

THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Human Capital Taxes

November 2023

TIME ALLOWED

3 HOURS 30 MINUTES

- All workings should be shown and made to the nearest month and pound unless the question specifies otherwise.
- Candidates who answer any law elements in this paper in accordance with Scots law or Northern Ireland law should indicate this where relevant.
- Scots law candidates may provide answers referring to Land and Buildings Transaction Tax rather than Stamp Duty Land Tax.
- Unless otherwise indicated by the provision of additional information in the question, you may assume that 2022/23 legislation (including rates and allowances) continues to apply for 2023/24 and future years. Candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.
- Additional marks may be awarded for presentation.
- You must type your answer in the space on the screen as indicated by the Exam4 guidance.

1. OIL5 Ltd is a UK resident company specialising in underwater oil pipeline work. Their accounts show the following:

	<u>Year ended</u> <u>31 December 2022</u>	<u>Year ended</u> <u>31 December 2021</u>	<u>Year ended</u> <u>31 December 2020</u>
	£	£	£
Turnover	16,000,000	15,000,000	13,500,000
Assets	1,600,000	1,500,000	1,400,000
Employees	444	432	409

On 1 December 2023 OIL5 Ltd will enter into a contract with Oil Refinery plc to undertake construction work in UK territorial waters in Wales. No materials, labour or machinery will be provided by Oil Refinery plc and OIL5 Ltd will be expected to source these. The project is expected to last six months.

OIL5 Ltd will use their own employees sourced from the Bristol office, who are contracted to work at sites across the South West of England, to work at the site in Wales for the duration of the project. They will also use individuals employed on short-term employment contracts for the duration of the project. Employees who will be sent to or will be working at the Welsh site will be provided with an allowance to cover food costs on top of their regular salary. Accommodation will be separately provided by OIL5 Ltd.

OIL5 Ltd will need to engage a specialist worker and plan to subcontract part of the underwater pipeline work to a deep-sea welding specialist who they will source via Welding4U Ltd, a UK resident company.

From 1 January 2024 Welding4U Ltd will provide the services of Daniel Main, who operates and is engaged by Welding4U Ltd through his own personal service company, DMWelding Ltd. Daniel is the sole shareholder of DMWelding Ltd, which is unconnected to Welding4U Ltd. Payments from OIL5 Ltd for Daniel's services will be made to Welding4U Ltd who will then remit a payment, less their fee, to DMWelding Ltd.

OIL5 Ltd have undertaken an employment status check for Daniel via HMRC's check employment status tool (CEST). This has come back stating that the engagement is likely to be one of employment.

Furthermore, as Daniel lives 50 miles away, he has requested that mileage be reimbursed for his daily travel to the Welsh site from his home along with the cost of hiring necessary tools for the job. OIL5 Ltd are happy to reimburse this directly to DMWelding Ltd as a business expense via their usual expense process. Daniel is expected to be at the Welsh site for a period of two months and will not receive any allowance payment.

Requirement:

Explain the employment tax implications arising as a result of the engagement between OIL5 Ltd and Oil Refinery plc including the engagement of the welding specialist and short-term workers. (20)

You are NOT required to discuss the Construction Industry Scheme.

Continued

2. Harvze Ltd is a UK resident company which manufactures cables. It has gross assets of £15 million and employs 233 full-time equivalent employees. It has four shareholders, who each own 2,000 ordinary shares of 10p each.

Harvze Ltd is currently implementing an Enterprise Management Incentive scheme to start at the beginning of December 2023. It plans to include five full-time employees in the scheme. They will be given options over 300 shares at an exercise price equal to the current market value, which is £170 per share.

Pintz Ltd is a UK resident company jointly owned by Rani and her partner Sol. It makes fibre-optic cables, has assets of £3.5 million and employs 25 full-time staff. They each own 4,500 ordinary shares of £1 each.

Harvze Ltd has made an offer to acquire the entire share capital of Pintz Ltd for £1,100,000. The purchase is expected to complete on 30 November 2023.

Pintz Ltd granted Enterprise Management Incentive options to two employees on 31 January 2022 with an exercise price of £25 per share and a two year vesting period:

- 1) An option over 500 shares to Terri, the Production Manager. Terri works full-time and earns £85,000 per year.
- 2) An option over 500 shares to Lars, the Marketing Manager. Lars did work full-time when the option was granted, but has been on paternity leave and has asked to work three days a week when he returns, so that he has time to look after the new baby. Three days is equivalent to 24 hours. His salary will be reduced from £85,000 per year to £51,000 per year.

At the time of grant, the market value was £30 per share. There are no good leaver or exit clauses in the terms of the option plan, although Rani and Sol have discretion to allow changes to the vesting schedule. As a goodwill gesture and rather than give them any bonus this year, they would be prepared to allow Lars and Terri to exercise early, so that they could then sell their shares to Harvze Ltd.

Harvze Ltd intends to maintain Pintz Ltd as a separate business. It will transfer one of its management team to be General Manager. Although there will be job losses at Pintz Ltd, it wishes to retain Terri and Lars in their roles. Harvze Ltd has therefore offered to either allow them to retain their existing options, or give them a payment of £4,000 and grant them options over 300 shares each in its new Enterprise Management Incentive scheme. The acquisition of Pintz Ltd is not expected to alter the market value of the Harvze Ltd shares.

Requirement:

Explain the Enterprise Management Incentive related implications of the acquisition of Pintz Ltd by Harvze Ltd. (15)

Continued

3. Gingco Ltd provides company cars to its sales team, who are each required to contribute £3,000 annually towards the private use of their car. They are all higher rate taxpayers. The cars have a list price of £45,000 with a benefit in kind of 37%. The company incurs leasing, insurance and maintenance costs of £9,500 per car per annum. Employees are not provided with private fuel.

Gingco Ltd may switch to electric cars. These are more expensive, with a list price of £66,625, but with zero emissions and a 300 mile range, the benefit in kind is 2%. Leasing, insurance and maintenance costs would be £13,000 per car per annum. To compensate for the additional costs, Gingco Ltd will require employees to make a salary sacrifice of £13,200 per annum but no longer make the £3,000 private use contribution. It may consider passing on any employer National Insurance savings through a reduced salary sacrifice.

If Gingco Ltd goes ahead with electric cars, charging points may be installed at the office and also at the homes of employees who have company cars.

Requirement:

- 1) **Explain the principles and requirements for a successful salary sacrifice and in particular the rules regarding salary sacrifice for company cars.** (6)
- 2) **Calculate, with explanations, the benefits in kind and cost for the company and the employees of providing a petrol or an electric car with and without the salary sacrifice arrangement.** (9)

Total (15)

Continued

4. Data Ltd is a London-based UK subsidiary of Data US LLC, a US owned group providing data management services.

Fred is employed by Data US LLC and has been seconded to the UK since 10 April 2022. His wife and two young children arrived in the UK at the same time. Fred was resident in the UK for 2022/23 and expects to be resident in 2023/24. He has never previously been domiciled or resident in the UK.

Fred's secondment is due to end on 31 March 2024 but Data Ltd would like to offer Fred a UK employment contract. He will move onto the UK payroll and will join the UK pension scheme to which he will contribute £5,000 and Data Ltd will contribute £10,000 annually. Data Ltd wants to maintain Fred's current net income which is:

	£
Salary	275,000
US hypothetical tax at 26%	(71,500)
US social security at 6%	(16,500)
US 401K pension scheme at 5%	<u>(13,750)</u>
Net income per annum	<u>£173,250</u>
Net income per month	<u>£14,438</u>

Fred is currently paid through the US payroll into his US bank account. Data Ltd has accounted for UK tax through a modified payroll. He is equalised on tax but not on social security. He consistently spends 30% of his workdays outside the UK; this pattern of travel is expected to continue. Fred does not remit any of his US-paid income to the UK as his wife earns sufficient income in the UK to cover their living expenses.

Fred is provided with UK private medical insurance costing £15,000 per year. He is also provided with a rented house costing £4,500 per month. Under his secondment terms, these benefits are delivered net. Both benefits will continue under the local employment contract, but Fred would personally suffer the tax due.

Fred chooses to live an hour's commute away from Data Ltd's central London offices to have better access to good schools and a large family home. The rent paid is the same as Data Ltd pays for another secondee to the UK who is single and lives in an apartment close to the office.

Data US LLC pays £22,570 in US employer social security contributions plus 10% of his basic salary into his US 401K pension; both are recharged to Data Ltd. Migrant member relief has been obtained for the US 401K pension scheme. 401K scheme contributions do not attract US social security relief. Data Ltd's total wage bill is less than £3 million per year.

Requirement:

- 1) **Explain how any reliefs available under the secondment will change with a UK employment contract.** (10)
- 2) **Calculate the change in the cost for Data Ltd of Fred's change from a secondment to a UK employment contract.** (4)
- 3) **Calculate with explanations how Data Ltd could match Fred's net income under a UK employment contract with his net secondment income using all reliefs available.** (6)

Total (20)

Continued

5. Gelatoz Ltd is a UK headquartered ice cream company. In January 2020, the company set up an Italian subsidiary and selected Aman to be its general manager. Aman was sent on assignment from the UK to Italy on 1 April 2020. He lived in Gelatoz Ltd provided accommodation in Italy, the lease for which was held by the company. His family moved to Italy with him.

Aman had been UK tax resident in 2019/20 and was not UK tax resident in 2020/21 and 2021/22 under the 'full time work abroad' rules of the third automatic overseas test of the Statutory Residence Test. Aman had only incidental UK workdays in each of those tax years. He has been non-resident in Italy throughout his assignment under domestic Italian rules. Aman is UK domiciled.

From 6 April 2022 to 31 December 2022, Aman worked primarily in Italy and spent 14 nights in the UK on a family holiday in July 2022. In early January 2023, his 14-year old son became unwell. Following agreement with Gelatoz Ltd, Aman and his family chose to return to the UK on 5 January 2023 for their son's medical treatment, as they were more familiar with the UK healthcare system. Due to other commitments, Aman's wife and son spent a total of 192 days in the UK in 2022/23.

Whilst Aman stopped 'full time work abroad' on 5 January 2023, he continued to carry out his Italian role in the UK up to 5 April 2023 and took no holidays / sick days during this period.

Gelatoz Ltd continued the assignment arrangement following Aman's return to the UK, and Aman's Italian accommodation remained available to him whilst he was in the UK. Aman remained tax equalised to the UK under the terms of his assignment. Gelatoz Ltd holds an A-1 certificate on file to retain Aman in the UK social security system for the duration of his assignment.

He made a five-day business trip to Italy from 10 February 2023 (day of departure from the UK) to 14 February 2023 (day of return to the UK) and stayed in the company provided Italian accommodation.

Whilst Aman was on assignment in Italy, he had no home in the UK. On his unanticipated return to the UK, he signed a one-year lease on a flat in London which was available to him and his family from 2 January 2023.

Since 6 April 2023, Aman has been commuting to Italy, spending at least three days per week working in Italy. It is anticipated that Italian workdays will be taxable in Italy, but he will remain non-resident in Italy. Aman will spend any other workdays, and all weekends and holidays in the UK.

Gelatoz Ltd pay Aman the following assignment package:

<u>Remuneration item</u>	<u>Details</u>
Annual salary	£240,000 paid monthly
Annual Hypothetical tax on salary	£105,000 withheld from salary monthly
Net Cost of Living Allowance	£6,000 every six months, paid in advance on 1 May and 1 November of each year
2022 calendar year bonus	£90,000 paid in March 2023
Hypothetical tax on bonus	47% withheld from bonus
Medical benefit	£3,000 annually
Share option income	Granted on 6 March 2022 Vested and exercised on 6 March 2023 Number of shares: 5,000 Share price on exercise: £4.5 per share Exercise price of £2 per share
Hypothetical tax on share option income	47% withheld on exercise by selling shares
Italian accommodation	£3,000 per month paid for by Gelatoz Ltd
UK accommodation	£3,500 per month reimbursed to Aman by Gelatoz Ltd; lease in Aman's name. Aman makes monthly contribution of £1,200
Employee NIC paid by Gelatoz Ltd	£1,050 per month

Unless a hypothetical tax is specified, all amounts are treated as paid 'net' of tax.

Requirement:

- 1) **Explain Aman's UK tax position for 2022/23 and the company's employer compliance obligations for 2022/23.** (14)
- 2) **Calculate with explanations the income that the company should have reported for PAYE purposes in respect of Aman's 2022/23 assignment package.** (6)

Total (20)

Continued

6. WellMinded Group Inc is a multinational company with its headquarters in the US. It has a subsidiary in the UK, WellMinded Ltd, and one in Singapore.

On 1 July 2022 Maria, an international assignee from the Singapore subsidiary, started to work for WellMinded Ltd in the UK. She was the first assignee that the company had in the UK since 2019, and was accompanied by her husband and son. She had never visited the UK before her assignment.

Maria is not UK domiciled. She does not travel overseas for work, but she does travel to other locations in the UK for work. She will not work in December 2023 as she will take the month as holiday in Singapore. The rest of her time during 2023/24 will be spent in the UK.

Maria was issued a K112 tax code by HMRC for 2023/24.

Singapore and the UK do not have a reciprocal social security agreement. WellMinded Ltd has Appendix 6 and 7 Agreements in place with HMRC, and files a PAYE settlement agreement every year.

In October 2023, WellMinded Ltd established that the following elements of Maria's 2023/24 remuneration package / expense reimbursements have not yet been reported to HMRC:

<u>Item</u>	<u>Amount</u>	<u>Notes</u>
Accommodation	£24,000 annually	Lease between WellMinded Ltd and landlord and paid monthly
Spouse support – UK driving lessons	£1,500 one-off	Due to be paid directly to driving instructor by WellMinded Ltd in December 2023
Education for Maria's son	£22,000 annually	Paid by Maria and reimbursed to her by WellMinded Ltd every quarter starting April 2023
Three home leave trips for her husband and son	£1,000 per person per trip	Paid by WellMinded Ltd to the travel provider in June 2023, and due to be paid in December 2023 and March 2024
Company spring party costs	£140 plus VAT per person	For Maria and her husband: due to be paid in February 2024
Travel and accommodation costs	£1,800 per trip	For two business trips to other manufacturing sites in Wales; reimbursed by WellMinded Ltd to Maria in September 2023 and October 2023
Taxis taken by Maria for business meetings	£320 in total	Reimbursed monthly by WellMinded Ltd
Taxis taken by Maria from home to work	£550 in total	Reimbursed by company in August 2023
One-off recognition award from manager	£150 one-off	Voucher available to Maria as soon as award made in September 2023

Requirement:

- 1) **State the date from which National Insurance Contributions apply, the amounts subject to National Insurance Contributions and the class of National Insurance Contributions which applies to each element of Maria's 2023/24 remuneration/reimbursements.** (5)
- 2) **Explain the reporting mechanisms that WellMinded Ltd should use to report the remuneration/reimbursements.** (5)

Total (10)