



The Chartered Tax Adviser Examination

November 2019

Human Capital Taxes

Advanced Technical Paper

TIME ALLOWED – 3 ¼ HOURS

- The first 15 minutes is designated as reading time. During this time you may read your question paper and legislation, annotate your question paper and use your calculator. You are not permitted to write in the answer booklet. The Presiding Officer will inform you when you can start writing.
- You should answer all **SIX** questions.
- Start each answer on a fresh page and do not write in the margins.
- All workings should be shown and made to the nearest month and pound unless the question specifies otherwise.
- Marks are specifically allocated for presentation.
- Candidates who answer any law elements in this paper in accordance with Scots law or Northern Ireland law should tick the appropriate box on the front of each answer booklet.
- Unless otherwise indicated by the provision of additional information, you may assume that 2018/19 legislation (including rates and allowances) continues to apply for 2019/20 and future years. Candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.

1. You are a manager in a social security consulting firm which provides advice to Dolly plc group, a multinational group of companies which is headquartered in the UK. The HR manager of Dolly plc, Elizabeth, has contacted you regarding the social security position of Emmanuel, the Finance Director for the group.

Emmanuel is a French citizen. His family and children live in France in the family home. He has an apartment in London, but he returns to France most weekends and for his annual leave.

Emmanuel is contractually employed by Dolly plc, and is paid via the UK payroll with UK PAYE and NIC being deducted from his pay. He spends approximately 30% of his working time in the US, 20% in Belgium, 20% in The Netherlands and the remainder in the UK. Emmanuel has had this working pattern since January 2018, when he joined the group.

In January 2020, Emmanuel will be posted to Singapore for two years. His London apartment will be sold prior to departure. During this secondment, Emmanuel will be returning to the UK for approximately 10 workdays a year for board meetings. He will also be spending eight weeks of the year on annual leave in France.

Emmanuel was granted unapproved stock options in Dolly plc when he joined the company and these have a three year vesting period. Emmanuel is intending to exercise these options as soon as they vest.

Requirement:

Write an email to Elizabeth which explains Emmanuel's social security position and the extent to which the stock options are liable to UK National Insurance contributions. You are not required to comment on Income Tax. (15)

NOTE: Relevant extracts from the UK-US Social Security Agreement are provided. The UK does not have a social security agreement with Singapore.

Continued

1. Continuation

Extract from the UK-US Social Security Agreement

Article 4

- (1) *Except as otherwise provided in this Part, a person employed within the territory of one of the Parties shall, with respect to that employment, be subject to the laws on coverage of only that Party. Where a person is subject only to the laws on coverage of the United Kingdom in accordance with this paragraph, those laws shall apply to him as if he were ordinarily resident in the territory of the United Kingdom.*
- (2) *Where a person who is covered under the laws on coverage of one Party and is normally employed by an employer in the territory of that Party is sent by that employer to work in the territory of the other Party, the person shall be subject only to the laws on coverage of the former Party, as if he were employed in the territory of the former Party, provided that the period of work in the territory of the latter Party is not expected to exceed 5 years, or such longer period as may be agreed upon by the Competent Authorities in a particular case. This paragraph does not apply to employment as an officer or member of a crew on a ship or aircraft.*
- (3) *A person who is covered under the laws on coverage of either Party with respect to self-employment shall be subject only to the laws on coverage of the Party in whose territory he ordinarily resides.*
- (4) *Where a person is employed under the laws on coverage of one Party and self-employed under the laws on coverage of the other party for the same activity, he shall be subject only to the laws on coverage of the Party in whose territory he ordinarily resides.*
- (5) *A person who would otherwise be covered under the laws on coverage of both Parties with respect to employment as an officer or member of a crew on a ship or aircraft shall, in respect of that employment, be subject only to the laws on coverage of the United Kingdom if he ordinarily resides in the territory of the United Kingdom, and only to United States laws on coverage if he ordinarily resides in the territory of the United States.*
- (6) *A person who ordinarily resides in the territory of the United Kingdom and who is not employed or self-employed shall be subject to the laws on coverage of only the United Kingdom with respect to Social Security contributions.*

End of Question

2. You are a manager in the employment taxes team of a firm of Chartered Tax Advisers. Your client is Ballater Ltd, a UK incorporated and resident company. The Finance Director of Ballater Ltd, Raahim Ali, is concerned that their expenses and benefit processing and reporting systems are not sufficiently robust or consistent.

During a quarterly update meeting on 31 October 2019, Raahim asked you to review the 2018/19 expenses and benefits provided to employees and to write a report with your conclusions.

Raahim is not concerned about previous years as prior to April 2018 Ballater Ltd employed a full-time payroll manager who dealt with expenses and benefits. Since the retirement of the full-time payroll manager, Ballater Ltd has relied on a succession of temporary payroll staff.

Following your review of the 2018/19 records, you have found the following:

- 1) Private medical benefits were not reported on forms P11D but were instead processed via the payroll and subjected to tax only. A file note states that: "I've read that it is now acceptable to payroll most benefits in kind, so please process on that basis." However, Ballater Ltd have not agreed with HMRC to payroll benefits.
- 2) Rafe Widdicombe joined Ballater Ltd on 1 October 2018 as Head of Sales. Rafe had the choice of receiving either:
 - (a) A company car with private fuel. The car offered was a new petrol vehicle: list price £31,000 (including VAT), CO₂ emissions 109 g/km; or
 - (b) A cash alternative of £1,700 per month.

Rafe chose option (a) and the company car and private fuel benefits were reported on his 2018/19 P11D. Rafe also receives a workplace car parking space in a commercial car park close to the office. The annual ticket costs Ballater Ltd £1,500.

The P11Ds and P11D(b) were submitted on time and the Class 1A NIC was paid on time. Rafe and the employees receiving private medical benefits were all higher rate taxpayers.

Requirement:

Prepare a report to Raahim Ali advising on matters arising from your review of the 2018/19 expenses and benefits. (15)

3. You are a manager in a firm of Chartered Tax Advisers which provides expatriate tax consulting services to Regent group, which is headquartered in Australia and has a UK subsidiary, Regent Ltd. The group also has entities in France and Germany. The parent company in Australia wishes to send one of its employees to the UK for a minimum of three years, commencing on 6 April 2020. The secondment may be extended up to a maximum of six years.

The group have decided that the secondee will be tax equalised, so they will be funding any UK tax and social security costs which arise as a result of the secondment. Therefore, the group are keen to understand the cost implications of their choice of employee.

The group are deliberating between the following individuals for the secondment:

- 1) Geoff, who is a British national. Geoff was born in the UK, to British parents, and moved to Australia 15 years ago. Geoff is single.
- 2) Brett, who is an Australian citizen. Brett has not previously lived or worked in the UK. Brett is married and has three children.
- 3) Angela, who is also Australian. Angela lived in the UK for five years and worked for another company. While Angela was in the UK, she purchased a property and married her British partner, Christine. They moved to Australia together in January 2018 but are considering returning to the UK and settling here long term. However, Angela will continue to maintain her other personal and economic relations in Australia, such as extended family and financial investments.

The HR manager for Regent Ltd, Emma, has written to you asking for your advice on the matter. She has mentioned that it would be much simpler from an immigration perspective if the group were to select the British national, as it would avoid the need to apply for a visa.

Emma has also informed you that the secondee will be expected to spend approximately 30% of their time working outside the UK during the secondment. This will be split equally between France and Germany. The remuneration in respect of these duties will **not** meet the conditions under the relevant double tax treaty for exemption from tax in the country where the duties are performed.

The company will provide the secondee and their family with two return flights to Australia a year.

Requirement:

Write an email to Emma explaining the Income Tax and National Insurance implications of the proposed secondment for each individual. (20)

NOTE: The UK does not have a social security agreement with Australia.

4. You have recently joined the Tax Department of Athome Ltd, which is a company providing care in the home for elderly customers. A competitor company has recently been investigated by HMRC in relation to the National Living Wage and the National Minimum Wage. Your manager has asked you to review a sample case to establish if there is anything that Athome Ltd should be worried about.

Athome Ltd provides carers in customers' homes 24 hours a day, seven days a week. Their employees work in teams of three, with each employee changing shift every four days. In any four-day period, one employee works the day shift from 8am to 8pm, one employee works the night shift from 8pm to 8am and one employee is off for the four days.

The customer will always have the same team, except when an employee is on holiday, in which case Athome Ltd will substitute any employee who is available. Employees have 35 days' holiday per year. This figure includes an allowance for public holidays, which are not taken at the time since care is provided every day.

Employees are all paid monthly using the same rates:

- 1) £9.00 per hour during the day shift.
- 2) £9.00 per hour for the first four hours of the night shift and £4.50 per hour for the remaining eight hours of the night shift.
- 3) £55 per day for two of the days off and nothing for the other two days, which are treated as weekend days.
- 4) Holidays are paid at £55 per day.

Athome Ltd requires the employee to be at the customer's home throughout the night shift. However, the customer is probably sleeping for some hours and may not need as much attention during the night, so Athome Ltd pays a lower rate for part of the night shift. Nevertheless, actual sleeping periods during the night shift are not recorded. The employee is expected to remain awake and available if the customer does require assistance.

You have taken one of the teams for the month of March 2019 as a sample case:

- 1) Lauren is 26 years old. She worked 264 hours and was paid £2,100.
- 2) Rose is 20 years old. She worked 240 hours and was paid £1,886.
- 3) Jacinta is 30 years old. She worked 192 hours as she took some holidays. Her pay was £1,680, excluding holiday pay.

Jacinta attended a compulsory training course for one day in the month. The course was from 9.30 am until 5.30 pm, with an hour's lunch break. The course was at the local college five miles from Athome Ltd's offices and Jacinta took a bus from the office to the college at a cost of £4 return. Athome Ltd paid the fee for the course since it was compulsory and paid Jacinta £55 for that day, as Athome Ltd still treated it as a day off and did not include the time in the total of hours worked above. The course fee and £55 are not included in the pay figures above, but the £55 was included in the taxable pay in that month's payroll. The course fee was treated as exempt under s.250 ITEPA 2003.

Continued

4. Continuation

Jacinta's holiday was covered by Marie, who is aged 24. Marie was not part of a regular team at that time and only covered other employees' holiday days that month. She worked a total of 168 hours and received pay of £1,370.

In addition, Marie was paid mileage of £18.90. This represented 42 miles at 45p per mile for travelling between her home to the different customers' homes in her own car. This money was paid via the payroll and subjected to PAYE and NIC.

Requirement:

Review the sample case and make notes for a meeting with your manager highlighting any issues and recommending any actions to be taken.

You are to use the following National Living Wage and National Minimum Wage rates.

Age	<u>25+</u>	<u>21-24</u>	<u>18-20</u>	<u>Under 18</u>	<u>Apprentices</u>
	£8.21	£7.70	£6.15	£4.35	£3.90

(15)

5. You are a tax senior in a firm of Chartered Tax Advisers which provides tax services to Crimond Ltd, a UK resident company. Crimond Ltd's main office is in London and they also have an office in Aberdeen, Scotland. Crimond Ltd has a wholly owned US subsidiary with its office in California in the US.

Gill Robertson, a partner in your office, has received the following email from Leslie Senton, the Human Resources Manager at Crimond Ltd.

To: Gill Robertson
From: Leslie Senton
Date: 29 October 2019
Subject: Employee locations

Gill

We have been developing flexible working policies and some of our UK employees have shown interest in working from a few locations we hadn't anticipated. Before we agree to these requests, I thought it would be a good idea to check with you if these moves have any tax implications. The details are as follows:

Isla Stewart

As you may be aware, Isla's new role as Group Head of Accounts requires her to travel to the US to check on the performance of our US subsidiary and meet with our US account managers. Whilst she will not be employed by our US subsidiary (nor will she become tax resident in the US), our US payroll manager has advised us that they are required to operate withholding tax (both federal and state) on her US workdays.

Isla and her partner recently bought a holiday home in California and she will stay in this property while working in the US. She estimates that she will visit this property for around five weeks per year and will work for around two days per week, in our California office, whilst there. Isla's US workdays are part of her UK/global role.

Isla does not work abroad except for these US days. She is comfortable that the extra withholding tax won't cause hardship in the short term, but wants to check if relief is available.

Our policy is to reimburse business travel costs, but I am worried about how to treat Isla's journeys to California – it looks complicated! Should we treat her journeys from the UK to California as business travel if she works whilst she is there?

Lewis Fraser

Lewis works in our London office. He mentioned to me that he and his family would like to relocate to France permanently. They have bought a property in France but will keep their London flat for their use. Lewis will then reduce the number of days he works in the UK to three days per week and will stay in the London flat when in the UK. He will work from home, in France, for two days per week. He is entitled to six weeks' annual leave per year. Our French tax adviser has indicated that Lewis is likely to become tax resident in France.

Harris Campbell

Harris, who is currently working in our London office, has asked to move to our Aberdeen office. He is currently renting a house in London and plans to buy a house in Aberdeen. We would be happy to support his request and to assist with his relocation costs. I think we can pay him a tax free allowance, is that correct?

Continued

5. Continuation

From our initial discussions with them we believe that these individuals are, at present, UK tax resident and domiciled.

Can you let me know if any of these proposals give rise to any concerns and what actions might be required for us to support these requests?

Kind regards

Leslie

Requirement:

Draft an email to Leslie Senton advising on the UK Income Tax and National Insurance implications for Crimond Ltd if they agree to the employees' requests.
(20)

Note: Relevant extracts of the UK/US Double Taxation Treaty, the UK/US Social Security Agreement and the UK/France Double Taxation Treaty are provided.

UK/US Double Taxation Treaty

Article 2: Taxes covered

- (1) *This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State irrespective of the manner in which they are levied.*
- (2) *There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of property.*
- (3) *The existing taxes to which this Convention shall apply are:*
 - (a) *in the case of the United States:*
 - (i) *the Federal income taxes imposed by the Internal Revenue Code (but excluding social security taxes) ...*
 - (b) *in the case of the United Kingdom:*
 - (i) *the income tax ...*

Article 14: Income from employment

- (1) *Subject to the provisions of Articles 15 (Directors' Fees), 17 (Pensions, Social Security, Annuities, Alimony, and Child Support) and 19 (Government Service) of this Convention, 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 of this Article, 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 any twelve-month period commencing or ending in the taxable year or year of assessment concerned;*

Continued

5. Continuation

- (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 which the employer has in the other State.*
- (3) *Notwithstanding the preceding provisions of this Article, remuneration described in paragraph 1 of this Article that is derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic shall be taxable only in that State.*

Extract
UK/US social security agreement

Article 4

- (1) *Except as otherwise provided in this Part, a person employed within the territory of one of the Parties shall, with respect to that employment, be subject to the laws on coverage of only that Party. Where a person is subject only to the laws on coverage of the United Kingdom in accordance with this paragraph, those laws shall apply to him as if he were ordinarily resident in the territory of the United Kingdom.*
- (2) *Where a person who is covered under the laws on coverage of one Party and is normally employed by an employer in the territory of that Party is sent by that employer to work in the territory of the other Party, the person shall be subject only to the laws on coverage of the former Party, as if he were normally employed in the territory of the former Party, provided that the period of work in the territory of the latter Party is not expected to exceed 5 years, or such longer period as may be agreed upon by the Competent Authorities in a particular case. This paragraph does not apply to employment as an officer or member of a crew on a ship or aircraft.*

Extract
UK/France Double Taxation Treaty

Article 4: Residence

- (1) *For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof, and any statutory body of that State, subdivision or authority. This term does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.*
- (2) *Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:*
 - (a) *he shall be deemed to be a resident only 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 States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);*
 - (b) *if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;*

Continued

5. Continuation

- (c) *if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the 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 States shall settle the question by mutual agreement.*

Article 15: Income from employment

- (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 within any period of 12 months; 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 which the employer has in the other State.*

End of Question

6. You are Alex Smith and you work as an Employment Tax specialist in a large firm of accountants and have just had a meeting with George Cooper, the Finance Director of your client, Advantage Plus Ltd. Advantage Plus Ltd is an advertising business operating from a single UK office with 40 employees of which 10 are managers.

George has recently joined the company and would like your advice on some potential staff benefits that he has identified:

- 1) Advantage Plus Ltd moved into new offices in April 2018, which are in a building on a campus with five other office buildings and a central hub building which contains a canteen. The canteen is subsidised by Advantage Plus Ltd (and the other companies on the campus). Advantage Plus Ltd contributes £10 per head for each of the 10 managers (which gives the managers a 75% discount on purchases) and £5 per head for the other employees (which gives the employees a 40% discount on purchases). The contributions are paid to the canteen for each of the 260 working days a year, irrespective of whether the employees actually use it.
- 2) Since April 2016, the 15 strong sales team have had a working lunch each month in the local pub at a cost of £13 per head to discuss the results for the month. Five members of the team are higher rate taxpayers and the remainder are basic rate taxpayers.
- 3) All employees are provided with free tea, coffee, water and biscuits at the new office. This is limited to six drinks and six biscuits per employee per day. Employees exceeding that level are charged 10p per drink and 5p per biscuit. Where an employee is required to make a payment, this is taken from their net pay.

Requirement:

Draft an email to George Cooper advising on the tax implications for Advantage Plus Ltd of the potential benefits provided. (15)