

The Chartered Institute of Taxation

Advanced Technical

Human Capital Taxes

May 2024

Suggested answers

Answer 1

Requirement 1

Felicia's total earnings for 2023/24 were £14,400 + £6,000, i.e. £20,400. This is below the threshold of £21,000 for postgraduate loan deductions. Therefore although deductions are considered every pay period, here every month, looking at the year as a whole, no deduction would be required. In March 2024, Felicia received her monthly salary of £1,200 plus her £6,000 bonus, a total of £7,200. This exceeded the monthly threshold of £1,750, meaning that Akrem Ltd was obliged to deduct (£7,200 - £1,750) multiplied by the postgraduate rate of 6%. There has been no error, and the amount of £327 was correctly deducted in March.

For Sylvester, Akrem Ltd should have begun to make student loan deductions in the FPS for January 2024. In the absence of details of the Plan, a deduction should have been made assuming that Plan 1 applied. The lack of any deduction was therefore an error.

The correct deduction would have been made based on Sylvester's gross salary of £2,400 x 100/96 per month. This should have been (£2,500 - £1,683) multiplied by the student rate of 9%, giving a deduction of £74 per month for the three months to the end of March 2024.

There was therefore a total under deduction of £222 in 2023/24.

Corrections to 2023/24 deductions

No correction is needed by Akrem Ltd in relation to Felicia's loan, as there was no error. Akrem Ltd must not make any repayment to Felicia. Felicia can be directed that if she wishes, she can apply to the Student Loans Company for a refund now that the tax year has ended.

Akrem Ltd should enter into its payroll software that Sylvester has a Plan 2 loan balance outstanding so that the appropriate deductions are made in future. Kit may wish to ring the HMRC Employer Helpline regarding the lack of deduction in March, but HMRC will not ask for an amended FPS. Nor will HMRC demand any immediate payment in relation to the under deduction in 2023/24, only that correct Plan 2 deductions are made going forward.

Deductions under Plan 2 going forward should be (£2,500 - £2,275) x 9% = £20 per month.

(If a New Starter Checklist is used for future joiners, this includes a question on student loans. Use of Plan 1 deductions where unsure will also trigger HMRC to check for details of the correct Plan following the first FPS relating to a new employee.)

Delayed PAYE submissions

Kit is wrong to delay these. Kit should make Akrem Ltd's April FPS with payment as soon as possible, and the May submission on time, not delaying until June.

Akrem Ltd will incur interest on any amount paid late to HMRC. This is calculated on a daily basis from the date the payment is due to the date of actual payment. Assuming a rate of interest of 6.75%, if payment is made on 30 June, interest to 30 June based on two payments of £3,100 due 22 May and 22 June would be £3,100 x 6.75% = £209.25 x (39/366 + 8/366) = £27.

The first late PAYE filing and payment in the 2024/25 tax year is ignored and will not incur a penalty. But on the next default, penalties of £100 per month for late filing (up to nine employees) and 1% of the income tax and NI paid late may be charged for late payment (for up to the third default). This

would give a total penalty of £131 (£100 + £31). Penalties are not automatic and HMRC take a risk-based approach to PAYE defaults.

When catching up the FPSs, the PAYE software will prompt Kit to enter a letter code to identify the reason for the late reporting. Making use of this may decrease the chances of HMRC seeking to apply penalties for lateness, however in this case it is unlikely that they would consider that there is a reasonable excuse.

Quarterly payments of PAYE are permitted where the total tax and NICs payable average less than £1,500 per month. This will not apply to Akrem Ltd so is not an option for Kit. Employers having difficulty making PAYE payments may contact HMRC's Payment Support Service to request an instalment arrangement.

Requirement 2

If Kit repays the loan on 30 June 2024, this is still outstanding by nine months and one day after the end of the accounting period, 1 June 2024. This will give rise to a close company tax charge (CA 2010, s.455) at the higher dividend rate: $33.75\% \times £5,000 = £1,688$. Kit's repayment on 30 June will trigger a refund of the s.455 tax to Akrem Ltd. No exemption applies for a loan of under £15,000 since Kit has a material interest (5% or more) in the company.

Assuming that Kit is able to repay some or all of the £5,000 by 31 May, this would reduce or eliminate the 'penalty' tax. A full repayment by the end of May would simplify the situation and ease company cashflow.

(The loan is less than £10,000, so even if Kit were an employee, no loan benefit would have arisen.)

Marking Guide

<u>Requirement 1</u>	
Calculation – deductions re Felicia’s loan	1
Explanation – deductions re Felicia’s loan	1
Actions for Felicia only, none for employer	0.5
Calculation – deductions re Sylvester’s loan based on gross pay	1.5
Explanation – deductions 2023/24 re Sylvester’s loan	1
Corrections – none re Sylvester	0.5
Future deductions - HMRC will collect per plan 2	0.5
Advise not to delay PAYE with reason	0.5
Delayed submission – late submission penalty calculation	1
Delayed payments – interest calculation based on any payment made in June	1
Delayed payments – late payment penalty calculation	1
Set up loans in software	0.5
Penalties not automatic/HMRC response	0.5
Probably no reasonable excuse	0.5
Quarterly payment/instalments, over £1,500 pm average	1
Subtotal Marks	12
<u>Requirement 2</u>	
Close/participator	0.5
1 June 2024 – repay before this date	1
S.455 charge and amount	1
Refund when Kit repays	0.5
Subtotal marks	3
Total	15

Answer 2

Requirement 1:

Raj's severance package will be treated as follows:

2023 calendar year bonus: will be subject to UK income tax and Class 1 NIC in full as general earnings. This is because Raj is UK tax resident on receipt. A foreign tax credit will be available to alleviate double taxation since the whole amount will also be taxed in Poland.

Payment in Lieu of Notice (PILON) and unused holiday pay: will be subject to UK income tax and Class 1 NIC in full as general earnings. This is because Raj is UK tax resident on receipt.

Payment to UK pension scheme: not subject to UK income tax or NIC. Unused annual allowance for 2022/23 available to carry forward if required, therefore, no annual allowance charge to consider.

Outplacement counselling: will not be subject to UK income tax (s.310 ITEPA 2003) or NIC, as Raj has been employed for more than two years and the benefit is available to all employees.

Post Employment Notice Period (PENP) will need to be considered as Raj did not serve his full notice period. The PENP statutory formula is: $((BP \times D)/P) - T$, where BP is his monthly salary of £10,000. As Raj is paid in equal monthly instalments, the contractual notice period is in whole months and the period between his actual termination date and the date on which his notice period would have ended is in whole months, a simplified calculation by month may apply. Therefore, P = 1 (month) and D = 6 (months). T is any contractual PILON, which in this case is £20,000.

$PENP = (£10,000 \times 6) - £20,000 = £40,000$, which will be subject to UK income tax and Class 1 NIC.

Ex-gratia payment: taxed under s401 ITEPA 2003 on the basis this is a non-contractual compensation for loss of office. The PENP will be subtracted from the ex-gratia payment, and the remaining £40,000 (£80,000 - £40,000) will be eligible for the £30,000 tax and NIC exemption, resulting in £10,000 being subject to tax and Class 1A NIC. No foreign service relief will be available as Raj is UK tax resident in 2023/24.

Redundancy payment: a genuine redundancy payment will be charged to tax under s401 ITEPA 2003. No foreign service relief will be available against the taxable redundancy payment as Raj is UK tax resident in 2023/24. The £30,000 exemption has been fully used against the ex-gratia payment and therefore the redundancy payment is subject to income tax and Class 1A NIC.

A foreign tax credit will be available to alleviate double taxation of the redundancy payment.

Hypothetical tax: will be applied to the payments that would normally be subject to UK tax / NIC.

As the payment is made before a P45 is issued to Raj, his normal tax code (0T) will be used to calculate the PAYE due.

Requirement 2:

Tax calculation on severance package (£)

Bonus 2023	150,000
PILON	20,000
Unused holiday pay	2,000
PENP	40,000
Ex gratia payment (W1)	10,000
Redundancy payment (W2)	210,000
Total gross taxable amount	432,000
Less hypothetical tax on total gross taxable amt	(172,800)
Net taxable amount	259,200

Gross up tax calculation (£):

Taxable net income 259,200

Net pay	Gross up by	Gross pay	Tax
30,160	100/(100-20)	37,700	7,540
52,464	100/(100-40)	87,440	34,976
<u>176,576</u>	100/(100-45)	<u>321,047</u>	<u>144,471</u>
259,200		446,187	186,987
		Less FTC (W3) -	108,182
		UK tax due	78,805

W1:

Ex gratia	80,000
Less PENP	<u>(40,000)</u>
Remaining ex-gratia	40,000
Less s403(1) exemption	<u>(30,000)</u>
Taxable ex gratia	10,000

W2:

S403(1) exemption	30,000
Less used against ex gratia	<u>(30,000)</u>
Remaining exemption	0

Redundancy payment (21 months x £10,000)	210,000
Less: Remaining exemption	<u>(0)</u>
Taxable redundancy payment	210,000

W3:

Income taxed in Poland:	
Bonus 2023	150,000
Redundancy payment = 2 years out of 21	<u>20,000</u>
Total income subject to double taxation	170,000
Polish tax at 35%	59,500

FTC is lower of:

Polish tax on doubly taxed income	59,500
Gross up for FTC purposes at 45%	108,182
UK tax on doubly taxed income at marginal rate	76,500
Gross up for FTC purposes at 45%	139,031

Marking guide:

TOPIC	MARKS
Requirement 1:	
Treatment of:	
Bonus + FTC (reasonably argued alternative view to the usual HMRC view will be awarded marks)	1
Unused holiday pay and PILON	1
Payment to pension and Annual Allowance	1
Outplacement counselling	1
PENP – identify and explain	1½
PENP – calculation	1
Ex-gratia payment – identify s401, subtract PENP, then allow £30K	1½
Redundancy payment – within s401, no £30K remaining + FTC	1
Hypo tax position and use of tax code	1
TOTAL	10
Requirement 2:	
Calculate net taxable amount	1½
Gross up tax	2
FTC*	1½
TOTAL	5

Credit to be given if 'pure' method used to check FTC (i.e. a with / without UK tax calculation) and relevant follow through marks will still be awarded where candidates do not spot that the UK gross up is after accounting for the FTC (and not before).

Credit to be given if £30k exemption set against redundancy payment in preference to ex gratia payment.

Answer 3

Requirement 1:

Lee's 2024/25 UK tax position will depend on his residence / domicile position. Considering each test of the Statutory Residence Test (SRT) in turn.

Automatic overseas test:

Lee will spend more than 45 midnights in the UK, isn't an international transport worker, and won't carry out full time work abroad (will have more than 30 UK workdays and more than 90 UK midnights).

Lee's residence position will not be determined under this test.

Automatic UK test:

Lee will have 124 UK midnights (4 months x 3 midnights plus 8 months x 14 midnights) - the 183-day rule will not apply.

Next, considering if Lee has his only home in the UK in 2024/25:

- There is a consecutive 91-day period (with 30 days falling in 2024/25) during which Lee will have a UK home, and no home in Singapore.
- He will be present in the UK home for at least 30 separate days.

Therefore, Lee will have his only home in the UK and will be UK tax resident in 2024/25.

Split year:

As Lee moves to the UK during 2024/25, the split year cases will be considered:

- Cases 4 and 8 would apply as Lee starts to have an only home / a home in the UK from 6 October 2024 / 6 August 2024 (respectively).
He has two connection factors (substantive UK employment and UK resident family) – and has less than 50 / 70 days of presence in the respective overseas periods.
- Cases 5, 6 and 7 would not apply.

As cases 4 and 8 apply, the case that gives the earlier date will apply — Lee will be UK tax resident from 6 August 2024 onwards, and non-resident prior to this date.

UK tax position:

RedCo Ltd should consider the tax position on Lee's earnings by splitting the year.

6 April 2024 to 5 August 2024:

Lee is non-resident during this period, with non-incidental UK workdays based on the nature of UK duties.

Considering the employment Income Article of the Double Tax Agreement (DTA):

Lee will spend less than 183 days in the UK in any twelve-month period starting or ending in 2024/25 (ignoring the domestic UK residence period). However, RedCo Ltd benefits from Lee's UK duties and bears the costs of his employment. Therefore, it is not possible to exempt his UK duties from UK tax or include Lee on RedCo Ltd's Appendix 4 filing.

Therefore, for this period, his UK workdays will be taxable in the UK. RedCo Ltd should account for PAYE tax for this period. A s690 ITEPA 2003 application should be made to HMRC to withhold on a reduced percentage of income based on UK workdays.

Marking guide:

TOPIC	MARKS
Requirement 1:	
Automatic overseas test – will not apply	½
Automatic UK test	
183 days will not apply	½
Only home in the UK will apply	1
Split year	
• Cases 4 & 8 will apply	1
• Cases 5, 6, 7 will not apply	1
• Date of split year	½
UK tax position:	
<u>6 April 2024 to 5 August 2024:</u>	
Non-resident, non-incidental	½
DTA position review, App 4 position, conclusion that workdays taxable.	2
RedCo withholding requirement and s690 (note – if App 8 mentioned, credit still given)	1
<u>6 August 2024 to 5 April 2025:</u>	
Tax resident, non dom and eligible for OWR by claiming remittance basis, no TWR	1
RedCo withholding requirement, apply Appendix 6 and claim OWR via payroll	1
TOTAL	10
Requirement 2:	
Non-Resident period source income	½
Non-resident period taxable income	1½
Resident period source income	½
Resident period – OWR calculation	1½
Excess remittances calculation:	
Determining remittances	1
Determining amount to retain offshore	1½
Determining excess remittance amount	1
Note: this calculation can be 'tricky' and so marks will be awarded where candidates demonstrate a good understanding of the principles, even if their calculations are not entirely correct.	
Tax calculation:	
Working out net taxable calculation (including excess remittances)	½
Gross up tax calculation	2
TOTAL	10

Answer 4

Requirement 1

In principle, computers provided to employees give rise to a taxable benefit under s.205 ITEPA 2003, where these are made available for private use. This is calculated as 20% of the market value when first provided by the employer and is also chargeable to Class 1A national insurance. However, where private use is insignificant, no benefit arises. (s.316(2) and (3) ITEPA 2003)

Arlo

Arlo's private use of the laptop is not insignificant. The benefit for the three months to 5 July 2024 will be $£1,750 \times 20\% \times 90\% \times 3/12 = £79$, giving Class 1A at 13.8% of £88 = £11. The wheelchair mount qualifies for exemption from any benefit charge since it is provided to enable an employee with a disability to perform his duties. (SI 2002/1596) Therefore no Class 1A arises on this.

The transfer of the wheelchair mount will be part of Arlo's redundancy package on 5 July 2024. The transfer at the market value of £670 will not be fully exempt within the £30,000 exempted under ITEPA 2003 s.404(4). £29,600 of the exemption will be used by the £12,000 statutory redundancy and the non-contractual payment of £17,600. The first £400 of the wheelchair mount will be exempt, and the remaining £270 taxable. Class 1A of £270 @ 13.8% = £37 will be due with the PAYE submission which includes Arlo's final payment.

Becca

Becca's benefit for 2024/25 will be $£2,300 \times 20\% \times 99\% \times 1/12 = £38$.

On transfer of the laptop to her on 5 May, under ITEPA 2003 s.206, a benefit arises on the higher of the current market value, or the original market value less benefits charged in the two years to date:

£1,270; or

$£2,300 - (£2,300 \times 20\% \times 99\% \times 2) - £38 = £1,351$

With Class 1A at 13.8% on the benefit of $£38 \times 13.8\% = £5$; and on the transfer of $£1,351 \times 13.8\% = £186$.

There will be no benefit in relation to the tablet, which is almost exclusively for work use, with insignificant private use.

Connor

Even if Connor is not an employee, no charge can arise in respect of provision of the laptop. If he is, there is no private use anyway.

Requirement 2

Several factors point to Connor becoming an employee of Gauged Ltd on 1 May 2024: provision of the computer equipment, integration into the business with a company email, exclusivity, and regular hours on site suggesting control exercised by the company. The presentation of invoices can suggest self-employment. However the regularity here suggests a salary-type arrangement for payment.

Gauged Ltd may wish to refer to HMRC's guidance, and use the CEST tool, retaining the results of their check.

Assuming the conclusion is that Connor is becoming an employee for tax purposes, Connor must be added to the payroll and income tax and Class 1 NICs deducted from his salary. The non-compete payment is subject to income tax and Class 1 secondary NIC and should be included in the FPS for May.

Marking Guide

<u>Requirement 1</u>	
Arlo laptop benefit for three months as significant private use	1
Arlo laptop Class 1A	0.5
Arlo wheelchair mount exempt with reason	1
Arlo redundancy use of £30,000 and remainder	1
Wheelchair mount transfer Class 1A	0.5
Becca Class 1A on use	1
Becca Class 1A on transfer	1
No benefit for Becca re tablet	0.5
Connor – no benefit with a valid reason	0.5
Subtotal Marks	7
<u>Requirement 2</u>	
Factors pointing to employment status for Connor (0.5 each)	1.5
Add to payroll, include in FPS, make deductions	0.5
Recommend use of HMRC guidance, eg CEST	0.5
Non-compete payment consequences	0.5
Subtotal Marks	3
Total	10

Answer 5

UK employees

Under the statutory residence test (SRT) the employees are unlikely to pass any of the automatic overseas tests as they expect to spend over 90 days in the UK during the 2024/25 tax year. They are likely to pass the only home test, which is an automatic UK test, as there will be continuous period of 91 days in which the employees' only have a UK home, 30 of which will be in the 2024/25 tax year. This will result in them being UK resident for the duration of their assignment.

Under Article 15 of the UK/China double tax treaty, China will retain a primary right to tax employment income derived from Chinese workdays and no exemption will be available as the employees' will be present in China for a period of more than 183 days in any 12-month period starting or ending in 2024/25.

As there is no reciprocal agreement for social security contributions with China and the employees will:

- Remain employed by Banjo Ltd,
- Remain ordinarily resident in the UK,
- Be resident in the UK immediately prior to their departure.

Employees' will remain subject to Class 1 NIC in the UK for the period of assignment.

No relief is available in the UK for Chinese social security. Banjo Ltd should consider whether they intend for the employees to suffer this cost or whether they will meet this on the employees' behalf which will incur additional costs to Banjo Ltd.

As employees' will be subject to both UK and Chinese tax withholding, Banjo Ltd should consider an Appendix 5 agreement with HMRC that will allow the Chinese tax withheld to be given as a credit against PAYE due in the same pay period via the payroll.

If approved, Banjo Ltd will need to provide HMRC with the names and NI number of the employees. They will also need to send a report to HMRC at the end of the tax year detailing the amount of foreign tax credited against PAYE and amount, along with evidence, of foreign taxes paid to the Chinese authorities, for each employee.

As employees are travelling to China to undertake a task of limited duration which is intended to last for no more than 24 months nor most the period of their employment, the Chinese workplace will be deemed a temporary workplace. Travel expenses in connection with performing their duties in China, including the provision of flights and accommodation, can be reimbursed, or met tax free.

The return flight home at Christmas will be exempt from tax as the employees:

- Are absent from the UK wholly and exclusively to perform the duties of employment,
- Can only perform the duties outside the UK.

Travel expenses of the visiting spouse and child may be reimbursed tax free as the employee in question will be:

- UK tax resident with UK taxable earnings
- Absent from the UK for a continuous period of 60 days or more for the purpose of their employment,
- The journey is from the UK to a place outside the UK where the employment is performed,
- The spouse and child are visiting the employee.

It should be noted that if the child turns 18 prior to the outward journey then under statute they will not be deemed a child. The deduction will then not be available, and the reimbursement of their travel costs will be subject to PAYE/NIC.

The provision of a car where private use is made available will give rise to a taxable benefit reportable on forms P11D/P11D(b). However, if the intention is that the car will only be used to visit clients and commute to the temporary workplace then all such journeys may be deemed business journeys and

no private use will occur, therefore if private use is then explicitly prohibited by Banjo Ltd, no taxable benefit will arise.

In practice this may be difficult as no private use must be demonstrated to occur. A single private journey would give rise to a full taxable benefit which could be as simple as picking up the car at the lease hire place and driving to their temporary accommodation. All journeys would need to commence or conclude at a temporary workplace (i.e., the Chinese branch office or a client) which may not be practical.

Chinese visitors

Visitors to the UK are unlikely to be deemed UK tax resident under the SRT assuming they spend less than 46 days in the UK in any tax year. PAYE will be due on earnings arising from UK workdays.

Under treaty, the exemption in Article 15(2) is unlikely to apply as HMRC will deem the overseas branch as an extension of Banjo Ltd and not a separate entity and an Appendix 4 agreement will not apply.

However, duties incidental to their overseas duties will be deemed as performed outside the UK and not taxable in the UK. Incidental is not defined in statute but does generally include training events. However, working on UK projects is unlikely to be deemed incidental.

As annual non-incidental workdays will likely be less than 60, Banjo Ltd should consider applying for an Appendix 8 agreement which will allow earnings subject to PAYE and taxable benefits (payrolled) be reported annually on a separate PAYE scheme on a month 12 FPS. The deadline for the FPS and payment of PAYE is 31 May following the end of the tax year.

If Banjo Ltd settle the PAYE liability on any visitor's behalf, their PAYE must be grossed up.

No liability to Class 1 NIC is likely to arise for the visitors' as:

- They are neither ordinarily resident nor ordinarily employed in the UK,
- They normally work outside the UK for a foreign employer and continue to work for that employer,
- Their presence in the UK is not permanent.

They will be exempt from Class 1 NIC for the first 52 weeks following their arrival. As they may return to the UK later for other projects then Banjo Ltd need to consider whether each visit can reset the 52-week clock. This is not outlined in legislation, but genuine ad hoc assignments to the UK with gaps at least longer than 4 weeks will give strength to resetting the clock.

Marking guide

	Marks
UK employees unlikely to pass any of the automatic overseas tests under the SRT with reason	0.5
UK employees likely to pass the only home test	1.0
No exemption for employment income available under treaty	0.5
UK employees will remain subject to Class 1 NIC throughout their assignment along with reasons	1.5
No relief available for Chinese social security	0.5
Recommend an Appendix 5 agreement	1.0
Outline requirements of the Appendix 5 agreement	1.0
Chinese workplace will be deemed a temporary workplace with reasons	1.0
Accommodation in China can be provided tax free	0.5
Costs of flights to China will not be taxable with reasons	1.0
Costs of flights for spouse and child may be exempt with reasons	1.0
Exemption for child however will be subject to whether they are 18 at the start of their journey	0.5
Provision of a car where private use is made available is a taxable benefit	1.0
Depending on actual use, if private use is prohibited then potentially no benefit will arise	0.5
Restricting private use may not be practical	0.5
Chinese branch visitors	
Unlikely to be UK tax resident with reason	1.0
PAYE due on earnings arising from UK workdays	0.5
Treaty exemption will not apply with reason	1.0
Incidental duties will not be taxable in the UK	0.5
Training likely to be incidental, but working on UK projects will not be	0.5
Recommend putting in place an Appendix 8 agreement	1.0
Taxable earnings reported annually on the month 12 FPS	0.5
Deadline for the FPS and PAYE is 31 May following the end of the tax year	0.5
If benefits are provided their taxable value will be reported on the payroll	0.5
If employees do not suffer the PAYE, then employer must gross this up on the payroll	0.5
No liability to Class 1 NIC likely to arise with reasons	1.0
52-week exemption period may reset on return visits	0.5
Total	20.0

Answer 6

Payments from the UK registered pension

Finance Act 2004 imposed a series of rules that UK registered pension schemes must follow. A UK registered pension scheme should only make authorised payments and transfers.

If a payment or transfer is unauthorised then it may result in an unauthorised payments charge. An unauthorised payment charge is levied at 40%. If an unauthorised payment exceeds 25% of the pension plan value, then this can result in an unauthorised payments surcharge which is a penalty charge of an additional 15%.

Once an individual is 55 years old a UK registered pension scheme can provide pension benefits but there is no obligation to take benefits and the employee can leave the funds invested if they wish.

If Miguel decides to take pension benefits, then he can:

- Take the whole sum as cash. The first 25% would be tax free and the remainder would be subject to income tax.
- Use the money to purchase an annuity. 25% could be taken as a tax free lump sum with the remainder used to buy an annuity contract. The annuity would provide an income for life and would be subject to income tax when paid.
- Take 25% as a tax-free lump sum and move the remainder into flexi access drawdown. The funds remain invested, but the individual can take out money as they choose.
- Take lump sums when needed. Each lump sum would be 25% tax free with the remainder subject to income tax.
- A combination of these options could be offered, for example, a 25% lump sum, with 25% placed into flexi-access drawdown and the remainder used to buy an annuity.

Any pension benefits are subject to PAYE which means the payer, Segovia UK Ltd, must operate PAYE using the RTI system and issue a P60 certificate at the end of the year.

UK registered pension schemes are exempt from Class 1 NIC.

Miguels' non-UK residence does not impact the domestic income tax position set out above. However, his tax residence in Spain means that the DTC could operate to prevent taxation in both the UK and Spain.

The UK income tax liability would be overridden by Article 17 of the UK/Spain double tax agreement which would give exclusive taxing rights to Spain if he is tax resident in Spain. He would be able to make a claim on his UK self-assessment tax return for a refund of the UK PAYE applied to the pension income. Although the treaty reduces Miguel's UK income tax liability it does not affect Segovia Ltd's obligation to operate PAYE.

Payments from the Non-UK registered pension

The Segovia SA Employer Top Plan is an Employer Financed Retirement Benefit Scheme (EFRBS). The plan will be regarded as an EFRBS because it is a scheme set up by an employer to provide retirement or death benefits (s.393B ITEPA 2003) which is not a registered pension scheme. This is not subject to the UK pension rules and therefore benefits can be provided in any form.

However, none of the benefits are entitled to the 25% lump sum tax exemption applicable to registered scheme benefits. Pension income is subject to income tax as normal.

Pension income from an EFRBS is regarded as PAYE employment income and subject to PAYE, RTI. There would not be a charge under Part 7A ITEPA 2003 (employment income provided through third parties) due to an exempting provision for certain retirement benefits (s.554W ITEPA 2003).

As this is not a registered pension scheme Class 1 NIC would be due.

The UK income tax liability would be overridden by Article 17 of the UK/Spain double tax agreement which would give exclusive taxing rights to Spain if he is tax resident in Spain. The protection of the treaty would not impact the PAYE obligation of Segovia Ltd.

Transfer

A transfer from a UK registered pension scheme can be made to another UK registered pension scheme or a Qualifying Recognised Overseas Pension Scheme (QROPS).

If a transfer is made to any other type of scheme, this would be regarded as an unauthorised payment and would be subject to an unauthorised payment charge of (40%) and an unauthorised payments surcharge (15%) on the value of the assets transferred.

This charge would need to be calculated and paid to HMRC by the pension scheme administrator which is Segovia UK Ltd. Segovia UK Ltd therefore need to establish whether the Malta pension scheme is a QROPS. A non-UK pension scheme must meet certain conditions in order to be a QROPS. A QROPS must:

- satisfies the regulatory requirements test;
- satisfies the tax recognition test;
- only makes payments to members under the age of 55 in very limited circumstances, eg they have retired due to ill health;
- if it provides tax relief on pension payments, does not limit the relief to non-residents of the country in which the scheme is based; and
- is based in either an EU member state, Norway, Liechtenstein or Iceland, or in a country/territory with which the UK has a double taxation treaty which makes provision for exchange of information or in a country/territory with which the UK has a tax information exchange agreement.

If this is a QROPS and transfer is made, certain conditions need to be met otherwise an overseas transfer charge would be due which would need to be calculated and applied by Segovia UK Ltd. Although the charge will be paid out of the member's pension funds, it is up to the pension scheme administrator to calculate and remit to HMRC. The Overseas Transfer Charge is 25% of the funds transferred to the QROPS. i.e. 25% x £375,000.

In order for no Overseas Transfer Charge to arise the QROPS must either:

- 1) be in the same country in which the individual is tax resident (Spain);
- 2) both the individual and the QROPS are in an EU member state, Liechtenstein, Norway or Iceland.
- 3) Be provided by the employer or is an overseas public service pension scheme.

If this is a QROPS, then Miguel's tax residence in Spain, and the pension plan's location in Malta means that it would satisfy the second test and prevent an overseas transfer charge.

Marking Guide

Requirement 1	Marks
A UK registered pension scheme can only provide benefits in an authorised manner otherwise unauthorised payment charges may be due. Once age 55 the trustee can pay the following benefits.	2
Take the whole fund as cash – 25% will be tax free and the rest subject to income tax.	1
Take a 25% tax free sum and use the rest to buy an annuity – the annuity will be subject to PAYE	1
Take a 25% tax free lump sum and enter into flexi access drawdown	1
Take a series of lump sums. Candidate identifies that each sum is 25% tax free with the remainder subject to income tax.	1
No Class 1 NIC is due on registered scheme benefits. Benefits from an EFRBS are subject to Class 1 NIC.	2
Pension benefits are PAYE income and therefore PAYE must be operated through payroll and RTI as it would for employment income.	1
The Segovia SA Employer Top Up Plan is an EFRBS/unregistered pension scheme and benefits can be provided in whatever form but are treated as employment income	1
Employment income is subject to Class 1 NIC and needs to be subject to PAYE through payroll.	1
There is no 25% tax free exemption for an EFRBS/unregistered pension scheme	1
A transfer can be made to a UK registered scheme or a QROPS. Any other transfer would be an unauthorised payment.	1
Identify that an overseas transfer charge can apply if the transfer is made to a QROPS where the taxpayer is not resident or the individual and the QROPS are not in an EU member state.	2
As the pension scheme is based in Malta and Miguel is resident in Spain, no overseas transfer charge would arise assuming this is a QROPS.	1
It is the responsibility of Segovia UK Ltd to assess and calculate any overseas transfer charge.	1
The UK/Spain DTC would give exclusive taxing rights to Spain on pension income from both pension plans.	2
The protection of the treaty does not impact the PAYE obligation of Segovia Ltd.	1
Total	20