



The Chartered Tax Adviser Examination

May 2017

Human Capital Taxes

Advisory Paper

TIME ALLOWED – 3 ¼ HOURS

- The first 15 minutes is designated as reading time. During this time you may read your question paper and legislation and annotate your question paper. You are not permitted to write in the answer booklet. The Presiding Officer will inform you when you can start writing. Calculators may not be used during this time.
- You should answer all **SIX** questions.
- Start each answer on a fresh page and do not write in the margins.
- All workings should be shown and made to the nearest month and pound unless the question specifies otherwise.
- Marks are specifically allocated for presentation.
- Candidates who answer any law elements in this paper in accordance with Scots law or Northern Ireland law should tick the appropriate box on the front of each answer booklet.
- Unless otherwise indicated by the provision of additional table information, you may assume that 2016/17 rates and allowances continue to apply for 2017/18 and future years. Candidates referring to actual or pending rates and allowances for 2017/18 and future years will not be penalised.

1. You are a manager in a firm of Chartered Tax Advisers and your client is ADC Ltd, which is a UK incorporated and tax resident company. You have received the following email from Bob Travers the Managing Director of ADC Ltd:

To: Joe Green
From: Bob Travers
Date: 2 May 2017
Subject: Non-resident director

Dear Joe

I need your advice in relation to Jim Potter, who is a director and employee of ADC Ltd but who is tax resident and lives in New Zealand. Jim is regarded as non-resident in the UK but has been spending an increasing number of days in the UK, mainly for personal reasons to watch sporting fixtures that his team are playing in the UK. We would like to know whether these additional days will have any impact for the company and for Jim.

Jim has said that he spent 114 days (based on where he was at midnight) in the UK during the 2016/17 tax year compared to around 50 days per year in each of the three previous tax years. During 2017/18 he thinks that he may spend over 130 days (again based on where he is at midnight) in the UK. Of his days in the UK, 35 days (where more than three hours of work are carried out) each tax year are spent working for ADC Ltd.

He is required to attend four board meetings for ADC Ltd each year, although two of these can be carried out by video link from New Zealand. The other two must be carried out in person. When he comes to the UK for a board meeting, he will usually stay for a week in order to catch up with his UK contacts and to carry out other duties for us. The days spent in the UK on his director trips are included in the 35 UK workdays a year referred to above.

In addition to the days spent working for us in the UK and the two board meetings attended by video link from New Zealand, he also spends two days a month working for us from New Zealand.

We pay Jim separately for his general duties (£100,000 per annum) and his director duties (£40,000 per annum) direct into his New Zealand bank account. If you need any more information regarding amounts that we pay, please let me know.

In addition, any expenses that Jim incurs whilst he is in the UK are paid for using his New Zealand credit card. The bills for this credit card are settled from his New Zealand bank account.

By way of additional background information, Jim's wife and children (aged 10 and 7) remain in their home in New Zealand during his visits to the UK. He also owns a property in the UK, which he stays in when he visits the UK.

I have a meeting with Jim next week to discuss the overall impact that his increased UK time will have on the companies and what we need to do in this respect. Please note that Jim is taking advice from his New Zealand adviser separately so I only require advice relating to the UK implications from you.

Kind regards

Bob Travers

Relevant extracts from the UK/New Zealand double tax treaty are provided opposite.

You are required to draft an email to Bob Travers explaining the UK tax implications of Jim spending more time in the UK. (20)

Continued

1. Continuation

Extracts from UK/New Zealand double tax treaty

Article 4 Residence

(1) For the purposes of this Convention, the term "resident of a Contracting State" means, as the context requires:

- (a) any person who is resident in the United Kingdom for the purposes of United Kingdom tax; or
- (b) any person who is resident in New Zealand for the purposes of New Zealand tax.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 16 Dependent personal services

(1) Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any consecutive period of 12 months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

End of Question

2. You are a tax manager in a firm of accountants and have been approached by Aldo Smith, the Finance Director of your client, CZE Ltd. CZE Ltd is a UK company that specialises in the sale of outdoors sporting equipment and has its head office in Milton Keynes.

Aldo has recently become aware that a former colleague, Julian Savage, would like to relocate to the Milton Keynes area due to the ill health of his mother. Julian is currently working as a sales manager for a firm in Manchester.

You have received the following email from Aldo:

To: Jeremy Bagg
From: Aldo Smith
Date: 1 May 2017
Subject: New employee proposal

Dear Jeremy

As per our telephone conversation, I would like to offer a role to Julian in CZE Ltd. I have had an informal conversation with Julian, who believes that he would not be prevented from working for our firm due to any non-compete terms in his current contract. Therefore, it is likely that if we get the package right, he would consider a move to our firm although obviously the other members of the Board will need to agree to the appointment.

I am therefore in the process of putting together a proposed package before I arrange for Julian to come in for an interview. As an incentive to join us, I am considering a "golden hello" payment of £10,000 payable on acceptance of the contract. He will actually start work in three months when his notice period at his current employer expires so I am considering adding a term to his contract that if he does not start with our company or leaves within a set period then this amount will be repayable. Since he will not be on the payroll, can this be paid tax free? Are there any alternative approaches we could use to deliver a similar result tax efficiently?

I look forward to hearing from you.

Kind regards

Aldo

You are required to write an email to Aldo in response to his queries. (15)

3. You work for a firm of Chartered Tax Advisers and your client is Alpha plc, which is the UK subsidiary of a multinational group headquartered in Sweden.

Your tax partner has asked you to brief him on the UK tax issues arising from a proposed secondment to the UK of Astrid, who is one of the directors of the Swedish parent company. Astrid will become the Managing Director for Alpha plc on a part-time basis and it is expected that she will remain in this role for at least three years.

It is anticipated that she will normally work on Tuesdays and Wednesdays in the UK, flying in on Tuesday morning, staying in a hotel on Tuesday night and then flying home on Wednesday evening. She will continue to have responsibilities at group level and will work on group matters in Sweden on the other days of the week. Except for work, she will not spend any time in the UK. She has not previously been tax resident in the UK.

Alpha plc will bear the cost of Astrid's return flights to the UK, as well as all accommodation and subsistence while she is in the UK. Astrid's husband and children will remain in Sweden.

You are required to draft a memo briefing your tax partner on any UK Income Tax issues for Astrid in relation to her secondment to the UK. (15)

4. You are a manager in a firm of Chartered Tax Advisers which provides tax advice on reward related matters to PPT plc, a UK headquartered company with a wholly owned subsidiary in Germany.

Frank, the Group Reward Manager of PPT plc, has recently contacted you for advice regarding one of their long standing UK full-time employees, Emily, who is on assignment in Germany. Frank is concerned that this might have an impact on her participation in the firm's UK tax advantaged share scheme.

Emily started travelling to Germany in early January 2017 to lead a project at the German subsidiary. Until the start of April 2017 she spent two workdays a week in Germany and stayed in hotels. Throughout this period she retained the apartment that she rented in London.

By the start of April 2017 it had become clear that Emily would need to be in Germany on a more permanent basis and devote 100% of her time to the project until it ends on 5 April 2018, at which point she will return to the UK. Emily decided it would make sense to rent an apartment in Germany and therefore gave up the tenancy of her London apartment on 5 April 2017.

During 2017/18, she anticipates that she will return to the UK for no more than two workdays a month plus occasional social visits on holidays. When she is in the UK she will stay with her parents.

You have already established that under the UK statutory residency test Emily will be considered resident in the UK for the full 2016/17 tax year but non-resident for the full 2017/18 tax year.

Your contacts in Germany have confirmed that Emily will be considered tax resident in Germany under their domestic rules for calendar years 2017 and 2018.

Frank has advised you that Emily is single with no children, is domiciled in the UK and is not a director of PPT plc. This is the first overseas assignment that Emily has ever undertaken. PPT operates a Company Share Option Plan (CSOP). This was self-certified by the company as tax advantaged in May 2014.

Emily currently holds three sets of unexercised options as follows:

Granted 30 June 2014	2,000 shares (market value at grant £2.00 per share)
Granted 30 June 2015	2,000 shares (market value at grant £2.50 per share)
Granted 30 June 2016	2,000 shares (market value at grant £3.50 per share)

She is expecting to be granted options over a further 2,000 shares on 30 June 2017.

Frank also expects that she may exercise some of her existing options while on assignment to Germany. Emily's assignment letter states that she will be fully tax equalised on all employment income while on assignment.

Relevant extracts from the UK/Germany double tax treaty are provided opposite.

You are required to prepare a memo to your Tax Partner discussing:

- 1) Emily's residence status under the UK/Germany Double Tax Agreement during the period from 1 January 2017 to 5 April 2018.** (4)
- 2) The impact of the German assignment on Emily's participation in the Company Share Option Plan. You are NOT required to comment on Social Security or prepare calculations.** (11)

Total (15)

Continued

4. Continuation

Extracts from UK/Germany Double Tax Treaty

Article 4

Resident

(1) *For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority of a "Land" or a Contracting State. This term, however, does not include any person who is liable to tax in that Contracting State only if he derives income or capital gains from sources therein or capital situated therein.*

(2) *Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:*

(a) *he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (centre of vital interests);*

(b) *if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;*

(c) *if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;*

(d) *if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.*

(3) *Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.*

(4) *If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated.*

End of Question

5. You are an expatriate tax manager in a firm of Chartered Tax Advisers. Your client, UIH Ltd, which is a UK company, has asked for your advice in relation to their first long-term assignment outside of Europe.

Paul Massey is to be assigned to UIH Ltd's South Africa subsidiary for 36 months commencing on 1 June 2017 in order to oversee new business development in the region. Paul will be accompanied by his wife, Diana. Both have always been resident and domiciled in the UK. Paul has been employed by UIH Ltd for the last 15 years.

You have established that for Income Tax purposes they will become non-resident in the UK and resident in South Africa from the start of assignment. You have also established that there is no reciprocal social security agreement between the UK and South Africa. Paul will continue to be paid via the UK payroll and the company has applied for an NT code for Paul to commence from 1 June 2017.

According to the assignment agreement, Paul is tax and NIC equalised on his employment income for the period of the assignment. He will also be entitled to a net cost of living allowance throughout the assignment. In South Africa he will live in a rented apartment. There is currently some discussion about whether the apartment will be leased directly by the South African company or whether they will provide Paul with an accommodation allowance.

The company is also willing to fund any reasonable expenses Paul incurs in the UK to protect his UK basic state pension entitlement.

You are required to prepare a memo for the UIH Ltd payroll manager advising on:

- 1) Paul's UK social security position while in South Africa distinguishing between his personal liabilities and those of the company.**
- 2) The UK payroll obligations for UIH Ltd in respect of Paul while he is in South Africa.**

(15)

6. You work for a firm of Chartered Tax Advisers and have received the following email from Michael Atkinson, who is the new Finance Director at your firm's client, 4rail Ltd.

To: Anne Adviser
From: Michael Atkinson
Date: 1 May 2017
Subject: PAYE review

Anne

By way of introduction, I have been appointed as the new Finance Director at 4rail Ltd and I have been reviewing our payroll processes. Whilst doing this, I came across an unusual situation with one of the contractors we use, Fred Mason.

Fred is a skilled handyman who has been engaged by us since 6 April 2016 and is responsible for the day to day maintenance of our factories and offices.

Fred is contracted to work a minimum of 20 hours per week and has autonomy over which days he works and the priority of the tasks he performs. He invoices the company on the first day of the month for his services in the previous month at a fixed rate of £25 per hour and the company always pays his invoices on the 15th of each month. During 2016/17 he worked an average of 25 hours per week. The contract has a termination notice period of one month for both parties.

We provide Fred with all of the tools he requires together with a small diesel van. Fred keeps the van at home overnight and he uses it to drive from his home to our various factory and office sites. The van is provided to him on condition that he must not use it for private purposes, other than commuting between home and company sites and he complies with those terms. He is provided with all fuel for the van.

Our payroll team have advised me that the contract with Fred includes a declaration that he is a self-employed individual and is responsible for his own taxes via his Self Assessment tax return.

I would appreciate your advice relating to any withholding or reporting obligations the company has in respect of the arrangements with Fred, as I would like to be sure that we are compliant.

Kind regards

Michael

You are required to reply to Michael's email, providing the advice he requires. (20)