

THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Human Capital Taxes

November 2021

TIME ALLOWED

3 HOURS 30 MINUTES

- All workings should be shown and made to the nearest month and pound unless the question specifies otherwise.
 - Candidates who answer any law elements in this paper in accordance with Scots law or Northern Ireland law should indicate this where relevant.
 - Scots law candidates may provide answers referring to Land and Buildings Transaction Tax rather than Stamp Duty Land Tax.
 - Except as set out below or indicated by additional information in the question, you may assume that 2020/21 legislation (including rates and allowances) continues to apply for 2021/22 and future years.
 - 1) You MUST assume that the UK remains within the European Union.
 - 2) You MUST ignore all temporary Covid related legislation including furlough, grants, loans and the reductions in VAT and SDLT rates.
- Except in relation to points 1) and 2) above, candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.
- You must type your answer in the space on the screen as indicated by the Exam4 guidance.

1. Insurlife Ltd, a UK company, has recently formed a subsidiary in Luxembourg, Insurlife SA which will provide services to EU customers. They have identified an individual, Anna Jones, who is currently an employee of Insurlife Ltd to run the subsidiary. For EU regulatory reasons, Anna must be employed directly by the Luxembourg entity rather than seconded to it. Her contract will commence on 1 January 2022 and is indefinite in length.

Anna is resident and domiciled in the UK and has never worked overseas. She is married with two children who attend a school in London. Her husband and children will remain in the UK and therefore Anna will commute to Luxembourg. She will fly there early on Monday morning and work in Luxembourg until Thursday evening each week, when she will return to the UK. The company will rent an apartment for her in Luxembourg and will also pay for her return flights to the UK each week. On Fridays, she plans to work from her London home or the company's London office. Her annual leave will be taken either in the UK or in third countries with her family. In addition to working in Luxembourg and the UK, she may travel to other EU countries from time to time for work.

Under Luxembourg domestic law, Anna will be tax resident in Luxembourg from 1 January 2022 and tax and social security withholding will be applied there on all earnings from the employment. Both the flights and accommodation benefit are liable to tax in Luxembourg. The company has agreed to settle any UK and Luxembourg taxes and social security arising on the flights and accommodation. Anna will not be tax equalised on her salary.

Requirement:

Explain Anna's tax and social security position in the UK.

(15)

Extract from UK/Luxembourg double taxation treaty

Article 4: Fiscal domicile

- 1) For the purposes of this Convention, the term 'resident of a Contracting State' means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
- 2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:
 - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);
 - (b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- 3) Whereby reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 15 – Dependent Personal Services

- 1) Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
- 2) Notwithstanding the provisions of paragraph 1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
- 3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft 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.
- 4) In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment, and as if references to `employer` were references to the company.

End of Question

2. Aengine Ltd is an engineering company with over 250 employees. Its total pay bill is in excess of £3 million per annum. The share capital in the company is wholly owned by three directors who are all UK resident for tax purposes.

Company vehicles have been provided for a number of years. During 2020/21 these were provided to directors and employees as follows:

Directors

In 2018, the three directors of Aengine Ltd were given the option of receiving a car allowance of £8,500 (payable in monthly instalments) or a company car. In relation to the company car, they were able to upgrade to a higher specification car if they pay £3,000 per annum (deducted in monthly instalments from their net pay). All directors selected the higher specification company car, which had a list price of £30,000 and CO₂ emissions of 115g/km. The cars were first registered before 6 April 2020 and have petrol engines. Fuel was not provided.

Aengine Ltd reported the company cars on forms P11D with a benefit in kind value of £8,500 for each director.

Engineers

Aengine Ltd employed a team of 100 engineers (all basic rate taxpayers) who were each provided with a double cab pickup vehicle. The vehicles were only used for travel from home to work and between work sites.

Half of the engineers had vehicles with an uncovered load area behind the passenger cab and a net payload of 1,050kg. The other half of the engineers had vehicles with hard tops over the load area, which reduced the net payload to 950kg. The list price of all the vehicles was £25,000 and CO₂ emissions were 150g/km. The vehicles were first registered before 6 April 2020 and the fuel type was diesel. The vehicles met the Real Driving Emissions Step 2 (RDE2) standard. The engineers were reimbursed for the cost of business fuel at HMRC Advisory Fuels rates.

Aengine Ltd did not report any benefits in respect of these vehicles on forms P11D.

Sales Team

Aengine Ltd's sales team consisted of 15 employees (all higher rate taxpayers). The company provided each of these employees with a company car.

The list price of each car was £20,000 and CO₂ emissions were 130g/km. The cars were first registered before 6 April 2020 and the fuel type was petrol. The engine size of the vehicles was 2100cc. Aengine Ltd reported the company cars on forms P11D with a benefit in kind value of £6,200 for each employee.

A fuel card was provided to employees in the sales team. They had to complete a mileage log and retain fuel receipts and were required to reimburse the company for private mileage costs. The amount reimbursed was based on the proportion of total fuel costs represented by private mileage to total mileage.

Following a review of payroll records, it was discovered that two employees each with total mileage of 10,000 and private mileage of 2,000 made payments of £200 each rather than the £350 which they should have paid. All other employees reimbursed the company in line with the policy.

Aengine Ltd did not report any benefit for any private fuel on forms P11D nor did it deduct any PAYE or National Insurance Contributions.

You may assume an Advisory Fuel Rate for 2020/21 of 17p per mile.

Requirement:

Explain the correct Income Tax, National Insurance and Apprenticeship Levy treatment of the various vehicles and fuel provided during 2020/21, calculating any underpayment arising assuming this will be met by the company.

You are NOT required to consider any other years nor to consider penalties and interest due.

(20)

3. Geffen Smith Ltd is a financial consulting company whose operations and employees are all located in England. It employs a large number of consultants and has a pay bill of approximately £10 million per year.

They want to encourage talented undergraduates, who are currently enrolled in a degree course, to join the company. They plan to do this by meeting the costs of their education either directly or indirectly. The options they are currently considering are:

- 1) paying a "sign on" bonus of equivalent value to the tuition fees;
- 2) reimbursing tuition fees, or
- 3) setting up a scholarship scheme.

In the past, Geffen Smith Ltd has recruited graduates with degrees in accounting and finance, business studies, geography and classics. They make job offers to graduates in the Autumn before the year of graduation which are always contingent on the employee getting a minimum of a 2:1 degree. Geffen Smith Ltd has no desire to change either the timing of the recruitment process or which degree disciplines they consider. They also want to pay no more than the equivalent of the final year's tuition fees plus related costs.

They are also considering starting a school leavers programme. New joiners will work for Geffen Smith Ltd whilst at the same time studying for a recognised professional qualification that is relevant to their jobs. Geffen Smith Ltd plans to outsource this training to a recognised training provider rather than delivering it in-house. They are interested in exploring tax efficient ways of delivering this training.

Requirement:

- 1) **Explain the tax and National Insurance treatment of the three options proposed by Geffen Smith Ltd for undergraduates.** (11)
- 2) **Discuss any tax efficient ways for Geffen Smith Ltd to meet the cost of the school leavers training programme.** (4)

Total (15)

4. AIRobo Inc is a successful US technology company and is planning to expand into the UK market. AIRobo Inc has formed a UK subsidiary, AIRobo Ltd. One of their senior executives, Jeffrey Brown, has been seconded from AIRobo Inc to AIRobo Ltd to set up an office with sales and operational functions.

Jeffrey is a US citizen and arrived in the UK on 1 October 2021. He has never been tax resident in the UK and is domiciled in the US. He will be joined by his wife and two children on 2 January 2022. The assignment is expected to last for three years and Jeffrey expects to work 20% of his time outside the UK. He will continue to be paid on the US payroll and to receive his net pay into a US bank account in US dollars.

The balance of his US bank account on 1 October 2021 was £5,000 which was earnings for US duties before arriving in the UK. He transferred £2,500 to the UK on 2 October 2021. After he was paid on 31 October 2021, a US mortgage payment of £3,000 was debited on 1 November 2021 and Jeffrey transferred £4,500 to the UK on 2 November 2021. Jeffrey expects to remit around £4,000 per month to the UK to cover living costs.

Jeffrey is tax equalised to the US, and his package is as follows:

<u>Remuneration item</u>	<u>Amount</u>
Base salary	£120,000 per annum paid monthly on the last day of each month.
2021 calendar year bonus	£90,000 paid in March 2022.
Accommodation	£6,000 per month in rent directly to the landlord.
Relocation benefits	Shipping of belongings – £5,500 Flights for Jeffrey and family to relocate to UK – £9,000 UK home search assistance – £2,500 plus VAT
Travel	Reimbursement of flights for one family annual trip to Florida to stay at their holiday home up to a maximum of £7,500. They are planning to take a trip in February 2022.
Hypothetical tax	27% deducted from salary. 37% deducted from bonus.

Jeffrey will be UK tax resident for 2021/22 and is eligible for split year treatment with the UK part of the year commencing 1 October 2021.

The company has applied for a certificate of coverage and Jeffrey will continue to be subject to US social security. Jeffrey has significant US investment income and wishes to claim the remittance basis of taxation.

Requirement:

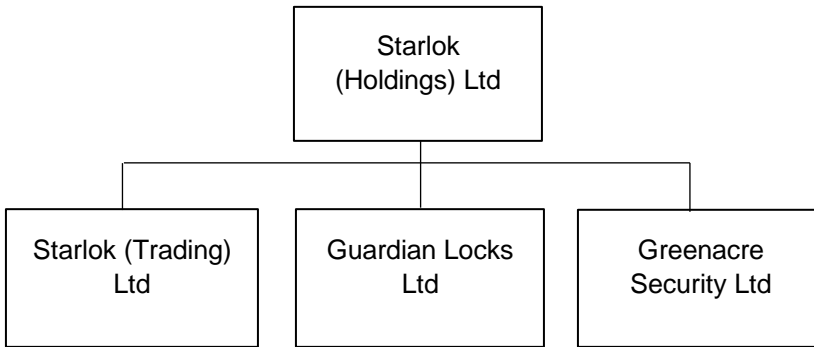
- 1) Calculate the Income Tax due for and the company's cost of tax equalisation for 2021/22, identifying any qualifying conditions for relevant claims and exemptions available. (14)**
- 2) Explain how Jeffrey's banking arrangements may affect the tax equalisation costs and how such costs may be mitigated including any conditions that need to be met. (6)**

Total (20)

5. Starlok (Holdings) Ltd is the holding company of a group which manufactures security products. The group has grown quickly in recent years as a result of acquiring a number of other companies.

Currently, Starlok (Holdings) Ltd has three wholly owned subsidiaries; Starlok (Trading) Ltd, Guardian Locks Ltd and Greenacre Security Ltd. All three companies employ staff and have their own PAYE reference numbers. Starlok (Holdings) Ltd, however, does not employ staff or have a PAYE reference number.

The current group structure is set out in the diagram below.



All companies are UK incorporated and resident.

They want to reorganise their group structure by transferring the trade, assets and employees of Starlok (Trading) Ltd, Guardian Locks Ltd and Greenacre Security Ltd into a newly formed subsidiary called Starlok (UK) Ltd. These companies will then be dissolved to leave a simplified group structure with Starlok (Holdings) Ltd having a single wholly owned subsidiary, Starlok (UK) Ltd.

The current subsidiaries each have enduring PAYE Settlement Agreements (“PSA”s) and agreements for custom scale rate allowances with HMRC. All employees are provided with private medical insurance which is reported on forms P11D. The group has not registered for voluntary payrolling of benefits. Starlok (Trading) Ltd operates a Cycle to Work scheme, where any employee can sacrifice part of their salary in exchange for use of a company owned bicycle. However, this scheme has never been extended to employees of Guardian Locks Ltd or Greenacre Security Ltd.

The transfers are scheduled to take place on 31 August 2022, with the employments to be transferred under the Transfer of Employments (Protection of Undertakings) Regulations (“TUPE”). The group wishes to avoid as much disruption as possible to its employee population and would prefer not to issue Forms P45 for the transferred employees if possible.

Prior to the transfers, three employees of Guardian Locks Ltd will have their employments terminated by reason of redundancy and will receive statutory redundancy pay. Their private medical cover will cease on their termination date and the employees will serve their full notice period. They will also be treated as “good leavers” under their employer’s incentive plans and will receive a cash bonus representing the three years ending 31 March 22. During this period they are expected to be resident and working exclusively in the UK. The cash bonus is expected to be paid after the issue of Forms P45.

Requirement:

Explain how the group should transfer the employer payroll records from the current subsidiaries to Starlok (UK) Ltd and explain the employment tax reporting obligations and wider employment tax considerations arising in the year of transfer. (15)

6. Green plc has a number of international assignees working in the UK. The assignees are members of a variety of international pension schemes. Details of their international plans are as follows:
- 1) Belgium employer pension scheme – Green plc has one assignee from Belgium who is a member of the Belgian pension scheme. The scheme is a final salary scheme and each member contributes 5% of salary to the plan. The benefit accrual is 1/60 of base salary for each year of service. The scheme is open to all Belgian employees. It is regulated by the Belgian pension regulator. Employer contributions are not taxable in Belgium and employee contributions are tax deductible. The scheme pays a pension to employees from the age of 60 and distributions may not be taken before this.
 - 2) US 401K plan – this is a qualified US pension plan under s401(a) of the US tax code. It is regulated by a US regulator. They have three assignees based in the UK who are members of the plan. The plan is a defined contribution plan. Each employee contributes \$19,500 each calendar year and the employer matches contributions 1:1. It is open to all US citizens and residents who can claim a deduction for contributions for US tax purposes. Employer contributions are not subject to US tax. Under the plan rules employees may take a distribution upon leaving the employment before retirement age or a hardship loan.
 - 3) International Pension Scheme – the plan is based in Jersey and uses a Jersey resident trust which is funded by contributions from the employee (5% of salary) and employer (10% of salary). There is one assignee in the UK who is a member of the plan. The plan distributes at the earlier of termination from the employment and when employees reach the age of 50. The plan is not open to tax residents of Jersey.

The assignee from Belgium is tax equalised and will be promoted on 1 January 2022. His annual salary will increase from £140,000 to £170,000. The assignee commenced his employment in Belgium in 2006 and has been on assignment to the UK since 2016. His total earnings including bonus, assignment benefits and tax equalisation are expected to be £340,000 for 2021/22.

Requirement:

Discuss the tax treatment of the employee and employer contributions to each of the above plans and calculate the annual allowance charge for the Belgian assignee.

(15)

Tax Treaty Extracts

Note that there are no provisions in the UK/Belgium or UK/Jersey treaty covering contributions to pension schemes in Belgium or Jersey.

Extract from UK/US double tax treaty

Article 18 – Pension schemes

Where an individual who is a resident of a Contracting State is a member or beneficiary of, or participant in, a pension scheme established in the other Contracting State, income earned by the pension scheme may be taxed as income of that individual only when, and, subject to paragraphs 1 and 2 of Article 17 (Pensions, Social Security, Annuities, Alimony, and Child Support) of this Convention, to the extent that, it is paid to, or for the benefit of, that individual from the pension scheme (and not transferred to another pension scheme).

2. Where an individual who is a member or beneficiary of, or participant in, a pension scheme established in a Contracting State exercises an employment or self-employment in the other Contracting State:
 - (a) contributions paid by or on behalf of that individual to the pension scheme during the period that he exercises an employment or self-employment in the other State shall be deductible (or excludable) in computing his taxable income in that other State; and
 - (b) any benefits accrued under the pension scheme, or contributions made to the pension scheme by or on behalf of the individual's employer, during that period shall not be treated as part of the employee's taxable income and any such contributions shall be allowed as a deduction in computing the business profits of his employer in that other State.

The reliefs available under this paragraph shall not exceed the reliefs that would be allowed by the other State to residents of that State for contributions to, or benefits accrued under, a pension scheme established in that State.

3. The provisions of paragraph 2 of this Article shall not apply unless:
 - (a) contributions by or on behalf of the individual, or by or on behalf of the individual's employer, to the pension scheme (or to another similar pension scheme for which the first-mentioned pension scheme was substituted) were made before the individual began to exercise an employment or self-employment in the other State; and
 - (b) the competent authority of the other State has agreed that the pension scheme generally corresponds to a pension scheme established in that other State.
4. Where, under sub-paragraph a) of paragraph 2 of this Article, contributions to a pension scheme are deductible (or excludable) in computing an individual's taxable income in a Contracting State and, under the laws in force in that State, the individual is subject to tax in that State, in respect of income, profits or gains, by reference to the amount thereof which is remitted to or received in that State and not by reference to the full amount thereof, then the relief that would otherwise be available to that individual under that sub-paragraph in respect of such contributions shall be reduced to an amount that bears the same proportion to that relief as the amount of the income, profits or gains in respect of which the individual is subject to tax in that State bears to the amount of the income, profits or gains in respect of which he would be subject to tax if he were so subject in respect of the full amount thereof and not only in respect of the amount remitted to or received in that State.
5.
 - (a) Where a citizen of the United States who is a resident of the United Kingdom exercises an employment in the United Kingdom the income from which is taxable in the United Kingdom and is borne by an employer who is a resident of the United Kingdom or by a permanent establishment situated in the United Kingdom, and the individual is a member or beneficiary of, or participant in, a pension scheme established in the United Kingdom,
 - (i) contributions paid by or on behalf of that individual to the pension scheme during the period that he exercises the employment in the United Kingdom, and that are attributable to the employment, shall be deductible (or excludable) in computing his taxable income in the United States; and
 - (ii) any benefits accrued under the pension scheme, or contributions made to the pension scheme by or on behalf of the individual's employer, during that period, and that are attributable to the employment, shall not be treated as part of the employee's taxable income in computing his taxable income in the United States.

This paragraph shall apply only to the extent that the contributions or benefits qualify for tax relief in the United Kingdom.

- (b) The reliefs available under this paragraph shall not exceed the reliefs that would be allowed by the United States to its residents for contributions to, or benefits accrued under, a generally corresponding pension scheme established in the United States.

- (c) For purposes of determining an individual's eligibility to participate in and receive tax benefits with respect to a pension scheme established in the United States, contributions made to, or benefits accrued under, a pension scheme established in the United Kingdom shall be treated as contributions or benefits under a generally corresponding pension scheme established in the United States to the extent reliefs are available to the individual under this paragraph.
- (d) This paragraph shall not apply unless the competent authority of the United States has agreed that the pension scheme generally corresponds to a pension scheme established in the United States.

US/UK double tax treaty exchange of notes

With reference to sub-paragraph o) of paragraph 1 of Article 3 (General Definitions):

it is understood that pension schemes shall include the following and any identical or substantially similar schemes which are established pursuant to legislation introduced after the date of signature of the Convention:

- a) under the law of the United Kingdom, employment-related arrangements (other than a social security scheme) approved as retirement benefit schemes for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988, and personal pension schemes approved under Chapter IV of Part XIV of that Act; and
- b) under the law of the United States, qualified plans under section 401(a) of the Internal Revenue Code, individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, individual retirement annuities, section 408(p) accounts, and Roth IRAs under section 408A), section 403(a) qualified annuity plans, and section 403(b) plans.

End of Question