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

Answer-to-Question-_1_

Since M was aged 55, there is a risk that the payment to him could be regarded as being in anticipation of retirement. The consequences of this would be that the entire payment woudl be fully taxable and subject to Class 1 NICs.

That said, it is clear from the facts that P and M should be able to prove that the payment was not in anticipation of retirement - not least because M planned to work for another 5 years.

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Payments for injury to feelings do NOT come within the scope of the exemption which applies to termination upon the injury or disability of an employee.

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M is contractually entitled to the pay in respect of accrued holiday entitlement. Accordingly, this is taxed as earnings and subject to Class 1 NICs.

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The £30,000 exemption applies per employer. Therefore, the

exemption available here is reduced by the statutory redundancy payment already made. (In other words, the exemption here is £18,000.

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Excluding the £1,750 element (for reasons already given) M's redundancy package is £923,000. Of that amount, a portion represents 'PENP'(the basic pay to which M would have been entitled had he worked his notice period). PENP is taxable in full and subject to Class 1 NICs.

The formula for calculating PENP is:

((BP x D) - T)/P

BP is basic per for his last monthly pay period (i.e. excluding the commission and payrolled medical insurance). The £2,000 salary sacrifice is included, however. Therefore BP = £20,333

T does not include the payment in respect of holiday entitlement. It also does not include the commission, because the commission is not related to his termination.

Because the notice period and post-employment period are in whole months, one can use the simplififed formula. D is 3 (3

months post-employment notice period), P is 1.

M's tax code has no bearing on the calculation.

Therefore, PENP = (20,333 x 3)/1 = £60,999.

Of the remaing amount of the package (£923,000 - £60,999 = £862,001), the first £18,000 is exempt (for reasons already given).

Therefore, this leaves £844,001 which is subject to s.403. This amount is subject to income tax and Class 1A NICs. These Class 1A NICs should be accounted for under the PAYE system.

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The apprenticeship levy (0.5%) only applies to amounts subject to Class 1 NICs.

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If the termination payment is made before the Form P45 is issued, PAYE shoudl be applied using tax code 1257L. Looking at the dates here, however, it looks like the form should have already been issued. Therefore, P should operate PAYE using tax code 0T on a month 1 basis. Either way, the cash payment is reportable by wya of inclusion in a Full Payment Submission.

Because he has benefits in kind from 22/23 in the way of the medical insurance, this should still be reported on P11D by 6 July 2023. The Class 1As due on this benefit should be reported on P11D(b) by the same date, and the amount due paid to HMRC by 22 July 2023 (assuming P is paying electronically).

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

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

Answer-to-Question-_2_

They will both qualify for the seafarers earnings deduction. This is because they are both UK tax resident, are seafarers, and perform their duties partly outside the UK.

Starting from the first period of absence.

Days in UK	Absent from UK	Total days in period so far	Total UK days in period so far	At end of latest absence, are UK days more than half of total
-	25			
	6			
	18			
	5			
	20			
	8			
	20			
	5			
	18			
	6			
	25	156		
2				
30				

21				
1		210	54	No

In any 365 period, the employees will be absent from the UK for at least half the days. Moreover, looking backwards from the end of an eligible period, there will never be a gap from the UK of more than 183 days.

The employee can aach deduct 100% of thier ernings referable to the eligible period from their earnings. This deduction is after making deductions for pension contributions and allowable expenses.

The deduction cannot be operated through PAYE, however. The employees will have to claim it via self-assessment. Also, the calculations of eligible periods cannot take into account their previous employments. When they start working for CG, the calculations must start from scratch.

The workers will still be subject to Class 1 NICs.

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It is unclear what is meant by ‘take home’ pay. However, assuming this means what they get once they’ve made claims via self-assessment, the calculations are as follows.

There is no Class 1 due in respect of the medical benefit.

Primary Class 1 NICs are payable in the amount £4,884 for the portion of their earnings which falls between the PT and UL.

If CG pays them £65,182 in gross pay, the total primary Class 1 deductions will be £5,182. Thereby leaving them with £60,000 once they make the claims.

In terms of costs to CG, in addition to the salary, it will have to pay:

Medical insurance: £2,500
Pension: £65,182 x 15% = £9,777
Secondary Class 1 = (65182-8840) x 13.8% = £7775

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

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

Answer-to-Question-_3_

Equipping

These payments come within the scope of an exemption and so no income tax or NIC liability will arise (s.316A ITEPA 2003). There are no reporting requirements.

However, the equipment in question should only be use for business purposes. (Insignificant private use is permissible).

Broadband

____The exemption above is not available in respect of the office-based workers. For the office-based workers, the reimbursement is earnings and subject to income tax and Class 1 NICs (reportable on full-payment submissions and collected and paid via the PAYE system).

As for the other workers, HMRC only accept the exemption applies if (i) a broadband connection was not already available, (ii) the workers need broadband to work from home, and (iii) the broadband is mainly used for business purposes.

One suspects that one or more of these conditions will not be satisfied.

Travel

____For the home workers, the office is a temporary workspace. Therefore, the reimbursement of travel expenses will be exempt from income tax and NICs.

For the hybrid workers, the devil is in the detail. With reference to s.339 ITEPA, it is clearly a workplace and will be for the duration of the employment. Generally, to qualify as a temporary workplace, an employee's attendance would have to be for a period of 'continuous work', which HMRC regard as requiring "40% or more" of their working time at that place.

Moreover, because the hybrid workers attend 'for greater networking and collaboration', the arrangments do not fall within

HMRC's policy of treating 'bases' as permanent workplaces. (HMRC will treat somewhere as a base if the main reason an employee goes there is because it is the place from which they work or at which they are routinely allocated tasks).

Therefore, there is a risk the payments would not be exempt. However, if the arrangements are tweaked such that hybrid workers always spend LESS than 2 days a week at the office, and a formal distinction is made such that they are not allocated tasks whilst at the office, there would be a good case for saying the payments would be exempt.

Meals

For the employees for whom the office is a temporary workspace, the reimbursement will be exempt. For the others, it will not.

AMH may wish to consider the exemption under s.317 ITEPA 2003. If free or subsidised meals are provided on AMH's premises, they are provided on a reasonable scale, the meals (or vouchers/tokens for the meal) are available to all employees at the office, and the provision is not pursuant to a salary sacrifice arrangement, the benefit will be exempt. This will be the case, even if the office is a permanent workplace vis-a-vis the worker in quesiton.

Construction Industry Scheme

AMH will be a deemed contractor because its cumulative expenditure on construction operations in a 12-month period will exceed £3m.

The £2.5m payment made in respect of space occupied them is a contract payment under the scheme. However, the £1m paid in respect of the sublet area is not a contract payment.

To the extent the £2.5 contract payment is paid to a subcontractor(s) registered under the CIS scheme for gross payment, it can be paid gross.

To the extent it is paid to a subcontractor registered under the scheme but not registered for gross payment, AMH should deduct 20% from the pre-VAT amount paid in respect of (i)labour, (ii) travelling expenses and subsistence and (iii) the profit element of any materials. It should then remit the deducted amount to HMRC on a monthly basis by 19 following the tax month

(or 22 if paying electronically), together with PAYE and NICs. It must also submit Form CIS300 by no later than 19 each month.

To the extent the subcontractor is not registered under the scheme, the requirements are the same except that the amount to be deducted is 30% not 20%. Of course, it is incumbent upon AMH to check the status of any subcontractors it uses.

The landlord will not be a deemed contractor - not least because its annual expenditure on construction operations will not exceed £3m. It can therefore pay the £2m to AMH gross.

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

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

Answer-to-Question-_4_

Since the annual pay bill exceeds £3m, the apprenticeship levy (0.5%) applies to any amounts subject to Class 1 NICs.

Charge on Acquisition of Shares

____Since there are no forfeiture conditions, the exemption in s.425 ITEPA 2003 does not apply at the point of acquistion.

Because the shares are acquired by reason of employment, they are employment-related securities. At the point of acquisition, an amount will have been charged to income tax.

Because the shares are listed, they are readily convertible assets. Therefore the amount charged to income tax was also subject to Class 1 NICs. The income tax and Class 1 NICs should have been collected and remitted to HMRC under the PAYE system.

The amount charged to income tax is calculated as the difference between the actual/restricted market value of the shares and amount AD paid. (It is now too late to make an election under s.431).

The amount charged to income tax and Class NICs is therefore:

= 10,000 x (£13.5 - £1)
= £125,000

Amounts due:

Income Tax = £125,000 x 45% = £56,250
Primary Class 1 NIC = £125,000 x 2% = £2,500

Secondary Class 1 NIC = £125,000 x 13.8% = £17,250
Apprenticeship Levy = £625

Charge when restrictions lifted

____An amount will have been charged to income tax at this time.

Broadly, that amount is the percentage of the shares which had not already been taxed, paid for, or treated as taxed or paid for.

Per share, the calculation is:

= UMV x (IUP - PCP - OP) - CE

UMV is 35.

IUP is (15-13.5)/15 = 0.1

PCP is 0.

OP is 0.

= 35 x 0.1

= £3.5

Amount charged to income tax = £35,000

Amounts due:

Income Tax = £35,000 x 45% = £15,750
Primary Class 1 NIC = £35,000 x 2% = £700

Secondary Class 1 NIC = £35,000 x 13.8% = £4,830
Apprenticeship Levy = £175.

The addtional £12.5 she paid per share raises, the base cost of the shares to £47.5 per share, so she will have made a capital loss.

Notional Loan

There appears to be a notional loan whereby RS in effect leant AD £125,000 for three years. The notional interest (£2,500 per year) is taxable and subject to Class 1A NICs.

BONDS - Acquisition

Amount charged to income tax at acquisition = £50,000

There is no Class 1 liablity.

The tax liability (payable by way of self assessment) is 50k x 45% = £22,500

Bonds - First Conversion

There is an amount charged to income tax.

= 140,000 - 80,000 = £60,000

The tax liability,(payable by way of self assessment) is 60k x 45% = £27,000

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

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

Answer-to-Question-_5_

Since the annual pay bill exceeds £3m, the apprenticeship levy (0.5%) applies to any amounts subject to Class 1 NICs.

Statutory Entitlement

S has been continuously employed with her employer (Barom SRL) for at least 26 weeks before being matched with a child. Her average weekly earnings are not less than £120. Provided she gives her employer 28 days notice and proof of adoption she is entitled to statutory adoption pay.

For the first 6 weeks she takes leave and pay, she is entitled to 90% of her average weekly earnings. For the next 33 weeks she is entitled to £151.97 per week.

Her average weekly earnings need to take into the account that she is tax equalised.

Company Policy

It is clear that 12.1(a) will lead to a much higher amount than (b). Therefore, her entitlement is governed by (a).

Her net mexican salary for 39 weeks would be £18,000.
Her statutory minimum pay in mexico would be 425x6 + 265x33 = £11,295, but per company policy, she is entitled to the enhancement.

Part 3

Running out of time. Please carry error through: Total SAP pay due: £12,000. So total due is 30,000

The total which needs to paid in tax is 30,000 x 20/80 = £7,500

Employer also has to pay Class 1 NICs on both SAP and the company adoption pay.

(30,000 - 8840)x 13.8% = £2920

It should be operating a modified PAYE agreement under Appendix 6.

Net	Gross up		
12,570			
30,160	20/80		

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

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

Answer-to-Question-_6_

Earnings

The accomodation benefit is exempt by virtue of s.99 ITEPA.

If paid as an allowance, the £80 is not exempt. If instead D is reimbursed or the utilities bills are paid directly, this will be an exempt benefit.

The exemption under s.290A does not apply because she earnigns more than £8,500.

The flights to and from the UK are exempt because UK is a temporary workplace.

The benefit of the creche is exempt. All the requirements of s.318 are met (the child is D's; the premises are appropriately registered and not a dwelling; the premises are made available by the scheme employer (it does not matter that it is not D's employer); the care is open to the scheme employer's employees generally).

Statutory Residence Test 22/23

_____D will spend 126 days in the UK. Therefore, the first automatic UK test is not satisfied.

D spends at least 30 days in her UK home. However, for any 91 day period which could be in point, she had an overseas home available to her where she spent at least 30 days in the tax year. Therefore, the second automatic UK test is not satisfied.

It is clear from mere inspection that for any 365 day period overlapping with 22/23, it is NOT the case that at least 75% of workdays in that period will be UK workdays. Therefore, the third automatic UK test is not satisfied.

Turning to the sufficient ties test, D is an 'arriver' becuase she was not UK resident in any of the preceding three tax

years. She has an accomodation tie becuase she has the self-catering accomodation for at least 91 days in the year and spend at least one night there. She also has a work tie because she has at least 40 UK workdays.

As an arriver with 2 ties, she would need 120 days in the UK to be UK resident. She has 126 days. She is therefore UK resident under domestic law.

Her worldwide income and gains are therefore subject to UK tax.

None of the split year cases are in point. Case 6 does not apply because she has not previously been UK resident. Case 7 does not apply because she does not have a partner within the scope of Case 6. Case 5 does not apply because she does not have a 365 day period in which at least 75% of her workdays are UK workdays. Case 4 does not apply because she always has an overseas home available to her. Case 8 does not apply because she is not UK resident in 23/24 (see below).

SRT 23/24

She is a leaver because she was UK resident in 22/23. She has a work tie and a 90-day tie. The accomodation tie is debatable/requires more information, but assuming the accomodation it becomes unavailable to her as soon as she leaves the UK, she has it for less than 91 days in the tax year and so, she only has two ties.

With only two ties and only 86 days in the UK, she will not be UK tax resident. Only income from her UK workdays are assesable to UK income tax.

Treaty

Unless she claims the remittance basis, D is liable to UK income tax in respect of her overseas earnings in 22/23. This would make her dual resident under Article 4(1).

However, her permanent home is in Barbados, and so she will be treaty resident in Barbados for both 22/23 an 23/24.

The requirements in Art 15(2)(a) are not met. This is because, regardless of whether it is the UK or Barbados fiscal

year which is in point (probably the barbados one), for any fiscal year which could be in point, there is a 12 month period beginning or ending in that year in which she spends more than 183 days in the UK.

Therefore, but for the non-discrimination point below, the treaty does not affect the UK's right to tax D's earnings.

Remittance Basis

D could claim the remittance basis. Becuase she has not been UK resident for at least 7 of the previous 9 tax years, there will be no remittance basis charge.

Because of Art 23 in the the treaty, she will be entitled to the UK personal allowance even if she claims the remittance basis.

Because she has not previously been UK resident, she will be eligible for overseas workday relief if she claims the remittance basis. Thefore, to the extent her salary is attributable to overseas workdays, it is outside the scope to tax.

In any event, however, because her earnings are so low, there is no need to claim the remittance basis. Her earnings are covered by the personal allowance and there is no income tax to pay.

Compliance

The church should technically operate PAYE on D's earnings (s.689 ITEPA 2003). However, given there is no tax it can apply a NT code.

National Insurance

Because D's detachment to the UK is not expected to last more than 3 years, her earnings are not subject liable to UK NICs (Art 7).