

The Chartered Institute of Taxation

Advanced Technical

Taxation of Owner-Managed Businesses

November 2022

Suggested solutions

Question 1

Work on existing facilities:

- 1) The replacement of the grass pitches may qualify as repairs, because they form a small part of the entirety which is the caravan site itself (*Cairnsmill Caravan Park v Commissioners for HM Revenue and Customs* [2013] UKFTT 164 (TC)). It could be argued that the hardcore surface does not represent an improvement compared to the grass pitches.
- 2) The repairs to the access road to the site are an allowable expense provided that there is no alteration or improvement to the road e.g. to accommodate larger vehicles. (*G Pratt & Sons v Commissioners for HM Revenue and Customs* [2011] UKFTT 416 (TC)).
- 3) The caravans for holiday lettings are allowable as plant and machinery under List C, s23 CAA 2001. The caravan for the warden's use will not be allowable as it does not carry out a function in itself and so does not qualify as plant and machinery. (*Paul Telfer v Commissioners for HM Revenue and Customs* [2016] UKFTT 614 (TC)).

Development work:

- 1) The preliminary costs and professional fees can be apportioned over the work carried out on a pro rata basis (*JD Wetherspoon v Commissioners for HM Revenue and Customs* [2012] UKUT 42 (TCC)) and allowances claimed as appropriate.
- 2) Shop:
 - (a) Advertising signs are on list C, s23 CAA 2001 and so are allowable as plant and machinery.
 - (b) The suspended ceiling does not carry out a function and so does not qualify as plant and machinery. (*Hampton (Inspector of Taxes) v Fortes Autogrill Ltd* [1980] STC 80, 53 TC 691)
 - (c) Although moveable partition walls are allowable as plant and machinery, as they are included on List C, s23 CAA 2001 and (*Jarrod (Inspector of Taxes) v John Good & Sons Ltd* (1962) 40 TC 681), this only extends to the partitions where there is the intention of moving the partitions as part of the company's business. As there is no intention to move the other half, there will be no relief.
- 3) Bar and restaurant:
 - (a) It was found in *IRC v Scottish & Newcastle Breweries Ltd* [1982] STC 296, 55 TC 252 that decorative items were allowable as plant and machinery as they performed a function by providing an ambience.
 - (b) Toilet area tiling was held to be disallowable as part of the setting in *JD Wetherspoon plc v Commissioners for HM Revenue and Customs* (2008) SpC 657; [2009] UKFTT 374 (TC); [2012] UKUT 42 (TCC).
 - (c) The sloping tiled floor in the cold store was found to be allowable in the same case, as it performed a function.
- 4) The buildings for the animals are not allowed as they are structures rather than plant. Although zoo cages are included on List C s23 CAA 2001, the list cannot be extended to include similar structures. Following the decision in *Yarmouth v France (1887)* 19 QBD 647, plant and machinery can be claimed on the animals as they are used in the business: allowances can be claimed on live animals.

MARKING GUIDE

TOPIC	MARKS
Work on existing facilities	
Identification of repair of part of entity	½
Comments re improvement	1
Repairs to access road	½
Identification of holiday caravans on List C	1
Differentiation of warden's caravan	1
Sub total	4
Development work	
Pro-rating allowed of preliminaries	1
Allowability of advertising signs	½
No relief for suspended ceiling, with reason	1
Analysis of moveable partitions	1
Decorative items allowable	½
Toilet area tiling not allowable	½
Sloping floor allowable as performing a function	½
Building for animals not allowed	½
Allowances available on animals	½
Sub total	6
TOTAL	10

Question 2

Part 1

Losses

The losses can be carried forward against total profits provided the company continues to trade. If the losses exceed £5m, the deductions allowance will restrict the amount that can be used to £5m + 50% of unrelieved profits when profits exceed £5m in a year.

As Mike will acquire 100% of the shares, there will be a change in ownership at the date Mike acquires the shares. It is therefore important to ensure that a major change in the nature and conduct of the trade does not take place within five years of the change in ownership. If a change in nature and conduct of trade does take place, the losses arising prior to the date of change in ownership will not be able to be set against profits arising after that date.

s.673(4) CTA 2010 states that a major change can include a change in the type of property dealt in, or services or facilities provided in the trade, or a major change in customers, outlets or markets. The changes proposed by Mike include a shift from luxury yachts to affordable yachts, reducing social events and outsourcing training. This is potentially a change in customers and services resulting in the losses not being available to Besail Limited to offset against future profits within the company.

Entertaining

Besail has been expensing all costs in relation to social functions and no tax adjustment has been made for this. Business entertaining is the provision of free or subsidised hospitality. The skiing trip is not, therefore business entertaining as it is not free or subsidised, but the summer event is paid for by Besail and so should have been disallowed. A tax liability exists on the correction of this error. This is a liability of Besail Ltd and so would be acquired along with the shares.

Booking system

We do not know the true value of the booking system as this was created by a friend of the owner of Besail Ltd in exchange for a free timeshare. The valuation of £100,000 may reflect the value of the booking system supplied but this will need to be confirmed. The treatment of the booking system will depend on whether it is a capital cost or a revenue cost. If capitalised, it would be appropriate to charge amortisation in the accounts which would be an allowable deduction for tax purposes (unless capital allowance treatment of software costs is elected). The credit in the accounts, however, should not have gone to the DLA but instead have been recognised as income as the asset was exchanged for a timeshare. Any increase in tax liability as a result of correcting this treatment will be a liability of Besail Ltd and so would be acquired along with the shares.

Contingent liability

Given the potential size of this liability combined with the other inherent liabilities identified, it may be beneficial to consider a trade and assets purchase rather than a share purchase. Mike could directly acquire the trade and assets or could set up a new company to acquire the trade and assets. This would mean that all inherent liabilities would be left behind in Besail Ltd including the lawsuit and the potential tax liabilities arising from historical errors. The new company would commence trading on the transfer of the trade and a new accounting period would begin. Each asset of Besail Ltd would be acquired at the price paid to Besail Ltd and the booking system, for example, would be capitalised at that value and tax allowable amortisation applied. Goodwill may be created which would be capitalised as an intangible asset. There would be a disadvantage in that the tax losses would remain in Besail Ltd and could not be utilised in Mike's new company. For Besail Ltd, an accounting period would end on the transfer of trade. The losses could be offset against profits/gains on the disposal of assets/inventory.

Part 2

Loans

The borrowing from the bank is borrowing to purchase shares in a close company in which Mike has a material interest and so interest would be deductible against Mike's total income.

Safety Ltd is a close company as it is run by two participator/directors and so any borrowing from it will be subject to s455 tax. Therefore, Safety Ltd could be charged tax at 32.5% for any amount outstanding on the payment date for the year in which the money was borrowed. The tax will be repaid to the company when Mike repays the loan or if the loan is written off. If the loan is written off, Mike will be treated as having received a dividend for the full amount.

Although the loan is interest free, a benefit in kind will not arise as the loan is a qualifying loan.

The loan from Safety Ltd to Besail Ltd will have interest charged at 0.5%. The interest receivable in Safety Ltd will be treated as a non-trade loan relationship credit. The interest payable in Besail Ltd will either be a non-trade loan relationship debit or a trading expense depending on the reason for this additional borrowing. Providing the borrowing was for trade purposes, it will be a deductible trading expense. However, if the money has been borrowed for non-trade purposes, it will be a non-trade loan relationship debit in Besail Ltd.

MARKING GUIDE

TOPIC	MARKS
Part 1	
Losses:	
Loss treatment	1
Identify change in ownership, change in nature/conduct of trade, including five-year time frame.	1.5
Implications of major change	1
Discussion of indicators of change	2
Entertaining:	
Business entertaining definition	0.5
Application to ski trip/summer event	1
Consequent liability	0.5
Booking system:	
Need to confirm value of booking system	0.5
Capital v revenue	0.5
If capital, amortisation (or capital allowances)	0.5
Incorrect treatment of credit and consequence	1.0
Contingent liability:	
Identification of trade and assets deal to avoid contingent liability	1.0
All liabilities left in Besail Ltd	0.5
New company, new AP	0.5
Assets acquired at price paid	0.5
Goodwill	0.5
Losses left behind	0.5
Implications for Besail Ltd	0.5
Total Part 1	14
Part 2:	
Loan eligible interest	1
Close company - Safety Ltd	0.5
S455 tax	2.0
No benefit in kind	1
Treatment of Loan from Safety Ltd to Besail	1.5
Total part 2	6
TOTAL	20

Question 3

Part 1

2021/22

Ross – As Ross is retiring from the partnership, he will be assessed in 2021/22 on his share of profits for the period to the date of his retirement less any overlap profits created when the partnership commenced.

Share of profits for the period 1 Feb 2021 to 31 May 2021 (see W 2)	31,200
Less : Overlap profits b/fwd	<u>(30,000)</u>
	<u>£1,200</u>

Abby – As Abby is continuing in the partnership, she will be assessed in 2021/22 on a continuing basis, subject to the change of accounting date. The year of the change will be 2021/22 and the gap period will be from 1 February 2021 to 31 May 2021, four months. As this is less than 12 months, her assessable profits will also include 8 months of the year ended 31 January 2021. This will create additional overlap profits.

Share of profits for the four months ended 31 May 2021 (4 / 16 * £121,800, from W2)	30,450
8 months of share of profit for year ended 31 January 2021 (8 / 12 * £74,400, from W1)	<u>49,600</u>
	<u>£80,050</u>

Overlap carried forward = Created £49,600 + b/fwd £10,000 = £59,600

Yousef – As Yousef is joining the partnership, he will be assessed in 2021/22 on a commencement basis

Share of profits for the period 1 June 2021 to 5 April 2022 (10 / 12 * £87,000, from W2)	<u>£72,500</u>
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2022/23

Ross – Not applicable as retired in 2021/22

Abby – Assessed on 12 months to the new accounting date 31 May 2022

Share of profits for the year ended 31 May 2022 (12 / 16 * £121,800)	<u>£91,350</u>
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Yousef – Assessed on 12 months to the new accounting date 31 May 2022 and overlap profits created being the period 1 June 2021 to 5 April 2022

Share of profits for the year ended 31 May 2022 (W2)	<u>£87,000</u>
Overlap profits c/fwd: 1 June 2021 to 5 April 2021	<u>£72,500</u>

Working 1 – Allocation of profits for the year ended 31 January 2021

	Total	Ross	Abby
Salary	24,000	-	24,000
Balance 3:2	<u>126,000</u>	<u>75,600</u>	<u>50,400</u>
	<u>£150,000</u>	<u>£75,600</u>	<u>£74,400</u>

Working 2 – Allocation of profits for the period ended 31 May 2022

	Total	Ross	Abby	Yousef
<u>1 February 2021 to 31 May 2021 (4 mths)</u>				
Salary (x 4/12 * £24,000)	8,000	-	8,000	-
Balance 3:2	52,000	31,200	20,800	-
<u>1 June 2021 to 31 May 2022 (12 mths)</u>				
Salary	36,000	-	21,000	15,000
Balance 1:1	<u>144,000</u>	-	<u>72,000</u>	<u>72,000</u>
	<u>£240,000</u>	<u>£31,200</u>	<u>£121,800</u>	<u>£87,000</u>

Part 2

Chargeable Gain
North Street Property

Capital Gains Tax Computation for Ross:

Deemed Sale Proceeds (Note 1)	1 June 2021	60% * £300,000	180,000
Less: Original Cost	1 February 2017	60% * £100,000	<u>(60,000)</u>
Gain before Exemption			120,000
Less: Annual Exemption (Note 2)			<u>(12,300)</u>
			<u>£107,700</u>
Tax thereon at 10% (Note 3)			<u>£10,770</u>

Base Cost for purposes of future disposal

Yousef

Transferred at Valuation (Note 1)	1 June 2021*	50% * £300,000	£150,000
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Abby

Original Cost	1 February 2017	25% * £100,000	25,000
Transferred at Valuation (Note 4)	1 February 2018	15% * £150,000	22,500
Transferred at Valuation (Note 1)	1 June 2021	10% * £300,000	30,000
			<u>£77,500</u>

Notes:

- Whether or not Yousef and Abby decided to revalue the property to £300,000 in future partnership accounts will have no impact on the tax consequences. Ross has agreed to sell his 60% interest in the property based on a valuation of £300,000. This will therefore give rise to a chargeable gain, based on this amount. This price paid will then represent the base cost for the 50% acquired by Yousef and the 10% acquired by Abby.
- As Ross has no other disposals in the tax year he will have an available annual exemption.
- The gain is taxed at 10% as qualifying for Business Asset Disposal Relief after the deduction of the annual exemption as no other disposals in 2021/22.
- The revaluation on 31 January 2018 has no tax consequences but the subsequent change of PSR on 1 February 2018 gives rise to a deemed disposal based on the revalued amount. Abby's interest has increased by 15% from 25% to 40%.

MARKING GUIDE

TOPIC	MARKS
Part 1 – Taxable Profits	13
Profit Allocation for year ended 31 January 2021	1.0
Profit allocation for the period ended 31 May 2022	2.5
Ross – Basis period 2021/22	1.0
Ross – Deduction of overlap relief b/fwd	1.0
Ross – No assessment 2022/23	0.5
Abby – Basis period 2021/22	2.0
Abby – Calculation of overlap relief – 2021/22	1.5
Abby – Basis period 2022/23	1.0
Yousef – Basis period 2021/22	1.0
Yousef – Basis period 2022/23	1.0
Yousef – Overlap relief c/fwd	0.5
Part 2 – Chargeable Gain	7
Capital Gains Tax Computation for Ross	3.5
Base Cost for Abby	2.5
Base Cost for Yousef	1.0
TOTAL	20

Question 4

Income tax computation

	£	Note
<u>Earned income</u>		
Net income from trading profits	50,650	1
Employment income	18,000	
<u>Investment income</u>		
Interest	<u>1,650</u>	
Total income	70,300	
Personal allowance	<u>(12,570)</u>	
Taxable income after allowances	<u>£57,730</u>	
<u>Tax rates</u>		
Basic rate limit £37,700 plus extension £900 = £38,600		4
Other	38,600 @ 20%	7,720
Higher rate limit £150,000 plus extension £900 = £150,900		
Other	17,480 @ 40%	6,992
Savings	500 @ 0%	-
Savings	<u>1,150 @ 40%</u>	<u>460</u>
Total charged	57,730	
Total tax charged	15,172	
Less: tax at source	<u>(1,086)</u>	
Income tax due	<u>£14,086</u>	

Class 2 NIC

	£	Note
Reduced profit for Class 2 NIC (£50,560 - £5,000)	45,650	
Exceeds profit threshold, so: 52 weeks @ £3.05	<u>£158</u>	
No annual maximum restriction		8

Class 4 NIC

	£	Note
Trading profit	50,650	
Less: additional Class 4 losses b/f	<u>(5,000)</u>	
Reduced profit for Class 4 NIC	45,650	
Less: lower limit	<u>(9,568)</u>	
Class 4 NIC main charge profit	36,082	
Contribution 9% on £36,082	3,247	
Less: Class 4 Annual Maximum restriction	<u>(467)</u>	8
Class 4 NIC due	<u>£2,780</u>	

Total Income Tax and NIC for 2021/22 - £17,024

Notes:

1) Trading profits adjustment

	£	Note
Profit/(loss) per accounts	97,930	
Add:		
Employer pension contributions	250	2
Depreciation	5,550	3
Charitable donation	720	4
Less:		
Interest income	(1,700)	5
Reduction in general bad debt provision	(1,000)	6
Capital allowances	<u>(46,100)</u>	7
Tax-adjusted trading profit/(loss)	55,650	
Less: trading losses brought forward	<u>(5,000)</u>	
Net income from trading business	<u>£50,650</u>	

2) Employer pension contributions which are unpaid by the accounting reference date are not deductible until they are paid. Contributions redirected from employees' own salaries remain deductible.

3) Depreciation is a non-deductible capital cost within the profit and loss account.

4) Donations to national charities are not "wholly and exclusively" for the business purpose. These are added back and Gift Aid claimed in Alex's personal tax return.

5) Interest is not a trading receipt and so is deducted in computing the business's taxable profits. It will be taxed on Alex personally based on the total actually received in the tax year - £1,650 (£1,700 - £150 + £100).

6) Movements in general provisions are not taxable/deductible as these are not compliant with FRS 102. The general provision has reduced from £4,000 to £3,000.

7) Capital allowances

	AIA @ 100% £	Main pool £	Allowances £
TWDV b/f		20,000	
Additions:			
Van	30,000		
Equipment	12,500		
AIA @ 100%	<u>(42,500)</u>		42,500
WDA @ 18%		<u>(3,600)</u>	<u>3,600</u>
TWDV c/f		<u>16,400</u>	<u>46,100</u>

8) NIC annual maximum

Regulation 21	£
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1	53 x (£967 - £184)	41,499
2	12% x £41,499	4,979
3	£18,000 - £9,568	8,432
4	£8,432 - £41,499	Nil
5		Nil
6		Nil
7		Nil
8	£4,979 + nil + nil	4,979
	Class 1 NIC paid	1,011
	Class 2 liability (above)	158

No reduction/repayment of Class 1
or 2 NIC due

Regulation 100		£
1	£50,270 - £9,568	40,702
2	9% x £40,702	3,663
3	£3,663 + (53 x £3.05)	3,824
4	£3,824 - £1,011 - £158	2,655
Case 1	£1,011 + £158 + £3,253	4,422
Case 2		
5	£2,655 x 100/9	29,500
6	£45,650 - £9,568	36,082
7	£36,082 - £29,500	6,582
8	£6,582 x 2%	131
9		Nil
Maximum	£2,655 + £131 + Nil	2,786
	Class 4 NIC payable	<u>3,253</u>
Restriction	3,253 - 2,786	<u>£467</u>

MARKING GUIDE

TOPIC	MARKS
Sources of income	1
Personal allowance	$\frac{1}{2}$
Gift Aid extension	$\frac{1}{2}$
Thresholds/calculation	1
Savings allowance	$\frac{1}{2}$
Tax at source	$\frac{1}{2}$
Class 2 NIC	1
Class 4 losses brought forward	1
Class 4 calculation	1
NIC annual maximum:	
Regulation 21 calculation	2
Regulation 100 calculation	3
Trading profits ($\frac{1}{2}$ for adjustment and explanation):	
Pension	1
Depreciation	1
Donation	1
Interest	1
General provision	1
Losses brought forward utilised	1
Capital allowances calculation:	
Additions	$\frac{1}{2}$
AIA	$\frac{1}{2}$
WDA	$\frac{1}{2}$
Deduction of allowances from profits	$\frac{1}{2}$
TOTAL	20

Question 5

Late registration and penalties

1) Corporation tax

The company should have registered for Corporation Tax within three months of the start of its first accounting period. The company has two accounting periods in the period to 31 December 2020. The first period starts when the company starts to earn interest on 1 May 2020 and ends when the company starts to trade on 1 June 2020. The second period starts when the company starts to trade on 1 June 2020 and ends with the period of account on 31 December 2020. The company should therefore have registered within three months of 1 May 2020 i.e. by 1 August 2020.

As the company failed to contact HMRC within 12 months of the end of the accounting periods, i.e. by 31 May 2021 and by 31 December 2021, penalties will be due based on the behaviour of the company and the potential lost revenue. Potential lost revenue is the tax unpaid 12 months after the end of the chargeable period. It is likely that the failure is seen as careless, meaning a maximum penalty of 30%. The penalty can be reduced by an unprompted disclosure to a minimum of 10% as the failure was for more than 12 months.

Once a notice to file has been issued, the company will have a minimum of three months from the date of the notice to file the return. Two returns will be required: one for each accounting period.

The company can make amendments to the Corporation Tax within the period of 12 months of the filing deadline. This will be 3 months from the date of the notice to file in this case.

HMRC will have 12 months from the quarter date following the actual submission of the return to open and enquire e.g. if the return is filed in April 2022, the deadline will be 30 April 2023.

Corporation Tax should have been paid within 9 months and 1 day of the end of the accounting periods i.e. by 1 March 2021 and 1 October 2021. Interest will therefore be due on the balances due from then until the date of payment.

2) PAYE on salaries

The company should have been making Full Payment Submissions (FPS) for each month that they have taken salaries. The submissions should have been made on or before a payment was made.

For each late submission after the first late submission in the tax year, a penalty will be charged. As there are only two employees, then the penalty will be £100 per submission. A further penalty of 5% of the PAYE or NIC that should have been shown on the submission may be charged for any submissions made more than three months late.

The PAYE and NIC should have been paid within 17 days of the end of each tax month. The late payments will be charged penalties of up to 4% of the payment due. Further penalties will be charged of 5% for payments more than six months late and a further 5% for payments more than 12 months late.

Interest will also be due on payments from the due date to the date of payment.

3) Car benefit

The company should also have filed a form P11d in respect of the company cars by 6 July 2021 and paid Class 1A NIC on the benefit by 22 July 2021. Penalties will be charged as the return will be filed late and interest will be due on the Class 1A paid late.

4) Loan from Peter

Barput Ltd should have deducted income tax on the payments of interest to Peter as the loan has been legally drawn up and is for a period of more than 12 months.

Quarterly returns should have been completed for the period ended 30 June 2020, and quarterly thereafter (September, December and March). The return and the tax were due 14 days after each quarter end.

MARKING GUIDE

TOPIC	MARKS
Corporation Tax	
Identification of accounting periods with reasons	1
Identification of date by which the company should have registered	½
Liability to penalties for 2 periods	1
Basis of calculation of penalties and potential reduction	1½
Due date of Corporation Tax Return and identification of two returns	1
Liability for interest on late paid Corporation Tax	1
Identification of period for making amendments	1
Identification of HMRC enquiry period	1
Sub total	8
PAYE	
Requirements for Full Payment Submissions	1
Liability to penalties on late filed submissions	1
Due date of payment of PAYE and NIC	½
Liability to penalties on late paid tax	1
Interest on late payments	½
Due date for P11D Return for car benefit	½
Class 1A NIC liability	½
Sub total	5
Loan from Peter – CT61	
Requirement to deduct Income Tax from interest (including reasons)	1
Requirement for quarterly returns (CT61) including due dates	1
Sub total	2
TOTAL	15

Question 6

Part 1 - Scott's employment status

The three most important factors in considering whether Scott, the worker, would be classified as an employee if his services were provided direct to Umber Printing Ltd are:

- Mutuality of obligation – the company must be obliged to provide work and the worker must be under an obligation to accept the work provided. Non-employees would have no guarantee of work and would be able to decline the work offered. The position in this case will depend on the exact terms of the agreement however it would appear that there is an obligation for Scott to accept the work which is given to him by Joyce.
- Personal service – an employee would have no flexibility to send a substitute in their place if they are unable to perform the work. Even if the agreement permits the provision of a substitute HMRC will look to see whether this is a genuine right or a substitute has actually been used. Scott is expected to perform the work personally and is not able to send a substitute.
- Control – an employee will normally be directed as to how to carry out the work whereas non-employees will usually have more flexibility over deadlines, method etc. The level of control by Joyce would need to be reviewed but it would appear likely that Scott will be under the control and supervision of Joyce.

Other factors which HMRC commonly consider are whether the worker provides their own equipment (yes), whether they are entitled to company benefits (no), whether there is an opportunity to profit from the work (no), whether the worker has other engagements with other businesses (yes).

There is no single test of whether an employment relationship exists, and all factors will be considered as a whole. Whilst there are a number of factors which indicate that Scott would not be an employee, as most weight is placed on mutuality, personal service and control, it is likely that Scott would be treated as an employee by HMRC if engaged directly.

The company could use the CEST (Check Employment Status for Tax) tool provided by HMRC to obtain their view, which can normally be relied upon provided the information entered is true and accurate.

If this is the case, the company would have to consider its obligations under the “off payroll working” rules. The rules apply where the company meets two or more of the following conditions:

- an annual turnover of more than £10.2 million
- gross assets of more than £5.1 million
- more than 50 employees

The company has met the turnover and gross assets test for the previous two financial years and therefore must apply the off payroll working rules.

As a result, the company must carry out a Status Determination in relation to Scott's R&D engagement and communicate this to him using a Status Determination Statement. The company must keep detailed records of this determination, including the reasons for the conclusion reached, and have processes in place to deal with any disagreements arising.

The company must withhold PAYE and NIC from the quarterly payments to Small World Ltd and report these to HMRC through the RTI system. The company must also pay employer's Class 1 NIC on the payments.

Part 2 - Non-executive director (NED)

Both non-executive and executive directors are “office holders”. As such, HMRC do not accept that an office holder can be self-employed. HMRC's starting point is that NEDs should be treated in the same way as executive directors for PAYE purposes.

Payments made to the office holder for executing the duties of the office i.e. attending board meetings, are therefore taxable under PAYE and are subject to employee's and employer's Class 1 NIC.

The location of the board meetings is likely to be considered a “permanent workplace”, as it is likely to be in the same location each time, and therefore travel to and from the board meetings would be private travel from home to work. As the company is reimbursing the travel and accommodation expenses incurred by the NED then, not only are the payments taxable, but they will be subject to PAYE and both employees and employers Class 1 NIC as they will be the settlement of a “pecuniary liability”. If the company arranges the travel/accommodation, rather than reimbursing the employee, then the costs will be included on a P11D. The company will pay Class 1A NIC instead of employers Class 1 NIC, so it would only be for the NED’s benefit.

The usual employment tests (which are described above) will be considered to determine whether the consultancy work falls within the definition of an employment, or whether this is validly self-employed work. If the consultancy payments are made to a self-employed individual, who does not meet the definition of an employee, then payments can be made free of tax. There is a risk that HMRC could seek to tax all payments to the NED under PAYE/NIC and therefore the consultancy services should be distinct and separate from the non-executive duties, and the contractual relationship should reflect the two different relationships.

MARKING GUIDE

TOPIC	MARKS
Part 1 – Off-payroll working	9
Mutuality of obligation	1
Personal service	1½
Control	1
Other factors	½
Conclusion	1½
CEST	½
Off payroll working rules apply	½
Status determination obligations	1½
PAYE and NIC	1
Part 2 – Non-executive director	6
PAYE/NIC	1½
Travel costs – current	2
Travel costs – arranged by company	1
Consultancy work	1½
TOTAL	15