



# The Chartered Tax Adviser Examination

May 2020

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## Application and Professional Skills

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### Human Capital Taxes

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TIME ALLOWED – 3 ¼ HOURS

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- The first 15 minutes is designated as reading time. During this time you may read your question paper and legislation, annotate your question paper and use your calculator. You are not permitted to start writing your answer. The Presiding Officer will inform you when you can start writing.
- In order to secure a pass in this paper, you will be required to demonstrate competence in each of three skills.

You will be assessed across your answer as a whole for Structure. A pass or fail grade will be awarded.

You will be assessed for competence in a number of broad topics for the following skills:

- Identification and Application
- Relevant Advice and Substantiated Conclusions

For each topic for each of these two skills, a grade will be awarded. The grades for those topics will be weighted and averaged to produce a final grade for each skill of 0, 1, 2, 3 or 4. A grade of 3 or 4 is required to demonstrate competence.

- Write on one side of the paper only. Do not write in the margins.
- 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 tick the appropriate box on the cover sheet.
- 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, you may assume that 2019/20 legislation (including rates and allowances) continues to apply for 2020/21 and future years. Candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.

You are Jane Jones, a tax senior at a firm of Chartered Tax Advisers. Your partner, Vanessa Brown, has recently met with Bob Robins, the HR Director of one of the firm's clients, Navy AFT Ltd. Vanessa is currently away on holiday.

Navy AFT Ltd is a manufacturer of electrical components with clients mainly in the automotive sector within Europe. Navy AFT Ltd is planning to purchase a Swiss-based company, Ein SA, which also operates in a similar market and they often work collaboratively on projects for mutual clients. The directors of Navy AFT Ltd and Ein SA have discussed making their relationship more formal and as a result Navy AFT Ltd aims to acquire Ein SA in January 2021.

Jack Smith, one of Ein SA's senior project management employees, has been working in the UK on joint projects with Navy AFT Ltd and recently Jack has been in discussion with the directors about working in the UK for Navy AFT Ltd permanently. Coincidentally Jack is looking to return to the UK with his wife and family in 2021 after living and working in Switzerland for several years. Bob is looking for advice regarding the structure of Jack's offer of employment.

Before Vanessa went on holiday she told you that she was expecting an email from Bob as a follow-up to their meeting and asked that you read it and prepare a report for her review when she returns to the office.

The following exhibits are provided to assist you:

**EXHIBIT A** – Email from Bob Robins

**EXHIBIT B** – Components of draft job offer to Jack Smith annotated by Jack and Bob

**EXHIBIT C** – Extracts from UK/Switzerland Double Tax Treaty

**EXHIBIT D** – Swiss Social Security Rates

**EXHIBIT E** – Pre-seen information

**Requirement:**

**Prepare a draft report to Bob Robins, for Vanessa's review, advising on the UK tax aspects of the offer Navy AFT Ltd is considering making to Jack.**

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**EXHIBIT A**

Email from Bob Robins

To: Vanessa Brown  
Cc: Jane Jones  
From: Bob Robins  
Date: 3 May 2020

Dear Vanessa

It was lovely to see you last week.

As discussed at our meeting, here is the additional information regarding Navy AFT Ltd's planned purchase of Ein SA. I've cc'd Jane as requested.

We would like your help from a tax perspective regarding an offer of employment for Jack Smith, a project manager for Ein SA based in their Zurich offices, who we are looking to employ here in the UK. Jack is a UK national and moved to Switzerland in the autumn of 2013 to work full-time for Ein SA.

Jack started coming to the UK in September 2019 to work on projects where Navy AFT Ltd and Ein SA were working jointly to supply components to a UK-based automotive client. Ein SA do not have any offices or sites in the UK as most of their production and back office functions are in Zurich and so Jack often worked at our office whilst on these projects. There was no formal secondment agreement as Jack didn't work for us: he simply used one of our spare desks whilst working on Ein SA's part of the project.

Jack has provided me with a copy of his travel schedule which is below. Prior to this Jack had not visited the UK since he left the UK in 2013. Jack stayed in a variety of hotels when he was here. The cost of his flights and hotels averaged £3,000 per month and all were reimbursed tax and social security free in Switzerland by Ein SA through expenses.. Jack tells me that he didn't come to the UK at any other times during this period for personal reasons and he didn't work anywhere else during this period.

<u>Month</u>	<u>Workdays in the UK</u>	<u>Swiss Workdays</u>
September 2019	8	14
October 2019	11	11
November 2019	18	4
December 2019	10	8
January 2020	20	0
February 2020	17	3
March 2020	15	5
April 2020 (all after 6 April 2020)	7	7
May 2020 estimated days.	10	9

This pattern is expected until 31 August 2020.

His knowledge of the industry and experience with Ein SA means he would be a perfect fit for us long-term and we would like to offer Jack a permanent role here. Ein SA are happy with this too as it will help with the transition when the purchase goes ahead so they see it as not really losing Jack. Coincidentally, Jack and his wife Kate want to return to the UK with their daughter Amy who they would like to start at secondary school in the UK from September 2021. They plan to relocate to the UK from 1 July 2021.

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We are considering two options for Jack's start date:

Option 1

He would be seconded to us by Ein SA from 1 September 2020 until 30 June 2021 before becoming employed directly by us on 1 July 2021. During his secondment he would work almost exclusively for us but would need to do some minor work for Ein SA, to maintain contact with his team and to help with interviewing, which would require him to be physically present there some weekdays. We would reimburse Ein SA for 100% of Jack's employment costs including flights and UK hotels but would not tax-equalise his employment income as it is a UK role. Jack would remain liable for his own tax and social security at all points. We would be happy to help him with a loan if this arrangement caused any temporary cashflow difficulties for him due to double taxation.

On the days when he needs to work in Switzerland, the bulk of the time would be spent working for us on our projects. Overall, we expect him to spend 10 workdays in the UK and nine workdays in Switzerland per month.

Option 2

His UK employment with Navy AFT Ltd would start on 1 September 2020 and he would have no ongoing connection with Ein SA. However, to allow him to spend time with his family, he would spend 15 workdays in the UK and four in Switzerland each month, working from home or perhaps in the Ein SA offices.

Until 30 June 2021 under both options Jack would effectively work full-time for us with the different workday pattern as explained above. He will return to Switzerland at weekends.

From 1 July 2021 his role will be identical under both options with any trips outside the UK relating to projects Jack is working on; it is not expected that his non-UK trips will follow any specific pattern.

Attached (**EXHIBIT B**) is a copy of the components of the draft offer we are discussing with Jack; comments are next to each item indicated with our respective initials. You will see we have a couple of decisions to make about the timing of Jack's employment and whether Navy AFT Ltd or Ein SA pay his bonus in January 2021.

Many thanks and I look forward to receiving your advice on this when you return from your holiday.

Bob

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## **EXHIBIT B**

### Components of draft job offer to Jack Smith annotated by Jack and Bob

Annotations: JS – Jack Smith  
BR – Bob Robins

Position: Head of European Operations  
Location: Based in Nottingham office  
Salary: £400,000 [JS: Agreed.]  
Bonus: 25% of basic

*[JS: Agreed this is also the same as my current package. As discussed, I'm due a bonus of £100,000 in January 2021 for the financial year ended 31 December 2020 - I'm expecting this in my Swiss payroll and don't want to pay UK tax on this.]*

*[BR: You will still receive the bonus in January 2021 but as you know I'm looking for tax advice as to whether this could be rolled into your new contract with Navy AFT and paid from the UK if you start with us in September 2020. I'll come back to you once I have the tax advice.]*

Holiday: 25 days holidays plus public holidays [JS: agreed.]  
Start Date: To be confirmed  
Location of work: You'll be based in the UK but it is expected that you may need to travel to some of our other locations from time to time.

*[JS: That's fine. I thought it would be helpful to explain what we are aiming for regarding the move to the UK. The plan is for Amy to start secondary school in the UK in September 2021 so we will want to be permanently back in the UK by July 2021 once Amy finishes her Swiss school summer term. We are renting a home in Switzerland so we will give notice when we are ready to come back to the UK. We will rent in the UK initially whilst we look for a permanent UK home. Based on the tax advice we have already taken in Switzerland I will remain resident there until we move to the UK as a family, regardless of the employment or secondment route. Also, from September 2020, if I'm employed by Navy in the UK, it would be great if I could arrange an apartment here as opposed to staying in hotels so I can start bringing personal belongings to the UK each time I come and also prepare my own meals. As I'll still be paying for my family home in Zurich, would you be able to contribute towards the cost of my UK apartment please? I've estimated that it will cost around £2,000 per month so would like this to be paid instead of hotels. I'm expecting total housing and travel costs to remain around £3,000 per month.]*

*[BR: yes, that's all fine.]*

Tax: You will remain responsible for all tax and social security on this arrangement, even if we end up in a secondment arrangement from Ein SA.

*[JS: Agreed. I'd like to remain in the Swiss social security system whilst my family live in Switzerland if that's possible as mine and Ein's contributions ensure our entitlement to Swiss healthcare and Swiss state pension.]*

*[BR: If there's any double taxation in real time, we may be able to help your cashflow in the form of a loan. I'm hoping that you can be exempt from UK social security but we're checking with our advisers.]*

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## **EXHIBIT C**

### Extracts from UK/Switzerland Double Tax Treaty

#### Article 4 - Residence

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 or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State. In the case of Switzerland, the term includes a partnership created or organised under Swiss law.
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 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 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 has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has a habitual abode;
  - (c) if he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident 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 5 - Permanent establishment

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
  - (a) a place of management,
  - (b) a branch,
  - (c) an office,
  - (d) a factory,
  - (e) a workshop and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

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4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs (1) and (2), where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such a person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 15 - Dependent personal services

1. Subject to the provisions of Article 16, 18 and 19, 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:

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- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned of that State, 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 or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### Article 22 - Elimination of double taxation

1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):
  - (a) Swiss tax payable under the laws of Switzerland and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Switzerland (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Swiss tax is computed;
  - (b) in the case of a dividend paid by a company which is a resident of Switzerland to a company which is resident in the United Kingdom and which controls directly or indirectly at least 10 per cent of the capital or voting power in the Swiss company, the credit shall take into account (in addition to any Swiss tax creditable under subparagraph (a)) the Swiss tax payable by the company in respect of the profits out of which such dividend is paid.
2. Where a resident of Switzerland derives income which, under the laws of the United Kingdom and in accordance with the provisions of the Convention may be taxed in the United Kingdom, Switzerland shall, subject to the provisions of paragraphs (3), (4) and (6), exempt such income from Swiss tax, provided, however, that such exemption shall apply to gains referred to in paragraph (4) of Article 13 only if taxation of such gains in the United Kingdom is demonstrated.

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**EXHIBIT D**

Swiss Social Security Rates

	<u>Paid by employer</u>	<u>Paid by employee</u>	<u>Total</u>
Total	6.225%	6.225%	12.45%

Applies to all income uncapped.

Non-Swiss entities liable to Swiss social security must register in Switzerland to pay social security.

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## **EXHIBIT E**

### Pre-seen information

#### Business Description

Navy AFT Ltd is a manufacturer of electrical components and was founded in 1994 by Thomas James, Fergal Michaels and Archie Anthony who met whilst at Nottingham University.

#### Business Ownership

The business remains privately owned with venture capital backing. It is hoped that there will be a public listing in the next few years. There are 5,000 ordinary shares of £1 each in issue which are held as follows:

<u>Ownership</u>	<u>Number of Shares</u>
Thomas James	1,500
Fergal Michaels	1,250
Archie Anthony	1,250
PB Venture Capital Ltd	1,000

#### Key Roles

Managing Director:	Thomas James
Finance Director:	Fergal Michaels
Operations Director:	Archie Anthony
HR Director:	Bob Robins
Client Services Director:	Tony McDonagh

#### Products and Services

Navy AFT Ltd has won many innovation awards for their cutting-edge design using alternative materials. Due to the extra lightweight properties of their components they mainly sell their components and provide design and consultancy services to the automotive industry, specifically to clients in the motor racing sector.

#### Business Location

Navy AFT Ltd is currently based in Nottingham and has branches in Japan, Australia and the US. Navy AFT Ltd plans to expand its business by making further acquisitions.

#### Employees

Navy AFT Ltd has 123 full-time employees.

#### Pension Arrangements

Navy AFT Ltd operates a defined contribution company pension scheme.

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Summary accounts for Navy AFT Ltd for the year ended 31 December 2019

	<u>Year ended 31 December 2019</u>		<u>Year ended 31 December 2018</u>	
	£	£	£	£
Turnover		10,800,000		8,750,000
Cost of Sales		<u>(2,579,000)</u>		<u>(2,106,500)</u>
Gross Profit		8,221,000		6,643,500
Bank Interest		115,750		46,950
Expenditure:				
Directors' remuneration	900,500		810,000	
Employment costs	3,915,000		2,880,000	
Other administrative costs	<u>289,500</u>		<u>250,640</u>	
		<u>(5,105,000)</u>		<u>(3,940,640)</u>
Net Profit		<u>£3,231,750</u>		<u>£2,749,810</u>

Directors' remuneration and employment costs include all Class 1 secondary National Insurance contributions and company pension contributions. The company is within the scope of the apprenticeship levy.

Balance Sheet at 31 December 2019

	£
Freehold property	7,800,000
Plant & machinery	3,565,000
Debtors/inventory	1,700,000
Bank current account	965,000
Bank deposit account	3,250,000
Less: creditors	<u>(455,000)</u>
	<u>£16,825,000</u>
Capital & Reserves	
Share capital	5,000
Profit & Loss	<u>16,820,000</u>
	<u>£16,825,000</u>