The Chartered Institute of Taxation

Advanced Technical

Human Capital Taxes

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Suggested answers

ANSWER 1

The Dutch schemes would not have the same favourable tax treatment in the UK and therefore an alternative arrangement may be preferable.

UK Treatment of the Dutch Schemes

The first scheme would be treated as a restricted stock plan with forfeiture provisions and would be regarded as employment related. As the forfeiture period could extend beyond five years, there would be a charge to UK Income Tax when the shares are awarded. The charge would be on the value of the shares at that date but adjusted for the fact they have disposal restrictions on them.

There is then a chargeable event whenever the disposal restrictions are lifted, e.g. on flotation or sale and a second Income Tax charge would arise based on the percentage of the value achieved at that time, which was not already taxed at grant. It would, however, be possible to swap restricted shares in Hoora BV for restricted shares in the purchasing company without a tax charge arising.

The Income Tax at either point would be up to 45% at current rates. Social security charges (called National Insurance) would also be due as it would be considered employment income. This would result in a cost of 2% to the employee but also 13.8% to Hoora BV.

Therefore, as there is no special tax relief, John and David could be reluctant to take up the scheme, which would defeat the retention objective. If the forfeiture period was restricted to five years, then there would not be a tax charge on grant. However, there would be a greater income tax charge at sale or flotation as 100% of the current value would be taxed. John and David may have to sell their shares in order to fund the tax payments at this time. There are possible elections to change the tax point to date of award but as already discussed, this does not help the attractiveness of the scheme.

The option scheme would be unapproved in the UK. There would be a UK Income Tax and National Insurance charge on 100% of current value at exercise. A further charge to CGT would occur if the shares obtained were retained and sold at a later date based on the proceeds received less the amount charged to tax at exercise.

The company would be required to register both share schemes with HMRC at the time of the issue of shares or grant of the option and prepare an annual report each year by 6 July.

Since there are potential arrangements in place for the shares to be traded even if it is just back to Hoora BV, the shares are readily convertible assets, which means that Plasio Ltd will have to operate withholding tax and national insurance through its payroll.

Alternatives

Given the unfavourable UK tax treatment, I would suggest looking at an approved UK share scheme instead. Given that Hoora BV only wants to reward specific employees, there are only two possibilities: a company share option scheme (CSOP) or enterprise management incentives (EMI). The maximum value of shares allowed under a CSOP is only £30,000, so I would suggest EMI is more suitable.

The conditions are as follows:

- The shares have to be in Hoora BV as the parent company, so it is the same as the Dutch scheme
- There can only be a total of 249 employees in the group and there are 248 (the part-time staff count as employees as they are doing 25 hours a week)
- Hoora BV can have no more than £30 million of gross assets, which is does not.
- The total value of shares is limited to £250,000 per employee
- The options must be exercised within 10 years

I believe that Hoora BV would currently meet these conditions. Hoora BV must also continue to trade and David and John continue to work full-time for the lifetime of the scheme. It is also possible to include restrictions in the plan about how and when the options may be exercised and the shares sold, so we

could mirror the types of restrictions that exist in the Dutch scheme. We will need to ensure the value of the shares is within the limits and that the valuation method is in accordance with HMRC's views.

As David and John will be given options at the market value at grant, there is no tax charge at grant or exercise. Hoora BV would also save employer's NI and the administration burden of payroll reporting. There is a charge on sale of the shares but it is to Capital Gains Tax (like the Dutch scheme) and the rate of tax payable could be between 10% and 20%.

The sale of EMI shares can qualify for a relief known as Entrepreneur's Relief, if there is at least two years between grant and sale/flotation and subject to other conditions. This relief brings the CGT rate down to 10%. I would assume that on the sale of Plasio Ltd to Hoora BV, John and David claimed this relief. However, there is a £10 million lifetime allowance to this relief, and so there could still be scope for a considerable CGT saving.

Again, an EMI scheme must be registered with HMRC and notification of the award of the share options must be made withing 92 days. Full detail of the scheme and the valuations must be given. Annual reports by 6 July each year are also still required.

Finally, the UK would allow a credit for the Dutch CGT raised on the sale of the shares, but only if the tax was correctly charged in accordance with the double tax treaty. Art 13(5), is most likely to apply, which would preclude the Netherlands from taxing the sale if David and John are UK tax resident.

MARKING GUIDE

TOPIC	MARKS
Dutch scheme 1 • Identifying restricted share scheme • Identifying charge at grant and at lift of restrictions • "roll-over" possible • IT not CGT • NIC cost employee and employer • Impact on scheme attraction • Elections possible but no advantage • Change to forfeiture period but no advantage	 ½ 1 ½ ½ 1 ½ ½ ½
Dutch scheme 2 • Identifying unapproved • Identifying charge to IT/NIC at exercise • CGT if held	 ½ ½ ½
Compliance • Register with HMRC incl. deadline • Annual reporting incl. deadline • Payroll reporting and why	 1 ½ 1
Alternatives • Identifying CSOP or EMI due to select staff only • Why EMI better due to values involved • Key qualifications (max of 2½ marks, ½ per point) o Hoora not Plasio o No of employees o Value of shares o Value of assets o Continue to trade and full-time work o Time limit • Restrictions possible • Checking share valuation • Benefit to Hoora • Describing taxation of EMI scheme • Suggesting and describing ER o Possible partial use already • Register with HMRC incl. deadline and annual reporting	 ½ ½ 2½ ½ ½ 1 1 1 ½ ½
Foreign tax credit • Art 13(5) applies • No FTC available and why	 ½ 1
PHS	1
TOTAL	**20**

ANSWER 2

The below is an overview of the tax considerations relating to the workers to be used in Plus Tard SARL's project to develop a UK power plant on behalf of the utility company.

UK Employed workforce and agency workers

Plus Tard's UK employed workforce and the agency workers, should be taxed as employees and paid subject to PAYE by Plus Tard and the agency respectively.

Construction Industry Scheme (CIS)

The Construction Industry Scheme ("CIS") is a special income tax withholding and reporting regime which applies to certain contractors who incur expenditure on construction operations in the UK or UK territorial waters.

CIS needs to be considered both in the context of the payments received by Plus Tard and the payments made to its non-employed workforce.

Specifically, Plus Tard will be considered both a "subcontractor" of the UK utility company (as it is engaged under a contract for construction operations and has a duty to the utility company to carry out the operations) and a "mainstream contractor" in relation to the subcontractors it uses (as it carries on a business which includes construction operations).

Further details of the obligations affecting Plus Tard as both a contractor and subcontractor are set out below. However, it is important to note that these obligations apply in connection to construction operations being carried out in the UK, or UK territorial waters, irrespective of the residence status of the contracting parties or whether they are trading via a Permanent Establishment in the UK.

Impact of being a subcontractor

As a subcontractor undertaking construction operations in the UK, any payments that Plus Tard receives from the UK utility company would be subject to the CIS regime. However, as the UK utility company would be regarded as being a "deemed contractor" for the purposes of CIS (that is to say its business doesn't include construction operations but it incurs expenditure on construction operations of £1 million or more over a period of three years ending with the last period of account) and is intending to use the plant for the purposes of its business (and nothing else), it should be able to benefit from a special exclusion under reg 22 Income Tax (Construction Industry Scheme) Regulations 2005.

The effect of this exclusion for Plus Tard is that there would be no need for the utility company to verify Plus Tard with HMRC prior to payment, and the payment itself should not be subject to CIS withholding (regardless of whether Plus Tard has registered with HMRC as a subcontractor). This point, however, would need to be confirmed with the utility company as the rate of CIS withholding for unregistered businesses is 30% (compared to 20% for subcontractors registered for net payment status and 0% for those registered for gross payment status) albeit this deduction can be offset against Plus Tard's UK PAYE liability. As best practice, it may be worth Plus Tard considering registering as a gross payment subcontractor.

Impact of being a mainstream contractor

As a mainstream contractor, Plus Tard will need to:

- register with HMRC as a contractor (if it has not already done so);
- verify the status of the subcontractors it uses with HMRC prior to payment (unless the subcontractor had previously been included in Plus Tard SARL UK branch's CIS return earlier in the tax year or in the two prior tax years);
- operate CIS withholding if HMRC:
    - determine that the subcontractor has been registered as a net payment subcontractor (deduction rate at 20%);
    - cannot verify the subcontractor (deduction rate at 30%);

- this withholding only applies to the labour element of the invoice (so VAT, materials etc will need to be excluded from the withholding calculation) and is reported and remitted under the UK's Real Time Information payroll regime. For example for the hiring of plant and any consumables used, such as fuel, are treated for CIS purposes as materials and deducted from the labour component. It is worth noting that plant hire can be treated as "materials" for these purposes if genuinely hired from a third party, but not for plant owned by the subcontractor. It is Plus Tard's responsibility to assess the cost of materials, establish if plant is owned or hired as Plus Tard are ultimately responsible for any CIS under-withholding.
- file monthly CIS returns by 14 days after the end of the tax month in which the subcontractors were paid;
- Make declarations as part of those CIS returns that the subcontractors listed are not employees. It is Plus Tard's responsibility to determine whether any workers it engages with directly are, in reality employees under UK law, as if so PAYE and NIC will be due in priority to CIS withholding.

Romanian workers

Whilst we cannot comment on the Romanian domestic law position, based on the facts provided the Romanian workers are likely to be automatically tax resident in the UK under the UK's Statutory Residence Test on the basis that they will spend 183 days or more in the UK in the tax year but will be regarded as Treaty Resident in Romanian as the place where their permanent home is or the place in which their economic and personal ties are closer.

It is important to understand the status of the individuals both in terms of understanding their ultimate income tax position as well as Plus Tard's reporting obligations.

The company has flagged that the individuals would be regarded as having a specific "freelancer" status under Romanian law. Whilst commentary on Romanian law is outside the scope of this paper, it should be noted that as employee and employer are not defined in the UK/Romania Double Tax Treaty, we must follow Art 3(2) which explains that we must look to UK domestic tax law (as the country of source) to interpret its meaning.

In this regard, from the facts given, there appears to be a large number of factors (control, mutuality etc) that point towards the individuals being employees of Plus Tard.

In such a case, the individuals would be considered as employees and Art 16 of the UK/Romania Double Tax Treaty would apply.

As the day count condition in Art 16(2)(a) of 183 days would be breached, the UK would have taxing rights on the payments from Plus Tard to the extent the work is performed in the UK.

PAYE should be applied by Plus Tard as it is in the territorial scope of PAYE by virtue of its UK branch which would be considered a UK Permanent Establishment (PE). In the (unlikely) event that work is performed by these individuals outside the UK, a Treaty Direction (similar to a s690 agreement) may be obtained from HMRC to limit the PAYE to an agreed estimate of the individual's UK workdays.

MARKING GUIDE

TOPIC	MARKS
Identification of and understanding of scope of CIS	
• Recognition that work constitutes construction operations and CIS is in point**;**	1
• Recognition that scheme applies to construction operations in the UK or UK territorial waters regardless of corporate residence;	1
• Plus Tard is a mainstream contractor under s59(1)(a) FA 2004	1
• Plus Tard is also a subcontractor	1
• Understanding that the following fall outside CIS:	
o Individuals engaged under a contract of employment (and thus fall outside the definition of a construction contract); or	½
o agency workers assessable and therefore, the fees do not constitute a contract payment	½
Impact of being a subcontractor	
• The utility company is a deemed contractor;	1
• and the payment it receives should be eligible for exclusion;	1
• Flagging impact - the payments it receives should not be delayed by the need for verification or should not suffer CIS withholding;	1
Impact of being a mainstream contractor	
• Understand that Plus Tard will need to:	
o Register as a contractor (if it has not already done so)	½
o Verify the payment status of the (non-employed/non-agency worker) subcontractors with HMRC;	½
o Apply CIS withholding on unregistered subcontractors at 30%;	½
o and those registered for net payment status at 20%	½
o Withholding should be applied on the cost of labour (excluding VAT and materials);	½
o Explain what it means in the context of plant hire;	1
o Complete monthly CIS returns	½
o by 14 days following the end of the relevant tax month in which the contractors were paid or penalties	½
Romanian workers	
• Individuals are likely to be dual resident under domestic tax law but Treaty Resident in Romania;	1
• Interpretation of “employment status” is for the UK under Art 3(2);	1
• Facts described are more indicative of employment rather than non-employed status;	1
• Art 16 is in point but no Treaty Relief is available;	1
• the individuals would be subject to UK employment income tax on their UK workdays;	1
• PAYE should be applied as Plus Tard is within the territorial scope of PAYE through its PE;	1
PHS	1
Total marks	**20**

ANSWER 3

Explanation of the tax and NIC implications for the company of each benefit

As a general point, the cash equivalent of the benefits for employment tax includes VAT whether or not it is recoverable by the employer.

Taking each payment/benefit in turn:

The £11,000 of costs for business entertaining would not normally be taxable under s336 ITEPA 2003. However, as the company operates in the UK via a representative office – meaning that its profits are not assessable to tax in the UK, s356 et seq ITEPA 2003 prevents the deduction from income tax from applying (as the expense is not disallowed as a deduction in computing the profits chargeable to tax on the company). Consequently, the full amount will be taxable.

The business lunches are also taxable on the basis that they are not wholly, exclusively and necessarily in the performance of the duties of the employment, therefore not qualifying for a deduction under s336 ITEPA 2003. As the restaurants are near to the employees' permanent workplace, the meals are not subsistence under ss338 – 339 ITEPA 2003;

The Christmas party counts as an annual party or function for the purposes of s264 ITEPA 2003. A £150 per head per year limit applies. This includes attendees present regardless of whether or not they are employees. The cost per head of the event was £140 ((£14,000 x 120%)/(80 + 40)). As such, the provision of the party is an exempt benefit. The fact the Glasgow staff not being invited to the Christmas party does not prevent the exemption from the applying as s264(1) only requires that an event is available generally for all employees at a particular location;

The cost per head of the Summer BBQ event was £42 (£4,900 x 120%)/140). As the cost per head of the Xmas party and the summer BBQ in aggregate is greater than £150, only one event can benefit from the exemption. The employer can choose and it makes most financial sense to select the Christmas party as the total cost is greater than the Summer BBQ.

The gifts of flowers, turkeys/hams, Easter eggs and flu inoculations can be treated as exempt trivial benefits under s323A ITEPA 2003 provided there is no contractual entitlement. HMRC take the view that a contractual obligation could arise where there is a legitimate expectation that employees may receive a benefit. HMRC's guidance at EIM21867 makes clear that just because a gift is provided each year does not mean an employee is entitled to it and likewise that they should not seek to challenge modest gifts that are provided infrequently to employees (e.g. a Christmas or birthday gift).

The vouchers provided for employee of the month are taxable. (They cannot fall to be treated as a trivial benefit as they are provided in recognition of a particular service.)

PSA computation

Benefit category	Benefit value	BR payers 30/150	HR payers 68/150	AR payers 45/150	SIR payers 7/150	Basic rate tax @20/80	Higher rate tax @40/60	Additional rate tax @45/55	Scottish intermediate rate tax @21/79	Total income tax
Client entertaining	£13,200									
Working lunches	£8,400									
Summer BBQ	£5,880									
Vouchers	£600									
	£28,080	£5,616	£12,730	£8,424	£1,310	£1,404	£8,487	£6,892	£348	**£17,131**

Class 1B NIC on the benefit	£28,080	@ 13.8% =	**£3,875**
Class 1B NIC on grossed up tax	£17,131	@ 13.8% =	**£2,364**
Total tax and NIC			**£23,370**

MARKING GUIDE

TOPIC	MARKS
Recognition that the benefit value includes VAT • Added back to business lunches • Added back in client entertaining	 ½ ½
Business entertaining • Inclusion in calculation • Explanation of exemption including interaction with employer's deduction	 ½ 1
Annual parties or functions • Recognising that other attendees such as spouses and families should be taken into account in working out "cost per head" • Recognising that the annual parties or functions exemption applies to all employees at a "particular location" and hence the Scottish employees not being invited to the Christmas party does not deny the exemption from applying • The cost per head of both events is greater than £150 and hence the exemption can only apply to one • It makes more economic sense to exempt the Christmas party	 1 1 ½ ½
Trivial benefits • The following meet the conditions for trivial benefits: o Flowers o Christmas turkeys/hams o Easter eggs o Flu inoculations • Recognition of HMRC challenge on contractual condition • Recognition that small modest annual gifts should not be challenged under this banner • Vouchers do not qualify for trivial benefits as they have been provided in recognition of a particular service.	 ½ ½ ½ ½ 1 1 1
Calculation • Correct allocation between rates • Correct tax gross up calculations o basic rate tax o higher rate tax o additional rate tax o Scottish intermediate rate tax • Class 1B NIC calculation on: o Benefit o Grossed up tax	 ½ ½ ½ ½ ½ ½ ½
PHS	1
TOTAL	**15**

ANSWER 4

Basic Principles

As Harry will be working in the north-west for three years, s338 ITEPA 2003 (travel expenses to a temporary workplace) do not apply. Therefore, the train fares to get him to his parents' house of £2,046 are a taxable benefit.

However, as Harry works across the various hotel sites and does not have another permanent workplace, the North-West will be a geographical place of work for Harry (s339 ITEPA 2003). Travel from his parents' house to and between hotel sites within the region will be allowed. This means the £1,210 mileage is not liable to tax or NIC as it is paid at the correct HMRC approved rates.

For any exemption under s289A ITEPA 2003 to apply, the company must ensure that the employee made the trip concerned and is likely to have incurred the costs concerned, where they are paying actual costs or benchmark rates. If they are paying bespoke rates, then they must have an expenses checking system in place.

The provision of the polo shirts and safety clothing are not taxable under s336 ITEPA 2003, as this would qualify as either a uniform (logo'd items) or protective clothing (boots/hi-vis items). The laundering of the clothing is also not taxable by virtue of the agreed exemption. However, only the first two claims are allowed as there is actual evidence of cleaning. The exemption will not allow a weekly lump sum with no proof of cleaning, which is what Harry appears to have claimed.

Although the daily food amount is within the exemption limits, this is a taxable amount because:

- It is not being paid with reference to the actual days Harry is working
- There is no evidence that Harry is incurring any food expenses.

Reporting requirements:

2020/21 P11D

Only the train fare is a P11D item as a private travel expense. However, it is liable to class 1 NIC not Class 1A as it was arranged by Harry but paid for directly by the company. As a pecuniary liability it should therefore have been included in the monthly payroll for National Insurance Contributions (NIC) purposes and an EYU or additional FPS will be required, see Payroll section below

Taxable amount on P11D	£2,046
Tax due @ 40%	£818
Liable to Class 1A NIC	£0

2020/21 Payroll

The subsistence and laundry allowances are cash amounts regarded as round sum allowances and should have been included in the monthly payroll. As the tax year has ended, an EYU or additional FPS will have to be prepared to include:

Taxable amount	
• Subsistence (£801.66 x 6)	£4,810
• Laundry (£25 x 20 weeks)	£500
	£5,310
PAYE @ 40%	£2,124
Liable to Class 1 NIC	
• Subsistence/laundry above	£5,310
• Train fare	£2,046
	£7,356

• Primary at 2% • Secondary @ 13.8%	£147 £1,015

Other points to note and recommended changes

As the cash amounts are round sum allowances, they cannot be included in an annual PAYE Settlement Agreement (PSA).

A decision needs to be made as to whether the payments to Harry continue as they are and if so, who is to bear the tax and NIC due, or whether to change the arrangements concerning Harry.

If Firesafex Ltd do not wish Harry to bear the cost of the PAYE and NIC, the amounts will need to be grossed up. This will cost the company an additional £6,062 for 2020/21 and £1,010 per month going forward.

Taxable amount (2020/21)	£7,356
• Grossed up tax	£5,073
• Grossed up NIC	£254
Grossed up amount	£12,683
Additional payment required	£5,327
Additional secondary Class 1 NIC	£735
Total additional cost to Firesafex	£6,062

The agreement from April 2015 has just expired. A new approval will need to be sought from HMRC but obtaining any new bespoke rates will require a sampling exercise and/or proof of costs incurred, which is not currently available. As an alternative, the benchmark scale rates for subsistence published by HMRC could be used, although it is still recommended that records of Harry' actual costs are maintained. However, the benchmark scale rates would not assist in Harry's case as the payment is not calculated by reference to days spent away, so a change to the payment calculation method is required.

Marking guide

TOPIC	MARKS
S338 • Why it is not a temporary workplace • Area based rules apply and why o Covers mileage	 ½ 1 ½
Clothing • Uniform, PPE and logo'd qualifies as exempt • Receipted laundry is tax-free • Laundry allowance is taxable and why	 ½ ½ 1
Subsistence • Rules for subsistence to qualify	 1
P11D • Identifying only train fares • Calculating tax due • Identifying why Class 1 NIC	 ½ ½ ½
Payroll • Identifying subsistence and laundry allowances liable to PAYE • Calculating PAYE due • Calculating primary Class 1 NIC • Calculating secondary Class 1 NIC o Including train fare • EYU required	 ½ ½ ½ ½ ½ ½

Other
• PSA not applicable and why
• Discussion required regarding continuing payments and liability to taxes due
  o Calculation of grossed up tax
  o Calculation of grossed up NIC
  o Calculation of additional secondary NIC
• Expiry date on current agreement
  o Discussion of success if reapplied for exemption
• Benchmark scale rates available
• Advising check required for bespoke vs scale rates
	
	1
	½
	½
	½
	½
	½
	½
	½
	½

PHS	½
TOTAL	**15**

ANSWER 5

Hotel California Ltd
Explanation of employer provided accommodation and annual taxable values quantified

General

1) Accommodation made available by an employer is regarded as a benefit. (ITEPA 2003, part 3, chapter 5 applies). However, an exemption is available for 'job related accommodation' if it is either necessary for the proper performance of an employee's duties or would enable them to perform those duties better under s.99 ITEPA 2003.

2) The provision of furniture, rooms and the payment of utility bills are also considered as taxable benefits. However, the provision of utilities in any exemption case falling under s.99 ITEPA 2003 is limited to 10% of the employee's earnings, with no benefit arising on the payment of council tax or water rates, in these instances.

3) All taxable accommodation benefits need to be reported on form P11D by 6 July following the end of the tax year. Accommodation benefits cannot be voluntarily payrolled.

4) Hotel California Ltd will be liable to Class 1A NIC at 13.8% on the total value of the benefits, which is due to be paid to HMRC by 22 July each year (if paid electronically) or 19 July if not.

Hotel Rooms

5) Rooms would be considered board and lodging. This is taxable at cost (ITEPA 2003, Part 3, Ch 10) under general charging provisions.

6) It is not living accommodation.

7) The benefit would be the marginal cost based on *Pepper v Hart,* and given the hotel already had the rooms, it could be argued that there is no additional marginal cost.

8) If not already agreed with HMRC, it would be recommended to seek HMRC agreement on any annual cost for the provision of the board and lodging.

9) If the annual cost qualifies as trivial benefits (ITEPA 2003, Part 3, S.323A) such that the value per person is less than £50; it is not cash or a cash voucher and no entitlement arises under the employee's contract of employment, or in recognition of particular services as part of their employment, this would not be taxable or reportable.

Cottage

10) It is likely that the lock-keeper's cottage would fall within the exception for accommodation for an employee where it is necessary for the proper performance of the employee's duties.

11) The services provided to the lock-keeper for gas and electric are limited to 10% of his other earnings in that year (s.315 (3) and (4) ITEPA 2003 refer). A benefit of £1,500 is the maximum charge. This is reportable on form P11D.

House

12) The exemption for job related accommodation is not available to the director, Donagh Henley as under s.99(3) ITEPA 2003 directors with more than a 5% holding do not qualify.

13) The taxable benefit chargeable on Mr Henley is based on the annual value of the accommodation (s.102 ITEPA 2003 etc applies).

14) The rules in s.107 ITEPA 2003 which treat the market value rather than the original cost as the taxable value do not apply, as Mr Henley moved in within 6 years of the property being purchased and the property has not been improved.

15) The taxable value is calculated as two elements:

a) The annual value, plus

b) The additional yearly rent charge

Step 1	annual value		£12,000
Step 2	acquisition costs	£400,000	
	+ improvements	nil	
	– payments made by the employee	nil	
		- £75,000	
	excess over limit	£325,000	
	x 2.25% Official Rate of Interest		£ 7,312
Total taxable value	£12,000 + £7,312		£19,312

The director would be liable for £19,312 x 45% = £8,690 Income Tax per year.

Assets made available

16) The furniture provided to the director is also a taxable benefit (ITEPA 2003, Pt. 3, Ch.10 refers).

17) The cash equivalent is the cost to the employer (s.203 ITEPA 2003).

18) The cost is the original market value of the furniture when first made available and the taxable benefit is 20% of that value (s.205 ITEPA 2003) each year.

£100,000 x 20% = £20,000 per tax year for each year of provision.

Depending on when the furniture was originally provided to the director, the tax years in point could be 2012/13 to date. Failure to report on form P11D, Class 1A NIC, interest and penalties should be considered, so it is necessary to establish when the furniture was first provided.

19) To avoid a benefit charge in future, the director should consider buying the assets at the current market value as he has potentially accumulated taxable benefit values greater than the original costs and the company is incurring ongoing Class 1A NIC expenses greater than the current net book value of the assets.

Services made available

20) As the accommodation provided to the director does not qualify as job related the services provided are fully taxable so his additional taxable benefit reportable on P11D is £10,340 per tax year

Chalets

21) The job related accommodation exemption is not available to the chalet maids, as distance to work is not considered a factor in determining better performance.

22) The taxable benefit is calculated as the annual rateable value of £500, as each chalet cost below £75,000 (and the value is likely to have remained under this limit).

Each chalet maid has an annual taxable benefit value reportable on a form P11D each year of £500/4 = £125.

The accommodation is only made available for October to April, so is to be apportioned = £125/12 x 7=£73 per maid.

Any Income Tax due, over the PA, would be payable by the chalet maids at Scottish tax rates.

MARKING GUIDE

TOPIC	MARKS
Accommodation provided by an employer is a benefit in kind under special charging provisions	½
Job related exemptions available if conditions met for proper or better performance	1
Associated costs also fall within benefits rules, under general rules	½
Stating P11D, deadline and that accommodation is not a payrolled item	1
Class 1A National Insurance obligations, rate and date	1
Board and lodging basis	1
Ref to marginal cost basis, Pepper v Hart	½ ½
Agreeing valuation based on marginal cost with HMRC	1
Seeking trivial benefit exemption	1
Lock-keepers exemption	1
Limit to services charging provision	½
Directors charging provision	½
Cost of house versus market value	1
Recognising moving in date was same as year of acquisition	½
House calculation: Annual value Acquisition costs Less 75,000 initial charge Official rate of interest Total taxable value Tax payable	 ½ ½ ½ ½ ½ ½
Assets made available calculation	½
Advice re purchase of assets to stop ongoing tax charge	1
Services made available, distinction between director and job related rules	½
Chalet calculation: Annual value No additional charge Apportionment across 4 chalets maids Apportionment for partial use during the year	 ½ ½ ½ ½
Scottish tax rates	½
PHS	1
TOTAL	**20**

ANSWER 6

In relation to the private medical cover to employees, it is correct that this is reported on Form P11D and Form P11D(b).

The provision of a voucher every 2 years for eye tests where an employee is required to use a visual display unit (VDU) in their employment is an exempt benefit and so no tax or NIC arises on the vouchers provided.

Medical check-ups are also exempt from tax and NIC provided only one check-up a year per employee is provided. The provision of flu jabs is not exempt. However, there is an exemption available for trivial benefits if the cost of providing the benefit does not exceed £50 per employee per occasion and the benefit is not cash or cash vouchers.

The full cost of spectacles or contact lenses required solely for VDU use that an eyesight test shows are necessary is exempt from tax. If spectacles are for general use, but include a special prescription for VDU use, only a proportion of the cost relating to the special prescription will be exempt.

The provision of spectacles, or payment towards the cost of spectacles for general use, including use with a VDU, which do not include a special prescription for VDU use will be a taxable benefit.

The trivial benefits exemption could be used to cover the provision of a voucher up to a value of £50 towards a new pair of glasses.

However, if the cost exceeds £50 the full amount will be taxable. As an example if you contributed £75 every 2 years, that would exceed £50 and not be treated as £37.50 per year.

On site facilities could be provided like a pool or table tennis table and these would be exempt as long as they were workplace sports or recreational facilities for use by staff generally.

In relation to the employee that had an accident at work and has already received treatment, this treatment has no tax or NIC implications as part of the private medical cover.

In relation to the recommendations of the employee's doctor, where occupational health services have been recommended to assist an employee to return to work after an absence due to injury or ill health and such treatment provided to an employee costs less than £500 per tax year, there is no tax or NIC due. This includes the payment or reimbursement of the cost of such treatment. Where the amount of the benefit exceeds £500, the excess over £500 will be taxable and Employer's NIC will be due. If you contract for the treatment there will be no employee's NIC due on the excess, but if the employee contracts for it there will be employee's NIC due on the excess irrespective of whether the treatment is invoiced to you or reimbursed to the employee.

MARKING GUIDE

TOPIC	MARKS
Private Medical • Correctly reported on P11D and P11D(b)	 ½
VDU eye tests – exempt s320A ITEPA 2003	½
Annual check-ups s320B ITEPA 2003 • Exempt • Only once a year • Flu-jabs not covered but can use trivial benefits	 ½ ½ ½
Other things • Spectacles o Full cost if solely for VDU s320A ITEPA 2003 o Contribution if VDU prescription s320A ITEPA 2003 o Taxable if no VDU prescription o Trivial benefits s323A ITEPA 2003 • On site recreational facilities s261 ITEPA 2003	 1 ½ ½ 1 1
Accident at work s320C ITEPA 2003 • Existing treatment covered by private medical • Recommended occupational health o Injury o Ill health o £500 per annum limit per exemption o Excess taxable and Employers NIC due o Employees NIC based on contract	 1 ½ ½ ½ ½ ½
PHS	½
TOTAL	**10**