Institution **CIOT - ATT-CTA**
Course **CTA Adv Tech Human Capital Taxes**

Answer-to-Question-_1_   Palm Ltd

A salary sacrifice scheme is officially known as an optional remuneration agreement. This is a formal agreement between the employee and the employer, under which the employee accepts a lower taxable salary in exchange for an agreed non-cash benefit in kind.

To avoid these schemes being exploited for tax advantages, where optional remuneration agreements are entered in to, the employee is not automatically taxed on the benefit in accordance with the benefit code, instead the cash equivalent of the benefit will be treated as the greater of;

- The cash equivalent of the benefit as calculated under normal rules
- The amount foregone

Certain benefits are not affected by the rules, and these will be covered as each benefit is considered in turn.

Pension Contributions

Pension savings under registered schemes are one of the exceptions to the optional remuneration agreement rules in ITEPA 2003, s69A. In this scenario, the pension contributions are instead taxable on their usual cash equivalent under the benefits code.

Pension contributions to registered schemes by UK employers are a tax-free benefit to employees. The contributions must be considered for annual allowance purposes, but if no employees are at risk of breaching these levels then the taxable benefit for additional employer contributions would be NIL. In addition, it may be considered whether the disguised remuneration rules apply for this scheme as it is a third party administrator, however tax-free benefits do not fall within the 7A rules, so the employer contributions do not create a relevant step for tax purposes.

For employee contributions, it should be noted that any reduction in salary as a result of the salary sacrifice arrangement would reduce the level of pension contributions that are taken from gross income. Any change in pension contributions does not impact the liability for Class 1 National Insurance, which will still be due on gross taxable income.

Using a salary sacrifice scheme for pension contributions would mean that less Class 1 National Insurance is paid, as this is calculated after deducting the salary foregone. Employees would still receive tax relief for contributions made to the pension scheme after taking salary sacrifice, however it is usual for employer contributions to increase when using a salary sacrifice scheme, which is as already discussed, a tax-free benefit.

Cycle to work scheme

Provided the bicycles are offered to all employees on a general basis, then the scheme itself will be tax exempt. It does not matter if employees decide not to use the scheme, and it does not matter if the bicycles are offered to employees on different terms.

As such, there would be no requirement to enter into a salary sacrifice arrangement for this scheme.

If a arrangement was entered into, without sacrifice, the additional salary payment each year would be £375, which attracts income tax at 20% (as all employees are basic rate tax payers) of £75. The employer's NIC on this amount would be £52 a year, and Class 1 primary for the employee would be £45. The total employer cost would be £375+£52 = £427

With the sacrifice, the cost of the package each year would be £375, equal to £375 a year for the two years the bicycle would be held for.

The employer would therefore make a saving of £52 a year (equal to Class 1 Secondary NIC on the value of the salary sacrifice).

From an employee perspective, entering into the scheme reduces their take home pay by £255 each year (£75 tax and £45 NIC) from the £375 given up), however in return they receive a cycle package worth £375 a year. It should be considered for each employee whether the use of the bicycle is required, especially as many seem to travel by car.

Private Medical Insurance

The impact of the salary sacrifice in this arrangement would be taxable using the general rules. The cash equivalent to the employee would be £750, equal to the marginal cost for the employer to provide this benefit. The amount foregone would be £500. The tax is calculated based on the higher of the two amounts, so £750 would be charged as a taxable benefit for the employee. This would be taxable via a P11D at 20% and subject to Class1A for the employer at 13.8%. This tax and NIC should be paid by the 22nd July.

In this case, sacrificing £500 of salary would mean a lower take home of £340 (as this is taxable at 20% and NICable at 12%), but would entitle the employee to a benefit worth £750. They would also be due to pay tax on the value of the benefit through the P11D, which would be £150. So would be a total cost of £490 for a benefit worth £750.

For the employer, they would be paying £750 for the benefit plus £104 for the Class 1A (£750 x 13.8%). A total cost of £854 for providing the benefit, while they save only £569 for the salary reduction (£500 + £500 x 0.138)

On-Site Car parking

The provision of a workplace car parking spot is exempt, therefore the amount that would be taxable is the amount of salary foregone, in this case £400. This would be subject to tax via self-assessment at 20%, unless the company wishes to consider voluntary payrolling of benefits.

Without the sacrifice, the employees receive £400, taxed at 20% and NIC at 12% gives them additional take home of £272. By taking the option, the employees are receving a reduction of £272 from take home pay, and will be taxed on the £400 at 20% = £80, so a total cost of £352, which would be less than the car park permit.

As the cost to the employer is negligble, it should be considered whether the provision of the workplace parking spaces are reduced further, as they give employees additional tax on a benefit that can be provided for free.

Apprenticeship Levy

By entering into Salary sacrifice arrangements, the employees would be reducing their taxable earnings for Class 1 NIC purposes. The Apprenticeship levy is calvulated on the annual pay bill subject to Class 1 NICs at 0.5%. A levy allowance is available for the first £15,000, so the levy will only be due if the pay subject to Class 1 NIC is over £3m. If this level is already breached, then any salary sacrifice schemes gives an additional saving to the employer of 0.5%.

Conclusion

In conclusion, the use of the schemes will save the employer money, and for the cycle to work scheme and the private medical, it will be worthwhile for the employees to enter the scheme if they wish to receive the benefits.

There should be some consideration on forcing salary sacrifice where the employee would not ordinarily have a taxable benefit, as this may upset staff that have to sacrifice salary and pay tax on a benefit they wouldn't normally be taxed on.

--------------ANSWER-1-ABOVE---------------

--------------ANSWER-2-BELOW---------------

Answer-to-Question-_2_   Minecomp Ltd

Where duties are mainly performed outside of the UK but the employee has some minor duties that are carried out in the UK, then ordinarily these duties are considered incidental under ITEPA 2003, s.39. This exemption is not available for directors, so any workdays performed in the UK are taxable.

As a non-UK resident, there would ordinarily be a claim that could be made under the double tax treaty between the UK and Georgia, however, Kolya is paid by the UK entity, therefore under Article 14 2(b) as Kolya's remuneration is paid by a UK entity, there is no exemption under this article.

Under Article 15, there is the provision that payments derived by a resident of Georgia in his capacity as a member of a UK resident company may be taxed in the UK. Therefore Kolya's earnings will be subject to UK tax.

Article 25 confirms that Kolya will not be eligible for the UK personal allowance as a non-resident in the UK.

As a UK non-resident, Kolya should only be taxable on his UK sourced income. As he is employed by a UK entity, Minecomp ltd are responsible for operating PAYE on 100% of his earnings, however, his UK duties are expected to fall well below this figure, so it is possible to reduce the taxable earnings as applicable.

As Kolya will be economically employed in the UK, and as a director, an Appendix 4 agreement cannot be entered into.

For calculating the amount of income that relates to UK duties, working time in the UK and relevant travel/preparation counts as working time. A workday for UK purposes is any day where work was done for more than 3 hours.

Regarding benefits, it appears that less than 40% of Kolya's working time for Minecomp Ltd is in the UK, as he performs 19 workdays a year in Georgia plus the four remote days and relevant preparation time, and is only in the UK for seven working days. As such, his travel to Reading is considered a temporary workplace and relief is available for the costs he incurs as a result of his trips here.

For non-domiciled individuals working in the UK, expenses for home leave and return travel at the end of assignment are deductible. Relief is restricted to expenses incurred in the five years from qualifying arrival date. As Kolya will never be considered resident he can qualify for this relief for more than the five years (provided he never becomes UK resident in the interim). This means the flights for him are exempt.As he does not stay in the UK for a period of 60 continous days, the costs of his wife's flights are a taxable benefit and these would be taxable in the UK and subjcet to Class 1 A For the employer.

The temporary workplace relief does not extend to accommodation and subsistence paid for Kolya's wife. Therefore relief is restricted to only Kolya's portion of the costs. As it is just the two of them moving, the relevant percentage is 50%. 50% of the hotel costs and evening meal = 10,400+2,600 = 13,000 / 2 = £6,500. This is treated as a taxable benefit for Kolya, although the company have agreed to pay the tax on the benefit.

Together with the flights, this brings Kolya's taxable benefits in April 2022 to £10,280 (3,780 + 6,500).

Where a s.690 agreement has not been entered into, the full amount of Kolya's directorship payments should be subject to UK PAYE withholding. If both amounts are paid out in May 2022, then Kolya's total income in the UK in that year will be £100,280.

Kolya will be tax protected in the UK, this means that the employer agrees to pay the employee's liability on certain earnings. Under this scheme, the employer will pay the UK additional liabilities, but any tax refunds would belong to the individual.

Before calculating the relevant amount to gross up, the UK NIC position must be considered.

UK NIC applies where an individual is gainfully employed in the UK, as is the case for Kolya. Normal director payments are therefore treated as earnings for Class 1 purposes. As no relevant NIC exemption applies under the treaty, the only concession is where Kolya only attends board meetings in the UK. For this concession to apply the following must be met;

- The director attends a maximum of ten meetings in a year and each visit lasts no more than two nights OR
- The director only attends one board meeting in a tax year and the visit lasts less than two weeks.

In this case, as Kolya was only in the UK for 10 nights, he would have no UK NIC liability, and as the secondary contributor, neither would Minecomp.

Kolya's earnings for tax purposes are £100,280. Grossed up at 40% may make Kolya's earnings exceed £150,000 in the tax year. This would be an additional cost for Minecomp, so by staggering Kolya's director payments so they are not received in the same tax year, the overall tax rate would be less. If the £65,000 is not paid until the following tax year then only a 20% rate of tax would apply for 2022/23.

--------------ANSWER-2-ABOVE---------------

--------------ANSWER-3-BELOW---------------

Answer-to-Question-_3_   TH Cuisine Ltd

1) Tips and gratutities are treated as taxable employment income. Whether or not the tips are subject to PAYE depends on how the tip reaches the employee's pocket. If the employee receives and keeps their own tips, they are responsible for declaring those tips as employment income under self-assessment.

If the tips are received by the employer, or pooled under a 'tronc' system, then PAYE should be operated in respect of the payment of the tips to the individual employees.

There is similar implications for NIC purposes, if the tips are pooled and subject to PAYE, where the employer decides the allocation, these tips are subject to Class 1 NIC. If a tip is passed directly to an employee then there are no NICs due.

Taking a look at the treatment of each restaurant in turn;

<u>London</u>

In the London restaurant, there is no formal processing of tips, with all tips paid directly to the staff members by way of cash. As the employer has no record of what has been paid, it is the employee's responsibility to pay the relevant income tax on the value of these tips.

The amount received should be recorded on a self-assessment tax return. This is due by the 31st January following the end of the tax year in which the tips relate. Although it is not the employer's obligation to ensure the employees declare these tips, it is recommended that training is provided to the individuals to guide them on the actions they should be taking regarding the cash tips they receive.

No NIC is due on the value of these cash tips.

Manchester

In this case, there is still no service charge, so all tips are received in cash. However, the restaurant manager, by collecting the tips, is acting as a 'troncmaster'. Under the SI 2003/2682 reg 100 special arrangements, every payment made to an employee by way of the employee's share of tips is regarded as a relevant payment, where the troncmaster is regarded as the employer.

In these circumstances, obligation falls onto the restaurant manager to administer PAYE on these tips as if they were the employer. The inland revenue may find that if the restaurant manager does not comply with these rules, then they will look at the principal employer, TH Cuisine, to apply the PAYE. Here, the troncmaster must give all relevant details to the employer, who will deduct the relevant tax and then provide the troncmaster with the details to pass back on to the staff.

These rules apply to all of the tips that are collected by the troncmaster

The 20% that are provided to the company are treated as pooled tips. Here the PAYE treatment is the same, where it is the restaurant manager who ultimately is responsible for the PAYE administration, however as the employer decides on the allocation of the 20%, this amount is subject to Class 1 NICs for the employees and the employers, and the company themselves are in charge of administering this deduction.

Edinburgh

The 10% service charge is sent straight to the employer as this is a service charge. As the employer distributes it directly to the employees, TH Cuisine are responsible for recording the distributed amounts on PAYE. Class 1 NIC is due for the employee and the employer on these amounts, as the employer is the secondary contributor.

Where tips are paid in cash to the employee, the same treatment applies as in the London restaurant.

Where tips are paid by card these go directly to the employer. In this case, the employer takes the 5% deduction off and then transfers the amount to the restaurant manager (the troncmaster). They are then responsible for operating the PAYE on the balance of the tips that are distributed, and since it is the restaurant managers discretion on how to distribute the tips, there are no NICs due on these amounts.

2) Legally, tips cannot form part of National Minimum wage calculations. On the face of it, the basic pay that is given to the waiting staff at the restaurants are equal to the national minimum wage rates. These are currently as follows;

Workers aged 23 and over - £8.91 (national living wage)
21-22 - £8.36 (national minimum wage - standard adult rate)
18-20 - £6.56 (national minimum wage - youth development rate)
16-17 - £4.62 (national minimum wage - young workers rate)

A lower rate of £4.30 applies to any apprentices.

Under s.336 ITEPA 2003, the provision of uniform (items with a logo) are not taxable. Therefore where staff have to pay for these costs for £5 a week, these deductions should be factored into calculating whether the national minimum/living wage minimums have been breached. Assuming any individuals did not work overtime in a week, then their base salary alone less the £5 uniform costs would have meant they were paid under the national minimum wage for that week.

In all cases where this applies, the worker is entitled to be paid a sum representing the shortfall. If the employer discovers the shortfall they should make a payment to the individual as soon as possible, as well as considering increasing basic pay rates, or removing the £5 a week charge for uniform. If the employee discovers the shortfall, they can make a claim to the employment tribunal.

HMRC have powers to investigate cases of non-compliance and can issue notice of underpayments to the emplloyers, they may require the employer to pay 200% of the underpayment (or £100, whichever is greater) up to a maximum of £20,000 for each worker identified. They may also be named and shamed as an employer who is paying under the relevant rates.

It is recommended the pay rates are revised as soon as possible to ensure that the national living/minimum wage rates are met.

For the employees travelling to training, the earnings they receive while at the college will be considered for their hourly rate purposes. If an employee does not attend college and has a deduction from their pay by way of misconduct, this does not reduce the pay for national minimum wage purposes. Therefore, if this is the only reason an individual is paid less than the minimum, no failure applies.

Consideration should be given for any costs the employees incur as part of the training.

--------------ANSWER-3-ABOVE---------------

--------------ANSWER-4-BELOW---------------

Answer-to-Question-_4_   Nocha SA

1) As the individuals will be coming to the UK on a tax equalised assignment, in order to report their income, it is recommended that Nocha Ltd apply for an EP Appendix 6 agreement.

This is a written agreement with HMRC that relaxes the usual compliance rules. A template should be completed and sent to HMRC. HMRC will then sign and return it to the client. It should be noted that by doing so, the employer has to give an undertaking to ensure that all included employees complete self-assessment tax returns propertly, including all items of employment income grossed up as appropriate. Although the costs have not been considered below, additional costs are likely to be required to help these individuals with preparation of their UK tax returns - as the calculations can be tricky without the assistance of a relevant tax advisor.

Under an EP Appendix 6 agreement, PAYE is estimated and paid in twelve equal instalments.

Each individual will have their own reporting requirements, so I will consider each case in turn.

<u>Emma</u>

As Emma will be moving to the UK from the 3rd April she is likely to become tax resident from the day she starts working in the UK, or the 14th May if that is sooner. Note she would be automatically non resident in the 2021/22 tax year as her days in the UK are less than 46. She will be a UK resident in future years as she will spend 183 days in the tax year in the UK. She will not need to split the tax year on the basis she will begin UK residence at the start of the 2022/23 tax year

As a UK resident Emma would be subject to UK tax on her worldwide income, however, as a non-domiciled individual (as a Swiss national), she can exclude from UK tax the income relating to non-UK workdays to the extent any relevant income is not remitted to the UK. This would offer a substantial tax saving for the company, but requires more admin to set up, as Emma would need to open a qualifying bank account and receive guidance on remittance she can make to the UK. This is available to Emma as she has been non-resident in the UK for the three years prior to her secondment, and would be available for the full three years of the secondment.

There is no indication that Emma will have overseas workdays so no calculation has been made for this saving.

As Emma's assignment to the UK exceeds two years, the costs of her accommodation in the hotel in Dumfries would be a taxable benefit (although an £8,000 relocation exemption could apply if not used elsewhere). Assuming the £8,000 has been used elsewhere, the cost of the days from the 6th April to the 13th May will be a taxable benefit. The costs for the days in the 2021/22 tax year will fall under a relevant personal allowance for the year.

As Emma will have her place of residence in the UK, she would be taxable on the UK rates, since she does not establish a 'close connection' with Scotland.

Frank

As Frank has been in the UK previously, his residence position is slightly different, in that for him to be an automatic non-resident in the UK in 2021/22, he can only have been in the UK for 16 days (or meets the full time work abroad tests). As Frank's presence in the UK was 10 days in February and a further 4 days (2nd to 5th) in April, he is deemed automatic non-UK resident for the 2021/22 tax year.

As Frank has not been non-UK resident for the previous three tax years, there is no opportunity for him to claim overseas workdays relief with respect of his earnings with Nocha.

Frank would also be deemed UK resident for the entire 2022/23 tax year on the basis he will spend over 183 days in the UK. Again no split year is required as his residence starts at the beginning of a UK year.

<u>Lucas</u>

Lucas will presumably arrive in the UK around the time of his assignment start date. He will also qualify as a non-resident in the UK for 2021/22 as he will spend less than 46 days in the UK in that year. For 2022/23, he will spend over 183 days in the UK on the assumption he is only outside the UK for 26 weekends (52 midnights). As Lucas will continue to be deemed Swiss tax resident, the double tax treaty to determine residence should be consulted.

Under Article 4(2)a, where an individual is resident in both Switzerland and the UK, the residence status should be determined by the state in which he has a permanent home available to him, if he has a home available in both states he shall be deemed a resident in the state with which his personal and economic relations are closer.

As there is a degree of permanence to the flat he will share with Frank in Dumfries, it is likely he meets the first test. As his family are in Switzerland and he returns there regularly, it is likely his centre of vital interests will be in Switzerland, meaning Lucas will be a UK non-resident in the tax year, only liable to UK tax on his UK sourced income. As there is no indication he will have any workdays other than the UK, for the purposes of Nocha's costs this does not change the tax position.

Calculation of costs to employer

Emma - 2021/22

Hotel Costs = £75 x 3 = £225

Total Cost for Year = £225.

Emma - 2022/23

	£			
Net Salary	50,000			
Mobility Premium £800 x 12	9,600			
	59,600			
Less UK Personal Allowance	(12,570)			
Taxable Income	47,030			
UK Income Tax				
37,700 @ 20%	7,540			
9,330 @ 40%	3,732			
	11,272			
Gross Up @ 40% £11,272 x 100/60	**18,787**			

Frank and Lucas - 2022/23

	£		
Net Salary	50,000		
Mobility Premium	9,600		
	59,600		
Less Personal Allowance	(12,570)		
Taxable Income	47,030		
Scottish Income Tax			
2,097 @ 19%	398		
10,629 @ 20%	2,126		
18,366 @ 21%	3,857		
15,938 @ 41%	6,535		
	12,916		
Gross Up @ 41% £12,916 x 100/59	**21,892**		

<u>Total Cost for 2022/23</u>

Salary x 3 = £150,000
Mobility Premium x 3 = £28,800
Tax Cost for Emma = £18,787
Tax Cost for Frank and Lucas (x2) = £43,784

Total Cost = 241,371

2) Frank's student loan would have been a Plan 2 loan, but this changed to Plan 4 from 6th April 2021. Frank should let the company know that this is the loan scheme he is on.

Student Loan deductions are calculated on earnings subject to Class 1 NIC. THe calculations are done as 9% on earnings over the annual threshold. In 2021/22 the Plan 4 annual threshold is £25,000. As Frank earns more than this amount, deductions should be taken from him. These are deducted post-tax, so do not offer any relief from Income tax at the scottish rates.

--------------ANSWER-4-ABOVE---------------

--------------ANSWER-5-BELOW---------------

Answer-to-Question-_5_   Digital Lessons Ltd

Working chronologically, the first consideration was when the shares were purchased from the unconnected formation agent for £500 by Mr and Mrs Jones. This will be used as the base cost for the shares for CGT purposes. We will assume this happened a long time prior to any of the other transactions

In 2018, Mr and Mrs Jones sold 10,000 shares to Sarah Gregory. As these shares are employment related securities, since Sarah began working for the company at the time of the transaction.

When Sarah purchased the shares she entered into a restriction provision for shares, as the shares had been artificially depressed by the side agreement entered into, which reduced the market value of the shares.

As the reduction in value was only 10%, the decrease could be ignored, and no charge arises.

For Mr and Mrs Jones, they have sold £10,000 shares at a value of £500,000. As they only paid £0.001 per share, the total gain subject to CGT is £500,000 less £10 = £499,990. This divided by two gave each of them a capital gain of £249,995. This gain would have been eligible for Business Asset Disposal Relief, meaning the full gain would be subject to tax at 10%, a £24,500 tax payment. This did not need to be put through payroll at the time of sale as there was no means by which the shares could be sold, so they would not have been treated as readily convertible assets, although this gain should have been reported on each of their 2018/19 tax returns. The window for amending this tax return has since passed, but a disclosure should be made to HMRC as soon as possible with the findings, to confirm the amount of tax that should have been paid, in an attempt to mitigate interest and penalties.

For Martin's purchase, a further gain of £374,995 would have been gained, which should have been reported on a 2020/21 tax return. Again this in half and subject to BADR gives a gain of £18,750 each.

Note that a £12,300 CGT allowance is available each year with respect to these share sales if not used already.

For Martin himself, the purchase of the shares did not need to be payrolled as the shares were not RCA's at the time of purchase. However he would have had a tax charge since there was a 20% discount from share value. THe effect of the s.431 election made is that there were no additional charges for the restrictions put in place regarding the sale of the shares, instead the only income tax charge was based on the unrestricted market value at the time of their acquisition

	£		
Unrestricted value	80	(£100 * 80%)	
Price Paid	75		
Employment Income	5		

This meant a total of £25,000 should have been reported as employment income for Martin in 2020/21. No PAYE withholding was required.

In 2021/22 the sale of the shares was made to E-learn PLC. Capital Gains tax should be paid by each individual at this time. For the purposes of BADR, Mr and Mrs Jones only have £562,507 left for their BADR £1m lifetime limit. The sale price of each share was £110, so the total gain for Mr and Mrs Jones is £53,350,000. The remaining £562,507 can be taxed at 10%, whereas the remainder should be taxed at 20%.

For Sarah, she has held the shares for over two years, and even though she doesn't hold a 5% holding she can benefit from the BADR rules as Digital Lessons is a close company.

Martin does not qualify for BADR as he didn't hold the shares for sufficient time to qualify.

For the company, if any tax did need to be accounted for via PAYE, the tax deducted can reduce an employee's cash pay to NIL. Any amount of PAYE which cannot be deducted from cash pay must be recovered from the employee within 90 days of the end of the tax year in which the non-cash payment was received. If any amount is not recovered from the employee, it must be recorded as a benefit for the employee in the year the payment was received.

Corporation tax relief is available for the provision of shares to employees where the company is not under control of another company. The amount that can be claimed is based on the market value of the shares less any price paid by the employee when they were provided.

--------------ANSWER-5-ABOVE---------------

--------------ANSWER-6-BELOW---------------

Answer-to-Question-_6_   Carbon Cancel Ltd

As a general rule, anyone working in the UK is liable to tax on their UK related earnings, unless the workdays are 'merely incidental' to the overseas role. Even if exemptions exist under a relevant double tax treaty, this does not change any relevant PAYE position.

To determine the liabilities for Carbon Cancel Ltd, it is necessary to first consider the residence position of Javier and Maria. The residence rules are determined by the Statutory Residence test (SRT) contained in Finance Act 2013, sch45. The SRT determines a resident position in each year, with the first test to determine residence known as the automatic overseas test.

Javier and Maria both spend 36 days in the UK. On the assumption neither of the individuals have been UK resident previously (in the last 3 years at least), they are first tested on whether they are present in the UK for fewer than 46 days in the current tax year. For both of them, this test applies, and they will be considered non-UK resident under the SRT test. As non-UK residents, they are only subject to UK tax on their UK sourced income.

If either of them had been resident in the UK in one or more of the previous 3 tax years, then the 46 day test is reduced down to 16, which they wouldn't have met. In this circumstance it is likely the individuals would be non-resident under the sufficient ties tests anyway, although these have not been considered further.

Javier is employed by an employer without a UK tax presence. It cannot be said that his duties in the UK are incidental to his role, as he performs more than just subordinate duties when in the UK.

Under the standard OECD double tax treaty, the general rule is that the country in which employment duties are carried out may tax the income generated by those duties. There is an exception to this rule where an employee doesn't work in the UK for 183 days, provided the employment contract remains with the home country employer and the costs of the work abroad are not recharged. The employer in this sense is the economic employer, i.e. a business that reaps the benefits of work from the individual, regardless of legal employer.

As Javier performs 40% of his role for the benefit of the UK, and there is no indication that the role in the UK is on its own (i.e. the work will continue each year and form a substantial presence), the economic employer provisions are met and Javier cannot be exempted under the DTA or under the UK STBV rules.

As such, Javier should be taxed on earnings attributable to UK workdays in the UK. As his employer for the UK time has a UK presence (Carbon Cancel Ltd) they should be responsible for calculating PAYE on the full value of his earnings. A s.690 direction can be requested from HMRC to limit the UK withholding to 15% in line with Javier's expected UK presence.

It is recommended that advice is taken in Spain where relief may be available for the UK taxes Javier will have to pay.

From the national insurance perspective, where individuals work across multiple EU jurisdictions, social security is paid in the country in which they habitually reside provided they work a substantial amount of time in that country (over 25%). A certificate of coverage should be supplied by the Spanish authorities to prevent a UK NIC charge for Javier.

For Maria, she is employed on a contract with the UK. In her case, the UK entity is responsible for operating PAYE on 100% of her earnings. As she will be non-resident and only expecting to work in the UK for 15% of her time, a s.690 application can be made to restrict UK withholding in line with her expected UK presence.

From a National Insurance perspective, as she will be gainfully employed in the UK, UK national insurance applies.

For both individuals, if PAYE only needs to be applied on 15% of their earnings, which is £9,000, their UK taxable earnings would be under £12,570, the personal allowance they are entitled to as nationals of European countries. This means no UK tax would ultimately be due. If there is no UK tax then there can be no foreign FTC where other countries wish to claim for UK taxes paid.

As both individuals visit the UK less than 40% of their employed time, the visits to the UK are considered visits to a temporary workplace. As such, any costs incurred by them for travelling and commuting are deductible against gross earnings. Where the employer has paid for flights and accommodation these are a tax exempt benefit.

The reimbursement for Kennel costs is confirmed by HMRC to qualify as a relevant subsistence cost for business travel. Therefore the £600 the company reimburse Maria for her kennel costs do not consitute a taxable benefit provided this is a reimbursement claim and there is no element of profit.