

# THE CHARTERED INSTITUTE OF TAXATION

## ADVANCED TECHNICAL

### Human Capital Taxes

**November 2022**

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TIME ALLOWED

3 HOURS 30 MINUTES

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- 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 2021/22 legislation (including rates and allowances) continues to apply for 2022/23 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. Pamlux Ltd is a manufacturer of personal care products with an annual pay bill of over £3 million. An employee, Giles Moody, resigned on 31 May 2021 without working or being paid for his three-month notice period. Mr Moody was 55 years of age at this time and had intended to work another five years before retiring. He first started to work for the company in 2006 but was made redundant in 2009 and received a tax and NIC-free redundancy payment of £12,000. He re-joined the company in 2012 and worked for the company until he resigned. Mr Moody lives in England.

Mr Moody lodged a claim with the Employment Tribunal alleging age-related discrimination and victimisation.

Pamlux Ltd agreed to settle out of court without any admission of liability, on the condition that Mr Moody withdrew his claims. A payment of £924,750 will be made on 30 November 2022, which comprises:

- 1) £900,000 as compensation for loss of office. This payment was calculated by reference to Mr Moody's alleged loss of earnings in the five years following the termination of his employment. It has been mitigated to reflect earnings from a new employment that Mr Moody has recently started;
- 2) £23,000 as compensation for injury to feelings. It is intended that this relates solely to the alleged discriminatory acts that took place during the employee's employment; and
- 3) £1,750 for accrued holiday entitlement not taken at the date of termination.

Whilst no payment will be made for any restrictive covenants, the settlement agreement restated the post-employment restrictions contained in Mr Moody's employment contract.

Mr Moody was paid monthly. For his final period of work, his payslip showed:

- 1) monthly salary of £18,333 after taking into account pension salary sacrifice of £2,000;
- 2) commission of £5,000;
- 3) private medical insurance premiums of £20 assessed via the payroll; and
- 4) a tax code of 1257L.

**Requirement:**

**Explain, with calculations, the Income Tax, National Insurance and Apprenticeship Levy treatment of each element of the settlement agreement.** (15)

2. C Guard Ltd is a UK resident company, based in Southampton. It is a private marine security company, which provides armed guards on cargo ships travelling through unsafe waters. The company wishes to hire two new employees, John and Pete.

John is a British national, who is due to leave the Royal Navy shortly. He has been based in Portsmouth for the last five years.

Pete is a British national, who left the Royal Marines on 28 January 2020. He has been working in a security role with another UK company since 1 February 2020. Since 28 January 2020, he has spent 22 nights in the UK. The rest of the time he has been onboard various ships or onshore overseas.

They are both UK tax resident as they own houses in Portsmouth, which are and will continue to be their only home. They do not have any other homes elsewhere.

John and Pete have requested a take-home salary of £60,000. C Guard Ltd wishes to know what gross salary it will have to pay to achieve this figure. The company has a non-contributory money-purchase pension scheme into which it makes contributions of 15% of gross pay. The company also pays international medical insurance premiums of £2,500 per annum per employee. It does not provide any other benefits.

John and Pete will work as a team on board UK registered ships sailing between the UK and India via South Africa and the United Arab Emirates. Their work pattern will be:

Prepare for the journey at C Guard Ltd's premises in the UK	21 nights onshore in the UK
Board the ship	One night onboard ship in UK docks
Ship sails down west coast of Africa to South Africa	25 nights sailing onboard ship
Ship unloads and reloads in South Africa	Six nights onshore in South Africa
Ship sails up east coast of Africa to the United Arab Emirates	18 nights sailing onboard ship
Ship unloads and reloads in the United Arab Emirates	Five nights onboard ship in the United Arab Emirates docks
Ship sails across Arabian Sea to India	20 nights sailing onboard ship
Ship unloads and reloads in India	Eight nights onboard ship in India docks
Ship sails across Arabian Sea to the United Arab Emirates	20 nights sailing onboard ship
Ship unloads and reloads in the United Arab Emirates	Five nights onboard ship in the United Arab Emirates docks
Ship sails down east coast of Africa to South Africa	18 nights sailing onboard ship
Ship unloads and reloads in South Africa	Six nights onshore in South Africa
Ship sails up west coast of Africa to the UK	25 nights sailing onboard ship
Report to C Guard Ltd's office	Two nights onshore in the UK
Take a month's holiday in the UK	30 nights in the UK

The above pattern is then repeated.

**Requirement:**

**Calculate with explanations the gross pay C Guard Ltd will need to pay John and Pete to achieve the required net take home pay and the total remuneration costs for C Guard Ltd.**

(15)

3. AMH LLP, a firm of architects, have recently revisited their work location strategy and have decided to allow more home working in order to promote greater flexibility and reduce their office space.

Going forward, there will be three categories of employee:

- 1) Home-based workers. These employees will have their homes as their contractual base location. They are expected to perform the majority of their duties from home and from client sites. They will only come into the office on rare occasions for training or team meetings.
- 2) Hybrid workers. These individuals will work from the office for either one or two days a week (assuming a five-day working week) under the terms of a new home working policy. The reason for being in the office is to enable greater networking and collaboration. There is no formal distinction between the nature of the work performed in the office and that performed at home.
- 3) Office-based workers. These employees will continue to have the office as their contractual base, but they will be granted a large degree of discretion to work from home from time to time as they feel appropriate.

AMH LLP want to understand the employment Income Tax and NIC implications of the following:

- 1) Equipping the home-based and hybrid workers with home office equipment such as computers, desks and chairs.
- 2) Reimbursement of home broadband for all categories of workers.
- 3) Reimbursement of travel into the office when required for home workers and hybrid workers.
- 4) Reimbursement of meals for all employees when in the office.

As a result of the shift to home working and hybrid working, AMH LLP will also be able to reduce their office space and are planning to sublet several floors of their offices as a result. AMH LLP's landlord was intending to make some refurbishments and as it suits both parties, it has been agreed that AMH LLP will carry out these refurbishments for the landlord and will receive a contribution towards the costs.

AMH LLP will spend £3.5 million in total in order to refurbish the office. Of this, £1 million relates to space to be sublet and the remaining £2.5 million relates to space occupied by them for their business. The landlord will pay a £2 million contribution to this cost and the project is expected to take 12 months to complete.

**Requirement:**

- 1) **Explain the Income Tax and National Insurance implications of AMH LLP's plans for the three categories of employee.** (15)
- 2) **Explain how the works on AMH LLP's office space will be treated under the Construction Industry Scheme.** (5)

Total (20)

4. On 1 January 2017 Andrea Davies joined Red Stalk plc as the Chief Information Officer. Red Stalk plc is UK tax resident and its shares are listed on the London Stock Exchange. It is a large employer with an annual pay bill of £5 million. Andrea has always been tax resident and domiciled in England.

On her start date, Andrea acquired 10,000 £1 ordinary shares in Red Stalk plc. These shares had an initial unrestricted market value of £15 per share. These shares were accompanied by a side agreement between Andrea and Red Stalk plc removing any entitlement to dividends and voting rights for the first five years and preventing their sale or transfer in this period. The shares were not subject to forfeiture conditions. No elections were entered into in respect of the shares. It is understood that the effect of the restrictions reduced the market value by 10%.

Andrea paid the nominal value of the shares at the time of acquisition, with the balance of the initial restricted market value paid three years later.

On 1 January 2022, when the restrictions lifted, Andrea sold the shares. At this time, the shares had a market value of £35 per share.

On 15 April 2020, Andrea was also gifted interest bearing bonds by her employer. The bonds could be converted into 3,500 unrestricted £1 ordinary shares in Red Stalk plc. The bonds had an interest rate of 5% and a market value of £50,000 ignoring the conversion right or £75,000 with the conversion right. On 5 May 2022, the bonds were converted into 3,500 £1 ordinary shares with an unrestricted market value of £40 per share. At this date, the bonds had a market value of £80,000 ignoring the conversion rights and the underlying shares had a value of £140,000.

Andrea has been an additional rate taxpayer throughout her employment.

**Requirement:**

**Calculate with explanations the Income Tax and National Insurance arising in each of the years concerned. You are not required to calculate or comment on any s.222 charges, late payment interest charges or penalties.** (15)

5. Sandrine is UK tax resident but domiciled in Mexico. She is employed by Barom SRL, which is a Mexican company. She is currently on assignment to Barom plc, which is the UK parent company of Barom SRL. Barom plc's annual salary costs exceed £3 million.

Sandrine is on a tax-equalised assignment package. She is liable to UK National Insurance contributions and is not equalised for social security.

Sandrine and her wife are adopting a child. They expect to be matched and the child placed with them on or around 1 February 2023.

Barom plc has not had a situation before where an assignee is taking statutory leave during an assignment and they require advice on the implementation of their international assignment policy.

Barom plc's assignment policy states:

**"12.1 Maternity or other Statutory Leave Entitlement and Payment**

An assignee is entitled to a payment, which is the higher of:

- (a) The equivalent net amount, after deduction of a hypothetical home country tax, that would be payable if the assignee had continued to work in the home country. If the home country employer's policy is to pay an enhancement over and above the statutory minimum, the assignee will be entitled to any such enhancement.
- (b) The net amount that would be payable, if the assignee qualifies for statutory leave in the host country, after deduction of a hypothetical tax based on the home country's tax rate for such statutory leave payments. If the host country employer's policy is to pay an enhancement over and above the statutory minimum, the assignee will not be entitled to any such enhancement.

For the whole period of leave, an assignee is entitled to payment under either only (a) or (b) above, and not a combination.

The Company will pay the actual home or host tax on any payment under this section. However, the Company will not pay any home or host country social security on any payment under this section."

Sandrine has worked for Barom SRL for seven years and has spent the last 22 months on assignment in the UK. She earns a net assignment salary of £24,000 per year, which is paid in 12 equal monthly amounts. On 30 September 2022, she received a net bonus of £5,000 for the year to 30 June 2022.

Barom SRL has advised that under the Mexican company's policy and Mexican law, she would be entitled to statutory leave payments for 39 weeks. A payment of £425 gross per week would be due for the first six weeks. This payment would not be liable to tax or social security in Mexico. For the remaining period, she would be entitled to £265 gross per week, which would be chargeable to Mexican tax at a rate of 26%. There would be no Mexican social security deduction from this payment.

**Requirement:**

**Calculate:**

- 1) **Sandrine's statutory adoption pay entitlement in the UK.**
  - 2) **How much Barom plc should pay Sandrine.**
  - 3) **The UK tax and social security costs they will each incur.**
- (15)

6. Denise is employed full-time as a preacher with the Free Church of Barbados, which operates an exchange programme with a number of other churches worldwide. They have made the following proposal to a church in Leeds:
- 1) Denise will minister in the local parish full time.
  - 2) She will arrive in the UK on 1 December 2022. She will stay until 30 June 2023, after which she will return to work in Barbados.
  - 3) She will remain an employee of the Free Church of Barbados. They will continue to pay her salary, which equates to £14,380 per year.
  - 4) The church in Barbados will pay for her flights to the UK. The flight is £1,000 each way.
  - 5) The church in Leeds will not have to bear her salary costs but should provide Denise, at no cost to her, with self-catering accommodation.
  - 6) The church in Leeds must meet her tax and social security costs in the UK.

The church in Leeds plans to rent a two-bedroom house, where Denise will live. The monthly rent is £1,050. They will give her an allowance of £80 per month towards utility bills.

Denise has a young daughter, who will be accompanying her to the UK. The church in Leeds runs a creche for the children of parishioners in one of the church buildings. This creche is registered under Part 3 of the Childcare Act 2006. The children of the church's employees can attend free of charge and this offer would be extended to Denise's daughter. The usual fee for other parishioners is £1,000 per month per child.

Denise and her daughter have never been to the UK before. They are expecting to stay in the UK for the entire period of the exchange.

Denise currently lives with her sister in Barbados and this home will remain available to her whilst she is in Leeds. She will return to live with her sister after the exchange. She will therefore be a tax resident of Barbados for the 2022, 2023 and 2024 calendar years and she will remain liable to Barbadian tax on her salary throughout the exchange period.

**Requirement:**

- 1) **Explain how each element of Denise's remuneration package will be taxed in the UK and how any double taxation will be avoided.** (13)
  - 2) **Explain what the church in Leeds must do to comply with the UK Income Tax and National Insurance legislation and how much they will have to pay.** (7)
- Total (20)

Extracts from UK/Barbados Double Taxation Agreement 2012

Article 4: Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and includes that State and any political subdivision or local authority thereof. The term also includes:
  - a) a pension scheme established in that State; and
  - b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

However, it does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
  - b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
  - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
  - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 15 Income from Employment

1. [...]salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
  - c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

Article 23 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.
- ...
5. Individuals who are residents of Barbados shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as nationals of the United Kingdom not resident in the United Kingdom. Where such allowances, reliefs and reductions are applicable, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purpose of Barbados tax as residents of Barbados.

Extract from The Social Security (Barbados) Order 1992

Part II

Article 6: General Provisions

- 1) Subject to the following paragraphs and the provisions of [8], where a person is gainfully employed, liability for contributions for him shall be determined under the legislation of the Party in whose territory he is so employed.
- 2) Where a person is employed in the territory of both Parties for the same period, liability for contributions for him shall be determined only under the legislation of the Party in whose territory he is ordinarily resident.
- [...]
- 8) [...]a person is employed in the territory of one Party while remaining liable for contributions under the legislation of the other Party, the legislation of the former Party shall not apply to him and he shall not be liable, nor entitled, to pay contributions under the legislation of the former Party.

Article 7: Detached Workers

Subject to the provisions of Article 8 (Travelling Personnel), where a person insured under the legislation of one Party and employed by an employer in the territory of that Party is sent by that employer to work in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him as if he were employed in the territory of that Party, provided that the employment in the territory of the other Party is not expected to last for more than three years.

**End of Question**