The Chartered Institute of Taxation

Advanced Technical

Human Capital Taxes

November 2021

Suggested solutions

ANSWER 1

Tax residence and treaty residence

Based on Anna's intentions she will remain tax resident in the UK. She will not meet any of the automatic overseas tests including working full time abroad. Furthermore, she will be automatically resident if she spends 183 midnights or more in the UK and if not will be resident by having four or five ties in the UK (family resident, accommodation availability, 40 work days, 90 days and possibly UK country tie) and spending 16 or more midnights in the UK each tax year.

As a resident in both the UK and Luxembourg the tax treaty between the UK and Luxembourg determines where she is tax resident. She will have a permanent home in both countries and will be resident in the country that is the centre of her vital interests. There is a strong case this remains the UK due to the continuing strength of ties (family and home) and time she expects to spend in the UK.

As a UK tax resident Anna will continue to be subject to UK tax on her worldwide income and gains. The treaty allows Luxembourg to tax earnings from the Luxembourg employment but this is limited to the amount of tax due on earnings for duties performed in Luxembourg. She can claim a foreign tax credit in the UK for properly charged Luxembourg tax. Earnings for duties performed in other EU countries are primarily subject to UK tax and not Luxembourg tax. To the extent that Luxembourg has charged tax beyond the scope of the treaty, Anna will be able to seek a refund from the Luxembourg authorities.

Social security

The EU rules contained in EU Regulation 883/2004 continue to apply whilst the UK remains subject to the agreement and determine whether she is required to pay UK or Luxembourg social security.

The default position is that an individual remains liable to social security in their state of residence. However, under the multi-state worker rule, as she has a Luxembourg employer, liability arises in Luxembourg unless she carries out a substantial part of her work in the UK (at least 25% of working time).

As it appears she will work less than 25% of her time in the UK liability for social security arises in Luxembourg. Her employer in Luxembourg will need to apply to the Luxembourg social security authorities for a document A1 to claim exemption from UK NICs.

UK tax position of package and reporting:

Salary

Anna's Salary will be fully taxable in the UK, subject to credit for Luxembourg tax charged on Luxembourg workdays.

Flights

As Anna's earnings remain liable to UK tax, and she is partly working in the UK, s370 ITEPA 2003 Case B can be considered for the deduction of her flight costs. The remaining conditions of Case B must be met in that:

1. The journey is between a place in the UK and a place outside the UK where duties of the employment are performed
2. The duties performed outside the UK can only be performed there
3. The journey is made wholly and exclusively for the purposes of performing them or returning after performing them

Each of these conditions is met in connection with the trips to and from Luxembourg. Therefore, no UK tax will arise on this benefit.

Accommodation

S370 referred to above only applies to travel facilities, not accommodation. S376 allows a deduction for accommodation but it only applies where the duties of the employment are performed wholly outside the UK; Anna's work in the UK disqualifies a deduction under this provision. ss337-340 ITEPA 2003 allows a deduction for travel and subsistence expenses in connection with travel to a temporary workplace. The indefinite term of the new employment contract means Luxembourg will be regarded as a permanent workplace and no deduction would be available.

Therefore, the accommodation benefit provided in Luxembourg will be subject to UK tax.. The taxable amount will be based on the rent paid by the company together with the cost of any utilities or other services provided.

Luxembourg Tax

The employer has agreed to pay any Luxembourg tax and social security on the flights and accommodation costs. Any taxes paid by the employer will be subject to UK tax and NICs if applicable.

Calculation and declaration of tax

PAYE applies if there is a presence of her Luxembourg employer in the UK. If it does need to be operated, the employer may wish to apply for an Appendix 5 agreement (net of foreign tax credit relief). If PAYE does not apply, Anna will need to declare the Luxembourg employment income in her tax return and calculate and pay tax accordingly. The UK will allow a foreign tax credit on any amounts subject to double taxation as highlighted above and Anna will need to complete the foreign pages to claim this. The tax credit is restricted to the lower of the Luxembourg and UK tax on the doubly taxed income.

The taxes due from the employer will need to be grossed up and calculated within the self assessment return or payroll if PAYE is to be operated.

MARKING GUIDE

TOPIC	MARKS
Identifying UK Tax residence Does not meet automatic overseas tests Could meet 183 days automatic test If less than 183 days, resident under ties	 ½ ½ ½
Identifying Treaty residence in UK Permanent home in both countries Resident in UK as a result of Centre of Vital Interests Explanation of UK tax position as a consequence of treaty residence in UK UK retains right of taxation on earnings from duties performed in third countries	 ½ 1 1 1
EU social security agreement Application of EU social security agreement rather than UK domestic law Multistate worker rules apply and identification of 25% rule Application for document A1 and possible registration for UK social security registration	 1 1 1
Identification of s15 application to salary	½
Travel costs Conditions of s370 met	 1
UK tax on accommodation Reason why s376 does not apply Reason why ss337-340 do not apply	 1 1
UK tax due on Luxembourg tax paid by employer	1
PAYE presence and appendix 5	1
Or declaring income on self-assessment return	½
Presentation and higher skills	1
TOTAL	**15**

ANSWER 2

Tax and NIC treatment of provision of company cars:

Directors

As the directors were offered an option between a company car cash allowance and a company car and this option did not predate 6 April 2017, the Optional Remuneration Arrangement (OpRA) rules will apply. Under the OpRA rules, the directors will be subject to tax on the higher of the company car benefit calculation and the amount of salary foregone.

As the annual payments of £3,000 made by the directors to the company were not specifically contributions towards the private use of the vehicles, no deduction will be available to reduce the benefit in kind amount under s.144 ITEPA 2003. Further, the annual payments will not qualify as capital contributions to reduce the vehicle's list price in the benefit in kind calculation under s.132 ITEPA 2003 as they were not made when the car was first provided.

The company car benefit calculation results in a chargeable amount of £8,400 (£30,000 * 28%). As the cash allowance is the higher amount, (£8,500) this is the value that was reported on Forms P11D and subject to Class 1A NIC. There was no underpayment for the 2020/21 tax year as Aengine Ltd reported the correct benefit in kind value on Forms P11D.

Engineers

S.115 ITEPA 2003 defines the difference between a car and van for income tax purposes.

Under the legislation, a car is defined as a 'mechanically propelled road vehicle which is not a goods vehicle, a motor cycle, an invalid carriage or a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.'

A van is defined as a 'mechanically propelled road vehicle which is a goods vehicle and has a design weight not exceeding 3,500 kilograms and which is not a motor cycle.' A 'goods vehicle' is defined as 'a vehicle of a construction primarily suited for the conveyance of goods or burden of any description.'

HMRC guidance allows double cab pick-up vehicles to be treated as a van for benefit in kind purposes under the same principles as VAT. Therefore, a double cab pickup that has a payload of 1,000kg or more is accepted as a van for benefit in kind purposes, whereas a double cab pickup with a lighter payload is treated as a car

Therefore, the pick-ups with hard tops over the load area should be treated as company cars. For these employees the benefit in kind value should have been £8,750 (£25,000 * 35%).

The remaining engineers provided with a pickup with a payload of 1,050kg would normally be assessed on their benefit in kind as a van with a value of £3,490. However, the engineers met the restricted private use condition at s.155(2) ITEPA 2003 during 2020/21 and therefore the benefit in kind value would have been nil. Both the commuter user requirement at s.155(5) ITEPA 2003, and the business travel requirement at s.155(7) ITEPA 2003 were satisfied.

Underpaid tax and NIC in relation to the mis-categorisation of the vehicle as a van, assuming the extra income does not result in the employees' income exceeding the higher rate tax threshold and assuming the company discharges the tax on the employees' behalf, is as follows:

BIK Value per employee = £8,750
Tax on grossed up basis (20%) = £2,188 (£8,750 * 20/80)
Class 1A NIC = £1,208 (£8,750 * 13.8%)
Employees and Employers Class 1 NIC (25.8%) = £565 (£2,188 * 25.8%)
Apprenticeship Levy (0.5%) = £11 (£2,188 * 0.5%)

Total for tax year per employee = £3,972

50 employees * £3,972 = £198,600

The payment of business fuel at HMRC authorised rates does not result in any tax liability.

<u>Sales Team</u>

The company car benefit in kind for each employee 2020/21 was £6,200 (£20,000 * 31%).

There was no underpayment for the 2020/21 tax year as Aengine Ltd reported the correct benefit in kind value on Forms P11D.

<u>Tax and NIC treatment of provision of fuel:</u>

Where a member of the sales team provided with a fuel card did not make good all private fuel incurred by the company, a fuel benefit in kind would have arisen during the 2020/21 tax year.

Employees would have been required to make good any private fuel cost by 6 July 2021. HMRC accept the use of advisory fuel rates for employees to pay back each private mileage undertaken. HMRC can accept a lower amount where it can be demonstrated that the full cost of the private fuel has been repaid by the employee.

Most employees reimbursed the company for private mileage under the company policy which should be accepted by HMRC as an amount to make good for the full cost of the private fuel incurred by the company, resulting in no taxable benefit for these employees.

However, as two sales team members paid the company less than required under the company policy and the amount which would be required if using the advisory fuel rates of £340 (2,000 x 0.17p), not all private mileage was made good to Aengine Ltd. Therefore, a private fuel BIK was reportable for the 2020/21 tax year of £7,595 (£24,500*31%). No reduction for the £200 paid by each employee as the whole amount of the private fuel costs have not been repaid by each employee, and there is no evidence the employees will make good the private fuel costs within 30 days of Aengine Ltd identifying the error.

Estimated underpaid tax and NIC for sales team, assuming it is discharged by the company:

BIK Value per employee = £7,595
Tax on grossed up basis (40%) = £5,063 (£7,595 * 40/60)
Class 1A NIC = £1,048 (£7,595 * 13.8%)
Class 1 NIC (15.8%) = £800 (£5,063* 15.8%)
Apprenticeship Levy (0.5%) = £25 (£5,063 * 0.5%)

Total for tax year per employee = £6,936

2 employees * £6,936 = £13,872

MARKING GUIDE

TOPIC	MARKS
Directors	
Optional Remuneration Arrangement rules	½
Transitional rules not available	½
Directors benefit in kind calculation	½
£3,000 annual payment does not qualify under s.144 ITEPA 2003	½
£3,000 annual payment does not qualify under s.132 ITEPA 2003	½
Calculate benefit in kind options	½
Confirm correct benefit in kind value used	½
Engineers	
Car definition	½
Van definition	½
Treatment of double cab pickup – payload over 1,000kg	½
Identify restricted private use condition	½
Identify business travel requirement	½
Identify commuter user requirement	½
Benefit in kind calculation for car benefit	½
RDE2 restriction to benefit in kind percentage	½
Benefit in kind calculation for van benefit	½
Confirmation nil benefit will apply for vehicles treated as a van	½
Calculate underpayment of tax and NIC per employee	
Grossed up tax	½
Class 1A National Insurance Contribution	½
Class 1 National Insurance Contribution on grossed up tax	½
Apprenticeship Levy	½
Correct total underpayment for 50 employees	½
No tax on fuel payments	½
Sales Team	
Employee benefit in kind calculation	½
Correct benefit in kind calculation used by Aengine Ltd	½
Fuel Cards	
Identify BIK arises	½
Use of advisory fuel rates for paying back private mileage	½
Use of other methods to show entire private fuel costs repaid	½
Confirm payment of £200 lower than both methods	½
Maintain records	½
Making good private miles by 6 July 2021	½
No reduction for payment of £200	½
Calculate underpayment of tax and National Insurance	
Grossed up tax	½
Class 1A National Insurance Contribution	½
Class 1 National Insurance Contribution on grossed up tax	½
Apprenticeship Levy	½
Correct total underpayment for 2 employees	1
Presentation and higher skills	1
TOTAL	**20**

ANSWER 3

<u>University recruitment</u>

<u>Sign on bonus</u>

This is earnings and as such will be subject to PAYE and Class 1 NIC, assessable via the payroll. To cover the whole of the fees, Geffen Smith Ltd need to gross up the payment.

<u>Tuition fee reimbursement</u>

An exemption exists for training designed to impart, improve, reinforce, knowledge, skills, etc. that qualifies/better qualifies the employee to undertake the employment.

This could apply to the tuition fees if the subject is directly related to the recruit's role. The accounting and finance and business studies degrees should be relevant to a financial consultant, however, classics and geography degrees may not.

Although s250 ITEPA 2003 allows the exemption to be applied to pre-employment situations and there has been support for this in *Silva v Charnock (Inspector of Taxes) [2002] STC (SCD) 426*, HMRC regards that the exemption should only apply in quite narrow situations.

HMRC considers training which an employee undertook of their own accord, at their own expense and when no employment was in view cannot be exempted just because an employer reimburses the cost. They do accept that exemption may be due, if the individual accepts an offer from an employer to start work in the reasonably near future, the individual then pays for training relevant to that job, and the employer makes a payment to reimburse those costs after the employment has begun. Charnock's fact pattern wasn't as narrow. However, as a Special Commissioners decision, it doesn't set precedent.

This may make use of the exemption open to challenge. Should Geffen Smith Ltd wish to pursue this, they should follow the sequencing outlined above.

<u>Scholarships</u>

If the tuition fees meet certain conditions, they will not be liable to Income Tax or NIC. Additionally, SP 4/86 explains that the exemption includes payments for lodging, subsistence and travel allowances of up to £15,480 per academic year.

HMRC stipulates that scholarship income consists of payments from an award usually made on merit to support a student during a period of study. It may, however, be difficult to distinguish between a payment which is a scholarship and that which is an inducement.

Whilst HMRC have stated that the person making the claim is best placed to determine whether payments are being made from a scholarship, it is advisable for Geffen Smith Ltd to set up the scholarship as a formal scheme with clear objective selection criteria in place.

Another benefit of a formal scheme is that it prevents a tax charge from arising under s215 ITEPA 2003, if a member of the family or household of an existing employee qualifies for a scholarship based on the same criteria as other scholars.

To qualify for the scholarship:

1. The individual must be in full time education when the scholarship is paid;
2. Geffen Smith Ltd must require that the employee is enrolled at university for at least one academic year; and
3. The individual must attend the course for at least 20 weeks in that academic year (or if the course is longer, for 20 weeks on average in an academic year over the length of the course).

Because of the need to pay the individual whilst still at university, there is a risk that they may not take up the employment. This could be mitigated with a clawback.

Following *HMRC v Julian Martin [2014] UKUT 0429 (TCC)*, the individual *may* be able to obtain Income Tax relief on any clawback via their tax return. There is no NIC relief.

<u>School leavers programme</u>

Costs of training for professional standards, paid by Geffen Smith Ltd to a third-party firm, should qualify for the work-related training exemption assuming the benefit is not provided under a salary sacrifice arrangement/cash alternative.

It may be possible for Geffen Smith Ltd to pay for the training/qualification by accessing Apprenticeship Levy funds.

The 0.5% of the pay bill that Geffen Smith Ltd pays each year (topped up by 10% from the Government) can be spent on apprenticeship training with an approved provider. The funds can cover the cost of training and assessment for an Apprenticeship Standard, capped at the funding band for the chosen apprenticeship.

As all of Geffen Smith Ltd's employees are in England, all of the funds can be accessed via the Digital Apprenticeship Service ("DAS") and paid directly to the provider. The funds expire 24 months after they enter Geffen Smith Ltd's DAS account.

In the event that there are insufficient Levy Funds to pay for the training, "co-investment" will apply where the Government pays 95% of the training and assessment costs up to the relevant funding band maximum.

MARKING GUIDE

TOPIC	MARKS
Sign on bonus Sign on bonus is assessable as earnings Grossed up to cover the whole amount of fees	 ½ ½
Work related training Set out qualifying conditions Note not suitable to all subjects Application to example subjects Law is applicable to pre-employment situation Silva v Charnock More restrictive test in HMRC guidance Explanation of steps to take to follow guidance	 ½ ½ ½ ½ ½ ½ ½
Scholarships Characteristics of a scholarship Exemption for fees Plus £15,480 per academic year Difficulty in distinguishing between scholarship and employment income Formal scheme or trust with objective criteria helps make the distinction Also prevents accidental taxation of family members Payment when scholar in full time education Twenty-week test in SP 4/86 Commercial risks of payment pre-employment Resolution with clawback Tax relief (Julian Martin) No NIC relief	 ½ ½ ½ ½ ½ ½ ½ ½ ½ ½ ½ ½
New joiners programme Work related training exemption Levy funds can be drawn down 10% Government top up 24-month limit Covers training and assessment Up to funding bands Co-investment if insufficient funds	 ½ ½ ½ ½ ½ ½ ½
Presentation and higher skills	1
TOTAL	**15**

ANSWER 4

Remuneration					**£**
Base salary (6/12 x £120,000)				£	60,000
Bonus				£	90,000
Less bonus related to pre-arrival (9/12*£90,000)				£	(67,500)
Hypothetical tax on salary (27% of £60,000)				£	(16,200)
Hypothetical tax on bonus (37% of £22,500)				£	(8,325)
Accommodation (£6,000 x 6)				£	36,000
Taxable relocation costs (note 1)				£	500
Net pay				**£**	**94,475**
Less:					
Unremitted s26 ITEPA 2003 earnings (note 2)				£	(17,615)
Net taxable pay				**£**	**76,860**
Personal Allowance (£0 as remittance basis claimed)				£	-
Tax					
£	37,500	20%	£ 7,500		
£	39,360	40%	£ 15,744		
Tax before gross-up			£ 23,244		
Gross up @ 40/60			£ 15,496		
Total tax				**£**	**38,740**
Funded by hypothetical tax				£	(24,525)
Cost of tax equalisation				**£**	**14,215**

Note 1 – Exemptions available

Qualified Relocation expenses under s271 ITEPA 2003

Shipping	£5,500
Home search	£3,000
Limit	£(8,000)
Taxable relocation costs	£500

Qualified reimbursed non-domiciled travel costs s373 and s374 ITEPA 2003

Family flights to UK	£9,000
Return trip to US	£7,500

Jeffrey is not domiciled in the UK and was not resident in the UK in 2018/19 and 2019/20 and he may be eligible for relief for certain travel costs for him and his family under s373 and s374 of ITEPA 2003. Under s375 ITEPA 2003, he has a qualifying arrival date of 1 October 2021. Reimbursements of Jeffrey's trips to and from the US are not taxable under s373 as this is the country where he normally lives. The reimbursement of two family trips per tax year to and from the US are also not taxable under s374 ITEPA 2003 provided the other conditions are met which include the requirement to be working in the UK for a continuous period of 60 days from 1 October 2021. Deductions are available for the first five years.

Note 2 – Analysis of unremitted s26 ITEPA 2003 earnings

As Jeffrey is non-UK domiciled and wishes to claim the remittance basis, nor has he ever been UK tax resident prior to 2021/22, he meets the conditions under s26A which means his earnings for duties performed outside the UK are liable to tax in the UK to the extent they are remitted to the UK.

Jeffrey's earnings, potentially chargeable to UK tax under s26 ITEPA 2003 if remitted, are £94,475 @ 20% = £18,895. However, to date Jeffrey received his net salary in a US account and remitted £7,000 to the UK. He cannot use the special mixed fund rules in s809RA as he had more than £10 in his US account immediately prior to receiving his first UK pay. He therefore needs to apply the rules in s809R to identify whether any s26 earnings were remitted to the UK on 2 November 2021.

Step 1 : Identification of net pay received in US account each pay period

Monthly pay and benefits	**£**
Salary (£120,000/12)	10,000
Hypothetical tax (£10,000 @ 27%)	(2,700)
UK accommodation	6,000
Total net pay each month	13,300
Total net UK source earnings (@80%)	(10,640)
Total net non-UK source earnings to which remittance basis applies (@20%)	2,660
Accommodation remitted to UK	6,000
Cash amounts received offshore:	
UK earnings (£10,640-£6,000)	4,640
Non-UK earnings	2,660
Total Net Cash Received each pay period	7,300

Step 2 : Analysis of mixed fund to 2 November 2021

Mixed fund baskets (809R ITA 2007)	**a) s15 income £**	**b) s26 income £**	**i) Other £**	**Total in/out £**	**Balance £**
Opening balance 1/10/2021			5,000		5,000
Remittance to UK 2/10/2021	-	-	(2,500)	(2,500)	2,500
Balance	-	-	2,500		2,500
Net cash pay	4,640	2,660	-	7,300	9,800
Balance	4,640	2,600	2,500		9,800
Offshore transfer 1/11/2021	(1,420)	(814)	(766)	(3,000)	6,800
Balance	3,220	1,846	1,734		6,800
Remittance to UK 2/11/2021	(3,220)	(1,280)	-	(4,500)	2,300
Balance	-	566	1,734		2,300

Total s26 earnings remitted on 2 November 2021 is £1,280. This means the total potential unremitted s26 earnings for 2021/22 becomes £17,615 (£18,895 - £1,280).

Payment structure

The US account where he receives his pay is classed as a mixed fund because it includes pre-assignment income, s15 (UK source) and s26 (non-UK source) earnings. Jeffrey has already transferred and intends to continue transferring money from this account to the UK and under the mixed fund rules he will need to look at each and every transaction in his US account to identify what category of income has been remitted. As demonstrated above, it could be the case that he remits s26 earnings to the UK from time to time, potentially increasing the amount of UK tax the company will need to pay. This has already occurred with his October pay.

Fortunately, there is some simplification available if Jeffrey is paid into an account that qualifies as a 'special mixed fund'. With such an account, analysis on a transaction-by-transaction basis is not needed but instead the account can be reviewed at the end of the tax year treating remittances to the UK as consisting of s15 earnings in priority. This simplifies matters significantly and also reduces the risk of additional UK tax costs arising for the employer.

For the account to qualify it must meet the following conditions:

- It is a current or deposit account
- It can be a joint account but only the employee deposits income into this account
- It is located outside of the UK
- It has a balance of less than £10 when employment income is first paid into it.
- It must not have previously been held for earnings eligible for overseas workday relief
- Only employment income is paid into this account
- It is nominated in the tax return for the first year it qualifies

An alternative option may be to consider organising a split pay arrangement where Jeffrey receives a proportion of his pay in a UK account and the remainder in a US account. HMRC accepts that money paid directly into a UK account in this manner consists of earnings related to UK workdays in the first instance.

In summary, we would recommend advice is given to Jeffrey to set up a 'special mixed fund' to optimise the company's UK tax position under his arrangements.

MARKING GUIDE

TOPIC	MARKS
Requirement 1	
Portion of Bonus not liable to UK tax	½
UK home search (adding VAT to benefit)	½
Relocation costs exemption correctly calculated	1
No exemption available for accommodation benefit	1
Identify eligibility for non-domiciled travel costs under s373	½
Identification of qualifying arrival date for s375	1
Eligibility under s373 and s374 ITEPA 2003 available for 5 years	½
Family costs deductible under s374 for flights to UK and travel to vacation home	1
Hypothetical tax treated as reduction if earnings	½
Identify eligibility under s26A for remittance basis on earnings for non-UK duties	1
S26 earnings for non-UK duties calculated	1
Remittance of October 2021 earnings Calculation of s15 and s26 earnings paid into US account in October Identification of s15 and s26 earnings with overseas transfer Calculation of s26 earnings remitted with transfer to UK	 1 1 1
No personal allowance due to remittance basis claim	½
Tax calculation	½
Gross up calculation	1
Cost of tax equalisation identified	½
Requirement 2	
OWR – explain the rules that apply to Jeffrey's current arrangements OWR – explain this could increase the employer's costs OWR – recommend setting up a special mixed fund	1 1 1
OWR – conditions for special mixed fund qualification	2
OWR – providing advice on a split payroll option as alternative to special mixed fund	1
TOTAL	**20**

ANSWER 5

Starlok (UK) Ltd must register as a new employer with HMRC and obtain a PAYE reference.

The transfer will be a “succession” for PAYE purposes (as there will be a change in the employees’ employment whilst they remain employed in the same business), provided both the old and the new employer agree. Under these provisions, the former companies do not need to issue P45s to employees. Instead Starlok (UK) Ltd is liable to do anything the old employer would have been liable to do under the PAYE regulations, but for the change of employer. This includes issuing P60s at the end of the tax year showing the taxable pay/PAYE for the pre and post transfer period.

Once the new reference is created, Starlok (UK) Ltd can then ask HMRC for a transfer of records. The Full Payment Submission (“FPS”) under the old payroll references should be submitted with leaving details, including year-to-date pay and tax figures.

Where a cumulative tax code is in force, Starlok (UK) Ltd must determine the PAYE and NIC from payments made to transferred employees from the date they moved payrolls using the pay and tax YTD figures under the old employer reference.

Starlok (UK) Ltd must complete P11Ds to report taxable benefits for both the pre and post transfer period for the transferred employees. For the 3 employees who have been made redundant during the tax year, the P11D reporting obligation will rest with Guardian Locks Ltd.

Any Class 1A NIC relating to private medical insurance for the terminated employees is payable by Guardian Locks Ltd by 19 September 22 (or 22 September 22 for e-payers). This is as a result of a special rule in the NIC successions regulations (reg 72 Social Security (Contributions) Regulations 2001) which accelerates the Class 1A NIC on employees terminated before the date of transfer. For all other employees, the Class 1A NIC is payable by Starlok (UK) Ltd at the normal deadline of 19 July 23 (or 22 July 23 for e-payers).

The group should ask HMRC to replicate any agreements under the PAYE references of the former companies under the Starlok (UK) Ltd’s PAYE reference, including the enduring PSA and the custom scale rate payment agreements. Note that the PAYE successions regulations do not apply to PSAs. This means that strictly, PSA calculations and tax liabilities are due from the former companies (from the start of the tax year to the date of transfer) and, by Starlok (UK) Ltd (from the date of transfer to the end of the tax year). However, it is possible to agree with HMRC that the liabilities relating to expenses and benefits in the pre-succession period can be assumed by the new employer and included in Starlok (UK) Ltd’s PSA calculation.

Note that the statutory redundancy payments won’t be chargeable to income tax or Class 1 NIC by virtue of s309 ITEPA 2003 and para 6 part X Sch 3 Social Security (Contributions) Regulations 2001. As a result, there will be no PAYE obligations on these amounts. The medical benefit provided to the terminated employees arises from their employment relationship and is subject to income tax and Class 1A NIC under the benefits code. The cash bonus constitutes a payment from the employment as it relates to reward for the employees performing the duties of their employment and is paid under good leaver provisions in the scheme rules. As the payment is made post P45, PAYE should be applied using a 0T tax code on a week 1/month 1 basis with NIC being calculated using the weekly earnings basis as an “irregular” payment.

Finally, a condition for the Income Tax exemption to apply for the workplace bicycle is that cycles are generally available to all employees of the employer. This test is currently met for Starlok (Trading) Ltd. However, without extending the benefit to the former employees of Guardian Locks Ltd and Greenacre Security Ltd, who have been transferred to Starlok (UK) Ltd, the exemption will not apply. In consequence, the bicycles will be taxable benefits on all employees each year, as an asset made available without transfer (s205 ITEPA 2003). The taxable value is the higher of 20% of the market value when the asset was first made available, or any rent or hire sum paid by the employer to a third party for the bicycle. To mitigate this risk, the employer should give all employees access to a work bicycle (e.g., by extending the cycle to work scheme to the wider employee population). Note however, that the bicycles do not need to be offered on the same terms for the “all employee condition” to be met.

MARKING GUIDE

TOPIC	MARKS
Set up new reference and transfer records Register new employer for PAYE to obtain new PAYE reference Regarded as a “succession” for PAYE purposes and why; The new employer is liable for anything the old employer would but for the change of employer; This includes including year to date taxable pay and PAYE deducted in the P60 return for the year; The employer should contact HMRC and arrange for a transfer of records; The FPS should be submitted by the old employer showing the leaving details.	 ½ ½ ½ ½ ½ ½
Benefits & P11D reporting New employer is responsible for reporting full year benefits on Forms P11D; New employer is also responsible for paying Class 1A NIC; Special rule in the NIC successions regulations to accelerate the Class 1A NIC on employees terminated; For the terminated employees this means: Guardian Locks must pay the Class 1A NIC; By 19/22 September 22	 ½ ½ ½ ½ ½
PSA The employer will need to ask HMRC to replicate: the enduring PSA; and custom scale rate agreement to the new PAYE reference; The successions regulations do not cover the PSA Old employer completes a PSA up to the point of transfer and the new employer thereafter; Employer may contact HMRC agreeing that New Co will account for the liability in the pre-succession period.	 ½ ½ ½ ½ ½
Redundancy package No income tax/PAYE on SRP; No NIC on SRP; Cash bonus treated as earnings for tax/NIC purposes; PAYE on a 0T W1/M1 basis; NIC on a weekly earnings basis. Medical benefit taxed under benefits code	 ½ ½ ½ ½ ½ ½
Cycle to work There is an all-employee condition on the workplace cycles exemption; The effect is that, absent any action, all employees in receipts of bicycles will be taxable on their use; Tax charge based on s205 – higher of: 20% of original market value Hire/rent etc. paid by the employer Extend the offer of company bicycles to remove this risk; Offer doesn’t need to be on same terms.	 ½ ½ ½ ½ ½ ½
Presentation and higher skills	1
TOTAL	**15**

ANSWER 6

When reviewing overseas pension schemes ('OPS') the disguised remuneration rules set out in Part 7A ITEPA 2003 must first be considered. There is an exclusion for contributions to OPS where it meets the regulatory requirements and tax recognition tests.

Under the regulatory requirements test, the scheme must be regulated by a pension scheme regulator in the country the scheme is situated.

The tax recognition test requires:

- be open to residents in the country where the scheme was set up;
- registration with that country's tax authority as a pension scheme;
- charge personal income tax and provide relief for contributions to or payments from the scheme.

If the disguised remuneration rules do not apply, relief may be available for contributions to an OPS under the following:

1. Migrant Member Relief (MMR) – relief for employer and employee contributions
2. S307 relief – relief for employer contributions to a plan that provides for retirement or death
3. Relief under the terms of a double taxation agreement

To claim MMR, the OPS must meet the conditions outlined above and the scheme administrators must undertake in writing to notify HMRC of Benefit Crystallisation events. For employees to be entitled to relief for their contributions, they must:

- Be tax resident in the UK for the period MMR is claimed
- Have relevant UK earnings chargeable to UK tax for that year
- Have joined the scheme before becoming resident in the UK
- At any time in the 10 years before arriving in the UK have been entitled to tax relief in respect of the contributions to the scheme in the country they resided in
- Notify the scheme manager that they intend to claim MMR

Relief under s307 is automatic if the scheme provides for retirement or death benefits. Conditions for relief under a double taxation agreement will be set out in the terms of that particular agreement.

Any claim is subject to the Annual Allowance / Lifetime allowance regime in respect of contributions and future charges may arise for any unauthorised payments. The annual allowance is £40,000 and is reduced by £1 for every £2 in excess of adjusted income between £240,000 and £312,000 with a minimum allowance of £4,000. Should there be insufficient annual allowance for the 2021/22 tax year it may be possible to use carry forward unused allowances from the previous three tax years.

Belgian Scheme

This should qualify as an OPS and meet the conditions for relief under both 1 or 2 above. The UK/Belgium treaty does not cover contributions to pension schemes.

MMR is more generous as it provides relief for employee contributions. However, it requires an application from the administrators and an agreement to future reporting whereas s307 relief is automatic. The restrictions to the annual allowance will result in no additional benefit in claiming relief for employee contributions under MMR.

US scheme

This scheme should be accepted as an 'OPS' and contributions not taxed under Part 7A. However, unlike the Belgian plan, s307 may not available because the US scheme can provide benefits other than for retirement or death. MMR may be available but the UK/US treaty provides relief for the employee and employer contributions to the US 401K plan under Article 18. The conditions for the relief are:

1. Each employee must have been a member of the plan before coming to the UK on assignment
2. The plan must be accepted by the UK as corresponds to a UK plan
3. The relief is restricted to the UK's limits (annual allowance)

The exchange of notes between the UK and US about the treaty confirms the UK accepts that US 401(a) plans correspond to UK pension schemes which means no application to HMRC is required.

Each individual can claim relief in their Self Assessment income tax returns should they wish to.

International Pension Plan

This plan is not an OPS as it fails the tax recognition test because Jersey residents cannot join. The plan is Funded by the employer and uses a third party (the Jersey trust). Employer contributions are liable to tax under Part 7A to the extent attributed to chargeable UK earnings.

Annual Allowance Charge for Belgian Assignee

Accrued Pension rights (5 April 2022)	16/60 x £170,000 x 16	£725,333
Accrued Pension Rights (6 April 2021)	15/60 x £140,000 x 16	£(560,000)
Pension Input		£165,333
Annual Allowance	Fully tapered due to income	£4,000
Annual Allowance charge	£161,333 @ 45%	£72,600
Tax gross-up	£72,600 @45/55	£59,400
Total UK tax cost to Green plc		£132,000

MARKING GUIDE

TOPIC	MARKS
Introduction	
Priority to consideration of disguised remuneration	½
Identification of exclusion to part 7A for contributions to overseas pension scheme	½
Setting out conditions for scheme to be an overseas pension scheme Regulatory recognition test Tax recognition test	 ½ ½
Identification of three ways of claiming relief including conditions	1
Contributions subject to annual allowance / lifetime allowance	½
Explain the annual allowance	½
Future distributions may be subject to member payment charges	½
Carry forward of annual allowances	½
Belgian Scheme	
Consideration of MMR, 307 and treaty	1
Comparison of administration requirements for MMR and s307	1
Confirmation that scheme is an overseas pension scheme	½
US scheme	
Scheme qualifies as an overseas pension scheme such that part 7A does not apply	½
Availability of MMR or Treaty	½
Highlighting the three conditions for relief under the treaty to be claimed	1
Interpretation of the exchange of notes	½
Claim on self assessment return	½
International pension scheme Not an Overseas Pensions scheme Funding provided to third party taxed under Part 7A	 ½ ½
Annual Allowance Charge calculation Calculation of pension input Calculation of annual allowance charge Identifying gross up	 1 1 ½
Presentation and higher skills	**1**
TOTAL	**15**