

The Chartered Institute of Taxation

Advanced Technical

Human Capital Taxes

November 2022

Suggested solutions

Answer 1

PENP

As Mr Moody has not served his full notice period, we must consider whether the Post Employment Notice Period ("PENP") regime applies to the termination payments. The PENP statutory formula is: $((BP \times D)/P) - T$.

BP is the salary of £18,333 plus the salary sacrifice of £2,000 added back = £20,333. The commission and benefits in kind are not included.

As the last pay period before leaving was a whole month, Mr Moody is paid in equal monthly instalments, the contractual notice period is in whole months and the period between his actual termination date and the date on which his notice period would have expired is in whole months, a simplified calculation by month applies. Consequently, P becomes 1 (month) and D becomes 3 (months). T is any contractual PILON but, in this case, none was paid.

The PENP is therefore £60,999.

The PENP is subject to PAYE and Class 1 NIC, calculated on a weekly earnings basis as an irregular payment made post cessation of employment.

Compensation for loss of office

The payment for compensation for loss of office is reduced by the PENP deeming provisions to £839,001 (£900,000 - £60,999).

The payment in this particular case is intended to compensate the employee for a loss of future earnings arising as a result of the alleged constructive dismissal. It should therefore be assessable under s403 ITEPA 2003 and not as general earnings. Whether or not Mr Moody decides to continue working or take early retirement should not bring the employer financed retirement benefit scheme legislation into effect as the intention of the payment is to compensate for dismissal (and the claims arising thereon).

As the £30,000 tax and NIC free amount must be aggregated in respect of different employments with the same employer, then only £18,000 of the loss of office payment can be paid tax and NIC free in this instance (£30,000 - £12,000). The excess (£821,001) is subject to tax and Class 1A NIC which must be paid 14-17 days after the tax month of payment.

Injury to feeling payment

The injury to feelings payment is compensation for conduct arising during the course of the employment. As a result, the payment is not made on or in respect of the termination of the employee's employment and therefore is not assessable under Part 6 Chapter 3 ITEPA 2003 and, following the precedent of *Walker v Adams* may be paid tax and NIC free.

Restrictive covenants

As the clauses in the severance agreement are simply restating restrictive covenants included in and compensated for in the employment contract, none of the severance agreement constitutes a payment for a restrictive undertaking assessable under s225 ITEPA 2003.

Accrued Holiday Pay

This is a contractual payment and therefore will be subject to income tax and Class 1 NIC.

PAYE

[The tax code to be used should be 0T M1 as a payment post termination and issuance of Form P45 – bonus ½ mark].

NIC calculation

Class 1 NIC should be calculated on the basis of a weekly earnings period.

Apprenticeship Levy

The apprenticeship levy is payable in respect of earnings attributable to Class 1 NIC only. It will therefore only apply to the PENP and accrued holiday pay.

Calculation

		£		£
<i>Amount subject to tax</i>				
PENP				60,999
Compensation for loss of office				821,001
Accrued holiday pay				1,750
				883,750
Subject to basic rate	£37,700/12 =	3,142.00	@ 20% =	629
Subject to higher rate band	£112,300/12 =	9,358.00	@ 40% =	3,743
Subject to additional rate		871,250	@ 45% =	
Total PAYE				
<i>Amount subject to Class 1 NIC</i>				
PENP				60,999
Accrued Holiday Pay				1,750.00
				XXX
Subject to main rate	£967-£184 =	783	@ 12% =	94
Subject to 2% rate	£62,749 - £967 =	XXX	@ 2% =	XXX
Primary Class 1 NIC				XXX
Secondary Class 1 NIC	£62,749 - £170 =	XXX	@ 13.8% =	XXX
Apprenticeship Levy		62,749	@ 0.5% =	305
<i>Class 1A NIC</i>				
Amount liable to Class 1A NIC		821,001	@ 13.8% =	113,298

MARKING GUIDE

TOPIC	MARKS
<p><i>PENP</i></p> <p>PENP applies as a result of notice not being served BP excludes benefits BP excludes commission BP requires add back of salary sacrifice Simplified PENP calculation for whole number of months is in point PENP subject to PAYE and Class 1 NIC and Apprenticeship Levy</p>	<p>1 $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$ 1 1</p>
<p><i>Compensation for loss of office</i></p> <p>Reduced by PENP Eligible for s403 ITEPA 2003 treatment £30,000 tax free applies on aggregate to different employments with same employers and reduce amount by previous payment EFRBS not in point and explanation Subject to PAYE and Class 1A NIC Class 1A NIC on a real time basis</p>	<p>$\frac{1}{2}$ $\frac{1}{2}$ 1 1 $\frac{1}{2}$ 1</p>
<p><i>Injury for feelings payment</i></p> <p>Not linked to termination of employment and therefore Part 6 Chapter 3 ITEPA 2003 not in point (s406 ITEPA 2003 not relevant) Tax and NIC free treatment</p>	<p>1 $\frac{1}{2}$</p>
<p><i>Compensation for restrictive undertakings</i></p> <p>Only restating the contract so s225 ITEPA 2003 not in point</p>	<p>1</p>
<p><i>Accrued holiday pay</i></p> <p>Contractual payment so subject to PAYE and Class 1 NIC</p>	<p>$\frac{1}{2}$</p>
<p><i>PAYE and NIC</i></p> <p>Correct use of tax bands and rates for PAYE Weekly earnings basis applies for NIC correct use of bands and rates for employee's NIC and employer's NIC Apprenticeship Levy applies to the payment subject to Class 1 NIC (ie PENP and accrued holiday pay)</p>	<p>1 $\frac{1}{2}$ 1 $\frac{1}{2}$</p>
<p>TOTAL</p>	<p>15</p>

Answer 2

John and Pete can be regarded as seafarers and will qualify for seafarers' earnings deduction (SED) provided:

1. They work at least partly overseas and their time in the UK amounts to no more than 50% over a 365-day period.
2. no period in the UK exceeds 183 days.

		Nights Overseas	Nights UK	Cumulative UK	Cumulative Total	Is UK more than 50%
First period of absence from UK	(when leaves UK dock)	25				
Remaining period on ship or overseas	6+18+5+20+8+20+5+18+6+25	131				
Total	Outside the UK	156	0	0	156	No
UK workdays	At UK office		2			
UK holiday			30			
UK preparation	At UK office		22			
Total	In UK			54	210	
Repeat period overseas		156		54	366	No
Repeat UK period			54	108	420	

Pete's previous absences from the UK are ignored due to the change of employment. Any periods abroad with the armed forces are also ignored.

Therefore, providing C Guard Ltd can ensure that John and Pete spend sufficient time working onboard the ships, they will be exempt from UK tax and no tax gross up is required. As the SED does not commence until they leave the UK, the first 22 nights of the new employment will be liable to UK tax. However, this would equate to less than their personal allowance for the period to the end of the tax year.

[However, John and Pete will need to obtain NT PAYE codes, otherwise PAYE will be deducted and they will have to claim the tax back on a self-assessment tax return at the end of the year. The claim should be made using Form R44. HMRC may not accept a claim for John until he has completed his first SED qualifying period. If Pete had an NT code with his previous employment, then he will need to notify HMRC and request the NT code is transferred to C Guard Ltd. – bonus marks available]

The SED will also cover any taxable benefits. However, as the medical cover is for work overseas, this is exempt as a benefit in kind under s325 ITEPA 2003 anyway.

Both employees will be liable to Class 1 primary NIC.

£0 to £9,568	0%	£0
£9,569 to £50,270	12%	£4,884
£50,271 to £60,000	2%	<u>£195</u>
Total		£5,079

Answer 3

Provision of office equipment

This should not be chargeable to income tax or NIC under s316 ITEPA 2003 provided the following conditions are met:

1. The equipment is provided by the employer;
2. Any private use by the employee or member of their household is not significant; and
3. The sole purpose of provision is to enable the employee to perform the duties of their employment.

HMRC does not expect employers to monitor private use. It would be prudent, however, to ensure that the intended use and private use restriction is set out within the employee documentation.

AMH LLP should note that the exemption only applies to provision of a company-owned asset. If ownership is to be transferred to the employee for less than the market value of the asset when first provided to employees, this will be a benefit in kind incurring Income Tax and NIC.

Reimbursement of home broadband

As this is being reimbursed, the exemption under s316 does not apply. S336 ITEPA 2003 would not apply as there is duality of purpose.

The broadband costs could be exempt under s316A ITEPA 2003, if the employee works under an arrangement in which they regularly perform some or all of the duties of their employment from home. This exemption would not be available for the office-based employees. Therefore, any expenses reimbursed to this group would be subject to income tax and NIC.

For the other two groups of employees, the reimbursement can meet the terms of this exemption if it is an additional expense of homeworking. If the employees already have a broadband connection at home, the exemption will not apply. This makes it unlikely that the benefit will qualify for exemption for many employees.

Any taxable reimbursement is subject to PAYE and Class 1 NIC in the first instance. However, the employer may choose to pick up the tax on behalf of the employees via a PAYE Settlement Agreement ("PSA"). Note that an alternative to reimbursing qualifying expenditure is to pay an allowance of up to £6 per week.

Reimbursement of home to office travel

For the home-based employees, given each trip to the office is for a self-contained purpose and the employees spend less than 40% of their working time there, the office should constitute a temporary workplace. Any expenses reimbursed by the employer to the employee should not be taxable under s338-339 ITEPA 2003.

For the hybrid workers, the work performed in the office is substantively the same as that performed at home. Hence it is unlikely that the "limited duration" or some other "temporary purpose" tests will be met. As a result, the office should be considered a permanent workplace and it will not be possible to obtain a tax exemption.

However, as the home is also these employees' workplace, it may be possible to obtain tax relief under the provisions for "travel between two workplaces" at s337 ITEPA 2003.

It is important to note, however, that the courts recognise that home has a dual identity. Therefore, in order to determine whether the home constitutes a permanent workplace on the days the employees travel into the office, they would look to understand whether the necessity for travelling into the office was dictated by the nature and terms of the job. In practical terms, a distinction can be drawn between any home to office travel on days when the employee is normally expected to work from home and travel between home to office on days when the employee is expected to travel to the

office. The former should be eligible for relief under s337 ITEPA 2003 whilst the latter would be subject to income tax and NIC. This could be included in a PSA.

Reimbursed meals

These are unlikely to meet the free or subsidised meals exemption at s317 ITEPA 2003 for a number of reasons:

- as a reimbursement, the employer is settling the employees' debt rather than providing a meal; and
- it is not clear whether the meals will be delivered on site or at the employer's canteen.

The trivial benefits exemption is also unlikely to apply as HMRC regards reimbursement as being equivalent to "money" thereby failing Condition A of s323A ITEPA 2003. Besides, each meal reimbursement across the course of a year for a single employee is likely to be regarded as linked in determining whether the benefit value is in excess of the £50 limit.

On those occasions when trips into the office are regarded as travel to a temporary workplace the reimbursement of meals may qualify as subsistence and can be made tax and NIC free.

Given the narrowness of this exemption, it may be worth the employer considering whether they can directly contract and pay for the meals with a vendor and have them delivered on site to meet the exemption at s317 ITEPA 2003, This has a broader base of eligible employees in their situation.

Office works

As AMH LLP is spending more than £3m on construction operations over a 12-month period it will be regarded as a "deemed contractor" for the purposes of the Construction Industry Scheme. Once it has met the limit, it will be required to verify the CIS status of its subcontractors and, depending on the outcome of that verification process, operate CIS withholding. It will also be required to include the expenditure paid to subcontractors on a monthly CIS return.

However, as £2.5m of the total spend is for premises used in its own trade and therefore AMH LLP is exempted from the CIS compliance obligations under the exclusion in reg 22 Income Tax (CIS) Regulations 2005. This exemption is not available for the £1m of expenditure to be used on office space to be sublet.

[If the landlord falls within CIS, AAMH LLP will also be a CIS subcontractor as a result of the payment from the landlord to carry out the landlord's own works. If AMH LLP is not registered as a subcontractor with HMRC, it will suffer 30% withholding on the payments received from the landlord. As a result, AMH LLP should investigate whether it is possible to register for gross payment status (recognising that there are certain tests that must be met regarding turnover, compliance, etc.). – bonus marks]

If this is not possible or registration for net payment status (at 20%) is the best that can be achieved, then the CIS withheld can in the first instance be offset against the monthly PAYE, NIC and CIS withholding remittances owed under AMH LLP's own PAYE reference.

MARKING GUIDE

TOPIC	MARKS
<p><i>Provision of office equipment</i></p> <ul style="list-style-type: none"> ● s316 ITEPA 2003 in point; ● Private use not significant; ● Sole purpose of provision for business use; ● Include in expense policy or employee handbook; ● Additional tax charge on transfer of asset; ● Based on market value when first provided to employees (used or depreciating asset rule). 	<p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1/2</p>
<p><i>Reimbursement of broadband</i></p> <ul style="list-style-type: none"> ● Why s316 ITEPA 2003 doesn't apply ● Why s336 ITEPA 2003 doesn't apply; ● Why s316A ITEPA 2003 doesn't apply to the office-based employees; ● Why s316A ITEPA 2003 can apply to the other two employee populations; ● PAYE and Class 1 NIC applies to reimbursements; ● A PAYE Settlement Agreement can be used ● £6 per week allowance can be paid in lieu 	<p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1</p> <p>1/2</p> <p>1/2</p>
<p><i>Reimbursement of home to office travel</i></p> <ul style="list-style-type: none"> ● Home based employees – application of temporary purpose test ● Application of 40% rule and therefore non taxable ● Hybrid workers limited duration or temporary purpose tests not met and therefore taxable; ● Relief may be available under s337 ITEPA 2003; ● Dual character of home ● Relief only available on scheduled home working day. 	<p>1</p> <p>1</p> <p>1</p> <p>1/2</p> <p>1/2</p> <p>1/2</p>
<p><i>Subsidised meals</i></p> <ul style="list-style-type: none"> ● S317 ITEPA 2003 not in point and why; ● s323A ITEPA 2003 not in point and why; ● Explanation of how better outcome achieved; ● Subsistence and travel interaction 	<p>1</p> <p>1</p> <p>1</p> <p>1/2</p>
<p><i>Office works</i></p> <ul style="list-style-type: none"> ● Application of deemed contractor rules. ● Application of reg 22 exemption; ● Outline verification, withholding and reporting requirements; ● 	<p>2</p> <p>1</p> <p>2</p>
TOTAL	20

Answer 4

On 1 January 2017, Andrea acquired shares, which were not forfeitable, however, the restrictions placed prevented Andrea from selling or transferring the shares. The value is $10,000 \times £15 \times 90\% = £135,000$, as the restricted value applies.

As the shares were restricted, there would have been no income tax and NIC charge under s62 ITEPA 2003 at acquisition. As there were no elections entered into to disregard the restrictions for tax and NIC purposes, there was also no tax charge at acquisition under Part 7 Chapter 2 ITEPA 2003.

However, as part of the consideration has been deferred, the regime for shares acquired at an undervalue at Part 7 Chapter 3C ITEPA 2003 is in point. This treats the difference between the restricted market value and the amount paid as an employment related loan, discharged at the date the consideration is paid as follows.

Value of the loan

$$10,000 \times £15 \times 90\% = £135,000 - £10,000 = £125,000$$

2016/17

Benefit in kind: $£125,000 \times 3/12 \times 3\% = £938$ reported on Form P11D

Income tax thereon: $45\% \times £938 = £422$

Class 1A NIC thereon: $13.8\% \times £938 = £129$

2017/18

Benefit in kind: $£125,000 \times 2.5\% = £3,125$

Income tax thereon: $45\% \times £3,125 = £1,406$

Class 1A NIC thereon: $13.8\% \times £3,125 = £431$

2018/19

Benefit in kind: $£125,000 \times 2.5\% = £3,125$

Income tax thereon: $45\% \times £3,125 = £1,406$

Class 1A NIC thereon: $13.8\% \times £3,125 = £431$

2019/20

Benefit in kind: $£125,000 \times 9/12 \times 2.5\% = £2,344$

Income tax thereon: $45\% \times £2,344 = £1,055$

Class 1A NIC thereon: $13.8\% \times £2,344 = £323$

On the 3-year anniversary of the date of acquisition, the deferred purchase price is paid extinguishing the notional loan.

Note that the loan has been calculated using the normal (averaging) method. HMRC or the employee (but not the employer) can elect for the precise method to be used. There is no benefit to the employee however, in making this election, given the value of the notional loan remained constant throughout its term and there is a further benefit in that the averaging method only counts as a benefit in kind, whole tax months in which the loan is outstanding.

At the end of the 5-year period there is a further chargeable event based on the increase in value of the "initial uncharged proportion" (i.e., $10\% \times £35 \times 10,000 = £35,000$).

This results in:

- Income Tax of $£35,000 \times 45\% = £15,750$,
- Primary Class 1 NIC of $£35,000 \times 2\% = £700$, and

Secondary Class 1 NIC of $£35,000 \times 13.8\% = £4,830$

The bonds are loan stock acquired by reason of the employment and are therefore treated as employment related securities for tax purposes.

The right of conversion into a class of securities of a different description (bonds into equity in this case) means that they are specifically treated as convertible securities under Part 7 Chapter 3 ITEPA 2003.

As no consideration was paid at the time of their award, there is an Income Tax charge in 2020/21 based on the value of the bonds calculated as if they were not convertible (i.e., $£50,000$). This results in an income tax charge of $£22,500$ ($£50,000 \times 45\%$) and primary Class 1 NIC of $£1,000$ ($£50,000 \times 2\%$) and secondary Class 1 NIC of $£6,900$ ($£50,000 \times 13.8\%$).

There is a subsequent chargeable event on conversion calculated by reference to the market value of the shares acquired on conversion less the market value of the bonds at the date of conversion calculated as if they are not convertible (i.e., $£140,000 - £80,000 = £60,000$).

This results in a tax charge of $£27,000$ ($£60,000 \times 45\%$), a primary Class 1 NIC charge of $£1,200$ ($£60,000 \times 2\%$) and a secondary Class 1 NIC charge of $£8,280$ ($£60,000 \times 13.8\%$)

MARKING GUIDE

TOPIC	MARKS
<p><i>Acquisition of ordinary shares</i></p> <ul style="list-style-type: none"> ● Shares are restricted non-forfeitable securities; ½ ● No general earnings charge on acquisition as no elections entered into (restricted value paid or payable); 1 ● Shares acquired at an undervalue regime applies; ½ ● Treats deferred consideration as a notional loan for tax purposes; ½ ● Chargeable to income tax and Class 1A NIC; ½ ● Calculation of liability in: <ul style="list-style-type: none"> ○ Value of loan 1 ○ Income Tax liability 1 ○ Class 1A NIC 1 ½ ● Loan calculated based on normal/ “averaging” basis but employee or HMRC (but not employer) can elect for alternative/ “precise” basis; 1 ● Little benefit in making election for employee and why; 1 ● Loan discharged by payment of deferred consideration; 1 ● Further tax charge on lifting of restrictions/sale; 1 ● Calculation of tax charge on that event. 	
<p><i>Acquisition of bonds</i></p> <ul style="list-style-type: none"> ● Bonds are employment related securities; ½ ● IT charge on acquisition; ½ ● Calculated on value ignoring conversion rights; ½ ● Bonds are convertible securities and why; 1 ● Calculation chargeable amount; 1 ● Calculation of tax and NIC 1 	
<p>TOTAL</p>	<p>15</p>

Answer 5

1) Calculating the UK adoption pay entitlement:

Firstly, we need to determine the gross pay figure,

Net pay	£24,000
Personal allowance	(£12,570)
	£11,430
Tax @ 20%	£2,286
Grossed up x 100/80	£2,858
Gross pay (£24,000 + £2,858)	£26,858

Weekly gross pay (£26,858/52)	£517
Weeks 1-6 @ 90%	£465
Weeks 7-39 @ lower of £465/£151.97	£151.97

The bonus is not relevant as it was paid more than eight weeks before the last pay date prior to the expected adoption date.

2) Comparison of net take home pay and applicable policy option:

Weeks 1-6: No hypo tax as statutory leave not taxable in Mexico

Statutory leave is taxable in UK, so company liable to UK tax grossed up and Sandrine pays NIC on grossed up amount, even if Mexican rates are payable

UK				
Weeks 1-6	Net weekly pay	£465	Gross weekly pay	£521
	Personal allowance	(£242)	Primary threshold	(£184)
		£223		£337
	Tax due @ 20%	£45	Class 1 primary NIC @ 12%	£40
	Grossed up x 100/80	£56		
	Gross weekly pay (£465+£56)	£521	Gross pay	£521
			Secondary threshold	(£170)
				£351
			Class 1 secondary NIC @ 13.8%	£48

Mexico				
Weeks 1-6	Net weekly pay	£425	Gross weekly pay	£471
	Personal allowance	(£242)	Primary threshold	(£184)
		£183		£287
	Tax due @ 20%	£37	Class 1 primary NIC @ 12%	£34
	Grossed up x 100/80	£46		
	Gross weekly pay (£425+£46)	£471	Gross pay	£471
			Secondary threshold	(£170)
				£301
			Class 1 secondary NIC @ 13.8%	£42

Therefore, Sandrine would receive £425 per week (£465-£40) under UK rates (£2,550 for 6 weeks) compared to £391 per week (£425-£34) under Mexican rates (£2,346 for 6 weeks).

Weeks 7-39: Hypo tax at 26% as statutory leave becomes taxable in Mexico

Statutory leave is taxable in UK, so company liable to UK tax grossed up and Sandrine pays NIC on grossed up amount, even if Mexican rates are payable

UK				
Weeks 7-39	Weekly Pay	£152	Gross weekly pay	£112
	Hypo tax @ 26%	(£40)	Primary threshold	(£184)
		£112		£0
	Personal allowance	(£242)	Class 1 primary NIC @ 12%	£0
		£0		
	Tax due @ 20%	£0	Gross pay	£112
	Grossed up x 100/80	£0	Secondary threshold	(£170)
	Gross weekly pay (£112+£0)	£112		£0
			Class 1 secondary NIC @ 13.8%	£0

Mexico				
Weeks 7-39	Weekly Pay	£265	Gross weekly pay	£196
	Hypo tax @ 26%	(£69)	Primary threshold	(£184)
	Net pay	£196		£12
	Personal allowance	(£242)	Class 1 primary NIC @ 12%	£1
		£0		
	Tax due @ 20%	£0	Gross pay	£196
*	Grossed up x 100/80	£0	Secondary threshold	(£170)
	Gross weekly pay (£222+£0)	£196		£26
			Class 1 secondary NIC @ 13.8%	£4

Therefore, Sandrine would receive £112 per week (£112-£0) under UK rates (£3,696 for 33 weeks) compared to £195 per week (£196-£1) under Mexican rates (£6,435 for 33 weeks).

	UK	Mexico
Weeks 1-6	£2,550	£2,346
Weeks 7-39	£3,696	£6,435
Total	£6,246	£8,781

Therefore, although Sandrine will be better off under UK rates in the first 6 weeks, she will better to receive the Mexican rates over the whole 39-week period. Barom plc therefore will have to pay Option (a) under their policy.

The Mexican rates will comply with UK law as the gross figure exceeds the UK statutory amount, even if the Mexican net in the first 6 weeks appears to be less than the UK statutory minimum. –

3) Tax/NI Costs

As calculated above, the Mexican rates will result in Barom plc paying a total of £276 [(46 x 6)+(0 x 33)] in UK tax and £384 [(42 x 6)+(4 x 33)] in NIC.

[As a large employer, Barom plc will be able to reclaim 92% of the UK statutory amount, not the actual amount paid, via the RTI system. The reclaim should be included on the monthly EPS:

		92%	Total
Weeks 1-6 @ 90%	£465	£428	£2,568
Weeks 7-39 @ £152	£152	£140	£4,620

Bonus marks]

Sandrine will pay,

Hypotax of £0 x 6 + £69 x 33 = £2,277

NIC of £34 x 6 + £1 x 33 = £237

MARKING GUIDE

TOPIC	MARKS
Requirement 1: UK adoption pay rates <ul style="list-style-type: none"> • Grossing up net • Why ignoring bonus • 90% first 6 weeks • Correct weekly amount • Capped from week 7 • Correct weekly amount 	1 1 1 $\frac{1}{2}$ 1 $\frac{1}{2}$
Requirement 2: <ul style="list-style-type: none"> • Why no hypo tax weeks 1-6 • Why hypo tax weeks 7-39 • Still liable to UK tax and NIC Conclusion more under Mexico	$\frac{1}{2}$ $\frac{1}{2}$ 1 1
Complies with UK law as gross Mexican exceeds UK limits	1
Requirement 3: Tax/NIC payable <ul style="list-style-type: none"> • Weeks 1-6 <ul style="list-style-type: none"> ○ Tax (UK & Mexico) ○ Ee's NIC (UK & Mexico) ○ Er's NIC (UK & Mexico) • Weeks 7-39 <ul style="list-style-type: none"> ○ Tax (UK & Mexico) ○ Ee's NIC (UK & Mexico) ○ Er's NIC (UK & Mexico) 	1 1 1 1 1 1
TOTAL	15

Answer 6

First, it is necessary to establish Denise's UK residence status.

She will not meet any of the automatic overseas or UK tests in either year.

2022/23

Sufficient ties test:

She has 2 ties:

Work	Yes, as she will have at least 40 UK workdays in the year
Accommodation	Yes, as she has use of the Leeds flat for at least 91 days
Family	No, the daughter is a relevant relationship and cannot count as a tie.
> 91 days in prior 2 years	No
Country	N/A as not been resident in the UK in last 3 years

With 2 ties and more than 120 days, she will become UK tax resident in 2022/23.

Split year:

Case 8 could potentially apply as she is starting to have a home in the UK. However, as she will be non-resident in 2023/24, she will not meet the necessary criteria to qualify.

2023/24

Sufficient ties test:

She has 2 UK ties:

Work	Yes
Accommodation in 2023/24	No, because the flat is not available for 91 continuous days or more
Family under 183 days	No, because the daughter will have only one tie (90-day) and will be
> 91 days in prior 2 years	Yes
Country	No, as she will spend more time in Barbados

With 2 ties, she will not become UK tax resident as she will spend fewer than 91 days.

Domestic UK tax position

2022/23:

Under domestic UK law, she is liable to UK tax on worldwide income and gains for the whole tax year, including the pre-arrival period. Although in reality, Denise's position is likely to be covered by the treaty (see below), the UK will allow a foreign tax credit for the pre-arrival period as the income is non-UK sourced. If the UK tax is higher than the tax in Barbados, then Denise will be paying more tax than if she had remained in Barbados.

2023/24:

As a non-resident, the salary for the three months April to June 2023 is UK taxable as she is working in the UK. Barbados should allow a foreign tax credit for UK taxes paid.

Double Tax Treaty Claims

Under Art 4(2) of the treaty:

- 6 April 2022 to 30 November 2022 (pre-arrival)
 - She will be treaty resident in Barbados as she only has a permanent home available in Barbados in this period.

- 1 December 2022 to 30 June 2023 (exchange period)
 - She will be treaty resident in Barbados as it is likely that her centre of vital interests is stronger with Barbados. She retains her employer and her home there and her only connection with the UK is a temporary work placement. If her centre of vital interests cannot be determined, she only has a habitual abode in Barbados and will be resident there under Art 4(2)(b).

She is still liable to UK tax on her salary and benefits during the exchange period. However, the income earned during the pre-arrival period is removed from any charge to UK tax.

The Leeds church is benefiting from her services and Denise is effectively working for them, so s689 ITEPA 2003 applies. The church in Leeds must include Denise on their UK payroll and calculate PAYE under the normal RTI system. Denise should complete an expat starter checklist. The church should report her salary in Barbados on their payroll.

There will be no charge to NIC for either Denise or the church. Denise should qualify under Art 7 of the social security agreement to remain solely in the Barbados system. She should obtain a certificate of coverage from the Barbadian authorities to give to the Leeds church for their payroll records.

UK Tax Amount

The UK is a temporary workplace under s336 ITEPA 2007. However, the flat is not used solely by Denise as her daughter is with her. The tax relief would be limited to the rent for a one-bedroom flat and a suitable proportion of the cost of utilities would be excluded from the tax relief.

However, Denise could get tax relief for her food costs (but not her daughter's) and also any business travel if she keeps records and receipts.

As a minister who is actively ministering, as opposed to carrying out administrative duties, s99 ITEPA 2003 could apply. HMRC accepts that this is a job where the employee needs accommodation to better perform their duties and it is usual for it to be provided. This would prevent the flat from giving rise to a taxable benefit. There is no adjustment to reduce the tax relief to just Denise's costs, unlike under s336.

As Denise's income is at a rate of more than £8,500 per year, then the utility allowance is not exempt under s290B ITEPA 2003. S290 ITEPA 2003 cannot apply to any council tax or water bills paid out of the allowance, since the building is not an official church residence. As discussed above, s336 would exempt the portion relating to Denise's costs. As a cash allowance it should be payrolled in full and the expenses claimed via a tax return.

The flights are not taxable under s281 or s373 ITEPA 2003.

The place at the creche is not taxable given that it is in an employer-provided facility, which is correctly registered (s318 ITEPA 2003) and open to all church employees.

The salary is subject to UK tax: $£14,380 / 12 = £1,198$ per month

2022/23 = 4 months = £4,792

2023/24 = 3 months = £3,594

Any tax due in the UK is payable by the church. So, the tax would need to be grossed up and added to the value of the salary.

However, Denise would qualify for a personal allowance in 2022/23 as she is resident in the UK under UK domestic rules, but not in 2023/24. Nevertheless, under Art 23(5) of the double tax treaty, as a resident of Barbados, she can also claim the allowance in 2023/24. Consequently, as her income each year is under the personal allowance, no tax is chargeable and therefore no tax gross up is required. There is therefore no income tax or NIC cost for the Leeds church. There is no double taxation for the exchange period, as Denise is only paying tax in Barbados.

MARKING GUIDE

TOPIC	MARKS
Application of SRT <ul style="list-style-type: none"> • Auto non-residence doesn't apply in either year • Auto residence doesn't apply in either year • Resident under ties test in 2022/23 <ul style="list-style-type: none"> ○ No of ties ○ No of days • Not resident in 2023/24 under ties test <ul style="list-style-type: none"> ○ Correct ties/days identified • Split year not available in 2022/23 <ul style="list-style-type: none"> ○ None of criteria is met 	1/2 1 1/2 1/2 1/2 1/2 1/2
Treaty residence <ul style="list-style-type: none"> • Treaty resident in Barbados <ul style="list-style-type: none"> ○ Pre-arrival – permanent accommodation ○ Exchange period – centre of interests/habitual ○ Removes pre-arrival period from UK tax 	1/2 1/2 1/2 1/2
Impact on UK tax liability <ul style="list-style-type: none"> • Identifying periods of dual residence and taxation under domestic rules • Non-resident /UK source only 	1 1/2
Payroll <ul style="list-style-type: none"> • S689 applies and why • RTI payroll required • Expat starter checklist • Payroll salary and utility allowance 	1 1/2 1/2 1
NIC <ul style="list-style-type: none"> • Exempt under Art 7 of agreement • No primary or secondary NIC • Certificate of coverage recommended 	1 1/2 1/2
Tax Calculation <ul style="list-style-type: none"> • Discussing s336 <ul style="list-style-type: none"> ○ keeping receipts ○ identifying limit on housing relief ○ identifying tax relief for travel and food only • Housing exempt under s99 ITEPA 2003 and why • Utility allowance not exempt under ss290-290E • Flights exempt • Creche exempt • Salary taxable • Gross up to be applied but no tax due • Personal allowance <ul style="list-style-type: none"> ○ not available under domestic UK rules ○ available due to treaty 	1 1 1 1/2 1/2 1/2 1/2 1/2 1/2 1/2
TOTAL	20