

The Chartered Institute of Taxation

Advanced Technical

Human Capital Taxes

November 2023

Suggested solutions

ANSWER 1

Employees

Generally, cash allowances are subject to PAYE/Class 1 NIC.

If intended to cover deductible business expenses, then it may be possible to make the payment gross.

For expenses to be deductible, the Welsh workplace must be a 'temporary workplace', which is a workplace where the employee attends either for the purposes of performing a task of limited duration or some other temporary purpose.

Neither are defined in statute; however, a workplace can be prevented under legislation from being a temporary workplace if:

- Continuous attendance is intended to last more than 24 months
- Continuous attendance comprises all or almost all the period of employment
- It is the base for which duties are regularly performed or allocated
- The duties of employment are defined by reference to a geographical area

For employees on permanent contracts:

- Continuous attendance at the Welsh site is not intended to last for more than 24 months, nor will it comprise all or almost all of their period of employment
- Their regular duties of employment are defined as the South West of England or a site within that area
- If duties are allocated it is assumed that this would be done on a regular basis at the Bristol office.

The Welsh site will therefore be regarded as a temporary workplace.

Assuming Oil5 Ltd pay no more than HMRC's benchmark rates for subsistence and are confident that employees are incurring qualifying expenses in connection with attendance at a temporary workplace the allowance can be paid gross. There is no requirement to check employee receipts.

If the allowance is in excess of the benchmark rate, a bespoke rate would need to be agreed with HMRC. In the absence of this, the cash allowance will be subject to PAYE and Class 1 NIC, although the employees will be able to claim a deduction for their expenses through their self-assessment return.

The accommodation can also be provided tax free.

For employees employed solely for the purpose of the project, attendance at the Welsh site will comprise all their period of employment. The Welsh site will not be a temporary workplace. If accommodation is provided; it will be treated as a taxable benefit subject to tax at the employee's marginal rate of tax and employer only Class 1A NIC. The food allowance will also be subject to PAYE/Class 1 NIC.

Specialist worker

OIL5 Ltd is UK resident and will not be deemed a small company for 2023/24 as annual turnover and average number of employees, for 2020 and 2021 (i.e. the last two financial years with the latter being the last financial year where the filing date for the accounts fell before the beginning of the 2023/24 tax year) was more than £10.2m and 50 respectively. Therefore Chapter 2 of Part 10, ITEPA 2003 will need to be considered.

Oil Refinery PLC's size is unknown, but it can be deemed to have 'fully contracted-out' the project to OIL5 Ltd as:

- OIL5 Ltd will provide a final product along with providing all materials and labour
- OIL5 Ltd are responsible for the working hours and pay of individuals working on the project
- No individual is providing their services directly to Oil Refinery PLC

Oil Refinery PLC is unlikely to be deemed the end user of Daniel's services.

OIL5 Ltd have requested the service of a specialist. As such they are likely deemed the end user of Daniel's services.

DMWelding Ltd is an intermediary for the purposes of Chapter 2 of Part 10, ITEPA 2003 given Daniel is the sole shareholder.

Welding4U Ltd is not such an intermediary but is a UK resident party within the engagement chain and the lowest qualifying person above DMWelding Ltd. It is deemed the fee-payer, responsible for operating PAYE/NICs on payments to DMWelding Ltd, but only if provided with a Status Determination Statement (SDS) setting out the decision that the engagement between OIL5 Ltd and Daniel is one of employment and the reasons for that decision.

Under Chapter 2 of Part 10, ITEPA 2003:

- OIL5 Ltd is the party required to determine Daniel's employment status and provide a SDS.
- The SDS should outline the reasons for their conclusion.
- The fact HMRC's check employment status tool (CEST) has indicated that the relationship is one of employment can be used to determine the SDS, but reasonable care must still be taken to ensure the CEST inputs reflect the facts of the engagement. For example, the fact Daniel has to provide his own tools is an indicator of self-employment and so OIL5 Ltd should ensure this is factored in.
- Given the outcome of the SDS, Welding4U Ltd is deemed to have made an employment payment to Daniel based on the VAT exclusive amount paid to DMWelding Ltd.
- This is to be treated as earnings of employment and Welding4U Ltd must deduct and account for PAYE/NIC.
- Payments to Welding4U Ltd can be paid gross.

If OIL5 Ltd does not comply with its obligations to prepare and deliver a SDS to the relevant parties or fails to take reasonable care in preparing the SDS, responsibility for accounting for PAYE/NIC (the deemed employer) will fall onto OIL5 Ltd.

Daniel may challenge the SDS and OIL5 Ltd must respond within 45 days of receipt either confirming that the original conclusion was correct; stating the reasons why or provide a new SDS if the conclusion has changed. Failure will result in OIL5 Ltd being deemed the fee-payer and responsible for deducting PAYE/NIC.

For expenses reimbursed directly to DMWelding Ltd by OIL5 Ltd, as the engagement falls under Chapter 2 of Part 10, ITEPA 2003, the rules on temporary workplaces are modified (s339A, ITEPA 2003) such that each engagement is treated as a separate employment. Attendance at the Welsh site will comprise all the period of 'deemed employment' and cannot be deemed a temporary workplace. Travel to the Welsh site from his home will be ordinary commuting.

However, assuming the tools are wholly, exclusively, and necessary for the performance of Daniel's duties, the costs of hiring can be reimbursed free of PAYE/NIC.

If OIL5 Ltd reimburse Daniel's mileage direct to DMWelding Ltd, then OIL5 Ltd will be required to operate PAYE/Class 1 NIC on the payment.

A starter checklist should be completed by Welding4U Ltd (and OIL5 Ltd if they reimburse the mileage direct) and the deemed employment payments to DMWelding Ltd will need to be flagged as 'off-payroll working' on the Full Payment Summary submission.

If DMWelding Ltd charges VAT on their invoice to OIL5 Ltd then the deemed employment payment net of VAT should be reported on the payroll.

DMWelding Ltd can pass the net payment received on to Daniel without further tax or NIC (reporting it as a non-taxable payment on the relevant Full Payment Submission) Daniel will then receive credit for any PAYE deducted when submitting his own self-assessment return.

MARKING GUIDE

TOPIC	MARKS
Cash allowances are taxable and subject to Class 1 NIC	0.5
Identify that the payment could be made tax free if in connection to qualifying expenses incurred at a temporary workplace	0.5
What is a temporary workplace and comment it is not defined in legislation except to prevent a workplace being deemed a temporary workplace outlining the '4 rules' for full marks:	1.5
Those on permanent contracts, outline that the Welsh workplace will likely be deemed a temporary workplace and give reason citing rules previously outlined	1
Accommodation can be provided tax free to those on permanent contracts	0.5
Allowance can be paid tax and NIC free, but only up to benchmark rate	0.5
Process if OIL5 Ltd want to pay a rate higher than the benchmark rate	0.5
Those on short term contracts will be deemed to be working at a permanent workplace as it attendance at Welsh site will compromise all their period of employment	1
Accommodation will be a taxable benefit to those on a short term contract	0.5
Identifying that OIL5 Ltd is not a small company and have a UK connection so engagement potentially caught under Ch 2, Part 10, ITEPA 2003	1
Size of Oil Refinery PLC is unknown but have fully contracted out the project to OIL5 Ltd (including reasons) and that Oil Refinery PLC will not be deemed the end user of Daniel's services	2
OIL5 Ltd will be deemed the end user of Daniel's services	1
DMWelding Ltd is an intermediary defined by Ch 2, Part 10, ITEPA 2003	1
Welding4U Ltd is not such an intermediary but is a UK resident party and will be the deemed fee-payer if SDS is provided confirming employment status	1
Outline requirements for OIL5 Ltd:	
Must determine employment status and pass SDS down chain	0.5
SDS must outline reasons of their conclusion and mention that CEST may be used as SDS	0.5
As fee-payer, Welding4U Ltd is deemed to have made a payment to Daniel that is subject to PAYE/NIC	0.5
The payment to Welding4U Ltd can be made gross	0.5
If SDS not passed down the chain then responsibility for operating PAYE/NIC falls onto OIL5 Ltd	1
OIL5 Ltd must have a dispute process in place along with the implications for failure to comply	1
Comment that being required to provide own tools may be an indicator of employment and OIL5 Ltd should ensure it took reasonable care with their employment status determination	0.5
With respect to expense payment, identify that the engagement is deemed to be a separate employment and that it is likely to be caught under the fixed length rule	1
Reimbursing cost of hiring tools can be done free of tax and NIC	0.5
Confirm that mileage to the site from their home cannot be reimbursed tax and NIC free and is considered a private expense	0.5
Outline payroll process for reimbursing a private expense if engagement is one of employment and OIL5 Ltd need to onboard Daniel as an employee	0.5
Identify that the deemed employment payment net of VAT should be reported on the payroll	0.5
TOTAL	20

ANSWER 2

Impact on Harvze Ltd's New EMI Scheme

The acquisition of Pintz Ltd creates a new group and this new group has to meet the qualifying criteria. The assets test is still satisfied as the combined value is less than £30 million. Furthermore, the value of the total EMI shares must remain under the required £3 million.

However, the acquisition of Pintz Ltd will potentially increase the total number of full-time equivalent employees in the group to above 250. Harvze Ltd will need to re-evaluate the number of full-time equivalent staff following the acquisition and the subsequent redundancies. If the limit is still exceeded, then Harvze Ltd will not be able to implement an EMI scheme.

Existing Options Held by Lars and Terri

Vesting in the Pintz Ltd scheme cannot be accelerated to allow Terri and Lars to exercise their options before the sale without also disqualifying the options. As an early-vesting-on-sale provision was not included in the original plan documentation, doing this now would be treated as a change in the terms of the options. The effect is that the early exercise would be treated as the release and regrant of the options, and the market value on the date of grant of the options would be taken to be the value on the date of the regrant (and this is likely to be the price offered by Harvze). Any income tax on the exercise of the regranted options will therefore be based on the discount to market value on the date of regrant, rather than the discount to market value at the original date of grant. The effect of this is that all the benefit accruing to Terri and Lars would be subject to income tax (with PAYE and Class 1 NIC) rather than capital gains tax. As such this route is not recommended.

Replacement options over shares in Harvze Ltd could be granted without triggering a taxable event. Where this happens, the replacement options are deemed to have been granted on the date of grant of the original option and on the same terms, just over different shares.

Harvze Ltd must notify HMRC of the replacement within 92 days. Lars and Terri must give a new written declaration that they meet the working time criteria.

In addition:

- It is assumed that the offer of £1,100,000 is in cash and therefore Harvze Ltd must take over control of all the shares in Pintz by means of a general offer.
- Harvze Ltd must be independent and must satisfy the trading requirements. Given it was setting up its own EMI scheme, it is assumed this is not an issue.
- At the date of exchange Terri and Lars still meet the qualifying criteria for employees and are working for Harvze Ltd or Pintz Ltd, which they will do. Lars is still eligible even though he works less than 25 hours per week as he will spend more than 75% of his working time working for Pintz Ltd.
- The replacement options must be granted within six months of the change of control.
- The value of the replacement options must equal the value of the original option; and
- No other consideration must be given to Terri and Lars for them to give up their options in Pintz Ltd

Lars and Terri will be exchanging Pintz Ltd options worth £55,000 (£110 x 500) for Harvze Ltd options worth £51,000 (£170 x 300). The full value of the existing options will not therefore be replaced. The cash payment of £4,000, although making up the value of the exchange, is not allowed under the rules for EMI. The replacement will not therefore meet the conditions necessary to maintain the EMI tax benefits. Harvze Ltd will have to amend its offer to Terri and Lars to remove the cash element and increase the number of shares over which the replacement options are granted to 324 for the options to qualify. Otherwise, the options will be unapproved and liable to income tax as employment income on exercise. The £4000 cash will be liable to IT and NIC and must be put through the payroll at time of payment.

However, it should be noted that any replacement options will be exercisable on the terms of the old options. The old options become exercisable on 31 January 2024. Therefore Lars and Terri would be able to exercise their replacement options on the same date and acquire shares in Harvze Ltd, which may not fit Harvze Ltd's commercial objectives.

In the event, Harvze Ltd do not wish to pursue replacement options, the third proposed alternative is to allow Lars and Terri to maintain their existing options. The acquisition of Pintz Ltd by Harvze Ltd would be a disqualifying event for the purposes of the existing options. Terri and Lars will have 90 days from the date of the purchase by Harvze Ltd to exercise their EMI options and still retain the tax benefits. This will be 28 February 2024. They cannot exercise until the scheme has vested on 31 January, so in effect they have one month to exercise.

Commented [A1]: It is the options that are affected no the scheme as a whole.

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Exercise within 90 days

	<u>Calculation</u>	<u>Taxes due</u>
Discount on grant	$(500 \text{ shares} \times \text{£}30 = \text{£}15,000) - (500 \text{ shares} \times \text{£}25 = \text{£}12,500) = \text{£}2,500$ Income Tax @ 40%	IT due of £1,000

Exercise after 90 days

	<u>Calculation</u>	<u>Taxes due</u>
Discount on grant	As above	IT due of £1,000
Growth in value	Current market value – $(\text{£}110 \times 500 \text{ shares} = \text{£}55,000)$	IT due

Any amount liable to Income Tax must be included in the payroll and PAYE must be deducted.. As the shares are readily convertible assets, then Class 1 primary and secondary NIC will be due as well.

The exercise must be reported to HMRC on the annual return by 6 July 2024.

MARKING GUIDE

TOPIC	MARKS
Impact on new EMI scheme <ul style="list-style-type: none"> - Assets and value tests for whole new group - >249 employees 	$\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$
Disqualifying events <ul style="list-style-type: none"> - Due to control test - Existing Pintz EMI options cannot retain beneficial tax treatment - Change to vesting schedule not in original plan provisions 	$\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$
Replacement options instead <ul style="list-style-type: none"> - within 6 months = NT - notify HMRC in 92 days - new working time statement 	$\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$
Conditions for Replacement <ul style="list-style-type: none"> - Takeover all shares - Harvze's independence - Harvze's trade - Employees qualify and why Lars still qualifies - No other consideration - Value must be equal - Harvze must increase new option offer 	$\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$ 1 $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$
90-day limit to exercise if not replaced <ul style="list-style-type: none"> - From date of Pintz sale - Calculating taxable value and IT 	$\frac{1}{2}$ $\frac{1}{2}$ 2
Shares/Cash Offer <ul style="list-style-type: none"> - Unapproved options liable to IT - Cash liable to IT and NIC via payroll 	$\frac{1}{2}$ 1
Under PAYE Liable to NIC as RCA Reporting to HMRC	$\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$
TOTAL	15

ANSWER 3

Requirement 1

Salary sacrifice is an agreement between the employer and the employee where the employee accepts a lower salary in return for a non-cash benefit in kind.

Where an employee gives up the right to earnings in return for the benefit, they enter into an 'optional remuneration arrangement' under s26 ITEPA 2003, whereby the employee is taxed on the higher of the cash equivalent of the benefit or the amount forgone. In the case of petrol and diesel company cars, if the salary sacrificed is higher than the benefit in kind, the employee would continue to be taxed on salary sacrificed and not the benefit of the car.

Payments made by employees for private use are ignored when comparing the cash equivalent to the benefit so if a private use contribution was kept, this would be ignored when comparing the amount forgone and the benefit.

However, where the benefit provided is a car with CO₂ emissions less than 75g/km; the optional remuneration rules do not apply and the employee is taxed on the benefit. Therefore, by using a salary sacrifice regime for lower emission cars the taxable benefit on these cars is considerably lower than with traditional cars. This results in the ability for tax planning if set-up correctly.

Legal advice would be needed as:

- the arrangement must be reflected in the employment contract
- remuneration must be sacrificed before earning or entitlement.
- the arrangement should be voluntary.
- variations should be possible at lifestyle change dates such as marriage, divorce or becoming a parent.

Best practice is that a salary sacrifice arrangement is reviewed regularly, usually every 12 months.

Employees save tax and NIC on the sacrificed amount and employers also save secondary NIC. The lower the benefit in kind, especially when using lower emission company cars, the greater the savings can be achieved.

Some employers choose to pass on some or all of the employer's NIC savings to employees whilst others use the savings to reduce the costs of providing the benefit.

Requirement 2

Below are the costs to the employee and Gingco Ltd of providing an electric or existing petrol company car without salary sacrifice.

	<u>Electric car</u>	<u>Petrol Car</u>
	<u>£</u>	<u>£</u>
List Price	66,625	45,000
Benefit in kind percentage	2%	37%
Benefit in kind	1,333	16,650
Less: Private use contribution		<u>(3,000)</u>
		<u>13,650</u>
Tax due by employee @ 40%	533	6,660
Class 1A NIC @ 15.05%	201	2,054
Tax	533	6,660
Private use contribution	<u>0</u>	<u>3,000</u>
Tax Cost to employee	<u>£ 533</u>	<u>£ 9,660</u>
Cost to company for lease etc	13,000	9,500
Class 1A NIC	<u>201</u>	<u>2,054</u>
Cost to Gingco Ltd	<u>£ 13,201</u>	<u>£ 11,554</u>

Ignoring any corporate tax relief, this way of providing electric cars costs more for Gingco Ltd and considerably less for the employees than the current petrol car arrangement so is unlikely to be an attractive alternative.

Instead, when using a salary sacrifice arrangement, the costs for an electric company car through salary sacrifice are:

<u>Electric Car</u>	<u>Employee</u>
	£
Salary sacrificed	13,200
Income tax saving @ 40%	(5,280)
NIC saving @ 3.25%	(429)
Company car tax @ 2% on £66,625 @ 40%	<u>533</u>
Cost for employee	<u>£8,024</u>

	<u>Employer</u>
	£
Lease, insurance, maintenance costs	13,000
Salary cost reduction	(13,200)
NIC Class 1A (2% on £66,625 @ 15.05%)	201
Class 1 NIC Savings £13,200 @ 15.05%	<u>(1,987)</u>
Cost for employer	<u>(£1,986)</u>

Savings when comparing a salary sacrifice arrangement for an electric car with the existing petrol car are much more attractive for Gingco Ltd as follows:

	£
Savings for employee	<u>£1,636</u>
Savings for Gingco	<u>£13,540</u>

Employees may wonder why they would be better off by sacrificing £13,200 compared to paying £3,000 for private use, however, the cost to the employees is lower than with a petrol car after taking into account the tax and NIC savings plus the lower company car tax. A salary sacrifice route is needed for Gingco Ltd to be able to provide environmentally friendly electric cars as the savings counter the costs of the more expensive electric vehicles, thereby making it more attractive.

A reduced salary sacrifice could be taken from the employees if the employer savings are passed on in full or shared with the employee.

If Gingco Ltd installed electric vehicle charging points at their offices or at the homes of employees who had company electric vehicles no benefit in kind would arise. No fuel benefit applies to electric vehicles even if the cars are used for private use. This would help to encourage staff to take up the electric cars but there would be additional electricity costs and the cost of installing the charging points for Gingco Ltd.

MARKING GUIDE

TOPIC	MARKS
1) Explain the principles of salary sacrifice and in particular the rules regarding for company cars	
Explanation of optional remuneration rules	1
Explanation of rules regarding private use contributions	1
Explain legal requirements for salary sacrifice	1
Exemptions for pension, cycle to work, company cars <75g/km, annual leave	1
Explanation of rules regarding low emission vehicles	1
Explanation of types of savings which can be made for tax and NIC	1
2) Calculate with explanations the cost of providing a petrol or electric car under their existing scheme and the savings which could be made for the company and the employees when providing an electric car using a salary sacrifice	
Calculation of the benefits in kind and cost for employee and Gingco Ltd for electric and petrol company cars without salary sacrifice	2
Explanation of higher costs for Gingco Ltd when using electric cars without salary sacrifice	1
Calculate the cost to the employee and company for the electric car	2
Explain the savings and the need for salary sacrifice and the option to share or pass the employer NIC savings to the employee	2
Comment that the electric car using salary sacrifice is an attractive option	1
Comment on electric charging points at company workplace and/or employee's home.	1
TOTAL	15

ANSWER 4

Requirement 1

Overseas Workday Relief

As Fred is UK resident but non-domiciled, he is entitled to claim to be taxed on the remittance basis so income relating to certain work carried out overseas not remitted would not be liable to UK income tax. This is known as overseas workday relief ("OWR"). Under the remittance basis personal allowances are lost but at Fred's income level of income zero personal allowances would be due so, based on employment income alone, it makes sense to claim the remittance basis.

OWR applies where an employee is non-resident for three consecutive years out of the preceding five years. Relief is available for the tax year of arrival and two following years.

Fred was working overseas until 10 April 2022 so he meets this condition so OWR is available for 2022/23, 2023/24 and 2024/25. As he was paid offshore and has not remitted anything this means we can consider OWR.

As Fred was tax equalised, Data Ltd would have taken the benefit of any OWR thereby reducing the overall amount of UK tax paid by it.

Temporary Workplace Relief

Where an employer reimburses or pays for the cost of travelling to and staying in a temporary workplace, no taxable benefit arises. This is sometimes referred to as Temporary Workplace Relief ("TWR"). Costs include travel and associated costs such as accommodation. Temporary is defined as for a period expected to last less than 24 months.

Fred's secondment to the UK was expected to last less than two years so the cost of accommodation provided by Data Ltd was tax-free.

TWR should be limited to costs incurred for the employee and not for any family members. Fred has a family-sized house so the costs should be restricted to that of housing for an employee on secondment alone, however, in comparison to the cost of housing for Data Ltd's other secondee, the rent in Fred's case is the same, so no restriction is needed.

TWR continues whilst the intention to stay here is less than 24 months. If Fred accepts a local contract TWR would end now, even if the contract were due to start in April 2024. It is of course accepted that Fred and Data Ltd would need to make plans before his original assignment end date but the later a decision is made to hire Fred locally is deferred would maximise TWR.

Requirement 2

Costs for Data Ltd

Below are total costs for Data Ltd, taking into account migrant member relief applies for US pension contributions:

	<u>Including</u> <u>Reliefs</u>
	<u>£</u>
Gross income	275,000
US hypo tax 26%	(71,500)
US 401K 5%	(13,750)
Medical	15,000
Housing	<u>54,000</u>
Total income	258,750
TWR	<u>(54,000)</u>
Taxable	204,750
OWR @ 30%	<u>(61,425)</u>
Net taxable	<u>£ 143,325</u>

<u>£</u>	<u>£</u>	<u>£</u>	<u>£</u>
<u>Gross bands</u>	<u>Net Bands</u>	<u>Rate</u>	<u>Tax</u>
37,700	30,160	@ 20/80	7,540
112,300	67,380	@ 40/60	44,920
	45,785	@ 45/55	<u>37,460</u>
Total grossed-up tax			89,920
Total costs as above			258,750
US pension @ 10%			<u>27,500</u>
Total costs			376,170
US Social security			<u>22,570</u>
Total secondment cost to Data Ltd			<u>£ 398,740</u>

Below is a summary of the cost of Fred's local hire package to Data Ltd:

	<u>£</u>	<u>£</u>	<u>£</u>
Salary	275,000		
Medical	15,000		
Housing	54,000		
Employer pension contributions	<u>10,000</u>		
Total	<u>£ 344,000</u>		£ 344,000
Employer's NIC:			
Total income as above	344,000		
Less: Employer pension contributions	<u>(10,000)</u>		
Income liable to NIC	<u>£ 334,000</u>		
Secondary threshold	9,100	0%	0
Balance	324,900	15.05%	<u>48,897</u>
Total cost to Data Ltd of local hire			<u>£ 392,897</u>

It's £5,853 more expensive for Data Ltd for a secondment compared to local hire.

Requirement 3

Below is a calculation of Fred's net income with and without OWR as Fred would be entitled to OWR for the 2024/25 tax year. Under the proposed local hire arrangement, he would be paid fully into a UK bank account and OWR relief would be wasted. However, by paying some of his salary into an overseas account Fred could personally achieve the benefits of OWR until 5 April 2025.

Fred should continue to ensure that at least the amount of the OWR is not remitted to the UK. If any of the OWR claimed is remitted to the UK it would become liable to UK tax, even in future years.

With a local employment contract Fred would no longer be able entitled to an exemption on his provided accommodation.	<u>No OWR</u>	<u>OWR</u>
	<u>£</u>	<u>£</u>
Salary	275,000	275,000
Medical	15,000	15,000
Housing	54,000	54,000
Pension	(5,000)	(5,000)
OWR @ 30%	<u>0</u>	<u>(101,700)</u>
Taxable Income	<u>£ 339,000</u>	<u>£ 237,300</u>

Tax		
20%	7,540	7,540
40%	44,920	44,920
45%	<u>85,050</u>	<u>39,285</u>
	<u>£ 137,510</u>	<u>£ 91,745</u>

NIC (same under both scenarios):

Income liable to NIC	<u>£ 270,000</u>
0%	0
13.25%	4,995
3.25%	<u>7,304</u>
	<u>£12,299</u>

<u>Net Income for Fred</u>	<u>No OWR</u>	<u>OWR</u>
Salary	275,000	275,000
Pension	(5,000)	(5,000)
Tax	(137,510)	(91,745)
NIC	<u>(12,399)</u>	<u>(12,399)</u>
Net Income	<u>£120,191</u>	<u>£ 165,956</u>

As Fred's net income would be over £45,000 higher by claiming OWR, it is worthwhile for Fred for Data Ltd to pay at least £101,700 of his net pay directly into an overseas bank account.

Fred's net income under the secondment terms is £173,250 so, when comparing Fred's net pay as an expat and local hire, the calculation below shows how much additional grossed-up income would be needed to achieve the same level and total cost to Data Ltd.

	<u>No OWR</u>	<u>OWR</u>
	<u>£</u>	<u>£</u>
Difference in net from previous expat role	53,059	7,294
Grossed tax & NIC @ 48.25/51.75	<u>49,470</u>	<u>6,801</u>
Additional income needed	102,529	14,095
Original salary (after salary sacrifice)	<u>270,000</u>	<u>270,000</u>
Gross Salary needed	<u>£ 372,529</u>	<u>£ 284,095</u>
Total cost to data as above	388,836	388,836
Additional gross salary	102,529	14,095
Employer NIC @ 15.05% on additional salary	<u>15,431</u>	<u>2,121</u>
Total cost to Data Ltd	<u>£ 506,796</u>	<u>£ 405,052</u>

Given the availability of OWR, if Data Ltd wished to match Fred's secondment net pay, his annual salary should be £284,095 from April 2024 when his contract starts. It would need to increase to £372,529 from April 2025.

MARKING GUIDE

TOPIC	MARKS
<u>Requirement 1</u>	
Explain how OWR works and relief available for year of arrival and further 2 tax years.	1.5
Explain OWR and remittance basis	1
Recognition that personal allowances would be lost anyway as income levels so worthwhile claiming remittance basis	0.5
Explain that remittance basis will still apply and income needs to remain outside the UK	1
Explain general concept of TWR	1
Explain intention remaining UK <24 months then TWR would end from point a decision was made to remain in the UK	1
Explain about TWR and the cost of the property equals that in central London so argue that full relief available	1
<u>Requirement 2</u>	
Calculation of employer's costs under equalised package:	
OWR	0.5
Reduce gross for hypo	0.5
Reduce gross for 401K	0.5
Incl medical benefit	0.5
Gross up tax	1
Add employer pension	0.5
Add employer US social security costs	0.5
Calculation of employer's costs under local package:	
Add medical and housing as cost to salary	0.5
Calculation employer's NIC after pension relief	0.5
Difference in costs	1
<u>Requirement 3</u>	
Explain that OWR could continue for another year if paid partly into his overseas bank account	1
Calculation of tax without OWR including gross-up of tax/NIC	2
Calculation of tax with OWR including gross-up of tax/NIC	2
Calculation of NIC	1
Suggest salary level from date local hire and then further increase from 6 April 2024	1
TOTAL	20

ANSWER 5

Requirement 1:

Aman's 2022/23 income position was based on his UK tax residence position under the statutory residence test (SRT):

Automatic overseas test:

Aman has been resident in 2019/20 and spent more than 15 midnights in the UK in 2022/23.

In 2022/23, he was not an international transport worker, and was not carrying out full time work abroad (FTWA) as he has spent more than 30 workdays and more than 90 midnights in the UK.

Aman's 2022/23 residence position was not determined under this test.

Automatic UK test:

Aman did not spend more than 183 days in the UK in 2022/23.

He did not have his only home in the UK: he had a home in Italy that remained available in 2022/23 and had been used for more than 30 days during the tax year, and in the 91-day period during which he also UK accommodation was available to him.

He did not work full time in the UK: he did not have more than 75% UK workdays in a 365-day period starting or ending in 2022/23.

Aman's 2022/23 residence position was not determined under this test.

Sufficient ties test:

Aman was UK resident in 2019/20, and so the following ties need be analysed for 2022/23:

1. Aman had UK resident family as his wife and son spent more than 183 days in the UK. His son spent more than 60 days in the UK with Aman, therefore included when analysing the family tie.
2. Aman had more than 39 UK workdays.
3. Aman had accommodation in the UK as his London flat was available for 94 days.
4. Aman had not spent more than 90 days in the UK in either of the previous two tax years. He was non-resident under FTWA rules in 2020/21 and 2021/22, which meant that he was in the UK for less than 91 days in those tax years.
5. Aman spent more days in Italy than in the UK.

Aman had three ties with the UK (1, 2 and 3 above) during 2022/23.

Aman spent 101 midnights in the UK in 2022/23:

- July 2022: 14
- 5 Jan 2023 to 9 Feb 2023: 36
- 14 Feb 2024 to 5 April 2024: 51

With three UK ties and more than 90 UK midnights, Aman was UK tax resident in 2022/23.

HMRC's exceptional circumstances concession would not apply as Aman 'chose' to return to the UK for his son's medical treatment.

Split year:

As Aman returned to the UK part way through 2022/23, the following split year cases of the SRT are potentially relevant:

- Cases 4, 5 and 7 would not apply.
- Case 6 would apply as Aman stopped FTWA from 5 January 2023. He was non-resident in 2021/22 under FTWA and will be UK tax resident in 2023/24 (208 days of presence in the UK). He satisfied the day count thresholds between 6 April 2022 and 4 January 2023: less than 25 UK workdays and less than 75 UK days of presence.
- Case 8 may have applied: when cases 6 and 8 both apply, case 6 takes priority over case 8.

Aman should have been able to split the tax year into a period of non-residence (6 April 2022 to 4 January 2023) and residence (5 January 2023 to 5 April 2023).

Double Tax Agreement (DTA):

Aman remains non-resident in Italy under its domestic rules and therefore the tiebreaker clause in the DTA does not apply

Employer compliance obligations:

Assuming a NT code is in place so that Gelatoz Ltd ceased to account for income tax through PAYE during the assignment, Gelatoz Ltd should have started operating PAYE tax from the 5 January 2023 payroll run. It should have accounted for net compensation and gross up via payroll for tax and NIC, as assignment arrangements continue.

As the UK is Aman's permanent workplace, there is no exemption for any accommodation provided to him or his family. Gelatoz Ltd should have reported UK accommodation on payroll for tax and Class 1 NIC (as lease is in Aman's name), after deducting his contribution. NICs would continue to have been paid on all compensation items including share option income, every month via payroll due to the A1 in place.

Gelatoz Ltd should have reported the cost of the medical benefit and Italian accommodation on a P11D for tax and Class 1A NIC. Again a deduction is not available for the accommodation because Italy is a permanent workplace due to Aman intending to spend more than 24 months and 40% of his time working there. Relief under s376 would not be available as Aman's duties will not be wholly performed outside the UK.

If an Appendix 7b agreement has been in place, then year-end reconciliations will be needed to reconcile the NIC position in respect of the non-resident period, by 31 March 2024.

Requirement 2

Income subject to PAYE tax (assuming NT code in place prior to resuming residence on 5 January 2023):

Item	Taxable (£)	Narratives
Salary	60,000	
Less Hypo tax	(26,250)	Taxable / deductible from 5 January 2023
Bonus	-	Not taxable / deductible as relates to prior calendar year when Aman was non-resident with only incidental UK duties
Less Hypo tax	-	
Net COLA	1,500	Taxable from 5 January 2023
Medical benefit	750	Taxable from 5 January 2023
Share option income	2,083	Taxable based on residence position between grant and vest dates
Less Hypo tax	(979)	Apportioned deduction
Italian accommodation	9,000	Taxable from 5 January 2023; no relief under TWR, or under s376 as duties not wholly performed outside the UK
UK accommodation	6,900	Taxable from 5 January 2023 – offsetting Aman's contribution
Employee NIC paid by employer	3,150	Taxable from 5 January 2023
Total net income	56,154	

(W1) Gross up tax calculation (£):	(£)			
Total net income	56,154			
Less Personal Allowance	(12,570)			
Taxable net income	43,584			
Net pay (£)	Gross up by	Gross pay (£)	Tax (£)	
30,160	100 / (100-20)	37,700	7,540	
13,424	100 / (100-40)	22,374	8,949	
		Total	16,489	

Total income subject to PAYE tax:	(£)
Total net income	56,154
Gross up tax (W1)	16,489
Total	72,643

MARKING GUIDE:

TOPIC	MARKS
Requirement 1:	
Residence and split year position will determine employer tax compliance	½
Automatic overseas test	1
Automatic UK test	1½
Sufficient ties test	3
Exceptional circumstances concession	½
Split year considerations	2½
No tax treaty considerations	½
Conclusion	½
Employer compliance requirements for Gelatoz Ltd:	
• PAYE tax position – when to operate and what to include	1
• UK Accommodation and TWR	1
• NIC position	½
• Medical and Italian accommodation position (including TWR)	1
• App 7b reconciliation	½
Requirement 2:	
Income subject to PAYE tax:	
• Salary less hypo	½
• Bonus less hypo	½
• COLA	½
• Medical	½
• Share options less hypo	1
• Italian accommodation	½
• UK accommodation	½
• Employee NIC	½
• Gross up calculated by candidates	1½
TOTAL	20

ANSWER 6

Requirement 1

Maria has been subject to UK NICs from 1 July 2023 onwards.

Well Minded Ltd should report Maria's compensation for NICs purposes as below:

Item	Income subject to NICs (£)	Type of NIC
Accommodation	18,000	Class 1A
Spousal support	1,500	Class 1A
Education	16,500	Class 1
Home leave	2,000	Class 1A
Company party	336.00	Class 1B
Travel and accommodation	Covered by TWR	None
Taxis for business	Exempt as business expense	None
Taxis for regular commute	550	Class 1
Recognition award	150	Class 1B
Total	<u>39,036</u>	

Requirement 2

The following reporting needs to be considered for reporting of Maria's compensation:

1) Appendix 6 modified 'shadow' payroll and Appendix 7a NICs Settlement Return

WellMinded Ltd should report taxable benefits covered by tax equalisation, via the Appendix 6 and Appendix 7a reporting. This includes the following items:

Accommodation
Spousal support
Education
Taxable home leave
Taxis for regular commute

They should report the compensation not yet processed (from 6 April 2023 onwards) in the first month that they can, and then carry out regularised monthly reporting along with Full Payment Submissions (FPS).

Maria's K-code issued by HMRC will be ignored for purposes of the Appendix 6 payroll.

Maria will need to report taxable income on her 2023/24 UK tax return (by 31 January 2025) under Appendix 6 requirements.

Under the Appendix 7a Agreement, the values of benefits which are subject to Class 1 NICs should be reported, NICs calculated and paid across monthly to HMRC.

A year-end reconciliation will be due by 31 March 2025 and any additional NICs due will be payable by that date.

2) P11D reporting

A P11D should be prepared to report benefits in kind processed through the FPS - due to be filed by 31 January 2025.

3) PSA for irregular and minor benefits

WellMinded Ltd's PSA should be used to report minor and irregular benefits in kind, such as the recognition award and company party on which Class 1B NICs are payable. The PSA is due by 19 / 22 October 2024 and Class 1B NICs are due by the same date.

MARKING GUIDE

TOPIC	MARKS
<u>Requirement 1</u>	
NIC application date	½
Each item of compensation – correct calculation of amount subject to NICs, reporting mechanism and type of NICs	½ x 9
<u>Requirement 2</u>	
Appendix 6 and Appendix 7a	3
P11D reporting	½
PSA reporting	1½
TOTAL	10