

The Chartered Institute of Taxation

Advanced Technical

Human Capital Taxes

May 2025

Suggested answers

Answer 1

Phantom Stock Units (PSU)

Although this award delivers value based on the performance of the Delft plc share price, it is a contractual promise to pay a future bonus and is not an employment related security. When the bonus was paid on 5 January 2025, it would have been subject to income tax under s.62 ITEPA 2003.

However, the period between the award date and payment date includes a period of work in the Netherlands and a period in the UK. s.16(4) ITEPA 2003 allows for the earnings to be apportioned to tax years based on a just and reasonable apportionment. It would be reasonable to assume the bonus was earned evenly over that period given that all he was required to do was remain employed. Three months of the 36 month period were worked in the UK, meaning that £5,000 would be subject to PAYE:

PSU bonus:	£60,000 (20,000 PSU x £3)
Less:	£55,000 (£60,000 x 33/36)
Subject to income tax and PAYE:	£5,000

Assuming Max is non-UK domiciled, as suggested by the facts, and he claims the remittance basis of taxation through self-assessment for 2024/25, 'overseas workday relief' (s.26 ITEPA 2003) will be available for 20% of the £5,000 attributable to overseas workdays from 6 October 2024 providing that the employment income related to those non-UK workdays has not been remitted.

PAYE:

PAYE should have been operated on the amount of general earnings subject to income tax of £5,000. As this is a cash payment the employer must operate PAYE in the PAYE month ending 5 January 2025.

Although relief under s.26 ITEPA 2003 may be available this claim would need to be made through the self-assessment tax return unless the payroll had obtained a direction from HMRC under s690 ITEPA 2003 to operate on only 80% of PAYE income.

NIC:

As Max is an employee of Ground Ltd he was subject to UK Class 1 NIC. As the cash payment is regarded as earnings, it was all subject to Class 1 NIC. There can be no apportionment for the period of non-UK residence or any relief for non-UK workdays since his contract began on 6 October 2024.

Restricted ordinary shares

The restricted shares are an employment related security (ERS). They were awarded by reason of employment with Delft plc and are therefore employment related.

The forfeiture restrictions lapse on 5 January 2025. This means there was an income tax charge arising under Part 7 Chapter 2 ITEPA 2003 with a corresponding NIC liability and PAYE obligation. The income tax arising was on the full value of the shares at that time £150,000 (50,000 x £3).

The amount that counts as employment income should be apportioned on a just and reasonable basis between the overseas and UK duties. The relevant period is the period between the day of acquisition (6 January 2022) and the day of the chargeable event (5 January 2025).

Chargeable event (Securities Income):	£150,000 (50,000 ordinary shares x £3)
Less (Foreign Securities Income):	£137,500 (£150,000 x 33/36)
Taxable Specific Income:	£12,500

Overseas workday relief is available if Max claims the remittance basis of taxation for 2024/25 in respect of the non-UK workdays occurring between the 6 October 2024 and 5 January 2025. On the basis that one day a week was spent working overseas, 20% of the taxable specific income may be excluded from income tax to the extent it is not remitted to the UK.

PAYE:

The income tax charges arising on ERS will mean that an obligation to operate PAYE arose for Ground Ltd if the ordinary shares in Delft plc are readily convertible assets (RCAs).

An RCA includes quoted shares, securities where trading arrangements are in existence, and securities which do not allow for a corporation tax deduction for the employer.

As the Delft plc shares trade on a recognised stock exchange they are RCAs and Ground Ltd should operate PAYE. The employer must operate PAYE based on their reasonable best estimate of the taxable securities income (i.e. excluding any foreign securities income).

PAYE should have been operated by Ground Ltd on their best estimate of the taxable securities income. However, Ground Ltd should not have excluded from PAYE the taxable securities income related to non-UK workdays (i.e. between the 6 October 2024 and 5 January 2025). The only way to exempt income from PAYE is to have obtain a PAYE direction from HMRC under s.690 ITEPA 2003. A s.690 PAYE direction is obtained by writing to HMRC and providing an estimate of the percentage of non-UK workdays anticipated.

NIC:

The NIC treatment of ERS are different to general earnings. A NIC liability arises in respect of the amount of earnings related to periods when the employee was in the UK's National Insurance Contribution system. This means that Class 1 NIC was not due on the full £150,000 but on the amount which related to the period when Max became a UK employee which is £12,500.

Market value share options

The share options were awarded to Max by reason of his employment. They will be regarded as employment related share options (ERSOs).

ERSOs are not subject to income tax when acquired but are subject to income tax when those options are exercised. The income tax will be based on the difference between the actual market value at exercise and the exercise price.

The amount that counts as employment income is apportioned on a just and reasonable basis between the overseas and UK duties. The relevant period is the period between the day of acquisition (6 January 2022) and the day the ERSO becomes exercisable (i.e. vests) which is 6 January 2025 not the day the options are actually exercised (5 March 2025). This means the income tax charge will be calculated as follows:

Option exercise (Securities income) :	£210,000 (60,000 options x £3.50)
Less: (Foreign Securities Income):	£192,500 (£210,000 x 33/36)
Taxable Specific Income:	£17,500

PAYE must be operated on the same basis as the restricted shares. Class 1 NIC and PAYE will be due on £17,500.

Marking Guide

Requirement 1	Marks
PSU	
PSU is general earnings (s.62) rather than an ERS.	1
Simple calculation or other description given for how a just and reasonable apportionment is applied to the bonus.	1
Overseas workdays relief available for the part of the bonus earned after starting work for Ground Ltd.	1
ERS	
The restricted shares were awarded by reason of employment and are therefore ERS subject to Part 7, Chapter 2.	1
There will be a chargeable event when the forfeiture restrictions lapse. The income tax charge will arise on the full value as the ERS have so far been untaxed.	1
The amount that counts as employment income is apportioned on a just and reasonable basis between the overseas and UK duties	1
The relevant period is the period between the day of acquisition (6 January 2022) and the day of the chargeable event (5 January 2025).	1
Simple calculation or other description given for how a just and reasonable apportionment is applied to the ERS.	1
ERSO	
The share options were granted by reason of employment and are therefore ERS subject to Part 7, Chapter 5.	1
The income tax charge occurs on exercise of the options. However, the amount that counts as employment income is apportioned on a just and reasonable basis between grant and vest.	1
Simple calculation or other description given for how a just and reasonable apportionment is applied to the ERSO.	1
In respect of ERS and ERSO, a claim for overseas workday relief may be made in respect of the non-UK workdays occurring between the 6 October 2024 and 5 January 2025.	1
PAYE	
Full PAYE on general earnings cash bonus (PSU) and no apportionment for s.26 relief unless s.690 in place	1
For ERS, ordinary shares in Delft plc are RCAs as the shares are listed on a stock exchange therefore PAYE required.	1
PAYE is due on the PSU general earnings and taxable specific income of the ERS and ERSO. Relief under s.26 for non-UK workdays not available for PAYE unless s.690 direction from HMRC has been obtained.	1
NIC	
As Max is a local employee of Ground Ltd, a liability to Class 1 NIC starts from the first day of employment	1
Class 1 NIC liability arises as the ERS and ERSO are RCA	1
In respect of the PSU, Class 1 NIC is payable on earnings of £60,000 with no relief for period of non-UK residence or non-UK workdays	1
For the ERS and ERSO, Class 1 NIC is payable by reference to the amount of earnings while the employee is insured in UK NIC. This means that Class 1 NIC is payable on an amount equal to the taxable specific income in this case.	1
No relief from Class 1 NIC is available for any non-UK workdays relieved under s.26 ('overseas workdays relief').	1
Total	20

Answer 2

During the 2024/25 UK tax year, Alex is treaty non-resident in the UK during the period 6 April 2024 to 31 December 2024, and treaty resident during the period 1 January 2025 to 5 April 2025. This means that Alex is subject to UK Income Tax on UK sourced income in the earlier period but on worldwide income in the latter period.

6 April 2024 to 31 December 2024

SurePharm UK Ltd will have a requirement to apply PAYE to Alex's earnings as they will be deemed to have a 'tax presence' in the UK. A 'tax presence' means a UK place of business such as a UK office.

SurePharm UK Ltd could apply for a section 690 direction so that only a percentage of Alex's employment income is subject to PAYE withholding. Alex anticipates spending 50% of his overall time working in the UK, so the section 690 direction could be applied for on this percentage. In the absence of a section 690, PAYE should be withheld on 100% of Alex's earnings.

Following approval from HMRC, PAYE will only be withheld on 50% of Alex's employment income, in line with the proportion of his working time spent in the UK. As Alex is not physically paid in the UK, this will be facilitated via a UK 'shadow' payroll. Alex will have an automatic UK tax return filing requirement to reconcile the actual workday split.

During this period, SurePharm UK Ltd will not need to operate National Insurance as a US Certificate of Coverage is in place.

1 January 2025 to 5 April 2025

From 1 January 2025 Alex is on a UK employment contract, meaning that Alex will be liable to National Insurance and the Certificate of Coverage will no longer be valid. This is because Alex is not normally employed by a US company meaning Article 4(2) of the UK/US Social Security Agreement will not apply.

Alex will be subject to UK tax on his worldwide income from this point, both under domestic rules and under the treaty, meaning that the section 690 directive will no longer apply and HMRC should be contacted to withdraw this.

Alex is being paid into a UK bank account meaning Alex is not eligible for overseas workday relief even if he is on the remittance basis of taxation

As Alex will be subject to both PAYE in the UK and US Federal Income Tax withholding on the same income, this may cause a cash flow issue for Alex. This is because Alex will be required to fund both taxes in real time and there will be a delay until any foreign tax credit can be claimed. SurePharm UK Ltd could consider the following to mitigate this:

Appendix 5

SurePharm UK Ltd can make an application to HMRC to use the 'net of foreign tax credit scheme', known as an Appendix 5. This allows employers to offset any mandatory non-UK Income Tax withholding against UK PAYE due from Alex's employment income in real time via the UK payroll. The credit is restricted to the lower of the overseas tax or the equivalent PAYE due.

A formal application must be made to HMRC and the Appendix 5 should not be operated until this has been approved by HMRC.

At the end of the tax year, SurePharm UK Ltd should send HMRC a statement showing Alex's full name and National Insurance number, the total payment which both PAYE and non-UK tax was operated on, the total non-UK tax deducted, and the amount of non-UK tax paid to the overseas authority.

The Appendix 5 agreement will not assist with payroll matters during the period pre-1 January 2025 as PAYE is not being withheld on non-UK sourced income due to Alex's 'treaty' non-resident status in the UK.

Loan Arrangement

SurePharm UK Ltd could alternatively enter into a loan arrangement whereby they loan Alex the funds to pay the non-UK Income Tax withholding. This can later be repaid after Alex files his UK tax return and claims a foreign tax credit for the non-UK tax withholding.

If the loan exceeds £10,000 at any point during the 2024/25 UK tax year and no interest is being charged on the loan, then interest arising at HMRC's official rate of interest will be treated as a taxable benefit-in-kind for Alex. This should be reported on his 2024/25 Form P11D and will be subject to Class 1A National Insurance.

If the company pays the tax on Alex's behalf with no intention to be repaid, this will be deemed taxable income for Alex and will be subject to PAYE and National Insurance.

In either event, Alex should claim a foreign tax credit on his UK self-assessment tax return.

Marking Guide

	Marks
<u>PAYE/NIC withholding requirements</u>	
Pre-localisation Period	
Employer has a tax presence in the UK and should apply PAYE	0.5
Subject to Income Tax only on UK sourced income	0.5
PAYE is due on 100% of employment income in first instance	0.5
'Shadow' payroll utilised as physically paid outside the UK	0.5
Identify that a section 690 could be applied for	1
Identify that an application needs to be made and that this is done on estimated % of work duties in the UK	1
Automatic s690 Tax Return filing requirement	0.5
Identify that no NIC is due when a CoC is in place	1
Post-localisation period	
Subject to tax on worldwide income	0.5
Not eligible for OWDR	0.5
Identify that this can cause a cash flow problem for Alex	0.5
Identify that an Appendix 5 agreement could be applied for	1
Explanation of purpose of Appendix 5	1
Application is needed to operate Appendix 5	0.5
Year-end App 5 employer requirements	1
Limits on foreign tax that can be deducted	0.5
Appendix 5 does not assist in pre-1 January 2025 period	0.5
Identify that the company could loan the money and recoup on a UK tax return	0.5
Beneficial loan implications – tax and Class 1A NIC	0.5
Beneficial loan implications – reportable on a form p11d	0.5
Identify that any US tax payable via a shadow payroll is subject to tax and NIC if not repaid	0.5
Identify that UK NIC is now payable	0.5
Identify that Certificate of Coverage is no longer valid	0.5
Foreign tax credit claim needed on UK tax return	0.5
TOTAL	15

Answer 3

Calculation of benefits

As there is an option of taking either a cash allowance or a company car, the Optional Remuneration Arrangement (OpRA) legislation will apply.

Annual Values

Car 1

Under OpRA, the taxable value is the higher of the amount forgone, £7,200, or the benefit in kind value:

$$£26,000 \times 24\% = £6,240$$

Therefore, £7,200 for the full year

Car 2

OpRA will not apply in this case as the car's emissions are no more than 75g/km

$$£28,000 \times 2\% = \underline{£560} \text{ for the full year}$$

Provision of charge card

Electricity is not considered a fuel under ITEPA 2003 s.149(4) when provided for a vehicle that cannot produce CO2 when driven, therefore a fuel benefit will not arise on the provision of electricity.

Furthermore, a charge card provided in connection with a company car is exempt under ITEPA 2003 s.239(4).

Accommodation

The taxable value is the higher of annual value or the rent paid by employer.

As there is a lease premium of less than 10 years, this is treated as additional rent for each year of lease.

Divide lease premium over 8 years	£11,250
Add annual rent of £4,800	£16,050
Higher of annual value of £2,000 or figure above	£16,050
Apportioned between 3 employees on just and reasonable basis (divide by 3)	£5,350
Less employee contributions	(£4,800)
Annual taxable value	<u>£550</u>

Structural alterations are not included within the benefit value under statute.

Furnishings

These are treated as a separate benefit. As there is no transfer in ownership, the benefit value is deemed to be 20% of the market value when first made available to the employees, not when John moved in.

$$£3,000 \times 20\% = £600.$$

An apportionment is available for shared use on a just and reasonable basis, as above: £600 / 3 = £200

Loan

The payment of £1,500 to the dental surgery will not be treated as provision for dental treatment as Cactus Ltd are not contracting with the surgery for the provision of treatment, they are instead meeting John's costs on his behalf.

A benefit in kind may however still arise as Cactus Ltd are providing John with an employment-related loan. However, as the total amount loaned is less than £10,000, no benefit will arise.

Benefits included in the payroll

On the April FPS, the following monthly benefit values should have been reported on the FPS for PAYE purposes but not Class 1A NIC:

April FPS onwards	
Car benefit value: (£7,200 / 12)	£600
Furnishings benefit value: (£200 / 12)	£17

Due to the change in company car, the car benefit value must change from July:

Update to car benefit calculation from July FPS onwards	
Car 1 available 3 months in tax year (£7,200 / 12 x 3)	£1,800
Car 2 available 9 months in tax year (£560 / 12 x 9)	£420
Deduct amounts already subjected to PAYE in tax year (3 x £600)	£1,800
Total	£420
Car benefit value: divide by number of tax months remaining in tax year (9)	£47

End of year obligations for Cactus Ltd

The accommodation benefit must still be reported on a form P11D, as it cannot be a payrolled benefit. A copy of the P11D must be provided to John by 6 July 2026.

The payrolled benefits are liable to Class 1A NIC, which is not reported or remitted via the payroll. A P11D(b) must be submitted by 6 July 2026 reporting the taxable value of benefits provided to all employees and Class 1A NIC due, which is payable by 19 July 2026 (or 22 July if paying electronically).

Cactus Ltd must provide John with an annual summary of all payrolled benefits and their values by 31 May 2026.

As the charge card is an exempt benefit, there is no requirement to report.

Similarly, as the employment related loan does not give rise to a taxable benefit, there is no requirement to report.

National minimum wage

John is entitled to £11.44 p/h as he was 21 or over at the beginning of pay reference period (i.e. 1 April to 30 April).

John is salaried for NMW purposes as:

- Contract hours are stated
- Paid equally throughout year
- Paid monthly

Cactus Ltd must consider contracted hours over the calculation year then divide per pay reference periods (2040/12 = 170 hours). The additional 10 hours worked are not included, unless John exceeds the cumulative total of 2,040 hours over the year. As April is the first month of the contracted hours period, this will not be the case.

To calculate earnings for NMW purposes:

- The pension salary sacrifice is deducted.
- Accommodation benefit is added but at a fixed offset value. The rent paid must be compared to the accommodation offset. If the rent paid is greater, the difference is deducted. If it is lower, the difference is added, but only up to the offset value itself.
- The monthly loan deductions will not impact on pay for NMW purposes
- The other benefits are not included.

Annual salary		£24,000
Pension salary sacrifice adjustment:		
Qualifying earnings between upper limit of £50,270 and lower limit of £6,240	£17,760	
4% of qualifying earnings to be sacrificed		(£710)
		£23,290
Monthly (divide by 12)		£1,941
Accommodation adjustment for April:		
Offset value (30 x £9.99)	£300	

Rent paid	£400	
Deduction from salary		(£100)
April pay for NMW purposes		£1,841
Entitled under NMW (£11.44 x 170 hours)		£1,945
Shortfall		£104

Cactus Ltd must pay the shortfall as soon as possible to John, subject to PAYE and Class 1 NIC. Cactus Ltd should also review other pay periods for the actual hours worked over the calculation year on a cumulative basis.

Cactus Ltd would also be advised to check any other employees is a similar situation to John.

Marking guide

	Marks
<i>Cars</i>	
Car 1 higher of amount foregone and normal calculation: £7,200	0.5
Car 2 calculation £560	0.5
Car 2 Reason OpRA does not apply	0.5
Provision of electricity not a fuel benefit	0.5
Provision of charge card in connection with a company car an exempt benefit	0.5
<i>Accommodation</i>	
Higher of annual value of rents paid less rent paid	0.5
Lease premium added to rent: £11,250 plus just and reasonable apportionment	0.5
Taxable value £550	0.5
Kitchen upgrade does not impact on benefit	0.5
<i>Furnishings</i>	
20% of market value plus just and reasonable apportionment: £200	1
Market value based on value when first made available to employees, not just the employee receiving the benefit	0.5
<i>Loan</i>	
Payment of £1,500 to surgery will not be deemed provision of dental treatment with reason	1
Will be deemed an employment related loan, however no benefit will arise as less than £10,000	1
<i>Payrolling benefits – April</i>	
1/12 th of car and furnishings benefit reported via FPS for PAYE but not Class 1A NIC	1
Accommodation benefit cannot be payrolled	0.5
<i>Payrolling benefits – July</i>	
Car benefit calculation updated to account for new car: £47 to reported from July onwards	1.5
End of year obligations	
P11D(b) and Class 1A NIC due by 6 July 2026 and 19 th July 2026 (22 nd if paying electronically) respectively	1
Annual summary required by 31 May 2026 outlining benefits payrolled to John	1
No requirement to report charge card or loan	1
National Minimum Wage	
John entitled to £11.44 from 1 April 2025	0.5
Salaried for NMW purposes with reasons and calculation of hours in April	1.5
How pension and rent paid impacts on pay for NMW purposes with calculation	1.5
Loan deductions do not impact on NMW	0.5
Total NMW entitlement in April: £1,944.80	0.5
Shortfall for April: £103.80	0.5
Recommended steps for employer upon discovering shortfall	1
Total	20

Answer 4

UK PAYE Obligations

As Albert spends more than 183 days in the UK per tax year, he will be considered as UK tax resident under the Statutory Residence Test. UK tax residents are subject to UK tax on their worldwide income and gains. For a UK employer, there would be a requirement to declare Albert's employment income on a monthly basis via a UK payroll and subject it to PAYE tax. However there is a territorial limitation to PAYE which restricts it to cases where the employer has a 'tax presence' in the UK. As such, when considering whether Vasquez SA (an overseas employer) has a requirement to operate PAYE, we must determine whether they have a 'tax presence' in the UK.

HMRC regards a branch, agency or representative office in the UK as establishing a tax presence. HMRC do not regard an overseas employer as having a UK tax presence simply because there are employees in the UK, and instead something similar to a branch, agency, office or establishment must exist in the UK. This includes a UK address that HMRC can use to contact the employer and to send enforcement notices, if required. An individual's personal residence is not considered as a 'tax presence' in the UK even if the employee performs their work duties from this address.

As such, Vasquez SA should not have a 'tax presence' in the UK and therefore there is no requirement for Vasquez to withhold PAYE tax from Albert. Albert should declare his UK taxable income on his self-assessment UK tax return. To the extent that his income is also taxable in Spain, a foreign tax credit should be available in the UK to mitigate double taxation which should also be claimed on his self-assessment UK tax return.

Social Security

When considering social security, Albert will be subject to UK National Insurance under UK legislation as he lives and is 'gainfully employed' in the UK. We should then consider the current agreement between the UK and the EU to determine whether this domestic requirement is overridden.

Under this agreement, Albert will be considered as a 'multistate worker' as he exercises his work duties in at least 2 EU member states including the UK. This is defined as at least 5% of his working time per member state which is met in the UK and Spain based on the fact pattern provided.

Multistate workers are subject to social security in the country they are habitually resident if they carry out a substantial part of their work activity in that country (at least 25%). Habitual residence is not defined in legislation however it is viewed as a place in which the individual has a settled and regular mode of life, and where the individual lives apart from temporary or occasional absences.

As Albert has lived in the UK for his whole life, has a settled mode of life here, and is only absent for temporary work purposes, he should be viewed as being habitually resident in the UK. In addition, as he spends at least 25% of his working time in the UK, he will be subject to UK NIC.

Under the EU Withdrawal Agreement, social security is only payable in one member state at a time and therefore no Spanish social security should be due, and an A1 Certificate should be obtained from HMRC to certify this.

Typically, there is a requirement for the employer to have a presence or place of business in the UK in order to be the secondary contributor liable to employer's social security however this is overridden where the overseas employer is based in an EU country. As Vasquez SA are an EU employer, they should register as a secondary contributor in the UK and be responsible for employer's national insurance relating to Albert (Class 1 Secondary NIC and Class 1A NIC) where applicable.

Vasquez SA should apply for and administer a National Insurance scheme as the only withholding requirement is primary and secondary NIC. This is a company obligation requiring Vasquez SA to report Albert's gross income subject to UK NIC by the 19th of each month and pay the corresponding Class 1 Primary and Secondary NIC to HMRC by the 22nd of the month if paying electronically.

Vasquez SA should be eligible for the Employment Allowance which can reduce their secondary NIC liability by up to a maximum of £5,000 per year.

Marking guide

Response	Marks
This question tests the candidate's understanding of the reporting requirements for overseas employers and the national insurance rules for globally mobile individuals.	
<u>UK PAYE Obligations</u>	
PAYE tax has a territorial limitation and is only applicable if the employer has a 'tax presence' in the UK.	1.0
Define tax presence as office, agency, establishment etc.	1.0
Albert's home address not sufficient to be a tax presence.	1.0
Conclude that PAYE tax is not required.	1.0
UK tax should instead be paid via self-assessment.	0.5
Although the tax could be paid voluntarily via PAYE	0.5
<u>Social Security</u>	
Liable to UK NIC under UK legislation as gainfully employed in the UK.	1.0
Define multistate worker and apply to Albert.	1.0
NIC due in country of habitual residence if more than 25% of working time spent there.	1.0
Explain habitual residence and conclude this is the UK.	1.0
Recommend A1 Certificate obtained in the UK.	1.0
Employer will only be a secondary contributor if they have a presence or place of business in the UK.	1.0
Overridden if the employer is from the EU in which case employer should register as secondary contributor.	1.0
Employer should operate a NIC only scheme to make the payments to HMRC.	1.0
Deadlines for NIC only scheme	1.0
Eligible for the Employment Allowance	1.0
BONUS – Individual only subject to social security in one jurisdiction under EU agreement	1.0 (B)
<u>Total</u>	<u>15</u>

Answer 5

Treaty Position

As Amelia is tax resident in the UK and Genovia, we must refer to the DTA to determine which country she is 'treaty resident' in. As the UK/Genovia DTA follows the OECD model convention, the residence article is article 4 which considers their homes and 'centre of vital interests'

When determining where an individual has a home, the OECD commentary states that 'this home must be permanent, that is to say, the individual must have arranged and retained it for his permanent use as opposed to staying at a particular place under such conditions that it is evident that the stay is intended to be of short duration'. Clearly Amelia's family home will meet the definition of a home per the OECD's model convention.

The OECD model convention does not set out a minimum length of time that a home has to be available in order for it to be a permanent home however we would expect that the Genovian property, which is available to Amelia for the duration of her 2-year assignment, would meet the conditions to be considered as a permanent home.

As Amelia has a permanent home in both countries, we must determine in which country her centre of vital interests lie. This is determined with regard to the location of her family, social relations, occupations, political, cultural or other activities etc. and must be examined as a whole. Amelia does carry out the majority of her employment duties in Genovia however she retains an element of her employment duties in the UK along with her employment contract, family, social, and personal interests. As such, she should be considered as treaty resident in the UK.

As a result, Amelia's employment income will be taxable in Genovia only to the extent that she exercises her work duties in Genovia (80% of her income). She will be taxable in the UK on her worldwide income however a foreign tax credit will be available in the UK for tax charged in Genovia in accordance with the treaty to mitigate double taxation.

Appendix 5 Foreign Tax Credit Calculation

Amelia's compensation package and doubly taxed income is as follows:

Compensation Item	2025/26 Secondment Total	Genovian Taxable Amount	Doubly Taxed Income
Salary	£60,000	£48,000	£48,000
Private Medical Insurance	£3,750	£3,000	£3,000
Bonus	£24,000	£9,600	£9,600*
Accommodation	£27,000	£21,600	£0**

The doubly taxed income relating to Amelia's salary and PMI is simply 80% of the annual figures as she exercises 80% of her working time in Genovia.

*The doubly taxed income relating to Amelia's bonus is the amount that Genovia are eligible to tax i.e. 80% of the portion relating to the period she is seconded to Genovia (July 2025 – December 2025):

$$£24,000 \times 6 \text{ months} / 12 \text{ months} \times 80\% = £9,600$$

**If Amelia's secondment to Genovia is for less than 24 months, Genovia could be considered as a 'temporary workplace' under S339 ITEPA 2003. As such, accommodation costs incurred by her employer are not taxable in the UK and therefore cannot be included in the doubly taxed income when calculating the foreign tax credit relief available. Similarly, the private medical benefit could be exempt from UK tax if incurred solely in relation to her overseas secondment.

The maximum foreign tax credit available is therefore the doubly taxed income multiplied by the Genovian effective tax rate (43%):

$$£60,600 \times 43\% = £26,058$$

We must then consider whether a restriction is required to the foreign tax credit with reference to HMRC's guidance under HS263 as the FTC cannot exceed the UK tax due on the same income however this will typically take place on a self-assessment tax return.

The foreign tax credit is typically claimed via Amelia's self-assessment tax return however her employer may claim real time foreign tax credit relief via an Appendix 5 Net of Foreign Tax scheme.

The Appendix 5 scheme applies to UK employers who are required to deduct foreign tax from payments being made to employees working abroad while continuing to deduct UK PAYE in line with the employee's tax code.

The employer then gives credit for foreign tax actually payable in the overseas jurisdiction. The credit is restricted to the amount of UK PAYE due on the employee's wages and any net UK PAYE balance should be reported and paid to HMRC by the normal payment date.

At the end of the tax year, the employer must send a statement to HMRC including the name and NINO of each employee included in the arrangement, the total income that PAYE and foreign tax was operated on, the total foreign tax deducted which was offset against UK PAYE and the amount of foreign tax paid to the overseas authority.

Marking guide

Response	Marks
<u>Treaty Analysis</u>	
Define permanent home and conclude that the UK property is a home	1.0
Conclude that the Genovian property is a home despite it being available for two years	1.0
Define Centre Of Vital Interests (COVI)	1.0
Weigh up the factors for both countries but ultimately conclude COVI is in UK	1.0
Explain that her worldwide income is taxable in the UK and double taxation relief should be obtained via a foreign tax credit	1.0
<u>FTC Calculation</u>	
Calculate DTI on salary, PMI	1.0
Calculate DTI on bonus by removing the pre-assignment portion	1.0
Calculate the FTC on the DTI using Genovian tax rate	1.0
Consideration should be given to limiting the FTC to the UK tax due on the DTI calculated by comparing total UK tax due on all income and total UK tax due on income excluding the DTI	1.0
consider possible exemption for accommodation under TWR or PMI for overseas secondment	1.0
<u>Miscellaneous</u>	
FTC typically claimed via self-assessment however can be obtained via Appendix 5	1.0
<u>Appendix 5 applicable where employers are required to deduct foreign tax from payments made to employees who are also subject to UK PAYE withholding</u>	1.0
<u>Calculate FTC in real time based on Genovian withholding and apply via PAYE</u>	1.0
<u>Take the lower of the UK tax and Genovian tax due with the residual PAYE balance payable as usual</u>	1.0
<u>Year-end statement sent to HMRC by employer</u>	1.0
<u>Total</u>	<u>15</u>

Answer 6

CIS and The Various Subcontracts

Payments for construction operations under a construction contract are within the scope of CIS.

The contract with A LLP is outside the scope of CIS as the professional work of architects is not considered a construction operation.

The contract with B Ltd is within the scope of construction operations as scaffolding is preparatory to the construction work.

The services provided by C Ltd include alteration and demolition works. Therefore, the whole contract is regarded as construction operations and within CIS, regardless of what other services will be provided under the contract.

Installation of security systems is not a construction operation, however as this service is mixed within a contract that contains construction operations; the installation of power supply systems, the whole contract with D Ltd is within CIS. This is despite a separate payment being due for the non-construction operation work.

Contractor within CIS

Propman Ltd's activity to date as a management agent is unlikely to deem them to be a contractor within CIS as it does not enter into contracts with subcontractors. Instead, it sources subcontractors for its clients and the contracts for any construction operations are between the subcontractor and the client.

Propman Ltd will become a deemed contractor, once its cumulative expenditure on construction operations in a rolling 12-month period exceeds £3m. This is expected to occur once it pays C Ltd the third invoice on 1 May 2026.

However, because during the project's duration Propman Ltd's core business will become one that primarily includes construction operations, it may become a mainstream contractor. Therefore, Propman Ltd should consider registering as a contractor for CIS before the first payment is made to B Ltd.

Operating CIS

Propman Ltd should operate CIS withholding on payments for the construction operation contracts and remit this monthly to HMRC by the 19th following the end of the tax month the payments were made (or the 22nd if paying electronically).

CIS300 returns should be submitted to HMRC by the 19th following the end of each tax month to report amounts paid to subcontractors and CIS withheld in that month. If no payments are made then a nil return should be submitted.

A statement should be provided to each subcontractor outlining the amount withheld within that tax month by the same deadline, along with details of payments made and the costs of materials.

The withholding rate depends on the status of the subcontractor. The status of each business needs to be verified with HMRC online before payment is made:

- If the subcontractor is not registered for CIS the rate is 30%
- If the subcontractor is registered, the rate is 20%
- A 0% rate will apply if the subcontractor has gross payment status.

CIS should be withheld on amounts net of VAT, cost of materials and plant and machinery. However, if the subcontractor:

- Owns the plant and machinery, no deduction should be given. Therefore, no deduction should be given if B Ltd includes a cost for scaffolding
- Does not incur the cost of materials directly, no deduction should be given. Where material costs are incurred by the subcontractors of C Ltd, no deduction should be given by Propman Ltd if costs are passed on to them.

Once verified, the withholding due on payment of subsequent invoices will only require re-verification of status if no payments have been made in the current or preceding two tax years to that business. If status does change within this window, HMRC will notify Propman Ltd.

VAT

Propman Ltd is required to account for VAT on behalf of the subcontractors under the reverse charge mechanism. However, Propman Ltd is deemed to be the end user of the subcontractors' services, as it is providing a completed building to Landlord PLC and not making an onward supply of the construction services.

Therefore, Propman Ltd could issue written confirmation to the subcontractors that they are the end user. This means the subcontractors would have to charge VAT on their invoices rather than Propman Ltd do the reverse charging on their VAT returns.

Post project

Once the project is completed, Propman Ltd will cease to be a mainstream contractor unless it decides to undertake another such conversion project. It will, however, still be a deemed contractor until such time as its spend on construction operations falls below £3m in a preceding 12-month period. Consideration can then be given to deregister as a contractor or request a temporary stop if it will only be a temporary cessation of construction operations.

Marking guide

	Marks
<i>CIS and The Various Subcontracts</i>	
General scope for CIS	0.5
A LLP not within CIS with reason	0.5
B Ltd within CIS with reason	0.5
C Ltd & D Ltd all services within CIS with reason (mixed contract)	1
<i>Contractor within CIS</i>	
Pre project, business activity as a management agent not within CIS as mainstream nor deemed contractor with reasons	1
Deemed contractor from 1 May 2026 with reason	1
During project, business activity may change to that of a mainstream contractor, with reason	1
Consider registering as a contractor before first payment made to B Ltd	0.5
<i>Operating CIS</i>	
CIS withholding on payments for construction operation contracts reportable to HMRC on CIS300 by 19 th (or 22 nd if paying electronically)	1
Details of payments made to be reported on return along with a statement to each subcontractor	1
Outline the rates of CIS and verification process	1
CIS withheld on amounts net of VAT, cost of materials and plant and machinery	1
If subcontractor owns the plant and machinery then no deduction allowed	0.5
If subcontractor does not incur cost of materials directly, no deduction allowed	0.5
Re-verification requirements	1
<i>VAT</i>	
Outline reverse charge VAT mechanism and reasons why it won't apply on invoices to Propman Ltd from the subcontractors	1
Written confirmation must be given to subcontractors that they are the end user	0.5
<i>Post project</i>	
Post project, will cease to be a mainstream contractor and once construction operation spend falls below £3m in preceding 12-month period can consider deregistration	1
Nil returns required for months no payments are made in respect of construction operations	0.5
Total	15.0