	Limited or poorly explained authority. References may be vague, inaccurate or only partially relevant.	Lacks credible supporting authority or relies on unsupported assertions.
Structure & organisation	Exceptionally clear, logical structure with smooth progression of ideas. The discussion reads as a coherent, reasoned argument throughout.	Generally well structured with a clear progression of ideas. Some weaknesses in flow or balance, but the argument remains intelligible.	Some structure is evident, but organisation is weak or uneven. Ideas may be repetitive or poorly sequenced.	Disorganised or unclear structure. The discussion is difficult to follow or lacks coherent progression.
Conclusion	Strong, well-reasoned conclusion that draws the discussion together and evaluates how the courts distinguish between the two. Demonstrates evaluative judgement.	Clear conclusion that summarises the main points & answers the question, though may lack depth or evaluation.	Basic conclusion that largely restates earlier points without analysis or clear resolution of the question.	Incomplete, irrelev ant or missing conclusion. Fails to address the question posed.
Presentation & writing	Clear, concise & professional writing style. Tone & language are appropriate to a professional tax context.	Generally clear writing. Meaning is clear, though expression may occasionally be awkward or repetitive.	Writing is unclear in places, with noticeable issues that detract from clarity. Tone is inappropriate at times.	Poor presentation. Unclear expression makes the answer difficult to understand. Tone may be inappropriate.

Illustrative

1 – sample solution, distinction

Introduction

The distinction between tax planning, tax avoidance and tax evasion is fundamental to the operation of the UK tax system and to the role of the tax adviser. While taxpayers are generally entitled to arrange their affairs in a tax-efficient manner, Parliament, HMRC and the courts have sought to establish boundaries between legitimate use of the tax system and arrangements which seek to obtain tax advantages in ways that are inconsistent with the purpose of the legislation. Understanding those boundaries requires consideration of HMRC guidance, principles of statutory interpretation and judicial developments, particularly the Ramsay principle.

Tax planning, tax avoidance and tax evasion in the UK tax system

HMRC generally regards tax planning as arranging affairs so as to take advantage of reliefs, exemptions and incentives that Parliament has intentionally included within tax legislation. Examples include making pension contributions, investing through an Individual Savings Account (ISA) or claiming capital allowances where the relevant statutory conditions are satisfied. Tax planning is therefore consistent with both the wording and purpose of the legislation. In such cases the taxpayer is merely making use of opportunities deliberately provided by Parliament.

Tax avoidance is more difficult to define. HMRC generally uses the term to describe arrangements that seek to obtain a tax advantage while remaining within the literal wording of the law but producing a result that was not intended by Parliament. Tax avoidance therefore differs from tax planning because the issue is not simply whether the arrangement complies with the legislation, but whether the arrangement seeks to exploit the legislation in a way that frustrates its purpose. Tax avoidance arrangements have often involved contrived or artificial steps inserted primarily or exclusively to achieve a tax advantage.

Tax evasion, by contrast, involves unlawful conduct. Whereas tax planning and tax avoidance operate within the framework of the law, tax evasion involves deliberate non-compliance with legal obligations. Examples include failing to declare taxable income, concealing assets, creating false records or deliberately submitting incorrect tax returns. Unlike tax avoidance, which concerns the interpretation and application of legislation, tax evasion is fundamentally a matter of breaking the law.

The Ramsay principle

The boundaries between these concepts are not always straightforward. Taxpayers have long been entitled to organise their affairs efficiently (applying the doctrine of choice). The principle from *IRC v Duke of Westminster* established that taxpayers are generally entitled to arrange their affairs so that they pay less tax than would otherwise arise. However, the courts later recognised that a purely literal approach to legislation could permit arrangements which complied with the wording of the law whilst frustrating its purpose.

In *WT Ramsay Ltd v IRC*, the House of Lords adopted a broader approach to statutory interpretation. The modern Ramsay principle is best understood as a principle of statutory construction rather than a freestanding anti-avoidance doctrine. A summary of the law is given in *Berry v RCC* where it was stated that the court

Published

1 – sample solution, distinction

must determine, using a purposive interpretation, what transaction answers the statutory description enacted by Parliament and then decide whether the transaction in question, viewed realistically, does so.

The purposive approach does not mean that the courts seek to defeat tax avoidance wherever it arises. Rather, the courts seek to identify the relevant fiscal concept embodied in the legislation and apply that concept to the facts. In doing so, they consider both the wording of the provision and its place within the wider statutory scheme. The focus is therefore on determining what Parliament has enacted, not what the court believes Parliament ought to have enacted.

The courts may therefore consider the overall effect of a composite transaction rather than examining each step in isolation. Artificial or commercially insignificant steps may be given little weight when determining whether the requirements of the legislation have genuinely been satisfied.

Importantly, applying the Ramsay principle does not mean that all tax avoidance arrangements fail. A transaction undertaken with the aim of reducing tax may nevertheless fall within the statutory description enacted by Parliament. The question is not whether the taxpayer wished to save tax, but whether, on a realistic view of the facts and a proper interpretation of the legislation, the transaction answers the statutory description.

This approach helps distinguish legitimate tax planning from tax avoidance. Where Parliament provides reliefs or incentives, such as pension tax relief, taxpayers are entitled to structure their affairs to obtain those benefits. However, arrangements involving pre-ordained, artificial or commercially insignificant steps may fail if, viewed realistically, they do not answer the statutory description Parliament intended.

Conclusion

In conclusion, tax planning, tax avoidance and tax evasion are distinct concepts within the UK tax system. Tax planning involves making use of reliefs and incentives intended by Parliament, whereas tax evasion involves unlawful non-compliance. Tax avoidance lies between those two concepts and concerns arrangements that seek to obtain tax advantages in ways that may be inconsistent with the purpose of the legislation. The courts determine whether arrangements constitute legitimate tax planning or unacceptable tax avoidance primarily through purposive statutory interpretation, an approach strongly associated with the Ramsay principle. Ultimately, the distinction depends not merely on the legal form of transactions but on whether the outcome accords with the purpose for which Parliament enacted the legislation.

Published

1 – sample solution, pass

Introduction

The terms tax planning, tax avoidance and tax evasion are often used together, but they have different meanings. HMRC, the courts and tax professionals all recognise the importance of distinguishing between them because they represent different ways in which taxpayers may seek to reduce their tax liabilities.

Tax planning

HMRC generally regards tax planning as arranging affairs in a tax-efficient way by using reliefs and incentives that Parliament has deliberately included within tax legislation. Tax planning is a normal part of financial and business decision-making and is generally accepted as legitimate.

Examples of tax planning include contributing to a pension scheme in order to obtain tax relief, investing through an Individual Savings Account (ISA) or claiming capital allowances on qualifying business expenditure. In each case the taxpayer is obtaining a tax advantage, but this is an outcome intended by Parliament.

Tax planning therefore involves operating within both the letter and the purpose of the law.

Tax avoidance

Tax avoidance is more difficult to define. HMRC generally uses the term to describe arrangements that seek to reduce tax in a way that is contrary to the intention of Parliament, whilst still seeking to comply with the wording of the legislation.

Tax avoidance schemes often involve complex transactions or artificial arrangements that have little commercial purpose other than obtaining a tax advantage. For this reason, HMRC may challenge such arrangements where it believes they do not operate as Parliament intended.

Unlike tax evasion, tax avoidance is not necessarily illegal. However, it may be challenged under legislation, judicial principles or anti-avoidance provisions so may not succeed.

Tax evasion

Tax evasion differs fundamentally from both tax planning and tax avoidance because it involves unlawful conduct.

Examples include deliberately failing to declare income, concealing information from HMRC, maintaining false records or submitting inaccurate tax returns. In these situations the taxpayer is not attempting to interpret the law in a favourable way; instead they are deliberately failing to comply with it.

As a result, tax evasion may result in civil penalties and, in serious cases, criminal prosecution.

The Ramsay principle

The distinction between tax planning and tax avoidance is not always clear. Historically, the courts accepted that taxpayers were entitled to arrange their affairs

Published

1 – sample solution, pass

to reduce their tax liabilities. This principle was recognised in *IRC v Duke of Westminster*.

However, concerns arose that some taxpayers were using artificial arrangements to obtain tax advantages which Parliament had not intended. This led to the decision in *WT Ramsay Ltd v IRC*.

The Ramsay principle is now recognised as an approach to statutory interpretation. When considering tax legislation, the courts will look at the purpose of the legislation and consider whether the arrangement in question genuinely falls within it. The courts may also take a realistic view of the facts and consider the overall effect of a series of transactions rather than looking at each step separately.

This does not mean that every tax-motivated arrangement is unacceptable. Taxpayers are still entitled to arrange their affairs efficiently and make use of reliefs that Parliament intended them to use. The key issue is whether the arrangement falls within the legislation when it is interpreted purposively and applied realistically to the facts.

For example, making pension contributions in order to obtain tax relief would generally be regarded as tax planning because Parliament intended that relief to encourage pension saving. By contrast, a series of artificial transactions undertaken solely to obtain a tax advantage may be challenged by HMRC and the courts.

Conclusion

In conclusion, tax planning, tax avoidance and tax evasion are distinct concepts. Tax planning involves making legitimate use of reliefs and incentives provided by Parliament, while tax evasion involves unlawful non-compliance with tax law. Tax avoidance lies between these two concepts and concerns arrangements designed to achieve tax advantages that may be inconsistent with the purpose of the legislation. The Ramsay principle helps the courts distinguish between acceptable tax planning and tax avoidance by applying a purposive interpretation of tax legislation and taking a realistic view of the facts.

Published

Question 2 – 60 minutes

Question pedagogy

This question is designed to assess candidates' ability to apply UK tax administration and compliance principles to a complex factual scenario. Unlike Question 1, which is deliberately discursive, Question 2 is fact-driven and applied, requiring candidates to communicate by integrating technical knowledge with professional judgement and professional scepticism.

The primary objective of this question is to test whether candidates can:

- explain and communicate within uncertain parameters, reflecting the fact that the information provided is deliberately incomplete rather than defective;
- explain and rationalise why Rain Ltd has been non-compliant;
- explain, in broad terms, HMRC's statutory powers and limitations when seeking to recover underpaid tax; and
- advise pragmatically on dispute resolution options available to a taxpayer, taking into account evidential uncertainty, proportionality and process.

Although the assumed technical content for the module is the Knowledge Level Income Tax & NIC syllabus, candidates are expected to have undertaken targeted, detailed research in advance of the exam. This includes understanding relevant legislation, HMRC practice and case law. Candidates are expected to refer to legislation and case law by name where relevant. Time constraints may restrict how much candidates can bring into their answer – eg the distinction answer runs out of time to also bring in case law, so is very statutory focussed, but candidates would not be penalised for discussing case law if they, in their professional judgement, considered it appropriate to do so.

This question also deliberately introduces uncertainty and incomplete information. Candidates are therefore required to demonstrate professional scepticism by identifying where further facts or clarification are needed before advice can be finalised. This mirrors real advisory work and supports the Tax Landscape emphasis on judgement, process and communication rather than mechanical rule application.

There is a range of valid approaches to answering this question. It is not assessed by reference to a checklist of points or a single "correct" solution. For example, there is relevant case law candidates could have brought into their answer and this approach would also score well. Case law has not been used in the two suggested solutions below as they were already at the limits of what is reasonable to produce in an exam scenario. Candidates may also have focussed on s.684(7A)(b) ITEPA 2003 in addition to or instead of Regulation 72 of the PAYE Regulations 2003 (SI 2003/2682). This could also score well. The suggested solutions are an approach, not the only possible approach.

The distinction level sample answer represents a high-quality synthesis. Candidates are not expected to reproduce it in full. What is most important is how effectively candidates select, structure and communicate relevant points within the time available. It is fully expected that most candidates answers will be shorter.

The published Tax Landscape syllabus rubric is applied holistically, with importance placed on the quality of reasoning, structure, communication and appropriate use of supporting authority. Quantity of material alone is not rewarded.

Published

Guidance for assessors

A failing answer might:

- Misunderstand the material given and/or not have researched relevant technical topics.
- Fail to explain or apply the rules to the scenario.
- Give little or no reference to HMRC powers, dispute process or missing information.
- Be disorganised or unclear with an illogical structure to the answer which makes it hard to follow.
- Have an unprofessional tone – eg uses colloquialisms, slang, unprofessional language or sentences that do not make sense.

A pass-level answer might:

- Broadly explain why HMRC would view the PAYE operation as non-compliant.
- Identify a broadly technically correct route for recovery from the employee.
- Demonstrate a basic understanding of HMRC's evidential burden.
- Outline appeal, review and ADR options.
- Identify relevant information gaps, but remain largely descriptive.
- Be readable and broadly well structured, even if not entirely coherent.
- Use formal English with a broadly professional tone.

A distinction-level answer might:

- Integrate PAYE principles, HMRC powers, evidential burden and recovery strategy into a coherent analysis.
- Evaluate why HMRC would pursue recovery from the employee in this case.
- Demonstrate understanding of time limits, proportionality and HMRC practice.
- Use legislation and case law selectively and purposefully.
- Explicitly link missing information to the strength or weakness of HMRC's case.
- Advise strategically on dispute resolution options, not just procedurally.
- Use formal English with a consistent professional tone.

Published

Criteria	Distinction	Pass	Borderline fail	Fail
Introduction	Clear, focused introduction setting out the compliance issue, HMRC's likely position and the scope of the discussion.	Introduces the scenario and identifies the main issues, though framing may be generic.	Limited introduction; issues identified unclearly or incompletely.	No meaningful introduction or context.
Analysis & application	Insightful analysis of PAYE non-compliance, HMRC recovery powers and evidential requirements, applied directly to the facts.	Sound explanation of non-compliance and recovery mechanism, applied to the facts in a largely descriptive way.	Some correct analysis, but weak application or misunderstanding of key principles.	Little or no correct analysis; significant misapplication.
Critical thinking & synthesis	Demonstrates judgement by integrating HMRC powers, time limits, behaviour and proportionality into a coherent narrative.	Some critical thinking evident, but discussion is mainly procedural rather than evaluative.	Limited synthesis; points treated in isolation.	No meaningful synthesis or judgement.
Evidence & support	Selective and accurate reference to relevant legislation, case law and HMRC practice, clearly supporting the analysis.	Appropriate reference to legislation or HMRC guidance, though explanation may be brief.	Weak, vague or partially incorrect authority.	No relevant authority or reliance on incorrect sources.
Structure & organisation	Clear, logical structure with smooth progression and effective signposting.	Generally well structured, though flow may be uneven.	Weak structure; repetition or poor sequencing.	Disorganised and difficult to follow.
Conclusion	Balanced, realistic advice on dispute resolution options, reflecting evidential uncertainty and professional judgement.	Clear summary of options available, though limited evaluation.	Basic conclusion with little linkage to analysis.	No meaningful conclusion or advice.
Presentation & writing	Clear, concise & professional writing style. Tone & language are appropriate to a professional tax context.	Generally clear writing. Meaning is clear, though expression may occasionally be awkward or repetitive.	Writing is unclear in places, with noticeable issues that detract from clarity. Tone is inappropriate at times.	Poor presentation. Unclear expression makes the answer difficult to understand. Tone may be inappropriate.

Published

2 – sample solution, distinction

Why HMRC will consider Rain Ltd's approach as non-compliant

Rain Ltd's approach is non-compliant because PAYE Income Tax and National Insurance Contributions (NIC) accounted for under PAYE must be calculated by reference to an employee's actual net taxable earnings, not by applying a standardised or assumed level of deductible expenses.

Rain Ltd appears to have operated PAYE on the basis that part of Alex's pay represented reimbursed employment expenses. Where expenses are genuinely reimbursed and satisfy the statutory conditions, it would be correct in principle to exclude them from gross earnings. However, there is no evidence that Rain Ltd assessed whether the amounts treated as expenses were in fact reimbursed or satisfied the statutory tests for exemption. [Ch 7A, Part 4, ITEPA 2003]

The use of a fixed percentage applied to all contractors regardless of role, location or working pattern, indicates that no meaningful consideration was given to those statutory tests. [s.289A ITEPA 2003]

As Alex did not submit expense claims, it is unlikely that the amounts represented genuine reimbursements of properly deductible amounts. In practice, it appears more likely that these were personal expenses incorrectly treated as deductible, and the payments made represented gross earnings on which PAYE should have been operated in full. The expenses should instead have been claimed as deductions by Alex directly from HMRC.

Whether HMRC can recover the underpaid Income Tax directly from Alex

Although an employer is normally responsible for operating PAYE, HMRC may, in certain circumstances, seek to recover underpaid Income Tax directly from an employee by making a Regulation 72 direction notice. [Reg 72 PAYE Regulations 2003, SI 2003/2682]

HMRC can seek direct recovery from Alex if it is satisfied that Alex knew that Rain Ltd had wilfully under-deducted tax (see condition B of reg 72).

However, in accordance with its practice as set out in its manual at INS8101, it is unusual for HMRC to pursue an employee (as opposed to a director) for non-payment of Income Tax due under PAYE unless:

- Income Tax/NICs were not paid over by the employer and neither was it deducted from the employee – ie if Alex's pay had been subject to the deductions but Rain Ltd had not paid them over to HMRC, Alex could not now be pursued.
- The employer cannot pay what is due – Rain Ltd is insolvent.
- The failure to deduct the Income Tax or pay over the NICs was wilful (that is, deliberate) and within the knowledge of the employee – it seems hard to argue that it was not wilful by Rain Ltd but highly arguable whether Alex had the requisite knowledge required by Condition B.
- The prospects of recovery from the employee are reasonably good – HMRC must consider this to be true, but we should verify whether he has the assets to pay the outstanding tax.

Published

2 – sample solution, distinction

Proving Alex's knowledge is a high evidential threshold. HMRC must show that he was aware of the deliberate under deduction, not merely that the PAYE treatment was incorrect. Given that Alex did not submit expense claims and appears to have received limited explanation of the arrangements, it is uncertain whether HMRC would be able to meet this threshold, although it may argue that the use of a fixed percentage should have alerted Alex.

A Regulation 72 direction does not create a new tax liability but transfers an existing one. HMRC must therefore be within the normal assessment time limits. If it can establish deliberate behaviour, assessments may be made up to 20 years after the relevant tax year, bringing all years from 2016/17 to 2023/24 within scope. [s.36(1A) TMA 1970]

Options available to Alex for resolving the dispute

Before determining the most appropriate dispute strategy, further information is required from Alex.

In particular, it is important to establish:

- Whether Alex held any role beyond that of an ordinary employee (for example, as a director or shareholder of Rain Ltd) – this would change his perceived level of understanding of Rain Ltd's PAYE processes.
- What explanations, if any, Rain Ltd provided about the PAYE and expenses model – the clearer any documentation is the more likely HMRC will be able to prove the level of knowledge required under Condition B.
- The extent and nature of the expenses actually incurred by Alex will help to determine the extent to which Alex may have honestly believed the treatment was correct. If his actual expenses were close to 35% it makes his argument much stronger than if they were say 5%.
- The stage the HMRC investigation has reached and whether a Regulation 72 direction has already been issued.

If the letter from HMRC is actually a warning letter, which is issued prior to the issuing of a Regulation 72 direction notice, then HMRC will have reviewed the strength of its case and decided that it is worth pursuing. But it will have invited Alex to engage with the process, and it does mean that the investigation is still at a relatively early stage.

If it is at this early stage, Alex could engage with HMRC providing information about his working arrangements, the expenses actually incurred, and the assurances given by Rain Ltd. Early and cooperative engagement may encourage HMRC's not to proceed with the case, particularly where Alex can demonstrate that he relied on the employer's PAYE operation in good faith.

If HMRC has already issued a Regulation 72 direction notice then the investigation is at a more advanced stage and HMRC will have specified the amount of underpaid tax. Alex has the right to appeal within 30 days. The appeal must be in writing and specify the grounds for appeal. [Reg 72C SI 2003/2682]

If it is now more than 30 days since the direction notice was issued it may be possible to make a late appeal based on reasonable excuse. [s.49(3) TMA 1970] If

Published

2 – sample solution, distinction

HMRC refuses the late appeal Alex can apply to the tribunal to consider his request instead. The tribunal is not limited by the need for a reasonable excuse and could permit a late appeal where it feels it is just to do so.

Assuming the appeal is made within the 30 days (or a late appeal is accepted) Alex can:

- discuss the matter with HMRC in an effort to settle the appeal
- ask for a review, or
- notify his appeal to the tribunal.

In practice, if the core technical position favours HMRC, Alex may decide that negotiating a settlement is the most pragmatic outcome. Demonstrating cooperation, providing available records and addressing HMRC's concerns proactively may enable the matter to be resolved efficiently.

However, if Alex and HMRC cannot agree, HMRC should offer a review under s.49C TMA 1970 which Alex has 30 days to accept or appeal to the tribunal. A review is carried out within HMRC but by a different person to the original decision. The review could uphold, vary or cancel the original decision by HMRC.

Alex does not have to accept the offer of a review and could instead appeal directly to the tribunal. If the outcome of a review is to uphold HMRC's original decision or vary it but not to Alex's satisfaction, Alex could then appeal to the tribunal within 30 days of the review result letter.

If Alex does not respond to the offer of a review and does not appeal to the tribunal HMRC will treat the matter as settled on the basis of its letter offering the review as if agreed under s.54 TMA 1970.

Similarly, if a review upholds HMRC's decision and Alex does not appeal to the tribunal then the matter will be treated as settled.

If Alex appeals to the tribunal on the basis:

- he did not have knowledge of Rain Ltd's wilful failure to deduct the correct amount of tax, then it is for HMRC to prove that he did have this knowledge
- the assessment is wrong, then it is for Alex to prove that the figures are incorrect.

An appeal to the tribunal is likely to be expensive and time consuming and should be considered as a last resort and only if the probable benefits outweigh the costs.
An alternative to an appeal to the tribunal is to use HMRC's non-statutory Alternative Dispute Resolution (ADR) process. This means an HMRC mediator who has been trained in mediation skills and techniques will work with Alex and the HMRC officer. The mediator will attempt to navigate a resolution to the process.

Published

2 – sample solution, pass

Why HMRC will consider Rain Ltd's approach as non-compliant

Rain Ltd's approach is non-compliant because PAYE Income Tax and National Insurance Contributions (NIC) must be calculated based on Alex's actual salary which appears to be the total amount paid via the payroll.

Whereas Rain Ltd has treated some of the amounts as being reimbursed expenses and deducted those amounts before deducting Income Tax and NIC. It is not at all clear that these payments were reimbursed expenses and as there was no attempt to audit what the payments were for it is unlikely that HMRC would accept the payments were anything other than employment income.

Rain Ltd should only have exempted amounts from Income Tax and NIC if they would be allowable as deductions from employment income. [s.289A ITEPA 2003]

Whether HMRC can recover the underpaid Income Tax directly from Alex

Although PAYE obligations normally rest with the employer, HMRC can, in certain circumstances, seek to recover underpaid Income Tax directly from the employee by making a Regulation 72 direction notice. [Reg 72 SI 2003/2682]

Condition B seems most likely to apply here as if HMRC has reason to believe that Alex knew that Rain Ltd had wilfully under-deducted tax it can make a Regulation 72 direction notice. This then transfers the liability for the Income Tax due on his employment income to Alex.

This is a high evidential threshold. HMRC needs to demonstrate Alex's knowledge of Rain Ltd's deliberate failure, not merely that the PAYE treatment was incorrect. Relevant factors may include the nature of any explanations provided to Alex, whether he understood that a fixed percentage of pay was being treated as expenses without individual assessment, and whether that treatment was obviously inconsistent with his actual level of expenses.

Rain Ltd did operate a standardised expenses model without individual assessment, and Alex did not submit expense claims or receive detailed explanations of the legal basis for the deductions. However, it is not clear what evidence HMRC has of Alex's knowledge of Rain Ltd's wilful failure or that it was wrong.

HMRC must be in time to assess Alex for the underlying Income Tax under the Taxes Management Act 1970. Where HMRC relies on Condition B, it will typically assert deliberate behaviour, allowing assessments to be made up to 20 years after the end of the relevant tax year. This would bring all years from 2016/17 to 2023/24 within scope, provided HMRC can establish the necessary knowledge. [s.36(1A) TMA 1970]

Options available to Alex for resolving the dispute

Before determining the most appropriate dispute strategy, further information is required from Alex.

In particular, it is important to establish:

- whether Alex held any role beyond that of an ordinary employee (for example, as a director or shareholder of Rain Ltd);

Published

2 – sample solution, pass

- what explanations, if any, Rain Ltd provided about the PAYE and expenses model;
- the extent and nature of the expenses actually incurred by Alex; and
- the stage the HMRC investigation has reached and whether a Regulation 72 direction has already been issued.

If the letter from HMRC is actually a warning letter then it will have invited Alex to engage with the process, and it does mean that the investigation is still at a relatively early stage.

If it is at this early stage, Alex could decide to engage with HMRC during the process by providing information about his working arrangements, the expenses actually incurred, and the assurances given by Rain Ltd. Early and cooperative engagement may be relevant to HMRC's decision whether to proceed with the case, particularly where Alex can demonstrate that he relied on the employer's PAYE operation in good faith.

If HMRC has already issued a Regulation 72 direction notice then the investigation is at a more advanced stage and HMRC will also have specified the amount of underpaid tax. Alex has the right to appeal within 30 days. The appeal must be in writing and specify the grounds for appeal. [Reg 72C SI 2003/2682]

The grounds for appeal are either:

- Alex did not know that Rain Ltd was wilfully failing to deduct the correct amount of tax; or
- The amount being assessed is incorrect.

If it is now more than 30 days since the direction notice was issued it may be possible to make a late appeal based on reasonable excuse. [s.49(3) TMA 1970]

Assuming the appeal is made within the 30 days (or a late appeal is accepted) Alex can:

- discuss the matter with HMRC in an effort to settle the appeal
- ask for a review, or
- notify his appeal to the tribunal.

In practice, if the core technical position favours HMRC, Alex may decide that negotiating a settlement is the most pragmatic outcome.

However, if Alex and HMRC cannot agree, HMRC should offer a review which Alex has 30 days to accept or appeal to the tribunal.

Alex does not have to accept the offer of a review and could instead appeal directly to the tribunal. If the outcome of a review is to uphold HMRC's original decision or vary it but not to Alex's satisfaction, Alex could then appeal to the tribunal within 30 days of the review result letter.

If Alex does not respond to the offer of a review and does not appeal to the tribunal HMRC will treat the matter as settled.

Similarly, if a review upholds HMRC's decision and Alex does not appeal to the tribunal then the matter will be treated as settled.

Published

2 – sample solution, pass
An appeal to the tribunal is likely to be expensive and time consuming and should be considered as a last resort and only if the probable benefits outweigh the costs. An alternative to an appeal to the tribunal is to use HMRC's non-statutory Alternative Dispute Resolution (ADR) process. This means an HMRC mediator who has been trained in mediation skills and techniques will work with Alex and the HMRC officer dealing with his case. The mediator will attempt to navigate a resolution to the process.

Published

Question 3 – 22 minutes

Question pedagogy

This question is designed to assess candidates' ability to evaluate the quality and reliability of tax research undertaken by another person. Unlike the other questions, which assess substantive technical analysis and application, this question focuses on the process of research, source evaluation and professional judgement.

Candidates are provided with a note prepared by a junior colleague which reaches a conclusion regarding Alex's employment status whilst working for Rain Ltd. The note has intentionally been prepared using sources of varying reliability and contains a number of weaknesses in both its research methodology and reasoning.

The primary objective of this question is to test whether candidates can:

- identify weaknesses in research methodology and source selection;
- distinguish between authoritative and non-authoritative sources;
- evaluate the reliability, relevance and limitations of different sources;
- recognise unsupported assumptions, gaps in evidence and overconfident conclusions;
- explain how a tax issue should be researched in a professional environment; and
- communicate constructive professional criticism in a clear and reasoned manner.

Knowledge and skills being assessed

Although the factual context relates to employment status, this is not intended to be an employment status technical question. Candidates are not expected to reach a definitive conclusion on Alex's status. Instead, they are expected to demonstrate an understanding of how professional tax research should be conducted and how the quality of research can affect the reliability of any conclusion reached.

The question therefore assesses the extent to which candidates can:

- identify the difference between primary sources (for example legislation and case law) and secondary sources (for example commentary, news articles, HMRC guidance and generative AI);
- understand the hierarchy of authority between sources;
- evaluate whether conclusions are supported by evidence;
- recognise where further research or information is required;
- demonstrate professional scepticism; and
- explain an appropriate research process.

Candidates may choose to structure their answer using a recognised framework for evaluating sources. Structured approaches to evaluating sources are widely used in academic practice (eg university guidance on evaluating information), focusing on authority, currency, objectivity, relevance and reliability. The ACORN framework reflects these principles in a simplified form. ACORN or any other equivalent approach would be acceptable (eg Sarah Blakeslee's CRAPP test). However, use of a particular framework is not required. Credit is awarded for demonstrating the

Published

underlying principles of source evaluation and professional judgement rather than for knowledge of a specific model.

Use of generative AI

The note intentionally refers to the use of generative AI as part of the research process. Candidates are not expected to reject AI as a research tool. Instead, they should evaluate how it has been used and explain the extent to which the conclusions produced should be verified against more authoritative sources.

Strong candidates are expected to recognise that AI can be useful as an initial research aid or orientation tool but does not constitute an authoritative source of tax law.

Scope and proportionality

Question 3 has a suggested time allocation of 22 minutes and is intentionally focused on the quality of the research process rather than the underlying employment status conclusion.

There is a wide range of valid approaches to answering this question. Some candidates may structure their answer around the weaknesses in the note itself, while others may use a recognised source evaluation framework to organise their discussion. Both approaches are valid.

Assessment approach

The published Tax Landscape syllabus rubric is applied holistically. Assessment focuses on professional judgement, evaluation of sources, quality of reasoning and communication. Candidates are rewarded for explaining why the research is unreliable and how it could be improved, rather than for simply identifying technical employment status indicators.

Guidance for assessors

A failing answer might:

- Focus primarily on the technical employment status conclusion rather than the quality of the research undertaken.
- Accept the trainee's conclusions largely at face value.
- Fail to distinguish between authoritative and non-authoritative sources.
- Treat a newspaper article, AI output and tax law sources as having broadly equal weight.
- Fail to identify significant gaps in the research process.
- Demonstrate little or no professional scepticism.
- Make only vague assertions that "more research is needed" without explaining what additional sources should be consulted.
- Have an unprofessional tone – eg uses colloquialisms, slang, unprofessional language or sentences that do not make sense.

A pass-level answer might:

- Identify that the research relies too heavily on a newspaper article and generative AI and theoretical norms.
- Recognise that legislation, case law, HMRC guidance and professional commentary should also have been consulted.

Published

- Demonstrate an understanding that different sources have different levels of authority and reliability.
- Identify some unsupported assumptions or weaknesses in the note.
- Explain a broadly appropriate research process that would improve the quality of the conclusion.
- Show some awareness that the available facts may be incomplete.
- Be readable and broadly well structured, even if not entirely coherent.
- Use formal English with a broadly professional tone.

A distinction-level answer might:

- Critically evaluate both the sources used and the reasoning process applied in the note.
- Clearly distinguish between primary sources (such as legislation and case law) and secondary sources (such as HMRC manuals, professional commentary, news articles and generative AI), explaining the relative weight that should be attached to each.
- Identify specific weaknesses in the trainee's methodology, including unsupported assumptions, confirmation bias, overreliance on weak sources or failure to consider alternative explanations.
- Demonstrate strong professional scepticism and explain why the conclusion is insufficiently supported by the evidence presented.
- Explain how the issue should be researched in practice, including source selection, verification and cross-checking.
- Recognise the limitations of the available facts and explain how additional information could affect the conclusion.
- Present a coherent and well-reasoned critique using formal English with a consistent professional tone.

Importantly, a distinction answer does not require knowledge of a particular research framework or attempt to reach a decision as to Alex's employment status in what is not a tax-technical question. The distinguishing feature is the quality of evaluation, professional scepticism and judgement demonstrated in assessing the reliability of the research and the conclusions drawn from it.

Published

Criteria	Distinction	Pass	Borderline Fail	Fail
Introduction	Clearly identifies the purpose of the critique, the reliability issues arising and the broad approach taken to the evaluation.	Identifies the need to evaluate the research and its conclusions.	Limited or unclear introduction with little indication of approach.	No meaningful introduction.
Analysis & evaluation of research	Insightful evaluation of the strengths and weaknesses of both the research methodology and the conclusions reached. Distinguishes clearly between flaws in evidence gathering and flaws in reasoning.	Identifies a number of weaknesses in the research and reaches sensible observations about reliability.	Some weaknesses identified, but evaluation is limited or largely descriptive.	Little or no meaningful evaluation. Accepts conclusions uncritically or misunderstands the task.
Critical thinking & professional scepticism	Demonstrates strong professional scepticism. Challenges assumptions, identifies missing facts, alternative explanations and potential confirmation bias. Explains the impact of uncertainty on the validity of the conclusions.	Demonstrates some scepticism and recognises limitations in the sources or conclusions.	Limited scepticism. Weak recognition of uncertainty or unsupported assumptions.	No meaningful scepticism. Conclusions accepted largely at face value.
Evidence & source evaluation	Clearly distinguishes between primary and secondary sources, evaluates their reliability and explains the relative weight that should be attached to them. Demonstrates a strong understanding of source hierarchy.	Recognises that some sources are more authoritative than others and identifies appropriate alternative sources.	Limited understanding of source authority or hierarchy.	Treats sources uncritically or fails to distinguish between authoritative and non-authoritative sources.
Research methodology	Explains a well-reasoned alternative research approach, including source selection, verification, corroboration and testing of conclusions.	Describes a broadly appropriate approach to researching the issue.	Some understanding of research process but lacks depth or structure.	Fails to explain how the issue should have been researched.
Conclusion	Strong evaluative conclusion explaining the reliability of the note and whether its conclusions can be relied upon. Clearly summarises the improvements required.	Clear conclusion identifying the main weaknesses and improvements required.	Basic conclusion with limited evaluation.	Missing, irrelevant or unsupported conclusion.
Presentation & writing	Clear, concise & professional writing style. Tone & language are appropriate to a professional tax context.	Generally clear writing. Meaning is clear, though expression may occasionally be awkward or repetitive.	Writing is unclear in places, with noticeable issues that detract from clarity. Tone is inappropriate at times.	Poor presentation. Unclear expression makes the answer difficult to understand. Tone may be inappropriate.

Published

3 – sample solution, distinction

Introduction

The note reaches a clear conclusion that Alex was self-employed whilst working for Rain Ltd. However, the reliability of that conclusion is limited because both the research methodology and the sources used have significant weaknesses. A conclusion on employment status should be supported by authoritative legal sources and a balanced evaluation of the facts. Neither appears to have occurred here.

Evaluation of the sources used

The note relies primarily on a newspaper article and generative AI. Whilst both may provide useful background information, neither is an authoritative source of UK tax law.

The newspaper article appears to have been used to support the proposition that contractors are generally self-employed. However, newspaper articles are intended for a general audience and are not designed to provide legal analysis. The fact that a person is referred to as a contractor does not determine their employment status for employment or tax purposes.

Similarly, the note appears to place significant weight on the conclusions generated by AI. AI can be a useful research tool when identifying relevant issues or directing further research. However, it cannot be relied upon as a source of law and may oversimplify and misunderstand legal principles, omit relevant authorities or provide inaccurate information. The fact that both the newspaper article and AI reach similar conclusions does not necessarily increase confidence in the result.

The note contains no reference to legislation, case law, HMRC guidance or professional commentary. This is a significant weakness because the conclusion has not been verified against authoritative sources.

Additional sources that should have been consulted

Before reaching a conclusion, the researcher should have considered primary legal sources, including relevant legislation and employment status case law. These sources carry greater weight than newspapers or AI-generated commentary.

HMRC guidance should also have been reviewed to understand HMRC's likely approach, although it should not have been treated as determinative. Professional commentary and technical publications could then have been used to provide corroboration, context and alternative perspectives.

Further factual information may also have been required before a reliable conclusion could be reached. The researcher should have identified any gaps in the facts provided by Alex to date and explained how those gaps affected the degree of confidence that could be placed in the conclusion.

Evaluation of the reasoning and conclusions

The reasoning within the note is also problematic. The analysis appears to focus primarily on factors supporting self-employment whilst giving little consideration to facts that may point in the opposite direction. The reasoning adopted by the writer seems to have assumed self-employment and has quoted resources that substantiate that assumption. The correct approach should have been to pose the

Published

3 – sample solution, distinction

question as to the worker's status, quote the law that should have been used to answer the question and then seek evidence to prove the requirements of the law one way or the other.

For example, the note places considerable emphasis on Alex's specialist skills, the fact that he worked on multiple projects and the fact that he incurred expenses. Whilst these factors may be relevant, none is determinative. Many employees possess specialist skills and incur expenses in the course of their work.

More importantly, the note gives insufficient consideration to facts contained within the client file which may support employment. Alex was employed under a contract of employment with Rain Ltd, worked full-time for extended periods, and was supervised by employees of the end client. These factors should have been analysed before any conclusion was reached.

The note also appears to assume that the existence of deductible expenses supports self-employment. This is not necessarily correct. The availability of tax relief for expenses and employment status are separate issues and one does not automatically determine the other.

Overall, the conclusion appears stronger than the evidence supports. There is a risk of confirmation bias because the note selectively uses information that supports a self-employment conclusion whilst overlooking evidence that might indicate employment.

Conclusion

The note should not be relied upon in its current form. It relies excessively on non-authoritative sources, contains unsupported assumptions and fails to evaluate all relevant facts objectively. The conclusion that Alex was self-employed may ultimately be correct or incorrect, but the research undertaken is insufficiently robust to support that conclusion. A more reliable analysis would have been based on authoritative legal sources, a balanced assessment of the facts and a more critical evaluation of alternative explanations.

Published

3 – sample solution, pass

Introduction

The note attempts to determine whether Alex was employed or self-employed whilst working for Rain Ltd. However, there are weaknesses in both the research undertaken and the conclusions reached. As a result, the conclusion that Alex was self-employed may not be reliable.

Evaluation of the sources used

The note relies heavily on a newspaper article and generative AI. These sources may be useful for obtaining a general overview of an issue but are not authoritative sources of UK tax law.

The newspaper article appears to have been used to support the view that most contractors are self-employed. However, newspaper articles are written for a general audience and cannot determine employment status for tax purposes.

The note also relies on information generated by AI. Whilst AI may help identify issues for further investigation, it should not be treated as a source of law. The conclusions generated should instead be verified using more authoritative sources.

The note does not refer to legislation, case law or HMRC guidance. This weakens the reliability of the conclusion because there is no evidence that the legal position has been checked.

Additional sources that should have been consulted

Before reaching a conclusion, the researcher should have consulted the relevant legislation, employment status case law and HMRC guidance.

Professional commentary and technical materials may also have been useful in understanding how the rules apply in practice.

It would also have been important to identify whether any relevant facts were missing before reaching a conclusion.

Evaluation of the reasoning and conclusions

The note focuses mainly on factors that suggest self-employment. For example, it refers to Alex's specialist skills, his work on different projects and the fact that he incurred expenses.

However, these points do not automatically mean that Alex was self-employed. The note should also have considered facts that may indicate employment.

For example, Alex was employed by Rain Ltd under a contract of employment, worked full-time for extended periods and was supervised by employees of the client company. These facts are relevant and should have been considered before reaching a conclusion.

The note also assumes that because Alex incurred expenses he was probably self-employed. This does not necessarily follow and further analysis would have been required.

Overall, the conclusion appears stronger than the research supports.

Published

3 – sample solution, pass

Conclusion

The note should be treated with caution. It relies too heavily on a newspaper article and generative AI and does not adequately refer to authoritative sources. Additional research using legislation, case law and HMRC guidance would have been required before a reliable conclusion could be reached. Whilst the conclusion may ultimately prove correct, the research undertaken is insufficient to support it with confidence.

Published

Question 4 – 23 minutes

Question pedagogy

Question 4 is designed to assess candidates' ability to apply core employment income tax principles to a focused, technical issue within the wider case study having undertaken appropriate research as indicated by the pre-seen. Unlike Question 2, which tests process, HMRC powers and dispute strategy, Question 4 deliberately narrows the scope to a single expense category in order to test technical reasoning, statutory interpretation and disciplined application within a constrained time allocation. It also tests opinion writing skills.

The question requires candidates to explain whether and, if so, how tax relief could be claimed for IT equipment purchased and paid for personally by an employee. This framing is intentional. It prevents candidates from simply asserting that an expense is or is not deductible and instead requires them to:

- identify the correct statutory route(s) for relief;
- apply the statutory tests to the facts provided (as explained in case law as relevant);
- reach a reasoned conclusion, recognising where relief is doubtful or unlikely; and
- express their opinion in a formal, written communication.

Knowledge and skills being assessed

Although the assumed technical content is the Knowledge Level Income Tax & NIC syllabus, this question is not designed to test rote knowledge. It tests whether candidates, having carried out research in advance to enable them to provide a detailed response, can:

- identify the correct statutory framework for employee-incurred expenses (in particular s.336 ITEPA 2003);
- distinguish between use for work and expenses incurred in the performance of the duties;
- recognise the significance of capital versus revenue expenditure and the limited circumstances in which employees may claim capital allowances;
- apply relevant case law principles to explain why relief is or is not available; and
- communicate a clear conclusion proportionate to the facts and the time available.

The question is also designed to reward candidates who recognise that an apparently work-related expense may still fail the statutory tests, reflecting the restrictive nature of employment expense relief in UK tax law.

Scope and proportionality

This question has a suggested time allocation of 23 minutes and is intentionally limited in scope – eg relating to the new employment rather than work performed for Rain Ltd. Candidates are not expected to consider PAYE compliance, HMRC recovery powers or dispute processes, which are assessed elsewhere in the exam. Nor are candidates expected to consider every possible exemption or relief. The

Published

focus is on applying the general employment expense rules accurately and proportionately.

There is a range of valid ways to structure an answer although it should exhibit the features of the IRAC approach or something similar. Some candidates may focus primarily on s.336 ITEPA 2003, while others may also consider the capital allowances route under ITEPA 2003 and the Capital Allowances Act 2001. Both approaches can score well if applied correctly and explained clearly. For example, an answer that used the time to explain case law under s.336 and then spent less time or even no time on the possibility of capital allowances could still score well. An exceptional answer would consider the interaction of the two routes and state an opinion as to which one is better for the client to rely on (if indeed that is the outcome of the research).

The style of question and expected answer is very different to what might be expected in Advanced Technical. The ability to research in advance means the level of depth expected is quite high. However, the advance notice given by the pre-seen makes this question a test of a candidate's research skills. The pre-seen is designed to direct candidates towards undertaking additional research beyond the core Knowledge Level syllabus content, enabling them to answer the question at the depth suggested by the time allocation.

The question is assessed holistically using the published Tax Landscape syllabus rubric. There is no checklist of statutory provisions. The quality of explanation, application and conclusion is more important than the quantity of technical material reproduced.

Guidance for assessors

A failing answer might:

- Misunderstand the statutory test for employment expenses.
- Assert deductibility based solely on work-related use.
- Fail to identify the correct statutory provisions.
- Contain little or no application to the facts.
- Be disorganised or unclear with an illogical structure to the answer which makes it hard to follow.
- Have an unprofessional tone – eg uses colloquialisms, slang, unprofessional language or sentences that do not make sense.

A pass-level answer might:

- Identify s.336 ITEPA 2003 as a starting point.
- Explain the key elements of the statutory test in broad terms.
- Recognise why personally purchased equipment is unlikely to qualify.
- Reach a sensible, cautious conclusion.
- Be readable and broadly well structured, even if not entirely coherent.
- Use formal English with a broadly professional tone.

A distinction-level answer might:

- Apply the statutory tests precisely and accurately.
- Integrate relevant case law to explain how the courts interpret the rules.

Published

- Distinguish clearly between employment expense relief and capital allowances.
- Recognise evidential and factual limitations.
- Provide a well-reasoned conclusion proportionate to the suggested time allocation.
- Use formal English with a consistent professional tone.

Published

Criteria	Distinction	Pass	Borderline fail	Fail
Introduction	Short appropriate introduction.	Introduction clear.	The rest of the answer may not flow from the Introduction.	No introduction.
Analysis & application	Applies the statutory tests precisely to the facts, explaining clearly why the conditions are or are not met in Alex's circumstances.	Applies the statutory tests to the facts in a broadly correct but largely descriptive way.	Some attempt to apply the law to the facts, but analysis is weak or inconsistent.	Little or no meaningful application to the facts.
Critical thinking & synthesis	Demonstrates clear judgement by distinguishing between work-related use and statutory deductibility and by recognising evidential and factual limitations.	Reaches a sensible conclusion with limited evaluation.	Conclusion reached with little supporting reasoning.	No clear or reasoned conclusion.
Evidence & support	Correctly identifies and applies both the relevant statutory routes at least to some extent. Demonstrates a clear understanding of how and why the provisions apply.	Identifies s.336 ITEPA 2003 as the starting point and may also recognise that capital allowances are relevant.	Mentions statutory provisions but with limited accuracy, clarity or relevance.	Fails to identify the correct statutory provisions or relies on incorrect law.
Structure & organisation	Exceptionally clear, logical structure with smooth progression of ideas. The discussion reads as a coherent, reasoned argument throughout.	Generally well structured with a clear progression of ideas. Some weaknesses in flow or balance, but the argument remains intelligible.	Some structure is evident, but organisation is weak or uneven. Ideas may be repetitive or poorly sequenced.	Disorganised or unclear structure. The discussion is difficult to follow or lacks coherent progression.
Conclusion	Strong, well-reasoned conclusion that draws the discussion together. Demonstrates evaluative judgement.	Clear conclusion that summarises the main points & answers the question, though may lack depth or evaluation.	Basic conclusion that largely restates earlier points without analysis or clear resolution of the question.	Incomplete, irrelevant or missing conclusion. Fails to address the question posed.
Presentation & writing	Clear, concise & professional writing style. Tone & language are appropriate to a professional tax context.	Generally clear writing. Meaning is clear, though expression may occasionally be awkward or repetitive.	Writing is unclear in places, with noticeable issues that detract from clarity. Tone is inappropriate at times.	Poor presentation. Unclear expression makes the answer difficult to understand. Tone may be inappropriate.

Published

4 – sample solution, distinction

Even if the IT equipment purchased by Alex were used in the course of his employment, this does not of itself mean that tax relief is available. The availability of relief depends on whether the statutory conditions for the deduction of employment expenses are satisfied. There are two provisions that need to be considered.

Where an employee incurs expenditure personally, Income Tax relief from employment income under the general rule is available only if:

- the employee is obliged to incur and pay the expense as holder of the employment; and
- it is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

[s.336 ITEPA 2003]

This is a strict test and has been consistently interpreted narrowly by the courts.

Personal preference by Alex to use his own equipment rather than employer-provided equipment appears not to meet the first part of s.336 ITEPA 2003. Although Z plc does have a "bring your own" policy for IT equipment that applies to all employees in that role, it is still not clear that buying and using his own equipment is anything more than the exercise of a personal preference/choice by Alex. Z plc does provide IT equipment. It is therefore unclear whether Alex is "obliged" (ie under a duty to incur and pay the expense merely in exercising a choice.

The equipment would have to be used wholly and exclusively in the performance of the duties of the employment. Duality of use (eg clothing) precludes an expense from satisfying this part of the test unless it is severable (eg telephone usage). So the equipment would need to have little to no private use to meet this threshold.

The expenditure on the equipment must also be incurred as a necessary part of the performance by Alex of the duties of his employment. Case law dictates that this test is met only if an expense is deductible by every holder of a particular employment in the performance of their duties in the sense that they are unable to perform those duties without the equipment. Being useful in performing a role would not be enough; Alex would have to show that he would be unable to perform his role without the equipment to meet this test. This is clearly not the case here as Alex could perform his role without incurring the expense (the employer providing equipment adequate for him to do his job).

Expenses incurred to put an employee in a position to perform their duties are not incurred in the performance of those duties. Case law such as *Brown v Bullock* and *Ricketts v Colquhoun* illustrates this distinction. Equipment such as a laptop or monitor is typically acquired to enable the employee to carry out their role and therefore equips the employee for work, rather than being incurred in the actual performance of the duties themselves.

Whether the cost of the IT equipment purchased by Alex does satisfy the statutory test in s.336 ITEPA 2003 is debatable and without more detail we cannot reach a definite answer. However, it seems unlikely it would meet the threshold.

However, s.336 ITEPA 2003 is not the only provision whereby employment expenses are deductible. s.327 ITEPA 2003 permits a deduction from employment

Published

4 – sample solution, distinction

income for capital allowances under s.262 CAA 2001. The IT equipment is plant (being apparatus used wholly or partly in the employment) which is owned by Alex. The expenditure he incurs in acquiring it is capital as the equipment needs to be replaced only every three years. Although it is an open question as to whether capital expenditure is within the scope of s.336 ITEPA 2003, it appears that he may qualify for deduction under the capital allowances regime. If there is private use of the IT equipment, capital allowances are not denied but rather allowances are given in respect of the employment use of the asset (unlike for s.336 ITEPA 2003 where there must be no duality of purpose).

However, where capital allowances are claimed by an employee two additional criteria must be met under s.36 CAA 2001:

- the equipment is not a cycle or motor vehicle (which is clearly the case); and
- it was necessarily provided for use in the performance of the duties of the employment or office.

Overall, a claim for capital allowances is less onerous than meeting the criteria under s.336 ITEPA 2003 as the conditions to be met are less strict. However, Alex still needs to prove that the use of the equipment is necessary for his role. This is the same test as that in s.336 ITEPA 2003 and, for the reasons stated earlier, is likely to be a difficult threshold to reach.

Accordingly, even though the IT equipment is used for work purposes, it is unclear whether Alex would be able to claim tax relief for the expenditure incurred in buying it.

If Alex does meet either the test in s.336 ITEPA 2003 or the requirements to claim capital allowances (which seems remote), he would still need to claim tax relief from HMRC. If the amount is below £2,500 he can do this using HMRC's online form. Otherwise, he would need to make a claim via an Income Tax self-assessment return each year.

In any event, employee NIC would remain payable in full on his gross salary, as no deduction is available for expenses for NIC purposes.

Published

4 – sample solution, pass

The availability of relief depends on whether the statutory conditions for employment expenses are satisfied.

Under the general rule, expenses are deductible if:

- the employee is obliged to incur and pay the expense; and
- it is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

[s.336 ITEPA 2003]

This is a strict test and has been consistently interpreted narrowly by the courts.

Personal preference by Alex to use his own equipment rather than employer-provided equipment would fail the first part of s.336 as his employer provides equipment.

The equipment would have to be used wholly and exclusively for the purposes of the employment. So the equipment would need to have little to no private use to meet this threshold.

The equipment must also be necessary for the role so if Alex could perform the role without incurring the expense then it is not necessary for him to have paid for the equipment.

Expenses incurred to put an employee in a position to perform their duties are not incurred in the performance of those duties. Case law such as Brown v Bullock and Ricketts v Colquhoun illustrates this distinction.

Whether the cost of the IT equipment purchased by Alex does satisfy the statutory test in s.336 ITEPA 2003 is debatable and without more detail we cannot reach a definite answer.

However, the expenditure is capital in nature and therefore under s.327 ITEPA 2003 a deduction from employment income for capital allowances may be permitted per s.262 CAA 2001.

Where capital allowances are claimed by an employee the equipment must have been necessarily provided for use in the performance of duties of the employment or office. [s.36 CAA 2001]

Alex will still need to prove the equipment is necessary for his role. This is the same test as for s.336 ITEPA 2003 and is a difficult threshold to reach.

Accordingly, although the IT equipment is used for work purposes, Alex probably will not be able to claim tax relief when buying it as he is, in both cases, unlikely to be able to meet the statutory requirements.

However, if Alex did meet either the test in s.336 ITEPA 2003 or the requirements to claim capital allowances, he would need to claim tax relief from HMRC. If the amount is below £2,500 he can do this using HMRC's online form. Otherwise, he would need to make a claim via an Income Tax self-assessment return each year.

Published