Chartered Institute of Taxation
Excellence in Taxation

The Chartered Tax Adviser Examination

November 2019

Human Capital Taxes

Suggested solutions

ANSWER 1

To: Elizabeth
From: Tax manager
Date: 5 November 2019
Re: Emmanuel's social security position

Dear Elizabeth

Thank you for contacting us regarding Emmanuel's social security position.

Emmanuel is gainfully employed in the UK as he physically carries out duties here, so the starting point is that he is liable for UK National Insurance contributions (NIC) on his earnings.

As he is spending more than 5% of his time working in a second EU member state, we must also consider the rules relating to multi-state workers to understand in which EU member state he is insured (and therefore in which member states he is not liable).

Emmanuel's family and children live in France and he returns there frequently so he is likely to be habitually resident there as this would appear to be where he has the strongest personal ties. He does not carry out more than 25% of his work duties in France, so under the multi-state rules his social security liability will be in the country the employer has its registered office or place of business, which in this case is the UK. The employer social security liability will always follow. We recommend that a multi-state A1 certificate is obtained in order to prove exemption from social security in Belgium, the Netherlands and France.

Emmanuel is also working in the US. The UK-US social security agreement stipulates that he is only liable to social security in the UK provided his work in the US is not expected to go on for a period exceeding five years. A certificate of coverage should be obtained from the US authorities to confirm the exemption from US social security, given the significant amount of time he is spending working there.

Regarding the Singapore secondment, as Singapore is not a country covered by EC Regulations and does not have a social security agreement with the UK it is considered a 'Rest of World' country for social security purposes. As Emmanuel will be seconded to Singapore by his existing UK employer, we will need to consider whether there is a continuing liability to UK NIC for 52 weeks after his departure. This applies where the individual is resident immediately before the secondment, remains ordinarily resident and is employed in the UK. However, as Emmanuel's family live in France, this is a strong indicator that he is unlikely to be ordinarily resident in the UK and therefore the 52 week continuing liability does not apply. This may be subject to challenge on the basis that he continues to have factors connecting him to the UK, such as having a UK employer and returning to the UK for employment. If such a position is upheld, then he and Dolly plc will continue to be liable to UK NIC on his earnings for 52 weeks after departure.

Regarding the workdays spent back in the UK, we must consider whether these trigger a UK NIC liability as he will be both 'present' in the UK and working under a UK contract. If there are no more than 10 board meetings in the year and the UK visits last no longer than two nights each time, he may be eligible for an HMRC concession which allows them to be exempt. The concession is only available if Emmanuel is neither resident nor ordinarily resident in the UK for social security purposes. Otherwise, there is a risk of bringing all the earnings under the contract in scope of UK NIC as no apportionment is possible. Therefore, there may be some scope to save UK NIC if the board meetings can be managed so that the terms of the concession are met. Having a separate fee for the board meetings may mitigate the potential risk.

In order to determine the extent of the option gain which is liable for UK NIC, we must consider what proportion of the vesting period Emmanuel was liable for UK NIC. As he should cease to be liable to UK NIC upon his Singapore secondment, two thirds of the option gain will be liable.

I trust the above is helpful.

Kind regards

Tax Manager

MARKING GUIDE

TOPIC	MARKS
Gainfully employed so liable for UK NIC	1
Identify multi-state worker	1
Identify country of habitual residence	1
Test whether carries out 25% of work duties in country of habitual residence	1
Conclude that social security liability is country where employer is registered, i.e. UK	1
Recommend A1 is obtained for Belgium and the Netherlands	1
Identify exempt from US social security under Article 4	1
Recommend certificate of coverage obtained	1
State rules for continuing 52-week liability for Singapore assignment	1
Identify not ordinarily resident in the UK so continuing 52-week liability does not apply	1
Identify risk of UK NIC liability on workdays as working under a UK contract	1
Correctly identify HMRC concession	1
Identify that option gain is subject to UK NIC according to proportion of the vesting period he is UK-insured	1
Conclude that 2/3rds of option gain is liable to UK NIC	½
Advise that employer NIC liability follows that of employee	½
PHS	1
TOTAL	**15**

ANSWER 2

To: Raahim Ali
From: A Manager
Subject: Report for Ballater Ltd: 2018/19 expenses and benefits review

At the request of Ballater Ltd we have conducted a review of the company's expenses and benefits processing and reporting procedures. We have identified the below errors.

Medical benefit

We understand that you have not registered with HMRC for voluntary payrolling of the private medical insurance benefit. Accordingly, the benefit should not be processed through payroll, but reported on P11Ds and employer's Class 1A NIC paid. To remedy the position, we suggest that Ballater Ltd takes the following steps:

1. With respect to the 2018/19 year, Ballater Ltd should contact HMRC to agree a voluntary settlement on the Class 1A NIC due on the private medical benefits.

2. With respect to the current year, it may be possible to agree with HMRC to continue to process private medical benefits through the payroll. Alternatively, Ballater Ltd could process a correction to the payroll via the submission of an amended Full Payment Submission or by updating the year to date figures on the next Full Payment Submission. Either way,P11Ds (marked "Payrolled" or not as appropriate) should be filed in respect of the 2019-20 year by the 6 July 2020 deadline. Class 1A National Insurance will be payable via submission of the P11D(b) by 19 July 2020 (22 July if paying electronically).

3. For future years, you should register online for voluntary payrolling of benefits with HMRC.

    a. You must register before the start of the next tax year – it will then apply in all future years, unless you deregister. Affected employees must be informed in writing that their benefits will be payrolled.

    b. You can choose which benefits are included in the voluntary payroll, although beneficial loans and accommodation are excluded from the system. The cash equivalent of the benefit is then payrolled. If you chose to deregister you must do this prior to the start of the tax year in which you do not intend to payroll benefits.

    c. By 1 June following the end of the tax year, Ballater Ltd must provide each affected employee with a summary of the payrolled benefits detailing the amount included in the payroll for each benefit.

    d. Ballater Ltd will need to complete and file a form P11D(b) by 6 July following the end of the tax year. Class 1A on payrolled (and non-payrolled) benefits must be reported using P11D(b) and paid by 19 July (22 July if paid electronically).

Rafe Widdicombe

Where an employee is offered a choice of a benefit in kind or a cash alternative the optional remuneration arrangements (OpRA) rules apply. These rules require the employer to report the higher of the cash equivalent of the benefit and the 'amount foregone'.

The value of the company car benefit in 2018/19 was: £3,410 ((£31,000 * 22%) * 6/12) and the fuel benefit was £2,574 ((£23,400 * 22%) * 6/12). The cash equivalent of the benefits is £5,984.

If Rafe had chosen the cash allowance he would have received £10,200 (£1,700 * 6).

Under the OpRA rules tax is payable based on the higher of the cash equivalent of the benefit or the value of the cash forgone. Therefore, the benefit was understated on the 2018/19 P11D by £4,216 and the additional amount of Class 1A NIC due is £582.

The workplace car park is an exempt benefit.

Voluntary disclosure and penalties

We recommend that a voluntary disclosure is made to HMRC of the above inaccuracies and you should include a payment of the amount underpaid, to reduce any interest (which accrues daily).

HMRC will seek to charge tax geared penalties on the NIC due. The amount is determined by whether the error was innocent, careless, deliberate or deliberate and concealed, and whether or not any disclosure is unprompted (voluntary) or prompted by the belief that HMRC are about to discover the error. The penalty range for a careless error is 0% (for an unprompted disclosure) to a maximum of 30%.

HMRC is likely to regard the errors found as careless and unprompted if the disclosure is made without delay. As such, HMRC will seek to charge a penalty at the lower end of the range.

Ballater Ltd could request suspension of the penalty. If HMRC agrees they will not seek immediate payment. Instead, conditions will be imposed requiring Ballater Ltd to improve its processes to ensure that similar errors do not arise in future. If met, then after the expiry of the suspension period (which cannot be longer than two years), the penalty will be cancelled.

Please let us know if you would like our assistance in preparing the disclosure.

Kind regards

A Manager

MARKING GUIDE

TOPIC	MARKS
Presentation and higher skills	1
Medical benefit – voluntary disclosure	0.5
Medical benefit – current year correction via FPS	0.5
Medical benefit – voluntary payrolling option and P11D	1
Medical benefit – future payrolling • register • employee informed • Class 1A NIC • reporting and payment	 0.5 0.5 0.5 0.5
Rafe: • OpRA applies • higher of BIK or cash foregone • car and fuel calculation • car allowance calculation	 1 0.5 1 0.5
Rafe – workplace car park an exempt benefit	0.5
Rafe – quantify the amount understated	1
Recommend voluntary disclosure and payment	1
Penalty and interest chargeable	0.5
Explanation of basis for penalties • Tax geared • Behaviours • Prompted v unprompted	 0.5 1 1
Recommend suspension is sought • Conditions imposed • Two year period	0.5 0.5 0.5
TOTAL	**15**

ANSWER 3

To: Emma
From: Tax Manager
Date: 5 November 2019
Re: UK secondment

Dear Emma

Thank you for contacting us.

Income Tax

All the prospective employees are likely to be resident in the UK under the Statutory Residence Test, given that they would appear to be spending more than 183 days in the UK in each tax year. Therefore, the default position is that they will be each be taxable on worldwide income. However, tax relief may be available where the secondee qualifies as non-UK domiciled.

Firstly, it would appear that Geoff would be deemed to be UK domiciled under rules which state that where an individual was born in the UK with a UK domicile of origin, he will be deemed to be UK domiciled when they are resident in the UK. Geoff appears to have a UK domicile of origin because he was born in the UK to British parents.

The main impact of this will be that Geoff will not be able to access Overseas Workday Relief (OWR), under which an individual can exclude income relating to duties performed overseas from UK tax provided that the income is not remitted to the UK.

In addition, he would not be able to benefit from tax relief in respect of the home leave flights because one of the conditions for this relief is that the employee is not domiciled in the UK. Therefore, these will be taxable in the UK.

Brett, on the other hand, should be able to access OWR for the first three tax years of residence in the UK on the basis that he is not domiciled in the UK, was non-resident for three consecutive tax years prior to the secondment, and he claims the remittance basis. You should ensure that Brett receives proper advice relating to overseas bank account structuring in order to maximise and simplify the calculation of this relief. In particular, we recommend that he opens a new non-UK account each tax year to receive his employment income and receives no other income other than interest in the account. Remittances to the UK from this account should be minimised in order to maximise the relief. Brett will be able to access home leave in respect of the flights to Australia on the basis that he is non-domiciled in the UK, but only for the first five years of the secondment.

Angela, while non-domiciled (her continuing personal and economic relations to Australia will mean that a UK domicile of choice is unlikely), will not be able to access OWR because she will not be non-resident for three consecutive tax years prior to her return.

In order to access the exemption for home leave flights, Angela needs to be not resident in both of the two tax years preceding the tax year in which she returns. In other words, with a 6 April 2020 start date, she will only get relief if she is non-resident in the UK for 2018/19 and 2019/20. This condition appears to be met.

Where OWR is not available (in the case of Geoff and Angela), the income relating to overseas duties will be taxable in the UK. As the conditions for treaty relief in the other country are not met, Foreign Tax Credit relief will be available in the UK up to the amount of UK tax on the doubly taxed income.

Social Security

For social security purposes, Australia is considered a 'Rest of World' (ROW) country. As such where an individual is seconded to the UK from Australia they are usually exempt from Class 1 primary National Insurance contributions (NICs) for the first 52 weeks of their secondment from the start of the contribution's week following arrival for the employment. During this period the employer will also be exempt from UK NICs in respect of the employee's pay and benefits.

It should be noted that the exemption only applies where the employee is not ordinarily resident in the UK. This is unlikely to be challenged in the case of Brett, provided his circumstances do not indicate a settled and regular mode of life in the UK within the first year.

In Geoff's case, there is a small risk of challenge by HMRC on his ordinary residence status given the fact he is a British national, and so is more likely to have connections to the UK which point to ordinary residence status. The risk would be heightened if Geoff has property and family in the UK. However, given the length of time Geoff has spent outside the UK it is likely that Geoff would be able to demonstrate that he does not 'normally' live in the UK and he does not have a 'settled and regular mode of life' here. In this case, the 52 week exemption would be applicable.

Angela is unlikely to be able to substantiate a claim that she is not ordinarily resident in the UK if she is living here with her British partner, has property in the UK and the facts otherwise indicate a regular and settled mode of life in the UK, notwithstanding the fact she has a foreign employer. Therefore the 52 week exemption is unlikely to be available.

Conclusion

Brett is therefore likely to be the 'cheapest' employee to send to the UK from a UK tax and social security perspective because it should be possible to benefit from all three reliefs mentioned (OWR, home leave and the 52 week NIC exemption).

Geoff will certainly not be eligible for OWR, and it is unlikely that Angela will be either unless the start date can be delayed. Geoff will not be eligible for home leave, but it appears that Angela will. However, Angela appears less likely than Geoff to be able to access the 52 week NIC exemption, because the facts indicate she is likely to remain in the UK on a settled basis.

Tax savings will be grossed up at the individual's marginal rate of tax. Where UK NIC is due, it will be on an all or nothing basis. In this event, the main cost will be employer's NIC, which is due at 13.8% on all earnings above the secondary threshold, including on grossed up taxes paid on the employee's behalf.

In the case of Brett and Angela, any additional costs (such as removal costs, flights and accommodation) attributable to the fact they would be accompanied to the UK by their family should also be considered in assessing the overall cost attributable to each individual.

Kind regards

Tax Manager

MARKING GUIDE

TOPIC	**MARKS**
Income Tax	
Identify that Geoff will be deemed to be domiciled in the UK and explain why	1
Impact of UK domicile on OWR	½
Brief explanation of what OWR is	1
Impact of UK domicile on home leave	1
Brett will be eligible for OWR	½
Recommend that Brett have a qualifying account (1) and explain conditions (1)	2
Brett will be able to get home leave as non-domiciled	½
Home leave can only apply for 5 years	½
Angela will not get OWR and explain why	1
For home leave purposes Angela needs to be NR for two years prior to her return	1
Highlight that FTC would be available as treaty exemption not available	1
Social security	
Discuss 52-week rule for inbound expatriates from ROW countries	1
52 week rule only available where individual is ordinarily resident overseas	1
Discuss whether or not candidates are likely to be ordinarily resident the UK for NIC purposes and hence able to access exemption (1 mark in each case)	3
Discussion and comparison between the three prospective secondees	2
Discuss rates of tax and NIC saving	1
PHS	2
TOTAL	**20**

ANSWER 4

Carer	Total	Hours	Hourly rate	NMW for age
	£		£/hr	£/hr
Lauren	£2,100	264	£7.95	£8.21
Rose	£1,886	240	£7.86	£6.15
Jacinta	£1,680 + £55 - £4= £1,731	192 + 7 = 199	£8.70	£8.21
Marie	£1,370	168	£8.15	£7.70

Summary of findings

For employees over 25, pay rates must be at least the national living wage (NLW). For employees under 25, national minimum wage rates apply (NMW). Taking the total pay for the month divided by the number of hours worked, we can establish the following:

Lauren is being paid at less than the NLW.

Rose being under 21 is being paid at a rate higher than NMW. This will still be OK, even when Rose turns 21, assuming a similar work pattern.

Jacinta is well above the NLW but this is because she had reduced hours actually worked due to holiday. There is potential exposure for a full month. For example, if she had worked a full month similar to Lauren or Rose, her rate would probably be below the NLW.

Jacinta's training course counts as working hours as the course is compulsory. Time travelling to the course would also count, although it is only a short distance away. Once this is known we will need to adjust the calculation accordingly. The cost of travel to the course will reduce Jacinta's pay to be assessed against the NLW.

Marie is currently above the NMW but will be below NLW when she turns 25. The travel payment does not count for NMW, as it is an expense deductible under s338 ITEPA 2003.

The travel payment could qualify for tax relief as Marie is not attending a regular customer of hers. She could make a claim to HMRC directly for a tax refund. However, if it had been correctly treated and not put through payroll, then the company and the individual would have saved NI contributions. So it would be beneficial to the company to treat this correctly through the payroll.

Jacinta could have claimed travel costs to the course from Athome Ltd, which would have been PAYE and NIC-free under temporary workplace relief. If the company does not reimburse mileage or expenses in this circumstance, then tax relief could be claimed from HM Revenue & Customs.

The rate of £4.50/hour is potentially causing the NMW failure as these hours must be included in NMW calculation as the employees are still subject to work related responsibilities, even if the customer is asleep. The £9 rate is unlikely to be the problem since it is above the NLW. The flat rate for holiday is not the problem since there are no hours worked on these days. This payment in effect counteracts some of the underpayment on night shift hours.

An HMRC review could go back six years, including for ex-employees. Arrears are paid at current NMW, not historic NMW. The arrears will be subject to PAYE and NIC deductions.

PAYE is calculated according to the rates applicable for the year the payment was earned. It is treated as a week 53 payment. Therefore, an Earlier Year Update will be required for each year concerned. NIC is calculated as if the arrears are a lump sum at the time of payment. The company is required to issue a letter to each employee explaining the payments and deductions made.

If HMRC finds a shortfall it can levy a penalty of 200% of amount owed or £100 (whichever is greater) up to £20,000 max per worker.

Naming and shaming of company is also possible, which would not be a favourable outcome for the company's reputation. Failure to rectify could also lead to criminal charges being brought against the company.

If HMRC issue a penalty notice, the company has 28 days to pay any wage arrears and penalty. However, payment within 14 days reduces penalty by 50%. Rectification of arrears before any notice would also reduce penalty.

Actions:

- Consider changing the company training policy to include course time, travel time and travel payments.
- Check for other employees aged over 25 as exposure currently seems to be with older employees.
- Check for employees about to become 25
- Work out arrears and pay any underpayments as soon as possible
- Consider changes in rates/payment structure required to avoid recurrence of problem

MARKING GUIDE

TOPIC	MARKS
Calculation of hourly rate (½ mark per person):	2
Identifying issues • Over 25 • Jacinta due to holiday • Review includes ex-employees • Backdating limit and current rates • Customer sleeping hours included in NMW calculation • Calculation of PAYE and NIC over different time periods • Training course hours included and why • Training course travel included	 ½ ½ ½ 1 ½ 1 1 ½
Travel payment • Not included in NMW pay • Can qualify under TWR • Marie can claim tax back • NIC saving if not payrolled • Available to Jacinta	 ½ ½ ½ ½ ½
Penalties • Normal penalties • Naming and criminal charges • Time limit after penalty notice • Reduction for immediate payment • Reduction for arrears already settled (Up to 1 bonus mark will be awarded for reference to any HMRC disclosure scheme currently available and benefits of such a scheme)	 ½ ½ ½ ½ ½
Action Points • Review training policy • Checking older employees • Checking age changes • Calculate and make payments of arrears • Change rates for future	 ½ ½ ½ ½ ½
Total	**15**

ANSWER 5

To: Leslie Senton
From: Gill Robertson
Date: 9 November 2019
Subject: Employee locations

Leslie,

Thank you for your email.

Our comments are based on your email of 29 October 2019 and information we hold on file. Should the facts change as plans develop, or any of our assumptions be incorrect, please let us know as our advice may need to be revised.

Isla Stewart

Isla will remain UK tax resident as she will be spending more than 183 days in the UK in each tax year. She will therefore remain liable to UK taxation on her worldwide income and capital gains. Crimond Ltd should therefore continue to operate PAYE tax on her earnings.

Isla will initially suffer double taxation due to the US withholding tax requirements, as confirmed by your US subsidiary. However, she can seek relief from federal tax under Article 14(2) of the UK/US Double Taxation Agreement, provided that:

1) she does not exceed 183 days in the US in any 12 month period;
2) she is paid by, or on behalf of, a UK resident employer, and
3) her remuneration is not borne by any permanent establishment of that employer in the US.

Where these conditions are met, the UK has the sole taxing right over her US workdays. HMRC will not then allow a foreign tax credit claim for the federal taxes. HMRC would expect the US to relieve the doubly taxed income.

Please note that in respect of state tax, the UK will allow a unilateral foreign tax credit in respect of US tax charged on Californian workdays. This credit is claimed via her UK self-assessment tax return.

Isla will remain ordinarily resident for National Insurance purposes and employee and employer contributions should continue. It would be prudent to obtain a Certificate of Coverage to confirm exemption from US social security contributions.

Finally, please note that travel costs can be deducted from earnings where:

1) the expense is incurred by the employee travelling in the performance of their employment duties, or
2) the expenses are attributable to the employee's necessary attendance at any place in performance of her duties of employment, or
3) where an individual works partly abroad and the expense is incurred wholly and exclusively for the purpose of performing their duties at a place abroad.

No relief is available for private (personal) travel. As such, travel between the UK and her California home will not qualify for relief, whether or not she works whilst she is staying there. Travel to and from the California office from her Californian home will qualify for relief because it will be a temporary workplace. Crimond Ltd should advise Isla to clearly separate personal and business costs so they can be correctly processed by Crimond Ltd's payroll.

Lewis Fraser

Lewis will remain resident in the UK under the sufficient ties test as he has three ties to the UK (work, accommodation and 90 day ties) and he will spend more than 90 days in the UK in each tax year.

As Lewis remains UK resident under UK domestic law, then assuming he is also resident in France under French law (as indicated), he is likely to be treaty resident in France under the UK/France Double Taxation Agreement. This will be on the basis that although he has a permanent home in both countries, his centre of vital interests (in particular his family) is in France. As a result, the treaty will restrict the UK's right to tax Lewis to his UK-sourced employment income (based on UK workdays).

Crimond Ltd could apply to HMRC for an informal treaty direction (equivalent to a section 690 direction) limiting UK PAYE to an estimated portion of Lewis's employment income. HMRC will grant a direction where an individual is treaty non-resident in the UK. Lewis's residence status each tax year will need to be confirmed, but the direction may be issued for up to three years.

Under EU rules, an individual is only liable in one member state for social security. On the basis that, in relocating with his family, Lewis is habitually resident in France and that he carries on at least 25% of his work in France, he will be liable to French social security. An A1 certificate should be obtained to confirm liability. National Insurance withholding in the UK should then cease. Advice should be taken in France on Crimond Ltd's registration requirements there.

Harris Campbell

As you know, the Scottish government has the power to set tax rates and bands for Scottish taxpayers on certain types of income, in particular, employment income. As a UK resident, Harris will be liable to the Scottish rate of income tax if Harris has a 'close connection' to Scotland. As his only or main place of residence will be in Scotland, he will meet this test and his employment will be liable to the Scottish rates of income tax. An 'S' code should be prefixed to his tax code by HMRC. The operation of National Insurance is not affected by Scottish taxpayer status.

With regards to supporting his relocation costs, there is an exemption for employer provided relocation benefits or reimbursed relocation expenses which would apply to Harris, providing he is changing his main residence as a result of an alteration of the place where he normally performs the duties of his employment. The exemption applies to eligible expenses/benefits up to a value of £8,000. Eligible expenses include transporting of belongings (including packing and unpacking), travel and subsistence connected with the change of residence and costs associated with acquisition or disposal of a residence. The expense must normally be incurred on or before the end of the tax year following the year in which Harris changed residence.

Please note that a cash relocation allowance would be subject to PAYE and National Insurance.

Please don't hesitate to contact me should you have any questions.

Kind regards

Gill Robertson

MARKING GUIDE

TOPIC	MARKS
Presentation and Higher skills	2
Isla – remains UK tax resident and liable on the worldwide basis	1
Isla – remains subject to UK PAYE and National Insurance	1
Isla – Article 14(2) of the UK/US DTA in point	1
Isla – identifies conditions for foreign tax credit treaty relief and unilateral relief	1.5
Isla – Certificate of Coverage would be prudent	1
Isla – travel costs – private journeys won't qualify for relief	1
Isla – travel costs – California office a temporary workplace	1
Lewis – conclude UK resident under sufficient ties test - identify three ties (90 day, work and accommodation)	2
Lewis –residence tiebreaker under UK/France DTA	1
Lewis – impact on liability to UK tax of treaty	1
Lewis – obtain s 690	1
Lewis – liable to French social security	1
Harris – identify Scottish taxpayer	1
Harris - employment income subject to Scottish rates of income tax	0.5
Harris – identify that NIC is unaffected by Scottish residence	0.5
Harris – identify employer paid/reimbursed benefits/expenses qualify for relief, limitation of amount and time and examples of qualifying relocation	2
Harris – cash allowance subject to PAYE/income tax and National Insurance	0.5
TOTAL	**20**

ANSWER 6

To: George Cooper
From: Alex Smith
Date: 4 November 2019
Subject: Staff Canteen and Entertaining

Dear George,

Following our recent discussion, I have considered the position in respect of the potential benefits and the PAYE, benefit in kind and National Insurance (NIC) issues that may arise.

Staff Canteen

There is no tax charge on the provision of meals for directors or employees if the meal is provided in a canteen or on the employer's premises, and the following conditions are met:

- the meal is on a reasonable scale and
- all employees, or all employees at a particular work location, may obtain a free or subsidised meal (or a voucher for one); and
- the meals are not provided as part of salary sacrifice or flexible remuneration arrangements.

The phrase "on a reasonable scale" can be quite broad. A benefit applies only where the provision is clearly unreasonable. For example, where it involves the provision of an elaborate menu, fine wine and cigars.

The exemption applies to meals provided in **any** canteen. The canteen does not necessarily have to be on the employer's premises, or restricted to the employees of one employer. For example, on an industrial estate there may be a single canteen serving the employees of all employers on the estate. Meals provided in that canteen are within the exemption as long as they are only available to all employees of the employers concerned. A restaurant, cafe, public house or similar establishment which serves meals to the public at large is not a canteen.

There is also no need for all the employees to get the same level of subsidy for their meal. Provided a free or subsidised meal is available to all employees, the exemption applies.

In the circumstances outlined there are no benefit in kind or NIC implications.

Sales team meeting

The exemption relating to in-house meals does not apply to the sales team meetings, because not all the employees at the employer's location may get a free meal on the same basis as the sales team.

The provision of this 'working lunch' will give rise to a benefit in kind for all of the 15 sales team attending.

Our estimate of the liability is:

Tax due on benefit

Number	Amount	Months	Amount	Tax rate	Tax due
10	£ 13.00	12	£ 1,560.00	20%	£ 312.00
5	£ 13.00	12	£ 780.00	40%	£ 312.00

Tax payable on a grossed-up basis

Amount	Tax rate	Tax due
£ 312.00	20%	£ 390.00
£ 312.00	40%	£ 520.00

NIC due on tax met for employees

Amount	NIC rate	NIC due
£ 390.00	25.8%	£ 100.62
£ 520.00	15.8%	£ 82.16

Class 1A NIC due on benefit

Amount	NIC rate	NIC due
£ 1,560.00	13.8%	£ 215.28
£ 780.00	13.8%	£ 107.64

Total Tax and NIC payable = £1,415.70

In addition, there could be penalties for incorrect forms P11D of up to £3,000 per P11D per employee per annum. However, where the employer voluntarily settles the tax on a grossed-up basis HMRC practice is to forego P11D penalties for incorrect returns. However, tax geared penalties could still apply in respect of the NIC due and we would expect to be able to mitigate the NIC penalty down to 15% and/or seek a suspended penalty.

We would recommend settling on a grossed-up basis as not only could HMRC take a dim view in relation to penalties if they are required to assess each of the individuals, additionally it would not help employee morale for the sales team to be faced with personal tax liabilities.

We would recommend writing to HMRC to address this rather than amending previously submitted P11D's as this may lead to HMRC selecting the Company for a full PAYE/Employment Tax Compliance review which could impact the Company's risk rating and result in unnecessary disruption.

Perhaps, in future the sales team could have these meetings in the staff canteen and avoid the benefit in kind?

Tea, coffee, water and biscuits

An employer may provide its employees with access in the workplace to tea, coffee or water from a cooling dispenser. If this refreshment is available generally to all employees, these refreshments are exempt from a tax and NIC charge.

The fact that the employee has a limit and has to pay for some drinks and biscuits is irrelevant, as under the legislative exemption they have no requirement to.

Best regards,
Alex

MARKING GUIDE

TOPIC	MARKS
Staff canteen	
S317 ITEPA 2003 exemption	1
Reasonable scale	½
All can participate	½
Not if salary sacrifice	½
Any canteen	½
Same level of subsidy	½
Canteen definition	½
No BIK or NIC issues	½
Sales team meeting	
S317 ITEPA 2003 exemption does not apply	1
Not all participate	½
Not all on same basis	½
Working lunch is a taxable benefit	½
Apportion at 20% and 40% rates	1
Grossing up for tax at 20% and 40%	1
NIC on grossed up tax	1
Class 1A NIC on benefit	1
P11Ds penalties up to £3,000 per return per employee per annum	½
No penalties on grossed up tax	½
Penalty still on NIC	½
Advising to settle voluntarily on a grossed up basis	½
Tea, Coffee, biscuits	
S317 ITEPA 2003 exemption	½
Limit on drinks and biscuits and payment by employee irrelevant	½
Presentation	1
TOTAL	**15**