

Institution **CIOT - CTA**  
Course **Adv Tech Human Capital Taxes**

Event **NA**

Exam Mode **OPEN LAPTOP**

Exam ID

Answer-to-Question-\_1\_

**Income tax and NIC consequences of payments to Amy**

The £200,000 payment made to Amy when she accepts the offer will be considered earnings from her employment with Big Ltd. As a result, the amount paid should be subject to PAYE income tax and Class 1 primary and secondary NICs.

Earnings are treated as paid on the date that the employee becomes entitled to them, therefore the £200,000 will be paid on 31 May 2023.

Big Ltd will need to operate payroll and deduct PAYE and Class 1 primary and secondary NICs in the tax month ended 5 April 2023.

The amount should be reported under Real Time Information (RIT) and included on a Full Payment Submission (FPS) on or before the time of payment (i.e. on or before 31 May 2023).

The tax and NICs should be paid to HMRC by 19 April (or 22nd if paying electronically).

If the payment is made before Amy has had a P45 from then PAYE should be operated using 0T tax code. If tax is overpaid, this can be reclaimed in December payroll once Amy starts her employment/receiving salary from Big Ltd.

Amy's salary will be subject to PAYE income tax and Class 1 NICs as outlined above each tax month. FPS should be made on or before

the time of payment. Tax and NICs paid by 19th or 22nd of the month if paying electronically.

### **Relocation package**

#### School fees

The £10,000 paid towards Amy's sons school fees will be taxable.

The tax treatment will depend on whether the payment is made directly to the school or whether Big Ltd is reimbursing Amy for school fees.

If the school make payment directly to the school, the fees paid will be a taxable benefit, which should be reported on Amy's P11D and form P11Db by 6 July following the end of the tax year. Amy will then pay tax on this via self-assessment or via her tax code.

As Amy is an additional rate tax payer she will pay tax at 45% on the benefit:

$£10,000 @ 45\% = £4,500$

Big Ltd will have a Class 1A NIC liability (at 15.05%) on the amount of school fees paid.

$£10,000 @ 15.05\% = £1,505$

If Amy is reimbursed for the school fees, the benefit will be reported on Amy's P11D and form P11Db as outlined above, however the payment will be treated as earnings for Class 1 NIC purposes.

As a result, Class 1 primary NICs will be payable by Amy at 3.25%:

$£10,000 @ 3.25\% = £325$

Class 1 secondary NICs will be payable by Big Ltd at 15.05%:

$£10,000 @ 15.05\% = £1,505$

Class 1 NICs should be paid by 19th/22nd of the month following the month of payment.

#### Legal fees on sale of house

The amount paid to Amy in respect of the reimbursement for the legal fees on the sale of her old house will be exempt from tax and NICs under s.271 ITEPA 2003.

The exemption applies for the reimbursement or payment of removal and relocation expenses up to £8,000. Any reimbursements must be directly attributable to a qualifying relocation expense.

In this case the legal fees on the sale of her old house will be qualifying removal expenses and are under £8,000 so fully exempt.

#### Travel costs to Leeds

There is an exemption for travel and subsistence costs where an employee is travelling to a temporary workplace.

A temporary workplace is one that the employee will be seconded to for less than 24 months or one that they spend less than 40%

of their working time at.

As Amy is required to work in Leeds, it will not be considered a temporary workplace and as a result, the travel and relocation expenses of £7,000 (total) will be taxable.

As outlined above, the reimbursement of the £1,000 travel costs should be reported on form P11D by 6 July for income tax purposes. The amount reimbursed will be earnings and Class 1 primary and secondary NICs will be due.

Class 1 NICs should be paid by 19th/22nd of the month following the month of payment.

As the hotel costs will be paid for directly by Big Ltd, these will be reportable on form P11D by 6 July for income tax purposes and Class 1A NICs will be payable by Big Ltd.

Any benefits reported on P11D should be reported on form P11Db as well.

Any Class 1A NICs due should be paid to HMRC by 19th of July (or 22nd if paying electronically).

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-----ANSWER-1-ABOVE-----  
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-----ANSWER-2-BELOW-----  
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Answer-to-Question-\_2\_

Loan balances waived - employment in ome for Beth  
Dividend for Michelle but still subject to Class 1 NICs.

1) Refunds from 2022/23 tax returns:

Foreign tax credit due:

	Michelle	Beth	
	£	£	
Income liable to overseas tax	59,000	74,000	
UK tax on this amount @ 45%	26,550	33,300	
Overseas tax paid	19,470	37,500	
Amount of foreign tax credit	19,450	33,300	

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Refunds due	19,450	33,300	

Repayment of loans:

	Michelle	Beth	
	£	£	
Loan to pay o/seas tax	19,470	37,500	
Less refund payable RE FTC	(19,470)	(33,300)	
Amount outstanding	nil	4,200	

Write off of the excess overseas tax loan:

Beth's foreign tax credit does not give her a large enough refund to repay her overseas tax loan back to Holdings Ltd in full.

Where the amount remaining is written off by Holdings Ltd it will be treated as employment income for Beth.

The amount written off must be subject to PAYE and Class 1 NICs in the month that the loan is written off.

Holdings Ltd will be entitled to a corporation tax deduction on the amount written off plus any Class 1 secondary NICs paid.

Michelle's loan is able to be repaid in full from the FTC, however if any amount of Michelle's loan was not repaid, the amount written off would be treated as a dividend as Michelle is a shareholder of Holding Ltd.

The amount written off would however still be subject to Class 1 NICs, payable by payroll in the month that the loan is written off.

In addition to this, as Michelle is the sole shareholder of Holdings Ltd, it is a close company in which she holds more than



5% of the share capital.

The loan made to Michelle for the overseas tax in December 22 and March 23 will be subject to a s.455 corporation tax charge at 33.75%.

The charge arises where the loan is outstanding more than 9m and 1 day after the end of the accounting period in which it arises.

When the loan is repaid or written off, the s.455 charge can be reclaimed from HMRC.

## 2) Loan Benefit in Kind (BIK):

Where an interest free loan (or interest below the HMRC's ORI of 2%) is provided to an employee of a company, a benefit in kind will arise on the amount of interest that would have been charged using HMRC's ORI (less any amount paid if applicable).

The cash equivalent of the loan can be calculated using the average method or the strict method, however HMRC or the tax payer can insist on the strict method being applied. HMRC will insist on the strict method where there is a significantly less tax payable using the average method.

A benefit in kind only arises where the loan outstanding is greater than £10,000 at any point in the tax year.

As this is the case for Michelle and Beth, they will both have a taxable benefit in kind reported on their P11D.

### Michelle

#### Average method

$$(\pounds 19,470 + 0) / 2 \times 2\% = \pounds 195$$

Strict method

$$£16,500 \times 108/365 \times 2\% = £98$$

$$£19,470 \times 6/365 \times 2\% = £6$$

Strict method used as it gives a lower BIK.

Total BIK in 2022/23 for Michelle = £104

Michelle income tax: £104 @ 45% = £47

**Beth**

Using the strict method

	£	<u>Loan</u>
$2,250 \times 9/365 \times 2\%$	1	May 21 - 15 April 22
$4,600 \times (2-1.75)\%$	12	June 21
$5,500 \times 2\%$	110	July 21
$40,000 \times 7/12 \times 2\%$	467	March 22 - Oct 22
$20,000 \times 3/12 \times 2\%$	100	Oct 22- Jan 23
$5,000 \times 2/12 \times 2\%$	17	Jan 23 - 5 April 23
$3,500 \times 11/12 \times 2\%$	64	May 22 - 5 April 23
$950 \times 1/12 \times 2\%$	2	travel advances
$£22,500 \times 108/365 \times 2\%$	133	o/seas tax loan Dec 23
$£15,000 \times 6/365 \times 2\%$	5	o/seas tax loan March 23
Total Benefit in kind	911	

Beth's income tax: £911 x 45% = £410

The travel advances have been included as outstanding for one

month - any amount offset against qualifying travel expenses for the trip will be treated as repaid.

Class 1A NICs will be payable by 19 July 2023 (or 22nd if paying electronically). Form P11Db should be submitted by 6 July 2023.

Class 1A NICs:

$(£104 + £911) @ 15.05\% = £153$

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-----ANSWER-2-ABOVE-----  
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-----ANSWER-3-BELOW-----  
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Answer-to-Question- \_3\_

1) Social security position for Pierre:

Under the Trade and Cooperation Agreement (SSC protocol), as Pierre will be working in more than one EU member state including the UK, he will be liable to social security in his state of residence, which is France, provided that he pursues a substantial part of his working activity in France.

Reference to substantial part means at least 25% of Pierre's total working time. However as Pierre only carries on 20% of his working activities in France, this condition will not be met.

Therefore, as Pierre is only employed by one employer, he will be liable to social security in the place in which the employer is situated.

As DesGlaz Ltd is a UK registered company, Pierre will be liable to UK NICs.

As DesGlaz Ltd has a UK place of business, it will be the secondary contributor for Class 1 NIC purposes and must operate payroll for Class 1 NIC purposes.

2) In order to determine whether Pierre is UK tax resident, the statutory resident test (SRT) should be applied.

There are three tests to the SRT which should be applied in order:

1. Automatic overseas test
2. Automatic UK test
3. Sufficient ties test.

Pierre's days in the UK:

4 days (mon-thurs at midnight) x 4 quarters = 16

Therefore in a tax year Pierre will only spend 16 days in the UK.

This means that he will be automatically non-UK tax resident under the second automatic overseas test as he was not UK tax resident in the previous three tax years and spends less than 46 days in the UK in the relevant tax year.

Therefore Pierre will be non-UK tax resident during his employment with DesGlaz Ltd.

Under Article 15 of the DTA only Pierre's earnings in relation to UK duties will be subject to UK tax unless the exemption applies.

The exemption applies where:

1. Pierre spends less than 183 days in the UK in 12 months
2. remuneration is paid by an employer who is non-UK resident
3. remuneration is not borne by a UK entity

As DesGlaz Ltd is a UK entity (and there will be no overseas economic employers), the above exemption will not be met and Pierre's earnings in relation to UK duties will be subject to UK tax.

Strictly, as DesGlaz Ltd has a UK place of business, they must operate PAYE on all of Pierre's earnings paid to him. Pierre will then be able to claim a refund via self-assessment.

However, Desglaz Ltd could apply to HMRC for a s.690 direction. This would allow them to operate PAYE only on the amount of earnings in relation to UK duties (i.e. the amount that wouldn't

have a right of refund via self-assessment). This would prevent the need for a self-assessment return to be made and DesGlaz Ltd would not have to pay for UK tax return services for Pierre.

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-----ANSWER-3-ABOVE-----  
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-----ANSWER-4-BELOW-----  
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Answer-to-Question- \_4\_

1) The tax and NIC position for Anna should be considered separately for Anna.

UK Tax position in 2022/23:

Firstly Anna's tax residence position should be considered under the statutory residence test (SRT).

Under the SRT, there are three tests which must be applied in order:

1. Automatic overseas test
2. Automatic UK test
3. Sufficient ties test

Days in the UK in 2022/23:

SkinUK plc:  $5 \times 12 = 60$  days

ShinySkin UK Ltd: 8 days

total = 68 days

Anna will not be automatically non-UK resident under the automatic overseas test as she will be in the UK for more than 46 days in the tax year (and was UK res in one of the previous three tax years) and does not work full time abroad.

Anna will not be automatically UK resident under the automatic UK tests because:

1. She has not spent more than 183 days in the UK in the tax year
2. She had an overseas home available to her of which she spent more than 30 days in
3. She does not work full time in the UK at any point in the tax year as she return to Germany on 6 April 2022.

Therefore we must consider the sufficient ties test.

As Anna was UK tax resident in one of the three previous tax years, and will spend 68 days in the UK in 2022/23, she will need at least 3 ties to the UK in order to be UK tax resident in 2022/23.

Work tie - Anna will have a work tie as she will do more than 3 hours of work per day for at least 40 days in the tax year.

90 day tie - Anna will have the 90 day as she has spent more than 90 days in the UK in the 2 previous tax years.

Accommodation tie - Anna will have an accommodation tie as she will have a place to live in the UK which is available to her for a continuous period 91 days.

Therefore Anna will be UK tax resident in 2022/23.

As Anna is considered tax resident in Germany, the tie breaker clause in Article 4 of the DTA must be considered.

Anna will therefore be tax resident in the country in which she has a 'centre of vital interests'.

Given that Anna will spend most of her time in Germany, her family and friends are in Germany and she has memberships to leisure activities in Germany, Germany should be considered Anna's centre of vital interests.

Therefore, Anna will be German tax resident only in 2022/23. Under Article 15 of the DTA, she will only be subject to UK employment taxes on her earnings in relation to UK duties unless the exemption applies. However, the exemption will not apply to Anna as she is employed by the UK entity.

Strictly ShinySkin and SkinUK should operate PAYE on all of Anna's earnings in 2022/23 as they have UK places of business. Anna



could they claim a refund via self-assessment.

However, a s.690 direction can be applied for to HMRC which allows the operation of PAYE only in relation to the UK earnings.

Alternatively, where Anna has less than 60 non-incidental work days in the UK an Appendix 8 agreement can be applied for. This would allow each company to only operate once PAYE at the end of the tax year using month 12 tax tables.

This is only applicable where Anna does not have a liability to UK NICs (See below).

#### Social security implications:

Under the trade and cooperative agreement, Anna will be liable to social security in her country of residence provided that she spends a substantial amount of her working time here.

Across both employments, Anna will be liable to social security in Germany as she spends more than 25% of her working time here and it is her country of residence.

As both employers are UK based, they will have an obligation to operate a shadow payroll to account for German social security and pay it to the German social security authorities unless Anna agrees to fulfil the employers obligations. If Anna does, Skin UK plc and Shiny Skin will have an obligation to inform the German social security authorities.

Anna should obtain a certificate of continuing liability from the German social security authorities.

#### 2) Amounts to be reported to HMRC:

Skin UK:

	£		
210,000 x 5/22	47,728	salary	
14,400 x 5/22	3,273	car allowance	
	1,500	Reimbursement of hotel costs	
	52,465		

However, the reimbursement of the hotel and subsistence costs will not be exempt as Anna's employment duties are not performed wholly outside the UK.

ShinySkin

The reimbursement of the business airfare and the travel allowance will be exempt under s.370 Case B.

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-----ANSWER-4-ABOVE-----  
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-----ANSWER-5-BELOW-----  
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Answer-to-Question- \_5\_

Accomodation benefit:

The provision of the flat by PubDrinks Ltd (PDL) to Greig will be a taxable benefit.

The cash equivalent of the accomodation owned by PDL is equal to the annual value of the flat plus any additional yearly rent.

Additional yearly rent arises when the property was acquired for more than £75,000 and is equal to the cost of the property in excess of £75,000 multiplied by HMRC's ORI (currently 2%).

However, as the property has been owned by PDL for more than six years prior to the date that it was provided to Greig, the additional yearly rent will be calculated using the market value of the property at the time that Greig moves in (as opposed to the original cost which would be the case if the flat had been owned for less than 6 years).

Therefore the accomodation benefit for Greig will be:

	£		
Annual value	6,000		
Additional yearly rent (w1)	4,000		
Accomodation benefit	10,000		

(w1) additional yearly rent

$(£275,000 - £75,000) @ 2\% = £4,000$

It is not possible to opt for an accommodation benefit to be payrolled, so it must be reported on form P11D by 6 July following the end of the tax year, Greig will then pay income tax via self-assessment or via his tax code. As Greig is a basic rate tax payer he will pay tax on this at 20%/

$£10,000 @ 20\% = £2,000$

PDL should report the benefit on form P11Db and pay Class 1A NICs at 15.05%, due by 19th (or 22nd if paying electronically) of July 2023.

$£10,000 @ 15.05\% = £1,505$

Runnings costs:

The running costs of the flat which are paid directly by PDL to the suppliers will be taxable benefits for Greig.

The cash equivalent will be the cost to the employer of providing the benefit.

The benefits should be reported on form P11D and P11Db as outlined above.

Income tax for Greig 2022/23:

	£		
Insurance	500		
TV & broadband	600		
Gas & elec	2,595		

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Total	3,695		
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£3,695 @ 20% = £739

As the costs are met directly by PDL, Class 1A NICs will be due on the cash equivalent, payable by PDL by 19th/22nd of July.

£3,695 @ 15.05% = £556

There is an exemption for broadband where it is paid wholly and exclusively for the purposes of working from home and there is no private use however as Greig is a chef, it will not be for the purposes of working from home and will be therefore be taxable.

Reimbursed Council:

As PDL reimburse Greg for the council tax payments the benefit will be reported on Greig's P11D and form P11Db by 6 July following the end of the tax year as outlined above.

Income tax (£3,000) @ 20% = £600

However, it will be treated as earnings for NIC purposes and Class 1 primary and secondary NICs will be due.

As Greig's salary is below the upper earnings limit:

Class 1 primary NICs: (£3,000) x 13.25% = £398

Class 1 secondary NICs: (£3,000) x 15.05% = £452

Mobile Phone alternatives:

The reimbursement of the mobile phone costs will have the same tax treatment as outlined above for the council tax.

Instead, if PDL were to contract directly with a mobile phone supplier to provide Greig with a mobile phone, this would be an exempt benefit.

Therefore saving Greig income tax and Class 1 primary NICs and PDL Class 1 secondary NICs.

Salary:

Greigs salary will be treated as earnings and subject to PAYE income tax and Class 1 NICs in the tax month in which the salary is paid.

Greig's salary should be reported on a full payment submission on or before the time of payment under RTI.

The tax and NICs should be paid to HMRC 14 days after the end of the tax month in which the salary is paid or 2 days later if paying electronically.

Payrolling benefits:

The benefits outlined above which are reported on form P11d (except the accomodation benefit) can be voluntarily payrolled.

This must be agreed with HMRC prior to the start of the tax year in respect of the reimbursement amounts which are subject to Class 1 NICs, or by 6 July following the end of the tax year in respect of any benefits subject to Class 1A NICs.

This is because once a liability to PAYE or Class 1 NICs arises, it must be paid on the due date for that tax month.

Where benefits are voluntarily payrolled PDL must register the payrolled benefits with HMRC online and provide employees with a

summary of the payrolled benefits by 31 May following the end of the tax year.

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-----ANSWER-5-ABOVE-----  
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-----ANSWER-6-BELOW-----  
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Answer-to-Question-\_6\_

The option granted to Many was by virtue of her employment and as a result, will be an employment related security (ERS).

Grant of the option:

There will be no or NIC implications of the grant of the options to Many in 2018.

Exercise:

ERS can be subject to a restricted securities charge where the shares are forfeitable or there is a restriction in relation to the disposal of the shares.

The disposal restrictions do not have any impact over the market value of the shares, therefore there will be no restricted securities charge in relation these restrictions.

Therefore on exercise of the options, the amount treated as employment income will be the difference between market value of the shares (taking into account the 25% discount) and the exercise price paid ("the option gain").

	£		
Market value at exercise *	33,750		
Less exercise price	(10,000)		



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Option gain	23,750		

\*£4.50 x 10,000 = £45,000  
 £45,000 x 25% = £11,250  
 MV at 31 December 21 = £33,750

However, only the option gain in relation to the period whilst Mandy was UK resident or in relation to UK workdays during the relevant period will be subject to tax in the UK.

The relevant period will be from the date of acquisition to the date the option becomes exercisable (1 October 2021):

1 October 2018 - 30 September 2021 (36 months)

Period	UK months	Overseas months	Total months
1.10.18 - 31.12.18	3		3
1.1.19 - 31.12.20	1	23	23
1.1.21 - 30.9.21	9		9
<b>Total</b>	<b>13</b>	<b>23</b>	<b>36</b>

Therefore, on exercise 13/36ths of the option gain will be subject to UK income tax.

$13/36 \times £23,750 = £8,576$  of the gain will be subject to UK income tax in 2021/22.

As the shares are in an unlisted company and there are no arrangements in place at the time of exercise for the shares to be sold, the shares should not be readily convertible assets (RCAs). Therefore, the option gain is reported and income tax paid by Mandy via her 2021/22 self-assessment return.

If the shares were RCAs at the time of exercise, PAYE should be

operated on a best estimate basis on the taxable income gain at the time the option is exercised (NICs have been considered separately below). FPS for ERS should be submitted 14 days following the end of the tax month and

When dividend and voting restrictions are lifted:

When the restrictions are lifted one year after the date of acquisition/exercise, the value of the shares held by Many will increase by 25%.

Therefore, the increase in value will be treated as employment income and subject to UK income tax.

	£	£
UMV at 31 Dec 2022	$5.00 \times 10,000$	50,000
MV immediately before	$50,000 \times 75\%$	(37,500)
Amount treated as employment income		12,500

As Many is UK tax resident at the time the restriction is lifted, the £12,500 paid will be fully subject to UK income tax.

On the basis that the shares are not RCAs, the amount should be reported and income tax paid via Many's 2022/23 self-assessment return.

If there are arrangements in place at the time for the shares to be sold they will be RCAs and the amount treated as employment income will be subject to PAYE as outlined above.

### National Insurance Implications

As the shares in the company are not RCAs, there will be no NIC implications in relation to the grant, exercise, lifting of restrictions as outlined above.

However, if the shares were RCAs at the time of exercise/lifting of restrictions then Class 1 primary and secondary NICs will be due on the amount treated as employment income which should be paid via payroll.

In relation to the option gain taxable on exercise, the amount on which Mandy will be subject to UK NICs will be the portion of the option gain arising whilst Mandy was within the UK social security system.

Assuming there is no social security agreement between the UK and China, Mandy would be within the UK social security system for the first 52 weeks of her secondment to China.

As Mandy is gainfully employed in the UK at the time the restrictions on the shares were lifted (Dec 22), this amount would be fully subject to UK Class 1 NICs if the shares were RCAs.