Answer-to-Question-_1_

There are a number of employment tax implications that must be considered for the proposed engagement.

<u>Short-term workers</u>

It is understood that the company will hire short-term workers under employment contracts for the period of the project which is expected to last six months.

There are payroll costs and implications that should be considered. All employees should have PAYE operated at their marginal tax rate, and the relevant Class 1 NICs on their earnings payable by 19th of the following tax month.

Each employee should be provided with a starter checklist to ascertain their tax code, whether any student loand deductions are due and they should be put on the payroll accordingly.

On the understanding these individuals will be commuting to the same workplace every day and will not have had another workplace, this will be a permanent workplace and therefore any accommodation and subsistence that is provided would be a taxable benefit. Where a workplace is considered temporary due to either meeting the temporary purpose (unconnected to their normal duties) or duration conditions (less than 24 months or 40% of their working time spent at the site)

The allowance to cover food cost wold be taxable via payroll as if it was earnings and should have the appropriate PAYE and NICs applied to it for each individual. In addition, the accommodation benefit provided by Oil5 should also be included on Forms P11D by 6 July following the tax year and the relevant Class 1A NICs paid on the benefit by 19th July. The amount of the benefit in kind will vary depending on whether the employer owns the accommodation or pays rents. Contributions by employees would reduce these benefit in kind amounts.

It may be adviseable for the company to consider engaging with an agency to provide the short term workers. There would be fewer obligations such as national minimum wage, operation of payroll, auto-enrolment for these new starers as they would not be considered employees. The administrative burden would be eased but the company should ensure that there are no personal service companies in the chain and that the agency was operating PAYE and NICs on the payments made to the workers.

For the agency rules to apply, there must be a worker that provides their services to the client; there is an agency that is not associated with the worker; and the worker is subject to supervision, direction and control.

Off-payroll Working Rules

In respect of the engagement with the welding specialist, it is important to consider the off-payroll working rules and any relevant Management Service Company rules.

It has already been confirmed by OIL5 that the engagement of the specialist would be considered as one of employment by the CEST.

The off-payroll working rules apply where the following conditions are met:

- The employer is not a 'small' employer for IR35 purposes. In this case this means having met at least two of the following three conditions: turnover of more than £10.2m; a balance sheet total of £5.1m; and more than 50 employees. These conditions must have been met for two consecutive years.

- There must be an individual that provides their services directly to the client.

- The contract for the above mentioned services does not sit with the individual and the client, but instead sits with an intermediary.

- The intermediary is a qualifying company - i.e. a Personal Service Company.

- If there was a contract in place with the worker directly then there would be an engagement that would be considered as one of employment.

Given the information provided, we understand that the company met the turnover and employee test for at least the last two consecutive years and would therefore not qualify for the small company exemption.

It is also evident that there is a personal service company acting as an intermediary and the specialist is providing services directly to the client and they would be considered an employee if the intermediary did not hold the contract as indicated by the CEST. A personal service company is one where the individual has at least a 5% interest in or an opportunity to receive 60% of the profits of the company.

Given the above, there are a number of requirements that must be undertaken as follows:

- A status determination statement should be issued by the client (Oil5) as soon as they have made a decision whether ITEPA, 2003 Chapter 10 applies, and given the CEST came back indicating employment this would be the case. The SDS should be issued to all entities/individuals in the chain including Welding4U Ltd, DMWelding Ltd and Daniel to ensure that everyone is aware of the status.

- Oil5 should identify the feepayer, the next entity in the chain that is not the intermediary that the employee does not have a 5% interest in, or does not have an access to the profits. The feepayer must calculate a deemed employment payment by the end of the tax year and withhold PAYE and NICs on this payment by 19th April following the tax year.

- The intermediary company should not be associated with Oil5, nor Welding4U and given this information has been provided this is the case.

Given the OPW rules apply and the individual is within IR35, however we must consider whether the managed service company rules apply and therefore there is a separate requirement to operate PAYE and NIC on the deemed employment payment.

Managed Service Company Rules

The MSC rules could potentially apply as regardless of whether Wleding4U is an agency, the agency rules cannot apply where there is an intermediary between the individual performing their services and the agency. Therefore, we must consider whether the MSC rules apply to the engagement between Welding4U and DMWelding Ltd.

The MSC rules apply where the following conditions are met:

- there is a company that promotes the provision of services of an individual to a client;

- the company is unassociated with any intermediaries in the chain; and

- if the individual was providing their services directly then there would be a contract of employment.

The above rules apply where the MSC financially benefits from the arrangement, or has control/influence over the method of payment, activities of the company and the finances. Given that it controls the method of payment to DMWelding Ltd and takes a fee it may be seen as a managed service company and therefore the rules would apply.

The two tests should also be satisfied: the individual will receive an amount higher than if they were employed; and the individual receives the greater part of the consideration received from the client.

In this case, the feepayer would be required to withhold PAYE and NIC on the deemed employment income (VAT exclusive) that should be calculated <u>everytime</u> a payment is made to the individual.

In this case PAYE and NICs are payable in respect of this amount by the feepayer and the company should ensure that these are being withheld to avoid any potential liabilities being transferred to them.

The transfer of debt provisions could apply where HMRC cannot obtain the PAYE and NICs from the MSC and this could ultaimtely fall on the engager with the individual. Therefore, Oil5 should ensure that the appropriate steps are being taken to avoid a liability arising on the unpaid PAYE and NICs.

HMRC can target Oil5 via a Reg80 direction which would attempt to recover PAYE and NIC unpaid on what should have been classed as employment income. However, generally they would try to recover this amount via a Reg72 through the worker first to ensure that they can offset any tax accounted for via self-assessment.

The fee payer is also required to make quarterly online reports separate to the RTI system for the quarters ending on 5 July, 5 October, 5 January and 5 April. The reports are due the following month and penalties of up to £600 per day, or £3,000 per form are due where these are not met. It is possible that within a 12 month period the penalties are sliding of £250, £500 and £1,000 every time a form is missed. Once a form has been submitted indicating nil returns for four consecutvie quarters, then the obligation is no longer required.

In order to complete the above forms, information will be required around the payments made to the individual, the individuals who were engaged and the reason for PAYE not being levied - reasons including, payments made to a self-employed individual, limtied company or partnership; that the individual was overseas or that another entity had operated PAYE.

For both PSC and MSC rules, the tax suffered on the deemed employment payment would be deductible from dividends taken out by the individual so as to avoid double taxation. In addition, any expenses incurred by the individual to genuinely incurred to provide their services would be tax deductible and could be deducted from the deemed employment payment. However, where the individual is an employee then stricter expense rules are utilised and the permanent workplace condition should be considered. It is possible that the Welsh site could be considered Daniel's permanent workplace and therefore any commuting from his home to the workplace would be seen as ordinary commuting and the reimbursement would be a taxable benefit that should be reported on Forms P11D and the relevant tax paid by the company.

It would be adviseable to discuss the option of including Daniel directly on the payroll to avoid the above compliance issues similar to the short-term workers. However, it would increase Daniel's employment law rights such as National Minimum Wage, auto-enrolment and therefore there may be some considerations around this that the company should seek legal advice on.

--------------ANSWER-1-ABOVE---------------

--------------ANSWER-2-BELOW---------------

Answer-to-Question-_2_

EMI schemes are a tax advantageous way of providing employees with options over the company and incentivising them to work for the company.

<u>EMI conditions</u>

It is important to consider the conditions applying to EMI schemes before investigating the implications of the acquisition of Pintz Ltd.

EMI schemes can be utilised by small trading companies that have assets below £30 million and less than 250 full time equivalent employees.

Individuals participating in an EMI must be full time workers, working at least 25 hours per week and must work at least 75% of their working time for the company in which they hold the EMI options. It is important to note that individuals that hold at least a 30% interest in the company cannot participate in an EMI scheme.

The maximum value over which EMI options can be held is £250,000 per employee, with an agregate value of £3 million for the company.

For the scheme to remain tax advantaged, all options should be exercised within 10 years.

Once the scheme is set up, it should be registered within 92 days with HMRC of the grant of the options to provide them with the relevant information. This is not a confirmation of the EMI but simply making HMRC aware that the scheme exists. The business should ensure that all information regarding the grant of the options is held appropriately on file.

All option plans and any chargeable events should be reported by the company by 6 July following the tax year via an online Form otherwise penalties may be due of an automatic £100.

Acquisition of Pintz Ltd

It is important for Harvze to note the above conditions for qualifying EMI schemes as the maximum requirements include all companies within a Group.

If Pintz was to be acquired and the employees retained, there would be a large increase in the number of employees that would exceed the 250 limit for the EMI options to qualify. This would be a disqualifying event and both entities would need to ensure that employees exercised their options within 90 days of the chargeable event, otherwise there would be a further tax charge on the difference between the options at the time of the chargeable event and at the time of exercise.

Therefore, where Harvze's intention is to make employees redundant, they should ensure that the total number of employees remains below 250 so that the EMI options remain qualifying.

Sale of Lars and Terri options

Where Lars and Terri exercise their options so that they can sell their shares to Harvze Ltd, with the vesting period waived they would suffer an income tax charge on the discount granted on the options at the time of acquisition.

An employment tax charge would arise on exercise of the shares on the discount provided. This was £5 given the difference between £30 at grant and £25 at exercise and therefore the total amount chargeable to employment income for both Lars and Terri would be 500 x £5 = £2,500. As there is a market to sell these securities, they would be considered readily convertible assets and therefore PAYE and Class 1 NICs would be due on the amount in line with RTI and FPS in the relevant month.

A further capital gains tax charge would arise on the sale of the shares to Harvze for Lars and Terri. This would be payable at the higher rate of 20% for both individuals, unless they own more than 5% of the company via their EMI shares and therefore would be able to utilise the business asset disposal relief ultimately reducing their capital gains tax to 10%. They would both have the annual exempt amount of £12,300 available to them for the year. The base cost for the shares to be deducted from the proceeds would include the employment income suffered on the above charge on exercise.

In contrast, given that Harvze would like to retain Teri and Lars they can either retain their existing options which would be simply use the same market value of the shares and they would not suffer any employment tax. The bonus that would be given to them would be subject to PAYE at their marginal tax rates and NIC for both Class 1 Primary (3.25% and 13.25%) and Class 1 Secondary payable by the employer (15.05%). It would also grant the EMI options over 300 shares each and if these were granted for free then there would be employment income chargeable to income tax on the discount when the shares are exercised.

Again the company should consider whether any of the limits above would be reached and therefore whether there would be any issues.

Other considerations

There is a risk that Lars will fail to meet the EMI conditions as he will no longer be working over 25 hours. This would be considered a disqualifying event and therefore his options would need to be exercised within 90 days of the disqualifying event otherwise they would lose their tax advantage and he would be charged employment income on the price difference between the chargeable event and price at exercise.

It is therefore recommended that Lars is informed of this and his hours adjusted so that he works at least 25 hours per week.

There should be no issue with the proposed plan to grant 300 shares at £170 per share to five employees as the total would remain below £3million on aggregate, and each employee would not hold more than £250,000 options. However, the number of options in circulation under the EMI should be monitored especially after the acqusition of Pintz Ltd provided the EMIs still qualify.

--------------ANSWER-2-ABOVE---------------

--------------ANSWER-3-BELOW---------------

Answer-to-Question-_3_

1)
<u>Salary Sacrifice mechanics</u>

Salary sacrifice is a tax efficient method of allowing employers to provide benefits to their employees at a tax advantage by way of the employee giving up a part of their salary for the benefit.

In exchange for 'giving up' a portion of their gross salary the employee will receive a benefit, in this case a company car. The amount 'sacrificed' comes out of the employee's gross pay before income tax has been calculated on this. Therefore, the employee will ultimately save tax at their marginal rate. Given that the majority of Gingco employees are higher rate tax payers they will be saving tax at the 40% rate.

Salary sacrifice is more effective the higher rate the tax payer is, with the best savings occuring at the additional rate of tax at 45%. Unless the sacrifice ultimately means that the employee's personal allowance does not get reduced (i.e. they are sacrificing salary above £100,000 where the personal allowance is tapered), in which case the savings would be higher.

Salary sacrifice is only allowed on certain benefits provided by the employer as otherwise the Optional Remuneration Arrangements (OpRA) must be considered. The benefits that may be sacrificed without triggering the OpRA charge include pensions; holidays; electric vehicles; and childcare vouchers.

Given the above, Gingco Ltd would only be able to utilise the salary sacrifice scheme in respect of the electric vehicles and not the petrol vehicles provided to employees currently.

In order for the salary sacrifice to be an effective salary sacrifice, a number of conditions must be met during the scheme set up:

- The employer must inform the employee exactly what they are sacrificing and what they will receive in return. The employee should be made fully aware that they will be giving up a portion of their salary and receiving an electric vehicle in this case.

- There should be a contract in place between the employer and the employee that leads to the sacrifice, and this should not be allowed to be varied across the sacrifice scheme period.

- The arrangements should be in place for at least 12 months but we typically see Electric Vehicle (EV) schemes run around 36 months.

- The employee must give up their right to the portion of the salary <u>before</u> they receive the benefit of the EV.

- They must continue to give up their salary until the end of the scheme and any conditions cannot be varied by the employee. In order for the salary sacrifice scheme to remain effective, it can only be amended by the employer at their own discretion. However, the legislation and HMRC guidance provides for 'life-events' where the sacrifice may be varied, or the employee may leave the scheme in events such as marriages; births; employment ending or divorces - where there would be a significant impact on the employee's financial position.

- The employer should ensure that checks are put in place each month when a sacrifice is made to ensure that the employee does not fall below National Minimum Wage (NMW) following the sacrifice. Salary sacrifice reduces pay for NMW purposes and where employees fall below the NMW line this could cause further compliance issues for the employer, alongside potential criminal charges that could be brought against the employer. Therefore, salary sacrifice should not be offered to employees that are at or close to the NMW line. Thereby, salary sacrifice can be offered to specific employees and does not have to be offered to all employees.

As mentioned above, salary sacrifice can only be used on electric company cars and therefore petrol cars are excluded. Where petrol cars were attempted to be sacrificed, the OpRA rules would be triggered and the benefit would be calclated on the higher of the cash foregone (i.e. the sacrifice amount) and the value of the benefit under the normal benefit in kind rules.

Salary sacrifice also allows the employer to save Class 1 Primary National Insurance Contributions (NICs) on the lower salary paid, and where the benefit is an electric car the Class 1A NIC benefit will be lower and thus the employer will not pay as much to HMRC via Forms P11D(b).

Salary sacrificed benefits should still be reported on Forms P11D annually by 6 July following the tax year, and the relevant Class 1A NICs due by the employer at 15.05% should be paid to HMRC by 19th July following the tax year (or 22nd where the payment is electronic). A P46 Form should also be submitted where the benefit is a company car, detailing the dates the company car was available to the employee and type of company car.

Historically, HMRC have provided clearances for salary sacrifice schemes, however they no longer provide these to employees. It may still be possible to request HMRC review the scheme to ensure that it is effective for salary sacrifice.

2) Calculation of the benefit in kind

Non-Salary sacrifice

	Petrol	**EV**	
List price	45,000	66,625	
BIK %	37%	2%	
BIK	16,650	1,333	
Class 1A @ 15.05%	2,506	201	
Other costs @ cost to employer	9,500	13,000	
Class 1A @ 15.05%	1,430	1,957	
Total benefit	3,936	2,158	

Salary Sacrifice

The salary sacrifice for the petrol vehicle is not allowed, and the costs would simply be the ones calculated in the above calculation. However, the following costs would apply for the employer and employee.

	Amount	Employer cost	Employee cost
Lease cost		9,500	
Salary sacrifice		(13,200)	13,200
Income tax saved (13,200 x 40%)			(5,280)
Class 1 Secondary NIC saved @ 15.05% assuming the employer gives 100% to the employee			1,987

EV BIK (as above)	1,333		
Class 1A @ 15.05%		201	

The employer would also obtain a corporation tax deduction for the cost of the car that would be factored into the whole life cost of the EV when considering the scheme.

We have included the calculation of any NICs passed over the employee at 100%. However, the employer does not have to pass across the full NICs saved and could vary this by retaining 50% and giving the employee 50%, or whatever proportion it deems beneficial. It can be used to reward employees where the salary sacrifice value is reduced, or alternatively can keep the Class 1 NIC saving and reinvest it in the business.

It would give the employer a cash flow advantage as they would have to withhold less income tax from the employee to pay to HMRC by the 19th of every month to account for the PAYE due on their salary.

In addition, the provision of EV chargers can be included in the salary sacrifice scheme. The grants that were available for EV chargers have ceased but tax advantages remain that would make it beneficial for the employer to invest in EV chargers. For example, the cost of the charger would be deductible for income tax purposes via salary sacrifice ensuring the employee saves further income tax on their salary.

It is also important to note that electricity provided to employees at the workplace through EV chargers is a tax free benefit regardless of whether the mileage is used for business or private miles. Therefore, the employer could charge simply the cost of the electricity to the employee, or as a further incentive provide the electricity for free and there would be no benefit in kind that would be due as an additional cost.

HMRC have also recently confirmed that any reimbursement for electricity at home may also qualify as a tax free benefit regardless of whether busines or private mileage is undertaken. Therefore, this may be a further incentive the business may wish to consider when creating the scheme for the employees.

--------------ANSWER-3-ABOVE---------------

--------------ANSWER-4-BELOW---------------

Answer-to-Question-_4_

1)

The following reliefs are available under the secondment:

a) Overseas workday relief

As Fred was not a UK resident during a consecutive three tax years out of the last five, he has overseas workday relief available to him for three tax years following his residency.

Overseas workday relief provides relief from applying PAYE on any workdays and duties carried out wholly overseas. This would include the 30% of time he spends outside the UK and UK tax would not be due on these duties.

However, overseas workday relief will end after the third year he is UK resident, and where his UK contract begins. This will effectively mean that Data Ltd should withhold PAYE at Fred's marginal tax rate each month and pay this to HMRC by 19th following the tax month via the RTI system.

This will effectively increase the withholding obligations for Data Ltd and the cost of Fred's contract.

However, overseas workday relief would not have been available from the third year regardless of whether Fred was under a UK contract as it is only available for three years following the first year of UK tax residency.

As the employer has a UK economic presence, they would be liable to operate PAYE. In addition, he would now be liable to UK NICs and therefore the employer should ensure that 15.05% is withheld for Class 1 Secondary NICs and Class 1 Primary NICs at 3.25% / 13.25%.

b) Migrant member relief

Fred applied for migrant member relief in respect of his overseas pension which meant that provided that certain conditions were met, that any payments into the pension would be tax free as if they were made into a qualifying UK pension.

It is still possible for the employer to pay this tax free into his pension provided that his earnings qualify as chargeable UK earnings and he is resident in the tax year he makes those payments.

However, he would now be considered a relevant UK individual and therefore migrant member relief will no longer be applicable.

To the extent that Fred would like to transfer his pension funds they must be considered a qualifying overseas pension under the following conditions:

- the US pension is registered with a registered pension provider; and the tax recognition test is passed
- the tax recognition notes that the scheme is available to all residents, that there is a system of personal taxation in the country, that tax relief is given and that individuals can only rarely access the fund below the UK pension age (of 55).

Provided these conditions are met transfers would be free of charge where the schemes are managed by the same employer and the individual works for that employer.

c) Tax equalisation

Fred would no longer be tax equalised and therefore hypothetical tax being accounted for would not be deducted from his pay. Instead, he would suffer the UK income tax liability at his current rates calculated further below in (2).

f) Travel and temporary workplace

Under a UK employment contract Fred would no longer have tax free flights back to the US for visits, nor would his spouse and minor child be allowed two tax free return trips per year.

The business may wish to consider whether these are still offered to Fred and if so, would have to account for the relevant tax on this amount.

In addition, the temporary workplace rules applied under the secondment as it was to last fewer than 24 months. However, once the contract begins the office and commute would be considered to be a permanent workplace and therefore any relief applicable to temporary workplace rules would cease. This would involve any travel costs and accommodation costs reimbursed which would now be taxable benefits that should have the appropriate Class 1A NICs accounted for by the company at 15.05%.

2) Change in the cost to Data Ltd from secondment to an employment contract:

	Current cost		New Cost		
Salary	275,000		275,000		
Tax: US hypotax (grossed up as tax equalised 71,500 x 26/74)	96,622	UK tax	20% @ 37,700 = 7,540 40% @ 112,300 = 44,920 45% @ 125,000 = 56,250		
US social security	16,500	UK NICs	275,000 x 15.05% = £41,388		
Pension	13,750	UK pension	5,000 (not Data cost) 10,000		
Benefits	19,500	benefits Class 1A NIC	19,500 2,935		
Cost to Data	324,750		348,823		

Data would have to withhold £108,710 annually in PAYE, which is currently £37,210 more than under the equalised hypothetical tax. However, this is reduced when the gross figure is considered which should be reportable on Forms P11D as a benfit over the hypotax.

UK NICs would be significantly more than the social security paid in the US.

The company would pay less for the private medical insurance of £15,000 and £4,500 as Fred would suffer the tax due. However Class 1A would be due on the benefits and should be submitted to HMRC by 6 July following the tax year.

It would be more expensive for Data when considering an employment contract.

In addition, they would have to consider new starter forms, ensure tha auto-enrolment was complied with and should seek additional legal advice in respect of any employment law obligations that may be applicable.

--------------ANSWER-4-ABOVE---------------

--------------ANSWER-5-BELOW---------------

Answer-to-Question-_5_

In order to understand Aman's tax position we need to understand whether he was UK resident for any part of the 2022/23 tax year.

Residency is determined by the statutory residence tests and will indicate whether the employee is subject to tax in the UK on an arising basis or whether they could claim the remittance basis.

We have been informed that Aman was not UK tax resident during 2020/21, and 2021/22 but was in 2019/20. On this basis, we will consider the following statutory residence tests in turn:

<u>Automatic overseas Test</u>

As Aman was UK resident in one of the three prior tax years, he would qualify as an overseas resident only if he spent fewer than 16 days in the tax year in the UK.

Given his return to the UK on 5 January 2023, and the 14 days he spent in the UK in July 2022, he would not be classed as automatically overseas resident.

As part of the third test, he also spent more than 91 days in the UK during the tax year whilst 'working full time abroad' and therefore would not qualify automatically as overseas resident.

We must therefore consider the second test, the Automatic UK test.

<u>Automatic UK test</u>

Aman did not spend longer than 183 days in the UK during the tax year and would therefore not qualify for this. However, it is important to note that both his wife and son spend 192 days in the UK in 2022/23 and therefore they would qualify as UK residents automatically.

Secondly, we need to consider whether Aman has had a home in the UK for all or part of the tax year. There should be a period of 91 consecutive days where he had a home available to him and at least 30 of those days fell in the tax year and where Aman was present in the home during this time.

Given Aman leased the London flat on 5 January and continued to own this for a year, the condition above would be satisfied. However, at the same time Aman must not have had an overseas home during this time or if he did he must have been present in it for fewer than 30 days in the tax year. As he moved to the UK in January, this condition would not be satisfied and therefore we have to consider the final Automatic UK test - the work full time in the UK test.

Given that Aman did not work full time for a period of 365 days during the tax year where more than 75% of the working days were spent in the UK (a working day is considered where he works for three hours or more), and at least one of these days must fall within the tax year. The working pattern of visiting Italy for three days a week in the subsequent tax year would cause this condition to not be met, as he would not be spending 75% of his working time during the 365 day period working in the UK.

We must therefore then consider the sufficient ties test.

<u>Sufficient Ties Test</u>

As Aman was UK resident in one or more of the previous three tax years, he would qualify for the days and ties conditions related to 'UK leavers' rather than 'incoming individuals'.

We will consider the ties as follows:

- The family tie: As previously noted during 2022/23 both Aman's spouse and minor child were UK resident due to the automatic UK overseas conditions as they spent longer than 192 days here. Therefore, Aman would have a family tie through his spouse and minor child who are considered UK resident.

- The accommodation tie: Aman would have an accommodation tie during the year if he had a place to live in the UK available to him for a period of 91 consecutive days or more during the tax year. His flat was available to him for a period of 91 consecutive days in the tax year and therefore this accommodation tie would be met.

- A work tie: He would have a work tie where he did at least three hours of work a day for 40 days. Given he worked from the UK from January until the end of the tax year, this condition would be met.

- 90 day tie: He would have a tie under this condition where he spent more than 90 days in the UK within either or both of the previous two tax years. This tie is not met as he only had incidental days in the prior tax years.

- Country tie: Finally he does not have a country tie as he is not present in the UK for the longest number of midnights during the tax year.

Given the above, Aman would have three ties and in order to qualify as a UK resident would have to spend between 46-90 days in the UK. As we have already established, Aman spent 99 days in the UK and therefore would qualify as a UK resident under the sufficient ties test.

<u>Split year rules</u>

As Aman would be considered UK resident and domiciled he would be subject to income tax on an arising basis for both his UK income and worldwide income.

It is however possible to apply the split year rules by considering the cases to ensure that income tax is not charged on the portion relating to his overseas duties (i.e. up until the point of 5 January).

Different cases govern the split year rules and these are considered below as an individual returning to the UK:

Case 4 considers that the split year treatment applies from the date that he starts to have a home in the UK only. Given he retains his Italian home this case would not apply.

Case 5 considers the individual starting full time work in the UK, given he continues to work for the overseas entity and has significant time overseas this would not be the case.

However, case 6 as specified within the information provided deals with the individual ceasing full time work overseas and we understand Aman stopped 'full time work abroad'. Therefore, the year could be split on the 5 January as specified.

Anything related to the period before this Aman would be considered non-resident and would not have to apply UK income tax to those earnings.

However, HMRC would seek to receive income tax via PAYE where there is an economical presence of the employer in the UK from Aman for any work carried out after 5 January 2023.

National Insurance Contributions (NICs) Position

As Aman continued to have a certificate of continuing liability he would not have been subject to overseas social security and the employer would have continued to pay Class 1 NICs in the UK on Aman's earnings.

As he will continue to be gainfully employed in the UK, the certificate will prevent Italian authorities raising social security and he will continue to be charged to UK NICs in 2022/23.

Employer compliance

Given Aman's residency status and position, Gelatoz Ltd would have the following obligations in 2022/23:

They should operate PAYE on his income and withhold the tax at his marginal tax rate as he would be liable to UK income tax given he is UK resident from January 2023. This should be submitted to HMRC via a Full Payment Submission through the Real Time Information system on or before the date of the payment and the withheld tax should be paid to HMRC by 19th of the following tax month (or 22nd where payment is electronic). In addition, they should also ensure that both Class 1 Primary employee NICs are withheld at 3.25% and 13.25%; and employer Class 1 Secondary NICs at 15.05%.

As Aman is tax equalised, the employer may want to ensure that it has agreed with HMRC that it can operate an Appendix 6 modified PAYE agreement. This would allow Gelatoz to withhold the hypothetical tax each month and pay this through the PAYE system. This would avoid any administrative burden.

Gelatoz should also ensure that any benefits provided to Aman are repoted on Forms P11D by 6 July following the tax year; and that the relevant Class 1A NICs are paid at 15.05% on the benefit by 22nd July where the payment is electronic.

2)

The income that the company should have reported for PAYE purposes is as follows:

	Earnings		Explanation	
Annual salary 240,000 x 3/12	60,000		Taxable on the portion that Aman was resident in the UK	
Living allowance 6,000 x 3/6	3,000		Taxable on the portion that Aman was resident in the UK	
Bonues	90,000		Taxable when received rather than the period that it relates to unless it relates to a period of non-residence and is paid into an overseas bank account.	
Medical benefit	3,000		Reportable on Forms P11D and Class 1A NICs due. Full benefit reportable as provided to him in the UK.	
Shares	0		As the shares are not readily convertible assets they do not have to be reported via PAYE and NICs. Instead there would be employment income on the vesting of the shares that should be settled via Aman's self assessment. If the company decide to pay the tax on this then Aman should ensure this is paid back to the company within 90 days of the end of the tax year otherwise there would be a further benefit charge on this amount.	
Italian accommodation	36,000		Fully taxable as continued to be available for Aman to use overseas.	

(3,000 x 12)				
UK accommodation (3,500 x 3) - (1,200 x 3)	6,900		This is considered as though the employer is settling the employees pecuniary liability and therefore PAYE and Class 1 NICs would be due on this amount and this would not be considered a benefit in kind as the contract is with Aman and the employer reimburses the costs.	

As the company also pay the hypothetical tax on the amount, this should be considered and grossed up appropriately for both the salary and bonus.

--------------ANSWER-5-ABOVE---------------

--------------ANSWER-6-BELOW---------------

Answer-to-Question-_6_

Provided that Maria came to the UK in July 2022, National Insurance Contributions would not be due for the first 52 weeks where the following conditions were satisfied:

- Maria did not ordinarily work in the UK;
- Maria came to work in the UK as part of her wider overseas arrangements with her employer in Singapore;
- The costs relating to Maria's salary are not borne by a UK permanent establishment of the overseas subsidiary; and
- Maria has come to the UK 'for a time' that usually means less than five years.

The above conditions may be satisfied given the information provided and therefore Maria would begin to be subject to UK Primary and Secondary NICs from 1 July 2023.

From the packages provided to Maria, the following Classes and amounts of NICs would apply to each element of Maria's remuneration package:

<u>Class 1 Primary and Secondary NICs</u>

Class 1 Primary and Secondary NICs are due on earnings related to the employment. Therefore, this would apply to a number of the items provided to Maria.

Education for Maria's son would be subject to Class 1 Primary and Secondary NICs as it counts as the employer covering the employee's pecuniary liability. It is not considered a benefit in kind as the contract for her son's education is unlikely to be held by the employer, and it is reimbursed directly to Maria. If it is possible, it would be advantageous to arrange for the contract to be with the school and WellMinded Ltd and for them to pay the fees directly. In this case, the NICs cost for the employee would be lower as it would be considered a benefit in kind on the cost to the employer. This would be apportioned for the time Maria was not subject to UK NICs for her primary NIC, but the 15.05% on the employer secondary NIC would be due on the full amount.

On the assumption that the one-off recognition vouchers were cash vouchers then PAYE and Class 1 NICs would be due on the amount. Where the vouchers were non-cash Class 1 NICs would still be due but the amount would be reportable on Forms P11D.

Class 1 Primary NIC due: (22,000) x 9/12 + 150 = £16,650

Class 1 Secondary NIC due: 22,000 + 150 = £22,150

The above benefits should have PAYE and NICs applied via the RTI submissions each month. The education for Maria's son should also be reported on Forms P11D on an annual return by 6 July following the tax year. Howver, Class 1A NICs would not be due on this amount.

RTI and FPS submissions should be made on or before the date of the payment and the relevant amounts should be paid to HMRC by 19 following the the tax month.

The benefits should also be reported on the employee's P60 by the end of the tax year and provided to them by 31 May detailing all the benefits and amounts withheld from them.

However, for an appendix 7 agreement easement, the employer can submit the payment for assignees for the NICs in one PAYE and FPS due on 31 May following the tax year. Under this, Forms P11D are not required and the tax can be accounted for in this manner.

The same applies for PAYE Appendix 6 agreements where a modified agreement can be used to pay the tax in monthly installments of the estimated tax liability.

Class 1A NICs

Class 1A NICs are payable by the employer at 15.05% on benefits in kind provided to employees.

The **accommodation benefit** would be considered a benefit in kind with Class 1A NICs due by 19th July following the tax year (or 22nd where payment is made electronically). This is because the lease is between the company and the landlord and the payments are made directly between these two entities, not including the individual. The cost to Class 1A NICs would be the annual value and would include the whole tax year as the company would still be liable to pay Class 1A NICs even when Maria is not liable to pay Class 1 Primary NICs.

The **spouse support driving lessons** would be a benefit in kind as the contract and payments are made directly with the employer and therefore Class 1A NICs would be due on the cost to the employer.

Home leave trips for assignees in the UK are allowed for the first five years of their stay in the UK provided they were not resident in the UK during the last two tax years when they arrive in the UK, or not physically present in the UK during the last 24 months when they arrive in the UK.

Reimbursement of family trips is also a tax-free benefit where the spouse and minor children undertake two trips per year provided that they return to their home country, and the employer incurs the costs directly. It is the case with the home leave trips that the employer has incurred the costs and therefore two of these trips would be tax free and they would therefore be exempt. However, the final trip would be subject to Class 1A NICs as a benefit provided to the employee. It would be advised to wait a further month to take the third trip so that it could obtain the tax free benefit within the new tax year. The Class 1A NIC liability below has been calculated on the assumption that the cost will be incurred within the tax year.

Class 1A NICs due: 24,000 + 1,500 + 2,000 + 550 = £28,050

Class 1A NICs should be reported on Forms P11D(b) with the benefis being reported on Forms P11D as previously described. Forms P11D(b) and the NICs payment are due 19th July following the tax year.

A K code implies that some of the benefits are being reported through her PAYE code and therefore would not be accounted for on Forms P11D. WellMinded should ensure that Maria contacts HMRC to check that her tax code is amended where the benefits are not reflected accurately. The employer cannot make any changes and this should be communicated through Maria to HMRC.

Forms P11D report the benefit to HMRC and the employee and ensure the relevant benefit tax is settled accordingly.

Class 1B NICs

Unfortunately, the company spring party should include the VAT cost and therefore this would take the amount to £168 per person. This exceeds the annual functions exemption of £150 per person and therefore becomes a taxable benefit provided to employees.

Given that Gelatoz have a PAYE Settlement Agreement (PSA) this can be reported via the PSA and the Class 1B NIC due on this amount covered this way.

The tax figure should be grossed up as the tax payable on the benefit is also a benefit provided to the employee.

As per the below information on the exempt benefits, any travel related to home to work travel to a permanent workplace would be considered ordinary commuting and therefore subject to tax. It is however possible that where the taxis taken are post 9pm from the office and there are fewer than 60 of these in a tax year that they would be a tax free benefit. In addition, it may be possible to agree with HMRC that they could be included on the PSA by 6 July following the tax year and where a category has been agreed they could be included on the Class 1B NIC liability rather than the Class 1 Primary and Secondary. This assumption has not been considered for the below Class 1B NICs total and instead the taxis have been included in the Class 1A NICs above.

Class 1B NICs due: £336

PSAs do not have a strict deadline to be submitted but payment of the Class 1B NICs must be made by 19th October following the tax year, or 22nd where payment is due electronically. In addition, employers should ensure they have the relevant PSA categories agreed with HMRC by the 6th July deadline following the tax year. PSAs settle minor, irregular or impracticable benefits to HMRC each year and must be agreed prior with HMRC.

<u>Exempt</u>

The travel and accommodation costs of £1,800 per trip for business purposes would be tax free as they relate to the purposes of travelling for business purposes to temporary work places. This exemption also covers the taxis taken by Maria for business meetings of £320 in total and there would be no tax due in respect of these.