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

Event **NA**

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Count(s)	Word(s)	Char(s)	Char(s) (WS)
Section 1	**1088**	**4927**	**5999**
Section 2	**884**	**4467**	**5340**
Section 3	**731**	**3152**	**4395**
Section 4	**822**	**3716**	**4690**
Section 5	**617**	**3007**	**3747**
Section 6	**405**	**1863**	**2265**
Total	**4547**	**21132**	**26436**

Answer-to-Question-_1_

Where an employee is awarded shares in a their employing company at less than market value, a charge to income tax arises as employment income.

Hoora are considering introducing the following share schemes.

Hoora can claim a CT deduction for the value of the shares awarded.

Option 1

The shares will be considered restricted securities as they are subject to disposal restrictions.

Where sale restrictions are in place, the shares will be subject to an initial tax charge on the difference between the amount paid for the shares (nil in this case) and the restricted value of the shares at award.

A secondary tax charge will arise in 5 years time when the restrictions lift based on a percentage of the market value of the shares when the restrictions lift. The percentage is based on the amount of the initial unrestricted market value not taxed at award.

The employees can make an election under s.431 ITEPA to be taxed on the initial unrestricted market value of the shares at award. No further tax will arise in this case when the restrictions lift.

Assuming the unrestricted market value of the shares at award is £241,379 (assuming the current exchange rate), this will be the amount taxed at award.

This may be beneficial if the share price is expected to increase, but may be hard for the employees to fund this tax charge initially as they are unable to sell their shares to raise funds. Therefore, consideration would be needed regarding how the tax will be funded, e.g. through a loan.

Option 2

Under option 2, the share options would be considered a non-tax advantaged share option scheme.

There is no grant at the award of a share option.

A tax charge will arise at vest on the difference between the price paid for the shares and the current market value of the shares at exercise.

Again, assuming the value received by the employees is £241,379, this could lead to difficulty in funding the tax due at exercise where the shares have not been sold to realise a profit.

PAYE and NIC

PAYE and NIC is only required on shares which are readily convertible assets. This means shares which are traded on a recognised exchange or where trading arrangements exist.

Hoora is a limited company so is not listed. However, trading arrangements would be deemed to exist under option 1 as there are arrangements in place for the employees to sell back their shares to the company or to the purchasing company.

This means that under option 1, the shares will be considered readily convertible assets and PAYE and Class 1 NIC will be payable by both the employees and the employer.

Under option 2, trading arrangements are not in place therefore PAYE and NIC are not required. The employees will settle any tax payable via self-assessment.

Sale of shares

When the shares are sold, there will be a disposal for capital gains purposes. The gain will be the difference between the sales proceeds and the base cost of the shares.

The base cost of the shares is the amount paid for the shares (potentially nil in this case), and the amount subject to income tax at award/exercise. Therefore, the base cost of the shares will be in the region of £241,379.

Gains are taxed at 10% up to the basic rate limit and 20% thereafter. BADR may be available depending on the amount of shares held (as minimum 5% is required) to reduce the CGT rate to 10% up to a lifetime limit of £1m.

Under the double tax treaty, where gains arising by a resident in the UK from shares situated in the Netherlands, these gains cab be taxed in both the UK and the Netherlands except where one of the following applies:

- the UK resident owns less than 50% of the shares prior to the gain
- the gains are derived in the course of a corporate reorganisation
- the resident is a pension scheme

Provided that none of the employees hold 50% of the shares, as is likely the case, the gain will only be taxable in the UK.

Alternatives

An EMI scheme can be set up in the UK which is a type of tax advantaged share option scheme. IT can be used for specified employees.

An EMI scheme is available for small trading companies where there are fewer than 250 full time equivalent employees, assets of less than £30 million and companies which carry on a qualifying trade.

As Hoora is part of a group, these limits are applied to the group as a whole. It appears these tests have been met.

The employees must work at least 25 hours per week or devote at least 75% of their time for the company and directors are able to join the scheme therefore John and David can join, as can any part-time employees.

Up to £250,000 worth of options can be given to employees up to an aggregate maximum of £3m. This means that if employees are provided with £241,379 in shares, they will met this condition. However, as there are 6 employees in total, the aggregate maximum would be exceeded. Consideration therefore would need to be given to reducing the share options for some employees, perhaps those more junior can receive less.

There is no tax charge on the grant of an EMI option.

There is no tax charge on the exercise of an EMI option provided it is made within 10 years of grant and no discount is given at grant. This is clearly a big tax saving for the employees and removes the concern over funding tax liabilities.

If a discount is given at grant, the tax charge is equal to the difference between the price paid for the shares and the

lower of the market value at exercise and the market value at grant.

A capital gain will arise when the shares are sold the same as explained above.

Reporting

Hoora must register the share plan with HMRC by 6 July following the end of the tax year in which shares are first awarded.

In the case of an EMI scheme, the options need to be self-certified to HMRC that the conditions are met with 92 days of grant.

Hoora will be required to submit an annual ERS return to HMRC by 6 July following the end of the tax year. A return will be required each year until the scheme is de-registered, submitting a nil return as necessary.

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

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

Answer-to-Question-_2_

UK agency workers

The workers who will be supplied via the agency will be subject to the agency rules. These rules apply where an individual personally provides their services to a client and there is a contract in place between the client and the agency under which the client pays for the services that the worker provides.

The rules apply where the worker is subject to (or to the right of) control, supervision, or direction by any person. It does not matter to what degree this is asserted as it is simply considered a yes/no question.

As the work is under the SDC of Plus Tard UK employees, the agency rules will apply.

This means that the agency will be treated as the employer and must deduct income tax and NIC from the payments made to the worker via PAYE. The agnecy is liable for Class 1 secondary NICs. If however, Plus Tard UK pays the workers directly, this obligations shifts to them instead.

Romanian workers

The workers coming to the UK will be UK resident as they will spend more than 200 days in the UK during the tax year. Therefore, they will be UK resident on their worldwide income on an arising basis.

They will also be considered resident in Romania therefore they are considered dual resident. The treaty contains a tie breaker clause where an individual is considered resident in both states.

They will be considered to be Romanian treaty resident on the basis that is where their permanent home is located.

Therefore, the UK can only tax their UK workdays.

Construction industry scheme

The CIS scheme requires income tax to be withheld from payments to subcontractors.

Contractors must register online with HMRC prior to the first day payments are due to subcontractors.

A contractor is defined as any person carrying on a business which includes construction operations, certain specified bodies (e.g. local authorities), or where annual expenditure exceeds £1m over a three year period.

The UK utillity company is likely to be considered a contractor.

Construction operations includes:

- construction or demolition of, or repairs to, any works forming part of the land, including walls, roadworks, railways etc
- installation of heating, lighting, air conditioning and drainage and santitation systems
- cleaning, paintning and decorating
- construction, alterationm repair, extension or demolition of buildings and structures

It is likely therefore that the work undertaken will fall within the first to areas.

Plus Tard UK, the agency workers and the Romanian workers will be considered sub-contractors in this instance. This means that the payments made to them will fall within the scope of the CIS rules.

Payments can either be made gross or with a deduction of tax at 20% or 30%. If the subcontractor is not registered with HMRC, withholding is required at 30%. The deductions are paid to HMRC on 19th/22nd of the month if payment is made electronically.

The amount of withholding depends on whether the subcontractor is registered for gross payment or not. This can be checked with HMRC online.

To satisfy the gross payment condition, three tests must be met:

- compliance test
- turnover test
- business test

CIS only applies to workers who are not employees. The CIS return requires a declaration to this effect.

The employment status of workers is considered using the employment status indicators which have been established through case law and HMRC guidance.

This must be done before carrying out the check of the subcontractor’s status online.

It is possible that the Romanian workers will be considered

employees as they are under Plus Tard UK's SDC (self-employed individuals are not usually subject to SDC whereas employees are), they have limited financial risk (as they are paid a day rate rather than on completion of tasks and are not required to fix mistakes in their own time as usually evidenced by self-employed people), they cannot provide a substitute (self-employed people do not usually have any degree of personal service and can engage helpers), and cannot refuse work (which suggests a high degree of mutuality of obligation akin to employment).

Therefore, the Romanian workers are more like employees and therefore should be included on Plus Tard's UK payroll.

A CIS300 return will be due which shows the amounts paid to sub-contractors, the amount of tax deducted, and whether materials were provided to the subcontractor. Confirmation should also be provided that payments have not been made to employees and the status of sub-contractors has been verified.

Briggs Plant Hire ("Briggs")

The provision of labour via Briggs will be subject to the off-payroll working rules. These apply from the 6 April 2021 for medium and large companies in the private sector where services are provided personally by an individual to a client via an intermediary, but would be considered an employee of the client if not for the intermediary.

This means that the employment status of the labour being provided needs to be considered whether it is more akin to employment or self-employment. The client should undertake this determination and record the outcome and the reasons on a statement determination statement (SDS) on or before the contract begins.

If the relationship is considered to be one of employment,

the fee payer is responsible for operating PAYE and Class 1 NIC on the payments made.

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

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

Answer-to-Question-_3_

1)

Reimbursement of client and supplier entertainment

The costs incurred on entertainment are deductible to the extent that they have been paid or reimbursed by the employer and have been disallowed in the employer's taxable profits.

Assuming that the amounts have been disallowed, the amounts will not be taxable. Otherwise PAYE and Class 1 NIC will be due on the amount reimbursed.

Working lunches

Although the lunches had a business purpose, as they were provided off of the employer's premises they will be a taxable benefit in kind. Tax and Class 1A NIC will be payable on the benefit (being the amount paid for by the company) and should be reported on the P11D.

However, as this will be included on the PSA, Class 1B will be payable and no P11Ds are required.

Annual functions

There is an exemption for annual events which are open to all employees and do not exceed £150 per head. If this amount is exceeded, the event is taxable in full as it is an 'all or nothing' exemption. £150 is the VAT inclusive amount.

Where there is more than one event, all of the events must cost less than £150 per head. If not, consideration should be

given to which event is better to exempt.

The Christmas party was open to all employees at the London office. HMRC accept that the event can be made available to all employees at one location where the employer has more than one location. Therefore, it does not matter that the Glasgow employees could not attend.

Christmas party:		
VAT inclusive amount		16,800
Attendees:		
Employees	80	
Guests (50%)	40	120
Cost per head		£140
Summer BBQ		
VAT inclusive amount		5,880
Employees		140
Cost per head		42

Therefore, it is better for the Christmas party to be exempt under the annual events exemption as only £42 for the Summer BBQ will be taxable instead of £140.

If the cost was not included on the PSA, it would be taxable and subject to Class 1A NIC and reportable on the P11D.

However, as this will be included on the PSA, Class 1B will be payable and no P11Ds are required.

Flowers, turkeys, easter eggs, flu jabs

There is an exemption for trivial benefits. The cost of providing each benefit cannot exceed £50 and it cannot be provided in recognition of services carried out by the employee and there must be no contractual entitlement to receive it. The

amount cannot be cash.

The flowers will be exempt as they cost no more than £50.

The turkeys cost £30 per head so will be exempt.

The Easter eggs cost £15 per head so will be exempt.

The flu jabs cost £20 per head so will be exempt.

Therefore, no taxable benefit will arise on these items.

Vouchers

Non-cash vouchers are subject to Class 1 NIC as earnings at the time the employee receives the voucher as it can be exchanged for goods and services.

It should be subject to tax and recorded on the P11D for the tax year.

It cannot be a trvial benefit as it is being given in recognition for services.

Effect of PSA

Where a PSA is entered into, the employer will pay tax and Class 1B NIC on the grossed-up value of the benefit on the employee's behalf.

The due date for payment of the tax and Class 1B under a PSA is 22 October following the end of the tax year where payment is made electroncially, otherwise 19th.

The calculation should be submitted by 31 October following the end of the tax year.

2)

As we do not have the exact tax rates for each individual in receipt of the benefits, I have applied the % tax splits to work out the tax due.

% tax splits

Rate	No. of e'ees	%
BR	30	20%
HR	68	45%
AR	45	30%
IR	7	4.65

Summer BBQ

Cost per head 42

PER EMPLOYEE:

	GUP benefit	**Tax**	**Class 1B**
BR: 42 x 100/80	52.5	10.5	7
HR: 42 x 100/60	70	28	10
AR: 42 x 100/55	76	34	10
IR: 42 x 100/79	53	11	7

Vouchers

Cost per head £50 (assuming all 12 employees are HR taxpayers as we do not have information in the question regarding their tax rates)

	GUP benefit	**Tax**	**Class 1B**
HR: 50 x 100/60	83	33	11 x 12 = £528

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-------------ANSWER-3-ABOVE--------------
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----------ANSWER-4-BELOW----------

Answer-to-Question-_4_

Travel and subsistence can be paid to an employee free of tax and NIC where an employee is required to travel to and work at a temporary workplace.

A temporary workplace is considered one where the employee attends for a continuous period of work not exceeding 24 months. A continuous period is regarded as where duties are carried out to a significant extent, meaning at least 40% of working time is at that location.

Harry is required to work in the North West of England on the contract for three years.

Harry is likely to be considered an area based employee on the basis that his duties are defined by reference to an area rather than specified building and because he must attend different places within that area in the course of his job (he must attned different hotel sites within the North West).

This means that the North West should be considered Harry's permanent workplace. As such, the cost of travel to and from that area, as well as any subsistence, will not be deductible.

Therefore, the cost of travelling to the north west from London will be considered ordinary commuting. His weekly travel fares will be a taxable benefit. As these amounts were arranged by Harry but paid to the travel agent's directly, the £2,046 will be subject to Class 1 NIC as earnings and reportable on his P11D

for the tax year.

The mileage claim will also be taxable as it will be considered that the company have reimbursed Harry for ordinary commuting. This will be subject to tax via the P11D and Class 1 NIC as earnings via PAYE.

This means the payments made to Harry of £801.66 should be subject to PAYE and Class 1 NIC as earnings each month. Assuming it is now May 2021, this could mean a potential additional £5,611 should have been processed via payroll.

The expense claims for the boots, high-visibilty vest, coat and polo shirts with the company logo will not be taxable as these clothes are not wearable in an everyday context and are for a business purpose.

Compliance failures

This means that during 20/21 there has been an underpayment of PAYE and Class 1 NIC for the tax year and incorrect FPS's have been submitted.

Penalties can be applied for the submission of an incorrect FPS of up to 100% of the potential lost revenue (being the underpaid tax and NIC). The penaty is based on the reason for the error. Where an error is due to carelessness, the maximum penalty which can be applied is 30%.

This is reduced to a minimum of 0% where unprompted disclosure is made to HMRC.

It is likely that the error in this case is likely to be considered careless. The company should make a full disclosure to HMRC of the error as soon as possible to benefit from a reduction in penalties arising.

It is possible the penalty can be suspended for up to 2 years.

Late payment penalties can also be charged depending on the number of defaults in the tax year.

Interest can be charged at 2.6% on the late paid Class 1 NIC.

If this error is found before the next pay period's FPS is submitted, revised year to date figures should be used on the next FPS. Otherwise, adjusted year to date figures sbould be used if discovered after the subsequent FPS.

If the error is discovered after the end of the tax year, an additional FPS should be submitted which records the difference between what was originally reported and the correct amount.

HMRC may seek the underpayment of PAYE and Class 1 NIC from either Harry or from the company under regulation 80. Where this is the case, the tax and NIC should be paid on a grossed up basis.

Going forwards

The company should no longer pay the cost of travel and accommodation for Harry as this incurs a high tax charge.

The company could include the travel costs on a PAYE Settlement Agreement going forwards if they wish to continue paying for Harry's expenses. This means they will settle the tax due on Harry's behalf on a grossed-up basis and pay Class 1B NIC on the value of the benefit and the grossed-up tax paid.

In either case, the company should avoid paying cash amounts directly to Harry as this means PAYE and CLass 1 NIC will be due.

They should instead pay directly for the costs of his travel e.g. contracting with the travel agents for his travel and paying it directly to them. This means that Class 1A NIC will instead by payable and removes the employee NIC charge.

Payments subjec to tax via PAYE ***(per month)***	
Direct payment	801.66
Tax @ 40%	321

Payments subject to Class 1 NIC	
Train fares	2,046
Mileage	1,210
Direct payment	801.66
Class 1 EE NIC @ 2%	81
Class 1 ER NIC @ 13.8%	560

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

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

Answer-to-Question-_5_

Hotels

A taxable benefit arises on the provision of accommodation for employees, unless it is considered exempt accommodation. This is reportable on the P11D and subject to Class 1A NIC.

Where accommodation is considered job-related accommodation, the benefit is exempt.

This is the case where the accommodation is necessary to enable the employee to better perform his duties to or to perform those duties better or is customarily provided.

Employees who can demonstrate that the occupation of the accommodation is essential for the proper performance of their duties will therefore have no benefit arising. This is likely to apply in respect of the security guard, the night porter and potentially the general manager as they are required by their employer to live on site to do their job.

Therefore, no taxable benefit will arise on the provision of the hotel room they occupy.

Properties on hotel grounds

The lock keeper is required to be onsite at the company's site to carry out his duties therefore the accommodation will be considered job-related as explained above and will be exempt.

The payment of household expenses (such as heating, lighting

and other bills) by an employer generally gives rise to an additional tax charge. However, where the accommodation is exempt as job-related, there is a restriction on the taxable benefit arising on the house hold expenses.

Where this is the case, the amount on which the employee will be taxed on the provision of household expenses cannot exceed 10% of his other earnings from employment in the year.

Where an employer pays for council tax and water charges in respect of exempt accommodation, these amounts are exempt.

Therefore, the lock keeper's salary is £15,000 so the amount which that he can be taxed on cannot exceed £1,500.

The electric ans gas costs £2,800 in total therefore he is taxed on £1,500 only.

The house provided to the director cannot be exempt as job related accommodation as to be exempt the following must be met:

- the director cannot have material interest: she has material interest (being more than 5% of the shares), and either
- is a full time full working director of the company is non-profit

As she does not meet the first requirement the accommodation is taxable.

The taxable benefit will be:

Annual value	12,000
Additional yearly rent (400,000 - 75,000) x 2.25%	7,313
Total	19,313

As there have not been more than 6 years between acquistion

and her moving in original cost is used.

The house is fully furnished therefore a use of asset charge arises:

100,000 x 20%	20,000

Household bills are paid for therefore the benefit charge will be £10,340, the total of bills paid for.

No benefit in kind charge arises on the cost of repairs. If this howver relates to any amounts of repair, the cost of the improvements will be reflected in the cost of the property in future yeaers.

This is reportable on her P11D (due by 6 July following the end of the tax year) and should be subject to Class 1A NIC at 13.8% payable by the company.

Class 1A NIC should be reported on the P11D(b) and the associated payment made by 22 July following the end of the tax year.

Chalets

It could be argued that the provision of the chalet accommodation would be exempt as job related accommodation on the basis that it allows for better performance of duties. It is also likely to be considered customary as chalent staff often live on-site as the locations are remote.

If the accommodation is not considered job-related an accommodation benefit will arise equal to:

Annual value	500

Additional yearly rent	
(297,000 - 75,000) x 2.25%	4,995
Total	5,495
time apportion 6/12	2,747

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

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

Answer-to-Question-_6_

The provision of a health check-up is not a taxable benefit provided that no more than one check-up is provided to each employee per tax year.

An exemption is also available for eye tests or corrective glasses where an employee is required to use a visual display unit in the employment. This exemption is available where:

- the provision of the test or glasses is required by regulations made under the Health and safety Act
- the tests and glasses are made generally available to the relevant employees

It is likely that the employees are required to use a screen for work.

This means that these benefits will not be reportable on the P11D as they are an exempt benefit.

If the contribution made towards the glasses is given directly as cash to the employee to buy glasses, this will be subject to PAYE and Class 1 NIC.

If the flu jabs cost less than £50 per employee, they will be exempt under the trivial benefits provisions. This means that no taxable benefit will arise on the flu jabs and it will not be reportable on the employee's P11D.

Recreational facilities used by staff generally (such as a

ping pong table or pool table as they are considered sporting) will be an exempt benefit. These must be made available to all employees, not available for the general public's use, and they are used wholly or mainly by persons whose right or opportunity to use them is employment related.

Therefore, no taxable benefit arises on the provision of the pool or tennis table. No P11D is required.

Medical treatment provided to an employee to help them return to work will be exempt up to £500. The employee must have either been assessed by a doctor as unfit for work due to injury/ill health for at least 28 consecutive days, or been absent from work due to injury/ill health for at least 28 consecutive days.

This can be done through either the payment or reimbursement of the costs.

If this £500 limit is exceeded, the excess of £500 is taxable and will be subject to tax and Class 1A NIC. This should be reported on the P11D.

Treatment related to injuries that result from employee's work is exempt.

The medical treatment provided under the insurance is not a taxable benefit as the insurance itself is the taxable benefit and is subject to tax and Class 1A NIC.