

Setting up your Business in the UK

Issues to consider



The United Kingdom (UK) continues to be one of the world's leading locations for global investment, being rated again as the most attractive place in Europe for foreign investment.ⁱ Also, the World Bank has ranked the UK as the number one country in the EU and G8 for ease of doing business, solidifying its position as a premier destination for inward investment.

However there are a number of issues which you must consider when you are looking to set up your business in UK. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it all depends on your specific business circumstances and needs. A brief overview of the main structures is below:

Establishment (a branch of your overseas business)

- Not a separate legal entity but an extension of the overseas parent company
- No limited liability or ring-fencing of the UK operations
- If one has a permanent establishment in UK then profits from this PE are liable to UK Corporation tax
- Must file **parent company accounts**, prepared under UK Company Law, at Companies House for public inspection, even if these are not made publically available overseas

Limited Company:

- Provides limited liability and ring-fencing to UK operations
- Gives a perception of a local business, with longevity
- Corporation tax to be paid on company profits
- Have to file UK company accounts at Companies House for public view
- Accounts require auditing unless you qualify for an audit exemption. The company would need to have two of the following:
 - Annual turnover of no more than £6.5 million
 - Assets worth no more than £3.26 million
 - 50 or fewer employees on average

Limited Liability Partnership:



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- Members (partners) have limited liability
- Profits are allocated to members who then pay Income Tax on these profits personally
- The tax residence of the member, and where the profits in the LLP originated will determine in what jurisdiction and how these profits are taxed

How much Corporation Tax will the business pay?

Current Corporation Tax rate in the UK is 20% (for the tax year to 31 March 2016).

The tax rate of an “Establishment” is determined by the level of profits of the global parent entity, not just on its UK activity.

If an Establishment incurs a loss then this loss can be offset against the parent company’s profits or it can be carried forward in the UK to offset against future UK profits. (A similar treatment applies in a group situation, whereby companies are owned or under common ownership of 75% or more by the parent.)

If a UK subsidiary company owned less than 75% by its parent incurs a loss, this can be carried back one year against taxable profits and then carried forward and only offset against future profits from the same trade. It cannot be offset against parent company profits.

What if we use UK to set up our holding company?

The UK’s competitive tax legislation means that it is a very attractive place to set up a holding company.

If a UK company holds shares in another company and these shares are subsequently sold, then the resulting gain is exempt from tax as long as the company held at least 10% of the share capital in the company sold and it was a trading company or part of a trading group.

Also virtually all dividends received by a UK parent company, whether from the UK or overseas are exempt from UK taxation.

The UK also does not levy a withholding tax on dividends paid to its shareholders, whether they are based in the UK or overseas. All of which makes the UK a very advantageous location to set up a holding company.

What if we make cross-border transactions between group companies?

The UK follows internationally recognised **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm’s

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length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods
- Provision of management services
- Property rental charges
- Transfer of intangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a “market” interest on loans

A business will need to maintain Transfer Pricing documentation supporting the arm’s length basis of connected party transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm’s length basis.

SME’s are generally exempt from UK’s Transfer Pricing regime, so only “large” entities need to undertake detailed TP analysis. A “large entity” for TP purposes is one with > 250 employees, or < 250 employees but Revenues > €50M **and** Gross Assets > €43M. However even if an entity is exempt from the UK’s Transfer Pricing regime it may fall under the scrutiny of the other international tax jurisdictions where it transacts. There may also be other tax regulations which ensure transactions are undertaken at a commercial value.

What Employment Taxes and Social Security will need to be paid?

If an individual is resident in the UK then they are subject to UK tax laws. From 6 April 2013 the UK Statutory Residence Test was introduced, which comprises three tests to determine whether an individual is resident or not in the UK – the ‘automatic overseas test’, ‘automatic residence test’ and ‘sufficient ties test’. These tests can be complex and we would advise any new entrant to the UK or person who spends time working in the UK to take professional advice to determine whether they are UK tax resident.

Current Personal Income Tax rates in the UK are:

Band of income (£)	Tax rate (%)
1 – 31,785	20
31,786 – 150,000	40
Over 150,000	45

(NB: rates are for the tax year to 5th April 2016)

Employers and employees also have to pay UK social security, which is called National Insurance:

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Current National Insurance (NI) rates are:

	Band of income (£)	Rate (%)
Employer	Up to 8,112	0.00
	Over 8,112	13.80
Employee	Up to 8,060	0.00
	8,060 – 42,835	12.00
	Over 42,835 on excess	2.00

NB: (rates are for the tax year to 5th April 2016)

It is the employers' legal responsibility to pay over employees' tax and social security deductions to the UK tax authorities.

The UK has a Reciprocal Agreement with the USA, EU countries and many others whereby when an overseas national of those countries is seconded to the UK for a defined period of time and continues to pay social security in their home country, then the employer and employee are exempt from paying UK National Insurance.

What is Value Added Tax (VAT) and should the business be registered?

VAT is a "goods and services tax" on supplies made, the standard rate of which is 20%. If a business makes taxable supplies in excess of £82,000 in any 12 months then it MUST be registered for VAT.

There are three types of supply

- Taxable – must charge VAT on supplies, can reclaim input VAT
- Exempt – cannot charge VAT nor reclaim input VAT
- Outside the scope – not in the UK VAT system

The supply of most types of goods and services in the UK would be classed as Taxable supplies. However when these supplies are made to companies which are outside of the UK advice needs to be sought as to what rate of VAT, if any, to use.

If a UK entity sells goods or provides services to its non EU parent then there is no VAT chargeable on this overseas supply, however on the basis that the supply would be VAT'able if made in the UK then the entity will be able to reclaim all its input VAT.

Can we provide Share Option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

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The UK has a number of “approved” Share Option plans which give tax benefits to employees and employers alike and it is often possible to adapt an overseas stock option plan to fit into one of these “approved” plans.

However this is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in the UK.

How else can we compensate our employees?

The UK has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many UK businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to “spend” their benefits allowance; which can range from “purchasing” additional holiday entitlement to obtaining full family medical cover.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or [email](#) us directly.

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The information in this document was prepared as at 26 March 2015.

ⁱ UKTI Inward Investment Report 2011/12