PKF FRANCISCLARK
Chartered accountants & business advisers

Doing Business in the UK
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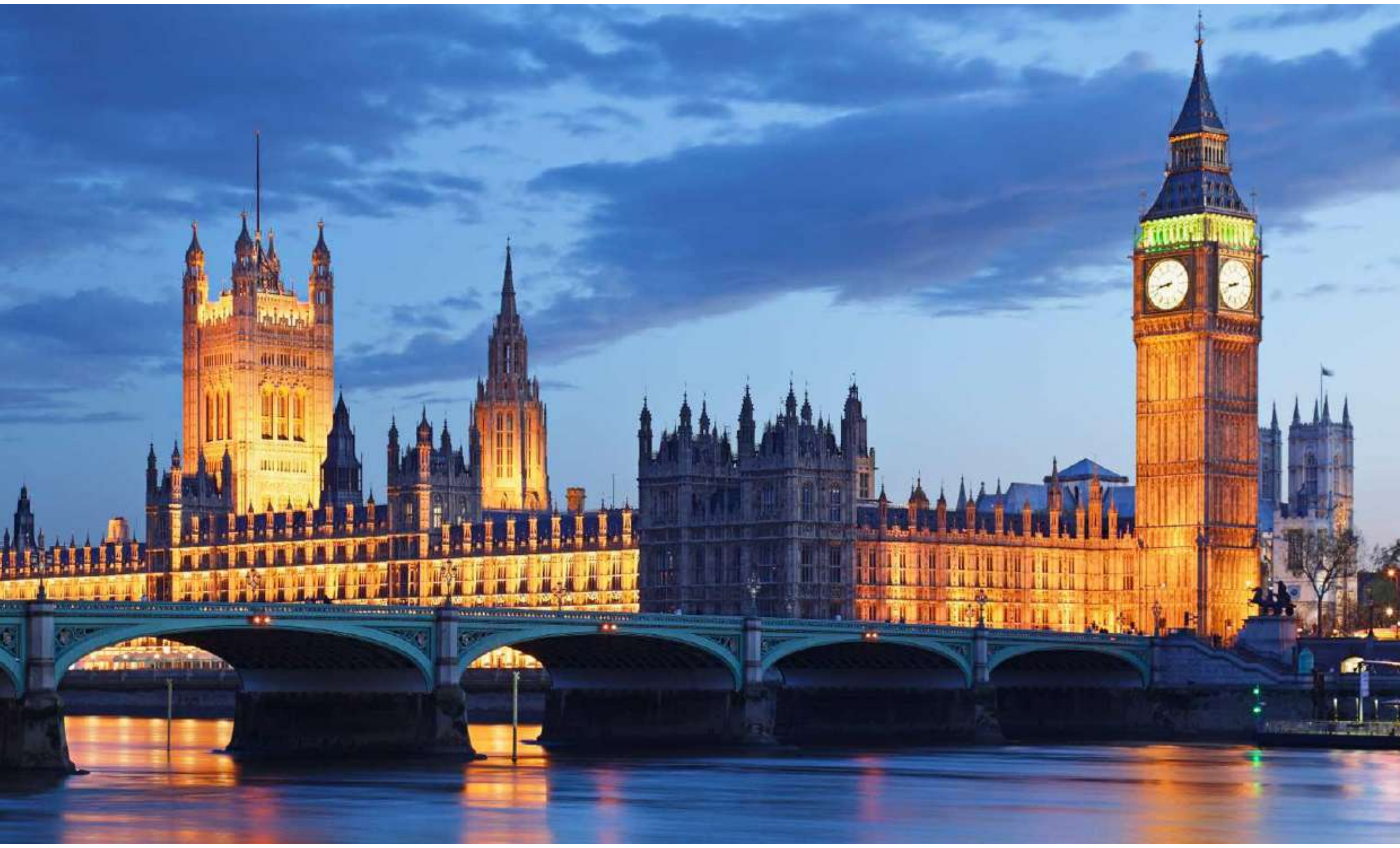

The PKF Network

PKF Francis Clark is part of the PKF network, a global family of legally independent firms bound together by a shared commitment to quality, integrity and the creation of clarity in a complex regulatory environment. We provide world-class analysis and clear solutions in assurance, advisory, taxation and business services for companies around the globe.

We specialise in providing high quality audit, accounting, tax and business advisory solutions to international and domestic organisations in all our markets.

where we operate

440 cities

150 countries

5 continents

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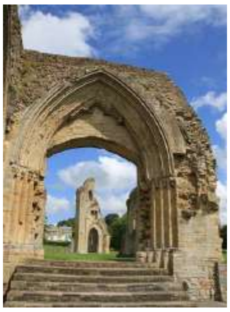


Foreword

PKF Francis Clark is one of the top 20 firms of accountants in the UK. We are all about people; experts who work with you to achieve your goals and objectives. We offer a range of financial services to a large variety of businesses; our team of experts are here to provide advice and support for all your accountancy and tax requirements.

This publication provides an overview of the most important aspects of doing business and investing in the UK and we trust that you find it informative and useful.

The UK remains one of the most attractive places in the world to invest in and trade with. It continues to receive the most foreign investment of any country in Europe and has one of the most competitive tax regimes in the world. Key partners for inward investment continue to be the USA, China and India. The UK also remains an active outward investor, and whilst circa 50% of this goes to Europe, other key partners include the Americas, China and India.

If you are considering setting up, investing in or acquiring a UK business or trading in the UK, your next step should be to talk to us. We have extensive experience of helping businesses cross borders and we provide a comprehensive range of services to inward investors across a broad range of business sectors, including:

- Auditing of UK and foreign subsidiaries and holding companies
- Corporate finance advice re acquiring/ disposing of subsidiaries and fund raising
- Business advice regarding setting up of operations in the UK
- Taxation compliance and advice services
- Outsourcing and bookkeeping

We specialise in advising growing and entrepreneurial/owner-managed businesses, AIM and Main Market companies and UK subsidiaries. Our aim is to work closely with our clients to understand their goals and so help to achieve them.

ANDREW RICHARDS

Managing Partner, PKF Francis Clark

1 Introduction

Geography and population

The United Kingdom of Great Britain and Northern Ireland (more usually referred to as the United Kingdom or the UK) is a state consisting of the nations of England, Scotland, Wales and Northern Ireland. Also under UK sovereignty, though not part of the UK itself, are the Crown dependencies of the Channel Islands and the Isle of Man. These dependencies pursue their own policies over taxation, employment, health and education, but are subject to UK control on matters such as defence.

The UK is an island of 243,000km². Its population in 2017 was 65.2 million, virtually the same as France yet in an area less than half the size. The language spoken is English and London is the largest city and capital. Its time zone is GMT or GMT+1 for Daylight Saving Time/British Summer Time.

Political system

The UK is a constitutional monarchy. The constitution is uncodified and partly unwritten, comprising constitutional conventions, statutory law and common law. The head of state is the Monarch who since 1952 has been Queen Elizabeth II (for more information see www.royal.gov.uk), although this is a largely ceremonial role. Parliament is at the centre of the UK's political system (see www.parliament.uk). It is the supreme legislative body and the UK government is drawn from and answerable to it. Parliament is made up of the House of Commons and the House of Lords.

The House of Commons consists of 650 Members of Parliament, elected in general elections held at least once every five years and using the first-past-the-post voting system. A Conservative minority government was formed following the June 2017 election.

The House of Lords comprises a (non-elected) mixture of hereditary and appointed members. It scrutinises bills that have been approved by the House of Commons and, while it is unable to prevent Bills passing into law, acts as a check on the House of Commons that is independent from the electoral process.

The political head of the country is the Prime Minister, who must have the support of the House of Commons. The Monarch appoints the Prime Minister, guided by strict convention. The post usually goes to the leader of the majority party in the House of Commons. Theresa May was appointed Prime Minister in June 2017 as the head of a Conservative (minority) government. The Prime Minister selects the other ministers who make up the Government.

Although government in the UK has traditionally been centralised, there has been a recent move towards devolution. As a result, Scotland now has its own parliament, Wales has the Welsh Assembly Government and Northern Ireland has the Northern Ireland Assembly. Members of these bodies are elected by a form of proportional representation. While the Scottish Parliament has the power to legislate including varying certain taxes, the Welsh and Northern Ireland Assemblies only have the power to spend the budget allocated to them.

Economics

The UK is one of the three largest economies in Europe, alongside France and Germany, and one of the six largest economies in the world. There has been a trend over the last 30 years to reduce public ownership through privatisation programmes. There has also been a switch from once dominant manufacturing industries to services, particularly banking, insurance and business services although recent governments have announced that they wish to reverse this trend.

Brexit

The UK joined the European Union (EU) – then known as the European Economic Community – in 1973. The EU is now established as a single trading area with no internal tariffs and with common standards applying to virtually the full range of commercial life (for more detail see www.europa.eu). These close economic links were cemented by the launch of the euro as a single currency in 1999, although the UK opted to retain the pound sterling. On 29 March 2017, the UK Government exercised Article 50 of the Treaty on European Union, serving a two year notice period on the EU that the UK intended to leave. Whilst the outcomes of the negotiations and exit remain uncertain, the UK remains a major global market and significantly attractive for inbound investment.

Exchange controls

There are no exchange controls in the UK.

Regulatory environment

Businesses and investors coming to the UK must comply with regulatory law governing how they operate. This law changes often and the compliance burdens on businesses are increasing. A detailed exploration of these issues is outside the scope of this booklet, and the following represents an overview only.

Legal systems

There are minor differences in the legal systems of England, Wales and Northern Ireland. However, many aspects of the Scottish legal system, in particular property law, are quite different and appropriate advice should be obtained when setting up a business there.

Money laundering

The Proceeds of Crime Act 2002 (supplemented by the Money Laundering Regulations 2017) extended the offence of money laundering to the proceeds of any crime. Money laundering is now so widely defined that it includes, for example, benefits (in the form of saved costs) arising from a failure to comply with a regulatory requirement where that failure is a criminal offence.

The regulated sector required to disclose knowledge or suspicion of money laundering to the law enforcement agencies includes banking, financial services, life insurance, bureaux de change and other money service businesses, estate agents, casino operators, insolvency practitioners, tax advisers, accountants, auditors, and businesses providing services in relation to the formation, operation or management of a company or trust.

The principal money laundering offences include:

- concealing, disguising, converting, transferring or removing criminal property;
- becoming concerned in an arrangement in which someone knowingly suspects or facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person; and
- acquiring, using or possessing criminal property.

The legislation includes offences of failing to report suspected money laundering, 'tipping off' about a money laundering disclosure, 'tipping off' about a money laundering investigation and prejudicing a money laundering investigation.

It is necessary for businesses in the regulated sector to do a number of things:

- ensure that they know their clients, such as by requiring anyone with whom they conduct business to provide proof of identity and undertaking ongoing monitoring where applicable;
- keep records of the proof of identity for at least five years after the end of each business relationship;
- operate effective money laundering training programmes for staff, and internal controls and procedures to prevent money laundering; and
- maintain internal procedures requiring anyone who knows or suspects that a person is money laundering to report it to a nominated officer – known as the money laundering reporting officer.

It is a criminal offence for those employed in the regulated sector to fail to report knowledge, or even reasonable suspicion, of any criminal activity giving rise to the proceeds of crime.

Bribery Act 2010

The Bribery Act, which came into force on 1 July 2011, introduced rigorous new anticorruption regulations that affect individuals and all businesses that are either incorporated or carry on business in the UK.

The Act introduced two general offences covering the offering, promising or giving of a bribe (active bribery) and the requesting, agreeing to receive or accepting of a bribe (passive bribery). It also sets out two further offences which specifically address commercial bribery – bribery of a foreign public official in order to obtain or retain business or an advantage in the conduct of business, and failure to prevent bribery on behalf of a commercial organisation. It is the last of these offences that will affect commercial organisations the most.

A business or organisation will be guilty of an offence if it fails to prevent an 'associated person' from bribing another with the intention of obtaining or retaining an advantage for the business or organisation. 'Associated person' is defined widely and can include employees, agents and subsidiaries depending on the circumstances.

Two areas that businesses should be particularly alert to are corporate hospitality and facilitation payments (small payments to public officials designed to ensure the prompt performance of duties). However, corporate hospitality will only amount to bribery if it can be proved that the person offering it intended the recipient to be influenced to act improperly.

Organisations found guilty of an offence can face an unlimited fine and be banned from bidding for EU public contracts. If found guilty of indictment, individuals can be subject to a maximum penalty of ten years' imprisonment and an unlimited fine.

Criminal Finances Act

From 30 September 2017 it is a criminal offence in the UK if a business fails to prevent its employees or any person associated with it from facilitating tax evasion. Businesses will need to ensure that they are aware of, and have control over, how their employees, agents or service providers are operating to reduce the risk of exposure to the new offence.

The offences are expected to increase compliance requirements across all business sectors. Businesses are likely to have to conduct more due diligence in relation to their suppliers, contractors and employees and will probably have to look much more closely at where, and the manner in which, payments are made for goods and services, especially if offshore accounts are involved or payments are made in cash.

The first offence applies to all businesses, wherever located, in respect of the facilitation of UK tax evasion. The second offence applies to businesses with a UK connection in respect of the facilitation of non-UK tax evasion.

The offences apply to companies, limited liability partnerships, limited partnerships and partnerships. They make a business vicariously liable for the criminal acts of its employees and other persons 'associated' with it, even if the senior management of the business was not involved or aware of the criminal activity. 'Associated persons' are employees, agents and other persons who perform services for or on behalf of the business, such as contractors, suppliers, agents and intermediaries.

For either of the offences to apply, the employee/associated person must have criminally facilitated the tax evasion, in its capacity as an employee/associated person, providing services to the business. A business will not be criminally liable for failing to prevent the facilitation of tax evasion if the facilitator was acting in a personal capacity.

A business will have a defence if it can prove that it had put in place reasonable prevention procedures to prevent the facilitation of tax evasion taking place, or that it was not reasonable in the circumstances to expect there to be procedures in place.

UK businesses will need to undertake a risk assessment to identify the risks of facilitation of tax evasion within the organisation and the potential gaps in the existing control environment. The risk assessment should be documented so that it can provide an audit trail to support any policy decisions regarding the implementation of new procedures to reduce the risk of exposure to the offences.

Aside from the possibility of incurring a heavy fine, a successful prosecution under either of the new offences could give rise to serious reputational damage for an organisation.

Data protection

The storage of personal data on a computer or in an organised manual filing system is currently subject to the Data Protection Act 1998 (DPA). A business involved in processing such personal data must register with the Information Commissioner.

When processing data, it is necessary that individuals give their consent and that the processing be for a necessary purpose, for example in connection with performance of a contract or to protect the vital interests of the individual. The business must have safeguards to prevent unlawful or unauthorised processing of data and its loss or destruction.

The DPA is due to be updated by the adoption of the European General Data Protection Regulation (GDPR), which is due to apply in the UK from 25 May 2018. The UK Government has confirmed that the UK's decision to leave the EU will not affect the commencement of the GDPR.

Under the GDPR, the data protection principles set out the main responsibilities for organisations. The principles are similar to those in the DPA, with added detail at certain points and a new accountability requirement - the GDPR requires an entity to show how it complies with the principles - for example by documenting the decisions you take about a processing activity. This is explained in greater detail later in this guide.

Competition

Competition law is effected through both UK and (until Brexit) European law. It is designed to maintain a competitive economy by controlling the ability of companies to operate through a monopoly in their respective areas. In the UK, the main authority is the Competition and Markets Authority (CMA) that encompasses the whole economy and aims to promote competition, both within and outside the UK, for the benefit of consumers.

The CMA's role is supplemented by a number of others in relation to particular sectors such as energy, financial services, telecommunications and broadcasting, water, etc. As of 1 April 2015, the Financial Conduct Authority has extensive powers to require the self-reporting of significant competition infringements, which the CMA and others do not enjoy.

The Competition Act 1998 contains prohibitions on matters that prevent, restrict or distort competition or which affect trade within the UK, or conduct by undertakings amounting to abuse of a dominant position. The regulations give a non-exhaustive list of the types of agreement that will be caught, namely those which:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, placing them at a competitive disadvantage; or
- make the conclusion of contracts subject to supplementary obligations that have no connection with the subject of the contract.

An agreement only infringes prohibitions if it has an appreciable effect on competition in the UK and fails to qualify for an exemption. There is no appreciable effect on competition if:

- the agreement is between competitors: their aggregate market share does not exceed 10% of any relevant market affected by the agreement;
- the agreement is between non-competing undertakings: their market share does not exceed 15% of any relevant market affected by the agreement; or
- competition in the relevant market is restricted by various parallel networks of agreements with similar effects: thresholds are reduced to 5%.

To be exempted an agreement must:

- provide efficiency gains;
- allow consumers a fair share of the resulting benefits;
- not impose restrictions beyond those indispensable to achieving those objectives; and
- not eliminate competition.

Failure to comply with the legislation has significant consequences for both companies and individuals including fines (up to 10% of group turnover), contract becoming void and criminal sanctions for individuals.

Acquisitions and mergers

Mergers are regulated by the CMA under Part III of the Enterprise Act 2002. In certain narrow cases of public interest, the Secretary of State is also involved in the decision-making process.

The UK has a wide definition of merger. It includes not only obtaining legal control, but also de facto control and obtaining material influence. The acquisition of material influence through voting rights or by other means may be sufficient and has been found at shareholdings below 18%. Therefore, many minority investments and participations are to be assessed as if they were mergers in the regular sense, providing the jurisdictional thresholds below are met.

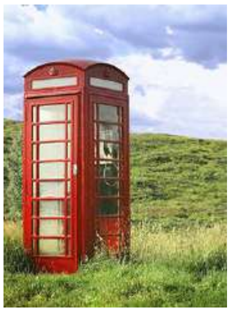
A transaction may be investigated by the CMA if the merger meets either the:

- Share of supply test. This is met if the transaction creates or enhances a 25% share of supply or purchases in the UK or a substantial part of the UK.
- Turnover test. This is met if the business being acquired has a UK turnover in excess of £70 million in the previous business year.

If the jurisdiction thresholds are not met, the authorities cannot intervene and examine it. There is no obligation to notify a merger to the UK authorities even if these jurisdictional thresholds are met or if it may have anti-competitive effects.

Following notification (or, if the merger has not been notified, the date it was made aware of it) the CMA has up to 40 working days to make its assessment. It can then either clear the merger or refer it for an in-depth 'Phase 2' investigation by an independent panel. The CMA must refer a transaction for a Phase 2 investigation where it believes there will be a Substantial Lessening of Competition (SLC).

The Phase 2 panel must decide within 24 weeks (which can be extended by eight weeks), whether the merger would result in a SLC within any market in the UK, after which time it can either clear the transaction or prohibit it.



2 Forms of business organisations

It is possible to do business in the UK through a variety of different entities and business arrangements. The main types are set out below.

Companies

A common entity for doing business in the UK is that of a limited liability company so that the liability of the owners is limited to a known amount. A company is a separate legal entity under UK law and can own assets, conduct business, employ people and remain in existence in perpetuity unless formally wound up or liquidated.

A company may be limited by shares or, in certain circumstances, by guarantee, and carries the suffix 'limited' (generally abbreviated to ltd) or 'public limited company' (abbreviated to plc). A company may also be unlimited (so that one or more of its owners' liability for the actions of the company is unlimited) but this structure is rarely used in practice.

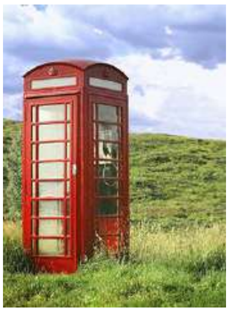
The advantage of a plc is that it may issue its shares to the general public, subject to numerous legal formalities. Before a plc may commence business it must apply for a certificate to commence business and to borrow. In order to obtain this, it must have a minimum authorised share capital of £50,000 of which 25% must be fully paid (i.e. where authorised capital is £50,000, £12,500). Shares in a plc are freely transferable and may be listed and traded on the London Stock Exchange (LSE) or other markets - such companies are referred to as 'quoted' or 'listed'.

Conversely, shares in a private company are transferable only in accordance with the company's own internal regulations as set out in the articles of association. This latter form of company is therefore the one most frequently favoured by family businesses and overseas investors.

A limited company can be formed with minimum difficulty. There are several specialist agencies that have pre-formed companies, called 'off the shelf' companies ready for use.

Companies incorporated in the UK have to comply with certain filing and legal requirements, including the following:

- A copy of the company's memorandum and articles of association must be drafted and filed at Companies House, which is generally responsible for overseeing and administering the Companies Act 2006. The memorandum contains basic information about the company including its name and scope of activities, whilst the articles set out the rules for the operation of the company's internal affairs.
- Accounts must be prepared in accordance with a standardised series of accounting principles and rules and must, in many cases, be audited by a registered auditor. Certain smaller companies are exempt from this audit requirement.
- Accounts must be filed at Companies House within nine months of the financial year end for a private company and six months for a plc.



- All companies and organisations subject to corporation tax have to file their corporation tax return online and pay any corporation tax and related payments due electronically i.e. by direct debit. The tax return, computations and – crucially – the accounts must be submitted in an electronic format called iXBRL (Inline eXtensible Business Reporting Language).
- A general meeting of shareholders must be held each year, although private companies are exempt from this obligation (unless their articles specifically require a meeting) so that many matters may be dealt with instead by written resolution. However, a meeting would still need to be called to dismiss a director or remove an auditor before the end of its term of office.
- A Confirmation Statement must be filed every 12 months including details of shareholder information, share capital or the company's SIC activity code. Companies must also maintain a Persons with Significant Control (PSC) register, with changes in PSCs being notified to Companies House no more than 28 days from the date of change.

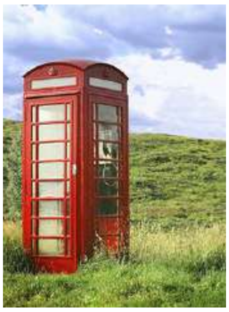
The fundamental concept underlying UK company law is that a company and its shareholders are separate legal persons. A UK company therefore has rights and duties independent of its shareholders and directors, and can take and be the subject of legal action in its own name.

Place of business or branch

An overseas company can establish a presence in this country by setting up a branch. The Companies Act 2006 (together with associated regulations) requires every overseas company which sets up a UK establishment to deliver certain documents to Companies House.

A UK establishment arises when an overseas company employs personnel based permanently in the UK who are capable of dealing with third parties on its behalf. The company must register the establishment with Companies House within one month of establishing operations in the UK.

To do this, the company must complete form OS IN01 and send it to Companies House, accompanied by certified copies of various constitutional documents of the company, a copy of the latest set of published accounts and a £20 registration fee. A UK establishment is also subject to regulation imposed by the Companies Act 2006 and has to provide certain information regarding the overseas company and the establishment to the Registrar. There is no statutory requirement for a UK establishment to have an audit but the overseas company is required to file financial information as for a UK company. Moreover, it may be required to present detailed results when filing tax returns with HM Revenue & Customs (HMRC).



Partnerships

Many businesses in the UK are not conducted through the medium of a company and consequently do not normally have the protection of limited liability. The business might be carried out by one person on his or her own, or by several in a partnership.

The law of England and Wales and Scottish law treat partnerships differently. The former does not recognise it as a separate legal entity and looks through the partnership to individual partners. The latter recognises the legal persona of a partnership. For tax purposes all are regarded as transparent. It is also possible to create Limited Partnerships whereby there is a 'general' partner who carries the unlimited liability of the partnership, while the limited partners are limited in their exposure to the level of their capital contributions. Limited partners are not permitted to participate in the general management of the partnership.

A Limited Liability Partnership (LLP) is a different type of entity: LLPs have to meet similar financial disclosure and statutory filing requirements to UK companies, including filing an annual return and accounts and notifying the Registrar of any changes of members or members' details, plus the need for an audit in appropriate cases. A LLP is a separate legal entity from its owners (the members), and the members' assets are protected in the event of the business becoming insolvent. However, legal action can be taken against individual members who are found to be negligent or fraudulent in their actions.

From a tax perspective, the members of a LLP are taxed in a similar way to an unlimited partnership, i.e. a LLP is regarded as transparent. Although not required by the Act, most LLPs adopt an agreement regulating the relationship between their members. In the absence of an agreement, default provisions are set out in the Act.

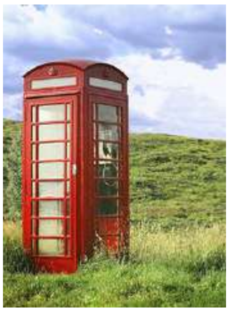
Joint ventures

A joint venture involves co-operation on a project between two or more parties, where they may agree to share expenses and/or income from the project. This is not a partnership and its legal implications need to be clearly understood by the parties concerned. Often these are formed as joint venture companies to provide this clarity and are subject to the same legislation and regulations as companies covered above.

Trusts

A trust is a concept recognised in UK law that separates the legal ownership of an asset from the beneficial ownership (i.e. the enjoyment) of the asset. Trustees legally own the assets, but the beneficiaries may benefit from them. Although a trust cannot trade in its own right, the trustees themselves can carry on a trade, profession or vocation for the benefit of the trust's beneficiaries provided there is an express power for them to do so in the trust deed. A trust can also own all the shares of a trading company or the assets with which the trade is carried on (for example, it might own the trading premises).

A person who creates a trust and transfers assets into it is known as the 'settlor'. The settlor appoints persons as trustees to hold the assets. The trustees owe a duty to the beneficiaries to manage the assets in the beneficiaries' best interests. It is not uncommon for the settlor to also be a trustee and a beneficiary of the trust.



Trusts are commonly used to address family issues, reduce tax liabilities and to protect business assets. The UK tax treatment depends on a number of factors, including the nature of the trust, the residence status of the trustees for tax purposes, and the settlor's residence, domicile and any remaining interest in the trust. The four most common types of trust are:

- Interest in possession trusts – give an individual the right to receive the income from the assets during his or her lifetime.
- Discretionary trusts – give the trustees discretionary power over the distribution of income and capital, i.e. no one is entitled to it by right.
- Trusts for bereaved minors and '18-25' trusts – trusts for children where income can either be accumulated or used for their benefit while they are under a specified age (either 18 or 25 depending on the type of trust chosen). There are a number of conditions which must be met in order to qualify for the beneficial tax treatment accorded to such trusts.
- Bare trusts – give an individual an absolute right to the asset and income from it, but the trustees are the legal owners of the asset.

3 Financial reporting and accounting

Statutory accounting requirements and principles

Requirement to keep accounting records

UK law requires companies to keep adequate accounting records and to prepare accounts for each financial year, which have to be filed at Companies House. The requirements for LLPs are similar to those for companies.

Tax legislation requires the retention of records used in the completion of tax returns and these must be adequate to support the figures shown on the tax return. Sole traders and partnerships must keep records of all receipts and payments and all sales and purchases of goods. There is currently no specific legal requirement as to the form of accounting records to be kept by sole proprietors, although there are proposals (referred to as Making Tax Digital) for this to be changed and it is expected this legislation will be introduced from 2020.

Certain records are referred to as 'statutory records' and are required to be retained by legislation. In general, such records are likely to be specified in regimes that require transactions to be recorded throughout the course of each monthly or quarterly accounting period, for example Value Added Tax (VAT), or for income tax purposes, such as the records noted above. The Companies Act 2006 also specifies certain accounting records that must be kept.

Generally, tax legislation requires that accounting records be retained - in the case of a person carrying on a trade, profession or business alone or in partnership or a company, until the fifth anniversary of 31 January next following the year of assessment (which ends on 5 April) or, in the case of companies, the sixth anniversary of the end of the period. Otherwise (for non-trading records), records must be retained until the first anniversary of 31 January next following the year of assessment. If accounting records are kept outside the UK, accounts and returns sufficient to disclose the financial position of the business and to enable directors to prepare a balance sheet and a profit and loss account must be sent to and kept in the UK.

Applicable accounting frameworks

There is an overriding requirement for a company to prepare accounts, usually for 12 months, that show a true and fair view. If a company has one or more subsidiaries, it must also prepare group accounts, unless the group is small or the company is itself a subsidiary of another company which meets specific financial reporting conditions, or if the results of the subsidiaries taken together are not material to the results of the group.

The accounts can be prepared under either:

- UK GAAP (Generally Accepted Accounting Principles, i.e. UK reporting standards and all supporting rules and guidelines, including the Companies Act 2006), known as Companies Act accounts; or
- International Financial Reporting Standards (IFRS) as adopted by the European Union.

UK GAAP includes FRS 101 and FRS 102 which were adopted to bring UK GAAP more into line with IFRS. Small companies can adopt a modified version of UK FRS 102 that follows the standard recognition and measurement principles but are not required to make the same volume of disclosure. Micro-entities can alternatively choose to adopt FRS 105 which greatly simplifies the reporting requirements. To qualify as a small company (or micro-entity) an entity must (with some exceptions) meet two out of three criteria for the current and preceding accounting year. These criteria are turnover less than £10.2m {£632,000 for micro}, gross assets less than £5.1m {£312,000} and employees less than 50 {10}.

Any group whose debt or equity securities are traded on a regulated market (including the LSE) or on the Alternative Investment Market (AIM) is required to apply the IFRS accounts framework in the preparation of its consolidated accounts.

Companies Act accounts

The directors of a company applying this framework must prepare a balance sheet, a profit and loss account, and, in most cases, a cash flow statement for each financial year. The Companies Act 2006 prescribes the form and content of the balance sheet, profit and loss account and additional information to be provided by way of notes, for example; details of directors' remuneration. The requirements for LLPs are similar to those applying to companies.

In addition to the financial statements, the annual report must include a directors' report and (unless the company qualifies as small) a strategic report whilst companies listed on the LSE must also present a directors' remuneration report and a corporate governance statement.

Audit Requirements

Who needs an audit?

Companies and LLPs must have their accounts audited, unless they qualify for exemption. The rules on eligibility for audit exemption are complex and advice should be sought to determine whether or not the company or LLP is exempt. Generally, though subject to specific detailed exceptions, accounts do not have to be audited for years ending on or after 1 January 2016 if the company or LLP meets two out of three of the following tests in two out of three consecutive years:

- has a turnover of not more than £10.2m;
- has a balance sheet total of not more than £5.1m; and/or
- has not more than 50 employees.

In addition, the company or LLP must not trade on a regulated market in a European Economic Area state, be an authorised insurance company, banking company or similar trade and must not be part of a group (anywhere in the world) that exceeds the above limits.

Subsidiary companies are also exempt from the mandatory audit requirement for years ending on or after 1 January 2016, subject to the following conditions:

1) its parent undertaking must be established under the law of a European Economic Area state and prepare consolidated accounts in accordance with the 7th Company Law Directive or IFRS;

2) the company's shareholders unanimously agree to dispense with an audit in the financial year in question;

3) the parent must give a statutory guarantee of all the outstanding liabilities to which the subsidiary is subject at the end of the financial year; and

4) the company cannot be quoted, nor an authorised insurance company, a banking company, an e-money issuer, an investment firm (as defined by the Markets in Financial Instruments Directive) or a management company (as defined by the Undertakings for Collective Investment in Transferable Securities legislation), nor carry on insurance market activity and cannot be a trade union or an employer's association.

It should be noted that this subsidiary exemption is not limited by the size of the subsidiary or the size of the group as a whole, nor are members of a group with a public company member excluded. Certain documents will need to be filed at Companies House, including confirmations of shareholder agreement and the parent guarantee, and the group accounts will need to disclose that the exemption has been taken by the subsidiary(ies) and be filed with the subsidiary accounts.

However, many entities consider that an audit is beneficial and will continue to be audited even where they fall within the exemption. Some of the main benefits of a company having its accounts audited are:

- to meet lenders' or creditors' expectations;
- to reassure directors that they have met their accounting responsibilities for the benefit of shareholders who are not directors;
- to minimise questions from the tax authorities;
- to provide feedback to the directors on their systems and controls, although the auditor will not necessarily perform a detailed assessment of the entire system;
- to improve the company's credit rating;
- to provide an independent check on the company's accounting function; and
- to get the company used to having audits if it expects to grow and would need to be audited in the future.

4 Business finance

The UK has a sophisticated and well developed system of providing funding for businesses, covering debt finance from large and small organisations, equity finance from institutions and individuals and grant funding from regional and national awarding bodies. This includes funding of subsidiaries or branches of foreign businesses.

Debt funding

Debt funding provides a business the opportunity to grow using external funds without any loss of control. Unlike equity, debt funding has defined servicing costs and must be repaid within a defined period. Debt funding is readily available in the UK for all businesses from the usual international and national banks, as well as numerous other funders. As well as the usual provision of term loans, overdrafts and asset based facilities (such as invoice discounting and leasing) mezzanine funding (more expensive funding but where security is less relevant and more focus is on cash generation) is also accessible.

Equity finance

Equity finance focuses on those projects and businesses that require more flexibility than can be provided through traditional debt. The injection of equity funding will result in some dilution of ownership. Whilst such investments demand a significant return to the investors for the risks involved, they can provide the platform for a business to capitalise on strategic opportunities; thereby providing the means for the business owners to add significantly more value to their investment than would be possible using the existing funds available.

Private equity

Private equity houses, venture capitalists and, increasingly, family offices (funds managed on behalf of wealthy individuals or families) provide a ready source of equity funding for businesses in the UK. The amounts of money potentially available via this source are significant, but success in securing such funding is not straightforward.

Private equity investors typically demand a significant return on their investments (a 20% compound return is not uncommon for development capital and returns will be even higher for early stage funding) and require evidence of a sound management track record, a robust business proposition and a clear exit plan. In return, they may provide not only financial support but also, if they specialise in the business sector concerned, valuable relevant experience and contacts that will assist in developing the business growth.

Mainstream private equity funding is concentrated on expansion and development capital and/or management buy-outs where the business is already established and profitable, although a number of specialised funds are dedicated to early stage ventures, typically in high tech or scientific areas.

Equity funding for UK expansion for non-domestic businesses are available, although more complex and usually for larger deals. Details on the major equity funding institutions can be found on www.bvca.co.uk.

Business angels

For relatively low levels of equity, wealthy individuals, usually known as business angels, may provide the best source. Business angels will typically provide sums below £250,000, although investments of £1m or more are not unknown. The level of involvement in the day-to-day running of the business expected by such an individual will vary. Some seek no day-to-day involvement whatsoever, while others are keen to secure full-time employment within the business and add value to their investment with their experience.

Access to business angels can be obtained through informal channels or via more established introduction services that try to match potential investors with businesses seeking finance. Tax reliefs, such as the ones available under the Enterprise Investment Scheme, may be essential to the investor and the investment will need to be structured accordingly.

More recently, the advent of crowd funding (pooling groups of smaller investors and sometimes institutions) has greatly increased the provision of equity funds, although they still tend to be focused on amounts less than £1m.

Flotation

Becoming a public company and offering shares for sale on one of the public markets may provide the solution to businesses seeking to expand further. Such a listing will not only provide access to capital, and a market for trading in the shares, but may also increase public profile and credibility. It also offers the advantage that a company may use its own quoted paper to fund acquisitions.

The LSE offers two different markets: the Official List and the Alternative Investment Market (AIM). The former offers a higher profile and access to larger funds, but has more demanding criteria including a three-year track record of trading and earnings although the standard listing allows reduced criteria where only minimum EC standards are met, compared to the stringent demands of premium listing. It also offers some specialist segmentation such as techMARK™ and techMARK mediscience™.

The AIM market is frequently more attractive for smaller, growth orientated businesses where the amount of funding required is typically in the range of £10m to £50m. The costs of listing on AIM are slightly less than the Official List but the main advantage is that the compliance requirements in connection with acquisitions are less onerous and hence less expensive. Other advantages include tax reliefs for investors for qualifying companies and lower ongoing compliance and corporate governance costs.

The costs of flotation and ongoing corporate governance are key considerations for any company contemplating a float, as well as the risk of takeover. The pressure from institutional shareholders and market volatility can be a significant distraction from the day-to-day management of the company and longer term strategies may be more difficult to pursue.

Grants

Businesses thinking of setting up or expanding factories, offices or distribution units in the UK should be aware that, through the UK Government and the EU (pending Brexit), there may be grant schemes available that can help reduce the cost of a specific investment. These grant options should be considered at the earliest possible opportunity as funding is limited and competition for grants is intense. Grants are dependent upon:

- location - they are typically available in areas that are undergoing regeneration;
- size - many authorities will only support start-ups; and
- business sector - which in turn may depend on location of the business.

5 Introduction and summary of taxation in the UK

Overview of taxes within the UK

The principal UK direct taxes are income tax, corporation tax, inheritance tax (IHT) and capital gains tax (CGT). While not strictly a tax, national insurance contributions (NIC) are also charged on salaries and an individual's self-employed earnings. In addition, certain indirect taxes are charged on transactions entered into by both individuals and businesses, e.g. VAT, stamp duty, stamp duty land tax and customs duty.

The rates of tax are currently applied uniformly throughout England, Scotland, Wales and Northern Ireland. However:

1) the Scottish Parliament has set an annual Scottish income tax rate (currently the same as that in England and Wales, but with different thresholds for payment of higher rate tax) and

2) the Corporation Tax (Northern Ireland) Bill provides for the devolution of the rate-setting power for corporation tax to the Northern Ireland Assembly, which has committed to setting a rate of 12.5% in April 2018.

There are also a number of regional tax incentive schemes and exemptions to encourage investment in certain economically depressed parts of the UK.

The only local taxes in the UK are property taxes levied by the local authorities in whose area the property is situated (council tax for private residences, business rates for commercial property).

Administration

The assessment and collection of taxes is administered by HMRC. There are a number of geographically based tax districts dealing with local taxpayers. In addition, there are specialist divisions and units, including an international division, which review the more technical areas of UK tax and deal with the more substantive or serious cases. All taxpayers subject to UK direct taxes are required to assess their own tax liabilities and many are required to make returns.

Summary of key points of UK taxation

- A company resident in the UK is generally chargeable to corporation tax on all its sources of income and capital gains, wherever arising. Companies with overseas permanent establishments may, however, make an election to exempt profits and losses from those permanent establishments from UK tax if certain conditions are met.
- Dividends received by UK companies from both UK and non UK companies are generally exempt from corporation tax if certain conditions are met. These conditions are stricter for smaller recipient companies.
- Where income or gains arising overseas are taxable on a UK resident company due to the conditions for exemption not being met, double taxation relief is available in respect of the foreign tax suffered.
- Non-resident companies are liable to corporation tax if they carry on a trade in the UK through a permanent establishment. Capital gains arising on a non-resident company in respect of the sale of assets used in, or for the purposes of a trade carried on through a UK permanent establishment, are also subject to corporation tax.
- Controlled foreign companies legislation is in place to ensure that profits diverted from the UK to subsidiaries resident in low tax jurisdictions are included in a controlling UK company's taxable income.
- Transfer pricing rules impute arm's length pricing to transactions between connected parties whether located overseas or in the UK. For small or medium sized entities the application of the rules are generally restricted to transactions with countries with which the UK does not have a suitable double tax treaty.
- The 'diverted profits tax' came into force in April 2015. This imputes a tax charge of 25% on profits 'artificially diverted' from the UK through transactions which have no economic substance, where the arrangements are not otherwise caught by controlled foreign companies or transfer pricing rules. As this new tax is not covered by UK Tax treaties, the charge may not be creditable for overseas tax purposes.
- Country-by-Country reporting regulations apply to multinational groups with a UK parent company and turnover of £586m or more. For accounting periods commencing on or after 1 January 2016, such entities must provide HMRC with an annual report which discloses certain financial and fiscal information for each country in which the group carries on its business.
- Companies, partnerships, groups or sub-groups with turnover >£200m or balance sheet total over £2bn in the previous tax year are required to publish their tax strategy on the internet. If part of a multinational group, the strategy should cover matters relevant to UK tax. The first strategy should be published before the end of the first financial year commencing after 15 September 2016.

- UK companies/groups with net UK interest exposure above £2m are required to apply new rules effective from 1 April 2017 to limit corporate tax deductibility of interest expenditure. A fixed interest rate will apply, limiting the allowable net interest exposure to 30% of a group's UK EBITDA; also a group ratio rule will apply to replace the current worldwide debt cap. This will be based on the external net interest to EBITDA ratio for the worldwide group.

- From 1 April 2017, businesses will be able to use carried forward trading losses against profits from other trading income streams other than those that created the loss or against trading profits generated by other group companies. Where group taxable profits >£5m, the amount of loss that can be offset will be restricted to 50% of the amount of profit that could be offset against the carried forward losses.

- VAT is charged on the supply of most goods and services in the UK, the acquisition in the UK from other EU member states of any goods, and the importation of goods from places outside the EU member states. In addition UK VAT should be accounted for on certain services purchased by a UK business from non-UK suppliers.

- Income tax at 20% must be withheld from payments of interest or royalties, although from April 2016 banks will cease to be required to deduct income tax from certain payments of interest, principally where the recipient is a UK resident individual. Double tax treaties reduce or remove this charge in many cases, but this must be claimed formally from HMRC prior to making any non-withholdable payment. There is no withholding tax on dividends, wherever the recipient is based.

- Resident and UK domiciled individuals are subject to income tax on their worldwide income as it arises. Non-residents are normally only subject to income tax on income arising in the UK.

- UK resident but non-UK domiciled individuals can choose to be taxed only on their income and capital gains arising in the UK together with income and gains remitted to the UK from overseas in a given tax year (the Remittance Basis). However, long term residents are required to pay an annual charge to qualify for this treatment.

- Non-domiciled individuals who come to work in the UK, and who were not resident in the UK for any of the previous three tax years, can claim overseas work day relief for the first three tax years following arrival in the UK.

- A UK domiciled or deemed domiciled individual is potentially subject to IHT on the transfer of any property owned by him or her, whilst a non-UK domiciled individual may only be subject to IHT on the transfer of property situated in the UK. IHT is a combination of gift and death tax.

- From 6 April 2015, non-residents owning UK residential property have been subject to CGT in respect of gains arising on disposal of that property. In most cases, only increases in value from that date will be subject to charge.

- UK residential property owned by non-natural persons (e.g. companies) is subject to an annual tax (Annual Tax on Enveloped Dwellings) but there are reliefs where the property is used in certain property businesses, including letting.
- UK resident trusts are liable to UK tax on worldwide income and gains. Non-resident trusts are liable to UK tax only on UK income.
- Anti-avoidance legislation exists to attribute the income and gains of offshore trusts and companies to UK residents who set up such structures and their UK resident beneficiaries.
- Trusts are subject to their own IHT regime on worldwide assets. However foreign assets settled by a non-UK domiciled person (who was also not deemed domiciled) are excluded.
- Devolved taxes – in Scotland, with effect from 1 April 2015 new taxes came into effect in relation to land and buildings transactions and Scottish landfill. Further devolved powers are in development for Northern Ireland.
- HMRC wishes to become one of the most digitally advanced tax administrations in the world. By 2020, HMRC will require most businesses, self-employed people and landlords to maintain digital tax accounts and submit quarterly, digital returns.

6 Tax implications of the form of business in the UK

Many businesses intending to trade in the UK do so either through a UK establishment of an overseas company or through a separate UK subsidiary company. From a general legal perspective, a UK company may be more desirable than a UK establishment of the overseas company because it has a separate legal personality and may protect an overseas investor from exposure to claims arising in the UK. In general, if profit earning activities are conducted in the UK, the profits from those activities will be liable to UK corporation tax.

1 - Operating through a UK company

A UK resident company is liable to corporation tax on all its sources of income and capital gains, wherever these arise. A company is deemed to be resident in the UK, for tax purposes, if it is incorporated in the UK or its central management and control is exercised in the UK. Many other countries also rely on a definition of tax residence based on the place of incorporation and effective management and therefore it is not impossible for a company to be resident in more than one country. Most of the UK's tax treaties cover this situation by having a tie-breaker clause which generally resolves the position for the purposes of claiming relief under the treaty by determining residence as the place of effective management.

A non UK resident company carrying on a trade in the UK through a permanent establishment (located in the UK) is liable to corporation tax on all income and gains attributable to that permanent establishment.

A company is required to self-assess its own tax liabilities and payments. Coupled with this requirement is a responsibility to keep detailed documentation.

Corporation tax rates are fixed for each financial year commencing 1 April. If a company's accounting period does not coincide with the financial year, its profits must be time apportioned and the corporation tax rate applied accordingly. Prior to 1 April 2015, the applicable rate of corporation tax varied depending upon a company's taxable profits. From 1 April 2015, however, a company is subject to a standard rate of corporation tax, irrespective of the level of its taxable profits:

	1 April 2016 to 31 March 2017	**1 April 2017 to 31 March 2018**
Standard rate	20%	19%

Payment of corporation tax

Large companies are those companies with taxable profits in excess of £1.5m (or who are liable to pay the bank levy). Where a company is a member of a group of companies, the limit of £1.5m is reduced proportionately by the number of related 51% group companies within its group, plus one (companies are related 51% group companies if (i) Company A is a 51% subsidiary of Company B, (ii) Company B is a 51% subsidiary of Company A, or (iii) Company A and Company B are 51% subsidiaries of the same company).

In evaluating the number of related 51% companies for the purposes of reducing the £1.5m and £10m limits, the number is counted at the end of the accounting period ending on the day before the commencement of the accounting period concerned. If there was no previous accounting period, the number of 51% group companies is taken at the beginning of the current accounting period.

Where a company is 'large' for a second successive period, or where its taxable profits exceed £10m (divided by the number of 51% group companies, where appropriate), it will be required to pay its corporation tax liability for that period in quarterly instalments. The first payment is generally due six months and 13 days after the start of the accounting period and quarterly thereafter.

Companies with an annual corporation tax liability of £10,000 or less are not required to pay taxes by instalments. For these companies, the payment date is nine months and one day after the end of the relevant accounting period. A UK company must normally submit a tax return within 12 months of its accounting year end.

For accounting periods starting on or after 1 April 2019 companies with annual taxable profits of £20m or more (divided by the number of 51% group companies as above) are required to pay quarterly on the third, sixth, ninth and final month of their 12 month accounting periods - for a 31 December year end, payments will be due on 14 March, 14 June, 14 September and 14 December of that year.

Capital gains

Capital gains made by companies are taxed at the standard rate of corporation tax. Non-resident companies are only taxed on capital gains from the sale of assets used in, or for the purposes of, a trade which is carried on through a permanent establishment located in the UK. From April 2015 non-UK residents are chargeable on certain disposals of residential property in the UK. There are special provisions allowing tax deferrals by UK resident and non-resident companies for reinvestment/migration. Capital losses can only be offset against capital gains arising in the same financial year, or carried forward indefinitely to set against future capital gains. It is not possible to carry back capital losses.

A capital gain or loss arising on the disposal of shares in a trading company may be exempt from UK corporation tax where at least 10% of the ordinary share capital has been held for a minimum period of 12 months. This relief is called the "Substantial Shareholdings Exemption". The rules were relaxed for disposals on or after 1 April 2017. The changes mean that the company making the disposal no longer has to be a trading company or member of a trading group. The company being sold no longer needs to meet the trading condition immediately after the disposal to an unrelated party. Also the holding of a 10% stake requirement is relaxed provided at least 10% was held for a 12 month period within the six years prior to the disposal.

Transfer pricing

The UK transfer pricing legislation applies to both intra-UK as well as cross-border transactions and affects individuals and partnerships as well as corporate bodies. Broadly, the legislation applies where the terms of a transaction, or series of transactions, between two connected parties differs (in price, value or terms) from that which would have been made between independent parties dealing at arm's length. Where this results in a UK tax advantage for one of the connected parties (e.g. a reduced profit or increased loss), the taxable profit or loss must be computed using the arm's length price. The UK follows the Organisation for Economic Co-operation and Development (OECD) guidelines in relation to the methods used for determining arm's length prices.

A company is required to self-assess transfer pricing adjustments and must maintain contemporaneous documentation to support the calculations and to demonstrate that such transactions are at arm's length. The burden of proof lies with the taxpayer. If a business negligently or fraudulently fails to meet these obligations, it may be liable to penalties of £3,000 for each incorrect return and up to 100% of the unpaid tax, in addition to any unpaid tax and interest that is due. To minimise the administrative burden on them, smaller groups (those with combined annual turnover and/or total assets of no more than €10m and fewer than 50 employees) are exempt from these rules.

Medium sized groups (those with fewer than 250 employees and either an annual turnover of less than €50m or net assets of less than €43m) should maintain records of relevant transactions. However, their taxable profit will only be adjusted by HMRC where there has been blatant manipulation of transaction or transfer prices leading to a significant loss of UK tax.

Value Added Tax and custom duties

VAT is charged on the supply of most goods and services made by businesses in the UK. VAT is collected at each stage of the supply chain, generally when title to the goods passes or when services are performed. The burden of the tax falls on the ultimate consumer. Supplies of goods or services made in the UK by foreign entities can give rise to a requirement to register for VAT in the UK. VAT registration is compulsory for businesses established in the UK making annual taxable supplies in excess of the registration threshold. The registration threshold was set at £85,000 for the 12 months from 1 April 2017. Voluntary registration is sometimes available for businesses trading below this level. There is no VAT registration threshold for businesses making taxable supplies in the UK that have no UK business address. Such businesses must register for VAT immediately upon making taxable supplies in the UK unless the reverse charge rules apply.

The UK reverse charge applies to most services when provided by a non-UK supplier to a UK VAT registered business customer. It is possible for companies in a UK group to elect that transactions between them are free from VAT.

The standard rate of VAT in the UK is 20%. Some supplies, such as the grant of certain interests in land, insurance, education, financial services, and health and welfare, are exempt from VAT (i.e. no VAT is charged but recovery of VAT on related purchases will be restricted). There is the 'option' for businesses to charge VAT on non-residential property transactions in order to recover VAT incurred, however, this is subject to anti-avoidance restrictions. A 5% rate of VAT applies to some qualifying uses of fuel and power, certain residential property conversions and a few other items.

The export of goods from the UK, plus UK supplies of some other goods and services (e.g. books, food, children's clothing) are generally zero-rated. VAT-registered businesses with an annual taxable turnover not exceeding £150,000 (excluding VAT) may elect to simplify their VAT accounting by using the 'flat rate' scheme. Under the scheme, businesses account for VAT at a flat rate on turnover rather than on every single transaction. They are, however, not able to recover VAT on expenditure other than on capital items over £2,000 (including VAT).

VAT is also charged on the importation of goods into the UK from non-EU countries, receipt of many international services in the UK and the acquisition in the UK of goods from other EU member states.

Businesses that are required to charge VAT on the goods or services they sell can recover the whole or part of the VAT incurred on the purchases made in generating the sales. However, VAT cannot be recovered on purchases used to generate sales that are exempt from VAT. Input VAT recovery is limited to VAT on costs relating to supplies of standard, lower or zero-rated goods or services. Where a business makes both exempt and taxable supplies, the business is referred to as ‘partially exempt’ and input tax is restricted accordingly. Overhead costs that cannot be directly attributed to particular taxable goods or services are apportioned so part of the VAT can be recovered.

The net amount of VAT, after deducting recoverable VAT, must be paid over to HMRC on a regular basis (usually quarterly) supported by a tax return. Large concerns may be required to make monthly payments on account.

The EU is a customs union and accordingly customs duties are payable on many goods at the point the goods are first imported from outside the EU and cleared. Imports from certain countries or for certain uses may be subject to reliefs. The responsibility for the validity of the relief remains with the importing trader. Once goods have cleared customs with all customs charges paid, they may move freely between EU member states. It is possible that custom duties will change significantly once the UK has exited the EU in (at the moment) March 2019.

National Insurance Contributions

NIC is a social security charge on earnings. Contributions are payable by employers, employees and self-employed persons. Businesses (or individuals) employing individuals to work permanently in the UK will have to deduct NIC from the salary paid and pay it over to HMRC. There are exemptions for short-term periods of employment where the employing business is based outside the UK but, even if a business does not have a permanent establishment in the UK, it may be necessary for payroll deduction arrangements to be set up.

The UK has a number of reciprocal arrangements with other countries that operate social security systems.

For the year to 5 April 2018, NIC is charged on employees at a rate of 12% on earnings over £157 per week up to earnings of £866 per week and 2% thereafter.

In addition, employers must pay NIC at 13.8% on the total salary in excess of £680 per month paid to the individual. Employers must also pay NIC at the same rate on the value of most non-salary remuneration given to employees, e.g. the value of any private medical insurance. An employment allowance of £3,000 per year applies for businesses, charities and community amateur sports clubs, to be offset against their employer's NIC. The allowance is claimed as part of the normal payroll process. Only one company in a group may claim. There are some excluded employers such as certain employers of domestic staff, public authorities, companies whose sole employee is the director and those which carry out functions wholly or mainly of a public nature, however the allowance is available to employers of care and support workers where the duties of employment relate to the employer's personal, family or household affairs.

Employers with employees under the age of 21 or apprentices under the age of 25 are not required to pay employer's NIC on earnings up to £3,750 per month for those employees.

Different contribution rates may apply if the employee opts out of the UK's State Second Pension or where an individual is self-employed. There are a limited number of exemptions, e.g. where certain pension contributions are made to non-government schemes on behalf of employees, so it is often possible to structure remuneration packages to reduce such costs.

Apprenticeship Levy

An apprenticeship levy came into effect in April 2017 at a rate of 0.5% of an employer's pay bill. A £15,000 allowance for employers will mean that the levy will only be paid on employers' pay bills over £3m.

It is thought that less than 2% of UK employers will pay the levy.

Fringe Benefits Tax (FBT)

No FBT is payable by the employer as the employees are normally taxed on benefits provided by virtue of their employment. However, NIC may be payable by the employer on the cash equivalent of the benefit provided.

Benefits in kind

There are two ways to report benefits, either through payroll reporting each time a payment is made or annually. An annual return is required regardless of which way benefits are reported.

Local taxes

Local authority rates are charged on occupiers of commercial property in the UK based on the rateable value of real estate at a level determined by central government.

Other taxes

Insurance premium tax is payable at the standard rate of 12% on most premiums under insurance contracts from 1 June 2017. A higher 20% rate applies to sales of motor cars, light vans and motorcycles, electrical or mechanical domestic appliances, and travel insurance. Stamp duty, at a rate of 0.5%, is payable by the purchaser (whether or not UK resident) on the transfer of shares in a UK incorporated company.

Determination of taxable income

Trading profits

The starting point for assessing a company's annual tax liability is the company's profit and loss account, drawn up under either UK GAAP or IFRS as shown in its published financial statements. Certain statutory adjustments are made to the accounting profit or loss to arrive at the company's taxable profits, such as depreciation/capital allowances as covered below.

Other routine tax adjustments to a company's reported profits are to disallow any expenditure on client entertaining or hospitality and any general reserves against stock, work-in-progress, debts and future expenditure such as repairs.

Taxable trading profits are calculated by determining assessable income and subtracting allowable deductions. Generally, to be deductible, expenditure must be incurred wholly and exclusively for the purposes of the trade and be revenue in nature rather than capital. Tax adjustments are made to the profit derived using UK accounting standards.

Depreciation

Depreciation is not deductible and relief is instead given for investment through capital allowances. Capital allowances are granted for depreciation of equipment and other assets at the following rates (using the reducing balance method, unless stated otherwise):

- An annual investment allowance provides for 100% tax relief on expenditure of up to £200,000 on most types of plant and machinery costs but excludes cars.
- Plant, machinery and equipment - 18% where working life is less than 25 years. For certain assets where the working life is at least 25 years or the asset is one on a list of 'integral features' incorporated in a building, the writing down allowance is 8%.
- Motor cars - cars used in the business with CO_2 emissions of up to 130g/km (up to 160g/km if purchased before April 2013) form part of the general plant and machinery pool and attract allowances at 18%, whereas, cars with higher emissions go into a special rate pool with annual allowances limited to 8%.

- Research and development (R&D) - 100% capital allowances are available to companies which incur capital expenditure on facilities or equipment for the carrying out of R&D. In addition, enhanced relief for revenue expenditure may be available in some cases. See 'Incentives' below.
- Investment in energy-saving equipment and environmentally friendly equipment - 100% first year capital allowances are available for expenditure on designated energy efficient equipment and cars with very low CO_2 emissions (75g/km or less, or electric cars).

The amortisation on some intangible assets is deductible for tax. Relief can also be obtained in certain circumstances where the assets are not amortised for accounting purposes. No relief for the amortisation of goodwill or certain other business related intangibles is available where the goodwill or other intangible was acquired on or after 8 July 2015.

Stock/Inventory

Stock and work in progress are valued at the lower of cost and net realisable value, being the only basis acceptable for tax purposes.

Capital gains and losses

As discussed above, capital gains are included within the profits chargeable to corporation tax for an accounting period. Gains are normally computed by deducting the cost of an asset from its sale proceeds. An indexation allowance for inflation is available to companies. Capital losses can only be set against current or future capital gains, and not against income.

Dividends

Dividends received by UK companies from both UK and overseas companies are generally exempt from corporation tax subject to various conditions.

Interest deductions

Interest is generally deductible on an accruals basis as long as the borrowing is for an allowable purpose but there are many anti-avoidance rules to restrict relief. The main exception is where, under certain circumstances, the interest is payable to a connected party and remains unpaid for more than 12 months after the end of the accounting period. Relief for such interest is deferred until it is paid unless the lender is liable to UK corporation tax and has brought the interest receivable into account.

In years up to March 2017, a 'worldwide debt cap' regime applied to large groups and restricted tax deductions for interest payments by UK members of a multinational group by reference to the group's overall external finance costs. The rule was aimed at preventing a group obtaining a tax deduction to the extent that net financing expenses in the UK exceeded the group's worldwide external gross financing expenses. The UK's transfer pricing rules apply to debt. Interest paid to a parent or fellow subsidiary (under common control and whether UK or overseas) is not deductible to the extent that the payment would not have been made if the companies had not been connected. There are no statutory debt/equity restrictions.

UK companies/groups with net UK interest exposure above £2m are required to apply new rules effective from 1 April 2017 to limit corporate tax deductibility of interest expenditure. A fixed interest rate will apply, limiting the allowable net interest exposure to 30% of a group's UK EBITDA; also a group ratio rule will apply to replace the previous worldwide debt cap. This will be based on the external net interest to EBITDA ratio for the worldwide group.

Losses

Trading losses may be:

- set off against income and capital gains of the same accounting period;
- carried back for set off against income and capital gains of the previous year;
- carried forward against future trading profits from the same trade. Where within a period of three years there is both a greater than 50% change in a company's ownership and a major change in the nature or conduct of a trade, relief from the carry forward or carry back of losses will be denied from the date of the change in ownership;
- with effect from 18 April 2015, anti-avoidance provisions apply to deny the use of brought forward losses to certain arrangements where a company seeks to obtain a corporation tax advantage through the use of brought forward losses and it is reasonable to assume that the value of the corporation tax advantage exceeds the value of any non-tax advantages; and/or
- since 1 April 2017 businesses companies will have been able to use carried forward trading losses against profits from other trading income streams (other than those that created the loss) or against trading profits generated by other group companies. Where group taxable profits >£5m, the amount of loss that can be offset will be restricted to 50% of the amount of profit that could be offset against the carried forward losses.

Foreign sourced income

The UK has controlled foreign company (CFC) legislation which is designed to tax holding companies on the profits of subsidiary companies in a 'low tax territory' (countries where the tax rate is less than three-quarters of the corresponding UK tax on those profits). UK resident companies that hold a 25% or greater interest in a CFC may be taxed on the profits of the CFC but there are a number of exceptions to this rule. Since 2012, the regime has been targeted specifically at overseas profits that have been artificially diverted from the UK and a number of exemptions exist to take some companies or a proportion of their profits out of the charge. There is also a gateway test that companies can pass to avoid a CFC charge. A partial exemption for finance companies ensures that, in broad terms, profits caught under these rules are taxed at a quarter of the main corporation tax rate.

Incentives

There are a number of grants and other forms of assistance available to businesses in the UK. Certain expenditure incurred in respect of qualifying R&D activities carried on by companies qualifies for enhanced tax relief. If the qualifying expenditure is incurred by small and medium sized companies, the relief is generally an additional deduction of 130%.

Where such companies have a tax adjusted loss for a period, all or part of the losses can be surrendered for a repayable credit at a rate of 14.5%. From 1 April 2016, large companies may claim a taxable credit equal to 11% of the qualifying expenditure. Prior to 1 April 2016, large companies had the alternative option of claiming an enhanced deduction equal to 30% of the qualifying expenditure. In some circumstances, a small or medium sized company may be required to claim relief at the large company rates.

The Patent Box allows companies with qualifying patent income to be taxed on that income at an effective rate of 10% by way of a deduction against profits. The relief was phased in from 1 April 2013 to 1 April 2017. The way in which the Patent Box relief is calculated changed with effect from 1 July 2016; however, if a company elects into the Patent Box regime for periods ended prior to 30 June 2016, it will be entitled to claim relief calculated under the previous rules until 30 June 2021, but only in respect of income from patents which existed as at 30 June 2016.

A 100% business rate discount is available to businesses that move into an Enterprise Zone. In addition, 100% capital allowances are available in respect of certain types of expenditure by businesses and companies based in some Enterprise Zones.

Foreign tax relief

Certain foreign taxes paid on income and gains of a UK resident company may be credited against the corporation tax on the same profits or relieved by way of deduction against profits. The foreign tax relief cannot exceed the UK corporation tax charged on the same profits. Domestic and foreign dividends received by UK resident companies since 1 July 2009 are generally tax exempt. Various conditions need to be met and those conditions are different depending on whether or not the recipient is a small company.

Corporate groups

Tax losses (other than capital losses but see below) may be surrendered within a 75% UK group effectively allowing consolidation of losses against profits and capital gains. Where a UK group company takes over the trade of a 75% fellow UK group member, the unused trading losses and capital allowances are transferred to the acquiring company. The trade losses are offset against future profits of the trade transferred. Companies may also benefit from consortium relief. A company is owned by a consortium if at least 75% of the ordinary share capital is held by companies, each of whom owns at least 5%.

The transfer of assets within a 75% group of UK companies does not give rise to a capital gain. If the transferee company leaves the group within six years of such a tax free transfer, a capital gain may arise based on the market value of the asset at the time of the transfer. If the company leaves the group as a result of another company making a disposal of its shares, the gain forms part of the disposal proceeds deemed to be received by the company selling the shares.

A company with capital losses may elect to treat a gain which would have been realised by another UK group company as if it had been realised by it. The practical effect is to give a form of 'group relief' for capital losses.

Withholding tax

Subject to the terms of the tax treaty, withholding taxes must usually be deducted from interest and royalties. No withholding tax applies to dividends paid by UK resident companies or interest and royalty payments where the conditions of the EU Interest and Royalty Directive are met. It is currently unclear what impact Brexit will have on the application of the EU Interest and Royalty Directive in the UK.

2 - Operating through a branch or agent in the UK

There is no branch profits tax in the UK. A UK branch of a non-resident company is taxable on its profits and gains in the same way as a UK resident company.

UK legislation reflects the OECD model double taxation agreement in charging to tax profits of a non-resident company only to the extent the profits are attributable to a trade carried on through an establishment in the UK.

A UK establishment is a branch within the meaning of the EC 11th Company Law Directive (89/666/ EEC) or a place of business that is not a branch, but is a place where the company regularly conducts its business in the UK, i.e. either a fixed place of business through which the business is at least partly carried on or an agent that routinely enters into contracts on behalf of the company (other than an independent agent acting in the normal course of his or her business). A fixed place of business includes the following:

- a branch;
- an office;
- a workshop or factory;
- a mine, oil well, quarry or any similar place of extraction of natural resources or a related exploration structure; and
- a building site or similar.

A company is not regarded as having a UK establishment if the activities carried on by the agent or at the fixed place of business consist only of activities of a preparatory or auxiliary nature, such as the purchase, storage, display or holding of goods for processing for the company by another person. For example, if a non-resident company has a fixed place of business in the UK through which it purchases goods, arranges for their modification and then exports them for its own use outside the UK, no part of its profits will be liable to corporation tax. If, instead of exporting them for its own use, the goods are sold to customers, albeit not by persons in the UK, part of the profit of that activity will be subject to UK tax because those activities form an integral part of the company’s trade.

If a non-resident company does carry on trade through a UK establishment, all profits attributable to that part of its trade conducted in the UK and income and capital gains arising from property held by the establishment will be subject to the full rate of corporation tax, currently 19% (this is due to decrease to 17% for FY 2020, beginning on 1 April 2020). In most instances, a UK branch will be taxed in the same way as a UK company, including benefiting from various reliefs available to companies in a group relationship.

3 - Selling into the UK

a) Direct selling from abroad

Direct selling into the UK can take place either directly from an overseas head office or via sales personnel based in the UK. However, if the intention is to avoid exposure to UK corporation tax, contractual arrangements should be made outside the UK, without the use of sales staff in the UK. Such staff may constitute a permanent UK establishment and thereby create a taxable presence.

Reference should always be made to any relevant tax treaty with the UK for the reasons noted in the previous section. The VAT implications depend on whether the items being sold into the UK are goods or services and whether or not the goods are being sourced from another EU member state or elsewhere.

In the case of goods, if the company selling into the UK is responsible for the importation of the goods and delivering them to its customer, that company will be required to be VAT registered in the UK irrespective of whether or not it has a presence in the UK.

For VAT registration purposes, the physical presence of the seller, e.g. staff and offices in the UK, is not relevant. The goods themselves constitute a place of belonging for VAT purposes. If the seller is based within another EU member state and is selling to VAT registered businesses in the UK, it is not required to register for VAT in the UK, provided it can obtain the customer's VAT registration number and shows it on the VAT invoice. For the supplier, the supply is not subject to VAT, but the customer will have to account to HMRC for the VAT on acquisition. It is often possible to register for VAT for intra-EU trade in just one EU state.

If goods are brought to the UK from another EU member state as 'call off' stock, i.e. they are assigned to a single identified customer, but ownership of the goods remains with the supplier until they are called off by that customer, the UK allows the VAT to be dealt with by the customer as described above. Provided certain conditions are met, the EU supplier would not be required to register for VAT in the UK in respect of call off stocks. However, if the goods are acquired from elsewhere in the EU as 'consignment stock', i.e. to meet future demand before a customer has been identified, the overseas company will be making supplies of goods from the UK and must register for VAT.

Supplies between EU member states are not classed as imports or exports and, accordingly, no import duties are levied except in specific circumstances. Additionally, it is not necessary to make an import declaration on an acquisition of goods in the UK from another EU member state. If the customer is responsible for clearing the goods through customs and paying any duties and VAT on importation, then the selling company is not regarded as making any supplies for VAT purposes and is not liable to be VAT registered in the UK.

Normally, if a company supplying services does not have a physical presence in the UK then it is not liable to be registered. Business customers in most cases will have to account for the VAT under the reverse charge procedure. For example, this applies when a business buys certain services such as advertising or the advice of a lawyer or accountant.

On 1 December 2012, the UK VAT registration threshold was removed from all non-established businesses supplying taxable goods and services in the UK. This means they must register for VAT in the UK, however small their turnover. The new measure is expected to predominantly affect businesses that sell goods and services from a temporary presence in the UK, e.g. at a trade fair, speciality market or similar event.

Legal and contractual issues

The sale of goods and services into the UK necessarily involves two parties from different legal jurisdictions. Consequently, as a first step, it is always useful to state whether a contract is subject to English law or that of the seller's country of residence. The points below need to be borne in mind when negotiating contracts of sale with UK customers:

- The exact terms of the contract should be set out in writing and should include a statement that the contract will only be considered valid when confirmed by the supplier in writing. It is important to make sure that the terms on which sales are to be made are properly explained to the purchaser and accepted by him or her (or they may not be upheld in law should there be a dispute).
- Where a contract is silent on VAT in the UK, the price quoted is deemed to be inclusive of VAT.
- The contract document will also set out the price to be charged or the mechanism for its calculation and should also detail the exact nature and characteristics of the goods or services being supplied.

The seller's conditions of sale should be incorporated into every contract. Where the contract is for the supply of goods, it is usual to include a clause that ownership of the goods shall not pass to the purchaser until all amounts due under the contract have been paid. This type of clause is often combined with a contractual agreement that the purchaser is liable to compensate the seller if, before full payment is received, the goods are damaged while in the purchaser's possession.

The preceding comments are merely an outline of some of the more significant factors to be considered. Specific legal advice appropriate to individual circumstances should always be obtained.

b) Selling into the UK through a UK based agent

A UK based agent will typically fulfil the role of accepting sales orders and referring them back to the overseas principal. An agent is therefore different in nature from a distributor who purchases and resells goods on his or her own account. The agent could be an individual or a company and may be dependent on or independent of the overseas business.

If the agent is a dependent agent of a foreign company or, for example, a UK company connected with it, then a UK taxation liability may arise for the foreign company as that company will be deemed to be carrying on part of its business in the UK.

Where an independent UK agent is being used, acting in the normal course of his or her trade, the UK's double tax treaties typically provide that such an arrangement will not constitute a taxable presence in the UK for the overseas principal, provided the agent is acting in the ordinary course of his or her business. For VAT purposes, this is not always the case.

If a subsidiary company or a branch is the agent, then the transactions between the UK operation and the non-resident parent will be taxed separately based on arm's length terms. Where goods are imported from outside the EU, the VAT implications depend upon who is responsible for the importation of the goods. If it is the overseas company then it will be required to VAT register. However, if ownership of the goods passes first to the agent, who then imports and sells them to the ultimate customer, the overseas company will not need to be registered for VAT. If the customer is responsible for importation, the vendor does not become liable to register for VAT.

Voluntary VAT registration is possible to recover VAT incurred in the UK.

Legal and contractual issues

The precise terms of the contract with an agent can vary widely, but they will generally be subject to the Commercial Agents (Council Directive) Regulations 1993, which include provision for compensation on termination. While the agency agreement may be informal, certain clauses are fairly common. It is recommended that you always take specific legal advice in connection with contract terms, but typical clauses are those that refer to the exact extent of the respective duties of both agent and principal, the territory for which the agent will be responsible and whether or not the agent is the sole agent in that territory. It is advisable to include a clause in the contract indicating whether the agent can accept orders on behalf of the principal or, alternatively, that such orders must be referred to the principal for acceptance. The fee paid to an agent is normally calculated on the basis of a percentage of sales income.

c) Selling into the UK through a UK based distributor

A distributor differs from an agent in that a distributor actually acquires goods from the non-resident company and resells them in its own name. A distributor is therefore effectively a customer of the overseas business.

Selling through a distributor in the UK should not create a UK tax presence for the overseas business. However, many of the preceding remarks concerning agents apply equally to distributors. For instance, where a UK branch of the overseas enterprise acts as a distributor, the branch will be taxed on its UK profits. The mark-up made by a UK distributor needs careful reviewing as the taxable profit on sales to overseas affiliates will be computed based on arm's length prices.

Once again, the VAT implications depend on who is responsible for the importation of the goods. In these circumstances, it would normally be the distributor that is the importer, meaning that the overseas company need not register for VAT. In the unlikely event the overseas company imports the goods in its own name then sells them to the distributor after their arrival in the UK, then the overseas company would be liable to register.

Legal and contractual issues

Areas to consider include agency agreement clauses defining territorial trading boundaries and a statement of respective responsibilities. Competition law may also need to be considered and it is recommended that expert legal advice is sought. Moreover, as the distributor route involves the sale of goods to the distributor, it may well be prudent from the overseas supplier's point of view to consider clauses that govern the distributor's selling price and a reservation of title clause. This prevents title to the goods passing to the distributor until the distributor has paid its supplier. If the distributor sells the goods in advance of this event, then the distributor is deemed to sell the goods as agent for the supplier.

It should be noted that, although the goods are acquired and sold on by the distributor, the manufacturer, importer and supplier are still legally liable under UK law for any damage or injury incurred as a result of the supply of the goods. It is therefore advisable to consider appropriate insurance cover.

d) Selling into the UK through e-commerce

The significant increase in e-commerce over recent years has seen the UK make a considerable investment at business and government levels to put the necessary technological infrastructure in place.

Direct tax issues

In the field of direct taxation, there are three main issues:

- whether a web site on a server situated in the UK represents a taxable presence here. The UK Government has stated that a server may not in itself give rise to a taxable UK establishment. In practice, the nature of activities in the UK under the principles considered above will determine whether there is a UK tax presence or not;
- to what extent profits are attributable to e-business activities where there are related overseas parties, i.e. transfer pricing issues; and
- whether a payment represents a royalty in relation to the use of digitised products, e.g. online software or music.

Generally, if the customer utilises the product for his or her own purposes and is not exploiting it, then the payment would not normally represent a royalty and there would not be a requirement to withhold tax.

VAT issues

VAT represents a large proportion of a product's selling price and often plays a major part in the pricing considerations of retail suppliers. The principal issues arising in relation to VAT are related to the place of supply of goods and services and, in part, to whether the supply is of goods or services. For the purposes of VAT, e-commerce can be divided into direct and indirect e-commerce.

Indirect e-commerce is concerned with the supply of tangible goods and is comparable to shopping by catalogue. In this case, the internet only provides a facility through which a prospective customer can view and order goods via the vendor's web site.

When a transaction takes place, the supply is delivered in a conventional way, e.g. by mail. Because this transaction is very similar to mail-order shopping, it does not entail any new or additional VAT complications.

A seller based in another EU member state who supplies goods to non-VAT registered customers in the UK may charge the VAT rate applicable in their home member state. Where sales to the UK exceed the annual 'distance selling' threshold of £70,000, the seller must register for VAT in the UK and charge VAT at the UK rate applicable to the goods. Additionally, the legislation governing imports and exports to and from the EU also applies to goods ordered through the internet.

Direct e-commerce encompasses transactions where the internet provides the means of delivery of intangible property or digitised products. Examples include software and music. These are treated as services when delivered over the internet and the VAT rules applicable to services govern the status of these transactions. This can lead to inconsistencies, e.g. a supply can be zero-rated when in the form of goods (e.g. books) but standard rated when delivered as a service.

Where digitised products are supplied to a customer in the EU, the place of supply of the transaction is where the customer belongs. For business-to-business transactions, the EU business accounts for VAT in the member state concerned and there is no requirement for the non-EU business to register in the EU. However, where the supply is to a non-business or private individual, the non-EU supplier has an obligation to register for VAT in the EU and charge EU VAT. There is a special scheme whereby a non-EU business supplying digitised products to customers in more than one EU country only has to register in one member state of the EU.

Ceasing to have a presence in the UK

An investor may cease to have a business presence in the UK in a variety of ways including sale, winding-up or migration.

a) Disposal of a business or subsidiary

The disposal of a UK business will involve various tax, legal and commercial issues.

Tax considerations

Any capital profit on the disposal of a UK business will only be taxable in the UK in the hands of the seller if the seller is a UK resident or has a UK establishment. If this is not the case, then the seller will only need to consider his or her own domestic tax laws in relation to the sale.

A UK resident seller may suffer UK tax on the capital profit arising on the sale of shares in a company. Where the business is unincorporated, capital profits can arise on such assets as land and buildings, goodwill, intellectual property or equipment if sold for more than cost. Where the vendor is an individual, tax rates of 10% and/or 20% apply to most gains, with disposals of residential property not qualifying for main residence relief, and disposals of carried interests charged at 18% and/or 28% (depending on the total taxable income and gains of the individual in the tax year in which the disposal is made).

Entrepreneurs' relief (ER) may apply in certain circumstances, which reduces the rate of tax on qualifying gains to 10%. Gains qualify for ER up to the individual's lifetime limit of £10m.

Where the vendor is a company, it may be exempt from tax on gains arising on the sale of shares in a trading company where it has held at least 10% of the share capital of the other company for a minimum of 12 months within the six years prior to the disposal.

Legal and commercial considerations

Legal agreements drafted to cover the sale of a business can be very complicated and typically include provisions for indemnifying the purchaser should any unforeseen liabilities arise. It is therefore vitally important when selling a business in the UK that specialist legal, accounting and taxation advice is obtained.

b) Winding-up a company or striking a company off the register at Companies House

A business could cease to have a presence in the UK because the owners decide to close it down by a process of winding-up, or because the company has become inactive and the owners wish to cancel its registration at Companies House.

Tax considerations

The fact that a company goes into liquidation does not alter its requirement to pay tax or to continue to file a tax return (although the administrative responsibility for this will fall on the company's liquidator rather than the company). One of the main tax planning considerations will be that of maximising the use of any trading losses.

These losses cannot be carried forward beyond the cessation of trading and, therefore, it is important to ensure the most tax-efficient timing of events. There are few special tax rules relating to corporate insolvency, winding-up or striking off. However, due to perceived tax avoidance, HMRC has recently introduced targeted anti-avoidance rules aimed at liquidations where a capital treatment is sought, which aim to combat cases of 'phoenixism' and apply to certain distributions made in the process of winding up companies on or after 6 April 2016.

The term 'phoenixism' refers to the scenario where a company is liquidated and subsequently its business is carried on under the same or broadly the same ownership via a new entity. This may be for commercial/legal reasons or to achieve a tax saving from obtaining capital rather than income treatment on company reserves.

The rules apply to UK companies and non-UK companies that would be close if they were resident in the UK.

A business will normally prepare a tax return to the same date as its annual accounts, but this will be brought forward to the date of cessation of trade, if earlier.

Any trading losses incurred in the last 12 months of trading can be carried back and offset against the profits of the previous three years. This is an extension to the normal rule that only permits a 12 month carry back of trading losses.

Legal considerations

Sometimes the words 'insolvency' and 'winding-up' are used inter-changeably, although a company can be wound up by its shareholders at any time without it actually being insolvent. If the company is insolvent, a professional insolvency practitioner must be appointed to realise the company's assets for the benefit of its creditors. Only when the creditors have been paid in full will the company's owners be entitled to any remaining assets.

Where the company has not yet gone into liquidation, but the directors ought to know that the company has no reasonable prospect of avoiding the situation, then the directors will be responsible for additional liabilities of the company.

This is the case unless they can show that they took every reasonable precaution to minimise the potential loss to the company's creditors.

The liquidation and winding-up process can be expensive and therefore, where possible, many businesses prefer to close down their operations by striking the company off the register at Companies House. However, the striking-off process is less conclusive than winding-up since, on the application of any interested party, the courts can restore the company to life on the register within a period of 20 years, in order to deal with claims for repayment by former creditors of the company.

c) Company migration

It is possible for a company to become non-resident for UK tax purposes. This could happen to a UK incorporated company as a result of having its place of effective management in another treaty jurisdiction outside the UK. Most of the UK's tax treaty tie-breaker clauses deem the tax residence of a company to be in the country of effective management. Likewise, a non-UK incorporated company could move its place of central management and control outside the UK. In such a case, it would not be dependent upon the provisions of a tax treaty to establish its non-resident status. In each case for tax purposes, there is a deemed disposal at market value of certain types of chargeable assets held by the company (principally land, buildings and goodwill) at the time of migration.

There are relieving provisions to mitigate the effect of this charge. This occurs where the assets remain within the UK tax net (for instance by leaving them in a UK branch) or where the assets in question are located abroad and the migrating company is the 75% subsidiary of another UK company.

Before a company migrates, it must inform HMRC of this intention and provide a statement of its tax liabilities and how it proposes to settle them. A company will be liable to penalties for non-compliance with this requirement.

Making tax digital

The UK Government and HMRC are pressing for UK taxpayers to interact with HMRC digitally. The original plan for 'Making Tax Digital' (MTD) were revised in July 2017, and the Government has set out a new MTD timetable under which:

- only businesses with a turnover above the VAT threshold (currently £85,000) will have to keep digital records;
- for VAT purposes, they will only need to do so from 2019;
- for other taxes, businesses will not be asked to keep digital records, or to update HMRC quarterly, until at least 2020; and
- MTD will be available on a voluntary basis for the smallest businesses, and for other taxes.

This means that businesses and landlords with a turnover below the VAT threshold will be able to choose when to move to the new digital system.

As VAT already requires quarterly returns, no business will need to provide information to HMRC more regularly during this initial phase than they do now.

All businesses and landlords will have at least two years to adapt to the changes before being asked to keep digital records for other taxes. HMRC has said it is fully committed to supporting businesses in this transition. Its new plans will allow for well over a year of testing before any businesses are mandated to use the system.

Repatriation of profits

Post-Brexit, withholding taxes on dividends from EU subsidiaries or payments of interest or royalties to or from companies located in the EU may become a cash flow problem in the wake of UK's decision to leave the EU.

Currently, the parent subsidiary directive allows subsidiary companies to pay dividends up to UK parent company without the need to account for withholding tax. Similarly, companies often rely on the interest and royalties directive to make interest or royalty payments free from either UK or local withholding taxes.

If no agreement is reached, companies will need to rely on existing bilateral double taxation agreements in order to reduce or eliminate withholding tax rates.

The UK has an extensive double tax treaty network which includes treaties with all the other EU 27 member states. It should be noted however that more than half of these still allow the tax authorities in the payer company jurisdiction to levy withholding tax. Although withholding is often at relatively low rates, it is nevertheless a tax issue to be managed.

For details on withholding tax rates, please contact us.

7 Foreign personnel in the UK

Business immigration to the UK

Citizens of nearly all of the European Economic Area countries - the 27 EU countries plus Iceland, Liechtenstein and Norway as well as citizens of Switzerland - have the right to live and work in the UK, including setting up a business. Citizens of British Commonwealth countries have a similar entitlement if one of their grandparents was born in the UK. It is currently unclear as to the effects of Brexit on these rights.

Individuals from other countries moving to the UK for business purposes need to obtain a visa to allow them to live and work here. The UK authorities operate a tiered points-based system for skilled migrant workers and the employer must be licensed to be able to offer a legal employment contract to a foreign worker. Details of the scheme can be found at https://www.gov.uk/government/organisations/uk-visas-and-immigration.

Visas for sole representatives of an overseas company

Employees

Well-established companies based outside the UK can apply to send a senior employee (who is not a controlling shareholder) to help establish a trading presence in the UK. However, it may be preferable to apply for a visa under the highly skilled migrant programme as this type of visa is generally more flexible.

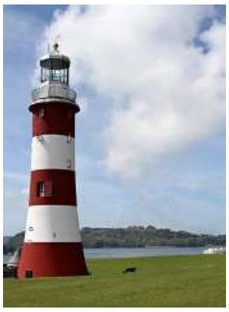
Investors

Investors are able to qualify for a visa based on their ability to invest at least £2m in the UK. A healthcare surcharge will also apply. The investor can invest £2m or more in UK government bonds, share capital or loan capital in active and trading UK registered companies, and will be allowed to work or study. They can apply to settle after two years if they invest £10m, and apply to settle after three years if they invest £5m. In addition, the investor has to spend at least 50% of their time in the UK and not be employed in the UK if they wish to apply to permanently settle here. Investors may not invest in companies mainly engaged in property investment, property management or property development. Where the application is to extend a visa first granted before 6 November 2014, further conditions apply.

Entrepreneurs

The entrepreneur category is for those investing in the UK by setting up, taking over and being actively involved in the running of one or more businesses here. A healthcare surcharge will also apply. This should involve:

- investing between £50,000 and £200,000 in a new UK business (conditions apply);
- working solely in the business;
- having sufficient funds for accommodation and maintenance until the business is profitable;
- having a controlling interest in the business;
- taking a share of the business’s liabilities; and
- implementing a business plan that looks to be thorough and viable.



The money to be invested in the UK should be your own and not from any other source (e.g. bank loans). It can be held in the form of cash and share capital and the investment should give you an equal or controlling interest in the business. Eligibility under this scheme is based on a points system. To apply, the entrepreneur must score 95 points made up of:

- 75 points for attributes (which are different depending on whether the entrepreneur is making an initial or an extension application);
- 10 points for English language; and
- 10 points for available maintenance (funds).

Employee rights

The rights that an employee enjoys under UK law are fairly extensive. Although employer burdens are lower than in some other European countries, these rights should be given due attention to avoid involvement in expensive and time consuming disputes and litigation.

Although not exhaustive, the following list indicates some of the most important areas to be considered:

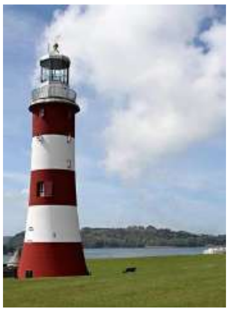
- written particulars of employment
- unfair dismissal
- redundancy
- discrimination
- national minimum wage
- working time
- works councils
- information and consultation
- working conditions

Pensions

There are a wide range of pension schemes currently available in the UK. However, it is now obligatory for employers to provide employees with access to a workplace pension and automatically enrol eligible workers in it. This requirement has applied to larger employers since October 2012 and will apply to all employers by 2018, unless:

- the employee earns less than £10,000; or
- the employee is under 22 years of age; or
- the employee has opted out.

It will also be possible for other employees to opt in to a workplace pension scheme: employees between the ages of 16 and 22, those earning less than the exempt annual allowance and employees aged between the statutory retirement age and 75. All employees in pension schemes will receive contributions into the scheme from their employer. For more information see: https://www.gov.uk/workplace-pensions.



Healthcare in the UK

Free healthcare is available to all UK residents and, under the National Health Service (NHS), every civilian lawfully living in the UK is entitled to register with a local medical general practitioner (GP) on the NHS panel responsible for his or her geographical area. In addition to providing general medical advice or treatment, the local GP is an important link between the patient and the rest of the NHS. If the patient requires surgery, in-patient treatment or other specialist consultation and treatment, he or she will be referred to the appropriate specialist by his or her GP.

Although the service provided by the NHS is generally adequate for minor ailments or treatment requiring emergency attention, many people take out private medical insurance in order to receive more prompt treatment. This also gives them more control over the timing of any hospital visit required and the standard of accommodation provided. However, the cover provided by insurance will often not include major surgery or the treatment required for serious chronic conditions.

8 UK taxation of individuals

Introduction

Income tax is charged on the total income of individuals and unincorporated businesses in each tax year (running from 6 April to 5 April).

The top rate of income tax and Scottish income tax for the tax year ending 5 April 2018 is 45%. This rate applies to taxable income in excess of £150,000 per year. The basic rate of tax for the year to 5 April 2018 is 20%, with a higher rate of 40% charged on the excess of total income, net of allowances, over £45,000 (£43,000 in Scotland).

An individual's tax liability is calculated by aggregating all income, deducting relevant allowances and reliefs, and then applying the appropriate rates to income over the tax exempt threshold. This threshold is adjusted in most financial years but is £11,500 for the tax year to 5 April 2018. The threshold is reduced by £1 for every £2 earned over £100,000 in a tax year.

Residence and domicile

Taxable persons comprise resident individuals, trustees and executors as well as non-resident individuals, trustees and executors in respect of their UK-source income. Resident persons are generally subject to income tax on their worldwide income as it arises. Non-residents are normally only subject to income tax on income arising in the UK. Broadly, UK resident individuals are liable to CGT whilst non-residents are not. However, since 6 April 2015 non-resident individuals have been liable to UK CGT on UK sited residential property on the portion of the gain arising after 6 April 2015.

A statutory residence test was introduced from 6 April 2013 and provides clarity to individuals on their residence status. For individuals who have been residing outside the UK for some time it is important that care is taken with the number of visits to the UK, as being in the UK for too long a period could make an individual UK resident. HMRC treats an individual as being in the UK for a day if the individual remains in the UK at midnight. Under the statutory residence test it is possible to be UK resident in certain circumstances when in the UK for as little as 16 days. Different rules apply to individuals leaving the UK as opposed to those coming to the UK and on every case it is important to take professional advice and review current residence status.

Broadly, individuals are domiciled in the country or state regarded as their permanent home. Individuals acquire a domicile of origin at birth, normally that of their father, and it is retained until a new domicile of choice is acquired. To acquire a domicile of choice, a person must sever ties with the domicile of origin and settle in another country with the clear intention of making a permanent home there.

There are special rules which prevent non-domiciled individuals from being taxed on their non-UK source income and gains until they are remitted to the UK. The rules regarding remittances to the UK are complicated and some UK residents are subject to a £30,000 or £60,000 annual charge for using this facility. Specific anti-avoidance rules prevent a non-domiciled individual from using the remittance basis in respect of income earned from an overseas employment that is deemed to be connected with the individual's UK employment. Rules which took effect from 6 April 2017 mean that foreign domiciled individuals who have been resident in the UK for more than 15 out of the last 20 tax years will be regarded as deemed domiciled in the UK for income tax and CGT purposes. Such individuals will no longer be able to claim the remittance basis of taxation once they become deemed domiciled here.

Non-domiciled individuals who come to work in the UK, and who were not resident in the UK for any of the previous three tax years, can claim overseas work day relief for the first three tax years following arrival in the UK. These rules allow a proportion of the individual's emoluments from employment to escape UK taxation until such time as those amounts are remitted to the UK, based on the number of UK and non-UK work days carried out by the individual during the true year.

Individuals leaving the UK

UK tax residence status will be lost immediately if an individual goes to work full time outside the UK for a period covering a full tax year, subject to certain temporary visits to the UK. Where a UK tax resident individual leaves the UK for non-work reasons, the individual will continue to be treated as UK resident until it is conclusively proven that he or she has left. For such individuals, keeping return visits to the UK to a minimum can help to prove that they have left but visits are not the only criteria – whether or not other connections with the UK have been maintained (e.g. retaining a property here and/or whether family members remain here, or children attend school in the UK) will also be considered.

Anti-avoidance measures exist to catch certain individuals who move abroad temporarily seeking to avoid capital gains or income tax. The affected individuals are those who have been resident in the UK for four out of the last seven years before departure.

The liability to CGT extends to gains arising on the disposal of assets held by the individual at the time of becoming non-resident and will come into effect if the individual returns to the UK within a period of five years.

For income tax purposes, rules were introduced in 2008 that apply where an individual has previously been resident in the UK, has relevant foreign income which arose when he or she was UK resident and has used the remittance basis of taxation to defer his or her liability to UK tax on that income.

Where such an individual becomes temporarily non-resident in the UK and remits foreign income that arose during years when he or she was UK resident to the UK during a year (or years) that he or she was not UK resident, and then returns to live in the UK within five tax years of the date of their departure, the income remitted during the period of non-UK residence is taxable in the year in which the individual resumes UK tax residence.

Allowances and deductions

Husbands and wives are taxed separately and each is entitled to a personal allowance. This has been set at £11,500 for the year to 5 April 2018 (although the allowance is reduced by £1 for every £2 above which an individual's annual income exceeds £100,000). The income of a minor unmarried child is also taxed separately, unless it originates from funds given to the child by the parent and it is in excess of £100.

From 20 February 2015, married couples are able to apply for the marriage allowance. The allowance is a tax break which could save some couples up to £230 for the year to 5 April 2018. The allowance enables couples who are paying low or no tax to transfer up to £1,150 of their 2017/18 personal tax free allowance to their spouse. This will only benefit couples paying the basic rate of tax. Any couples with a partner earning more than £45,000 would not be eligible.

Individuals are also entitled to a dividend allowance of £5,000, meaning that income tax will not be due on the first £5,000 of dividend income.

There is also a 10% starting rate for the first £5,000 of savings income only. This does not apply if an individual has other taxable, non-savings income above this limit. Individuals earning higher amounts are entitled to the new personal savings allowance. Basic rate taxpayers will be not have to pay income tax on the first £1,000 of savings income they receive and higher rate taxpayers will not have to pay tax on the first £500 of their savings income.

Donations to UK registered charities are made net of basic rate tax. For each £80 donated by an individual, the charity receives a total of £100. Higher or additional rate tax relief is given by extending the basic rate or higher rate band by the grossed up amount of the gift (see below).

A UK resident individual under the age of 75 may join a personal pension scheme and make contributions. Tax relief for all contributions in a tax year is given on the higher of 100% of relevant UK earnings and £3,600 (gross), and is further restricted to the annual allowance. This has been £40,000 since 6 April 2014 onwards and was previously set at £50,000 from 6 April 2011 to 5 April 2014. A tapered reduction in the annual allowance applies from 6 April 2016 for those with an adjusted income over £150,000. The reduction is £1 for every £2 of income over £150,000 and the minimum allowance is £10,000. The Government has announced that this limit is to drop to £4,000 for 2018/19 onwards and legislation is expected to be included in the autumn 2017 Finance Bill. Individuals are able to carry forward their unused annual allowances for up to three years. The total amount an individual may contribute into a pension over his or her lifetime (including any capital growth) is determined by the lifetime allowance (which is £1m from 2016/17 onwards having been reduced from £1.25m for 2015/16 and 2014/15).

Interest on loans taken out wholly and exclusively for business purposes qualify for tax relief. This includes interest on loans taken out to:

- acquire shares in a closely controlled company;
- acquire shares in an employee-controlled company; or
- acquire an interest in a partnership or to acquire machinery or plant for use in a partnership or employment.

The amount of unrestricted income tax reliefs an individual is entitled to take advantage of in any one tax year is restricted to the higher of £50,000 and 25% of the individual's adjusted total income. Restricted reliefs include the interest relief referred to above, as well as relief for trading and property business losses off-set against general income. Individuals are entitled to a tax credit of up to 30% of the value invested in qualifying shares in the Enterprise Investment Scheme (EIS) on investments of up to £1m per annum and in Venture Capital Trust (VCT) companies on investments up to £200,000 per year. A more generous relief of 50% is available on investments of up to £100,000 into small start-up companies under the Seed Enterprise Investment Scheme.

In addition to income tax relief, dividends received from ordinary VCT shares are exempt from income tax. EIS shares also qualify for capital gains deferral relief and there is no upper limit. Individual Savings Accounts (ISAs) are tax favoured savings accounts. Any income or gains from investments in an ISA is tax-free. The ISA annual contribution allowance for 2017/18 is £20,000.

Capital gains

Capital gains chargeable on taxpayers other than companies are subject to CGT at a rate of 10% and/or 20% on most gains, with disposals of residential property not qualifying for main residence relief, and disposals of carried interests charged at 18% and/or 28% (depending on the total taxable income and gains of the individual in the tax year in which the disposal is made).

Entrepreneurs' relief (ER) may apply in certain circumstances, such as on the disposal of shares held in a trading company, all or part of a business or an interest in a partnership, provided certain conditions are met, which reduces the rate of tax on qualifying gains to 10%. Gains qualify for ER up to the individual's lifetime limit that is £10m in the year to April 2018.

There is an annual exemption from tax on capital gains available per individual which for the year ending 5 April 2018 is £11,300.

Capital gains derived from assets outside the UK will not be subject to UK tax in the hands of a foreign domiciled individual unless remitted to the UK provided the remittance basis has been claimed for that tax year. Rules which took effect from 6 April 2017 mean that foreign domiciled individuals who have been resident in the UK for more than 15 out of the last 20 tax years will be regarded as deemed domiciled in the UK for income tax and CGT purposes. Such individuals will no longer be able to claim the remittance basis of taxation once they become deemed domiciled here. Individuals who leave the UK and become not resident for a period of less than five complete tax years may still be liable to tax on their return on any capital gains realised on assets owned prior to departure from the UK. This rule applies to those individuals who were resident for at least four out of seven tax years immediately preceding the year of departure.

Inheritance tax

IHT is chargeable on the value of the estates of deceased persons. For those domiciled or deemed domiciled in the UK, their worldwide estate is chargeable. For non-UK domiciliaries, generally only UK assets are chargeable. The tax is also payable on certain lifetime transfers to trusts, or companies under the control of five or fewer people and some transfers made by such companies.

The operation of IHT is complex and the text below gives only an overview of these rules. However, you should seek detailed advice from PKF Francis Clark, especially with regard to protecting offshore assets from the UK IHT net, if you intend to come to live here for some time.

A UK domiciled or deemed domiciled individual is potentially subject to IHT on the transfer of any property owned by him or her, based on the diminution in value of his or her estate, whilst a non-UK domiciled individual may only be subject to IHT on the transfer of property situated in the UK. IHT is a combination of gift and death tax. The first £325,000 is free of IHT (the 'nil rate band'). It normally only arises on death but, in certain circumstances, lifetime gifts can also be chargeable to IHT. The rate on lifetime chargeable transfers is 20% and property passing on death is charged at 40%. The rate (applicable on death) is reduced to 36% where the deceased leaves at least 10% of his or her net estate to charity. On death, IHT may also be levied on gifts made within the previous seven years. Special rules apply to IHT on trusts.

There are some lifetime exemptions, which are completely free of IHT and are not subject to the seven year rule including:

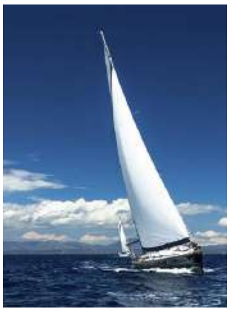
- an annual exemption of £3,000;
- a small gifts exemption of £250 per donee;
- wedding gifts to a child £5,000, or grandchild/great-grandchild
- £2,500 or to anyone else £1,000.

Reliefs are also available for disposals of businesses and farmland, provided conditions are met.

From 6 April 2017, an additional 'residence nil rate band' will apply if the value of a deceased's estate includes a property which has been their residence at some point and is left to one or more direct descendants on death. The residence nil rate band will also apply where the deceased has either down-sized to a less valuable residence or has ceased to own a residence on or after 8 July 2015. In such circumstances, the residence nil rate band will be available in respect of the value of the original main residence, provided that the deceased has left the smaller residence, or assets of equivalent value, to direct descendants. The residence nil rate band is being phased in and it will be set at £100,000 for 2017/18, before gradually increasing to £175,000 from 6 April 2020. If the value of the estate is in excess £2m, the residence nil rate band will be reduced by £1 for every £2 by which the value of the estate exceeds £2m.

Transfers between spouses and civil partners are exempt from IHT except when the transfer is made to a foreign domiciled spouse/civil partner by a UK domiciled spouse/civil partner when the exempt transfer is limited to the value of the nil rate band, currently £325,000. A foreign domiciled individual automatically acquires a 'deemed' domicile in the UK for IHT purposes if he or she has been resident in the UK for 15 out of the previous 20 tax years, unless he or she is excluded from this rule under the terms of a double taxation treaty. Once an individual has become deemed domiciled, transfers between spouses or civil partners will be fully exempt.

In addition, a non-domiciled individual may elect to be treated as UK domiciled for IHT purposes only. The effect of this would be that assets could be transferred from one member of a married couple/civil partnership to another, or left to them on death with no IHT arising. However, there may be IHT consequences in respect of any gifts or bequests made by the person treated as UK domiciled irrespective of the location of the assets concerned.



9 Taxation of land and buildings

The tax treatment of rental income and profits made from the sale of land or buildings must be considered separately.

Sale of land or buildings

The tax treatment of profit made from the sale of land or buildings will depend on both the owner's situation, e.g. tax residence, and the circumstances in which the property has been held. Broadly, these circumstances fall into three categories:

- Property developer/trader - all property will be treated as stock-in-trade and any profits made on sale will be taxed as trading income.
- Investor - all property will be treated as an investment.
- Other trader - property held for the purpose of a non-property trade will be treated as a capital asset.

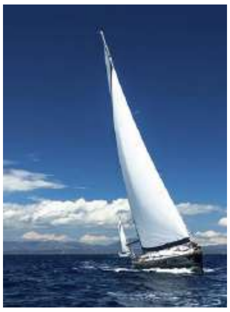
In the last two categories any profits or losses on sale should be assessed under the CGT regime (or as a capital gain/loss subject to corporation tax where the taxpayer is a company).

It is sometimes difficult to ascertain whether a property has been held as stock or an investment. In determining this, the following questions are relevant:

- What was the original intended use for the property? Can this be demonstrated by minutes of meetings or other documents?
- If the vendor is a company, what do the memorandum and articles of association state on the point?
- How was the property initially marketed - as a rental property or as a sale? If the property was initially intended to be let but was sold instead when an unforeseen offer was received, the fact that the property was not actually let should not necessarily prevent it from being treated as an investment asset.
- How long was the property held for? The longer a property is held, the more likely it is to be an investment.
- What do previous transactions indicate about the vendor's status and motives?

There is also a specific anti-avoidance rule which applies where a capital gain has arisen in certain circumstances. This rule applies to tax gains as income and applies to all persons, regardless of residence, if the land or building is in the UK.

Circumstances where this applies include when land is developed or acquired with the main objective of realising a gain on disposal and where the gain is realised in capital form on the sale of shares in a company owning the land or building, rather than of the property itself.



Growth in land value

In addition to CGT on the increase in the capital value of land, a specific tax can now be levied by the Local Authority (LA) on the growth in land value that occurs when the owner obtains planning permission to develop it (i.e. build houses or commercial buildings on the land). The Community Infrastructure Levy (CIL) has operated since 6 April 2010. The rate of the CIL (per square metre of developed land) for a particular location will be set by the LA so may vary considerably from region to region.

Rental income

Profits from the letting of land and buildings in the UK are taxable in the UK, wherever the recipient is resident. Profits are broadly determined in the same way as trading profits. Relief is available for most related costs. Historically, interest on a loan taken out to purchase the property was also allowable, however this relief is being phased out:

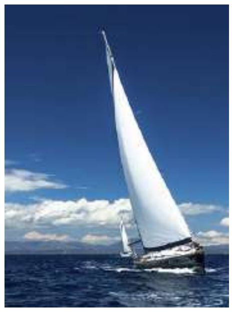
- from 6 April 2017 the deduction from property income is restricted to 75% of finance costs, with the remaining 25% being available as a basic rate tax reduction;
- for 2018/19, there will be a 50% finance costs deduction and 50% given as a basic rate tax reduction; in 2019/20, a 25% finance costs deduction will be allowed and 75% given as a basic rate tax reduction; and finally
- in 2020/21 all financing costs incurred by a landlord will be given as a basic rate tax reduction, rather than as a deduction.

There are also rules which restrict tax relief for interest on highly geared investments where the lender and borrower are connected. The other main tax relief available is capital allowances, which are available on plant and machinery.

If you let out residential property you may be able to claim a deduction for the cost of replacing domestic items such as movable furniture, furnishings, household appliances and kitchenware. Prior to April 2016, a 10% 'wear and tear allowance' was available - this has now been replaced by the 'replacement of domestic items relief', which is only available for expenses incurred from 6 April 2016 for income tax purposes.

Unlike the wear and tear allowance, for the new relief to apply the dwelling house can be unfurnished, part furnished or fully furnished. However, an expense must actually be incurred on purchasing a replacement domestic item, which must be solely provided for use by the tenants of that property and, additionally, the old item must no longer be available for use in that property. The initial cost of purchasing domestic items for a property is not a deductible expense. Relief is only available for replacement items.

Where the owner is resident in the UK, rental profits are included in aggregate taxable income for the year. For individuals, the basis period for property income is the tax year itself. So, while it is permissible to make up rental accounts to a date other than 5 April if an individual chooses to do so, it will be necessary to apportion two sets of accounts - on a daily basis - to arrive at the taxable profit or loss for the tax year.



Partnerships and LLPs carrying on a trade or profession, and individuals whose letting itself amounts to a trade (e.g. hotels or guest houses) are instead taxed on the property income accruing in the accounting period ending in the relevant tax year.

Companies are taxed on the rental profits accruing in each accounting period as part of their overall profits subject to corporation tax.

Where the owner is not resident in the UK, rental income will be liable to income tax, whether the owner is an individual, company or other entity. Income tax at the standard rate (currently 20%) will be withheld by the tenant (or, more usually, the UK agent managing the property) from the gross rental payments under the 'non-resident landlord scheme', with the tax deducted at source franking the non-resident's eventual tax liability on the income. On application by the landlord, HMRC will authorise rents to be paid without such deductions. In these circumstances, the landlord would instead be required to pay the UK tax arising through the UK self-assessment system, including any higher or additional rate tax due. However, for a non-UK resident company which does not have a UK permanent establishment (and is therefore not within the charge to corporation tax on its property income) the 20% income tax withheld at source under the non-resident landlord scheme is regarded as satisfying its entire income tax liability on the property income arising in the UK.

Plant and machinery

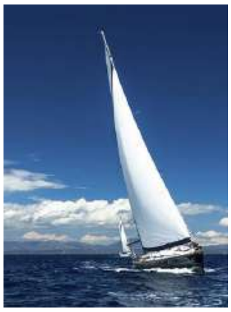
The general rule is that relief is given at 18% on the reducing-balance method. However, 100% relief can currently be obtained on up to £200,000 of qualifying investment (known as the annual investment allowance) in the year of purchase and on approved energy-efficient plant and machinery with no maximum limit.

Some items of plant are classed as 'integral features' and allowances available on these items are restricted to 8% on a reducing balance basis. Typical examples of integral features are air conditioning, hot and cold water systems and lifts. Experience shows that on average between 12% and 24% of the cost of a new office building will qualify as plant and machinery depending on the level of fitting out.

Purchase of second-hand property is a complex area. The difficulty is in deciding the proportion of the total purchase price that relates to fixed plant and machinery. For acquisitions of a building, both the purchaser and the seller must agree a proportion of the purchase price attributable to the fixtures within two years of the transaction. They must notify HMRC of this amount by means of a joint election. If the parties cannot agree on a figure, the matter must be referred to a tribunal if it appears material to the tax liability of either of them.

Where a building which includes fixtures is acquired second-hand by a business, the new owner will only be able to claim capital allowances on the fixtures if the previous owner had pooled the fixtures for capital allowances purposes before it sold the building.

Where second-hand buildings were purchased before April 2012 and no capital allowances were claimed on the fixtures by April 2012, there is no time limit on starting to claim the capital allowances.



Construction Industry Scheme

This scheme applies to any business in the construction industry that can be defined as a contractor (the person making the payment) or subcontractor (the person receiving payment) that is carrying out construction operations. This is defined quite widely and includes internal cleaning of a property during its construction, alterations or repair work, and internal and external painting. It also applies to non-construction businesses which are commissioning construction work on their properties if they spend more than £1m per year over a three year period on construction operations.

Any contractor falling within the scheme must register with HMRC and follow certain requirements to ensure that the subcontractors they deal with are paid correctly. These include:

- verifying sub-contractors with HMRC;
- paying sub-contractors in the manner prescribed by HMRC (making deductions of tax as appropriate)
- sending monthly returns to HMRC, detailing payments to sub-contractors and deductions made from them; and
- keeping proper records.

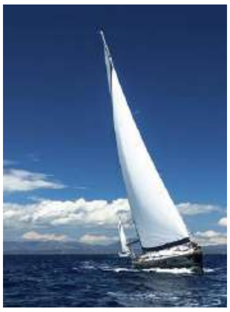
Stamp Duty Land Tax

Stamp duty land tax (SDLT) is payable on UK land and building transactions and the rates are between 0% and 12% on the consideration paid for residential properties. SDLT is charged at increasing rates for each portion of the price. Since 1 April 2016, an additional 3% charge has applied to purchases of residential properties which will not be used as the purchaser's main residence.

In Scotland, Land and Buildings Transaction Tax (LBTT) replaced SDLT with effect from 1 April 2015. The rates of LBTT for residential property range from 0% to 12%, with the 12% applying to consideration over £750,000 as opposed to over £1.5m for SDLT. LBTT is also applied progressively. An additional 3% charge applies to purchases of residential properties which will not be used as the purchaser's main residence.

For non-residential or 'mixed' property, SDLT applies at rates ranging from 0% to 5% on a block basis. Non-residential property transactions in Scotland are subject to LBTT rather than SDLT. Rates applicable range from 0 to 4.5% with 4.5% applying where the consideration exceeds £350,000. Special rules apply to leases.

Special rates of SDLT also apply where residential property is purchased by a 'non-natural person', which includes companies. This rate is 15% for property costing over £500,000. In addition, such properties are also subject to an annual tax, called the Annual Tax on Enveloped Dwellings (ATED). Exemptions from ATED will apply where the property is used for specified, qualifying purposes, including certain letting arrangements.



Value Added Tax

The VAT treatment of dealings in property and land is complex and the regular subject of litigation. Different rules apply depending on whether the property is residential or commercial and whether or not exploitation is by way of sale or lease. The large amounts of money involved in property transactions mean mistakes can be costly, with the added risk of interest and penalties imposed by HMRC if you get it wrong. Consult PKF Francis Clark at an early stage for expert help in ascertaining the VAT profile of your proposed project.

VAT liability - commercial property

The sale of the freehold of a new commercial building ('new' being defined as less than three years old) is subject to VAT at the standard rate. The sale of the freehold of 'old' commercial buildings or land and the grant of a leasehold interest in either new or old property or land is exempt from VAT. However, a vendor or landlord may make an Option to Tax on the property and charge VAT at the standard rate on the sale proceeds or on rental payments. The major advantage of making an Option to Tax is that the landlord can recover VAT on costs relating to the opted property. The purchaser or tenant can normally recover VAT charged on rent provided he or she is using the property for taxable purposes. Once made, an Option to Tax cannot usually be revoked for a period of 20 years.

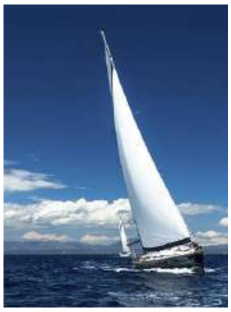
Written notification of the Option to Tax must be made to HMRC within 30 days of the date of the Option and, in some cases, prior permission is required. The Option will take effect from the day on which it is made, or a later date specified – although, in some cases, options can be disapplied by HMRC where anti-avoidance provisions apply.

VAT liability - residential property

The first sale of freehold or grant of a lease in excess of 21 years (20 years in Scotland) by the person constructing or, in some cases, converting residential property is zero-rated. Zero-rating is a nil rate of VAT, but VAT on related costs can be recovered. Other supplies of residential property are exempt from VAT (therefore VAT on the associated costs is irrecoverable). The Option to Tax (see above) does not apply to supplies of interests in residential property.

Place of supply

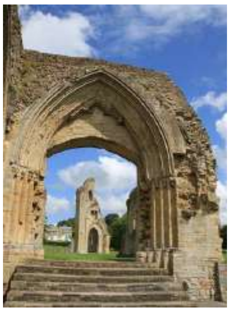
The place of supply of transactions relating to UK land is the UK. Overseas businesses owning UK land may, depending on the VAT liability, be entitled or obliged to register for UK VAT.



Business rates

Businesses are required to pay a tax (known as the uniform business rate) based on the value of the property in respect of land and buildings at a level that is set by central government. The set multiplier is applied to the rateable value of the property to calculate the charge.

A revaluation of rateable properties was undertaken in April 2015 and came into effect from 1 April 2017, which has led to large increases in business rates bills across the country. Some reliefs are available, particularly for small businesses. The Scottish Government and the Welsh Assembly set these levels in Scotland and Wales. In addition County Councils, Unitary District Councils and the Greater London Authority all have a right to levy a business rates supplement to fund additional projects which improve the economic development of their area. The right to charge is subject to a maximum levy of 2p on the multiplier.



Appendix 1 Useful websites

GOVERNMENT

Government services and information	www.gov.uk
Department for Business, Energy & Industrial Strategy	www.gov.uk/beis
Department for International Trade	www.gov.uk/dit
Department for Environment, Food and Rural Affairs	www.gov.uk/defra
UK Intellectual Property Office	www.ipo.gov.uk
Health & Safety Executive	www.hse.gov.uk
Information Commissioner	http://ico.org.uk/
Land Registry	www.landregistry.gov.uk
Competition & Markets Authority	www.gov.uk/cma
National Statistics Online	www.statistics.gov.uk
UK Visas and Immigration	www.gov.uk/ukvi

TAXATION

HM Revenue & Customs	www.hmrc.gov.uk
Chartered Institute of Taxation	www.tax.org.uk

OTHER

Bank of England	www.bankofengland.co.uk
Companies House	www.companieshouse.gov.uk
Financial Conduct Authority	www.fca.org.uk
London Stock Exchange	www.londonstockexchange.com
British Chambers of Commerce	www.britishchambers.org.uk
British Standards Institute	www.bsigroup.co.uk/en/
Copyright registration service	www.copyrightregistrationservice.com
Patent and trade mark attorneys	www.cipa.org.uk
The Association of British Insurers	www.abi.org.uk
Chartered Insurance Brokers directory	www.cii.co.uk
The Law Society (for England and Wales)	www.lawsociety.org.uk
The Law Society of Scotland	www.lawscot.org.uk
The Institute of Chartered Accountants in England and Wales	www.icaew.com

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