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

Event **NA**

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Count(s)	Word(s)	Char(s)	Char(s) (WS)
Section 1	**1174**	**4988**	**6145**
Section 2	**703**	**3294**	**4013**
Section 3	**592**	**2773**	**3380**
Section 4	**1133**	**5454**	**6798**
Section 5	**652**	**3191**	**3835**
Section 6	**704**	**3449**	**4306**
Total	**4958**	**23149**	**28477**

Answer-to-Question-_1_

In order to ascertain how Anna will be taxed in the UK, we must first understand her residence position. UK residency is determined by the UK Statutory residence test.

The first test is the automatic overseas test, an individual will be non resident for the year if they meet any of the following conditions:
-resident in the UK in one or more of the previous 3 tax years and spend less than 16 days in the UK
- resident in all of the previous three tax years and present in the UK for fewer than 46 days
- meet the work abroad condition - working at least 35 hours per week for the whole of the tax tear and is present in the UK for fewer than 91 days of which fewer than 31 are spent working in the UK.
Anna is unlikely to meet any of these as she works at least 1 day a week in the UK and will spend 4 midnights a week in the UK in addition to any annual leave.

The next test is automatic residence, anna will be UK resident if she:
- is present in the UK for 183 days or more
- has a home in the UK
- carries out full time work in the UK for a period of at least 365 days
For 2021/22, Anna will have spent 183 days in the UK and will therefore be UK resident for the tax year. Anna wont be able to split the tax year under case 1 - starting to work overseas as she remains UK resident the following year and doesn't work sufficient hours abroad.

For 2022/23, Anna will not meet any of the above conditions as she wont spend 183 days in the UK, she doesn't carry out full time work in the UK and although she has a home in the UK where her husband and children will remain, she will also have a home in Luxembourg where she will stay for more than 30 days.

Therefore we have to consider the third test, sufficient ties test for 2021/22.
As she has been UK resident in one or more of the previous three years, she will be treated as a leaver and therefore we have to consider the following ties:
- Family - spouse/civil partner or minor children resident in the UK
- Accommodation - place to live in the UK and spend at least one night there
- Work - works for more than 40 days in the UK in the tax year
- UK presence - spent more than 90 days in the UK in either of the previous two tax years
-Country - spends more days in the UK than in any other single country.

Anna will have 4 ties - family (her spouse remains in UK), accommodation (home in London), work (1 day per week = >40 days), UK presence.

With 4 ties, Anna will be resident if she spends more than 16 days in the UK. Looking at the information provided, Anna is likely to spend more than 16 days in the UK due to her being in the UK for 4 midnights a week and taking her annual leave in the UK.

She will therefore be UK resident for 2021/22, 2022/23 and any further years provided the same fact pattern continues to be met.

As UK resident, Anna is liable to UK tax on her worldwide income and gains. However, Anna is also considered resident in Luxembourg from her arrival on 1 January 2022. We therefore have to consider the UK/Luxembourg double taxation agreement (DTA) to determine who has the taxing rights.

As Anna is tax resident in both countries, she will be considered resident where she has a permanent home available to her. Anna has a permanent home in both locations as she has an apartment in Luxembourg and her London home. We therefore have to look at where her personal and economic ties are closer.

Anna has a Luxembourg employment and this role is indefinite but her family remain in the UK. Therefore it could be seemed to be split in that her economic ties are in luxumbourg but her social ties remain in the UK. If there is no obvious answer and Anna is not confident to argue either way we then move n to where she has a habitual abode.

Anna spends 3 nights a week in Luxembourg and 4 nights a week in the UK. Again she does not habitually spend her time in one place or another but her family does remain in the UK which is a key factor in determining residence. Failing this, Anna will be resident where is she a national, which is the UK.

Therefore it would seem that Anna is likely to remain resident in the UK under the treaty.

Therefore, she would only be liable to tax in luxumbourg on her luxumbourg sourced income i.e. luxumbourg workdays.

Looking at the DTA, the luxumbourg income will only be taxable in the UK if
- Anna is present in luxumbourg for more than 183 days in any fiscal year concerned
- the remuneration is paid by or on behalf of an employer who isn't resident in luxumbourg
- the remuneration is not borne by a PE which the employer has in luxumbourg

The treaty conditions wont be met as Anna is employed by the luxumbourg entity.

Therefore as Anna remains UK resident and will be taxable on her worldwide income, as she is also subject to withholding in luxumbourg on her income, she may be subject to double taxation.

As she is employed by a luxumbourg entity, they do not have an obligation to operate PAYE in the UK.

When Anna files her UK tax return she can claim a foreign tax credit for any income doubly taxed pay any UK income tax by 31 January following the end of the tax year.

Luxembourg taxation advice should be sought on whether the taxes settled on her behalf on the flights and accommodation should be grossed up for luxumbourg taxes.

NIC

The rules for employees working in more than one EU country for the same employer, the rule is that they are subject to the social security legislation of the country in which they are habitually resident if they carry on a substantial part of their activity in that country. Anna is likely to be habitually resident in the UK but as she only works one day in the UK, this is less than 25% of her work duties.

Therefore she will be subject to social security in luxumbourg from the start of her assignment.
An A1 application should be obtained from the authorities to confirm this position.

Anna can decide to pay voluntary class 2 contributions to maintain her state pension entitlement. Peovided she meets the

conditions of:
-UK resident for a continous period of 3 years and
-paid sufficient UK contributions in any three years to make these years qualifing years for benefit purposes.

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

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

Answer-to-Question-_2_

Apprentice ship levy
The apprenticeship levy is paid by employers, i.e. secondary contributors for class 1 NIcs purposes.
The apprenticeship levy is offset by a levy allowance of £15,000.
The apprenticeship levy is 0.5% of the employer's pay bill and therefore only those with a paybill exceeding £3million will have any liability to pay.
We are told the pay bill is in excess of £3 million and therefore there will be apprenticeship levy to pay.

An employer's annual pay bill is the amount of total payments to employees that are subject to Class 1 NICs i.e. salaries and bonuses.

Non cash benefits subject to Class 1A Nics are ignored.

Directors
The option given is an optional remuneration arrangement.
Where there is an optional remuneration arrangement in place, the employee is taxed on the cash equivalent of the benefit which is the greater of:
- the cash equivalent of the benefit as calculated under the normal rules and
- the amount foregone

Here the amount foregone is £8,500.

We must calculate the amount of the car benefit:

List price	30,000
Capital cont.	(3,000)
Revised list price	27,000

Cash equivalent
27,000 x ((115-75)/5 +18) = 26% = £7,020

Therefore, the individuals should have been taxed on the £8,500 - this is the figure reported on the P11D and therefore this is correct.
The p11d should be submitted by 6 July following the tax year and Class 1A NIC should have been paid at 13.8% on form p11d(b) by 19th/22nd (where electronically) July

This is subject to Class 1A NIC and therefore the apprenticeship levy is not payable.

Engineers

As the diesel meets the RDE2 standards, no additional 4% applies.

If the employer only pays for fuel for business purposes, no benefit will arise. The reimbursement of allowable business expenses is exempt income and no income tax or class 1 NICs will be due and there are no reporting requirements.

Business mileage does not include travelling from home to any permanent workplace i.e. ordinary commuting.
If an amount is reimbursed for this travel, this is a fully taxable benefit.

The travel between the work sites would be allowable.

The provision of the vehicle for work is a taxable benefit and should have been reported:

25,000 x (150-75/5+ 18)33% = £8,250

8250 @ 20% = 1650

1650 x 100/80 = 2063 reportable on P11D per employee

2063 x 12% = £247.60 x 100 = £24756 Class 1 NIC - to be taken into account when calculating apprenticeship levy.

Class 1A payable

2063 x 100 x 13.8% = £28,469

Sales Team
List price 20,000
20,000 x ((130-75)/5 +18) 29% = £5,800

The car benefit has therefore been calculated incorrectly and an overpayment of 6200 - 5800 = £400 per employee has been made.

Overreporting of 400 x 15 = 6,000

Fuel card
No fuel benefit arises where private fuel costs are reimbursed. No fuel benefit will arise if an employee is required to reimburse the whole of the expense incurred by the employer in providing private fuel and actually does so.

Provided the advisory fuel rates are used, no taxable benefit arises. For an engine size of over 2000cc, the petrol rate is 17pence.
(2000 x 17p = 340)

All the employees that actually reimbursed all private fuel costs will therefore have no benefit arise.

However where only a partial reimbursement is made, the contribution made has no effect and the benefit will be calculated in full.

Therefore, the individuals that did not pay the full amount will therefore have a fuel benefit.

24,500 x 29% = £7,105

Therefore, the fuel benefit needed to be reported on the form P11D and the £7,105 x 2 = £14,210 reported.

Higher rate taxpayers pay tax at 40%.
Tax payable:
Additional earnings of £350 - £200 = £150
150 x 60/40 = 225
225 @ 40% = £90

NIC @ 2% = 150 @ 2% = £3

As there has already been an overstatement, the additional amount reportable is:

14210 - 6000 = £8,210

Class 1A

8,210 x 13.8% = £1,133

The additional amount of earnings subject to class 1 NIC will need to be taken into account in determining the apprenticeship levy. The amounts reportable on the P11D do not.

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

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

Answer-to-Question-_3_

Sign on bonus

The sign on bonus will be considered as earnings and will be taxable and subject to income tax and NIC via PAYE.

Class 1 primary NIC will be payable at 12% if the amount exceeds £792 per month. Where the monthly pay exceeds £4,167 the excess is subject to Class 1 primary at 2%. No NIC is payable below the lower earnings limit (£520 monthly).

Geffen Smith Ltd will also be liable to class 1 secondary NIC contributions above the secondary threshold of £732 per month at 13.8%.

Reimbursing tuition fees
The reimbursement of tuition fees will also be seen as additional earnings and will be taxable in the same way as the sign on bonus.
The company are paying the individual's liability and therefore class 1 NICs are payable in additional to income tax.

The apprenticeship levy would also be payable on both the above as they are subject to class 1 NIC and the company has a paybill of >£3million.

Scholarship scheme
There is a general exemption from income tax for a scholarship if the person receiving the scholarship is in full time education.

The education needs to take place in a school, college, university or other form of recognised educational establishment. Here the individuals are at university.

If the scholarship relates to a facility run by the employer then the amount is likely to be treated as earnings. However, this is not the case here, they are unrelated.

The amount that falls within the exemption is £15,480 per year which covers all fees relating to the scholarship.

If the employment is provided under a trust or a scheme and the following conditions are met, this falls within the s.213 exemption;

- it is provided by a trust fund or scheme
- it is held by a person in full time education
- it would not normally be regarded as arising by way of that person's employment
- no more than 25% of the awards fro the fund are attributable to the reason of being by way of employment.

It must be noted that there may be other legal/ethical implications in relation to paying for an individual's degree in order to encourage them to join the company. This could be seen as a method of bribery and therefore the scholarship scheme would have to be set up with the help of legal advisors and outlining the conditions and applicable measures.

2) The provision of work related training is an exempt benefit. No liability to income tax will arise by virtue of:
- the provision for an employee of work related training or any benefit incidental to such training or
- the payment or reimbursement to or in respect of an employee of:

- the cost of work related training or of any benefit incidental to such training
- any costs such as:
    - costs incidental to the employee undertaking the training
    - expenses incurred in connection with an exam or assessment of what the employee has gained from the training
    - the cost of obtaining any qualification, registration or award to which the employee becomes or may become entitled to as a result of the training/exam or other assessment.

Geffen Smith should organise and pay for the training directly as if an employer settles an employee's liability there is a charge to secondary contributions.

If any liability arises, Geffen can meet the costs via a paye settlement agreement (PSA). This will mean the employee's wont suffer any tax liability and the employer's pay class 1B NICs instead.

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

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

Answer-to-Question-_4_
Tax equalisation is an arrangement between the employer and the employee. It is the process by which the employer ensures that the employee is in the same net financial position as if he had not taken up the overseas assignment.

The employer deducts from the employee's pay the amount that would have been due had he stayed in the US scheme.

This is called hypothetical tax. The employer then pays the actual amount due in the UK to the local tax authorities, making up the difference or keeping the balance.

As Jeffrey will be working for AIRobo Inc in its UK business, AIRobo Ltd will have to operate PAYE in respect of the amounts paid to Jeffrey.

A special modified PAYE scheme, known as an EP Appendix 6 agreement, is available in tax equalisation cases. This is a written agreement with HMRC that relaxes the usual PAYE compliance rules.

A template should be completed and sent to HMRC. HMRC will then sign and return it to AIRobo Ltd. As part of the application, AIRobo Ltd will have to give an undertaking to ensure that Jeffrey will complete his self assessment return properly including all items of employment income, grossed up as appropriate.

Under an EP appendix 6 agreement, the PAYE is estimated and paid in twelve equal instalments.

Adjustments if required can be made in the final quarter fo the tax year.

Where AIRobo Ltd are accounting for any tax over and above the hypo tax deducted from Jeffrey, they are taking on the liability of the individual. As such, the additional amount is treated as earnings and needs to be reflected in the PAYE calculation.

Using the figures provided:

Salary	120,000
Bonus	22500 (3/12 relating to UK assignment)
Accom (N1)	36000 (6 months of accommodation)
Relocation (N2)	500
Travel (N3)	7500
Total	186500
Less hypo tax:	
Salary	(32,400)
Bonus	(33,300)
Net pay	120,800

The next step is to gross up the net pay figure by reference to UK tax rates and allowances.

Jeffrey will not be entitled to a UK personal allowance as he isn't a EU citizen.

Net pay	Gross up by	Gross pay	Tax
30,000	100/80	37,500	7,500
67,500	100/60	112,500	45,000
23,300	100/55	42364	19064
120,800		192364	71564

AIRobo inc will have to pay over 71564 via a shadow payroll scheme. Under a modified PAYE arrangement, this is payable in 12 equal instalments of 5964.

Jeffrey will file a UK self assessment tax return to ensure the correct amount is ultimately paid to HMRC.

N1 - Accommodation

No UK tax relief is available against the accommodation as Jeffrey's assignment is expected to last more than 24 months. He will therefore be deemed to have a permanent workplace in the UK and cannot get relief for travel, accommodation and subsistence costs in connection with attendance.

It must be noted that as the accommodation is enjoyed in the UK, it is considered to be remitted to the UK. Where the special mixed fund rules are in point, the accommodation benefit can be aggregated with general earnings and still potentially claim full relief on the amount of the benefit attributable to non-UK workdays provided that the total amount of general earnings remitted to the UK over the year, do not exceed the total proportion of general earnings relating to UK workdays.

N2 - Relocation

The reimbursement of removal expenses is exempt up to a maximum of £8,000.

The employee must actually change their main residence and this must be in reasonable commuting distance of the employee's new workplace.

Qualifying removal expenses include:

- acquisition and disposal costs
- removal and transportative costs
- travelling and subsistence associated with looking for new residence
- replacement domestic items

Costs of acquisition and disposal can include:

- legal fees
- costs in connection with early redemption of mortgage
- maintenance, insurance, security costs or rent paid while old residence is empty

- advertising and estate agent#s or auctioneer's fees
-survey costs
- disconnection/reconnection of utilities.

The shipping of belongings would qualify, the UK home search assistance would apply, and the flights is connection with the relocation.

However the total costs are:
5500 + 9000 + 3000 (2500 + VAT) = 17,500

The flights to the UK could be deductible under section 373 - travel costs for non domiciled employees. The UK cannot be a temporary workplace as the assignment is expected to last for more than 3 years but relief will be available where:
- expenses of travelling from the country where he usually lives to the UK in order to carry out duties of employment
- return travel expenses on completion of duties.
A deduction is only available if the costs are borne by the employer.
However, as the above conditions are met, this expense is allowable.

17,500 - 9,000 = £8,500
£500 will be taxable.

N3 - Travel

The reimbursement for family flights to their holiday home is not incurred wholly exclusively and necessarily in the course of his employment and will therefore be considered as additional earnings.

2)Jeffrey is UK resident and non domiciled. He can therefore claim the remittance basis of taxation to ensure that his US income is only taxable in the UK to the extent it is remitted to the UK.

Jeffrey aims to remit c. £4000 per month to the UK. This will be taxable in the UK when he remits it. If the company is tax equalising him on all costs, they will also need to take into account any amounts that are remitted.

There are strict and complicated rules as to what type of income is deemed to be remitted first. Jeffrey should ensure that any salary and bonus are paid into a separate overseas bank account.

If the bank account has a balance of less than £10 and only has employment income in it, Jeffrey can nominate this as a qualifying account. In which case the special mixed fund rules will apply to the account and instead of looking at each withdrawal and determining whether there has been a remittance, it can be reviewed at the end of the year and the rules applied to all withdrawals and deposits as if there was just one withdrawal. This makes administration easier and helps control the remittance of what funds are remitted when.

As he has never previously been UK resident, he can also claim overseas workday relief. This would allow Jeffrey to treat the 20% earnings outside the UK as being taxed on the remittance basis. As the assignment is expected to last 3 years, OWR can apply for the duration.

Technically, PAYE should be accounted for on all of Jeffrey's earnings however a s.690 direction could be applied for from HMRC to only account for PAYE on employment income, after taking the remittance basis into account.

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-------------ANSWER-4-ABOVE--------------
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--------------ANSWER-5-BELOW---------------

Answer-to-Question-_5_

TUPE
When TUPE applies the employee's jobs transfer over to the new company (except where made redundant), their employment terms and conditions transfer and continuity of employment is maintained.

This is an example of a business transfer where subsidiaries are merging.

Before a transfer of ownership happens, employers must tell the trade union or employee representatives that the transfer is happening and why, how it will affect them, whether they think there will be any reorganisation and how many agency workers they're using and what types of work they are doing.

Employers can be penalised if they do not do this.

Employers will less than 10 employees can inform and consult directly with employees if there aren't any appropriate representatives.

Under TUPE, the new employer takes over the employee's employment contracts including all previous terms and conditions, holiday entitlement and any collective agreements previously made.

Employees can refuse to work for the new employer and notice isn't required.

After the transfer, the employer can't change an employee's terms and conditions if the reason is the transfer itself.

However, employers can improve employees' terms and conditions if they agree. Therefore, benefits can be made available for all employees so that it becomes the same for everyone. An employer cannot impose these, they have to be agreed by employees or their representatives.

Employee's company pension rights up to the time of a transfer are protected but the new employer doesn't have to continue an identical pension.

When the transfer is complete, employees should get an up to date written statement of employment, given the name of the new employer and saying their terms and conditions haven't changed.

If the employee's tax records are being updated, the employees will receive a p45. However if there is no change for the employee, p45's do not have to be issued but the p60's will need to be updated to account for the new employer.

PSA
Once agreed, a PSA continues until the employer or HMRC changes or cancels it.

As this transfer is having during the course of a tax year, the PSA should be updated and therefore HMRC need to be informed and the updates are subject to HMRC's agreement.

The custom rate scale allowances agreed with HMRC will need to be updated for the new subsidiary.

A new approval will need to be sought from HMRC but obtaining any new bespoke rates will require a sampling exercise and/or proof of costs incurred. The benchmark scale rates published by HMRC could be used until the new subsidiary can obtain new custom rates from HMRC.

Cycle to work scheme
Cycle to work schemes are taxed on their usual cash equivalent under the benefits code regardless of whether there is a related salary sacrifice agreement.

Termination payments

As the employee's were made redundant before the transfer, the transfer does not impact them.

As the cash bonus is paid whilst they are resident in the UK, it will be liable to income tax in the UK.

As the bonus is being paid after the form P45 is issued, income tax will be deducted using the 0T code on a month 1 non cumulative basis with no personal allowances. This means the tax will be deducted at basic, higher and additional tax rates as if it were the employee's first payment of PAYE income in the tax year.

The employer should give the employee a letter showing the date of payment, the gross amount and the amount of income tax deducted under PAYE.

As the medical cover is only paid up until the termination date, this will be reportable on the P11d as normal by 6 July following the end of the tax year.

Statutory redundancy payments are exempt from taxation as employment income and come within the scope of ITEPA 2003 s.401. Only the excess of termination payments over £30,000 is liable to income tax and class 1 NIC.

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--------------ANSWER-5-ABOVE--------------
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---------------ANSWER-6-BELOW---------------

Answer-to-Question-_6_

If UK resident, which it is assumed the individuals are, the employee will be entitled to tax relief (migrant member relief) against their UK income tax on contributions to an overseas pension scheme provided:

- the scheme is recognised by HMRC as being a qualifying overseas pension scheme - i.e. established in an EEA country or regulated and recognised for tax purposes as a pension scheme in the country it was established
-the employee joined the scheme before they became UK resident and continue to be a member
- the employee was entitled to tax relief on their contributions in their country of resident before becoming tax resident in the UK either immediately before coming to the UK or in the ten previous years
- the pension manager has been notified that the individual intends to claim migrant member relief and
- the pension manager has agreed to notify HMRC of any crystallisation events when appropriate

Belgium employer pension scheme
The scheme is established in an EEA country and is regulated by the belgian pension regulator.

As he is entitled to tax deductible contributions, he must have qualify for migrant member relief and the scheme must be qualifying.

To establish whether there is any annual allowance charge we need to establish what his input is.

Accrued pension rights as at end of 2022/23	
12/60 x 170,000 x 16	544,000
Accrued pension rights as at end of 2022/23	
11/60 x 140,000 x 16	(410667)
Pension input for 2022/23	133,333

The annual allowance is therefore £40,000. However this is tapered down for individuals with high income. An annual allowance tapering arises if an individual's threshold income exceeds 200,000 and their adjusted income exceeds 240,000. He isn't entitled to a personal allowance as his income is too high.

Threshold income:

Earnings	340000
Less pension cont.	(133,333)
	206667

Adjusted income

	340,000
add:e'ee cont.	133,333
e'er cont.	7000
	480,333

reduce AA by 1/2 480,333 - 240,000 = 120166
Annual allowance cannot be reduced below £4,000.
If he has any unused annual allowance from prior years this can be carried forward on a first in first out basis (he was a registered member fo the scheme at this point).

133,333 - 4,000 = 129333 x 45%= £58200 annual allowance charge

US 401K
This scheme is regulated in the US and meets the above conditions to be a qualifying scheme.

The DTA states where the employee pays in contributions whilst in the UK, these contributions will be deductible in computing taxable US income.
Any benefits will not be treated as taxable income and contributions shall be allowed as a deduction in computing the company;s corporation tax.

The reliefs cannot exceed the relief that would be available in the US.

When employees take a distribution, this will be subject to tax in the UK.
If they take this as a lump sum, the tax charge will be 55%.
If they take a partial amount, the tax will be 25%.

It must be noted that there is a lifetime allowance of £1,073,100 and there will be a lifetime allowance charge is at a crystallisation event, i.e. payment out of the pension, the amount in the pension exceeds this. The liability for the lifetime allowance charge is jointly and severally on the individual member and the scheme administrator.

International pension scheme

The scheme is most likely an employer financed retirement benefit scheme.
Where these operate, the employer establishes the EFBRS with a trust provider and the employer than makes contributions in respect of individual employees. The EFRBS must be established explicitly to provide benefits from age 55 onwards - here they

can take benefits from age 50.

Therefore, the employer contributions will not be deductible.

The member of an EFBRS is taxed in relation to benefits when taken regardless of whether they are taken as a lump sum form or as income and therefore is taxed on the individual as pension income as normal.
As the payment is paid out of a third party EDBRS, the payment will be charged to tax as employment income under ITEPA 2003, Part 7A.
The earmarking of funds for a particular employee will also be treated as income and immediately liable to income tax and NICs under PAYE.