THE CHARTERED INSTITUTE OF TAXATION

ADVANCED TECHNICAL

Human Capital Taxes

November 2024

TIME ALLOWED

3 HOURS 30 MINUTES

- All workings should be shown and made to the nearest month and pound unless the question specifies otherwise.

- Candidates who answer any law elements in this paper in accordance with Scots law or Northern Ireland law should indicate this where relevant.

- Scots law candidates may provide answers referring to Land and Buildings Transaction Tax rather than Stamp Duty Land Tax.

- Unless otherwise indicated by the provision of additional information in the question, you may assume that 2023/24 legislation (including rates and allowances) continues to apply for 2024/25 and future years. Candidates answering by reference to more recently enacted legislation or tax cases will not be penalised.

- Additional marks may be awarded for presentation.

- You must type your answer in the space on the screen as indicated by the Exam4 guidance.

1. Duggee Ltd is a privately owned asset management company. On 1 February 2018 one of their employees, Maya, was given 2,000 ‘C’ ordinary shares of 1p each in Duggee Ltd by the Duggee Employee Benefit Trust.

1) Maya was not required to pay anything for the shares. The actual market value of the shares at this time was £10 per share and the unrestricted market value was £12 per share.

2) The shares were subject to forfeiture provisions under which they had to be sold back to the Duggee Employee Benefit Trust at the lower of their value at that time or their value on 1 February 2018 (£10 per share), if she left employment with Duggee Ltd before 1 February 2024. There were no other restrictions attaching to the shares.

3) The Duggee Employee Benefit Trust must, if requested, buy the shares from Maya for their market value on or after 1 February 2024. The market value of the shares will be determined by an independent valuation.

4) No election was made under s.431 ITEPA 2003.

The following events occurred after Maya acquired the shares:

1) The forfeiture restrictions on all 2,000 shares lapsed on 1 February 2024 as Maya was still employed by Duggee Ltd. Their value at that time was £14 per share.

2) On 1 September 2024, the dividend rights for shares were improved which increased their value by £1 per share.

3) Maya sold all 2,000 shares to the Duggee Employee Benefit Trust on 31 October 2024 when their value was £16 per Share.

Maya is UK domiciled and remained UK tax resident throughout.

Requirement:

Explain how Duggee Ltd should have administered its PAYE, NIC and other employer reporting obligations in respect of Maya’s shares and how this would have differed if Maya had entered into an election under s.431 ITEPA 2003. (20)

2. Rikka is employed by BlueCo Ltd. She has always worked in the UK. The company assigned Rikka to their Swiss subsidiary BlueCo SA for three years starting on 6 December 2023.

   1) BlueCo Ltd expected her to be non-resident of the UK under the 'full time work abroad' rules.

   2) BlueCo Ltd continued to pay Rikka from their UK payroll and promptly obtained a 'No Tax (NT)' tax code from HMRC.

   3) Rikka is considered tax resident in Switzerland under domestic Swiss tax rules and subject to Swiss income tax withholding.

   4) The costs of her employment will be borne by BlueCo SA.

Between 6 April 2023 and 5 December 2023, Rikka spent all her time in the UK.

From 6 December 2023 to 5 April 2024, Rikka had two incidental UK workdays and three UK days of presence.

From 6 April 2024 onwards, Rikka was expected to have between five and seven UK workdays and between seven and 10 days of UK presence per quarter. These UK workdays were not expected to be incidental.

Rikka's husband and 14-year-old daughter were expected to move to Switzerland on 6 February 2024 and to rent out their UK home from this date.

In May 2024, BlueCo Ltd was informed that Rikka's husband and daughter in fact relocated to Switzerland on 6 April 2024, and that their UK property will not be rented out but used as a home whenever the family visits the UK.

On 6 October 2024, BlueCo Ltd announced a merger with DarkBlueCo plc which is planned to take place in 2025. Due to the merger, Rikka has been offered redundancy or a new UK based role. If Rikka accepts redundancy, this will be from 6 January 2025, and she will remain in Switzerland on an extended career break returning to the UK in May 2025. If she accepts the UK role, she will continue to work in Switzerland until her return to the UK on 15 March 2025.

Rikka's 2024/25 UK travel and workday pattern is expected to continue as planned, although there is more flexibility than before the merger was announced.

Rikka holds several UK investments and remains a member of BlueCo Ltd's UK pension scheme.

BlueCo Ltd operate an Appendix 4 arrangement.

Requirement:

Explain how the 2023/24 and 2024/25 PAYE tax compliance positions taken by BlueCo Ltd may be impacted if either option is taken up by Rikka.

You do not need to comment on implications of a potential redundancy, on social security, or on penalties or interest. (20)

You should assume that the UK / Swiss Double Tax Agreement is based on the OECD Model Tax Convention, except Article 15 below.

ARTICLE 15
DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Article 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

   a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned of that State, and

   b. the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

   c. the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

End of Question

3. Robert is non-UK domiciled and currently working for a US company, TJCB Inc. He will be sent to the UK on 6 July 2025 to undertake a three year secondment, at his US employer's UK subsidiary, TJCB UK Ltd. This will be his first visit to the UK or Europe and it has already been determined that he will be deemed UK tax resident from the date the secondment begins.

He will remain on the US payroll and his employer has agreed to pay him a gross salary of £600,000, which has been his salary since the start of his employment. A hypothetical tax of £100,000 per annum will be withheld from his monthly pay to ensure he is no better or worse off because of the assignment. His UK tax on pay and benefits will be met on his behalf by his employer.

He will continue to contribute to TJCB Inc's US 401k retirement scheme at a rate of 2% of his gross salary and TJCB Inc will contribute 4%. The US tax treatment mirrors that of a typical UK registered scheme in how it operates. Robert began employment with TJCB Inc on 6 October 2024 and enrolled in the 401k scheme on the same date; prior to this he was employed with other employers in the US and enrolled in their respective retirement plans and has never been enrolled into a UK pension scheme.

He will end the lease on his US residence to undertake the UK assignment. To help with the cost of moving to the UK, his employer has agreed to reimburse the following costs:

1) Transportation of domestic belongings £7,500.

2) Purchase of a new bed £2,000.

3) Accommodation at a hotel in case he is unable to immediately move into the UK property – £200 per night for a maximum period of two weeks.

He will also be provided with a one-off relocation allowance of £5,000.

Part of his assignment will require him to travel throughout the EU, visiting TJCB UK Ltd's clients. This is expected to be approximately 20% of his working time. TJCB Inc will keep paying his salary into his US bank account.

The TJCB UK Ltd has an Appendix 6 agreement in place with HMRC from a previous secondment and currently submits nil payment submissions on the modified payroll to HMRC as currently no other employees are on the scheme.

Extracts from relevant agreements are provided.

Requirement:

1) Explain what TJCB UK Ltd will need to consider in terms of Robert's relocation, likely tax residence and social security position and the impact of this on his pay, benefits and pension contributions. (10)

2) Explain how TJCB UK Ltd should administer the UK payroll under an Appendix 6 agreement, including an initial calculation of PAYE for the tax year of arrival. (10)

Total (20)

Extract from the US – UK Social Security Agreement

ARTICLE 4

1. Except as otherwise provided in this Part, a person employed within the territory of one of the Parties shall, with respect to that employment, be subject to the laws on coverage of only that Party. Where a person is subject only to the laws on coverage of the United Kingdom in accordance with this paragraph, those laws shall apply to him as if he were ordinarily resident in the territory of the United Kingdom.

2. Where a person who is covered under the laws on coverage of one Party and is normally employed by an employer in the territory of that Party is sent by that employer to work in the territory of the other Party, the person shall be subject only to the laws on coverage of the former Party, as if he were employed in the territory of the former Party, provided that the period of work in the territory of the latter Party is not expected to exceed 5 years, or such longer period as may be agreed upon by the Competent Authorities in a particular case. This paragraph does not apply to employment as an officer or member of a crew on a ship or aircraft.

3. A person who is covered under the laws on coverage of either Party with respect to self-employment shall be subject only to the laws on coverage of the Party in whose territory he ordinarily resides.

4. Where a person is employed under the laws on coverage of one Party and self-employed under the laws on coverage of the other party for the same activity, he shall be subject only to the laws on coverage of the Party in whose territory he ordinarily resides.

5. A person who would otherwise be covered under the laws on coverage of both Parties with respect to employment as an officer or member of a crew on a ship or aircraft shall, in respect of that employment, be subject only to the laws on coverage of the United Kingdom if he ordinarily resides in the territory of the United Kingdom, and only to United States laws on coverage if he ordinarily resides in the territory of the United States.

6. A person who ordinarily resides in the territory of the United Kingdom and who is not employed or self-employed shall be subject to the laws on coverage of only the United Kingdom with respect to Social Security contributions.

Extract from the EU-UK Trade and Cooperation Agreement

Article SSC.2

Persons covered

This Protocol applies to persons, including stateless persons and refugees, who are or have been subject to the legislation of one or more States, as well as to the members of their families and their survivors.

Extracts from the UK/US Double tax convention signed 24 July 2001

ARTICLE 3
Definitions
(o) the term “pension scheme” means any plan, scheme, fund, trust or other arrangement established in a Contracting State which is:

i. generally, exempt from income taxation in that State; and
ii. operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

ARTICLE 18
Pension schemes

2. Where an individual who is a member or beneficiary of, or participant in, a pension scheme established in a Contracting State exercises an employment or self-employment in the other Contracting State:

a) contributions paid by or on behalf of that individual to the pension scheme during the period that he exercises an employment or self-employment in the other State shall be deductible (or excludable) in computing his taxable income in that other State; and
b) any benefits accrued under the pension scheme, or contributions made to the pension scheme by or on behalf of the individual’s employer, during that period shall not be treated as part of the employee’s taxable income and any such contributions shall be allowed as a deduction in computing the business profits of his employer in that other State. The reliefs available under this paragraph shall not exceed the reliefs that would be allowed by the other State to residents of that State for contributions to, or benefits accrued under, a pension scheme established in that State.

3. The provisions of paragraph 2 of this Article shall not apply unless:

a) contributions by or on behalf of the individual, or by or on behalf of the individual’s employer, to the pension scheme (or to another similar pension scheme for which the first-mentioned pension scheme was substituted) were made before the individual began to exercise an employment or self-employment in the other State; and
b) the competent authority of the other State has agreed that the pension scheme generally corresponds to a pension scheme established in that other State.

End of Question

4. Dawn is UK domiciled and has always been UK tax resident. She is a director of Spotlight plc, which is listed on the London Stock Exchange.

Dawn is due to step down as a director on 1 January 2025 after 40 years of service but will remain as an employee in a part-time capacity for another six months to finish projects. After this, she will retire with no plans to seek other work.

Under her employment contract, Dawn is entitled to a bonus based on the company's performance over the year ending 31 December 2025. The amount will be agreed by the remuneration committee on 31 March 2026 and per Dawn's employment contract, the bonus will be paid 30 days after amounts have been agreed by the remuneration committee.

Spotlight plc will also provide Dawn with a leaving gift of £50,000. This gift is wholly at the discretion of Spotlight plc and will be given after her departure on 1 July 2025 as a retirement present.

Although Dawn does not intend to continue working once she has left Spotlight plc, she is seen as a key figure within her industry. To further discourage Dawn from working with any competitors Spotlight plc are considering entering into an agreement to award her 10,000 shares in Spotlight plc. This agreement will award her shares after three years providing she does not work for any competitors.

Requirement:

Explain the employment tax and National Insurance implications and obligations for Spotlight plc that will arise as a result of the above plans. (10)

5. Beauface Ltd operates a beauty salon in Birmingham and has 50 employees. The company pays Corporation Tax at 25%.

Beauface Ltd has enrolled all its employees in its pension scheme, except for Yinka. Yinka joined Beauface Ltd on 9 March 2024 as a beautician, working 20 hours per week on a weekly salary of £206, paid every Friday. Yinka's 23rd birthday was on 23 March 2024. Other employees contribute 5% of their salaries to the pension scheme and Beauface Ltd matches this amount with an employer contribution. Net pay arrangements apply to the occupational pension scheme.

Satisfied customers often give a cash tip to the beautician who treated them and to the receptionist on duty. All the beauticians receive tips of at least £50 per week. Currently, all tips go directly from the client to the relevant employee and the company has no record of these.

Beauface Ltd also sells skin creams to clients, at a markup of 50%. Employees are allowed to choose products free of charge with a retail value of up to £20 per month, excluding VAT at the standard rate. Products chosen by employees are subject to a PAYE settlement agreement.

Nelo has worked as Beauface Ltd's lead receptionist for five years. He handles clients' payments for their treatments and for any goods purchased. Nelo receives a monthly salary of £2,083 and cash tips of £210 in a typical month. He has no other source of income. He chooses free skin products to the maximum permitted value every month.

In future, Beauface Ltd would like there to be a record of tips paid and received. Two possible plans have been proposed for next financial year:

<u>Plan A</u>

Nelo has offered to collect and share out all tips. The company would have no involvement in the process, and no control over the allocation of tips. Nelo would store the cash tips and divide the total amount fairly each month between all client-facing employees, without taking any for himself.

In return, Beauface Ltd would increase Nelo's salary by £300 per month in view of the work he would do dealing with the tips, and would offer him free skin products to a total retail value of £40 per month excluding VAT. Nelo would buy himself a new smartphone with an app to record tip transactions, and the company would reimburse his phone bill payments. The smartphone would be used by Nelo in his employment and for non-work calls and his bills would be £52 per month.

<u>Plan B</u>

Beauface Ltd would collect all tips in cash and distribute 100% of these to employees with their salaries.

Requirement:

1) Explain the Income Tax and National Insurance Contribution implications of the cash tips currently and under the proposed plans, including the reporting obligations. (7)

2) Discuss whether Beauface Ltd met its obligations to Yinka in 2023/24 for National Living Wage and automatic enrolment purposes. (3)

3) Calculate the total cost to Beauface Ltd of Nelo's annual emoluments under Plan A, taking into account all relevant taxes. (5)

Total (15)

6. Yachtmaster plc is a UK quoted company that builds and sells pleasure boats in Southampton. It has established the 'Yachtmaster Employee Benefit Trust' which is a UK discretionary trust designed to provide various benefits to employees, directors and certain family members and dependants.

The objective of the Yachtmaster Employee Benefit Trust is to retain and attract staff through the provision of various benefits. The trust owns shares, cash and a yacht that were all transferred to it by Yachtmaster plc in 2010. The trustee is UK Trust Company Ltd, which is a UK professional trustee company.

During 2023/24, Yachtmaster plc recommended to the trustees that the following benefits were made available in respect of Adrian, who is an employee of Yachtmaster plc:

1) An interest free personal loan of £100,000 for a term of 10 years. The loan will provide a deposit for a residential house purchase.

2) The yacht was made available for free for the month of June 2023 to Adrian's civil partner, Ben. Ben is not an employee of Yachtmaster plc but he is a keen sailor. The yacht was worth £50,000 when transferred into trust. Running costs of the yacht (insurance, moorage fees etc.) are paid for by the trust and are £1,000 per week.

3) On 31 March 2024, Adrian was awarded an option over 10,000 ordinary shares in Yachtmaster plc, which vests on the 5th anniversary of the grant date and has an exercise price of nil. In order to satisfy the share options, the trustees purchased 10,000 ordinary shares from the stock market and allocated these in their trust share ledger for Adrian's future benefit.

Requirement:

Discuss the PAYE and National Insurance consequences for Yachtmaster plc of the provision of benefits in respect of Adrian. Calculations are NOT required. (15)