Chartered Institute of Taxation
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The Chartered Tax Adviser Examination

November 2017

Human Capital Taxes

Advisory Paper

Suggested Solutions

Answer 1

From: Tax Adviser
To: Guy Sinclair
Date: November 2017
Subject: Pension contributions

Dear Guy

Pension contributions are a tax efficient method of remunerating employees. Individuals benefit from tax relief on their pension contributions provided these contributions do not exceed their relevant UK earnings (generally employment income plus any benefits in kind) or their annual allowance (£40,000). Companies benefit from a tax deduction on employer contributions provided these are wholly and exclusively for the purposes of the trade.

Changes to the pension system were introduced from 6 April 2016 which restricted higher rate tax relief that high earners received on their pension contributions. A high earner is any individual who has annual gross taxable income (including investment and employment income) exceeding £150,000. Where this is the case, an individual's annual allowance will be tapered by £1 for every £2 that their income exceeds £150,000 to a minimum allowance of £10,000 (applies where income is £210,000 or more). This restriction will only apply where both of the following conditions are met:

- Threshold income (defined as gross taxable income plus any salary sacrificed under a salary sacrifice arrangement less any employee pension contributions) exceeds £110,000
- Adjusted income (gross taxable income plus employer pension contributions) exceeds £150,000

If the annual allowance is exceeded, an annual allowance charge may be payable by the individual (via the self-assessment process) unless this can be reduced by any unused annual allowances from the previous three years that the individual may have.

If a charge is payable this will be calculated at the individual's marginal tax rate on the excess contributions over the annual allowance (as adjusted if necessary) after taking into account any unused allowances carried forward . This can be paid directly by the pension fund if the charge totals £2,000 or more.

The above reduces the attractiveness of making additional pension contributions for high earners and employers should be aware of these provisions when considering pension provision.

Turning to the options suggested, these are considered below:

1. Payment of Cash Bonus

Based on the team's package, both the threshold and adjusted income thresholds will be met:

	Threshold income (£)	**Adjusted income (£)**
Salary	145,000	145,000
Car allowance	5,000	5,000
Bonus	45,000	45,000
Employee pension contribution	(8,700)	
Employer pension contribution		13,050
Total	186,300	208,050

Based on the above, their annual allowances will be tapered to £10,975. Total pension contributions of £21,750 have been made, which will result in a charge if insufficient allowances have been brought forward.

The brought forward annual allowances are as follows:

	2014/15	2015/16	2016/17
Employee contribution	7,200	7,800	8,400
Employer contribution	10,800	11,700	12,600
Additional bonus contribution	20,000	20,000	
Total contribution	38,000	39,500	21,000
Less Annual allowance	(40,000)	(40,000)	(36,200)
Allowance to c/f	2,000	500	15,200

The total annual allowance available to carry forward to 2017/18 is £17,700 (taking into account tapering in 2016/17). This results in no charge arising on any of the team in this year; instead, they would have unused annual allowances of £6,925 to carry forward against future contributions.

As they will receive cash remuneration, under this option, the team would suffer an Income Tax charge of £19,815 (£8700 at 40% and the remainder at 45%) and a National Insurance charge of £900 (at 2%) totalling £20,715.

The payment of a cash bonus would be an allowable deduction for the company for corporation tax purposes; however, the company would be liable to employer National Insurance of £6,210 each.

2. **Additional Employer Pension Contribution**

If an additional employer pension contribution is made, threshold income would reduce to £141,300 and adjusted income would remain the same. There would be no change to the annual allowance or brought forward annual allowance calculations. Total pension contributions of £66,750 will have been made under this scenario, which results in £38,075 being liable to an annual allowance charge after deducting the allowances.

The first £8,700 of the charge will be calculated at 40% and the remainder will be calculated at 45% meaning that a charge of £16,699 becomes payable.

The additional contribution would be deductible for corporation tax purposes provided it meets the wholly and exclusively test.

Conclusion

Paying a cash bonus results in a higher charge on both the company and the management team due to the Income Tax and National Insurance liabilities. Paying an additional pension contribution results in a lower charge overall which is payable by the team (or their pension fund) only.

Another option to consider would be to consider paying a lower pension contribution of £10,000 and the remainder as cash in order to utilise brought forward allowances. Income Tax and National Insurance liabilities would still arise and can be looked into further should you wish to consider this.

Finally, the teams' regular pension provision do exceed the team's tapered annual allowance. Once the brought forward allowances are fully utilised, this will result in annual allowance charges becoming payable. You may wish to review their remuneration package going forward with respect to their pension provision. It should be noted that there are anti-avoidance provisions in place to target situations where an employees' threshold or adjusted income are reduced in one year and then increased in another in order to get around the tapering provisions.

Kind regards

T Adviser

MARKING GUIDE

TOPIC	**MARKS**
Definition of high earner	1/2
Definitions of income	1/2
Definition of threshold income	1/2
Definition of adjusted income	1/2
Explanation of annual allowance tapering	1/2
Explanation of charge: calculated at marginal rate and how paid	1
Deductible for corporation tax purposes	1/2
Cash bonus	
Calculation of threshold and adjusted income	1
Calculation of brought forward allowances	2
Additional tax and national insurance charge	2
Effect on corporation tax for company	1/2
Additional Pension Contribution	
Adjusted calculation of income	½
Annual allowance pension charge	1 ½
Effect on company's position	½
Advice to company (restricted pension contribution and review of pension provision going forwards)	2
Higher skills and presentation marks	1
TOTAL	**15**

Answer 2

From:Tax Adviser
To: Kier Walker
Date: 10 November 2017
Subject: Redundancy

Dear Keir

Notice period

Employment income is subject to Income Tax and National Insurance as normal throughout the notice period regardless of whether Marion and Bob are working in the office or are on 'gardening leave'. Their employment will treated as continuing until the termination date and the tax treatment will not change even if they receive their pay during the gardening leave period as a lump sum.

As the notice period is likely to commence in January 2018, their termination date will be in June 2018.

Termination payment

Each element of the termination package will need to be looked at separately to establish the tax treatment. Regard should be had to the employment contract, any negotiations between the parties and the compromise/settlement agreement (once drawn up).

Statutory redundancy is exempt from tax and National Insurance but may have an impact when considering any ex-gratia element of the package (see below).

Legal fees are exempt provided the fees are referred to in the settlement agreement and the payment is made directly by the company to the employee's solicitor. Regard should be had to this when drafting the settlement agreement.

A payment made in respect of a restrictive covenant will be fully subject to tax and National Insurance.

The remainder of the termination package will be potentially assessable as follows:

1. Any element of the ex-gratia that is classed as earnings will be subject to Income Tax and National Insurance under PAYE as normal. This includes any accrued holiday pay or bonus payments.

   The medical, car and fuel benefit relating to the period up until the termination date would be taxable in the normal way and included on form P11D.

2. Any consideration paid on or in anticipation of retirement will be subject to Income Tax and National Insurance under the employer financed unapproved retirement benefit scheme legislation.

   To ascertain if these provisions apply, HM Revenue & Customs will seek to establish if the individual has "retired" (using it's every day meaning) from his current employment rather than employment as a whole. Legal advice should be taken regarding this when drafting any settlement agreement. This should be considered for both Marion and Bob but will be more of an issue for Bob due to his age.

3. If the ex-gratia payment is received in connection with the termination of employment (such as breach of contract), the first £30,000 of the payment would be exempt from Income Tax. National Insurance is only due if there is a contractual obligation.

   The statutory redundancy payments received of £14,370 would reduce the £30,000 exemption to £15,630.

The transfer of the cars to Marion and Bob would fall under these provisions. The tax would be calculated based on the second hand value of the cars at the point of transfer (Class 1A would only be due if the transfer was contractual).

4. If none of the above applies, the payment would not be connected with the employment or its termination and would be outside the scope of Income Tax and National Insurance, although in practice this will be difficult to argue.

   If any of the ex-gratia payment is made in respect of injury to feelings or is made in consideration of the employee not taking legal action against the company, these payments would fall outside the scope for tax and National Insurance.

Whilst the assumption is that this is a redundancy situation, the termination appears to relate mainly to a disagreement within the management team. It is possible that this termination will be classed as unfair dismissal. Legal advice should be taken,

There are a number of legal considerations that should be consulted on before the final tax and National Insurance position for the ex gratia payment is known. This would affect whether the payment was fully taxable (if made in respect of retirement), partially taxable (if in relation to the termination of the employment) or exempt (if unconnected to the employment).

Once the above has been ascertained, if the payment is taxable, you may wish to consider re-structuring the payment to ensure that this is tax efficient by using all relevant exemptions. For example, you could reduce the cash payment and instead make a contribution directly into Bob or Marion's registered pension fund.

Payments after redundancy

The medical benefit will continue after the termination date. There are two possible ways in which this will be taxed going forwards depending on whether the employee is treated as having retired or not as per points 2 and 3 above.

If the payment falls under point 3, any remaining exemption can be applied to the medical benefit. Otherwise, in either case, a tax charge will arise which will need to be reported to HM Revenue & Customs by way of letter. Class 1a National Insurance would not be due.

Kind regards
T Advisor

MARKING GUIDE

TOPIC	**MARKS**
Employment income 2016/17	
Taxation of income received in notice period	1
Taxation of income when on gardening leave	1
Treatment of car	1
Redundancy pay	
Assessing redundancy pay under s62	1
Legal fees	1
Assessing re restrictive undertaking	½
Payment in relation to retirement	2
s. 401	1/2
Statutory redundancy and reduction of exemption	1
NI	1/2
P45	1/2
Unfair dismissal – legal advice and potentially out of scope	1/2
Identifying second hand value of cars	1
Option to make payment into qualifying pension scheme	1
Medical benefit – ongoing tax charge	½
Medical benefit – no NIC charge	½
Medical benefit – reporting requirements	1/2
Presentation and higher skills	1
TOTAL	**15**

Answer 3

To: Harry Chasman
From Matthew Weston
Date: 6 Nov 2017
Re: Business Trips

Dear Harry,

Thank you for your email regarding business visitors from your Spanish Head Office during the Avon IV project.

There is a need to report these visitors to HMRC. Let me explain why.

Under s.689 ITEPA 2003, where employees from another Group company overseas work for the UK company, the UK company has to make PAYE deductions if the employees are liable to tax on their earnings. Anyone working in the UK is liable to tax under domestic UK law on the earnings for those workdays, even for short periods, unless the workdays are 'merely incidental' to the employee's overseas role. There is a double tax treaty between Spain and the UK, which under Article 14(2), would exempt an individual from UK tax if they are:

- Resident in Spain per Article 4 of the treaty
- In the UK for fewer than 183 days in any 365-day period
- Are not employed by the UK company
- Their remuneration costs are not borne by the UK company

However, the double tax treaty does not override the PAYE regulations and besides a claim under the tax treaty is a personal claim which should be made by the individual not the company.

Therefore, the strict process is that the company deducts the PAYE due and the employee submits a tax return at the end of the year, making the relevant claim under the treaty to get a refund of the PAYE.

Obviously, that is very onerous for everyone and not good cash flow. So, It is possible to request from HM Revenue & Customs an EP Appendix 4 agreement, whereby the UK company does not deduct PAYE provided details of the overseas employees are provided to them by 31 May following the end of the tax year. The details which have to be provided depend on how many days the employees have spent in the UK.

It does not matter if the employees visit the Stourbridge or Newcastle sites. You must ensure that the employees report to you when they are in the UK in any location.

Phase 1
These employees will be in the UK for 50 days (5 days a week for 10 weeks). Even though they will only be here for part of the day on Monday and Friday, a part-day counts as a whole day.

Therefore, they fall into the category of 31 to 60 days. You will have to confirm to HMRC:

- That they are not employed by the UK company
- The 50 days are not part of a longer UK period

Phase 2
This employee will be here for only 30 days in 2018/19 (5 days x 6 weeks) and, ordinarily, you would not have to report any information. However, because this first period forms part of a longer period overall, you also have to take account of the days spent in 2019/20.

In total the employee will spend 70 days in the UK. Therefore, he falls into the category 61 to 90 days. The details you will, therefore, have to report are:

- Name of employee
- UK and overseas addresses

- Nature of the duties in the UK
- Dates spent in the UK
- Country in which the employee files their tax return
- Confirmation that the UK company has not borne the cost of their remuneration nor otherwise functioned as their employer

Commenting about recharging of costs, for visitors up to 60 days, HM Revenue & Customs do allow a recharge of salary costs, however, not for visitors over 60 days. Therefore, if Head Office do recharge the salary costs, this will cause the employee during Phase 2 to become liable to UK tax and the UK company liable to PAYE withholding. I am sure that this will not be desirable for any of the parties concerned.

I suggest making Head Office and the employees aware that information has to be reported to HM Revenue & Customs and why.

Finally, there is also the question of National Insurance. If an employee is working in the UK, even for a short period, they and the employer are liable to National Insurance. However, under Article 12(1) of the EU social security treaty, EC 833/2004, the employer will be able to obtain Portable Document A1 from the Spanish Authorities to confirm the employees continue to pay Spanish social security contributions and that they are exempt from National Insurance contributions (employee and employer). You must inform Head Office that they must obtain these certificates for their employees before the start of the visits.

If you have any questions about the above, then please let me know. I would of course be happy to make the application to HMRC to operate these Short Term Business Visitor arrangements.

Best regards,

Matthew

MARKING GUIDE

TOPIC	**MARKS**
Explanation of reasons for STBV arrangement • s.689 • Liable to UK tax on workdays • Treaty conditions • Correct process for PAYE and making treaty claims	 ½ ½ 1 1
Outline of Rules • Agree with HMRC • Multiple sites • Part day counting	 1 1 1
Deadline for report	½
Identifying 30-60 days in Phase 1 • Information required	½ 1
Identifying 60-90 days in Phase 2 • Information required	1 2
Impact of recharging	1
Ensuring overseas office are notified of rules	½
Liability to National Insurance • A1 certificate required	½ 1
Presentation and higher skills	1
TOTAL	**15**

Answer 4

From: Tax Adviser
To: Anna Luck
Date: November 2017
Subject: Geraldine's UK assignment

Dear Anna

Thank you for the information you have provided regarding Geraldine's UK assignment. I am pleased to set out my advice on Geraldine's tax position in order to address the company's concerns.

Firstly, owing to the number of days spent in the UK during the year ended 5 April 2017, Geraldine is likely to be considered non-resident in the UK under the Sufficient Ties test in this year. However, from 6 April 2017, Geraldine will be considered tax resident in the UK because she is likely to spend more than 183 days in the UK during 2017/18 (and in subsequent years). Furthermore, she will be considered resident in the UK under the UK-Belgian Double Tax Treaty because her husband has joined her on assignment means her Centre of Vital Interests is likely to have shifted from Belgium to the UK.

This means that for the year ended 5 April 2017, she will not be liable to UK tax on income relating to duties performed outside the UK. From 6 April 2017, however, she will be liable to UK tax on her earnings for worldwide duties but as Geraldine is non-domiciled in the UK she will be able to claim to exclude from UK tax the income relating to non-UK workdays to the extent that it is not remitted to the UK (this is known as 'Overseas Workday Relief') for her first three years of residence (i.e. for the remainder of her assignment). This means Geraldine will be required to make a claim to be taxed on the remittance basis on her UK tax returns for these years.

It is possible to consider remittances from a non-UK bank account on an aggregate basis under the 'special mixed fund rules' provided the account meets certain conditions (i.e. it is 'qualifying'). However, Geraldine's pre-existing bank account is unlikely to meet the rule which would require the balance in the account to be less than £10 prior to the receipt of her April 2017 earnings.

Assuming the account is not qualifying, it will be necessary to analyse any remittances from this account on a transaction-by-transaction basis to determine whether any of the earnings relating to non-UK workdays in 2017/18 to date have been remitted to the UK. In order to simplify matters going forward, I would recommend that Geraldine opens a new overseas bank account which receives her earnings from December 2017 onwards and no other sources of income (other than bank interest earned on the account balance, but ideally this should be paid into a bank account from which there will be no remittances to the UK). Remittances to the UK from this account should be minimised and ideally a new bank account should be opened each tax year. Remittances to the UK may be direct or indirect. If the income is 'used or enjoyed' in the UK, for example if the income is used to settle a credit card bill which has been used for UK expenditure, this will be treated as a remittance.

As regards the elements of her remuneration package for 2017/18:

<u>Base salary</u>

We will be able to apply workday apportionment to these earnings. Because Geraldine indicated she expects to carry out approximately 30% of her workdays outside the UK, she will be able to exclude this proportion from UK tax provided it is kept offshore, having regard for the rules on determining what has been remitted to the UK.

Bonus

The 2016 bonus paid in June 2017 is not liable to UK tax because it was earned while she was non-resident in the UK (assuming she did not have taxable UK duties during the 2016 calendar year). However, this does not mean an equivalent amount can freely be remitted to the UK, as if it was paid into the same account as her 2017/18 earnings, her non-UK workday income for 2017/18 will be treated as remitted to the UK in priority to the bonus income. We will therefore need to consider carefully whether Geraldine has inadvertently remitted any non-UK workday income in light of this point.

Accommodation benefit

No UK tax relief is available against the accommodation benefit because Geraldine's assignment is expected to last more than 24 months. She will therefore be deemed to have a permanent workplace in the UK and thus cannot get relief for her travel, accommodation and subsistence costs in connection with her attendance at that workplace.

Because the accommodation benefit is enjoyed in the UK, it is considered to be remitted to the UK. However, where the 'special mixed fund rules' are in point, we are able to aggregate the accommodation benefit with Geraldine's other general earnings (i.e. basic salary, UK tax gross-up and private medical insurance) and still potentially claim full relief on the amount of the benefit attributable to non-UK workdays provided that the **total** amount of general earnings remitted to the UK over the year (including any UK-enjoyed benefits-in-kind and grossed-up taxes paid to HMRC) does not exceed the **total** proportion of general earnings relating to UK workdays.

Private medical insurance

The private medical insurance, as above, will be treated as remitted to the UK because it is 'enjoyed' in the UK, even though it is intangible. It will be aggregated with other general earnings in the same way.

Performance Share Award

The Performance Share Award will be treated as earned over the vesting period. So the amount attributable to the period prior to 2016/17 will be outside of scope of UK tax and the amount attributable to 2016/17 will be taxable only to the extent it relates to UK workdays.

Relief for the non-UK workday element of the amount attributable to 2017/18 will be available provided the proceeds are not remitted to the UK (and on the understanding the shares are non-UK situs).

Please note that, because the Performance Share Award is taxed as a securities option and **not** general earnings, it is not aggregated with other general earnings in the same way for remittance purposes. The pre-arrival element of the award will be 'trapped' behind income which is taxable on remittance. Therefore, the company may wish to consider identifying the pre-arrival element of the share award and paying this into a separate bank account. Geraldine will then be able to bring this money freely to the UK as it is not subject to the remittance basis.

UK grossed-up tax

Please note that any amount of grossed-up UK tax (as a result of her being tax-equalised) paid on behalf of Geraldine will be treated as remitted to the UK. Overseas Workday Relief should therefore be given on Geraldine's net remuneration prior to calculating the gross-up.

Overseas Workday Relief may be applied via the EP Appendix 6 Modified Payroll in order to reduce the PAYE paid in year.

When the UK tax return is prepared for 2017/18, it will be necessary to determine whether any of the non-UK workday income which is taxable in the UK on remittance has been remitted to the UK, having regard for the rules on what will have been deemed to be remitted to the UK as discussed above. In order to make this analysis as simple as possible, Geraldine should set up a qualifying account as soon as possible. In addition, Geraldine should ensure she keeps sufficient records (i.e. boarding passes, receipts for overseas expenditure, etc.) in order to substantiate the days worked overseas, should HMRC ask for proof in an enquiry.

Kind regards

Tax Adviser

MARKING GUIDE

TOPIC	MARKS
Identify non-resident in 2016/17	1
Identify resident in 2017/18	½
Identify treaty-resident in 2017/18 and explain why	½
Explain impact of being non-resident in 2016/17	1
Explain impact of being resident, treaty-resident and non-domiciled in 2017/18 (i.e. OWR), including the need to claim the remittance basis	1½
Identify existing account unlikely to be qualifying	½
Explain why account is not likely to qualify	1
Discuss consequences of non-qualifying account	1
Provide recommendation to open a qualifying account and explain conditions	1
Discuss briefly what constitutes a remittance to the UK	½
Discuss how base salary is taxed	1
Discuss how bonus is taxed	½
Consider how bonus may be trapped behind 2017/18 income	1
Discuss lack of tax relief on accommodation BIK	½
Discuss how an amount equal to the accommodation BIK will need to be treated as remitted to the UK	1
Discuss how PMI (or an amount equal thereto) will be treated as remitted to the UK in the same way, even though intangible	1
Discuss broadly how Performance Share Award will be sourced	1
Provide recommendation that the pre-arrival proceeds are paid into a separate account	1
Discuss how UK grossed-up tax is remitted to the UK	1
Confirm that Overseas Workday Relief may be applied via the EP App 6 Modified Payroll	1
Recommend that sufficient records are kept to substantiate days worked overseas	½
Presentation and higher skills	2
TOTAL	**20**

Answer 5

From:	Tax Adviser
To:	Bridget Smith
Date:	November 2017
Subject:	Equity Awards for Geoff

Dear Bridget

Thank you for contacting us regarding Newtex plc's withholding obligations on Geoff's anticipated stock option exercises and RSU income.

<u>Stock options</u>

We will need to consider the liability to UK tax (PAYE) and UK National Insurance Contributions (NIC) separately on the stock option income in order to handle this correctly for UK withholding purposes. Please note that it is assumed that shares in Newtec plc are Readily Convertible Assets.

Under rules applicable to stock options which are exercised after 6 April 2015, the UK tax liability at exercise of an unapproved stock option will be calculated on the option gain, or 'spread' (i.e. the difference between the market value on exercise and the exercise price) sourced over the grant to vest period. We understand that Geoff was treated as non-resident in the UK during his assignments to China and Singapore, nor did he have any UK taxable work duties during these periods, and as such the following proportions of the option gains will be liable to UK income tax (under domestic law):

Option 1	26/36ths
Option 2	0/36ths
Option 3	20/36ths

The above proportions of the option gains should be treated subjected to UK PAYE withholding using a 0T tax code, because the amounts are being paid after Geoff has left employment with the UK company and hence after the P45 being issued.

However, given that Geoff is likely to be treaty-resident in China upon receipt of the option income, the UK-China Double Tax Treaty will limit the UK's right to tax the option income to the amount which relates to UK workdays. Therefore, the part of the gain on Option 1 which is attributable to the period spent working in Japan will be exempt under the treaty. It will be possible to make a claim on Geoff's 2017/18 UK tax return to this effect, although strictly speaking it is not normally possible to apply this relief at source for withholding purposes. However, it may be possible to apply to HMRC for clearance to apply such treaty relief at source, but whether this is a worthwhile exercise will depend on the amounts involved.

For UK NIC purposes, we must consider the period Geoff was liable to UK NIC over the vesting period. This proportion of the option gain will then be liable to UK NIC.

Firstly, Geoff will have remained liable to UK NIC during the period he was working in Japan, in accordance with Article 5 of the UK-Japan social security agreement.

As we do not have a bilateral social security agreement with Singapore, we would expect Geoff to have had a continuing liability to UK NIC for the first 52 weeks of the Singapore assignment and thereafter to cease to be liable to UK NIC on his earnings from employment.

Furthermore, he would continue to be out of scope while on the Chinese assignment, because he would not have been UK resident (for NIC purposes) immediately prior to the transfer, so a continuing 52-week liability would not be applicable.

He will resume liability to UK NIC upon returning to the UK until he localises in China.

In summary, he will therefore be liable to UK NIC for the following periods during the various earnings periods:

1 March 2007 to 30 April 2010

1 July 2014 to 30 June 2016

Therefore, the proportions of the option gains liable to UK NIC will be:

Option 1	36/36ths
Option 2	2/36ths
Option 3	20/36ths

Practically this creates a challenge because different amounts are liable to UK tax than for NIC (except in the case of Option 3). Therefore you may wish to consider payrolling the option gains for tax and NIC purposes separately.

You should note that Class 1 secondary contributions will also be payable by Newtex plc on the amount on which Geoff is liable to Class 1 primary contributions.

<u>RSU</u>

You have advised that the RSU awards do not confer a right to acquire securities and as such the award will be taxed differently for UK NIC purposes, although the UK taxable element will be effectively calculated in the same way as for the options above.

For tax purposes, 17/36ths of the award will be liable to UK tax, corresponding to the period during the vesting period that Geoff was liable to UK tax.

For NIC purposes, because the award is treated as 'general earnings' and it is paid while Geoff is outside of scope of UK NIC, the award will not be liable to UK NIC when it vests.

I hope this helps, but please let me know if you have any further query.

Kind regards

Tax Adviser

MARKING GUIDE

TOPIC	**MARKS**
Amounts liable to UK tax and NIC need to be assessed separately	½
Consideration of shares being RCAs	½
Description of the 'spread' of the option gain	1
Description of how the spread is sourced over the vesting period	1
Correct determination of the proportion of each option gain liable to UK tax (½ mark each)	1½
Employer will need to use a 0T tax code on these proportions	½
Correct discussion of application of UK-CN Double Tax Treaty to option gain attributable to period spent working in Japan	1
Correct discussion of how treaty relief may be applied (payroll vs. tax return)	1
Correct description of principle to be applied in determining amounts of option gains liable to UK NIC	1
Discussion of liability to UK NIC while working in Japan, Singapore and China (while on assignment and while local) (½ mark for each period)	2
Correct determination of the proportion of each option gain liable to UK NIC (½ mark each)	1½
Discussion of how payroll might handle the fact that different amounts liable to tax and NIC	½
Highlighting that employer NIC is would be due on the same amounts	½
Determination that RSU would constitute general earnings because not a right to acquire securities.	1
Correct determination of proportion of RSU liable to UK tax	½
RSU would be exempt from NIC and explaining why	1
TOTAL	**15**

Answer 6

Our Address

Ms J Smithers
Gapo Ltd
Your Address

X November 2017

Dear Jane,

Introduction

As Newland does not have a Double Taxation Agreement with the UK, Burt's 2017/18 residence position will have the following impact on the UK taxation of his earnings:

- If resident, worldwide earnings are taxable in the UK.
- If non-resident, UK earnings are taxable in the UK, but Newland earnings are not.
- If Split Year treatment applies, UK earnings for the whole year are taxable in the UK, but Newland earnings in the overseas part of the year are not.

UK residence is determined by the Statutory Residence Test:

Automatic non-residence

Burt will be non-UK resident if he:

1. Had less than 46 UK residence days (residence day = present in the UK at midnight) as non-UK resident for the previous three years), or
2. Worked full-time overseas and had less than 91 UK residence days.

To meet the full-time overseas work condition, he must work at least 35 hours on average per week, with no breaks of 31 days or more, and have no more than 30 UK workdays (a day where more than 3 hours work are performed while present in the UK) during the year.

Burt will not meet either test as he has 133 UK residence days and only works 30 hours per week.

Automatic residence

As neither automatic non-UK residence test was met; Burt will be UK resident if he:

1. Had at least 183 UK residence days, or
2. Had a UK home in which he spent at least 30 days in the year, and for at least 91 continuous days (including at least 30 in the year) had no overseas home that he spent at least 30 days in, or
3. Worked full-time in the UK for a period of at least 365 days.

To meet the full-time work condition, he must work at least 35 hours on average per week, with no breaks of 31 days or more, and must have spent at least 75% of workdays in the UK.

Burt will not meet these tests as he had 133 UK residence days; had an available overseas home until 31 March 2018; and only works 30 hours per week.

Sufficient Ties

As none of the automatic residence tests were met; Burt will be UK tax resident if he has more than the permitted residence days his ties allow.

UK ties:

Family - UK resident spouse or minor children

Single with no children – No tie.

Accommodation – UK accommodation for a continuous period of at least 91 days in the tax year and spent at least one night there.

Has UK accommodation available for at least 91 days and will spend one night there - A tie.

Work – at least 40 UK workdays

Has 75 UK workdays – A tie.

90 Day – more than 90 UK residence days in either of the previous two years

Had less than 90 UK residence days in the previous two years – No tie.

With two UK ties and 133 residence days, Burt will be UK resident for 2017/18 as the 120 days threshold has been exceeded.

Split Year Treatment

There are eight Cases for Split Year treatment. Cases 4 to 8 deal with UK arrivals.

Case 4 – Starting to have a home in the UK only

Conditions:

- Must be non-resident in previous tax year.
- Must not have only home in the UK at the start of the year, but does on a day during the year, until the end of the year.
- Must not meet sufficient ties test for the part of the year before the day which only home is in the UK.

Burt qualifies for Case 4 - was non-UK resident in 2016/17; had no UK home on 6 April 2017; his only home was in the UK from 1 to 5 April 2018 and will not meet the sufficient ties test for 6 April 2017 to 31 March 2018 because:

- With one UK tie in the period 6 April 2017 to 31 March 2018 (accommodation not a tie as only available for 90 days) and 128 residence days (12 days outside UK), will not meet the test as 182 are permitted.

Case 5 – Starting full-time work in the UK
Case 6 – Ceasing full-time work overseas
Case 7 – Partner of someone ceasing full-time work overseas

Burt does not meet full-time working conditions (works 30 hours per week) and is single, so these Cases cannot apply.

Case 8 – Starting to have a home in the UK

Conditions:

- Must be non-resident in the previous year and UK resident in the following year (which is not a split year).
- Must not have a home in the UK at the start of the year, but does on a day during the year, until the end of the year and for all of the following tax year.
- Must not meet sufficient ties test for the part of the year before the day on which they start to have a UK home.

Burt qualifies for Case 8 as was non-UK resident in 2016/17; will be UK resident for the following year; did not have a UK home on 6 April 2017; acquired a UK home during the year and will keep it for the following tax year. He will not meet sufficient ties test for 6 April 2017 to 31 December 2017 because:

- With no UK ties in the period 6 April 2017 to 31 December 2017 (No accommodation and 20 work days) and 50 residence days, will not meet the test as 182 are permitted.

Conclusion

Burt will be UK tax resident for 2017/18 and will meet Split Year conditions for Cases 4 and 8.

Where Cases 4 and 8 apply, then earlier start date takes priority - Burt will be treated as being UK resident from 1 January 2018.

As Split Year treatment applies, Burt's UK earnings for the whole year are taxable in the UK, but his Newland earnings in the overseas part of the year are not. Due to Burt qualifying for split year treatment, there will be no additional UK tax liability on the employment income earned in 2017 for which the company will be required to make a tax payment.

Yours sincerely

Tax adviser

MARKING GUIDE

TOPIC	MARKS
Impact of residence on taxation of employment income in each scenario	2
Identify residence determined by SRT	½
Identify auto non-UK res test conditions and analysis	2
Identify auto UK res test conditions and analysis	2½
Identify sufficient ties test, identify 4 ties/analysis of each and conclusion	3
Identify cases 4 to 8 deal with UK arrivals	½
Case 4 conditions and analysis	2½
Cases 5-6-7 identified and analysed as not relevant	1
Case 8 conditions and analysis	2½
Conclusion on residence status including relevant split year cases	½
Conclusion on case priority, start date and what that means for the company	2
Presentation and higher skills	1
TOTAL	**20**