



# Setting up your business in the UK

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The United Kingdom (UK) continues to be one of the world's leading locations for global business, as the prime business location in Europe for foreign direct investment.

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

# What types of business structure should we use?

There are advantages and disadvantages to all of them, and there is no correct answer. It is dependant on your specific business circumstances and needs.

A brief overview of the main strucures are below:

## Establishment

(a branch of your overseas company)

- Is not a separate legal entity but an extension of the overseas parent company.
- There is no limited liability or ring-fencing of the UK operations.
- If you have a permanent establishment (PE) in the 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 publicly available overseas.
- Being a branch and not a separate legal entity may add complexity with regard to VAT – decide which establishment is supplying or receiving services.

# Limited company

- Provides limited liability and ring-fencing to UK operations.
- Gives a perception of a local business, with longevity.
- Corporation tax is paid on company profits.
- Have to file UK company accounts at Companies House for public view.
- Accounts require auditing if the group as a whole exceeds two of the following three criteria:
  - Revenues >£10.2m
  - Gross Assets >£5.1m
  - Employees >50.

# Limited liability partnerships

- Members (partners) have limited liability.
- Members can be companies, or individuals.
- Profits are allocated to members who then pay tax on these profits (the type and rate dependent on their own position).
- 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?

Companies which are tax resident in the UK are subject to corporation tax on their worldwide profits. However, various exemptions effectively limit this to tax on UK related activities.

Non-resident companies are generally subject to tax on activities carried out through a UK PE. It should be noted, however, that corporation tax is also imposed on non-resident companies that carry on a UK property business.

The current corporation tax rate in the UK is 19% for the tax year to 31 March 2022, no matter what the size of the company.

The Government has stated its intention to increase the main rate to 25% in the tax year to 31 March 2024 and at the same time introduce a small companies rate of 19% for companies with profits of up to £50,000.

Trading losses can generally be offset against current year profits or carried back to the preceding year. If not, these losses can be carried forward and offset against total profits of the company and Group.

However, the amount of annual profit that can be relieved by brought forward losses is limited to 50%, subject to a £5 million allowance per group. Group relief arrangements are also available to surrender these losses, subject to certain conditions, where there are several UK companies or establishments under common ownership of 75% or more by the parent company. Similar arrangements exist for consortiums.



# What if we use the 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 after being held for at least a year, 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 the company sold was a trading company or the holding company 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. The UK also has an extensive network of double taxation treaties.

The UK does not have any foreign-exchange controls or restrictions on inward or outward investments. 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 length basis.

The price and terms should be the same as if the transactions between affiliated entities have to be conducted on an arm's 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



Sharing of knowledge, expertise, business contacts etc.



Provisions of financial support e.g inter group loans and charging a 'market' interest on loans.



Transfer of intangible assets e.g trademarks, patents etc.



A business will need to prepare a TP report proving the arm's length basis of transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm's length base. SMEs are generally exempt from the UK's TP regime, so only 'large' entities need to undertake detailed TP analysis.

### A 'large entity' for TP



However, even if an entity is exempt from the UK's TP 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.

In addition to transfer pricing legislation, corporate interest restriction rules also cap the deductions available for interest. The rules are complex, but a group can always deduct net tax-interest expense of up to £2m per year, (subject to normal transfer pricing, thin capitalisation, and other anti-avoidance provisions).

It should also be noted that the UK does have strong anti-avoidance provisions to prevent artificial cross-border tax avoidance including:

- a general anti-abuse rule ("GAAR")
- anti-hybrid rules; and
- the diverted profits tax

# 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. The UK Statutory Residence Test comprises of three tests to determine whether an individual is resident or not in the UK:



**The 'automatic residence test'**



**The 'automatic overseas test'**



**The '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 a UK tax resident.

Current **personal income** tax rates in the UK are:

Band of income	Tax Rate (%)
1-37,700	20
37,701- 150,000	40
Over 150,000	45

*NB: rates are for the tax year to 5 April 2022*

Employers and employees also have to pay UK social security, which is called National Insurance (NI).

Current **NI** rates are:

	Band of income	Tax Rate (%)
Employer	Up to 8,840	0
	Over 8,840	13.8
Employee	Up to 9,568	0
	9,568- 50,270	12
	Over 50,270 on excess	2

*NB: rates are for the tax year to 5 April 2022*

It is the employers' legal responsibility to pay over employee's 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 NI.

# VAT

VAT is a 'goods and service' tax added to the value of taxable' supplies made in the UK.

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There are three categories of supply:

1

## Taxable supplies

With a 'rate' of VAT being charged on supplies made at the standard rate (20%), the reduced rate (5%) or the zero rate (0%). VAT incurred on related expenditure can be reclaimed from HMRC where taxable supplies are made.

2

## Exempt supplies

No VAT is charged on exempt goods or services. VAT incurred on related expenditure cannot be reclaimed from HMRC where exempt supplies are made.

3

## Outside the scope supplies

These are not in the UK VAT system.

Most supplies of goods and services made in the UK are taxable and subject to VAT at the standard rate of 20%.

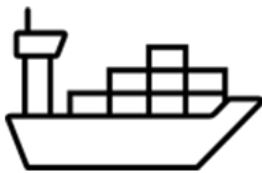
However, when these are supplied to businesses outside of the UK (including overseas parent companies), advice needs to be sought as to what rate of VAT, if any, to use and importantly the VAT implications in the country where the goods or services are received. In particular, the movement of goods across borders can be a complicated issue and there may be VAT registration requirements outside of the UK. VAT and Customs Duty advice may be required.



# Who needs to register?

If a UK established business makes 'taxable' supplies in excess of £85,000 in any 12 months or single month, then it **MUST** be registered for VAT.

There is no registration threshold for non-established businesses; a non-established business may have an obligation to register for VAT as soon as it makes **ANY** supply of goods (and potentially certain services) which take place in the UK. For example this could be if:



It is the importer of goods into the UK.



It sells goods to UK customers in consignments with a value of less than £135 (unless only selling to a UK VAT registered business or via an online UK marketplace).



It buys and sells goods or performs services physically in the UK.

We have a specialist VAT team which can provide specific advice as required.



# 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.

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.

# What benefits should we provide our employees?

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

Employers must provide a qualifying workplace pension to their UK employees and make a minimum level of contributions from the employees first date of employment. Similarly to some other countries, other benefits such as private medical insurance, life and disability cover are now commonplace in being provided by 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 fully family medical cover.

The UK also has legal requirements in relation to minimum wage and statutory holiday, vacation and leave.





# About us

We help dynamic businesses, not for profit organisations, private individuals and families with more than accountancy, business and financial advice. In a continually evolving world we help all generations embrace this change through trusted advice, support and guidance. Our dedication to providing a personal service is what sets us apart – we get to know you, understand your goals, support and advise you on your journey to help you realise your potential.

Our people offer a wide range of expertise and services which can be viewed on our website. With offices across London, Kent and Sussex, we provide our personalised services across the South East and internationally via our Kreston International network of like-minded firms.

Through our membership of Kreston International, one of the world's leading networks of accountancy firms, we are also able to assist our clients with their global needs. With over 25 years experience in assisting overseas companies set up and develop their businesses in the UK, we have the knowledge and expertise to make the process as easy as possible.



Our expertise with international business has also been recognised by the Department of International Trade (DIT), the government body which promotes the UK to overseas business. We are very proud to have been approved as members of the UK Investment Support Directory, which has been set up by the DIT to highlight businesses who have experience and expertise in supporting foreign investors looking to set up in the UK.



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