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Doing business and investing in the UK

March 2021 Edition

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Contents

Chairman’s welcome

Welcome to the 2021 edition of our guide, Doing business and investing in the UK.

How the world has changed since our last edition. Building fairer, greener and more resilient economies has never been more important and depends on the right business and investment.

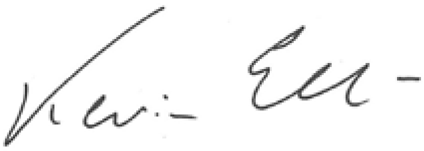
The UK has every incentive and opportunity to build on its position as a vibrant and trusted place for business as we move forward into a post EU trading environment. Our skilled workforce, diverse economy, science and innovation hubs, and renowned legal and education system, are just some of the UK’s credentials.

The relative ease of doing business is also key. This guide provides insight into all the main aspects, from establishing an entity to dealing with employees.

With 22,000 people across every pocket of the UK, we have practical experience of the business and legal issues across all industries. We know the culture, we know the market, and have long been helping companies and individuals establish themselves here.

I see first hand what a fantastic place the UK is to nurture enterprise and talent. We hope this guide is a helpful starting point to doing business and investing here.

If you have any questions or comments, please do not hesitate to get in touch.



Kevin Ellis
Chairman and Senior Partner
PwC UK

A profile of the UK, by the Department for International Trade

These are far from normal times. The Coronavirus pandemic continues to impact people, the economy, business and just about every aspect of our lives in an unprecedented manner. While there is light at the end of the tunnel as vaccines continue to be rolled-out across the UK, the economic impact will be felt globally for months and years to come.

That is why, at this critical time, trade and investment will be more important than ever, indeed they are two of the best enablers we have to kickstart growth, get businesses back on their feet and build back our economy greener and stronger than ever. That is why this government is so committed to supporting our businesses to export globally, and making investing in the United Kingdom even easier, more secure and more profitable for businesses around the globe, as we work to remove unnecessary obstacles from their paths.

As an open, dynamic, services-based economy, inward investment plays a vital role in the UK's recovery from this crisis and is crucial to job creation. In fact, across the UK, 4.5 million people are employed by foreign companies, with Department for International Trade (DIT) analysis showing that 56,117 new jobs were created in 2019/20 as a result of UK Foreign Direct Investment (FDI) projects. That's why attracting greater investment will play an even more pivotal role in driving growth across our economy in the years ahead.

The UK rightly has a proud and hard-won reputation as one of the most open economies in the world. We remain one of the top destinations for FDI in Europe and are one of the foremost destinations of inward investment in the world. The Government continues to work hard to ensure the UK retains its leading position in attracting investment and maximising the impact on the economy.

Indeed, we continue to enhance our approach to investment as we look to radically transform the UK's investment offer and business environment complemented by the Office for Investment and Freeports, to level-up the country, drive economic and productivity growth across the UK.

DIT is well positioned to support investment that will power current and future growth in key sectors. We continue to promote investment opportunities from across the UK through the High Potential Opportunities programme, target dedicated investment missions through our new Office for Investment, and work globally to attract high value investment from well established and emerging markets.

Our newly launched Office for Investment sits at the heart of Government and demonstrates our strong commitment to business and inward investment. Under the sponsorship of the Prime Minister and Chancellor the Office will bring together business expertise from across Whitehall and beyond, breaking down barriers so that existing and potential investors alike benefit from structured support when they need it. The creation of the Office demonstrates the UK's commitment to be the best place in the world for international investors. It is a core part of communicating our national story on investment and a focus for business facing engagement.

DIT also delivers campaigns that range from helping overseas companies with the logistical elements of locating and growing in the UK, inspiring and supporting more UK companies to take their first steps towards selling overseas, and helping to match foreign companies with innovative, high-quality products and services provided by British companies. With our GREAT campaign, we are showing partners worldwide that Britain is 'ready to trade'.

This pandemic has amplified calls worldwide for sustainable growth – and we are committed to turning the UK into a global leader in this field with international investors absolutely critical to helping us achieve this goal. Our ten-point plan for a green industrial revolution in Britain, as laid out by the Prime Minister last November, is a clear commitment to deliver on both the UK's ambitious net zero carbon target and global commitments, as we build back better in the years ahead. International investment will be crucial in driving a new green industrial base with export capacity.

At this challenging time, Britain remains one of the most open, business-friendly and welcoming economies for international investors anywhere on the planet, and we want to work ever more closely with businesses, institutions and other partners worldwide to embrace the huge economic opportunities the future has to offer.

Department for International Trade

Gerry Grimstone

Minister for Investment at Department for International Trade

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a global network of firms in 157 countries with more than 223,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

About this guide

How to use this guide

This guide is designed so that you can go directly to any section that is of interest. That said, we hope you will take the opportunity to read the guide in its entirety.

Whichever way you use it, we hope that you find the guide useful when you choose the UK as the location for your business.

We would ask you to let us know if you see any errors/spelling or other areas we should change as this guide is a continuous developing document.

Please also note that historic information has not been provided unless it is relevant.

The guide includes information as at 18 March 2021 and will be updated on a regular basis.

The purpose of this guide

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers LLP, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

Legal differences

The UK consists of three distinct jurisdictions:

- England and Wales
- Scotland
- Northern Ireland

Each jurisdiction has its own legal system. Although the three systems broadly adopt the same approach to business, there are some important distinctions. Accordingly, if you are planning to set up your business in Scotland or Northern Ireland, we would recommend that you take expert advice to understand the differences.

Please note that we will for the purposes of this publication:

- focus on issues to be considered when setting up a business in England or Wales; and
- view the UK as a single jurisdiction in which the laws of England and Wales apply throughout, unless stated otherwise.
- for other regions of the UK we have provided limited information and contact points.

Please also see the 'UK regions' section for further information.

Please contact our team for further information, although if you have any comments on the guide please feel free to contact Mike Curran(mike.curran@pwc.com)/ +44 7718 581 101 or Claire Smith (claire.v.smith@pwc.com)/+44 7841 785 318.

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Perspectives on the UK as an investment opportunity

The tax landscape

This is the first Doing Business guide published since the UK left the European Union. We are still living through a global pandemic which has created a sizeable dent in UK GDP. This, together with the large amount of additional government borrowing needed to fund the various measures introduced to support businesses and their employees, is having a significant impact on the public finances.

So how have these events affected the tax landscape in the UK so far?

The primary impacts of the pandemic on the tax landscape to date have been the considerable relaxation of payment and filing deadlines to support businesses; some new innovations such as the Coronavirus Job Retention Scheme.

Whilst the exit from the European Union brings with it some additional administrative complexity in the tax system for cross border transactions with the EU and with Northern Ireland, there are no major new tax burdens with which to contend. The Trade and Cooperation Agreement (TCA) between the UK and the EU has meant that there is less change and uncertainty than we might have anticipated.

So what are the prospects for the longer term?

It remains HMRC's ambition to become one of the most digitally advanced tax administrations in the world. Whilst there is still much to be done, the UK is making progress and already every individual and business has access to their own personalised digital tax account.

The extra debt burden resulting from the pandemic measures, has left the government with difficult choices about the timing, form and necessity of tax increases. However, it had become clear that business will be expected to play its part given the support that has been provided through the pandemic so it wasn't surprising that in the recent Spring Budget it was announced that the headline rate of corporation tax would rise from 19% to 25% in 2023.

However on a positive note, to try to stimulate the economy in the shorter term, a 130% 'super deduction' for certain capital expenditure was also announced which will be available until March 2023.

Other announcements at the Spring Budget included a review of the R&D incentive regime to ensure it remained globally competitive and the location of eight freeports around England which will provide tax incentives and other government support.

Any changes to the domestic tax landscape, particularly those focused on the digital economy, will need to be made against the backdrop of the OECD efforts at international tax reform.

Whilst the increase in the corporation tax rate is significant, it is clear the Government is keen to attract investment into the UK as it enters a new era outside of the EU.

Marissa Thomas
Head of UK Tax, PwC

How does the UK compare with other economies around the world on how easy it is to do business?

Finding ways to compare economies on a like for like basis, whether they are economic peer group countries or geographically near neighbours, is not an easy task, but the **World Bank's Doing Business** study does just that.

The study uses an **'ease of doing business' index**[1] to compare economies across 10 different indicators using a case study company that takes the form of a medium sized manufacturing business that employs 60 people. The indicators include amongst others, starting a business, getting credit, registering property, enforcing contracts and resolving insolvency. In the most recent report, Doing Business 2020, ranks the UK at number 8 out of 190 economies. Of the G7 nations only the United States is above the UK, and the only other G20 nation with a higher ranking is South Korea. In Europe, only Denmark has a better placing.

The Doing Business index includes a **'Paying Taxes' indicator** which measures the 'ease of paying taxes' for the case study company. PwC has worked with the World Bank on this indicator since its inception in 2004, and together we issued a comprehensive joint report[2] on the Paying Taxes data from Doing Business. Understanding the tax implications of operating and investing in different locations is undoubtedly important for businesses, but it's not simply the tax rate that's relevant, the compliance burden is also key. The Paying Taxes study looks at both aspects – it measures the overall tax rate (the Total Tax and Contribution Rate or TTCR), the time spent preparing, filing and paying taxes, the method used to make payment, and also, through the post-filing indicator, at some of the interactions with the tax authority after tax returns have been filed.

Paying Taxes 2020, which is the most recent version of the report and looks at the performance of tax systems in 2018 ranks the UK at 27 out of 190 economies.

Until 2018, the UK's TTCR had been falling steadily for 7 years as a result of cuts in the rates of corporation tax (CT) and of employer's National Insurance Contributions. The introduction of auto-enrolment for pensions payments increased the TTCR in 2018. At 30.6% of commercial profit[3], the UK's TTCR is considerably below the world average of 40.5% and the EU & EFTA averages of 39.0%.

The time to comply and the number of payments indicators have remained fairly constant for several years, but increased slightly in 2018, again due to the introduction of the auto-enrolment system for pensions. The time to comply is still extremely competitive, beaten only by Saudi Arabia and Australia in the G20.

At 9, the number of payments reflects the number of taxes faced by the case study company. As all the taxes in the UK can be paid and filed online they are each counted as one payment. Where taxes cannot be complied with purely electronically, more payments are counted. The UK is below the G20 average of 10.5 and the G7 average of 11.2.

The post-filling indicator looks at two processes – obtaining a VAT refund and correcting a corporate income tax return. The UK scores highly on the VAT refund element, but less well on the CIT correction. While it is relatively quick and easy to make the correction, any subsequent enquiries from the tax authority (HMRC) would be expected to last several months.

While the UK compares favourably with its peers on the TTCR and the effort required to file and pay taxes, there are elements within the indicator that can still be improved upon, particularly in relation to post-filing processes. Overall the data suggests the UK has the combination of a comparatively low overall tax cost and a tax system which is comparatively easy to comply with.

Andrew Packman
Total Tax Contribution and Tax Transparency Leader, PwC

[1] http://www.doingbusiness.org/rankings

[2] https://www.pwc.com/gx/en/services/tax/publications/paying-taxes-2020.html

[3] Commercial profit is the profit before all taxes borne

Foreign direct investment patterns, by the editor-in-chief of Investment Monitor

The pandemic has had a devastating impact on global investment flows, with foreign direct investment (FDI) dropping by more than 40% in 2020, according to figures from the UN Conference on Trade & Development (UNCTAD). The expectation is for a smaller decline in 2021, of the magnitude of 5-10%, but much depends on the speed and shape of recovery.

As an investment destination, the UK has faced the twin challenges of COVID-19 chaos and Brexit uncertainties. In 2019, FDI inflows to the UK had declined for the second year in a row, according to UNCTAD's World Investment Report 2020, and the country dropped one spot in the ranking of the world's top investment destinations, to number 8. Inflows to the UK have been on the decline since a peak of 2016, the year of the referendum to leave the UK, as many investors put plans on hold or made smaller investments in an effort to hedge their bets.

This sits against the backdrop of major changes to FDI patterns and global value chains that, if not completely brought about by the pandemic, have certainly been exacerbated. One is a trend towards smaller FDI project sizes (in terms of headcount and capital volume), caused by technological advances and increasing automation. Related is a Covid-led trend for smaller office spaces as working-from-home becomes the new norm – a shift that has major implications for central business districts such as the City of London and may increase the attractiveness of tier two and tier three cities. The 'war for talent' will take on new dimensions as that talent scatters to more cost-effective and spacious living locations, bringing their home offices with them.

Another major trend that has been brought to the fore by COVID-19 is a heightened sensitivity to supply chain risk and a resultant desire to shorten them by bringing production facilities closer to home. In 2021 we expect to see continued waves of companies looking to reshore or nearshore their activities. For the UK, this trend will be complicated, and perhaps compounded, by the need for manufacturers to factor in the country's new trading arrangements to their supply chain and site-location strategies.

The eventual FDI recovery may be slowed by an increased level of protectionism compared to the previous global recession following the financial crisis of 2007-08. A number of countries, including some of the world's major investment destinations, have established new FDI screening mechanisms, expanded the range of sectors subject to them, and lowered the thresholds for investments that require prior approval. COVID-19 has added to the protectionist trend with many countries introducing temporary amendments to their regulations to protect vulnerable companies from predatory foreign investors. Already-cautious investors will be keeping a close eye on national FDI regulations, to see which remain permanent or which might be rolled back once the pandemic abates.

The UK is among the countries toughening up their FDI screening mechanisms, with the autumn 2020 release of its new National Security and Investment Bill, a wide-ranging reform that increases the government's power to scrutinise and halt foreign (and domestic) investment. The bill came out the very week the UK also announced the establishment of the Office for Investment, a cross-government group charged with attracting foreign investment. This duality – whether intentional timing or not – points to the careful line the UK will need to tread between throwing its doors open to FDI and protecting its security, domestic players and its own perceived interests. Once again, Brexit complicates this trade-off further as the UK seeks to safeguard its position as Europe's top investment destination and London's status as one of the world's leading business and financial capitals.

The newly agreed trade deal with the EU will give some basis for companies to plan for the post-Brexit future, but it omits the services sectors which account for the largest chunk of inbound investments into the UK (see chart). This includes Financial Services, the jewel in the crown of the UK economy. So plenty of uncertainties remain. Far from ending, the process of shaping the UK's post-Brexit future – and with it, the country's prospects as a world leading investment destination – are only beginning.

Courtney Fingar is editor-in-chief of Investment Monitor (www.investmentmonitor.ai), an online publication focused on foreign direct investment. Launched in 2020 by New Statesman Media Group, Investment Monitor provides data-led insights for corporate executives involved in their companies' global expansion decisions and other stakeholders in the global FDI ecosystem.

Courtney Fingar
Editor-in-Chief Investment Monitor

Foreign direct investment patterns (continued)

Sector breakdown for UK FDI projects

	FDI Projects			New Jobs		
	2017-18	2018-19	2019-20	2017-18	2018-19	2019-20
Advanced engineering and supply chain	147	130	161	2,920	2,187	2,225
Aerospace	48	42	54	1,511	930	1,522
Automotive	108	93	80	4,133	2,712	3,212
Biotechnology and pharmaceuticals	74	53	56	2,025	1,290	1,264
Business and consumer services	160	155	164	7,467	6,345	5,353
Chemicals and agriculture	48	43	66	820	732	429
Creative and media	121	111	110	2,201	1,848	2,668
Electronics and communications	112	85	67	6,948	4,394	5,109
Environment, infrastructure and transportation	171	142	148	10,765	6,095	5,810
Extraction industries	39	41	33	641	1,279	2,240
Financial services	172	148	139	6,796	5,132	4,184
Food and drink	146	115	138	7,437	3,864	4,750
Life sciences	110	115	103	1,964	2,188	1,921
Renewable energy	68	41	37	1,620	1,017	876
Software and computer services	381	366	390	8,336	11,589	10,244
Wholesale	167	102	106	10,384	6,023	4,310
Total	**2,072**	**1,782**	**1,852**	**75,968**	**57,625**	**56,117**

Source: DIT FDI Results 2019-20

2 Economic prospects

UK economic prospects post COVID-19 in the backdrop of a greener global economy

After a tumultuous 2020, the new year began with positive news about the triumph of science over the virus with the discovery of safe and effective vaccines. This raised confidence in the UK and across the globe signalling that there really is light at the end of the tunnel and that as the population around the world begins to be vaccinated, the symptoms of the virus will affect less people.

So where does this leave the UK economy? At the beginning of 2021, our scenario based projections for the UK's real GDP growth ranged between 2-4% for the year. These projections are highly uncertain as they consider different epidemiological outlooks which account for various degrees of stringency in social distancing and other measures put in place to limit the spread of the virus as well as the take-up, effectiveness and availability of vaccines in the general population. As with most economic projections, they do not consider any possible future mutations of the virus as these are impossible to forecast.

There are also other short-term economic risks that could affect the UK's growth outlook including an unexpected wave of corporate bankruptcies, labour market scarring which leads to a protracted period of higher unemployment and slower than revival of demand in the global economy.

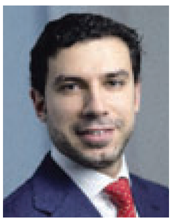
Our current scenario based projections for the UK imply that economic output is likely to recover to its pre-crisis levels between Q1 2023 to the middle of 2024. This pattern is not uncommon across other advanced economies. For example, we expect that other heavily-based services based economies (e.g. France and Spain) will also face a similar wait until their economy fully recovers. We also see that other capital goods exporting economies (e.g. Germany and Japan) are in a similar position as the pandemic has led to a temporary drying up of businesses investment.

Though the short-term outlook is challenging, there are also long-term impacts from the pandemic which business and policymakers will need to consider. COVID-19 will leave the UK more digitised but with bigger Government, more inequality and a renewed urgency to build resilience.

- On digitalisation, the shift to e-commerce with online sales reaching more than one third of retail sales in November, 2020 suggests that demand for retail store space could potentially stagnate in the future. This, coupled with the changing role of offices in the future, means that local policymakers will have to deal with changes in the demand for retail and office space in urban areas.
- On public finances, the Government's deficit for FY 2020/21 is likely to be larger than the £394 billion estimated by the Office for Budget Responsibility (OBR) in November last year which is broadly consistent with a public sector deficit of around 19% of GDP. Policymakers will therefore need to devise strategies to reduce the public sector deficit in the medium-term while keeping the headwinds to growth at a minimum.
- On inequality, while higher income households have increased their savings by 5-15%, lower income households have decreased by 10-15%. This highlights the need for renewed policy measures to tackle inequality by doubling down on levelling up.

Finally, one of the key trends that we expect will pick up momentum is the fight against climate change. 2021 will be the first year where the three main economies of the world—the US, the European Union (EU) and China—will all be focused on this task at the same time. The US has already applied to re-join the Paris Accord. The EU member states are expected to finalise their plans to accelerate their transition towards green by the end of April. And China's 14th Five Year Plan is expected to put into action a plan to dramatically increase energy efficiency.

For the UK, embracing the green agenda on a much bolder and grander scale is an inescapable fact. This could therefore be at the heart of the UK's levelling up agenda and be a leading creator of jobs in the future.



Barret Kupelian
Senior Economic Adviser, PwC

3 Understanding Brexit

Understanding Brexit

Please note that the commentary below was written in January 2021 and is based on the provisional Trade and Cooperation Agreement reached by the EU and the UK in December 2020. This summary may therefore be overtaken by events in the fullness of time and should therefore be read with this in mind.

The United Kingdom voted in a referendum in June 2016 to withdraw its membership of the European Union. This ultimately led to the UK legally ceasing to be a Member State of the EU on 31 January 2020 and entering into a transition period which ended on 31 December 2020. The EU and UK negotiated The Trade & Cooperation Agreement ('TCA') which came into provisional effect at 11pm GMT on 31 December 2020 and established the commercial and regulatory arrangements between the EU and the UK. The agreement is provisional upon ratification by the European Parliament which is expected by the end of February/early March 2021.

The TCA, which runs to over 1200 pages, sets out preferential arrangements in a number of areas such trade in goods, the digital economy, intellectual property and social security. It also contains arrangements to ensure a level playing field and maintain minimum standards in key areas of tax policy.

Given the importance of the TCA to the UK's relationship with the EU we focus below on summaries of the TCA's provisions in certain key areas which will form the relationship going forward between the EU and the UK.

1. Customs and VAT

The deal provides for a hard border to be established between the EU and Great Britain (Great Britain ('GB') includes England, Scotland and Wales – please see further below in relation to Northern Ireland). A hard border means, regardless of the tariff position, border control procedures will be in place and therefore businesses will now need to make customs declarations for both imports and export for movements of goods between the EU and GB. The movements of goods to and from Northern Ireland are treated differently as set out under the provisions of the Northern Ireland Protocol.

The TCA provides for movements of goods between the UK and EU to be tariff and quota free if certain criteria are met. However, the devil is in the detail, as the so-called 'rules of origin' will determine whether goods should be treated as being of UK or EU origin as appropriate and therefore whether a zero tariff rate should apply. Businesses will need to get to grips with these new rules and much more documentation is now required to be able to demonstrate whether the rules of origin criteria are met.

Facilitation schemes such as Authorised Economic Operators ('AEO') may become more valuable to traders in order to avoid the increased administrative burdens.

As previously known, the UK will be treated as a third country by the EU for VAT purposes (and vice versa). Additional VAT registrations may be required as a consequence of, for example, trading in goods on EU soil, or providing electronically supplied services to EU non-business recipients. EU simplifications using a GB VAT number (e.g. triangulation and call of stock) are no longer available.

For indirect tax purposes Northern Ireland will be treated as part of the EU in relation to supplies of goods and part of the UK in relation to supplies of services.

The movement of goods between Great Britain and the EU are therefore now very different to those in place when the UK was a member of the EU which requires businesses to adapt to these changes.

2. Direct tax and tax policy

As a member of the European Union there was an exemption from taxation for certain payments such as dividends, interest and royalties between the UK and corporate group entities in other EU member states. As EU directives no longer apply to such payments, the correct withholding tax position needs to be determined for such payments from the EU to the UK. It should be noted that the UK has an extensive tax treaty network which may offer relief.

However, the position of payments from the UK to the EU remains unchanged as the UK has incorporated the Interest and Royalties Directive into UK law (in a way that doesn't rely on the UK being a member of the EU for it to continue to be effective) and the UK does not levy dividend WHT.

The minimum standards for key tax policy measures will be those set by OECD as at 31 December 2020 and there is a requirement to bring in a system of subsidy control to avoid distortion in the market – e.g. measures like EU State Aid rules.

There is a commitment not to go below OECD standards (as they stood at the end of the transition period) in the areas of exchange of information, CFC rules, hybrids rules and interest limitations.

3. Immigration and social security

The TCA contained no significant detail in relation to immigration as that is dealt with and agreed at a member state level. However, there are significant changes to the UK's immigration system as it applies to EU nationals with effect from 1 January 2021. The UK's new immigration system applies to all EU nationals moving to the UK from 1 January 2021 (who are not covered by the Withdrawal Agreement). Individuals who do not qualify in a personal capacity (for example as a spouse/partner of a UK national) will require visa sponsorship from a registered employer. The individual will need to meet the relevant skills and salary thresholds for the particular visa category and/or role they are undertaking.

UK nationals travelling to the EU will need a valid passport with at least 6 months remaining until expiry. UK nationals will be able to travel to the Schengen Area for 90 days in a 180-day period (business visitor and personal travel) and there will be additional border checks. An individual's activities will need to be considered against the permissible business visitor activities to determine whether a work permit is required.

EU nationals visiting the UK will be able to spend up to 6 months in the UK in a single visit but will be subject to additional scrutiny where they exceed 180 days in any rolling 12-month period. They will be able to travel using either an EU passport or National Identity Card.

The TCA contains provisions covering social security arrangements and elements in relation to short-term business visitors, intra-corporate transferees, contractual service suppliers and independent professionals. It also contains a number of social security coordination measures aimed at protecting the entitlements of EU citizens temporarily staying in, working in or moving to the UK after 1 January 2021. This applies equally to UK nationals working in EU member States.

From 1 January 2021, the current EU coordination rules on social security have been replaced by the Protocol on Social Security Coordination. This will ensure that individuals who move between the UK and the EU after 1 January will have access to reciprocal healthcare cover.

4. Data protection

As at 31 December 2020 the EU's assessment of the UK's data protection regime (the adequacy assessment) had not been concluded.

The TCA grants an extension for personal data to continue to flow from the EU & EEA to the UK for an initial period of 4 months (extendable to 6 months) or until the adequacy assessment is completed, whichever is sooner. This provision is conditional on the UK keeping its data protection laws as they currently stand. This extension does not necessarily mean that the UK will be granted adequacy status and therefore businesses are required to ensure they have undertaken a risk assessment of the consequences of adequacy status not being granted.

For flows of data from the UK to the EU, the UK treats all EEA jurisdictions as adequate.

5. Governance framework and dispute resolution

The TCA establishes a series of bodies to undertake the governance of its terms, each of which are co-chaired by representatives of the EU and UK.

Decisions will be made by mutual agreement in each of these bodies and there will be no role for the CJEU in dispute resolution.

6. Other areas

There are many other matters which are changing on the context of Brexit and we have listed some of them below:

i. Northern Ireland

Northern Ireland remains subject to the provisions in the Northern Ireland Protocol agreed between the UK and the EU. On this basis Northern Ireland remains within the EU Single Market and a customs and regulatory border is in place between Northern Ireland and Great Britain.

As far as the trade of services is concerned, the position of Northern Ireland will be identical to that of the rest of the UK.

ii. Services

The TCA does not contain provisions replicating the single market's freedom of movement, establishment and provision of services.

Financial Services are not covered in any detail by the TCA. There are no equivalence decisions or the mechanics by which such are to be made within the TCA. However, in the separate joint declaration both sides agree to seek to reach an agreement on a way forward in respect of equivalence decisions in future.

UK financial businesses can no longer exercise EU passporting rights to provide services in the EU (and vice versa).

iii. Mutual recognition of professional qualifications

The TCA does not offer EU-wide mutual recognition of professional qualifications, although there are provisions that permit the future recognition of such qualifications on a profession by profession basis.

In the absence of such measures, individual Member State requirements will need to be met.

iv. Product conformity

The TCA does not include any mutual conformity recognition standards for products. This will mean that for most products they will need to conform to separate UK and EU standards if they are to be sold in both markets. There are simplified rules for certain sectors – e.g. chemicals, motor vehicles and parts, organic products, wine. Simplification measures such as self-certification, are available in certain circumstances.

v. Intellectual property

The TCA provides for high standards of protection for, and enforcement of, IP rights.

There are non-discrimination provisions to ensure no less favourable treatment given to the nationals of the UK by the EU than it gives its own nationals and vice-versa.

There are detailed provisions covering registration, and protection of (i) copyright and related rights; (ii) trademarks; (iii) design; (iv) patents; (v) undisclosed information; and (vi) plant varieties.

At the time of writing the TCA has just been negotiated and is still to be formally ratified by the EU. Time will tell how businesses will adapt to the changes required to the new relationship between the UK and the EU. However, what is clear is that any UK business which wishes to trade with the EU and vice versa will need to fully understand and implement the new way of working in order to be able to trade in a compliant manner on a going forward basis.

Brexit's impact on the UK cross-border merger regime

The Companies (cross-border mergers) Regulations 2007 set out the UK law governing the cross-border merger regime and derived from European legislation. As a consequence of Brexit and the end of the British transition period, the Regulations were formally revoked on 31 December 2020. Consequently, cross-border mergers are no longer legally possible for UK companies. However, the traditional route of transferring a business cross-border followed by dissolving the transferor entity (by liquidation or strike-off) will still achieve the end result from a legal perspective albeit via different legal mechanism.

For further information, please visit our website:

Beyond Brexit:
https://www.pwc.co.uk/the-eu-referendum.html

UK Trade Deal:
https://www.pwc.co.uk/services/tax/insights/trade-cooperation-agreement-between-eu-and-uk.html

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The UK regions

PwC perspective on international trade and reflection on the regions

We are living through times of unparalleled change. The COVID-19 pandemic has tested our resilience – of our institutions, of our companies, and of ourselves as individuals – in ways we had never imagined. As we recover from this period of intense disruption we will see what returns to normal and what has changed for good.

Here in the UK, we are doubling down on change. For nearly 30 years the UK's proposition for international investors has been based, at least in part, on membership of the European Union's single market. Now we have left the EU, the UK is beginning a new chapter based on asserting its own, distinctive strengths, rather than its alignment to those of its European neighbours.

The UK's own strengths are many, and varied. Trying to define the UK's core strengths is like trying to agree on the best spice in a chicken tikka masala: there are too many to choose from and they all enhance each other. For some of our international clients, the UK's value is in its stability, in its rule of law and in its shareholder protections. Some tell us they value the rich and deep labour market which provides access to the skills they need. And some tell us that they value the open, transparent and accessible business culture that makes doing business here straightforward.

But what's common across the majority of our clients is the emotional connection that they have for the UK. The UK's schools and universities have educated more world leaders than any other country; our world-renowned creative industries, media and sport create a cultural affinity far beyond their direct economic impact; and our cities show a cultural diversity, energy and tolerance not found in many other countries. All of which means that the UK is the world's favourite second home: somewhere that more people from more countries feel at ease, feel welcome, and feel confident.

PwC is starting a conversation – across business, government and society – to examine what the UK stands for in global markets and to set out a new vision that is fit for this next phase of our development. It is our hope that the vision builds on this emotional connection. In a world that was fracturing long before COVID-19, there is a critical role for multilateralism, for international collaboration and for a values-based approach to international trade and investment. We want international investors to be confident not only in the UK's stability, not only in its skills and resources, but also in its values. If the UK can enhance its reputation as somewhere the world can come to seek advice, to learn, to find solutions or to resolve differences, then we will have a genuinely differentiated position in world markets.

The UK is taking a dose of this medicine itself. The pandemic has shown us what can be achieved when different organisations across the public and private sector align behind a common goal and shared values. For example, our world-class healthcare ecosystem has shown innovation, organisation and compassion in equal measure in developing and delivering the Oxford-AstraZeneca vaccine. This level of collaboration feels new for a country that has traditionally maintained a respectful distance between state and industry, and that has encouraged unfettered competition in the private sector. We expect that the next few years will see an increased level of collaboration across the different segments of our economy as we align behind the need for an economic recovery and show that trade and investment is best played as a team sport.

This collaboration is not just between central government and big business. This report contains brief profiles of some of the UK's regions, which each have distinctive strengths and characters and offer investors a choice of locations to best suit their needs.

As governments around the world seek to assess and mitigate the economic and social damage done by COVID-19, there is a risk that the world turns inwards, raising barriers to trade and reshoring supply chains, at the very time it needs to kick-start the trade and investment that can help the recovery. The UK's values - openness, tolerance and multilateralism among them – have never been more important.

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Please also find more information on the growth in the cities using the following link:
https://www.pwc.co.uk/goodgrowth

UK regional overviews

South East

Region

South East

Population

15.41 mn

Key industry clusters

Consumer Markets, Industrial Manufacturing and Services, Government and Health

Main universities

Cambridge, Oxford, East Anglia, Essex, Hertfordshire, Southampton, Sussex, Reading, Surrey, Oxford Brookes, Kent and Middlesex

Main transport links

Air: Heathrow, Gatwick, London Luton, London Stansted, Southampton

Rail: Multiple routes run by Southern, Southeastern, South Western, Greater Anglia

Road: M25, M1, M2, M3, M4, M11, M20, M23, M26, M40.

Ports: Southampton, Portsmouth, Dover, Felixstowe

What makes this region stand out is the combination of world-leading education institutions (Oxford and Cambridge ranking the two of the top five in the world), globally competitive business clusters, highly skilled workers, entrepreneurship/innovation and it being an attractive place to live, geographically surrounding London. It is also a wide ranging and diverse geography with many different characteristics.

We have five distinct sub-regions in the South East region:

- Our Reading office is the firm's National Tech Hub with Reading being the centre for tech based businesses. Industry focus in our Reading office is Tech and Life Sciences. Our Reading office covers Oxford and the Thames Valley.
- Southampton represents the South Coast, an aerospace and defence, maritime, retail and Financial Services focused market.
- Cambridge moved offices in 2019 to be in the heart of the Cambridge Science Park. Key industry focus on Agritech, Biotech and other Tech (e.g. AI).
- Gatwick covers the South of London, Surrey, Sussex and Kent and as such has a large addressable market across private business, inbound with an industry focus on Financial Services and Travel.
- Watford is a wide ranging and fragmented market with a large client base, with many large corporates and pharma and private business at its core.

On a macro basis the Government's Leveling up agenda and the SE role in this needs to be considered (with the SE not Levelling down during the process). The South East has 12 county councils (nearly 50% of total in England), and 18 unitary authorities.

The South of England has two of the top three cities for 'gross value added' (GVA) per worker across the United Kingdom (71,600 GBP in Slough and Reading in Berkshire). This means that it is home to some of the most productive workers in the UK.

Many global companies have their UK HQ's in the region – examples include Microsoft, Oracle, Nestle, C.H. Boehringer, Honda, Samsung Electronics, Siemens, Thales, Sony Corporation, Ford Motor Company, Hutchison Whampoa, IBM and Mars Incorporated.

The South of England is home to the UK's top regions for foreign direct investment (FDI). In 2016, the South East and South West had 318 new FDI projects - creating almost 9,000 new jobs. (DIT Inward Investment Results 2016-17).

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London

Region

London

Population

9 mn

Key industry clusters

All sectors and industries are relevant due to access to Capital Markets and Infrastructure of London. Presence in all industries with Financial Services being prominent and significant activity and opportunities in Central and Local Government, Business Services and Technology, Media and Telecom.

Main universities

Imperial College London, University College London, King's College, London School of Economics and Political Science and Queen Mary University of London

Main transport links

Air: Heathrow, City, Gatwick and Luton

Rail & Road: Links to all major cities

London is a world famous, cosmopolitan city and a top ranking destination for businesses and tourists alike. London continues to prove itself as an influential, innovative and entrepreneurial city and a vibrant and exciting place to live and work.

'The City' is home to an international stock exchange and counts Financial Services as it's largest industry and one of the world's leading financial centres. On the LSE's main market there are more than 1,100 companies listed with a market cap of £3trn. Aside from Financial Services, London is home to a number of industries including technology, media, professional services, retail and hospitality and creative industries.

London's growth rate is forecast to be -9.5% in 2020 due to the COVID-19 crisis. This growth rate is expected to rebound to 6.2% in 2021 and 6.9% in 2022.[1] London's favourable time zones, access to talent and global markets means London is one of the top destinations for foreign direct investment (FDI). London secured 48.5% of all UK projects including two thirds of all inward projects in the digital sector.[2]

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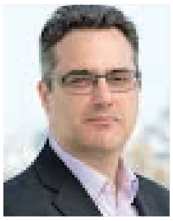

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[1] London's Economic Outlook: Autumn 2020. Date published: 07 December 2020. Website: london.gov.uk

[2] House of Commons Library Briefing Paper Number CBP-8534. 23 December 2020. Foreign Direct Investment Statistics

Midlands

Region

Midlands

Population

10.8 mn

Key industry clusters

Industrial Manufacturing & Services, Consumer Markets, Financial Services, Aerospace, Transportation, Life Sciences.

Main universities

Warwick, Birmingham, Leicester, Nottingham, Loughborough, Coventry, Derby, Staffordshire and Wolverhampton

Main transport links

Air: Birmingham Airport, East Midlands Airport,

Rail: Birmingham New Street, Coventry Station, Wolverhampton Station, Leicester Station, Derby Station, Milton Keynes

Road: M1, M6, M11

Historically, the Midlands region was the heart of Britain's innovation - during the nineteenth century, Birmingham registered 300% more patents than any other city globally. It's a region famous for its distinguished history in industrial and advanced manufacturing, with global powerhouses HQ'd within the Midlands. Today the region is already an engine for economic growth in the country, and is incredibly well connected to the rest of the UK with air, train or road links to all other major hubs (with HS2 arriving soon), and we're currently seeing investment within Coventry focusing on very light rail, and integrated transport. In 2018, the region accounted for a larger economy than Denmark and exported almost £50 billion of goods globally.

The region has expertise and a focus on the future of mobility, with Milton Keynes successfully running a 5 year EV Bus Project. It is also a hub for data driven health and life sciences, and creative content, techniques and technologies – the Midlands is leading the way on 5G.

The region is regarded as the best place in Britain to become a centre for advanced manufacturing, however the region today is already well known for manufacturing in all forms. The Midlands is also very well balanced, home to a number of large retailers, wholesalers, transportation, and Financial Services firms, and is home to one of Britain's newest 'unicorns' in the fitness industry. An increasing number of entrepreneurs are choosing the Midlands to begin their businesses for a huge number of reasons - not least because office rents can be four times cheaper than London, positioning the Midlands attractively for established businesses as well as those looking to scale.

The region has fantastic international connectivity with the West Midlands alone accounting for 8% of the UK's total FDI projects in 2019/20, with 157. This is the largest proportion outside of London & the South East. Our Universities also have strong international connections which, in turn, accounts for a large amount of international students studying in the region and staying to work after their studies.

In a post-COVID world cities such as Birmingham, Milton Keynes, Wolverhampton, Coventry, Leicester, Nottingham, Stoke-on-Trent & Derby, as well as the other options with fantastic links to the rest of the UK and internationally, will prove to be highly attractive options for all businesses with the combination of affordability, connectivity, talent and innovation. available.

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North

Region

North

Population

15.5 mn

Key industry clusters

Consumer Markets and Manufacturing (two biggest industries), large Public Sector, Financial Services, Pharma, Energy and Utilities.

Main universities

Manchester, Manchester Metropolitan, Salford, Leeds, Leeds Beckett, Bradford, Huddersfield, Hull, York, Sheffield, Sheffield Hallam, Liverpool, Liverpool John Moores, Newcastle, Northumbria, Lancaster, Durham and Chester

Main transport links

Air: Manchester Airport, Liverpool John Lennon Airport, Leeds Bradford Airport, Newcastle Airport

Rail: Liverpool, Manchester, Leeds, York, Sheffield, Hull, Newcastle

Road: Motorway links between cities and to Birmingham/London including M1, M6, M62

With 2,642 businesses per 10,000 resident adults, the Northern region is a thriving hub of economic activity and is at the forefront of innovation and investment. The North is a well balanced region made up of several key industries, including manufacturing, retail, pharma and energy and utilities.

Other prominent industries include chemicals, digital technology, and rail infrastructure. It also has a strong media presence with the move of the BBC to Manchester and Channel 4 to Leeds.

With Manchester bringing in 34 foreign direct investment projects in 2019 and the North East creating 2500 jobs from FDI, both the highest performers in these categories outside of London, it is evident that the North is a hub of international trade for the UK. Excellent international transport links and global partnerships between foreign Universities such as the University of Manchester with the university of Hong Kong and Liverpool University with the Queensland University of Technology. This invites both international business and young talent to invest and study within the region.

The face of the Northern market is changing, with the majority of the region now having devolved powers, and initiatives such as the Northern Powerhouse and HS2 will provide opportunities in the region. Additionally, the Government's Levelling Up agenda represents an intention to further enhance the socio economic environment in the North. These developments will provide an attractive post Covid environment for large businesses looking to re-locate head office and/or important functions in the region.

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West and Wales

Region

West of England and Wales

Population

West of England

5.6 mn

Wales

3.1 mn

Key industry clusters

Financial Services, Aerospace & Defence, Cyber, Technology, Government and Health, Creative Industries

Main universities

West of England: Bristol, Bath, Exeter, West of England and Plymouth

Wales: Cardiff, South Wales and Swansea

Main transport links

Air: Bristol Airport, Cardiff Airport

Rail: London Paddington through Bristol and onto either Swansea, or to the South West. Journey times have been reduced during 2019/20 as lines have been electrified on the London to South Wales route

Road: M4 links South Wales and Bristol to London, M5 links Bristol to the Midlands and to the South West.

The West of England and Wales region represents a diverse economy with a mixture of specialised industries, utilities and a blend of public and private sector.

The region is an important UK hub for Financial Services and aerospace and defence. It's known globally as a specialist hub for education, creative media and highly skilled tech industries. Some of the UK's leading universities are located in the region including Bath, Bristol, Exeter and Cardiff, producing a pipeline of talented graduates and a highly skilled workforce. Bristol is a globally recognised creative media centre – it's the home of the BBC's renowned Natural History Division (Blue Planet, Planet Earth), the Oscar winning production company Aardman Animations, and a number of private sector producers. Cardiff is also a production hub for the BBC (Dr Who, Casualty).

The region hosts the largest aerospace cluster in the UK, contributing to an advanced engineering hub in the region. Airbus UK is headquartered in Bristol with significant operations in Wales. In addition, BaE Systems, Rolls Royce, Thales and GKN Aerospace operate in the region, as well as smaller players in the supply chain.

Foreign direct investment into the region covers these sectors but has also expanded into many other high value sectors. Many global companies have UK bases in the region in the Financial Services, energy and manufacturing sectors. These include Honda, Orange, Zurich, BMW, LG, Borg Warner and Munich Re. The region's key urban hubs have built on their traditional bases to now be considered as centres for a highly skilled labour force.

The availability of skilled labour, ease of doing business, connectedness and proximity to London, quality of life, including availability of high quality education and cultural capital, have all contributed to the region's attractiveness for FDI.

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Scotland

Region

Scotland

Population

5.5 mn

Key industry clusters

Financial Services, Energy, Utilities and Resources, Technology, Food and Drink

Main universities

Herriot Watt, Robert Gordon, SRUC Scotland's, Rural College, Edinburgh, Aberdeen, Dundee, Glasgow, St Andrews and Strathclyde

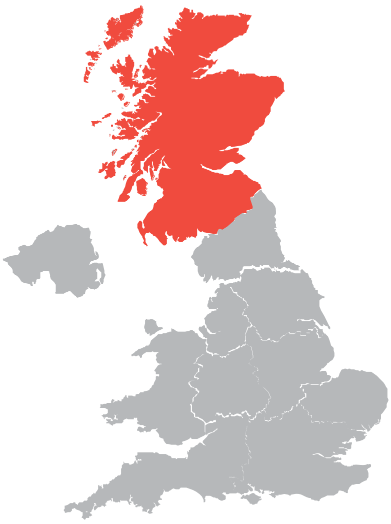
Main transport links

Air: Aberdeen, Edinburgh, Glasgow, Glasgow Prestwick

Rail: Edinburgh Waverley, Haymarket, Glasgow Central, Glasgow Queen Street, Aberdeen, Inverness

Road: A1 (M), M74

Ports: Numerous



Scotland is a global leader in the energy sector, which is set to continue with traditional skills in the oil & gas sector lending themselves to innovative energy transition businesses. Furthermore Scotland's abundance of natural resources, particularly renewable energy sources, means the country is a critical global centre for renewable energy production.

Ongoing investment in digital skills and digital infrastructure, such as thousands of people undertaking advanced training each year and a commitment to superfast broadband for all premises in Scotland, has created the perfect environment for technical innovation. Scotland is a go-to destination in Europe for tech, with start-ups thriving across the country. Combine this with an established Financial Services sector and this makes for the ideal conditions for a flourishing FinTech hub.

A culture of innovation extends into industries such as Food & Drink and Aerospace, with a focus on collaboration between world-leading academia and industry.

An ambitious infrastructure investment plan is set to inject £32 billion of funds into physical infrastructure specifically targeted at making Scotland even more attractive to international business.

The warmth, generosity and determination of the Scottish character makes Scotland a truly enjoyable place to do business. Your business will benefit from access to a highly skilled workforce whilst driving forward Scotland's vision for inclusive growth, with zero carbon and fair work at its core.

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Northern Ireland

Region

Northern Ireland

Population

1.9 million

Key industry clusters

Service sector (accounts for around half of economic activity), Public sector – education, health and public administration (accounts for over a quarter of total employment), Agriculture, Construction, Retail, Manufacturing, maturing Fintech and Cyber sectors and an established hub for research and innovation in Life and Health sciences.

Main universities

Queen's University Belfast and Ulster

Main transport links

Air: Belfast International (BFS) (mainly international routes), George Best City (BHD) (mainly domestic routes) and The City of Derry Airport (LDY)

Rail/Road: Train and motorway links between Belfast and Dublin. Ongoing investment in motorway links between Belfast and Derry/Londonderry.

Ports: Belfast Harbour is Northern Ireland's principal maritime gateway and logistics hub, serving the Northern Ireland economy and increasingly that of the Republic of Ireland. Around 70% of Northern Ireland's and 20% of the entire island's seaborne trade is handled at the harbour each year.

Northern Ireland is one of the four constituent nations of the United Kingdom it has a population of 1.9 million people and one of the youngest populations in Europe, 53% is under the age of 40. It is 13,600 sq km in size, accounting for six per cent of the total UK land area.

In recent years, Northern Ireland has established itself as a top destination for fintech development inward investment, and the region's strong data capabilities have resulted in increasing growth in knowledge industries such as cyber security. There is a vibrant advanced manufacturing and engineering sector. It is a location chosen by a variety of investors whose businesses are supported by low-cost customer support services. Operating costs in Northern Ireland are highly competitive and significantly lower than the rest of the UK and much of Western Europe. It benefits from low salary bases, prime office rent and low workforce attrition.

Northern Ireland is consistently the top performing region of the UK at GCSE and A-level examinations (equivalent to high school diploma). In 2019, 84.8% of Northern Ireland students achieved the three top grades in A-level exams, compared to 75.8% in the rest of the UK. 77% of school leavers go onto further and higher education and it is home to two world-leading universities, Queen's University Belfast and Ulster University and a vibrant network of further education colleges.

Belfast is ranked as the world's top destination for financial technology investment projects and has been ranked in the top three Fintech locations of the future after London and Singapore (Source FT FDI Markets 2019). Over the past 12 years, Northern Ireland has been establishing a reputation as a global hub for fintech and cyber. The result is that the region is currently classified as the world's top location for Financial Services technology inward investment, (source: fDi Markets FT 2020) 2003-2020. And Belfast is Europe's leading FDI destination for new software development, (source: fDi Markets FT 2020) 2003 – 2020. The region has established itself with strong credentials in cyber and is the number one international investment location for US cyber security firms, (source: Markets FT 2020) 2014-2020. It is also one of Europe's most business friendly regions of its size. (source: fDi European Cities & Regions of the Future, 2018/19).

Over 1,100 international investors and a multitude of investors from the rest of the UK have chosen to locate in Northern Ireland. Over 70% of new inward investors reinvest in Northern Ireland. The size and accessibility of services in the region has proved to be attractive to these investors; the smaller geographic area is easier to get around particularly if investors need to visit lawyers, accountants, clients all in a single visit. Investors like that they can visit ROI within a few hours and the land border with ROI means more accessibility from US/Europe/Australasia regions.

Northern Ireland (continued)

Northern Ireland has a unique position post the UK leaving the EU. While businesses in Great Britain face a range of new non-tariff trade barriers, Northern Ireland will not face these non-tariff barriers as it will effectively remain within the EU's single market for goods. This is a consequence of the Northern Ireland Protocol, a special deal to prevent the re-emergence of a hard border between Northern Ireland and the Republic of Ireland. The protocol does that by keeping Northern Ireland in the EU's single market for goods and by having Northern Ireland apply EU customs rules at its ports. Therefore, from 1 January 2021 goods arriving from Great Britain will be checked and controlled at Northern Ireland's ports, but goods going into the Republic of Ireland and the wider EU face no new checks or controls.

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The Department for International Trade

The Department for International Trade (DIT) offers dedicated, professional assistance, whether you are growing your business into the UK for the first time or expanding your existing presence.

We can tailor an end-to-end service for you, enabling you to access our bank of knowledge and our specialist expertise and let us bring what we know best – doing business in the UK and navigating government – to what you know best: your business.

Our aim is to show you the value the UK can offer, give you the information you need to make business decisions and support your growth in the UK. And rest assured that all our dealings are 'Commercial in Confidence' and free of charge.

We are waiting to support you in the next step of your journey.

DIT supports businesses in all four nations of the UK and work in:

- **9 regions around the world**
- **117 separate markets**
- **197 individual locations.**

The Department for International Trade develops Regional Trade Plans and activities promoting UK exports and inward investment across nine regions of the world, each led by a HM Trade Commissioner.

Opportunities across UK regions and industries

The Department for International Trade (DIT) has dedicated investment advisors delivering on our ambition to raise the level of economic performance across the whole of the UK and to support your business in whatever area you decide to grow in. Each UK region is well connected and home to top-tier education facilities that lead to a pipeline of highly skilled workers in a range of industries.

DIT can help your business take advantage of the most innovative emerging sectors and locations across the UK.

Discover the high potential opportunities within each region:

Wales	Welsh industry is diverse, including leading innovation in compound semiconductor technology. The region boasts a growing digital technology sector that is supporting a variety of sub-sectors within financial services, such as FinTech. You will also find life sciences and advanced manufacturing expertise in the region, as well as growing opportunities in medical technology.
Scotland	Scotland is an attractive UK destination for inward investment. In the region you will find capabilities in offshore wind and expertise in renewable energy sources. The regions research and development make it attractive to investors and this translates into the region's strengths across precision medicine and manufacturing. You will also find a strong chemical base, opportunities in financial services, and a digital media sector at the forefront of innovation in gaming, TV, and publishing.
North of England	The North of England is home to a variety of high opportunity industries, including advancements in materials such as carbon fibre and sustainable packaging. The region is home to experts in basic and speciality chemicals, rail infrastructure, agricultural technology, and applications of Data and AI analytics. If your business is life sciences, then you'll find strengths in tissue regeneration and wound care, as well as molecular diagnostics and early detection for healthy ageing.
Midlands	The Midlands is a magnet for overseas investment, offering expertise in advanced manufacturing and automotive research. Applications of 5G in the region are contributing to exciting developments in Industry 4.0, while work on robotics is transforming food processing. There are also advancements in space and satellites at Space Park Leicester, as well as CAV modelling and simulation, and data driven healthcare. If your business is creative, then you can find the next level of gaming production in this region.
South of England	In the South West you'll find highly mineralised areas which offer the metals vital to modern technology, as well as the future of automotive in sensors for autonomous vehicles. This is supported by strengths in 5G and digitalisation. With proximity to the coast there are also opportunities in aquaculture and marine autonomy. The region also boats capabilities in immersive technology, smart aviation, cell and gene therapy, and civil nuclear fusion and supply chains.
Northern Ireland	Northern Ireland is a top destination for fintech development inward investment, and the regions strong data capabilities have resulted in increasing growth in knowledge industries such as cyber security. In the region you will also find a vibrant advanced manufacturing and engineering sector. It is a location chosen by a variety of investors whose businesses are supported by low-cost customer support services and a steady influx of visitors who are attracted to the stunning scenery in the region.

Interested? We can help you get started.

Find out more about high potential opportunities across the whole of the UK and register your interest: invest.great.gov.uk/high-potential-opportunities

Accessing our free service to grow your business in the UK

Our commitment to you

- A dedicated account manager who can help you access the services you need.
- Tailored information on market opportunities, skills availability, site locations, financing and grant/incentive options to help you build your business case.
- Regional and local location analysis to help you choose the right place for your business to grow.
- Support in understanding and navigating government policies in areas such as visas, regulatory frameworks and planning.
- Introductions to sector networks including industry leaders, chambers of commerce, service providers, universities and centres of R&D excellence.
- Access to the UK Investment Support Directory, enabling you to find companies with skills and expertise to support you further
- Continued support to aid your future growth.

Top 5 services for UK-based companies

1. Signposting to government guidance, support and funding.
2. Helping companies access talent.
3. Profile raising at events and networking opportunities.
4. Bringing in overseas staff.
5. Assessing market opportunity through bespoke research.

Top 5 services for companies entering the UK market

1. Setting up in the UK.
2. Explanation of the tax environment in the UK.
3. Support with visa applications and entry to the UK.
4. Assessing market opportunity through bespoke research.
5. Tailored assistance for entrepreneurs.

If you would like to discuss your plans, you can contact our Investment Services Team at **invest.great.gov.uk/int/contact**

They can also put you in touch with staff at your nearest British Embassy, High Commission or a Local Trade Office, who can advise you.

For further information, please visit: **invest.great.gov.uk**

Department for International Trade

5

The UK as a business hub

The UK as a business hub

The use of the UK continues to be popular amongst global businesses. The strong business environment, supported by a relatively stable and competitive tax regime, helps draw these businesses to the UK.

Strong business environment

- A well-established corporate and commercial legal system, based on English common law.
- The UK attracts an internationally mobile, diverse and highly skilled workforce.
- Attractive location for senior executives and their families, with high quality housing, schools and leisure activities.
- Open market and diversified economy with a long and successful history of international trade.
- A strong international business community.
- Excellent transport links with the rest of Europe and internationally.
- Top class environment for research and development work.
- Leading global financial center.
- Access to capital through the UK markets.

Key features of the UK's tax regime

Direct tax

- Currently the lowest corporate tax rate in the G20 at 19%, rising to 25% from 1 April 2023, with a number of valuable exemptions and reliefs.

Dividends

- A widely applicable exemption from tax on dividends received was introduced from 1 July 2009. Unlike some other countries, the exemption is 100%, there is no holding or minimum underlying tax rate requirement.
- There is no UK withholding tax on dividends paid, under domestic law.

Established interest deductibility regime

- The UK continues to offer tax deductions for interest expense subject to limitations based on level of EBITDA, external debt and anti-avoidance provisions. The UK rules are compliant with the BEPS recommendations.

Substantial shareholdings exemption

- The UK offers an exemption from corporation tax on chargeable gains made on a sale of shares in trading companies for investments in which the UK company has had a substantial shareholding (broadly 10%).

Territorial tax system

- The UK operates a territorial tax system for companies, where the focus is on taxing profits earned in the UK. As well as the dividend exemption, companies may elect to exempt overseas branches and instead fall within the Controlled Foreign Company regime.

Extensive treaty networks

- The UK has a large number of tax treaties (over 130) and bilateral investment treaty networks, significantly reducing the level of UK withholding tax on royalties, and interest paid by UK companies and of withholding tax imposed overseas on payments of interest, royalties or dividends paid to the UK.

Tax incentives for innovation

- The patent box regime gives an effective tax rate of 10% on profits from the development and exploitation of patents where the claimant company has undertaken associated R&D. The patent box benefit may be reduced where the R&D has been subcontracted within the group or the IP has been acquired
- Significant research & development relief is available to any company with qualifying expenditure, with 'above the line' credits capable of being repaid even if a company is loss making for tax purposes.
- Tax-deductible amortisation on most intellectual property.

Capital allowances

- Capital allowances (UK tax depreciation) available on a wide variety of capital expenditure.
- Generous super-deduction provides a 130% first year allowance for expenditure that qualifies as the main pool plant and machinery.

Other features

- A broad variety of government grants are also available for investment in R&D and innovation.
- Internationally well respected and robust tax authority with assigned customer managers.
- Flexible profit and loss offset (via group loss relief surrenders).

Flexible customs duty and VAT regulations

- Value Added Tax (VAT) has a main rate of 20% which is broadly in line with the average EU standard rate and is applied to both goods and services. Certain supplies are exempt from VAT (no VAT on the supply, but no refund of the VAT incurred on the costs of supply), while others are at a reduced rate (5%). Uniquely, the UK also has a broad range of zero-rate supplies, which means VAT on the supply is 0% but input VAT may be reclaimed.
- For certain imports of goods, import VAT can be accounted for by using postponed accounting through the importers VAT return. This will remove the requirement to pay import VAT or defer import VAT to a deferment account on goods at import into the UK. This new facility is available from 1 January 2021.
- Customs duties apply to the imports of certain goods from outside of the UK.

Personal tax

- Significantly lower employer and employee social security rates than many other countries.
- Competitive personal tax rates, with some attractive investment reliefs.
- A tax efficient pensions regime.
- Expatriate incentives for secondees including:
  - detached duty relief: tax deductions on accommodation, subsistence and home-to-work travel for secondments of up to two years;
  - tax relief on certain relocation costs and home leave flights;
  - overseas workdays relief: tax relief on workdays performed outside of the UK, subject to conditions; and
  - remittance basis of taxation: currently a tax exemption for non-UK-domiciled individuals on non-UK source income/gains which are not remitted to the UK.

Freeports

In the 2021 Budget the Chancellor announced the creation of 8 freeport sites across England.

Freeports are areas intended to stimulate economic activity; boosting trade, employment and innovation.

Businesses operating within freeports will benefit from tax reliefs, simplified customs procedures and wider government support.

This means businesses operating within freeports can benefit from deferring the payment of customs and tariffs until products are moved elsewhere within the UK, or benefit from exemption if goods are brought into the freeport area for storage and/or manufacture before being exported again.

In addition, temporary enhanced capital allowances and business rates relief are available for businesses investing in freeport sites.

Why do businesses move to the UK?

There are a number of reasons why businesses move their operations to the UK. Outlined below are the key considerations which suggest the UK is an attractive place to operate in

Business environment

- Attractive business environment
- Strong economy
- Central time zone
- Good transport infrastructure, English language, giving access to world markets

Skilled workforce

- World leading for numerous industries e.g. financial sector, creative and pharmaceutical industries
- Top class universities and R&D infrastructure
- Attractive location for employees with access to good schools, leisure activities
- Workforce diversity

Business focused tax regime

- UK has the lowest headline CT rates in G20 at 19%
- Framework in place to facilitate future 12.5% Northern Ireland corporate tax
- Generous 130% super-deduction for qualifying capital expenditure
- Relatively low social security costs vs other European countries

Innovation incentives

- R&D credits giving 'above the line' benefit for large business
- IP amortisation regime gives tax deduction for most intellectual property
- Patent Box gives 10% effective tax rate on certain profits from patented IP
- A regime of tax credits for creative industries

Territorial tax regime

- Territorial tax regime largely seeking to tax only UK related profits
- Tax-free sale of subsidiary companies
- Extensive treaty network which limits withholding taxes
- BEPS-compliant interest deductibility rules

Government support and certainty

- The UK government recently launched the Office for Investment to support investment opportunities into the UK, particularly those which align with key government priorities, such as reaching net zero, investment in infrastructure and advancing research and development
- Potential for HMRC engagement before businesses commit to move to UK
- Ongoing certainty available through advance pricing agreements and corporate tax clearances
- Some regional grants available plus practical help from the government's Department for International Trade ('DIT')
- The UK government has recently announced the creation of freeport sites intended to stimulate economic activity.

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Family businesses in the UK

Introducing UK family businesses

Family Businesses are the oldest and most common type of economic organisation around the world.

While a family business can be defined as a business where several members of the same family are involved as major owners or managers, they come in all shapes and sizes and are present in all industries. While the majority of family businesses are small and medium-sized firms, the concept of 'mum and dad shops' has been long since over-taken with some of the biggest companies in the country being family owned.

Every two years, PwC publishes its **Family Business Survey**[15] where family businesses are interviewed on their concerns, challenges, successes and thoughts for the future. We conducted the research in 2020 and the report setting out the survey results was issued in 2021.

Doing business with family businesses

Family businesses are driven by values, by culture and by 'doing things right'. When doing business with this type of organisation, it will be far from focusing on immediate returns and quick fixes. Family businesses display a very different dynamic as they are driven by the values that shaped their history and legacy. Family businesses focus on sustainable long-term success which makes them some of the most resilient groups in the face of economic downturns. Family businesses also strongly commit to their people and their markets; they usually display strong relationships built on trust across all stakeholders. Additionally, they are more entrepreneurial and have a bigger appetite for risk.

These characteristics are important to keep in mind when going into business with family-owned companies, as they have a tendency to look for stakeholders that display similar values when it comes to business, performance and relationships.

What's happening in this space?

2020 was a year unlike any other due to the Covid-19 pandemic, disrupting all sectors and industries globally; however, we saw family businesses being compelled to use this time to reflect on their future and start asking important questions about continuity, specifically regarding succession and the involvement of the next generation. Typically, the next generation is called upon to own and/or manage the family business or assets as a result of a sudden event (the death of a family member, a struggling business), but with the pandemic, the current generation suddenly became very aware of the importance of succession and estate planning, pushing it up the agenda. This was a positive and welcome outcome among the uncertainty and confusion brought by the pandemic.

Overall, family businesses have been resilient despite the disruption caused by the Covid-19 pandemic with only one in five businesses having to access additional capital[16]. Family businesses have focused on supporting local communities and their workforces as part of adjusting their operations during the Covid-19 pandemic.

Creating a legacy has been a goal for family business owners and the Covid-19 pandemic has led family business owners to continue to focus on this goal. This has been reflected by greater priority being given to succession planning. Additionally, it has led to family businesses acknowledging that professional support is required to address sensitive issues among the family. As a result, there may be a move towards professionalising family governance and codifying family values.

Sustainability has not been a key consideration for family businesses. 12% of UK respondents strongly agreed that sustainability was at the heart of their operations[17]. Globally, 20% of respondents strongly agreed that sustainability was at the heart of their operations[18]. Family businesses have found it difficult to link sustainability practices with their family values. This is an area that family businesses need to make progress in as potential censure from regulators and consumers could threaten the legacy that they are trying to create. Incorporating sustainability practices presents an opportunity to bring the older generation and the next generation together. The next generation is likely to have an interest in sustainability and this will meet their goal of driving social impact alongside taking care of the family business.

Looking ahead, diversification or expanding into new markets are key priorities for family businesses. Family businesses also anticipate strong growth by 2022.

Tomorrow's Leaders

Family businesses are nimbler, more flexible regarding decision-making and they pride themselves on the ability to change quickly. Innovation is a top priority for the majority of family businesses but experience suggests that passing on the business from generation to generation can cause resistance to change, caused by a pigeon-holed vision, lack of fresh perspective and of external knowledge. The implementation of initiatives to strengthen digital capabilities is not being prioritised across the sector. The pandemic has highlighted the importance of prioritising digitalisation; those family businesses with strong digital capabilities were able to adapt their business models quickly and take advantage of new opportunities.

Conversations between generations on digital strategy and how to prepare for a future shaped by digital disruption, artificial intelligence and dizzying fast-paced technological developments are continuing. The next generation can help drive digital transformation and are working with the older generation to bring about such change in a way that is consistent with family values.

PwC is working with family businesses in these specific areas, where we support them in building the bridge between generations, enable them to accompany change and help them to remain innovative in the face of disruption and succession challenges. By implementing the necessary governance tools, both at family and governance levels, the different generations prepare for the long-term while maintaining their family brand and corresponding values.

Succession

We have noticed that up until now, next generations have filled in the role of stewards of the business, making sure it gets passed on to the following generation in better shape than first received.

This approach is shifting. The current generation of next gens, the millennials, in addition to wanting to take care of the business, also want to leave their personal mark and to drive a real social impact. We are witnessing the rise of a generation that views the environmental, social and ethical impact of a business as important as performance and profit. They are vocal in their desire to participate in a career that is both meaningful and that will make a difference: 'Profit with Purpose'. These new priorities define them as drivers for change inside their families and family businesses, at a pace that the previous generations might struggle to keep up with.

These will be the business-owners and leaders of one of the biggest groups driving the economy in a few years' time, which may indicate a sector about to become one of the most innovative in the future. And yet, they will still be able to maintain an emotional connection to historical roots and a legacy of doing business with care.

Conclusion – 'Watch this space'

Globally, 51% of family firms are aiming to grow steadily in 2021[19]. 46% of UK respondents are aiming to grow steadily in 2021[20]. They are also optimistic about the future, diversification and finding new markets are on the agenda as top priorities. In parallel, these businesses are also increasingly acknowledging the relevance of good governance and a solid familial organisation in order to withstand time, conflict and change. And in this time and age, those who can react to adversity and deal with change have a good probability to drive the economy in whichever markets they're in.

It is time to recognise the impact and contribution of these types of businesses, as they are a force for good. And it's a force that's not going away any time soon.

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[15] https://www.pwc.com/gx/en/services/family-business/family-business-survey.html
[16] https://www.pwc.com/gx/en/services/family-business/family-business-survey.html
[17] Data is from PwC's Family Business Survey (2020). This data is related to the results that were published as part of the 2021 report
[18] Data is from PwC's Family Business Survey (2020).This data is related to the results that were published as part of the 2021 report
[19] https://www.pwc.com/gx/en/services/family-business/family-business-survey.html
[20] Data is from PwC's Family Business Survey (2020).This data is related to the results that were published as part of the 2021 report

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PwC's Pathfinder team

Here to help you every step of the way

Regardless of what kind of entity you would like to set up, where in the UK you would like to be based, the industry sector you are working within or the overseas territory from which you are launching into the UK, our UK PwC Pathfinder team is here **to help you with every step of your journey.**

Developing your international expansion strategy 1

Reviewing your global structure 2

Considering your options for new cross-border activities 3

Assisting with implementation 4

Taking care of annual compliance 5

Advising on opportunities and helping to manage risk 6

Our Pathfinder team is with you every step of the way, providing proactive and practical advice to facilitate the development and implementation of your global expansion strategy. 7

Specialist knowledge and experience

Our specialists understand the complexities involved with moving cross border and will leverage their wealth of experience to provide you with **proactive, and importantly practical, advice.** We will make sure that you are doing the right thing and have access to the right information and right people at the right time.

Mike Curran
Pathfinder UK, PwC

Claire Smith
Pathfinder UK, PwC

Imogen Saunders
Pathfinder UK, PwC

Our UK Pathfinder Team is led by Mike Curran, Claire Smith and Imogen Saunders who between them have a vast amount of experience in this market. They understand the challenges you will face and will guide you through the process to ensure it is efficient and streamlined, resulting in a structure which meets both your commercial requirements and local compliance requirements.

A summary of some of the questions you might think through when considering your expansion into the UK are at Appendix A. We would be very happy to discuss your international expansion plans further so please do get in touch.

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What do you need to consider if you are looking to expand into the UK?

Common questions to consider

1. What type of legal presence do I require?
2. How do I establish the entity?
3. What tax issues do I need to consider?
4. How do I deal with my employees?
5. What regulatory matters do I need to consider?
6. What other factors impact my ‘doing business in the UK’?
7. How do I close a UK business?
8. How do I acquire a business in the UK?
9. How do I list on a UK stock exchange?

1. What type of legal presence do I require?

- Choice of entity
- UK establishment
- Private limited company
- Limited liability partnerships

Choice of entity

There are three principal ways for a foreign investor or company to carry on business in the UK. You may:

- register a UK establishment;
- incorporate a private limited company; or
- incorporate a limited liability partnership.

A UK Establishment is the registration of an overseas company and can only be used by foreign companies. It does not have legal personality under UK law. When contracting with third parties the foreign company is the contracting party.

Both a private limited company and a limited liability partnership can be used by both foreign companies and individuals and have legal personality in UK law.

The registration processes and ongoing compliance and governance requirements associated with each of the entities is governed by the Companies Act 2006.

Before making your choice, you should consider the following questions:

- How substantial will your business activity in the UK be?
- What form of physical presence will you have in the UK?
- What risks do you anticipate during the initial set-up?
- How long do you expect to do business in the UK?
- What is the structure of your operations and governance in the UK and overseas?
- What are the associated regulatory costs?
- What are the external disclosure and reporting requirements?
- What are the tax implications?
- What are the commercial considerations?

UK establishment

Generally, if an overseas entity has established a place of business in the UK from which it does business, it must register a UK establishment.

Under UK law, a non-resident company has a UK permanent establishment if:

a) it has a fixed place of business in the UK through which the business of the company is wholly or partly carried on, or

b) an agent acting on behalf of the company has and habitually exercises in the UK authority to do business on behalf of the company (as long as they are not independent agents acting in the ordinary course of their business).

Examples of fixed place of business in UK law include: a place of management, a branch, an office, a factory, a workshop, an installation or structure for the exploration of natural resources, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, or a building site or construction or installation project.

Activities which are preparatory or auxiliary to the business as a whole will not generate a UK permanent establishment. Each case is considered upon its individual facts, so we recommend that advice is taken on each specific fact pattern to determine if a UK permanent establishment arises.

If you are required to register you must within a month submit the following documents to the UK Registrar of Companies:

- a completed form (form OSIN01) that provides such information as:
  - the official name of your company;
  - the country of incorporation;
  - the address of the establishment in the UK and overseas;
  - details of the directors and secretaries including the extent of their authority to represent your company;
  - details for the person authorised to accept service of process on behalf of the company;
  - details of the permanent representatives of your company in respect of the business of the UK establishment and the extent of their authority to represent the company;
- a certified copy of your company's constitutional documents;
- a certified translation of those documents (if they are not in English);
- a copy of the company's latest set of audited accounts (if the company is required to file accounts publicly in its country of incorporation);
- a certified translation of those accounts and the company's constitutional documents (if they are not in English); and
- the registration fee (£20 for the standard service; £100 for same day registration).

PwC has a wealth of experience in working with foreign companies and investors to assess whether a UK establishment should be registered along with the registration at Companies House, knowing what the Registrar is looking for when accepting a registration. This can be invaluable when your registration is time critical, for example when awaiting a visa for an employee to transfer to the UK.

Private limited company

A private limited company is a separate legal entity with its own assets and limited liabilities.

If you choose to set up a private limited company as a UK subsidiary, the parent company will typically not be liable for the debts and other liabilities of the subsidiary beyond the amount of the subsidiary's share capital, unless the parent company has provided an express guarantee in respect of the subsidiary's liabilities.

On the one hand, a private limited company:

- is the most common form of trading entity in the UK;
- can be more credible than a branch operation and is often more desirable for the purposes of holding regulatory licences with its trading activities ring fenced from its parent company; and
- offers flexibility of ownership (it can have one or more shareholders).

On the other hand, it must comply with accounting, audit and regulatory requirements (e.g. corporate governance reporting). The main compliance obligations for a private limited company are:

- filing a confirmation statement on the anniversary of incorporation with the Registrar of Companies confirming that information held by the Registrar, such as its share capital and officers, is up to date;
- filing statutory accounts for the company for each financial year/period and circulating those accounts to its members;
- maintain a register of ultimate beneficial ownership;
- notifying the Registrar of Companies of any event-driven changes to the company (for example, resignation and appointment of directors, a change in the share capital and a change of registered office address); and
- maintaining statutory registers for the company in the UK.

Other options

There are many other forms of partnership such as general and limited, as well as other types of company including public companies, company limited by guarantee and a private unlimited company.. The most appropriate vehicle will depend on specific facts and circumstances.

PwC can help to incorporate companies electronically on a same day basis. This is an efficient means of registering companies using articles of association which can be tailored specifically for subsidiary companies.

Limited liability partnerships

Historically a partnership structure has been the vehicle of choice of 'people businesses' such as accountancy and law firms, many of which have operated as partnerships for more than a century. Until 2000, these businesses would have operated as general partnerships or limited partnerships.

Limited liability partnerships ('LLPs') have been in existence in the UK since 2000 and have become increasingly popular. They have been widely adopted across various sectors e.g. insurance brokers and architects.

Like a limited company, an LLP is a body corporate which has a separate legal personality and is governed by the provisions of the Limited liability partnerships Act 2000 and Companies Act 2006. It is therefore an alternative to a simple company limited by shares.

Key characteristics

As a body corporate, profits, assets, and liabilities belong to the LLP and not to its members. Much of existing company legislation, set out in the Companies Acts, the Insolvency Act 1986 and the Company Directors Disqualification Act 1986 also applies to an LLP.

An LLP is deemed to be transparent for UK tax purposes and therefore tax will be assessed on the members individually rather than on the LLP entity.

All the Companies Acts provisions on financial disclosure which apply to companies also apply to LLPs, other than those relating to share capital. The Limited Liability Partnership Act 2000 ('The Act') and the Limited Liability Partnership Regulations 2001 ('The Regulations') also apply many of the other company disclosure requirements to LLPs, so that:

- the appointment of new members must be notified to Companies House as must the retirement of existing members; and

- an LLP must have a registered office and any change in that office must be notified to Companies House. In addition, an LLP is required to deliver a confirmation statement to Companies House confirming that the information held by the Registrar, such as the names and service addresses of the members, is up to date.

The key differences between a limited company and an LLP are:

- an LLP does not have a Memorandum or Articles of Association, it is governed by its own unique and private agreement which may be amended whenever desired;
- an LLP does not have share capital, it is owned by its members through their capital contribution;
- an LLP may have profit sharing members who have no capital share in the LLP; and
- an LLP is transparent for direct tax purposes.

Commercial benefits

The key commercial benefits for adopting an LLP are:

- limitation of personal liability for the members;
- flexibility to adapt the business structure as commercial needs change;
- flexibility over the allocation of profit shares to each individual member to align reward with performance (of the individual, the business unit or the business more widely); and
- a potential source of working capital for the business if the LLP decides to utilise individuals' undrawn profits.

Other benefits

As well as commercial benefits for the business, an LLP offers an enhanced ability to incentivise and retain personnel including:

- the opportunity to offer key individuals a 'stake' in the business by becoming a member of the LLP;
- running a business and working within a collegiate, collaborative environment.

Members of an LLP

A member of an LLP may be any natural or legal person, e.g. an individual, a company or another LLP, and there is no limit on the number of members that an LLP may have. Members are those who subscribe upon the registration of the LLP and those who join subsequently with the agreement of existing members. Partnership in the LLP ceases upon the retirement or death of the relevant member, the dissolution of the LLP or by agreement of the members.

In addition there is a separate class of members called 'designated' members who are appointed upon registration or by agreement amongst the members. Designated members are responsible for ensuring compliance by the LLP with procedural and administrative requirements imposed by legislation and might be compared to company secretaries.

If there were fewer than two designated members appointed, every member would be deemed to be a designated member.

On becoming a member of the LLP, every member must complete a form LL AP01 or LL AP02 (Appointment of a Member to a Limited Liability Partnership). The form includes the following information about the member:

- full name;
- usual residential address (office addresses cannot be used);
- service address; and
- date of birth.

By signing the form the person is consenting to be a member of the LLP.

As a consequence of the filing requirements, the residential address of every member is obtainable by members of the public from Companies House. It is however technically possible for a member of an LLP to apply to the Secretary of State for a confidentiality order as to his/her address if they are considered 'at risk'.

After a member has become a member of the LLP, any subsequent change in his/her name or address must be notified to the Registrar within 28 days of the change on: form LL CH01.

2. How do I establish the entity?

- Legal requirements
- Is my corporate name available?
- What are my duties as a director?
- Companies Act 2006

Legal requirements

Registration requirements

A business seeking incorporation as a private limited company must file the following with Companies House:

- memorandum of association – a statement that the subscribers wish to form a company and have agreed to become shareholders of the company;
- articles of association – the rules under which the company must operate;
- completed form IN01 – details of the registered office, director(s) and secretary if you wish to appoint one (appointment of a secretary is optional for a private limited company), share capital, initial shareholders, people with significant control (UBO) and a statement of compliance confirming the various requirements relating to the incorporation have been met; and
- the registration fee (£14 for the standard service via electronic means, £40 for the standard service in paper format, £30 for a same day registration via electronic means and £100 for same day registration in paper format).

When satisfied that all formalities have been followed, the Registrar of Companies issues a certificate of incorporation. This is conclusive evidence that the company is duly incorporated and established, so the company may commence trading immediately.

For the information you must provide when establishing a company, please refer to **Appendix B.**

Additional requirements

Every company must:

- have at least one natural director (i.e. an actual person rather than a corporation);
- appoint auditors, unless its turnover and balance sheet total are below specified thresholds;
- keep a register of its shareholders (known as members), including their names and addresses, the number and class of shares they hold, details of the rights attaching to the different classes of shares and the date when they became members of the company;
- keep a register of charges (mortgages and other secured interests);
- keep a register of persons with significant control (a UBO register);
- keep a register of its directors and secretary (if it chooses to have a secretary) and a register of directors' and secretary's residential addresses;
- deliver to the Registrar of Companies (on form CS01) a confirmation statement, no later than the filing deadline, which is 14 days from the date to when the CS01 has been prepared;
- deliver to the Registrar of Companies statutory accounts for each financial year/period, no later than the filing deadline for delivery of the accounts, which is (usually) nine months from the end of the accounting reference date.

There are penalties for not meeting these obligations including automatic financial penalties for the failure to file statutory accounts by the due date. Continued non compliance can lead to the compulsory dissolution of the company by the Registrar of Companies with potential liability for the directors. If a UK company meets certain turnover and asset thresholds it will need to comply with corporate governance standards and reporting obligations.

PwC provides a full governance, transaction and compliance services to help the directors meet these requirements giving peace of mind to directors, particularly when located outside the UK and/or where there is no in-house local expertise in this area.

Is my corporate name available?

You may not choose a name for your private limited company that has already been registered on the UK companies register.

You may be in danger of infringing a trade mark if you choose a company or trading name that is identical to or similar to that of another company and you also risk becoming the target of a 'passing off' action by that other company.

Trade mark infringement and passing off is usually limited to situations where the two businesses are in a similar trade; however, it can occur even where the businesses are not in a similar trade.

To avoid these problems you should conduct a series of searches, including searches at Companies House and the UK Intellectual Property Office, as well as wider searches, for businesses using the relevant name. It is recommended that you employ the services of a professional firm that specialises in this area of the law.

In some cases, your company's name may not include certain words without the prior approval of the Registrar of Companies or the provision of third party consent. It is not generally possible to form a company with a name that is similar to another that is already registered (for example ABC Limited and ABC 1 Limited) unless your company is part of the same group as that company. In such cases approval is required from the Registrar of Companies. PwC can work with you and the Registrar in order to obtain the necessary approvals.

What are my duties as a director?

As a director, you are responsible for the day-to-day management of the company and you are subject to various statutory duties that, if breached, can result in personal liability. The duties, which are set out in the Companies Act 2006, include the requirements to:

- act in accordance with the company's constitution and only exercise your powers for the purpose for which they were conferred; and
- act in a manner that you consider, in good faith, to be the most likely to promote the success of the company for the benefit of its members as a whole. When exercising this duty, you must have regard to a number of issues, including:
  - the likely consequences of any decision in the long term;
  - the interests of the company's employees;
  - the impact of the company's business on the community and the environment;
  - the need to foster the company's business relationships with suppliers, customers and others;
  - the desirability of the company maintaining a reputation for high standards of business conduct; and
  - the need to act fairly between members.
- In discharging your duties, you must also exercise:
  - reasonable skill, care and diligence; and
  - independent judgement.

You also have a duty to avoid a situation in which you have, or may have, a direct or indirect interest that conflicts with the interests of the company and to disclose the existence of any interest in any proposed or existing contract with the company. You also have a duty not to accept benefits from third parties if they could give rise to a conflict of interest.

In cases of actual or prospective insolvency, your duties are still owed to the company but you must act in the best interests of the creditors, rather than its shareholders. Personal liability is also imposed in certain situations for permitting an insolvent company or prospectively insolvent company to continue trading, unless you can demonstrate that it is beneficial for the creditors to continue to do so.

The above is merely a summary of a director's duties but you should be aware that this can be a complex and technical area of law. To support directors it may be advisable to appoint a company secretary. For comprehensive advice PwC can assist.

Companies Act 2006

The formation, management and organisation of a company in the UK are largely governed by the provisions of the Companies Act 2006. Whether you choose to establish a new company or acquire an existing one, the provisions of the Companies Act 2006 will have a significant impact on your company.

The Act governs:

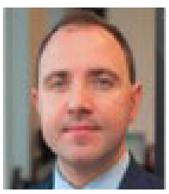
- the establishment of companies;
- how they are operated, owned, governed and managed;
- the extent to which they are required to publish information relating to their affairs (including their financial affairs);
- their liabilities and duties to their members and other stakeholders.

It addresses among other things:

- how share capital is organised, reduced and increased (and the records that must be kept of the company's ownership);
- how distributions are made to members;
- how directors must regulate their affairs;
- the requirement for a company to be audited;
- how creditors of a company can protect themselves (and how their competing claims shall be dealt with in the event of insolvency);
- how a company can be wound up and its affairs brought to an end.

PwC contacts

Entity Governance & Compliance



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3. What tax issues do I need to consider?

- **Corporation tax**
- **Patent box**
- **Developing and managing intellectual property in the UK**
- **Research and development**
- **Enterprise investment scheme (EIS) – UK tax incentive for investment in certain trading companies**
- **VAT**
- **Personal taxation**
- **Tax transparency**

Corporation tax

There is one main tax on companies' profits, which is corporation tax and is currently levied at a rate of 19%. Rates are fixed in advance and announced in the budget (usually around March) each year. The rate of corporation tax will increase from April 2023 to 25% on profits over £250,000. The rate for small profits under £50,000 will remain at 19% and there will be taper relief for businesses with profits between £50,000 and £250,000, so that their average rate is less than the main rate. Some industries do attract other profit related taxes but these specifics are outside the scope of this paper.

Support from HMRC

Before moving into the detail of the corporate tax rules, it is worth noting that HMRC provide additional support to mid-sized businesses (defined as businesses with turnover of more than £10m and/or at least 20 employees) that are experiencing certain types of growth to help them understand the tax issues they may face at their particular stage, including information on incentives and reliefs they may be able to claim.

The support will be in the form of helping business to:

- understand any new tax issues and reporting requirements;
- get the tax right before the return is filed;
- consider reporting and governance risks caused by the growth of the business;
- access financial incentives and reliefs the company may be eligible for; and
- access other HMRC specialists, services and guidance that are relevant.

Support is restricted to certain types of growth listed below but may be available for other types of growth subject to HMRC decision:

- turnover increased by 20% or more in the last 12 months, where this increase is at least £1 million;
- combining with, or buying, companies or other business organisations, or their operating units, resulting in growth of the business;
- changing the composition of a group of companies for the purpose of business growth (excludes insolvency);
- initial and subsequent offerings of shares on any stock exchange for public purchase;
- introducing capital that increases the balance sheet total by more than 20% where that capital is at least £1 million;
- first time notification of meeting senior accounting officer (SAO) conditions and completion of the first SAO certificate;
- paying corporation tax by quarterly instalments for the first time because profits are above the 'upper limit';
- making VAT payments on account for the first time, because in any period of 12 months or less you have a total liability of more than £2.3 million;
- selling goods or services from the UK to another country for the first time; and
- setting up a business operation in a new country.

This is an indication of the more open and proactive relationship HMRC now likes to adopt with tax payers.

Registration for UK corporation tax

Within three months of commencing trade or becoming active, a UK company or establishment is required to notify HMRC that it falls within the charge to UK corporation tax. Failure to notify can result in a penalty.

Generally a UK company or organisation is considered to be active for Corporation Tax purposes when it is, for example:

- carrying on a business activity such as a trade or professional activity;
- buying and selling goods with a view to making a profit or surplus;
- providing services;
- earning interest;
- managing investments; and
- receiving any other income.

This definition of being active for Corporation Tax purposes is not necessarily the same as that used by HMRC in relation to other tax areas such as VAT, or by other government agencies such as Companies House. The need to register for Corporation Tax can therefore often occur earlier than may be expected (e.g. when you start buying/selling, when you start advertising, renting a property or employing someone). It may also not match definitions in the various accounting conventions that are used to prepare audited accounts, such as the Financial Reporting Standards (FRS) issued by the Accounting Standards Board, or the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

Upon registering a UK company or establishment with Companies House, a notice will be issued by HMRC to the registered address, providing details of the unique tax reference (UTR) number assigned to the entity and of the tax office allocated to the entity. This information should be stored carefully as it will be required for all future communication with HMRC and can be time consuming to obtain again in the future. At this time, a form (CT41G) will also be sent to the registered office of the company or establishment to enable the registration process mentioned above (i.e. to enable you to notify HMRC that the entity is within the charge to corporation tax). This form can also be completed online.

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[6] http://taxsummaries.pwc.com/ID/United-Kingdom-Corporate-Significant-developments

The charge to corporation tax

A company (including the subsidiary of an overseas company) that is resident in the UK for tax purposes was historically liable to corporation tax on its worldwide profits and chargeable gains. There is now an exemption from tax for qualifying overseas branches of a UK company (if an election is made and notably, made before the start of the accounting period). This exemption is discussed further below.

A UK permanent establishment (PE) of a non-UK resident company is generally liable to UK corporation tax on:

- trading income arising directly or indirectly through the UK PE;
- income from property or rights used by, or held by or for, the UK PE; and
- chargeable gains accruing on the disposal of assets situated in the UK and used for the purposes of the UK PE.

A non-UK resident company is otherwise subject to UK corporation tax only on:

- the trading profits attributable to a trade of dealing in or developing UK land, irrespective of whether there is a UK PE;
- direct, and certain indirect, disposals of UK property; and
- income received from UK property.

The taxation of property is discussed further below.

Any other UK-source income received by a non-resident company is subject to UK income tax at the basic rate, currently 20%, without any allowances (subject to any relief offered by a double tax treaty, if applicable).

Corporation tax is assessed on total taxable profits (see next page) and chargeable gains in respect of each ‘accounting period’. The income tax year applicable to individuals, which runs from 6 April to the following 5 April, is irrelevant for corporation tax purposes. The rate of corporation tax is set for the financial year ending on 31 March. If the rate is changed, the profits of an accounting period that straddles the date of change are apportioned and charged at the appropriate rates.

Corporation tax rates

The rate of corporation tax applicable in the current financial year 2021 (being 1 April 2020 to 31 March 2021) is 19%. This rate has been in place since the financial year 2018. The rate of corporation tax will increase from April 2023 to 25% on profits over £250,000.

The corporation tax (Northern Ireland) Act 2015[6] has devolved to the Northern Ireland Assembly, the power to set and vary the level of corporation tax levied on eligible entities based in Northern Ireland. While this power has not been formally enabled, UK companies establishing subsidiary operations in Northern Ireland should be aware that the rate of corporation tax may vary in respect of their subsidiary operations and that additional reporting regulations may apply.

Taxable profits

Profits chargeable to corporation tax are calculated by adding together income from various sources. These will principally include trading profits, rents, investment income, deposit interest and chargeable gains.

Taxable trading profits are calculated in accordance with generally accepted accounting principles, with certain statutory adjustments. Some of the most common adjustments include:

- expenditure that is incurred wholly and exclusively for business purposes may be deducted;
- amortisation of capital expenditure deducted in the accounts by way of depreciation must be added back to the net profit or loss figure in the accounts and statutory ‘capital allowances’ are deducted instead;
- certain expenses are allowed to be deducted against total profits, rather than trading profits, on a ‘paid basis’ (e.g. patent royalties);
- only certain provisions are permitted to be deducted for tax purposes (e.g. holiday pay must be settled within 9 months of the year end in order for tax relief to be available for the accrual); and
- the expenditure on intellectual property assets is generally tax deductible based on amortisation rates in the company’s accounts, with profits on sales being taxed as income (and not capital gains).

Capital allowances

Accounting depreciation on fixed assets is generally not an allowable expense in determining taxable profit and instead, tax relief is provided via capital allowances (UK tax depreciation regime). There are several different categories of capital allowances, each attracting a unique rate of tax relief and fixed asset expenditure is allocated to one of these. These include:

- Main pool plant and machinery – 18% writing down allowances per annum on certain equipment, plant and machinery.
- Special rate pool plant and machinery – 6% WDAs on integral features and long life assets (UEL over 25 years).
- Research and development allowances – 100% first year allowances in respect of assets, including buildings, used to carry out qualifying research and development.
- Structures and buildings allowances – 3% per annum on a straight line basis on structures and buildings not used in a residential capacity.
- Cars – 100%, 18% or 8% depending on the CO2 emissions of the car.

No tax relief is available on non-qualifying assets and expenditure.

Generous temporary reliefs were introduced in the 2021 Budget in respect of main pool and special rate pool expenditure:

- The super-deduction will provide a 130% first year allowance for expenditure that qualifies for main pool plant and machinery.
- A 50% first year allowance will be available for expenditure incurred on assets qualifying for the special rate pool (normally at 6%).
- An enhanced 10% rate of SBA for constructing or renovating non-residential structures and buildings within Freeport tax sites. An enhanced capital allowance of 100% for companies investing in plant and machinery for use in Freeport tax sites. Further details to follow.

There appear to be a number of restrictions to the expenditure that will qualify, including plant and machinery used for leasing. This would mean commercial landlords and businesses who lease qualifying assets as part of their trade will not be able to benefit from the above. The above will apply to new expenditure incurred from 1 April 2021 only where contracts for the expenditure was entered into on or after Budget Day (3 March 2021).

There is no definitive list of assets that qualify for tax relief through capital allowances and it is important to consider tax legislation, case law and HMRC guidance when identifying qualifying expenditure.

There are further incentives provided by the government including an Annual Investment Allowance in respect of £1,000,000 of qualifying plant and machinery expenditure in an accounting period, enterprise zones offering accelerated relief on expenditure in designated areas and short life elections to accelerate the relief on disposal of certain assets.

Capital allowances need to be considered in detail as part of property transactions by both the buyer and seller. Furthermore when leasing property, landlord incentives including contributions and cash, need to be carefully considered as these have capital allowances implications for both the landlord and tenant.

Dividends

Dividends and other distributions of an income nature, whether received from UK or overseas companies, are within the charge to UK corporation tax unless they are exempt. Distributions received by small companies (fewer than 50 employees and either turnover of less than €10m or balance sheet total of less than €10m) will be exempt where the payer is resident in the UK or a territory with which the UK has a double taxation treaty that includes a non-discrimination provision.

In respect of large companies, dividends will be exempt if they fall within one of five exempt classes and are not caught by the targeted anti-avoidance rule. The exempt classes include dividends received from a company controlled by the payee, dividends in respect of non redeemable ordinary shares and dividends received from portfolio companies (i.e. ones in which the payee owns less than 10% of the issued share capital); however, the specifics of the exempt classes are complex and specialist help should be sought. It should be noted that the UK exemptions from tax on dividends are widely applicable.

Relief for losses

There are specific rules which determine the way in which losses can be accessed and shared across a UK group. The rules are extensive and a full analysis is outside the scope of this paper but in overview current period trading losses can be used in the following ways by an UK resident company:

- against other income or chargeable gains arising in the same accounting period;
- against profits of any description in the previous 12 months;
- as group relief in the same accounting period to qualifying companies.

It was announced in the Spring Budget 2021, that the trading loss carry-back rule is temporarily extended from one year to three years. This will be available for both incorporated and unincorporated businesses.

- Unincorporated businesses and companies that are not members of a group will be able to obtain relief for up to £2 million of losses in each of 2020-21 and 2021-22;
- Companies that are members of a group will be able to obtain relief for up to £200,000 of losses in each of 2020-21 and 2021-22 without any group limitations;
- Companies that are members of a group will be able to obtain relief for up to £2 million of losses in each of 2020-21 and 2021-22, but subject to a £2 million cap across the group as a whole.

Any unutilised trade losses can then be carried forward for use in the future. The carried forward loss can be set against the future taxable profits of the company in which the loss arose or group relieved to offset the taxable profits of its group members. This affords groups with a great deal of flexibility around the use of losses.

We would note that this more flexible approach only applies to losses generated after 1 April 2017; for losses which arose prior to this date, old loss relief rules will continue to apply (these are less flexible and only permit brought forward losses to be used against profits of the same trade arising in the company which generated the loss).

There is a restriction on the amount of brought forward loss which can be utilised in any one year, such that profits of up to £5m (across a UK group) can be offset fully and then 50% of the remaining profits can be offset, subject to the availability of losses. This applies to the utilisation of both pre and post 1 April 2017 losses. Unutilised losses can be carried forward indefinitely.

Tax on chargeable gains

UK resident companies pay corporation tax on their chargeable gains at the relevant corporation tax rate. For non-resident companies:

- those with UK establishments are liable to corporation tax on chargeable gains arising on the disposal of any assets that are situated in the UK and used for the purposes of the UK establishment or its trade; and
- otherwise only gains, from 6 April 2019, on the direct disposal and certain indirect disposals of immovable property situated in the UK are chargeable to UK corporation tax.

The chargeable gain is usually calculated as the difference between the net proceeds of sale of a chargeable asset and its purchase price together with any allowable expenditure (such as the incidental costs of acquisition) incurred on that asset (and sometimes indexation allowance depending on the age of the asset).

In respect of non-residents immovable property gains however, the chargeable gain is calculated by reference to the market value (of the asset being disposed of) on 5 April 2019 (or 6 April 2015 for certain residential property), with the option to use the original acquisition cost.

There is an exemption for capital gains and losses on substantial (broadly more than 10%) shareholdings in trading companies disposed of by corporate shareholders. This is commonly referred to as the 'Substantial Shareholdings Exemption'. In addition, shares must have been held throughout a 12 month period beginning not more than six years before the sale takes place.

There is also a subsidiary 'Substantial Shareholdings Exemption' for disposals of shares in non-trading companies by a company wholly or partially owned by 'Qualifying Institutional Investors' (types of tax exempt investors such as sovereign wealth funds and certain charities).

A non-UK company disposing of shares in a UK company will not generally be subject to UK taxation, unless it has a permanent establishment in the UK or, from 6 April 2019, it is disposing of shares in a UK property rich entity.

The 2019 regime in respect of the taxation of non-resident's gains on direct and certain indirect disposals of UK immovable property represents a significant change in the UK tax position for non-UK investors in UK property. The detail of the regime is outside the scope of this guide.

The Office of Tax Simplification (OTS) is currently undertaking a Capital Gains Tax Review. It is not clear when the Government will make any decisions in respect of this.

Taxation of residential property

The rules concerning the taxation of residential property have been subject to significant change in recent years. For corporates, the Annual Tax on Enveloped Dwellings ('ATED') was introduced in 2013 and the scope of the tax has increased since then.

ATED is an annual tax which is payable by companies owning UK residential property valued at more than £500,000 (as at 1 April 2017 or on acquisition if later). The annual charge will depend on the value of the property at the relevant date. For the year ended 31 March 2021, the charge ranges from £3,700 to £236,250. An annual return must be filed.

There are certain reliefs (for example, where the property is let to a third party on a commercial basis or is being developed for resale), which need to be claimed for, and also some exemptions (for example, for charitable companies using the property for charitable purposes).

In addition to the annual charge, any post 5 April 2013 capital gains realised on the disposal of enveloped properties were, until 5 April 2019, subject to CGT at 28%. From 6 April 2019 the ATED gains regime has been abolished (as it has now been superseded by the Non Resident Capital Gains regime at end).

Companies acquiring residential property are liable to pay Stamp Duty Land Tax at up to 15% of the purchase price. From 1 April 2021, that rate is increased to up to 17% where the purchaser is a non-UK resident company (or a company that is deemed to be non-UK resident for these purposes).

Taxation of foreign branches

Profits of foreign branches were historically taxable in the UK and losses were relievable. This treatment remains the default position but it is now also possible to elect into the branch exemption. The branch exemption is an optional regime and applies from the start of the first accounting period following that in which a company makes an election for exemption. Once a UK resident company has elected into the regime, the income and gains of all the foreign permanent establishments (PEs) through which it carries on business are exempt from UK corporation tax. Conversely, there is no relief for PE losses. Once the exemption has come into effect, it is irrevocable.

As well as those UK companies currently suffering UK tax on their overseas branches, the exemption may also be of interest to groups:

- considering overseas expansion; or
- looking to simplify their corporate structure.

There are some business and industry sector related reasons why companies prefer to operate through branches including:

- regulatory simplicity e.g. in the financial services sector; and
- for local legal reasons e.g. oil and gas companies operate through branches which helps minimise the need for local (third party) share ownership.

However, similar considerations may be relevant for groups outside these sectors, especially where local legal and regulatory issues are a barrier to incorporation. Additionally groups looking to transform business operations (e.g. supply chain, procurement etc.) may find that a branch rather than corporate solution deals with exit charge issues and ensures that the legal structure is kept as simple as possible.

Timing of tax payments

The date by which the corporation tax should be settled depends on the taxable profits of the company and the size of the global group as there are different regimes into which a company can fall. The key distinction is whether a company is large or not.

At a high level, a company will likely be large for these purposes if its profits exceed £1.5m (divided by the number of companies in the worldwide group and prorated for short accounting periods) in any given year. The number of companies is calculated by looking at the number of 51% subsidiaries in the worldwide group (branches/permanent establishments are not counted). The fact that it is the worldwide group to be considered here is important as it can mean that a small UK company which is part of a large global group can fall within the UK quarterly payment regime unexpectedly.

There are some exemptions to the above, most notably:

- a company is not large (regardless of the current period profits) if either:
  - the amount of its total liability for the accounting period is less than £10,000 (prorated for short accounting periods); or
  - its profits for the accounting period do not exceed £10m and either of the following applies:
    - at any time during the previous 12 months, the company did not exist; or
    - for any accounting period which ended in the previous 12 months, either its annual profit did not exceed the upper limit or its annual rated tax liability did not exceed £10,000.

If a company is large for these purposes, tax will be due by four equal instalment falling due:

1. 6 months and 13 days after the first day of the accounting period;
2. 3 months after the first instalment;
3. 3 months after the second instalment (14 days after the last day of the accounting period); and
4. 3 months and 14 days after the last day of the accounting period.

So for a company with a 31 December year end, the payments are due on 14 July and 14 October (during the year) and 14 January and 14 April following the end of the accounting period.

If a company is not large for these purposes, 100% of the tax should be settled 9 months and 1 day after the end of the accounting period. So for a company with a 31 December year end, the tax will fall due on 1 October following the end of the year.

The payment of corporation tax will be accelerated for the 'very large' groups. This affects companies with taxable profits above £20m, with this threshold being divided by the number of related 51% companies in the group (which includes overseas entities). Companies which fall within this definition, will be required to make instalment payments as set out above for large companies but the payment dates will be 4 months earlier than currently set for large companies. For a 12 month accounting period, payments will be due in months 3, 6, 9 and 12 of the period to which the liability relates.

Base erosion and profit shifting project

The OECD undertook a project (the BEPS project) in response to concerns that the interaction between various domestic tax systems and double tax treaties can often lead to profits falling outside the charge to tax altogether or be subject to an unduly low rate of tax.

The OECD published a 15 point action plan in July 2013 setting out proposals to address base erosion and profit shifting and the final BEPS package was published in October 2015. The 15 key actions are summarised below. The detail is outside the scope of this publication (although some points are picked up within other sections) but as can be seen, the changes are wide reaching and many are only now being brought within local legislation. The BEPS project was considerable and has had a marked effect on UK tax. The UK has adopted changes to its legislation to accommodate the relevant BEPS recommendations.

Action 1: Addressing the tax challenges of the digital economy

Action 2: Neutralise the effects of hybrid mismatch arrangements

Action 3: Strengthening CFC rules

Action 4: Interest deductions and other financial payments

Action 5: Counter harmful tax practices more effectively

Action 6: Prevention of treaty abuse

Action 7: Preventing the artificial avoidance of PE status

Actions 8 – 10: Risks and capital

Action 11: BEPS data

Action 12: Mandatory disclosure rules

Action 13: Country by country reporting and transfer pricing documentation

Action 14: Making dispute resolution mechanisms more effective

Action 15: Multilateral instrument

The OECD is currently working to address tax challenges of the digitalisation of the economy, and has adopted a two-pillar approach as the basis for a work program. However, political agreement is not expected on this package until mid-2021 at the earliest.

In the interim, the UK has introduced a digital services tax (DST) to address these tax challenges. It will be disapplied once the OECD's appropriate global solution is in place.

Digital services tax

From April 2020, a digital services tax of 2% applies to the revenues of certain digital businesses to reflect the value they derive from the participation of UK users, pending an appropriate international solution. The tax will apply to annual 'UK' revenues above 25 million pound sterling (GBP) from activities relating to internet search engines, social media platforms, and online marketplaces (of businesses with in-scope annual global revenues of more than GBP 500 million). Loss-makers will be exempt, and businesses with very low profit margins will be subject to a reduced effective rate.

Hybrid mismatch rules

The UK introduced rules dealing with hybrid mismatches, broadly intended to implement the recommendations in Action 2 of the OECD's BEPS project, which took effect on 1 January 2017. They are complex, may apply to a broad spectrum of situations and require careful consideration. At a high level, they effectively seek to address the situations where there is either: i) a mismatch between the deduction which arises and the income which is taxed; or ii) a deduction taken into account in two jurisdictions.

This could arise in situations involving a hybrid entity (such as a US company for which a check the box election has been made), a hybrid instrument (e.g. one which is treated as debt for one party but equity for the other), or dual resident companies.

Where a mismatch is caught by these rules, a disallowance may be required in the computation.

Diverted profits tax (DPT)

Diverted Profits Tax (DPT) was introduced in response to the shifting tax environment, most notably highlighted in the OECD's BEPS reports. It is separate from other corporate taxes and is currently levied at 25% (or 55% in the case of UK ring fence operations, i.e. broadly oil extraction operations and 33% in the case of taxable diverted profits which would have been subject to the bank surcharge) on diverted profits (as defined).

From 1 April 2023, the rate of DPT will increase from the current rate of 25% to 31%, in order to maintain the current differential between the DPT rate and the Corporation Tax rate. The rate of DPT in the case of ring fence operations will remain unchanged at 55% and the rate of DPT charged on taxable diverted profits which would have been subject to the bank surcharge will remain unchanged at 33%.

DPT may apply in two circumstances:

- where groups create a tax benefit by using transactions or entities that lack economic substance (as defined), and/or
- where foreign companies have structured their UK activities to avoid a UK permanent establishment.

Companies are required to notify HMRC if they are potentially within the scope of DPT within three months of the end of the accounting period to which it relates. The legislation is complex and subjective in places, and has the potential to apply more widely than might be expected.

In January 2019, HMRC launched the Profit Diversion Compliance Facility (PDCF) which is aimed at multinationals using arrangements targeted by DPT to give clients the opportunity to bring their UK tax affairs up to date.

The PDCF is designed to encourage businesses potentially impacted to review their tax policies, change them as appropriate and use the facility to submit a report with a proposal to pay any additional tax, interest or penalties due.

Transfer pricing

Background

The UK transfer pricing legislation is widely drafted and covers transactions between related parties that are both UK tax resident as well as those with overseas related parties.

UK taxpayers are required to prepare and file tax returns on the basis of revenues and costs calculated using arm's length prices for transactions with related parties. The arm's length principle to be applied in evaluating prices is that set out in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. A key area of focus for HMRC at the moment is transfer pricing risk, i.e. wanting to substantiate filing positions taken through evidence reviews. These evidence reviews are to substantiate the factual position stated in forming a filing position. HMRC will want UK taxpayers to be able to demonstrate that filing positions match the 'facts on the ground'. If HMRC opens an enquiry into transfer pricing, it will pay particular attention to the evidence of what actually happens in terms of activities undertaken and the management and control of risks to test the filing positions that have been adopted.

If any intra-group transactions have not been priced on arm's length terms, taxpayers are required to make transfer pricing adjustments in their tax returns where these result in increased taxable profits or reduced allowable losses. Taxpayers can only reduce their taxable profits (or increase allowable losses) by making compensating adjustments in the case of UK – UK transactions, or through the formal competent authority procedures in the case of cross-border transactions where a double taxation agreement exists with the UK.

Evidence to support the taxpayer's filing position should exist at the time when the tax return is filed and can be requested by HMRC to substantiate such filing positions taken.

The normal enquiry window during which HMRC can commence a transfer pricing audit is the same as for any other tax issue, being one year from the filing deadline for the relevant tax return. This time limit is extended if the tax return is filed late. If the taxpayer has not made sufficient disclosure of the relevant facts needed for the tax authority to assess potential issues within its tax return, HMRC can make a discovery assessment up to four years after the end of the accounting period, or six years if there was a failure to take reasonable care. In the event of a deliberate understatement of profits the time limit can be extended to as much as 20 years.

Exemptions

A company which is part of a small group (fewer than 50 employees and either balance sheet total assets less than €10m or turnover less than €10m) is exempt from the UK transfer pricing rules unless it has transactions with a resident of a non-qualifying territory, broadly a tax haven, or transactions with related parties that form part of the calculation of profits to be taxed under the UK patent box regime.

Companies which are part of a medium-sized group (fewer than 250 employees and either balance sheet total assets less than €43m or turnover less than €50m) are similarly exempt subject to one additional caveat. For medium-sized groups, HMRC has the ability to issue a 'direction' that the transfer pricing rules should apply in the circumstances specified in the direction. The issue of a direction can only be made after HMRC has opened a formal enquiry into the relevant tax return to undertake a transfer pricing audit. This is likely to require HMRC to establish a prima facie case that transactions are not at arm's length, so partially shifting the initial burden of proof which ordinarily lies with the company.

Related parties

The legislation applies to transactions where one party controls the other, or both parties are under common control.

A person or company controls another company if the first company has the power to secure that the affairs of the second company are conducted in accordance with its wishes. Control may be exercised either through share ownership, voting rights or power over the company granted by some other corporate document.

The UK transfer pricing rules can also apply to joint venture companies, in particular where a UK party has an interest of at least 40% in the subordinate and where there is another party which also holds at least 40%.

Content of documentation

There are currently no specific regulations governing the documents that a taxpayer is required to prepare in order to support its transfer pricing. The documentation required falls under the general rule for self-assessment that requires taxpayers 'to keep and preserve the records needed to make and deliver the correct and complete return'.

HMRC has published general guidance on record keeping and, in the absence of other more specific regulations, this guidance is likely to be persuasive.

As noted above, it is not expected that the documentation requirements will change significantly going forward. While the more prescriptive documentation requirements proposed by the OECD relating to the master file and local file are not currently expected to be incorporated within the UK transfer pricing legislation, they do provide the recommended format when preparing transfer pricing documentation from a UK perspective.

Collation of evidence files as part of supporting documentation is becoming increasingly important to support filing positions taken.

Penalty regime

There is no separate penalty regime for transfer pricing. Penalties may apply for filing an incorrect tax return (or, if an error or mistake later becomes known, failing to report this in a timely fashion).

The current penalty regime determines the level of penalty based on the behaviour which gave rise to the error. Penalties are fixed within a band depending on whether the error has arisen as a result of a failure to take reasonable care, a deliberate understatement or a deliberate understatement with concealment. The penalty is then mitigated according to whether the error was disclosed without prompting and according to the level of disclosure demonstrated. Disclosure is defined as including telling HMRC about the inaccuracy, giving help in quantifying any tax liability and allowing access to information.

Tax geared penalties are applied where adjustments are made which could give rise to additional tax payable; however, in this context, it is the amount of the adjustment itself which is used as the basis for the calculation of the penalty, and a penalty cannot be avoided solely as a result of, for example, having sufficient losses available to prevent additional tax becoming payable. Penalties can also be applied for a failure to provide information or documents under a formal notice.

To avoid a suggestion of carelessness, taxpayers should have set a reasonable transfer pricing policy and must in practice apply it. The policy must be capable of being documented to show that the taxpayer had grounds for considering its arrangements and prices to be in accordance with the arm's length principle.

Separate penalties can be applied for failing to maintain adequate transfer pricing documentation. A penalty of up to £3,000 per tax return can potentially be applied.

Advance pricing agreements (APA)

Taxpayers can obtain certainty on the pricing arrangements for related party transactions by entering into an APA with HMRC. Renewals of APAs are treated like new applications. Taxpayers do have to be accepted into the APA programme and typically only the more complex and high value transactions are considered suitable. There is a requirement to include a Diverted Profits Analysis with an APA application.

Thin capitalisation

The UK thin capitalisation legislation is incorporated within the transfer pricing legislation. It includes provisions that cover loans made to a UK company by a related party, or where the UK company has been able to borrow more than an arm's length amount from a third party on the strength of a related party guarantee.

The measure for determining whether the amount of the loan or the interest rate is excessive is the arm's length principle i.e. whether a third party would have loaned the UK company that amount of money or at that interest rate.

There are no formal safe harbour ratios, such as debt to equity or acceptable interest cover (profit before interest and tax to total interest payable) included within the legislation. Each case is examined individually and the suitability of a particular metric as well as the acceptability of a specific ratio arising therefrom could well be influenced by the averages for the particular industry sector.

In addition to the thin capitalisation rules, there are other rules which impact on interest deductibility, such as the corporate interest restriction, allowable purpose and hybrid mismatch rules.

These add an additional layer of legislation but do not replace the existing thin capitalisation rules, which still need to be considered in all financing situations.

Repatriation of profits and financing

A UK company can repatriate profits to the home territory of its parent company in a number of ways, the most common being via dividend. The main impact is from withholding taxes and transfer pricing. In the case of a dividend, the UK does not impose a withholding tax charge. This is the case whether or not the parent company or individual shareholder is in a treaty country or otherwise.

The deductibility of costs for intra-group supplies, services and finance costs may be (usually depending on the size of the group) subject to the UK transfer pricing rules, in which case the company or UK establishment needs to be comfortable that an arm's-length standard has been applied. A UK company also needs to be able to demonstrate that it is adequately capitalised to support a deduction for intra-group interest payable.

Interest deductibility is also subject to the corporate interest restriction (CIR) rules. Subject to a £2 million de-minimis per annum, the CIR rules impose rules which determine the quantum of interest costs deductible for UK tax purposes. At a high level, the amount of interest which can be deducted is broadly restricted to a fixed ratio being the higher of 30% of UK tax-EBITDA (based on the taxable profits with some adjustments) and the group ratio (for highly geared groups).

Anti-avoidance – General anti-abuse rule (GAAR)

The UK Government has introduced a number of measures over recent years to deal with marketed tax avoidance. These measures include the Disclosure of tax avoidance schemes (DOTAS) rules, provisions requiring early payment of disputed tax, and the serial tax avoiders regime (STAR) which is targeted at taxpayers who repeatedly enter into avoidance schemes. The most significant of the measures is the general anti-abuse rule (GAAR), which was introduced in 2013 in response to concerns about the number of artificial tax avoidance schemes over the previous decade. The stated intention of the Government was that the GAAR should act as a deterrent to taxpayers to encourage them not to enter into abusive tax planning arrangements, and to promoters not to promote such arrangements.

The GAAR applies to income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, annual tax on enveloped dwellings (ATED), stamp duty land tax (SDLT), national insurance contributions (from 13 March 2014), diverted profits tax (from 1 April 2015) and apprenticeship levy (from 15 September 2016).

If a taxpayer submits a return, claim or document to HMRC which includes arrangements which are later found to come within the scope of the GAAR, a penalty of up to 60% of the counteracted tax can be charged. This is in addition to any other penalties issued in accordance with existing penalty rules (e.g. late filing, error in a return). Total penalties will be restricted to 100% of the tax, or the maximum allowed under existing legislation if this is higher.

Patent box

Background

As part of the Government's aim to encourage innovation in the UK a low effective 10% corporation tax rate applies to profits arising from patented technology from 1 April 2013. This was phased in over four years from 2013 to 2017.

The relief applies to worldwide profits from patented inventions protected by UK Intellectual Property Office ('IPO') or European Patent Office ('EPO') patents, or patents under the law of specified EEA States (currently Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Poland, Portugal, Romania, Slovakia and Sweden).

It is not just royalties and income from the sale of IP that qualifies – the profit (minus a routine profit and a deemed marketing royalty) from sales of products which incorporate a patented invention potentially qualifies. A fairly broad range of revenues qualify for the patent box, including sales of products which include at least one patented invention, patent royalties and income from qualifying licensing, income from the sale of qualifying patents, qualifying patent infringement income and notional royalties for exploitation of qualifying process patents and supply of goods.

The UK company does not need to own the patent rights outright –an exclusive licence to exploit the patent is sufficient. The UK company need not have developed the invention or the product –it is sufficient for development to have been undertaken elsewhere in the group provided the UK has sufficient management activity in relation to the IP.

The 'pre-nexus' regime closed to new entrants from 30 June 2016. But, companies meeting the qualifying condition prior to 30 June 2016 had two years from the end of the accounting period straddling 30 June 2016 to formally elect into the pre-nexus regime. Claimants with pre-existing qualifying IP rights can continue to benefit from the pre-nexus regime until June 2021.

Following a review of all IP regimes, a modified UK IP regime is phased in from 1 July 2016. This modified regime is referred to as nexus. The new regime limits benefits of the patent box based on the proportion of relevant company research & development (R&D) undertaken as a proportion of overall R&D.

Eligibility

A trading company qualifies if it has ownership (either registered owner or via an exclusive licence) of patents (and some other forms of IP) and it has either performed significant qualifying development, or if another group company did the development then it must perform a significant amount of management activity in relation to the rights e.g. responsibility for ongoing decision making concerning further development and exploitation of the IP. Fulfilling these tests is critical to qualify for patent box and is not always straightforward.

Computation – calculating the benefit

There is a formula to calculate the qualifying profits designed to minimise the burden for businesses. The calculation of patent box can be summarised as follows, with the starting point for the calculation being taxable profits:

Stage 1 – profits and expenses must be allocated to patents or products incorporating patents apportioned in the ratio of patent income to total gross income. Alternatively a streaming election can be made to allocate expenses and profits on a just and reasonable basis.

Stage 2 – deduct a routine return which is computed as 10% of certain internal value adding costs within the patent stream. There is a prescribed list of costs which excludes R&D costs and bought in materials.

Stage 3 – a deduction is taken for a notional royalty in respect of marketing assets, which is determined based on arm's length principles.

There are a number of other requirements that must be considered as part of a detailed calculation for example impacts from a shortfall in R&D expenditure.

Nexus

The nexus rules apply to new entrants to the patent box on or after 1 July 2016 and to all companies from 1 July 2021. As detailed above the calculation under nexus is similar to pre-nexus. The fundamental difference is an additional step in the patent box calculation. This limits the qualifying IP profits based on the proportion of R&D undertaken by the company, by applying 'the R&D fraction'.

Stage 4 – The qualifying IP profits are multiplied by the R&D fraction to arrive at the relevant IP profits that qualify for the effective 10% rate of corporation tax.

Tracking and tracing of R&D expenditure is required to be able to calculate and apply the R&D fraction within claims.

The fraction should be calculated at the highest level of granularity possible, therefore applied on an IP asset, product, or product grouping basis as appropriate to the business.

Companies with patent box profits below a certain threshold (qualifying residual profit less than £1m or less than £3m divided by one plus the number of its associated companies elected into the patent box) can elect for a simplified 'small claims treatment' when calculating the notional marketing royalty. In addition, these small companies can calculate the R&D fraction for the claimant company as a whole.

Essentially, nexus requires the claimant company itself to hold qualifying IP rights, undertake R&D activities (itself or via third party subcontracting) and have qualifying income.

There are many areas to think about too in respect of patent box including:

- IP ownership model – moving or retaining more patented technology in the UK.
- Licensing of patents – where beneficial ensuring licences to the UK meet the relevant exclusivity requirements to fulfil the ownership test.
- How to track and trace R&D expenditure.
- Considering patenting behaviours and strategy.
- Calculating the benefit – tracking patents to products, R&D expenditure to patents or products and extracting the other financial data required for the calculation.
- Business model – the way in which a group organises its activities between different group companies can have a significant impact on the availability of the patent box incentive.

Developing and managing intellectual property in the UK

The Government is committed to a modern industrial strategy as a critical part of its plan for post-Brexit Britain with a vision that long-term prosperity depends upon science, technology and innovation. Its aim is to create 'the world's most innovative economy' taking what it feels are ambitious steps to reshape the research and innovation landscape. It is looking to build on world class strengths in research and to further improve the economic impact of our research investments. It is interesting then to consider how the UK tax rules encourage the creation and management of IP in the UK. Over recent years, a number of tax changes have been announced which should help put the UK on any global short-list of locations for developing and managing IP.

Measures include:

- enhanced tax deductions of 230% for small and medium sized enterprises ('SME') on qualifying R&D expenditure;
- a R&D expenditure credit ('RDEC') is available for large companies, reducing the cost of R&D in the P&L (by virtue of putting the credit above the operating profit line in the accounts);
- both SMEs and large companies can obtain a payable credit from HMRC in respect of qualifying R&D expenditure where they are loss making, subject to certain conditions;
- the patent box regime provides a 10% corporation tax rate on profits from products and services backed by patents (there are specific criteria for this including a limit on the benefit of the patent box based on the proportion of R&D undertaken in the UK R&D entity); and
- a corporation tax deduction on the cost of most acquired IP, with the deduction typically being taken in line with accounting amortisation.

This combination of measures has been well received with a number of companies considering their IP and patenting strategy as a result of the patent box regime.

But how does this compare on an international scale? Whilst some other territories also offer IP tax regimes or lower rates of applicable taxes, the above UK IP tax regime is expected to be of relevance to groups meeting the following profiles:

1. Groups wanting to locate their R&D activities in a major market where there is easy access to universities and other research companies with proven IP development expertise; and
2. Companies whose operating models comprise the development of patentable products or processes as it is possible to claim a R&D Tax Credit in the UK, with any profits from sales generated by the underlying IP being taxable at 10%.

Offshore receipts in respect of intangible property ('ORIP')

The 'offshore receipts in respect of intangible property' ('ORIP') tax, introduced with effect from 6 April 2019, taxes UK-derived intangible property receipts arising to non-UK resident persons.

In overview, it imposes a 20% income tax charge on the gross amount of capital and revenue arising in respect of the enjoyment or exercise of rights that constitute intangible property (broadly defined) where the enjoyment or exercise of those rights enables, facilitates, or promotes UK sales of goods, services, or other property, if:

- the recipient is not resident (as specifically defined for this purpose) in either the United Kingdom or a territory with which the United Kingdom has a full tax treaty (again, as specifically defined for this purpose), and
- none of the exemptions apply.

This wording would appear sufficiently broad to catch receipts paid under almost any licence but not outright sales of intangible property or pre-existing licences.

Conclusion

Along with the work that the intellectual property office does to create IP frameworks that promote growth and access to information, granting high quality IP rights, and helping businesses to enforce their rights around IP value, the UK offers a tax regime to support IP development and management. Groups considering either the creation of R&D centres or establishing international IP structures should give serious consideration to the UK.

Research and development (R&D)

Relief for expenditure of a revenue nature on research and development that is related to a company's trade and is undertaken by the company or on its behalf is wholly allowable as a tax deduction. In certain circumstances, either enhanced relief is available, or a credit is available which is offset against R&D costs in the company's profit and loss account.

Expenditure of a capital nature on research and development related to a company's trade is also wholly allowable as a tax deduction (i.e. 100% capital allowances are available). This covers capital expenditure on the provision of laboratories and research equipment; however, no allowance is available for expenditure on land.

A new R&D consultation was released on 3 March 2021. This is wide ranging and whilst it is clear that the government is fully supportive of the R&D regimes, in a backdrop of record government borrowing, the R&D regimes must provide value for money both for the taxpayer and the government, and be highly effective at encouraging investment in innovation. Any changes will be legislated in future Finance Bills.

R&D relief: small and medium-sized enterprises

Certain companies incurring research and development expenditure of a specific nature are entitled to claim R&D tax relief.

A standalone company (or the group where the UK company is part of a global group) must be a small or medium-sized enterprise, as defined by the EU. The company (broadly together with any company of which it owns 25% or more, or which has more than 25% interest in it, subject to some exceptions) should have:

- fewer than 500 employees; and either:
- an annual turnover not exceeding €100m; or
- an annual balance sheet total not exceeding €86m.

The research and development may be undertaken by the company, or directly on its behalf. The R&D must be related to the company's trade. Expenditure for which State Aid is received is excluded. R&D which is deemed to be funded or subcontracted to the company may only be claimed under the large companies scheme.

Detailed below are the types of expenditure which may be included within claims.

Enhanced R&D tax relief is given by increasing the deduction for qualifying research and development in a company's corporation tax computation from a 100% deduction to 230% deduction for qualifying expenditure.

One of the ways HMRC is tackling abuse in the SME regime is through the SME cap which will apply from 1 April 2021. The amount of payable tax credit a qualifying loss-making business can receive is capped at three times the company's total PAYE and NICs liability for that year. There is a threshold of £20,000 so that the smallest claims are uncapped (i.e. a company receiving a payable credit of below £20,000 for a 12-month period will not be impacted by the cap). There are also rules that attempt to limit the impact of the cap on some businesses with genuine R&D and IP substance in the UK.

R&D tax credits

Where an SME company has a 'surrenderable loss' it may claim an R&D tax credit. Generally, a surrenderable loss arises where the company incurs a trading loss.

The surrenderable loss is the lower of:

- the unrelieved trading loss; or
- 230% of the qualifying research and development expenditure.

The cash payment is currently 14.5% of the amount of losses surrendered (at January 2021). This equates to a cash repayment of up to 33.35% (being 230% at 14.5%) of the qualifying expenditure. Where the R&D tax credit is claimed, the trading loss carried forward is reduced by the amount of the surrendered loss.

R&D expenditure credit (RDEC)

Relief under RDEC is available to large companies (unless subcontracted to the claimant company by a UK SME) and SME companies where expenditure has been funded or subsidised (by grant income, customer funding or otherwise).

This credit is different to the payable credit referred to above for SMEs. Companies may claim to receive a taxable credit payable at 13% (from 1 April 2020). The credit is brought into account 'above the line' and reflected in the operating profits of the company, similar to a grant. The credit itself is taxable and so taking a 19% corporation tax rate into account, the net benefit to the company of the credit is 10.5%.

The credit is monetised by being offset against the company's corporation tax liability, such that the company has to physically hand over a smaller amount to HMRC when paying its corporation tax liability. Where the credit exceeds this liability there are seven steps to determine the cash amount (if any) payable to the company. This can be complex. Similarly, the accounting for the credit may not be straightforward.

Qualifying expenditure

The types of expenditure which may be included within claims are detailed in the table below:

	SME	Large company/SMEs with funded activities
Staffing costs (salaries, wages, employer's NIC, employer's pension contributions, any cash remuneration)	Yes	Yes
Expenditure on materials consumed or transformed in the process of undertaking qualifying activities (special rules exist to exclude certain expenditure on consumable materials incorporated into products that are subsequently sold), including software and heat, light and power	Yes (restricted to 65%, unless provided by a connected party)	Yes (restricted to 65%, unless provided by a connected party)
Payments in respect of qualifying activities subcontracted out to other parties	Yes (restricted to 65%, unless provided by a connected party)	No (unless activities are subcontracted to 'qualifying bodies', such as universities or charities, designated bodies, or entities/individuals not subject to income tax – in which case 100% may be claimable)
Payments to subjects of clinical trials	Yes	Yes
Contributions to independent research	No	Yes

Enterprise investment scheme (EIS) – UK tax incentive for investment in certain trading companies

Under the EIS, the UK offers tax reliefs to individuals who are UK taxpayers and subscribe for ordinary shares in independent unlisted qualifying trading companies, or companies which conduct research and development. It therefore assists such companies to raise finance. There is no requirement that the company is incorporated in the UK or trades in the UK – it must have a UK permanent establishment.

Income tax relief is given at a rate of 30% for amounts subscribed for qualifying shares – the maximum subscription permitted by an individual in a tax year is £1m for 2012/13 and onwards. There is no requirement that the subscriber is UK resident to obtain the income tax relief – they only need to have UK source income against which to set the relief. The maximum subscription which a company may receive from EIS investors or other source treated as EU State Aid in any 12 month period is £5m (subject to the higher limits which apply to 'knowledge intensive' companies, as described further below) and it may not have gross assets of more than £15m before the share issue or more than £16m immediately after.

For individuals liable for UK capital gains tax on disposals of shares, there is the added incentive that if a profit arises on disposal of the shares after they have been held for the longer of 3 years from subscription or commencement of trade, the disposal will be free of capital gains tax, whereas there may be income tax or capital gains tax relief for a loss on disposal.

Most trades conducted by a company, or within a group of companies will qualify for EIS purposes; the legislation specifies those trades which will not qualify. The trades which do not qualify include some with an element of asset-backing (e.g. farming, hotels) – the tax relief is given because the investments are expected to be high risk.

There are many complex conditions to be met relating to the company, its trade, its shares and the individual investor, in order that the subscriber obtains and then retains the income tax relief.

Changes were made to the EIS rules in the second Finance Act of 2015. These included the introduction of a lifetime cap of £12m on the amount of the funding that most companies can raise under the EIS rules (and under certain other schemes such as funding from venture capital trusts) and an 'age limit' requirement that the first EIS investment should generally be made within 7 years of the company starting to trade.

If the company is 'knowledge intensive', the lifetime cap increases to £20m and the age limit increases to 10 years (broadly a company is knowledge intensive if it is focused on research and development) – certain conditions need to be met for the higher limits to be available. Furthermore, the EIS investment limit for individuals has been doubled to £2m provided any amount over £1m is invested in knowledge intensive companies, the annual investment limit has been increased from £5m to £10m and greater flexibility introduced over how the maximum age limit is applied.

As part of HM Treasury's response to the Patient Capital Review, a new principles based test called the 'risk-to-capital condition' was introduced in the Finance Act 2018. This is to ensure that venture capital schemes are focused on support for companies with high growth potential.

This measure is aimed at excluding tax motivated investments, where the tax relief provides most of the return for the investor, with limited risk to the original investment (that is preserving an investor's capital) and applies to all investments made after 6 April 2018.

Broadly, it means taking a 'reasonable' view as to whether an investment has been structured to provide a low risk return for investors and has two key tests:

1. whether the company has objectives to grow and develop the business over the long term; and
2. whether there is a 'significant risk' that there could be a loss of capital i.e. where the amount of the loss could be greater than the net investment return (considered to be any income, capital or tax relief received by the investor).

VAT

The system of Value Added Tax (VAT) in the UK is similar to VAT in the EU and Middle East. There are, however, some significant and complicated differences of detail which are likely to develop over time, with the UK now outside the EU. Please visit our website for more information.

VAT is charged on the supply of goods and services in the UK made by a taxable person in the course of furtherance of a business, unless the supplies are VAT exempt. A UK taxable person is anyone registered or liable to be registered for UK VAT.

VAT is effectively a tax on consumer expenditure and, in theory, the end consumer should bear the burden of the tax; however, VAT is paid throughout the supply chain prior to being finally charged to the end consumer. VAT is paid and reclaimed by businesses through the input/output system. When a business buys goods or services, it may pay VAT to the supplier on its purchase (input tax). When the business sells goods or services, whether to another business or to a final consumer, it is required to charge VAT on its supplies (output tax) unless the supplies are specifically relieved from the VAT charge. If the business makes only taxable supplies, it must periodically total the input tax it incurs and deduct this from the output tax charged, paying the balance to HMRC. The result of this is that the final consumers bear the cost of VAT on the final price of the goods or services they purchase, except for businesses which make VAT exempt supplies - those businesses cannot recover input VAT and bear the burden of the tax through irrecoverable input tax.

There are three rates of VAT on taxable supplies in the UK:

- standard rate 20%;
- zero rate 0%; and
- a 5% reduced rate that applies to limited goods and services.

A company seeking to set up in the UK will likely need to assess if it has a compulsory requirement to register for UK VAT or wishes to voluntarily register for UK VAT (this is preferable if the company will be in a VAT repayment position from HMRC). HMRC do not automatically register a company for UK VAT upon its UK incorporation or by virtue of it transferring its residence to the UK so the onus is on the company to ensure it is correctly VAT registered.

Unlike other countries, the UK has a fairly high VAT turnover registration limit (currently £85,000). This means that a large number of small turnover businesses fall outside the VAT system although the VAT turnover registration threshold is being reviewed by HM Treasury.

A taxable person is liable to compulsory registration for VAT if their combined value of taxable supplies in the UK exceeded the registration limit in the preceding 12 months, or there are reasonable grounds for believing that the value of taxable supplies to be made in the next 30 days on its own will exceed the registration limit.

A business may also de-register if the anticipated value of the taxable supplies in the next 12 months is less than the UK deregistration limit (currently £83,000).

The VAT registration threshold for non-established businesses making taxable supplies in the UK is nil. Non-established businesses making taxable supplies in the UK are required to immediately register for UK VAT. The registration should normally be processed in three to six weeks.

The VAT registration process requires the non-resident company to complete a registration form either online or by post, verifying the basis under which it will become a taxable person and provide evidence of its taxable business activities.

The standard VAT reporting requirement for a company/branch following registration is to submit returns to HMRC every three months. If a business wishes to recover its input VAT more promptly, it may request permission to submit monthly VAT returns. There are other returns that will need to be completed if a UK based business trades with entities outside the UK.

VAT online registration and filing

Almost all VAT-registered businesses are required to submit their VAT returns online and pay any VAT due electronically. UK VAT returns and any associated payments are usually due one month and seven days after the end of the VAT return period, unless the trader is a large trader, in which case the trader has 30 days from the end of the VAT return period in which to submit and pay any VAT due.

Betting and gaming

General betting duty on general bets or pool bets on horse racing or dog racing applies at a rate of 15% of net takings.

Pool betting duty (other than those on horse or dog racing) applies at a rate of 15% of net takings.

Machine gaming duty (MGD) applies at a rate of 20% of net takings, the higher rate is 25%, the lower rate is 5%.

Remote gaming duty applies at a rate of 21% of net takings.

Personal taxation

Income tax

UK income tax is chargeable on any UK source income received by an individual in the UK if they are UK resident. Foreign income is subject to UK tax where the individual is either:

- domiciled in the UK;
- not domiciled/deemed domiciled in the UK but the income is remitted to the UK; or
- not domiciled/deemed domiciled in the UK but the individual chooses to be taxed on the arising basis of taxation.

For the 2020/21 tax year, the starting rate of income tax is 20% for the first taxable slice of income up to £37,500, 40% between £37,501 and £150,000 and 45% over £150,000 (for England, Wales and Northern Ireland). A table is attached at **Appendix D** with more detail on UK personal tax rates.

Scottish taxation

The introduction by the UK government of the Scotland Bill received Royal Assent on 19 November 1998 and became the Scotland Act 1998.

Subsequent Scotland Acts of 2012 and 2016 gave additional powers to the Scottish Parliament, including the power to introduce a new Scottish rate of income tax (SRIT) applicable to Scottish residents (broadly based on where their main residence is), new borrowing powers for the Scottish Government, full control of stamp duty land tax and landfill tax from April 2015 (known as Land and Buildings Transaction Tax (LBTT)) and the power to introduce new taxes, subject to agreement of the UK Government.

In December 2017, the Scottish Finance Minister delivered the Scottish draft budget for 2018–19, which included a diversion of rates and bands compared to the UK for non savings income. A new starter rate of 19p in the pound, a new tax band of 21p while the higher rate of tax increased from 40p to 41p and the top rate from 45p to 46p. The bands applicable to 2020/21 are shown in the table below.

UK Rates – Tax Year 2020-21

Tax rate	Tax band name	Earnings band
0%	Personal allowance	Up to £12,500 (tax free)*
20%	Basic	£12,501 and £50,000
40%	Higher	£50,001 to £150,000
45%	Additional	Earnings of £150,000 or more

Scottish Rates – Tax Year 2020-21

Tax rate	Tax band name	Earnings band
0%	Personal allowance	Up to £12,500 (tax free)*
19%	Starter rate	£12,500 and £14,585
20%	Basic	£14,585 and £25,158
21%	Intermediate	£25,158 and £43,430
41%	Higher	£43,430 and £150,000
46%	Additional	Earnings of £150,000 or more

* it should be noted that for high income earners the personal allowance will be lost in full where income in 2020/21 tax year exceeds £125,000. For individuals with income of £100,000 to £124,999 a tapered personal allowance will be available. See page 69 for further detail.

Northern Ireland rates – Tax year 2021 (Single, widowed or surviving civil partner)	
Tax rate	**Earnings band**
20%	35,300(a)
40%	Over 35,300(a)

a) Earnings rate bands thresholds increase to 39,300 if qualify for single person child carer credit

Northern Ireland rates – Tax year 2021 (Married or in a civil partnership - one spouse with income)	
Tax rate	**Earnings band**
20%	44,300(a)
40%	Over 44,300

a) If both spouses have income the increase in rate band is capped at the lower of €26,300 or the income of the lower earner. The increase cannot be transferred between spouses or civil partners.

Basis of taxation

For individuals, the UK tax year runs from 6 April in one year and ends on 5 April in the following year.

The UK operates a system of independent taxation.

In determining an individual's liability to UK tax it is first necessary to consider their residence and domicile status.

Residence

The statutory residence test (SRT) is designed to provide straightforward tests that enable individuals to be clear on when they will become a UK resident and what actions are required for them to break UK residence.

Broadly the SRT looks at a person's history of residence in the UK and level of connectivity with the UK.

There are three parts to the SRT.

Part A: time based conclusive tests that establish an individual as non-resident in the UK

- resident in the UK in one of the last 3 tax years but present for less than 16 days in the current year; or
- not resident in the UK in the past three years and present in the UK for less than 46 days in the current year; or
- works full time abroad and present in the UK for less than 91 days in the current year, of which 30 days or less is spent working in the UK.

If a person meets one of these criteria then an individual is non resident.

Part B: conclusive tests to establish an individual is resident in the UK

- present in the UK for 183 days in a tax year; or
- has a home(s) in the UK at which present for 30 or more separate days in the year and for at least 91 continuous days (wholly or partly in the tax year) and has either no overseas home or an overseas home at which present for fewer than 30 days in the year; or
- carry out full-time work in the UK.

A person meeting these criteria will be treated as resident in the UK.

Part C: connection and day counting tests where individual's residence position is not determined by Part A or B

There are separate tests for individuals arriving and leaving the UK which are a combination of connection tests and days actually spent in the UK. The more connecting factors you have the less time can be spent in the UK before you are considered UK tax resident.

i. Individuals arriving in the UK (individuals who were not resident in all of the previous three tax years)

The number of days an individual can spend in the UK without being resident in this case will again depend on their number of connecting factors. The relevant factors for someone coming to the UK are:

- has UK resident family;
- has substantive UK employment (or self employment) in the UK;
- has accessible accommodation in the UK; and
- spent 90 days or more in the UK in either of the last two tax years.

Days spent in the UK	Impact of connection factors on residence status
Fewer than 46 days	Always non resident
46-90 days	Resident if individual has **4 factors** (otherwise non resident)
91-120 days	Resident if individual has **3 factors** or more (otherwise non resident)
121-182 days	Resident if individual has **2 factors** or more (otherwise non resident)
183 days or more	Always resident

ii. Individuals leaving the UK – (individual resident in at least one of the previous three tax years)

The number of days an individual can spend in the UK will again depend on their number of connecting factors. The relevant factors for someone leaving the UK are:

- the four factors set out above for 'Arrivers'; plus
- spending more days in the UK than any other single country.

Days spent in the UK	Impact of connection factors on residence status
Fewer than 16 days	Always non resident
16-45 days	Resident if individual has **4 factors** (otherwise non resident)
46-90 days	Resident if individual has **3 factors** or more (otherwise non resident)
91-120 days	Resident if individual has **2 factors** or more (otherwise non resident)
121-182 days	Resident if individual has **1 factor** or more (otherwise non resident)
183 days or more	Always resident

Definitions

Clearly the definition of the terms used in the tests will be of paramount importance to the application. The full texts of the definitions are set out in the legislation but the following are some of the important points.

'full-time working overseas'

- employment or self employment must be for at least 35 hours per week;
- it must last a full tax year with no significant break;
- not more than 30 working days in the UK; and
- spends no more than 90 days in the UK in the tax year.

'working day' – any day where three hours or more is worked in the UK.

'only home' – no statutory definition and the individual need not own the property; residential accommodation for sale or let is not counted provided individual lives in another residence.

'family' – an individual has family in the UK in a tax year if either:

- their spouse, civil partner or common law equivalent is resident in the UK in that tax year (unless separated); or
- their minor children are resident in the UK and the individual spends 61 days or more with them (including part days) in the UK.

Children in the UK attending school or college will not be resident in the UK provided they spend fewer than 21 days in the UK whilst not present at an educational establishment and the child's main home is not in the UK.

'accommodation' – a place to live in the UK (including a weekend or holiday home) and:

- it is available to be used for a continuous period of at least 91 days in the tax year (ignoring gaps of fewer than 16 days); and
- at least one night is spent in that place during the year (increased to 16 where the accommodation is the home of a close relative).

'work ties' – employed or self employed in the UK for 40 or more days in the UK.

Individuals should take advice on the application of the SRT as it will impact on their tax status.

Domicile

Domicile is a general law concept and is distinct from nationality and residence. In very broad terms, an individual is regarded as domiciled in the country they consider their 'home country' (often the country where they have their long term permanent home).

UK tax position

If an individual is UK resident but non-UK domiciled or deemed domiciled, they can be taxed in the UK either on the 'remittance basis' or on the 'arising basis'.

An individual can decide each year (after the end of the relevant tax year) whether to be assessed on the remittance basis or the arising basis.

Arising basis

If no election is made for the remittance basis to apply, the individual will be assessed on their worldwide income and gains as they arise.

Remittance basis

If an individual elects to be taxed on the remittance basis, they will be subject to UK tax on:

- UK source income and the proceeds from gains on assets situated in the UK; and
- non-UK source income and the proceeds from gains on assets situated outside the UK only to the extent that the income or proceeds are remitted to or used in the UK.

The remittance rules are complex, and advice should be sought, but in simple terms income or gains are remitted to the UK when the funds are transferred into the UK or used to pay for goods or services in the UK.

It is necessary to elect for the remittance basis to apply. This election must be made on an annual basis on the individual's UK tax return.

The remittance basis is not available for non-UK domiciled taxpayers who have been UK resident in at least 15 of the previous 20 tax years, or to individuals who had a UK 'domicile of origin' and were born in the UK.

Remittance basis charge (RBC)

Where non-UK domiciled individuals have been resident in the UK for more than 7 out of the previous 9 tax years and they elect to be taxed on the remittance basis, they have to pay the RBC. The RBC is an annual charge of £30,000. This is payable in addition to the individual's tax liability on UK source income and gains, and non-UK income and gains remitted to the UK.

Where individuals have been resident in the UK for more than 12 of the previous 14 tax years, the RBC will be £60,000.

The remittance basis applies automatically to individuals who are not domiciled/deemed domiciled in the UK in respect of a tax year in which:

- the individual's unremitted foreign income and gains are less than £2,000; and
- the individual either has no UK income or gains, or has no UK income and gains other than taxed investment income not exceeding £100, and does not remit any foreign income or gains to the UK, and either has been a UK resident for more than 6 out of the previous 9 years, or is under the age of 18 throughout the year.

The following are some examples of instances which may trigger a UK tax charge where overseas income or capital gains are remitted (or treated as being remitted) to the UK:

1. Transferring cash, bank balances, cheques, promissory notes or any other form of money to the UK.
2. Receiving payment in the UK.
3. Servicing or repaying, outside the UK, interest or capital on a UK loan.
4. Servicing or repaying outside the UK, foreign loans that have been used in the UK.
5. Using overseas credit cards in the UK, if the settlement is made using foreign income or gains.
6. Bringing assets purchased abroad to the UK.

Actions before arriving in the UK

If an individual wishes to claim the remittance basis of taxation there are a number of practical steps which should be taken before arrival in the UK. Specific advice should be taken to look at any income and gains which arise before an individual becomes UK resident.

Business investment relief

An exemption is available on remittances of foreign income or capital gains brought to the UK for the purpose of business or commercial investment. In order to benefit from this relief for investing in the UK, certain conditions will need to be met before, during and after making the investment to ensure that a remittance of income or gains to the UK does not inadvertently lead to a tax charge. There are strict time limits for bringing funds to, and withdrawing funds from, the UK and some of the key conditions are set out below.

Qualifying company

Investors will need to make a 'qualifying investment', which will typically be in an 'eligible trading company'. An eligible trading company is a private limited company which carries on a trade in the UK or is preparing to carry on a trade within five years. It is also possible to make investments in certain holding company structures which then subsequently own shares in eligible trading companies. There are specific rules laid down in the legislation relating to all such investments and these need to be carefully considered.

Timing

The time limit for making a qualifying investment is within 45 days of remitting funds to the UK. A claim for relief must also be made on an individual's tax return that year so that the remittance is not treated as taxable.

Type of investment

A qualifying investment comprises shares or securities issued to the investor or a loan made by the investor, either secured or unsecured, to the company. There is no limit on the amount of the investment.

Continued qualification

There is no time limit on the duration of the investment but the qualifying conditions must continue to be met to avoid triggering a crystallising event. Clearly, a sale of the shares or repayment of the loan is a 'potentially chargeable event'; however, there are some other situations that would cause the investment to cease to be a qualifying investment including:

- the company ceases to qualify, for example the company gains a full listing;
- an individual ceases to be a relevant person;
- value is received as a result of the investment which is not treated as income for tax purposes; and
- trading activities do not commence within two years of making the investment.

If an investment ceases to be a qualifying investment, the individual will be treated as having remitted the income and/or gains to the UK, unless appropriate action is taken.

Withdrawing from the investment

The most straightforward way of withdrawing from an investment would be to sell the shares in the investee company or receive a repayment of loaned funds. Payments of interest or dividends should not result in a clawback of relief.

Action will need to be taken, however, following a sale or repayment in order to avoid creating a taxable remittance of income or gains. The funds will need to be taken outside the UK within 45 days or reinvested in another qualifying investment. Failure to do so will result in the funds being treated as a taxable remittance to the UK at the end of the 45 day period.

These actions will be equally applicable where an investment ceases to be a qualifying investment as a result of any of the situations mentioned above.

We recommend further guidance is sought.

Capital gains tax (CGT)

Individuals who are resident in the UK are liable to capital gains tax on:

- Worldwide gains – if domiciled/deemed domiciled in the UK, or non domiciled and subject to tax on the arising basis;
- Gains on UK situs assets, and gains on foreign assets only if remitted to the UK – if domiciled outside of the UK and they elect for the remittance basis to apply.

For the 2020/21 tax year, basic rate taxpayers are subject to tax on capital gains at 10% (or 18% for disposals of UK residential property and carried interest) and higher rate taxpayers at a rate of 20% (or 28% for disposals of UK residential property and carried interest).

Individuals who are not resident in the UK are also liable to capital gains tax on the disposal of residential property based in the UK. There are two methods for calculating the chargeable gain:

- Using the property's value at 5 April 2015 as the base cost.
- Using the original acquisition cost, but pro-rating the amount of chargeable gain based on the time elapsed between 6 April 2015 and the date of disposal in comparison to the total ownership period.

Capital gains tax extension

The extension of the capital gains tax regime to apply capital gains tax to gains realised on the disposal of UK residential property held by non-UK resident non-natural persons is to align the treatment to that of UK residents.

From 5 April 2019, non-resident companies became subject to corporation tax on gains from UK property. This meant a reduction in the tax charge for companies holding UK residential property from 28% to the corporation tax rate (currently 19%).

From 6 April 2020 UK residents who are subject to CGT on a disposal of UK residential property are required to make a payment on account of CGT within 30 days of completion of the disposal. This brings the payment requirement for UK residents in line with that for non-residents under the NRCGT regime.

Business asset disposal relief

Business asset disposal relief is available for individuals who make a material disposal of business assets.

The rate of capital gains tax on gains qualifying for business asset disposal relief is 10%. The maximum amount of gains which qualify for the relief during an individual's lifetime is £1 million, although there is no limit on how many times an individual can claim the relief subject to the lifetime limit.

Circumstances in which the relief can be claimed, include a disposal of:

- shares or securities of an individual's 'personal' company;
- the whole or part of a business, including partnership interests;
- assets used for the purpose of the business at the time the business ceased;
- trust business assets; or
- assets owned by individuals and used in a business in which the individual was a partner or by their 'personal' company.
- there are qualifying conditions attached to each category, for example in the case of the personal company the requirements are that for at least 24 months prior to the disposal:
  - the company must be a trading company or holding company of a trading group; and
  - the individual must be an officer or employee of the company or a company within the group.
  - the individual must hold at least 5% of the ordinary share capital and 5% of the voting rights exercisable by virtue of that holding;
  - they must also be entitled to at least 5% of either
  - profits that are available for distribution and assets on winding up the company; or
  - disposal proceeds if the company is sold.

If the number of shares held falls below 5% because the company has issued more shares, it may be possible to make an election to be treated as if the shares had been sold and re-bought immediately before the new shares were issued.

It is also possible to elect to postpone paying tax on that gain until the shares are sold.

UK personal allowance/(CGT) exemption

Generally, individuals who are resident in the UK are entitled to an annual personal allowance (£12,500 for 2020/21) and a CGT exemption (£12,300 for 2020/21). This means that an individual can receive £12,500 of income and £12,300 of capital gains, tax free.

The Personal Allowance is restricted by £1 for every £2 of income above a £100,000 threshold. It can reduce to zero.

Individuals who are resident in the UK but non-UK domiciled and elect for the remittance basis to apply are not entitled to the personal allowance or the capital gains tax exemption.

UK inheritance tax (IHT)

The UK does not impose wealth tax; however individuals may be subject to IHT if they die owning any assets located in the UK or transfer any assets located in the UK, irrespective of their residence or domicile.

A person's IHT exposure depends on their domicile rather than residence position. Accordingly, UK domiciled/deemed domiciled individuals are subject to IHT on their worldwide assets, wherever they are situated.

A person is regarded as deemed domiciled for IHT purposes, if they have been resident in the UK for more than 15 out of the past 20 years.

A person who is non-UK domiciled (and not deemed domiciled), is only subject to UK IHT in respect of assets situated in the UK; any assets located outside the UK are outside the scope of UK IHT.

UK IHT also applies to UK residential properties even where they are held by non-UK companies (which previously would have been treated as a non-UK asset).

Assets can pass between spouses or civil partners free of IHT except in the case where a UK domiciled spouse gifts assets to their non-UK domiciled spouse or civil partner, where the gift is currently capped at £325,000.

No IHT is charged on gifts transferred from one individual to another, provided that the person making the gift outlives the gift by seven years. IHT is charged at 40% on death, on relevant assets, subject to a £325,000 nil rate band (NRB).

Certain lifetime gifts, e.g. to a trust or company, will be subject to an immediate 20% charge to IHT if an individual is domiciled or deemed domiciled at the time of making the gift.

Individuals with direct descendants who have an estate (including a main residence) with total assets above the standard NRB will be eligible for an additional NRB when a residence is passed on death to a direct descendant. This is £175,000 from April 2020 and will then increase in line with inflation from April 2021 onwards. Any unused NRB will be able to be transferred to a surviving spouse or civil partner.

The additional NRB will also be available when a person downsizes or ceases to own a home and assets of an equivalent value, up to the value of the additional NRB, are passed on death to direct descendants.

There is a tapered withdrawal of the additional nil-rate band for estates with a net value of more than £2 million. This will be at a withdrawal rate of £1 for every £2 over this threshold.

Payroll taxes

All UK employers must operate a Pay As You Earn (PAYE) system. Under PAYE, employers must deduct income tax and social security contributions from employees' pay, provide them with a written pay statement, make payments to HM Revenue and Customs on a monthly or quarterly basis and keep adequate records.

All employers are required to tell HM Revenue and Customs via online reporting about payments to employees before or when they make those payments. This information may be shared with other Government departments such as the Department for Work and Pensions and the UK Borders Agency. It is the employer's responsibility to ensure that the information is accurate and up to date. HM Revenue and Customs can impose penalties for late or inaccurate submissions.

There are a number of different PAYE schemes which, depending on circumstances, will dictate which type of scheme is relevant for the business. These can include local domestic schemes, NIC only schemes, modified appendix 6 schemes or direct payment schemes.

Pension schemes

Under the Pensions Act 2008, every employer in the UK must put certain staff into a pension scheme and contribute towards it. This is called 'automatic enrolment'. To comply with most automatic enrolment schemes, employers will need a UK bank account.

Notably:

- Some salary sacrifice schemes will no longer continue to offer the same savings on tax and national insurance contributions. There are some exemptions to this – schemes related to pension savings (including pensions advice), childcare, cycle-to-work and ultra-low emission cars.
- Employers with a pay bill over £3 million each year are obliged to pay the apprenticeship levy. Employers will report and pay the levy to HMRC through the PAYE system.

Gender Pay Gap Reporting

Gender pay gap regulations require private and voluntary sector organisations employing 250 or more people to publish the details of their gender pay gap each year.

Mobilising your workforce

As companies expand their operations into the UK, it is important to establish a strategy to identify and mobilise the key individuals and the broader workforce needed to ensure successful entry to the UK. Deploying the right talent to the right place at the right time will enable a company to establish its footprint in the UK and achieve its broader business strategy.

Establishing a mobility strategy

Where an organisation is relocating to the UK to establish a new business or relocating a function, it is important to identify the key employees who may need to relocate or work in the UK. For example where a company becomes tax resident in the UK, it may need to hold its board meetings in the UK to demonstrate that the centre of management and control takes place in the UK. This will trigger overseas travel for the board directors and senior executives. As the company further expands its operations in the UK, other employees may need to increase their working time in the UK or formally relocate to the UK. The extent to which employees commute to the UK or who are required to second or relocate will depend on the role that the UK entity has within the group and the employees' preferences. This increases the complexity of the movement of people – either with increased commuting to the UK or a need for secondments or transfer of staff to the UK.

Identifying the different groups of stakeholders who need to undertake business travel or relocate to the UK is important as differing personal tax obligations and corporate reporting or payroll requirements may arise for each population. For example the tax treatment of board directors is more complex given the fiduciary duties performed in the UK and their pattern of visits to the UK.

Early involvement of various stakeholders in business expansion plans (such as HR, tax, reward and mobility teams) and anticipating the associated resourcing needs will enable organisations to smoothly deploy people and proactively manage the operational and compliance risks associated with the movement of employees.

Board meetings in the UK

In today's globalised world, UK business frequently draws upon global talent and experience to fulfil board director roles. For non UK tax resident directors of UK companies, both executive and non-executive, the tax and social security position can be complex and the cross-border aspects should be considered. Consideration also needs to be given to the tax treatment of expenses and benefits incurred e.g. where the company is meeting the cost of flights and accommodation in the UK. Some tax reliefs may be available where the individuals are domiciled outside of the UK or where the UK is considered a 'temporary workplace'.

Companies will need to establish a compliant payroll and social security process for board directors from the outset of entering the UK.

Some companies may also be required to report in the UK on directors' fees. The level of reporting and transparency has increased with the introduction of revised remuneration disclosures under the Department for Business Innovation and Skills (BIS) and accountability for companies under the Senior Accounting Officer regime.

Broader mobility considerations

Apart from the Board of Directors' meetings, in some circumstances other personnel may also be required to be present in the UK for work or to participate in various management meetings held in the UK.

The timing, frequency and the length of stay of employees entering the UK is also critical to achieving a company's strategy in establishing its presence in the UK and the role of the UK in the wider group. It is important to engage the individual stakeholders which the business needs to work in the UK as there may be personal circumstances which may impact the timing of individuals being able to relocate e.g. children may be in school which may delay moving to the UK. In addition, ensuring that individuals understand the UK tax personal tax regime, are rewarded appropriately as well as receive support in relocating to the UK are also important criteria to ensure that the relocations occur smoothly and without disruption to the business. Below are some examples of other considerations;

- **Immigration:** It is important to review the immigration requirements and ensure that the right permits and immigration documents are in place. Some requirements may take longer to apply for or fulfil and so it is important to establish timings to ensure that key employees can be deployed to the UK in line with the corporate strategy.
- **Reward packages:** Considering the impact of the UK tax (and potentially social security) regime is important to determine how to structure reward and compensation packages for senior executives and employees. In addition the compensation package may differ where individuals are commuting to the UK as opposed to formally relocating e.g. on a secondment or transfer. Where the UK tax rate is higher than the individuals' home country tax rate, companies may need to consider how to incentivise strategic employees to work in the UK to ensure that they are no worse off e.g. offering assignment allowances, benchmarking of pay, tax equalisation etc.

  Companies may also wish to estimate the tax costs of relocation so that the employees understand their individual global tax position and so that the business can accrue for the costs of relocating its people.

- **Understanding the availability of UK tax reliefs:** The UK has a number of tax reliefs to which mobile employees who are working in the UK may be entitled, such as detached duty relief, which provides deductions on accommodation, subsistence and home-to-work travel for secondments under two years, and overseas workdays relief, which gives an exemption on workdays performed outside of the UK (subject to certain conditions being met).
- **Equity reward and pension schemes:** The UK has complex rules regarding the taxation of equity compensation – non-UK based individuals may in some cases be taxed in the UK on UK workdays for equity compensation.

  Furthermore foreign pension schemes are likely to be subject to the UK pension rules. Since 6th April 2016, pensions tax relief for high earners is restricted in the UK. Therefore the position for employees relocating to the UK should be reviewed in light of this to understand the consequences and whether any alternative compensation needs to be considered.
- **Costs of living:** Businesses need to consider the different types of employees moving as incentives for a senior executive to relocate compared to a manager might differ. A company may also wish to benchmark cost of living differentials and relocation packages to assess the right level of allowances or benefits to offer.
- **Relocation services:** Companies will need to appoint relocation providers to provide services in relocating their people. Relocating to a new country can be burdensome to employees and therefore ensuring that seamless support is provided will help employees remain focused on the business needs.
- **Mobility policy:** As companies begin to move larger populations of employees to the UK, it should consider developing a mobility framework that enables them to move the right people, into the right roles, at the right cost and in a fair and consistent way.
- **Payroll compliance:** Companies will need to register in the UK for PAYE purposes and operate payrolls in compliance with the UK 'real-time' information rules. More complex expat payrolls may be required where individuals are tax equalised (modified payroll). Interaction with the home country tax and payroll positions should also be considered, in particular where individuals have a complex working pattern and commute.
- **Short term business visitors (STBVs):** Where the company is UK headquartered, STBVs are a common issue and may increase the complexity of compliance. Companies need to track travel for business visitors to the UK to disclose to HMRC and processes need to be put in place to manage this. The position should also be reviewed to determine whether any individuals may trigger UK tax as a result of their duties in the UK.
- **Social security:** The social security position should be reviewed where individuals are working cross-border. It may be possible in certain positions to retain an individual in their home country social security regime and the relevant applications would need to be made to the social security authorities.

Brexit and mobility

Although much remains unknown about the exact shape of the UK's future relationship with the EU following Brexit, people considerations will rank highly among the practical implications of Brexit. In considering moving people to the UK to fulfil companies' expansion strategy, companies should consider the impact of Brexit which may present more challenges from an immigration, social security and cost perspective.

For example, employees moving into the UK from the rest of the EU, the EEA or Switzerland on a temporary basis are often able to remain in their home country social security regime rather than them and their employer paying UK national insurance contributions under the rules currently in force. These rules are dependent on an EU regulation and it is unclear whether the UK will continue to be subject to that regulation when it leaves the EU. If the EU regulation does not apply, the position of those employees will depend on the terms of any social security agreement that the UK might have with the employee's home country. Some overseas revenue authorities will now only grant permission for employees to remain in their home country social security scheme where their assignment is due to end prior to the UK's departure from the EU.

There are some notable exceptions. The Common Travel Area (CTA) is a special border-free zone comprising the UK, Ireland, the Channel Islands and the Isle of Man and facilitates the principle of free movement for British and Irish citizens between the UK, Ireland and the Islands.

The Ireland Act 1949 states that Ireland 'is not a foreign country for the purposes of any law in force in any part of the United Kingdom'. The Irish Government also legislated in 1949 to ensure that British citizens in Ireland enjoy similar rights and privileges to those enjoyed by Irish citizens in the UK. As a result of these historic arrangements, the reciprocal rights for UK and Irish nationals include the right to enter and reside in each other's state without being subject to a requirement to obtain permission. The UK and Irish Governments and the EU have agreed that this principle of freedom of movement could continue, post Brexit.

Please visit our site for information about the possible impact of Brexit on your workforce planning.

Summary of considerations

Companies looking to expand their operations to the UK, or indeed any new territory, should consider its strategy for moving people to ensure the expansion is successful. To this end, they should plan ahead and consider:

- engaging right stakeholders from various parts of the business early on in the process;
- identifying the right talent for the expansion and incentivising them in the right way; aligning the company's objectives with the individuals;
- understand the overall cost involved in moving the different profile of individuals – from board members, to senior executives and employees;
- understanding operational and compliance requirements for both the company and its employees.

Tax transparency

The prevailing economic conditions of the last decade, including economic crises and significant budget deficits, have created increased demand for tax transparency. Consequently, the management of the UK tax system, as part of the globalised economy, and the contribution of large companies and High Net Worth individuals (HNWIs) to the UK Treasury, has become the subject of significant debate. Tax has attracted increasing attention from politicians, the media and the public, with mounting public pressure on businesses and HNWIs to not only pay their 'fair share' but also to publicly disclose what they pay.

The UK Government has been clear about its goal of increasing and encouraging tax transparency and indeed the trend for greater transparency is also reflected in the agendas and action plans of the Organisation for Economic Co-operation and Development (OECD), the G20, the European Union and the United Nations. Automatic exchange of financial information between tax authorities is now a reality as a result of The Foreign Account Tax Compliance Act in the US and the Common Reporting Standard and the transparency agenda continues to push forward. We are now moving from the exchange of information between global revenue authorities to a more public sharing of information through registers of beneficial ownership such as the People with Significant Control register in the UK with further proposals at EU level currently being considered. In the corporate sphere, public debate is becoming more focused on the tax policies of corporates and the tax they pay, with increasing demands for public Country by Country Reporting. These initiatives aimed at increasing transparency have been accompanied with increased civil and corporate deterrents in respect of those deemed to be evading or avoiding tax as well as those enabling others to do so.

The pace of change means that businesses, individuals and their advisors are having to adapt quickly to the increased regulation and the inherent tensions arising from the transparency agenda: the need to balance transparency with data protection, privacy, personal security and other considerations. Whilst acknowledging that the transparency agenda represents some challenges, it's also important to recognise the opportunities it presents.

The tax transparency debate is likely to continue to evolve and lead to some further changes in terms of regulation and taxpayer behaviour; however, as well as its goal of ensuring the correct amount of tax is paid by all relevant taxpayers, the UK has a twin goal of attracting mobile capital and remaining globally competitive. If the UK tax authorities encourage fair and proportionate tax enforcement and compliance through a transparent relationship with tax payers, they can enhance the UK's investment climate, and have a favourable impact on the economy.

The UK has been an international leader in implementing automatic exchange of information agreements and other tax transparency measures. The aim of the measures is to increase the effectiveness of HMRC's compliance activity as well as increasing the deterrent effect for those who attempt to evade UK tax by holding financial assets outside of the UK.

The Common Reporting Standard

The UK is signatory to the OECD's Common Reporting Standard (CRS) and in order to comply with the CRS has introduced regulations creating due diligence and reporting obligations for UK financial institutions. The obligations require financial institutions to:

- identify accounts maintained for specified persons, that is, account holders who are tax resident in jurisdictions with which the UK has entered into an agreement to exchange information about a wide range of financial accounts and investments to help tackle tax evasion.
- collect and report information in a specified manner on specified persons to HM Revenue and Customs (HMRC).

Beneficial ownership registers

In June 2015 the EU introduced the Fourth Money Laundering Directive, with Member States being required to have implemented the directive through national law by 26 June 2017. The directive introduced numerous measures designed to increase transparency and identify beneficial owners of companies, partnerships and trusts. In order to comply with the Fourth EU Money Laundering Directive, the UK has introduced The People with Significant Control Register and the Trust Register.

Both the EU and the UK Government have demonstrated an ongoing commitment to ensuring that the law effectively delivers the desired level of transparency and as a result, additional measures introduced by the Fifth Money Laundering Directive.

The people with significant control register

The people with significant control (PSC) register includes information about the individuals who own or control companies including their name, month and year of birth, nationality and details of their interest in the company. Since 30 June 2016, UK companies (except listed companies) and limited liability partnerships (LLPs) need to declare this information when issuing their annual confirmation statement to Companies House.

A person of significant control is someone that holds more than 25% of shares or voting rights in a company, has the right to appoint or remove the majority of the board of directors or otherwise exercises significant influence or control. This information will form a central public register of people with significant control, which is free to access.

The trust register

The trust register is a central register held by HMRC and updated annually by trustees. Information to be provided includes:

- details of trust assets, including values and addresses where relevant;
- the identity of the settlor, trustees, protectors, beneficiaries or class of beneficiaries and any other persons exercising effective control over the trust.
- Identity information required will include:
  - name;
  - date of birth;
  - national insurance number if UK resident, unless they are a minor; and
  - for those with no national insurance number, an address and passport or ID number.

The register will apply for any and all trusts that are UK resident or are non UK resident but have UK Source income or UK assets on which they are liable to UK tax.

The UK is also implementing the EU's Fifth Money Laundering Directive which will mean significant changes to the trust register including a wider range of information to be provided, time limits for compliance, and it also broadens the scope of trusts that need to register.

The requirement to correct

Finance (No 2) Act 2017 introduced a 'Requirement to Correct' (RTC) obligation to compel those taxpayers with offshore interests who had yet to put their UK tax affairs in order to do so by September 2018, ahead of the widespread adoption of the Common Reporting Standard.

Failure to carry out the necessary corrections by 30 September 2018 rendered the taxpayer liable to a 'failure to correct' (FTC) penalty which starts at 200% of the offshore potential lost revenue (PLR), and which may not be reduced below 100% of the tax. Additionally, the FTC penalty does not take into account the seriousness of the cause of the original error/omission, thus treating technical errors/cases where reasonable care was taken when a return was submitted in the same way as those where a person deliberately omitted income or gains. Therefore this is a very significant penalty, reflecting HMRC's tougher approach to offshore non-compliance.

Failure to prevent tax evasion

The aim of the legislation is to require companies to put in place reasonable procedures to prevent those providing services for it or on its behalf from knowingly facilitating tax evasion, and this will be the case whether the tax evaded is owed in the UK or in a foreign country. The new offences do not extend the scope of tax evasion, but are designed to change who can be held to account for facilitating evasion making it easier to take action against the company concerned.

Failure to implement reasonable prevention procedures could result in companies facing criminal prosecution if their employees or related counterparties facilitate tax evasion. The penalty on conviction is an unlimited fine, and the potential for associated reputational damage. Companies should carry out a risk assessment to identify the areas where facilitation could potentially arise. This process will identify current controls in place, whether they are proportionate, and where it is necessary to strengthen them or implement new ones.

HMRC's guidance states that due diligence of staff, third parties and clients should be undertaken in proportion to the risks that they pose to the business. There should also be top level commitment within the organisation to prevent the facilitation of tax evasion. Communication (including training) to employees and third parties should also be given to ensure procedures are embedded and understood. The risk assessment and controls should be monitored and reviewed on an ongoing basis.

Publication of a UK tax strategy

Large companies are required to publish a tax strategy in relation to UK taxation. It must be published on the internet, be publicly accessible and free of charge.

In order to comply with the legislation, the strategy should cover 4 areas:

- the approach of the UK group to risk management and governance arrangements in relation to UK taxation;
- the attitude of the group towards tax planning (so far as it affects UK taxation);
- the level of risk in relation to UK taxation that the group is prepared to accept; and
- the approach of the group towards its dealings with HRMC.

Senior accounting officer (SAO)

The SAO provisions were introduced in 2009 to ensure that there is board-level accountability for tax matters in large companies, and to incentivise those companies who are subject to these rules, to ensure that they have robust tax accounting systems and governance in place. Qualifying companies include UK companies (under Companies Act 2006) which had in the previous accounting year, turnover greater that £200m or gross balance sheet assets greater than £2bn alone or in aggregate with other UK companies in the same group (over 50%).

The company must appoint an SAO and notify who this is to HMRC every year. A SAO must be a director or officer of the company who has overall responsibility for the financial accounting arrangements e.g. the CFO rather than a Head of Tax.

The appointed SAO of a qualifying company must take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements i.e. to ensure tax is calculated and disclosed correctly in all material respects in the relevant tax return (the 'main duty'). An annual certificate must be submitted, by the SAO, to HMRC stating whether or not there are appropriate tax accounting arrangements in place.

There are financial penalties for failure to comply as follows:

- £5,000 on the SAO personally for failing in the main duty; and/or
- £5,000 on the SAO personally for failure to certify or providing a certificate with a careless or deliberate inaccuracy; and
- £5,000 on the company for failure to notify HMRC of the identity of the SAO.

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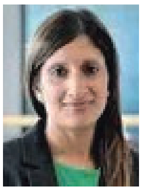

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4. How do I deal with my employees?

- Employment contracts
- Employee benefits
- Immigration
- Human rights

Employment contracts

UK law grants employees a range of protections that create obligations and potential risks for employers. Although these are generally less stringent than in other European countries, you will nonetheless need to be aware of them.

The obligations an employer owes its UK employees include:

- a general duty to provide a safe place of work, safe access and safe work systems, supported by related obligations, among other things, to take out employer's liability insurance, consult with employees or their representatives over health and safety issues and provide staff with certain health and safety information;
- a requirement to provide a written statement of terms and conditions of employment to employees and workers from day one of employment. A contract of employment can satisfy this obligation;
- an obligation not to discriminate against employees, including job applicants, on a range of grounds, including race, colour, nationality, ethnic origin, age, gender (this includes sexual harassment), pregnancy and maternity, marital or civil partnership status, religion or religious belief, sexual orientation, gender reassignment, disability, or part-time or fixed-term status;
- an obligation to pay employees at least the national minimum wage, which is a fixed hourly rate and is increased annually. At present this is £8.72 per hour for those 25 years old and over;
- various benefits in connection with giving birth, adoption and other family situations (these include maternity absence for up to 12 months, part of which is paid, and a right to time off to deal with domestic emergencies). The weekly rate of statutory maternity, paternity, adoption and shared parental pay is currently £151.20;
- a requirement to provide qualifying employees who have been absent from work for four or more consecutive days with statutory sick pay of £95.85 per week for up to 28 weeks. Employers may choose to provide their employees with a contractual right to additional sick pay;
- a requirement not to allow a worker to work beyond 48 hours per week (on average over, normally, a 17-week period) without express consent (there are additional limits on working time, including daily and weekly time off and specific limits related to younger workers and night workers);
- a duty to give each employee a minimum amount of 5.6 weeks' paid holiday each year;
- a requirement to observe limitations on the freedom of an employer to process personal data obtained about its employees and job applicants, including transferring it to third parties (these limitations are more strict in relation to personal data which is 'sensitive' and where the data may be transferred outside the EU to countries with lower levels of privacy protection); and
- various rights for employees to protect them in the event of termination of employment. These include a minimum notice entitlement that can be as long as 12 weeks and a right to a statutory payment on being made redundant with more than two years' continuous service. Where service exceeds two years, a dismissed employee has a right to claim compensation for unfair dismissal and that claim will be successful unless the employer can show there was a permitted reason for the termination and that a fair and legal process was followed. In some cases, two years' service is not required.

Union or other collective rights are less significant in the UK than in many other European countries. The law in the UK requires an employer to recognise a trade union or establish a national works council or committee in certain circumstances, but only where such an arrangement is specifically requested by a union or workers. As a result, many UK employers have no such arrangements in place.

Employers making collective redundancies will need to assess and manage a number of legal risks. It is worth noting that where there are between 20 and 99 employees affected, the collective redundancy consultation period is 30 days; however, where 100 or more employees are being made redundant the consultation period is 45 days. It is worth noting that employees whose fixed-term contracts are coming to an end will not count towards the total number of employees for the purposes of collective consultation obligations.

It is beneficial for an employer to establish a comprehensive contract of employment to be issued to each employee. This can include all of the terms and conditions of employment, covering the rights described above, and in addition protect the employer's business interests by placing obligations on the employee. Examples are specific requirements to keep information about the business and its customers confidential, provisions securing ownership of inventions and developments made in the course of employment, and covenants restricting certain competitive activities after employment ends, such as poaching customers or key staff.

Employers frequently supplement this contract with a formal staff handbook setting out company policies, including ones that support compliance with the issues referred to above, such as discrimination/harassment and data protection. Employers are required to have policies in place relating to: health and safety; disciplinaries and grievances; and equality and diversity/equal opportunities.

An employer is under an obligation to make a pension arrangement available to staff who meet certain eligibility criteria. Employers must automatically enrol eligible employees into a pension scheme and make contributions to the pension scheme. The minimum employers have to contribute increased to 3% of employees' salary (within certain limits), up from 2% previously, although employees may also be required to contribute.

Additional benefits such as bonus, health insurance and car allowance are a matter of choice for the employer. The contract of employment is an important tool in setting out the terms of any benefits provided, most notably bonuses. Precise language in the contract can clarify the employee's rights and may save the employer unexpected costs on termination of employment.

Equal pay

An employer is under an obligation to pay men and women equally for carrying out equal work. Work is considered equal if it is 'like work', 'work rated as equivalent' or 'work of equal value'. Where men and women are performing equal work, differences in pay may still be lawful if they are due to a material factor unrelated to gender. Failure to pay men and women equally for equal work may result in equal pay claims and liability to equalise pay going forward and pay arrears of damages for up to six years (with no cap on liability).

In addition to potentially significant financial exposure, employers can also be faced with reputational damage, employee relations issues and difficulty attracting or retaining talent.

Employment tax – other considerations

National minimum wage (NMW)

Employers are required to pay their staff at least the NMW, which is a minimum hourly rate of pay set by the Government, which varies based on the age of the worker (please see table for rates). Enforcement of the NMW is carried out by HMRC and in recent years they have opened investigations into a large number of employers in the UK and found high instances of underpayments.

In our experience, whilst employers aim to pay workers above the NMW, the complexities of the legislation means employers can often inadvertently pay their workers below the NMW.

Employers are often caught out because they require workers to comply with a particular dress code, but do not take into account the cost to a worker of complying with this, or do not pay workers for periods of work (e.g. team briefings before shift start times). These kinds of issues can lead to large underpayments and high penalties of up to 200% of the underpayment. In addition, employers are publicly named if HMRC identifies underpayments.

Rates for the National Living Wage and the National Minimum Wage. The rates change every April.
Rates from 1 April 2020

	25 and over	21 to 24	18 to 20	Under 18	Apprentice
April 2020 (Current rate)	£8.72	£8.20	£6.45	£4.55	£4.15

Rates from 1 April 2021

	23 and over	21 to 22	18 to 20	Under 18	Apprentice
April 2021 (Current rate)	£8.91	£8.36	£6.56	£4.62	£4.30

The use of independent contractors – IR35

Many companies engage independent contractors (who are engaged through their personal service companies ('PSCs')) instead of hiring employees. The 'off-payroll working' rules (known as IR35) will come into force on 6 April 2021 and will place obligations upon companies in respect of these contractors (if they do not fall under the 'small' company exemption). The purpose of these rules is to prevent the avoidance or reduction of tax and national insurance contributions by the interposition of an intermediary (typically a PSC) between a client and a contractor.

Essentially, the rules require end users of contractors to determine whether a contractor would have been an employee but for the existence of the intermediary and issue a determination of status to the contractor. This is known as a status determination statement. The end user and other entities in the contractual supply chain have various obligations depending on the outcome of the status determination and where the entity sits in the contractual chain.

There are a number of ways in which end users of contractors could find themselves taking IR35 liability for withholding tax and national insurance, including:

- failing to issue a status determination statement,
- not taking reasonable care with that statement; and
- not dealing appropriately with an appeal against the determination.

Contractual protections in the contracts with suppliers of PSCs can minimise the risk of any liability for end users.

Employee benefits

The contract of employment will include terms relating to:

- salary;
- potential bonuses;
- benefits provided by the employer to employees

In the UK it is also common to find some sort of equity incentive arrangement as part of a senior executive's reward package (and in some organisations employee share ownership is spread widely across the workforce in general) though this is usually made available outside the contract of employment.

Providing certain benefits, rather than paying a higher salary, is an option to consider which may affect the tax treatment. Changes from 6 April 2017 mean any tax advantage is restricted to certain approved benefits, such as pensions and childcare vouchers. The employer is responsible for reporting relevant taxable benefits provided to an employee in an annual return (form P11D).

All UK employers must automatically enrol all workers into a pension scheme (subject to certain low earner and young employee exemptions) and ensure minimum contributions are paid equal to a percentage of total earnings (currently 8% since April 2019 with the employer contributing a minimum of 3%). New employers must comply at the same time that they first become required to operate PAYE.

The provision of pension benefits has gone through a process of further significant changes with dramatic alterations in the tax treatment of pension contributions for 'high-earners'. The challenge for an employer is how to maintain pension provision as an attractive part of the reward package or at least develop tax-efficient savings arrangements as an alternative.

The use of equity for long-term reward is not confined to listed companies and it can be particularly attractive to provide share-based incentives in listed and unlisted companies where those companies are eligible for share plans that have been created by the Government to encourage employee share participation. These Government-supported plans provide the opportunity to generate value for employees without income tax implications, if all of the qualifying conditions are met. Where these structures are used, there are capped limits on the level of awards, but these are normally straightforward to set up and administer if the relevant qualifying conditions are met (a key condition being that the company whose shares are used is an independent company i.e. not controlled by another company). There is no requirement for the parent company to be a UK company to qualify for these plans, and the UK employing company will normally get a corporation tax deduction for value delivered to employees.

The enterprise management incentive (EMI) plan, allows shares worth up to £250,000 to be awarded to employees via EMI options – this is limited to groups with gross assets of under £30m and fewer than 250 employees. Plans are available on an all-employee basis or discretionary basis, so the company can design arrangements to suit its own circumstances. Performance conditions and vesting periods are common, to ensure that the arrangements retain and motivate your employees. Where qualifying conditions are not met for these arrangements, the commercial benefits of providing employees with the chance to hold shares or share options may still make it worthwhile to extend equity arrangements to employees, though care must be taken to understand potentially complex tax rules.

Immigration

From 1 January 2021, a new Points Based Immigration System (PBS) has been introduced following the end of free movement between the UK and EU. The new rules apply equally to all non British nationals going forwards.

When establishing a business in the UK, there are a number of options under both the PBS and other immigration categories. The first senior employee of a company can elect to come to the UK as a sole representative of an overseas business, whereas individual investors may prefer to apply under the Tier 1 (Investor) migrant or Start Up and/or Innovator categories, depending on their particular circumstances. For a company wishing to expand its presence in the UK, subsequent employees can also be sponsored to come into the country as Skilled migrants, subject to the company holding a valid sponsor licence. These options are discussed in more detail below.

Tier 1 (Investor): The Tier 1 (Investor) route is designed for high net worth individuals making a substantial financial investment into the UK and who have available £2 million, £5 million, £10 million under their control, held in a suitable bank and disposable in the UK.

Investors must have:

- Funds held for a minimum of two years or source of funds evidenced.
- A UK bank account opened for investing the funds.

Investments can be made in loan or share capital of active and trading UK registered companies; however, Investment in property related companies is prohibited.

Investors will be granted an initial visa for 3 years (and 4 months), following which they may seek an extension for a further 2 years. After 5 years in the UK, applicants may apply for settlement in order to remain in the UK indefinitely. Those who have invested £5 million or £10 million may be eligible to apply for accelerated settlement after 3 years or 2 years, respectively.

Start Up and Innovator: These two immigration categories are designed for entrepreneurs seeking to establish a business in the UK. The Start-Up visa option is available for early stage entrepreneurs seeking to establish a business in the UK for the first time. The Innovator visa option is available for experienced entrepreneurs. Both visa categories need endorsement from an authorised body and must demonstrate an innovative, viable and scalable business idea.

Innovators must demonstrate that they have available £50,000 to invest in the business from any legitimate source.

The Start Up visa is granted for a period of up to 2 years and does not lead to settlement, but entrepreneurs can switch into the Innovator visa and apply for settlement after 3 years providing they meet all the immigration criteria.

Sole representative of an overseas company: The Sole Representative visa route enables overseas companies to relocate a senior employee to the UK for the purpose of establishing a wholly-owned subsidiary or to register a UK establishment for the overseas parent company. The company must not already have a branch, subsidiary or other representative in the UK. In addition, the proposed UK establishment must be concerned with the same type of business activity as the overseas parent company.

In order to be a successful applicant, the senior employee must have previous experience in a senior role, work full time as a representative of the overseas parent company and have full authority to make operational decisions. The individual must also be competent in English language to a basic user standard and cannot be a majority shareholder of the overseas parent company.

This category leads to settlement after 5 years continuous residence in the UK.

Global Talent: This immigration category is designed for recognised global leaders, and the leaders of tomorrow in science, humanities, engineering, the arts (including film, fashion design and architecture) and digital technology. Individuals must be endorsed by a recognised UK body in their field, as approved by the Home Office.

This route can lead to a highly flexible permission, enabling visa holders to work for employers or be self-employed, change jobs without informing the UKVI and travel abroad and return to the UK for research purposes.

Worker: Worker route allows UK companies to sponsor migrants for the purpose of bringing them into the UK on assignment or to fill a gap in the workforce that cannot be filled by a resident worker.

- Skilled Worker: This category is for permanent transfers to the UK. The minimum salary requirement is set at £25,600 or the going rate, whichever is higher.. If applicants earn less than this - but no less than £20,480 - they may still be able to apply by 'trading' points on specific characteristics against their salary. For example, if they have a job offer in a shortage occupation or have a PhD relevant to the job. Applicants can apply for up to 5 years and can extend to take the total stay up to a maximum of 6 years. This route can lead to settlement after 5 years.

- Intra Company Transfer: This category is for applicants travelling to the UK on temporary assignment. Applicants will need to have worked for their employer overseas for more than 12 months, unless they're going to be paid a salary of £73,900 a year or more to work in the UK. The minimum salary requirement is set at £41,500.

Any migrant applying for immigration permission under Worker route requires their role to be mapped to a SOC Code. This is to determine if the role is at the appropriate skill level as identified by the Home Office. The SOC code also specifies the occupation specific minimum salary threshold (which may exceed the threshold for the visa category).

Companies wishing to sponsor migrants must apply for a sponsor licence from the UK Visa and Immigration authorities. Once licensed, the sponsor may issue Certificates of Sponsorship, provided that the organisation also complies with certain duties designed to ensure that immigration controls remain effective. These duties include:

- maintaining up-to-date, accurate and comprehensive records for each migrant worker, including up to date contact details, immigration status and entitlement to work;
- ensuring that checks are made on individuals with temporary permission to remain in the UK;
- notifying the UKVI of any changes to a migrant's circumstances;
- maintaining robust HR policies to ensure compliance with the PBS, data protection and privacy principles; and
- co-operating with the UKVI to allow them to manage the Sponsorship System properly by allowing the UKVI's staff access to any of the sponsor's premises on demand, adhering to any action plan and seeking to minimise the risk of immigration abuse by complying with any good practice guidance notes that the UKVI may introduce.

Companies that fail to uphold these duties may face a range of penalties, including fines and removal from the Sponsorship Register.

Personal immigration categories

Depending on their specific circumstances, certain individuals may be eligible to apply for a visa in a personal immigration category. Examples of such categories includes;

- Spouse/Civil Partner/Unmarried Partner
- UK Ancestry
- British National by descent
- PBS Dependant

The rules relating to personal immigration categories are dependent on the specific category an individual is applying under. In most cases there will be limited restrictions on their ability to work in the UK.

Business visitors

It is possible for an individual to enter the UK on business for up to six months in any twelve month period, provided that they do not carry out any 'productive' work and restrict themselves to the permitted activities for Business Visitors. These include:

- attending meetings, including interviews that have been arranged before coming to the United Kingdom, or conferences;
- arranging deals or negotiating or signing trade agreements or contracts;
- undertaking fact-finding missions;
- conducting site visits; and
- speaking at 'one-off' conferences where this is not run as a commercial concern.

Business visitors should ensure they check whether it is necessary for them to apply for a Tier 2 visa for their visit. It is also crucial that tax, social security, immigration and employment law issues are considered for short-term business visitors. Business visitors face serious consequences if they make false representations about their proposed activities in the UK. In such circumstances, they could face sanctions preventing them from re-entering the UK for up to 10 years. Furthermore, if employees travel to the UK and undertake activities over and above those permitted under the business visitor rules, this could be classed as illegal employment.

Those who intend to live for extended periods in the UK through frequent or successive visits do not meet the requirements for entry as a visitor.

Illegal employment

Under UK immigration legislation, it is illegal to employ an individual who does not have the appropriate permission to work in the UK. If a company employs an individual illegally, it may be liable to a civil penalty of up to £20,000 for each illegal worker. A company can establish a statutory excuse if they undertake the appropriate documentary checks for each worker before they commence employment. For any worker with limited permission to work in the UK, further checks should be undertaken when their current permission expires.

If a company knowingly employs an individual without the right to work in the UK, they will be subject to a criminal penalty of an unlimited fine and/or imprisonment (of the authorising officer in the company) of up to 5 years. A company may not rely on the statutory excuse in this instance.

Government authorities in the UK, including immigration authorities, tax authorities, the police and customs agencies are interconnected and can easily monitor the movements of foreign nationals in the UK. UK businesses must therefore ensure consistency and compliance when employing foreign staff.

Human rights

In 2013, the UK demonstrated its commitment to promoting human rights in business by being the first country to produce a National Action Plan to implement the United Nations Guiding Principles on Business and Human Rights (UNGPs). The UNGPs set out the corporate responsibility to respect human rights and call for companies to identify and address human rights risks. They include the requirement to implement due diligence processes as well as to report on human rights issues.

Compliance with the UNGPs and a transparent commitment to human rights and ethical business is becoming increasingly important to many investors, industry associations and public procurement processes. Organisations may also limit their liability in legal claims for human rights abuses by demonstrating their actions in reducing the risks of human rights issues.

In addition to the UNGPs commitments, companies in the UK are subject to a duty under the Companies Act 2006 to publish annual strategic reports which provide non-financial information (including human rights issues). For quoted companies, the strategic report is required to contain, to the extent necessary for an understanding of the development, performance or position of the company's business, information about the organisation's human rights risk areas as well as information on how the business model ensures protection of human rights. Failure to produce a strategic report is an offence that may result in a conviction. In addition, if a duly signed report is not compliant, every director who knew that it did not comply and failed to take reasonable steps to ensure compliance or even prohibit publication is similarly liable.

Lastly, in July 2020, the UK enacted the Global Human Rights Sanctions Regulations (the Regulations) – a UK-only sanctions regime targeting individuals and organisations deemed responsible for serious human rights violations. The Regulations (under which designations have already been made) allow the UK to unilaterally impose financial sanctions and travel bans on individuals and organisations following its departure from the EU.

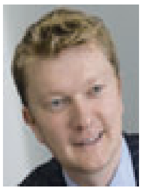
[22] The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013.

[23] This is also a requirement of the EU Non-Financial Reporting Directive December 2006.

[24] The reporting period should be for 12 months and should correspond to the company's financial year. However they can be different and this must be clearly noted in the reporting.

PwC contacts

Employment Contracts



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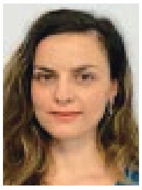

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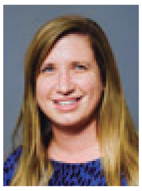

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5. What regulatory matters do I need to consider?

- The regulatory environment
- What are the accounting and audit requirements?
- Consumer credit
- Money Laundering Regulations 2017
- Financial sanctions
- Data protection
- Bribery Act 2010
- EU and UK competition rules
- Financial Services

The regulatory environment

The UK attaches great importance to competitive markets. As a result:

- price controls are not imposed (other than on certain regulated sectors);
- there is a complete absence of exchange controls; and
- in general, no restrictions are imposed on foreign ownership or investment.

Businesses in the UK can be impacted by numerous regulations including but not limited to:

- health and safety (of employees, consumers and the general public);
- certain technical standards (e.g. to guarantee quality and inter-operability);
- product liability;
- anticorruption; and
- advertising and the environment.

It is recommended you take professional advice to ensure all appropriate regulations are identified and complied with.

Amongst other industry sectors, Financial Services and certain utilities (see below) are subject to additional regulations.

To ensure that competition works effectively for consumers – encouraging efficiency and innovation and driving down prices – legislation prohibits certain anti-competitive practices and imposes requirements to treat customers fairly. UK competition law places restrictions on certain agreements, particularly those between competitors (for example price-fixing or market-sharing cartels). It also prohibits a firm exploiting its dominant position in a market through anti-competitive practices, such as predatory pricing or refusal to supply. The authorities can impose sanctions, and these can include:

- fines for the company involved, with the magnitude of fine being based on the turnover of the business;
- disqualification of directors; and
- custodial sentences for executives (but only where there has been a flagrant breach of the regulations, such as price fixing).

Because mergers and joint ventures can reduce the effectiveness of competition, they are subject to regulatory clearance under UK law. There is a voluntary merger notification system for those transactions that qualify for UK investigation (where transaction size and market share tests apply); however, as the UK competition authorities can investigate the effects of a transaction on competition, whether or not it was notified to the authorities, it is usually recommended that companies notify the authorities in advance of a deal closing. The UK Authorities have the power to prohibit or unwind mergers, or to impose remedies (such as forced divestment of parts of the merged business).

The Competition and Markets Authority (CMA) has prime responsibility for ensuring that markets function effectively, consumers are treated fairly, and UK competition law is enforced.

The UK also has a separate appeals body for competition matters called the Competition Appeal Tribunal.

In most sectors, the combination of technical regulation and competition law is seen as sufficient to ensure that markets function effectively. In certain sectors, however, economic/price regulation is applied because of known factors that inhibit the effectiveness of competition. These are primarily the utility sectors, where the suppliers are former nationalised entities that were privatised in the 1980s and 1990s.

Specialist regulators have been established in these sectors. Each has responsibility for enforcing competition law in its sector (effectively assuming the powers of the Competition and Markets Authority). They also carry out other functions, notably placing limits on price increases and imposing licence conditions on other aspects of the business, such as required coverage of the market and compulsory access to its infrastructure for other operators.

The main sectors subject to economic/price regulation are:

- energy (gas and electricity) – regulated by the Office of the Gas and Electricity Markets (Ofgem);
- water – regulated by the Water Services Regulation Authority (Ofwat);
- telecommunications, post and broadcasting – regulated by the Office of Communications (Ofcom);
- airports – regulated by the Civil Aviation Authority (CAA); and
- railways – regulated by The Office of Rail and Road (ORR).

From April 2013, the healthcare regulator, Monitor which is now part of NHS Improvement, has taken over responsibilities for economic regulation and competition within the National Health Service.

What are the accounting and audit requirements?

Accounting records

The Companies Act 2006 ('the Act') requires that a company keeps adequate accounting records. There is no requirement as to the form in which accounting records are kept, but they must be sufficient:

- to show and explain the company's transactions;
- to disclose with reasonable accuracy, at any time, the company's financial position; and
- to enable the directors to ensure that the annual accounts comply with the requirements of the Act.

These records must in particular detail the following:

- all sums of money received and expended, and the reason for the receipts or expenditure;
- the assets and liabilities.

If the company's business involves dealing in goods, records must be kept of the following:

- all stock held (inventory) at the date to which the accounts have been drawn up, and all stocktaking records from which such statements have been prepared;
- all goods sold and purchased, including the identity of the buyers and sellers (except in the case of goods sold in ordinary retail trade).

The accounting records must be kept at the company's registered office or at such other place as the directors think fit. The records may be kept outside the UK, but, if they are, certain accounts and returns must be sent to and retained in the UK. Normally, the records must be kept for at least six years from the end of the last company financial year. But they might need to be kept for longer if:

- they show a transaction that covers more than one of the company's accounting periods;
- the company bought an asset that it expects to last more than six years;
- the company was late in submitting its tax return; or
- HMRC has started a compliance check into the company's tax return.

Accounting reference period

The accounting reference period determines a company's 'financial year', in respect of which accounts must be prepared. Each financial year ends on the last day of the accounting reference period and accounts are made up to that date (or to a date within seven days of that date).

On incorporation, a company chooses an 'accounting reference date' (i.e. the day and month on which an accounting reference period ends). If it fails to do so, then it is assigned an accounting reference date that is the last day of the month in which the anniversary of its incorporation falls. Its first accounting reference period begins on the date of incorporation and ends on the accounting reference date, which must be not less than 6 months, but not more than 18 months, after the company's date of incorporation. Subsequent accounting reference periods are successive periods of 12 months, unless the company elects to alter its accounting reference date.

Although a company may alter its accounting reference date, this option is subject to certain limitations. A company's accounting reference period may not be more than 18 months.

Accounts and reports

A company must prepare individual (that is, non-consolidated) accounts for each financial year and is permitted to prepare them under either UK GAAP or IFRS (International Financial Reporting Standards). Since 2005, companies reporting under IFRS applied those standards adopted for use within the European Union. Following the UK's exit from the European Union, for years beginning on or after 1 January 2021 the relevant standards are IFRS as adopted for use within the UK. Initially at least, the two variants of IFRS are identical.

Where a company elects to prepare its individual accounts under either accounting framework, it can adopt the other framework in a subsequent financial year but there are restrictions on multiple changes from IFRS to UK GAAP in a five year period.

UK GAAP accounts can be prepared under:

- FRS 101 if the company is a 'qualifying entity';
- FRS 102;
- FRS 102 with reduced disclosures if the company is a 'qualifying entity'; or
- FRS 105 (for micro-entities).

A qualifying entity is a member of a group where the parent prepares publicly available consolidated accounts that are intended to give a true and fair view and that member is included in the consolidation.

Under FRS 101, the company applies the recognition and measurement rules of IFRS but is exempt from some of the IFRS disclosure requirements. A company must prepare individual accounts for each financial year, comprising:

- a statement of financial position as at the end of the period;
- a statement of comprehensive income for the period (may be presented as two statements: an income statement and statement of comprehensive income) (see below);
- a statement of changes in equity for the period (see below);
- a statement of cash flows for the period (qualifying entities are exempt from this requirement); and
- notes to the accounts.

An FRS 102 reporter is permitted to present ‘a statement of income and retained earnings’ instead of ‘a statement of comprehensive income’ and ‘a statement of changes in equity’ if the only changes to its equity during the periods presented arise from profit or loss, payment of dividends, correction of prior period material errors and changes in accounting policy.

Both accounting frameworks (UK GAAP and IFRS) require the presentation of comparative (that is, prior period) information.

A company that is a parent company must prepare group accounts consolidating its subsidiaries. A listed parent company must prepare its group accounts under IFRS; other companies may choose to prepare their group accounts under either UK GAAP or IFRS, but a UK GAAP reporter cannot prepare its consolidated accounts under FRS 101. Certain companies are exempt from the requirement to prepare group accounts. For example, companies that are themselves included in the group accounts of a larger group are exempt, subject to conditions. A UK parent company that prepares group accounts must ensure that its UK subsidiaries adopt the same accounting framework in their own accounts, but there are some exceptions to this general rule.

Some small companies (see below) are entitled to prepare ‘abridged’ individual accounts. The parent of a small group is not required to prepare consolidated accounts.

The minimum required content for abridged accounts is set out in law and in section 1A of FRS 102. The recognition and measurement requirement rules for adopters of Section 1A of FRS 102 are the same as for other FRS 102 adopters but there are fewer disclosure requirements.

For financial years beginning on or after 1 January 2016, a company qualifies as ‘small’ if, for the year in question and (except in the case of a new company) for the preceding financial year, two or more of the following conditions are satisfied:

- the amount of its turnover for the year is not more than £10.2m;
- its balance sheet total is not more than £5.1m; and
- the average number of persons employed by the company in the year (determined on a weekly basis) does not exceed 50.

However, a company will not be deemed to be a small company if it is:

- a public company;
- an authorised insurance company, a banking company, an e-money issuer, a MiFID investment firm or a UCITS management company;
- a company that carries on insurance market activity; or
- a member of an ineligible group (for example, a member of a group that includes a company whose securities are traded on a regulated market).

The accounts must be accompanied by an auditors’ report (for companies requiring an audit) a directors’ report and, except for small companies, a strategic report. There are additional reporting requirements for quoted companies (that is, those whose equity share capital is listed in the UK or another EEA State or is listed on the New York Stock Exchange or Nasdaq); these relate, for example, to corporate governance and directors’ remuneration.

Audited accounts for UK companies

At the present time, all UK businesses incorporated under the Companies Act require statutory audits unless they qualify for an audit exemption. Audit exemptions are available to certain dormant and small companies, and also to subsidiary companies which meet certain criteria.

Auditors

Where a company is required to have its accounts audited it must appoint an auditor. An auditor must be appointed for each financial year of the company. A company’s first auditors are usually appointed by the directors. For any financial year other than the first, the auditor will generally be appointed within 28 days of the circulation of a company’s accounts to its shareholders or, if the company is required to have an annual general meeting (‘AGM’), from the conclusion of the AGM at which their re-appointment is approved. An auditor’s term of office will usually run from the end of the 28 day period following circulation of the accounts until the end of the corresponding period in the following financial year or from the conclusion of the AGM to the start of the next AGM. If an auditor has not been re-appointed by the end of the next period for appointing auditors the current auditors will be deemed to be re-appointed except in certain circumstances.

When do I need an audit?

There is no specific requirement under tax law for the production of audited accounts; however, the revenue authorities normally insist on receiving audited accounts where these are required by the Companies Act or other relevant legislation.

The auditors are required to report to the members on the annual accounts (including group accounts, if prepared). The auditors' report must state whether, in their opinion, the accounts have been properly prepared in accordance with the relevant financial reporting framework (e.g. for years beginning on or after 1 January 2021, IFRS as adopted for use within the UK), have been prepared in accordance with the Companies Act 2006 and whether they give a true and fair view.

Auditors must also report, based on the work undertaken in the course of the audit, whether the information given in the directors' report and strategic report (if any) is consistent with the annual accounts and whether the directors' report and strategic report are prepared in accordance with applicable legal requirements. Auditors are also required to state whether, in the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, they have identified material misstatements in the directors' report and strategic report (if any), and if applicable give an indication of each of the misstatements.

In forming their opinion, auditors must also consider whether the following conditions have been satisfied:

- Have adequate accounting records been kept?
- Are the annual accounts in agreement with the accounting records?
- Have they received all information, explanations and returns necessary to form their opinion?

If they are not satisfied in any of these respects, the auditors must state that fact in their report. If the required disclosures for directors' remuneration have not been made by the company, the auditors must, as far as they are able to do so, give that information in their report.

There are additional reporting requirements for auditors of listed entities, non-listed public interest entities and entities that are required, and those that choose voluntarily, to report on how they have applied the UK Corporate Governance Code. These include the requirement to describe the 'key audit matters' of most significance to the audit, an explanation of how the auditors applied the concept of materiality, and an overview of the scope of the audit.

Foreign registered entities

Overseas companies with a presence in the UK, a 'UK Establishment', are required to register with the Registrar of Companies.

The type of accounts required for filing in the UK by the overseas company will depend on whether it is required to prepare, have audited and publicly disclose its accounts in the country of incorporation.

For companies that are required to publicly file accounts in their home territory, a copy of those accounts, together with any directors' report and auditors' report, must be filed with the UK Registrar.

A company that is not required to disclose accounts publicly under the law in its country of incorporation must prepare accounts under one of the following accounting frameworks:

- section 396 of the Companies Act 2006;
- the law of the country of incorporation; or
- IFRS.

There is no requirement that the accounts be audited but the accounts must state whether an audit has been performed. If the accounts have been audited in accordance with generally accepted auditing standards, the accounts must state the name of the body that issued those standards.

If an overseas company is a parent company, the directors must prepare group accounts for the year instead of individual accounts, subject to certain exemptions.

Frequency of reporting

All companies and UK establishments must report in respect of each accounting reference period; typically, this will be for 12 months but may be up to 18 months if the company has changed its accounting reference date. Listed companies must also prepare half-yearly reports if they do not publish quarterly reports.

Accounts signatories

A company's annual report and accounts must be approved by the board of directors and signed on its behalf. The accounts must be signed by at least one director and the directors' report must be signed by either a director or company secretary. The signature on the accounts must be on the balance sheet. The date the directors approved the accounts should be stated, ideally next to the signature on the balance sheet.

Circulation of accounts

A copy of the accounts (both individual and consolidated, if any), together with the directors' and auditors' reports on those accounts, must be sent to the shareholders, debenture holders (if there are any) and any persons who are entitled to receive notice of general meetings (unless the company does not have their current address). This should happen by no later than the end of the period for delivering the accounts and reports or, if earlier, the date on which it actually delivers its accounts and reports for filing.

Companies are permitted to send the accounts and reports to the relevant persons electronically provided they have received the consent of those persons in advance. A company can either send the documents to an address notified to the company by the person or it can publish the documents on a website, having advised the person of the name of the website where the documents can be accessed.

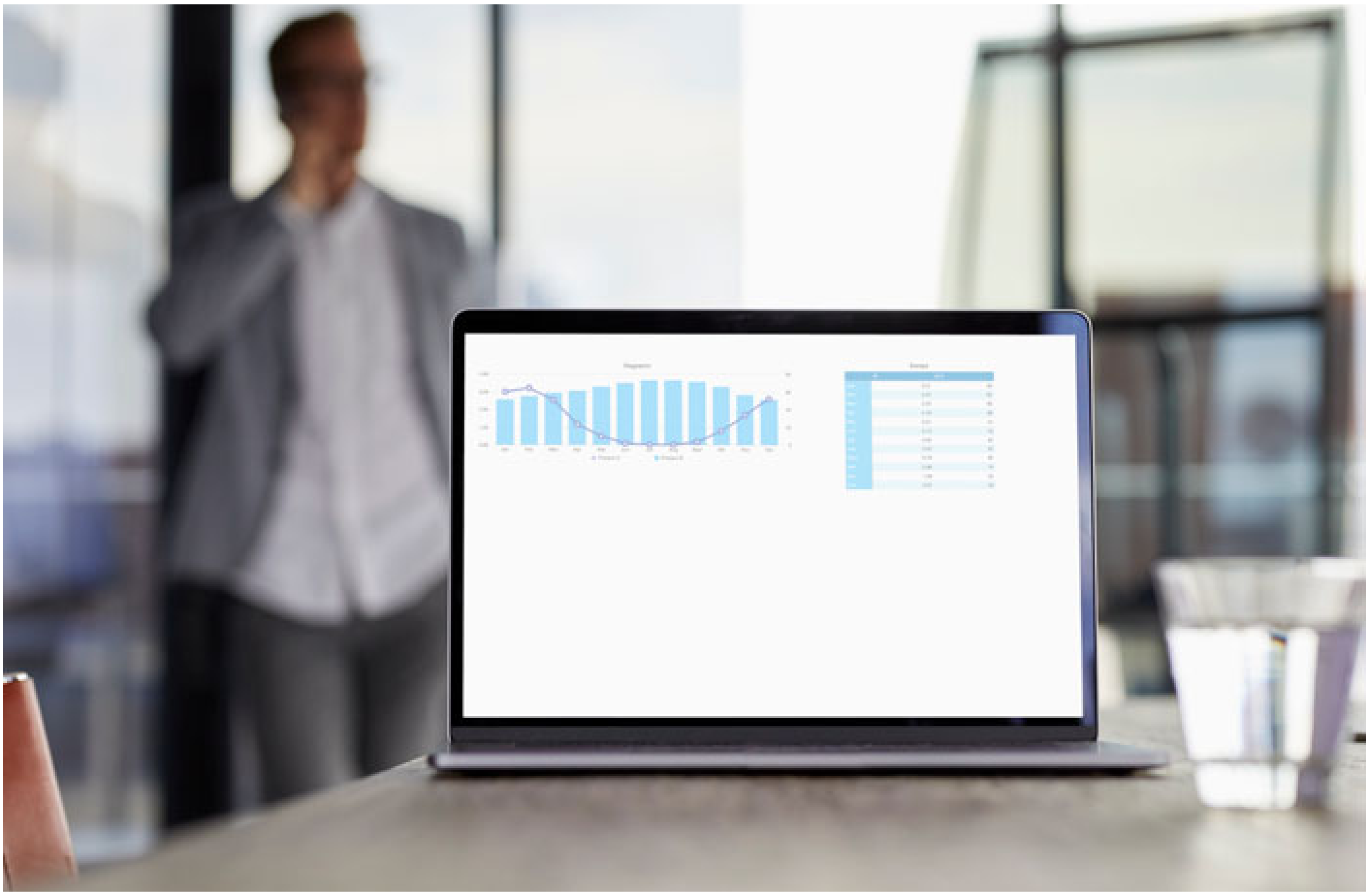
A public company's accounts must be laid before shareholders at a general meeting. This is usually done at the AGM but any general meeting can be used for this purpose.

Public availability of accounts

Private limited companies must file their accounts and reports at Companies House within nine months and public limited companies within six months of the accounting reference date. Accounts and reports are available for public inspection, on payment of a small fee, at Companies House.

Quoted companies must also publish their accounts and reports on a website maintained by the company, or on its behalf, and these must remain freely available on the website until the following year's accounts and reports are published.

A small company need not file a profit and loss account or directors' report.



Consumer credit

The Consumer Credit Act 1974 (CCA) is the main piece of legislation regulating lending and credit related activities in the UK. This has been supplemented by the European Union Directive on Consumer Credit with effect from 1 February 2011.

The Directive is more limited in extent than the CCA but in implementing it the UK has broadened the scope of the Directive. For example, the CCA applies to dealings with individuals and sole traders and business partnerships of two or three individuals, whilst the Directive as issued would apply only to individuals acting in their personal capacity rather than their business capacity.

Consequently, if your proposed business will involve any one of the following:

- providing credit or otherwise being a creditor to an individual consumer, sole trader or a small partnership;
- hiring goods to an individual consumer, sole trader or a small partnership;
- carrying on activities that relate to credit and hire agreements, such as credit brokerage, debt-adjusting, debt-counselling or debt-collecting,

then it is likely that you will need to be authorised by the Financial Conduct Authority (FCA) to undertake consumer credit business.

You are not likely to be authorised by FCA if:

- you only deal with limited companies (or, in the case of credit reference agencies, you only provide information about limited companies);
- you are just accepting credit cards for payment or trading references issued by someone else (and you did not introduce the borrower to them);
- you are just allowing customers to pay their bills for goods and services in twelve or fewer instalments within a year beginning on the date of the arrangement and do not charge extra for paying by instalments.

The rules relating to consumer credit are very complex and you should obtain your own legal advice if you are uncertain as to whether your proposed business might need to be authorised. You should note that failure to comply with the CCA and FCA requirements will attract criminal liability and other sanctions.

FCA authorisation can take up to six months from submission of complete information to obtain authorisation. If your business comprises more than one company or partnership, then each entity that carries on consumer credit business will need to be authorised.

Before the FCA approves authorisation, it must be satisfied that you are a fit person to engage in the activities identified on the application. Once the FCA has approved your authorisation, you will be required to maintain the required standard of fitness and ensure that you continue to comply with the requirements of the FCA and CCA.

For general information on the regulation of Financial Services in the UK, please refer to the Financial Services section of this guide.

Money laundering regulations

The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (MLRs 2019) came into force on 10 January 2020.

The Regulations require certain businesses to register with their relevant supervisory authority; have systems in place to prevent money laundering; and to report suspicious transactions.

The MLRs 2019 expanded the scope of MLRs 2017 by introducing changes to firms' customer due diligence and enhanced due diligence obligations. One particularly key change that the MLRs 2019 have introduced is the new obligation on firms to report, to Companies House, any discrepancy between beneficial ownership information on the People with Significant Control Register and information which the firm receives through its due diligence exercises.

The categories of business within the scope of the Regulations include:

- credit institutions and financial institutions (including money service businesses);
- crypto-asset businesses (i.e. custodian wallet providers and crypto-asset exchange providers);*
- auditors, insolvency practitioners, external accountants and independent legal professionals;
- tax advisers (including those who provide material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party);*
- trust or company service providers;
- estate agents and letting agents;
- high-value dealers (i.e. businesses that accept a payment or payments of cash for goods of at least €10,000 (or currency equivalent) or more either in a single transaction or in several linked transactions);
- art market participants (including operators of freeports);* and
- gambling providers.

Those marked with an asterisk as well as letting agents were brought into scope by the MLRs 2019.

The MLRs 2019 build on the definition of whether a 'Business Relationship' has taken place. This is defined as a business, professional or commercial relationship between a relevant person and a customer, which:

1. arises out of the business of the relevant person, and
2. is expected by the relevant person, at the time when contact is established, to have an element of duration.

The Regulations generally do not apply to those engaging in financial activity on a very limited basis i.e. with a turnover of under £100,000. However, you should establish at an early stage whether your new business:

- will be subject to the regulations; and
- needs to be registered with a relevant supervisory authority.

It is also worth noting that under the Proceeds of Crime Act 2002:

- the requirement to report suspicious activity to the National Crime Agency; and
- to avoid 'Tipping Off'.

Brexit and anti-money laundering

The UK is not expected to take a less intensive approach to financial crime following its departure from the EU. Specifically much of the UK's anti-money laundering regulation is driven by the standards set by the Financial Action Task Force (an intergovernmental organisation founded on the initiative of the G7). The UK's membership of this will not be impacted by Brexit.

Financial sanctions

The UK uses sanctions to support foreign policy and national security objectives, maintain international peace and prevent terrorism. Those looking to conduct business in the UK must adhere to the UK's sanctions regime.

Currently, the UK implements all financial sanctions imposed by the EU and UN. It can also impose its own domestic financial sanctions in certain circumstances.

Currently, the UK sanctions regime applies to action taken by:

- any person in the UK (including its territorial waters);
- any UK national outside the UK;
- any legal entity operating in the UK (including its territorial waters); and
- any legal entity incorporated in the UK (including their non-UK branches).

Some of the most common types of financial sanctions used in recent years are:

- target asset freezes;
- directions to cease all business; and

restrictions on a wide variety of financial markets and services including, but not limited to:

- investment bans;
- restrictions on access to capital markets; and
- directions to cease banking relationships and activities.

Individuals and organisations subject to financial sanctions are referred to as 'designated persons' and in general terms, it is a criminal offence to:

- deal with the frozen funds or economic resources belonging to, owned, held or controlled by a 'designated person'; and
- make funds or economic resources available to, or for the benefit of, a 'designated person'.

Financial sanctions and Brexit

Going forward, as per the Brexit Withdrawal Agreement between the EU and the UK, EU sanctions will continue to apply in the UK during the 'transition period' up to 23:00 on 31 December 2020. After that, the UK will have full autonomy over its sanctions regime through the Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act). The Sanctions Act transposes existing EU sanctions legislation into UK law. The Sanctions Act allows the UK to enable sanctions to continue uninterrupted and also gives the UK government the authority to implement its own sanctions regime.

Data protection

Since the General Data Protection Regulation (the 'GDPR') came into force on 25 May 2018, many organisations (both inside and outside the EU) have had to take their data protection and privacy obligations more seriously. Failure to comply with the GDPR can lead to serious operation, legal and regulatory repercussions for organisations, including but not limited to financial penalties of up to 4% of annual global turnover.

Scope and definitions

The scope of the GDPR is broad – it applies to:

- the 'processing' of 'personal data' by controllers and processors based in the EU;
- by controllers and processors based outside of the EU, if they are offering goods or services to people in the EU, or monitoring their behaviour in the EU; and
- to personal data that are exported from the EU to other countries.

Processing means any operation that is performed on personal data, from the moment of its initial collection.

Personal Data means any information relating directly or indirectly to an identified or identifiable human being, which includes obvious identifiers (such as name, address); value judgments about people (as in HR records); online identifiers (such as IP addresses and browsing histories); and advanced medical information (genome, biometrics and DNA data). Publicly available information is all in scope (so gathering personal data from social media websites is regulated).

The GDPR

The GDPR gives the data subject an increased level of control over their information. It also aims to ensure that data controllers and processors are safe custodians of data through obligations to evidence compliance and put in place appropriate governance around data use (the 'Accountability' principle). The GDPR provides for enhanced supervision by increasing the powers of the regulators. As a result, we have seen an increased focus on:

1. Data protection by design and default

Under the GDPR controllers must implement appropriate technical and organisational measures and procedures to ensure that processing safeguards the rights of the data subject by design. This requires implementing a robust privacy operating model that complies with each of the GDPR principles, including collecting only data that is necessary for the processing, as well as retaining that data only for the period of time for which it is needed. This can be particularly tricky for global organisations that have diverse geographies and business segments.

2. Data subject rights

Under the GDPR data subjects have enhanced rights in relation to their personal data, and organisations must implement policies and procedures to ensure that data subjects can exercise this in relation to their personal data. The typical data subjects rights that are exercised are the rights to access, rectify, and erase personal data. Some additional rights avail themselves to data subjects in prescribed scenarios, such as the right to object, and others are pervasive to any processing on any lawful basis. Other rights available to data subjects include the right to portability of data in certain scenarios so as to effect a seamless transition between one service provider and another.

3. Data breach penalties

Well over two years since coming into force, we are beginning to see an increasingly active approach taken by data protection regulators across Europe for breaches of the GDPR. The UK's data protection regulator, the Information Commissioner's Office (the 'ICO'), has recently fined: (i) British Airways £20 million as a result of personal data breach ('PDB') which affected 400,000 of its customers; (ii) Marriott International £18.4 million as a result of a PDB affecting a company it acquired where 339 million guest records were compromised; and (iii) Ticketmaster £1.25m for failing to implement appropriate security measures to prevent a cyber-attack on a chat-bot installed on its online payment page. As a result of these cases, there is a particular focus on implementing appropriate technical and organisational measures to protect personal data and in the case of Marriott International, there is a greater need for companies to conduct sufficient data protection due diligence in the context of acquisitions.

4. Cross border data transfers

Over Summer 2020, the Court of Justice of the European Union ('CJEU') issued a decision which had a significant impact on the way in which companies transfer personal data across borders ('Schrems II'). This decision invalidated the EU-US Privacy Shield framework for personal data transfers between the EU and the US, and gave rise to an obligation for all controllers to undertake a transfer risk assessment of the level of data protection provided in the non-EU country when utilising standard contractual clauses ('SCCs') to transfer personal data from the EU. As a result, clients need to act in order to understand their personal data flows and their risk position regarding personal data transfers from the EU and to assess whether they need to take additional steps to ensure they are lawfully transferring personal data.

5. Cookies

Under the GDPR consent must be a 'freely given, specific, informed and unambiguous indication… by a statement or by a clear affirmative action' that 'signifies agreement to the processing of personal data'. In September 2019, the CJEU issued a decision that clarified these transparency, affirmative and specificity requirements (the 'Planet 49 case'). It was held that these standards apply to cookies and that pre-ticked boxes that allowed opt out from the use of cookies did not constitute valid consent. As we await the upcoming ePrivacy Regulation and other developments in this rapidly evolving area of the law, clients must now seek to understand (i) the cookies they have on their website; (ii) where consent is required to drop cookies; and (iii) mechanisms used to obtain consent and whether these are valid; and (iv) where cookies banners need to be updated and displayed to be deemed effective.

Brexit & GDPR

At the end of the Brexit transition period, the EU rules relating to cross border data transfers also apply to transfers from the EU to the UK. In the absence of an 'adequacy decision' for the UK, organisations transferring personal data from the EU to the UK will need to put in place a data transfer mechanism, to legitimise the transfer of personal data to the UK.

This means that, if relying on SCCs, companies will need to undertake a case-by-case transfer risk assessment in relation to EU to UK data transfers (see Cross Border Data Transfers above).

Bribery Act 2010

The UK Bribery Act 2010 (the Act) became effective on 1 July 2011. It was introduced to enhance the UK's laws on bribery and is considered to be among the strictest and broadest international bribery legislation alongside its US counterpart, the Foreign Corrupt Practices Act 1977.

The Act sets out four bribery offences:

- a general offence of offering, promising or giving of a bribe (active bribery);
- a general offence of requesting, agreeing to receive or accepting of a bribe (passive bribery);
- an offence of bribing a foreign official; and
- the 'failure to prevent' offence which describes a corporate offence of failing to prevent bribery by an 'associated person' for the purposes of obtaining or retaining business or a business advantage. An 'associated person' is any person connected to an organisation that might be capable of committing bribery on the organisation's behalf (including, but not limited to, employees, subsidiaries, suppliers, agents and consultants).

The 'failure to prevent' offence is a strict liability offence meaning the prosecuting authority does not need to prove any intention or positive action on the part of the commercial organisation. In order to protect against criminal liability in relation to the corporate offence, commercial organisations need to be able to demonstrate that they have in place adequate procedures to prevent bribery.

This 'failure to prevent' offence is actively enforced by the UK's Serious Fraud Office (SFO). Therefore the importance of having well implemented and effective anti-bribery processes and procedures in place should not be underestimated.

EU and UK competition rules

Businesses must comply with European Commission and UK competition law which affects (amongst others) the areas described below.

Agreements

Certain agreements that have the effect of restricting or distorting competition within the EU are prohibited – unless they fall within certain automatic exclusions or exemptions. For example, price-fixing or market-sharing agreements between competitors that limit competition are in almost all cases prohibited.

A clause or entire agreement that is anti-competitive and does not fall within obvious exemptions will be void and unenforceable. This could threaten the entire agreement. In such circumstances, a party to an agreement may be able to make a claim for damages against the other party. Third parties affected by the agreement may also be able to claim damages. Finally, fines or other remedies could also be sought by national competition authorities or even by the European Commission.

There is no longer a process for clearing agreements with the competition authorities, so companies have to rely on their own assessment.

The above rules also apply to actions by associations of businesses or concerted practices – that is, all types of behaviours involving several parties, not just written agreements.

Abuse of dominance

The competition rules prohibit a firm with a dominant market position abusing that position, and in so doing distorting competition and affecting trade between EU states. For example, a firm with significant market power is restricted from pushing rivals out of the market with predatory pricing. The authorities can impose significant fines and other remedies on a firm found to be abusing its dominance.

Merger control

There are controls on some mergers and joint ventures. These depend on the scope of the merger and the expected impact on competition. Turnover thresholds and share of supply determine the mergers that qualify for notification to the competent authorities. Notification is compulsory if the European Commission's thresholds are met. In the UK notification is voluntary, however, it is advisable if the merger is expected to have an impact on competition in the market. Notification is to the Competition and Markets Authority (CMA).

State aid

To maintain a level playing field for companies across Europe there are restrictions on the ability of member states to subsidise companies with state funds on a selective basis. This selective state aid could have the effect of distorting competition by favouring the aided company over unaided companies. The European Commission assesses state aid matters relating to member states. Unless the aid is necessary in order to provide a service of general economic interest, it will be necessary to demonstrate that the investment was made on commercial terms equivalent to those of a Market Economy Private Investor. If the aid is found to be non-compliant it will be required to be returned.

Since the end of the Brexit transition period, EU State aid rules apply only in limited circumstances in the UK. In place of these rules, the UK has committed to introducing its own domestic subsidy control regime, which is likely to be introduced later this year. Ahead of the UK implementing its own regime, the subsidy control rules set out in the EU/UK Trade and Cooperation Agreement (which are closely modelled on the EU State aid regime) will apply. The European Commission will retain its jurisdiction to take enforcement action in EU State aid cases initiated before the end of the transition period.

Financial Services

The Financial Services industry is strictly regulated in the UK by the Financial Services and Markets Act 2000 as amended (FSMA) and its subsidiary legislation. Under the FSMA, any person who carries on a regulated activity in the UK must be authorised in accordance with UK Financial Services legislation or benefit from an exemption. A business that is in breach of this requirement may be committing a criminal offence. It will also be unable to enforce its agreements and may have to return money and pay compensation to its customers.

It is important, therefore, to establish at an early stage whether your proposed business requires you to apply for authorisation to carry on regulated activities. If your business does need to be authorised, certain individuals related to the business, including, for example, the chief executive officer, and all directors (including executive directors), will also need to be approved by the firm's Financial Services regulator(s).

It is also worth bearing in mind that the type of entity and business model you choose to carry on a financial services business in the UK may be subject to special rules.

Before providing authorisation, the financial regulators will need to be satisfied that your business meets certain fundamental conditions, including, for example, that the business will have adequate resources. Once authorised, your business will need to comply with relevant UK Financial Services rules and requirements, including the regulatory capital requirements.

Examples of the types of business that are likely to require authorisation include:

- banks;
- investment firms;
- asset managers;
- insurance companies and insurance intermediaries; and
- mortgage lenders and intermediaries.

Financial Services regulatory requirements

The Financial Service Act 2012 (the Act), passed by the UK Parliament in 2012 introduced a new UK Financial Services regulatory structure known as a 'Twin Peaks' structure, which separates the regulation and supervision of conduct issues from prudential issues. The Act renamed the UK Financial Services Authority the Financial Conduct Authority (FCA) and it has responsibility for regulating the conduct of Financial Services firms undertaking investment business and firms which provide consumer credit. It also regulates financial markets and oversees prudential requirements for smaller firms. The Act also created the Prudential Regulatory Authority (PRA), a subsidiary of the Bank of England, and this entity regulates prudential matters for deposit taking institutions, insurers and large financial institutions. The new regulators commenced operations on 1 April 2013.

If you intend to carry out regulated activity in the UK, you will currently fall under the supervision of the FCA. For the types of firms identified above, they will be regulated by both the FCA for conduct requirements and by the PRA for prudential requirements. In such circumstances, your company will have to comply with any FCA and PRA regulations that apply to the business to be carried out by your company. Those regulations are set out in the respective FCA and PRA Handbooks.

The globalisation of business means that regulators now operate on a more international basis; however, different regulators continue to take different approaches to managing relationships and adopt different supervisory techniques. It is vital, therefore, to understand the UK Financial Services regulatory approach and techniques and build strong relationships with your UK supervisors.

Every regulated firm in the UK must be adequately capitalised. The minimum level of capital required is determined by FCA or PRA's prudential rules, depending on whether the firm is prudentially regulated by the FCA or the PRA.

In practice, the FCA and PRA require most firms to assess their exposure to risk and undertake an Independent Capital Adequacy Assessment Process (ICAAP). After receiving the results of the ICAAP, the regulator may adjust the minimum capital requirement proposed in the ICAAP to one that it deems appropriate and proportionate. The regulators are the final arbiters on this issue.

Following the financial crisis, the FSA implemented more stringent liquidity rules for banks and complex investment firms. These firms now have to maintain a buffer of highly liquid assets and carry out an internal assessment of the adequacy of their liquid resources to meet their obligations in both business as usual and stressed conditions. All EU banks and many investment firms are required to comply with the Capital Requirements Directive IV, which has implemented the Basel III international capital standards.

UK Financial Services firms have a significant range of other UK and EU Financial Services regulation to comply with. This includes, but is not restricted to: MiFID II, EMIR, Solvency II, BRRD, PSD2 and AIFMD. This means firms need sufficiently resourced compliance functions to help follow, interpret and implement the regulations.

Financial Services supervisory regime

The FCA has a single strategic objective of ensuring that financial markets function well and three operational objectives:

- to secure an appropriate degree of protection for consumers;
- to protect and enhance the integrity of the UK financial system; and
- to promote effective competition in the interests of consumers in the markets for regulated Financial Services and services provided by recognised investment exchanges.

When discharging its general functions, such as making rules, the FCA must act so far as is reasonably possible in a way that is compatible with its strategic objective and advances its operational objectives. The FCA's supervisory activities involve inspections of individual firms and thematic reviews conducted across the industry by its supervisory teams. The FCA operates separate prudential supervisory and conduct supervisory divisions.

The PRA's general objective is to promote the safety and soundness of PRA-authorised persons, by avoiding adverse effects on financial stability and minimising adverse effects from the failure of such persons.

Under FSMA, the FCA has the authority to take enforcement action against regulated firms for breaches of the FSMA and their respective regulatory rules. A range of enforcement actions may be pursued. The regulatory bodies may, among other things, withdraw a firm's authorisation, discipline firms and individuals, apply to the courts for injunctions and restitution orders, and bring prosecutions for various offences.

Financial Services regulators place great emphasis on the importance of corporate governance, systems and controls. They focus in particular on the effectiveness of companies' arrangements, the responsibility of senior management for oversight of their businesses and on the outcomes of a firm's policies and practices. Specific senior manager appointments are registered with the FCA, where required, as 'Approved Persons' who need to uphold the integrity of the regulatory rules and can be personally held accountable by the regulators for their actions.

The change in UK regulatory philosophy from 'principles based' regulation to 'outcomes-focused' regulation has meant that it is no longer possible for companies to rely on prescriptive rules and the adequacy of systems and controls without reference to client outcomes. Instead, companies must demonstrate that they are achieving the correct outcomes regardless of the quality of the controls. Ultimately, responsibility for this falls to senior management. Not surprisingly, since the global financial crisis of 2008/9, there have been an increased number of regulatory enforcement cases against senior management relating to failed corporate governance, systems and controls or where client outcomes have simply been judged to be unacceptable.

Senior management must ensure that their businesses have sound compliance risk management frameworks. These should be flexible enough to allow business growth and changes in regulation, and be proportionate to the nature, scale and complexity of those businesses. Compliance risk management frameworks should meet certain regulatory monitoring requirements e.g. in relation to a firm's major exposures, liquidity and capital position.

Upon being authorised in the UK, companies are required to comply with certain ongoing reporting requirements, the frequency and nature of which are set out in the Supervision (SUP) section of the FCA and PRA Handbooks. These FCA and PRA reporting requirement requirements include transaction reporting, compliance reports and financial reports, and vary according to the nature of the company's business. UK banks are also required to submit prudential (financial) reports to the Bank of England. It is essential to have systems in place to ensure that these reports are accurate, complete and submitted in a timely manner.

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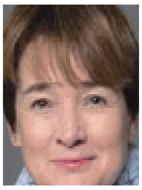

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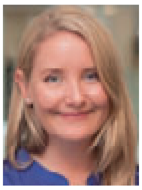

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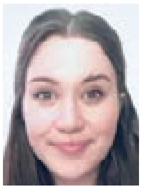
EU & UK competition rules



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6. What other factors impact my ‘doing business in the UK’?

- **Bank account set-up**
- **Business insurances**
- **Acquiring property**
- **Exchange control**
- **Customs and international trade**
- **Excise duty**
- **Grants**
- **Intellectual property**
- **Sustainability**

Bank account set-up

Generally, all new businesses will require a bank account in order to conduct their business in the UK. If you require a bank account in the UK, the major UK retail banks are likely to have branches close to your chosen site. Before setting up a bank account for their new customers, UK banks undertake customer due diligence, which is part of the anti-money laundering regime and is a key legal requirement of the Money Laundering Regulations 2007 in the UK.

'Know your client' procedures, in other words, identification of customers and their source of funds, help to ensure that the banks know who they are dealing with, thereby protecting themselves by identifying the customer, verifying the identity of the customer, identifying the beneficial owner of the customer and obtaining information on the intended purpose and nature of the proposed bank account. Covid has reduced the choices of banks available to new inward investors. You should not therefore underestimate the time it takes to set up a business bank account. This is particularly important if you intend to have direct payment arrangements set up to enable your employees to be paid directly by bank transfer from the outset of business.

The UK FinTech ecosystem provides a range of solutions for banking services including foreign exchange, SWIFT transfers, BACS payments for HMRC, debit cards and electronic transfers for international businesses. These products are very popular whilst waiting for the full UK business bank account and can often be obtained with several business days.

We can support you with the Department for International Trade to identify the most appropriate solution for your UK banking needs. The Department for International Trade's free services include access to the Bank Account Specialist. The Bank Account Specialist reviews all available providers in markets and will introduce you to the most suitable banking service solution where you are likely to be approved. The service has supported over 3,000 businesses with over 97% customer success.

Business insurances

There are a lot of different business insurance products available, but it is very important to consider that not every business will need all of them.

For example, a smaller home business or sole trader will not need the same cover as a bigger company that has multiple employees.

You should take some time to consider a few questions:

- What is the size of the business?
- Will your employees be working from home?
- Will your employees be travelling?
- Will you be responsible for the business' premises, or the equipment in the office?
- Do you provide a service or a product?
- Will public access be required?
- What insurances will you provide to employees?
- Can you combine insurances to obtain a discount?

The following is not an exhaustive list but summarises popular insurance cover:

General liability insurance

Every business, even if home-based, should consider liability insurance, e.g. provide cover against claims made by members of the public who have been injured or had their property damaged by your business (where the business being claimed against has been found legally liable for the damage or injury caused). Public liability (product liability) provides both defense and damages if you, your employees or your products or services cause or are alleged to have caused bodily injury or property damage to a third party.

For example, if you are attending a trade event such as a summer fair or festival and a member of the public gets injured while visiting your stall, any compensation awarded as a result could be claimed from your business not necessarily the organisation that arranged the event.

Property insurance

If you own a building or have business property, including office equipment, computers, inventory or tools you should consider purchasing a policy that will protect you if you have a fire, vandalism, theft, smoke damage etc. You may also want to consider business interruption/loss of earning insurance as part of the policy to protect your earnings if the business is unable to operate. Business interruption insurance is expensive but now becoming more common.

Commercial auto insurance

This protects a company's vehicles. You can protect vehicles that carry employees, products or equipment. With commercial auto insurance you can insure your work cars, SUVs, vans and trucks from damage and collisions. If you do not have company vehicles, but employees drive their own cars on company business you should have non-owned auto liability to protect the company in case the employee does not have insurance or has inadequate coverage.

Employers liability or worker's compensation

This provides insurance to employees who are injured on the job. This type of insurance provides wage replacement and medical benefits to those who are injured while working. In exchange for these benefits, the employee gives up his rights to sue his employer for the incident. As a business owner, it is very important to have workers' compensation insurance because it protects yourself and your company from legal complications – it is a requirement to have employers liability/ workers' compensation if you have employees.

Professional liability insurance

The policy provides defense and damages for failure to or improperly rendering professional services. Your general liability policy does not provide this protection, so it is important to understand the difference. Professional liability insurance is applicable for any professional firm including lawyers, accountants, consultants, notaries, real estate agents, insurance agents etc. Having at least £5 million worth of employer's liability insurance is a legal requirement for all employing businesses. Any employers without this cover can be fined up to £2,500 a day.

You can even be fined up to £1,000 if your certificate of insurance is not made readily available to your employees. So make sure to display your proof of employer's liability clearly! Or make it readily accessible to every employee.

Directors and officers insurance

This type of insurance protects the directors and officers of a company against their actions that affect the profitability or operations of the company. If a director or officer of your company, as a direct result of their actions on the job, finds him or herself in a legal situation, this type of insurance can cover costs or damages arising as a result of a lawsuit.

Data breach

If a business stores sensitive or non-public information about employees or clients on their computers, servers or in paper files they are responsible for protecting that information. If a breach occurs either electronically or from a paper file a data breach policy will provide protection against the loss.

Homeowner's insurance

This is one of the most important kinds of insurance you need. This type of insurance can protect against damage to the home and against damage to items inside the home. Additionally, this type of insurance may protect you from accidents that happen at home or may have occurred due to actions of your own. If an employee works from home you may need to assess whether their insurance policy will be adequate to cover work matters.

Life insurance and other employee-related insurances

Life insurance protects an individual against death. If you have life insurance, the insurer pays a certain amount of money to a beneficiary upon death. You pay a premium in exchange for the payment of benefits to the beneficiary. This type of insurance is very important because it allows for peace of mind.

Other types of employee benefits involving insurance include private medical insurance/critical illness in addition to salary. The most common are medical, disability, and life insurance.

Keyman insurance

This is a type of life insurance policy that is taken out by a business on the life of a key employee. It is also possible for the policy to pay out in the event of the key person being diagnosed with a specified critical illness such as cancer or heart attack.

Home business insurance

This insures business activities that take place at your home address (provided that you are allowed to do so under the terms of your rent agreement or mortgage). So if a customer or client trips and injures themselves while visiting you at your home, you will be covered.

Home business insurance will also cover your business contents such as computers, stock and equipment against damage and theft.

Many home workers assume that they will be covered for their business activities under their home insurance policy; however, the reality is that the majority of insurers will not cover your business if it is based at home because of the additional risks that present themselves in this context. While the actual task of working from home is not necessarily one of them, the introduction of stock, office equipment and potential injury to any visitors while at your home office will all put you at risk of your policy becoming invalid.

Travel insurance

This is insurance that is intended to cover medical expenses, trip cancellation, lost luggage, flight accident and other losses incurred while traveling, either internationally or domestically.

Acquiring property

Overview

Property can be owned by corporations and individuals. There are no significant legal differences in the way that corporations and individuals, non-UK or otherwise, may hold property in the UK; however, as a general rule no more than four persons, whether individuals or corporations, can be shown as the legal owners of property at the Land Registry.

Property can be owned either absolutely (freehold) or may be rented for a specified period from another person under a lease (leasehold).

The following information covers commercial property acquisitions in the UK where the property is to be occupied by you as part of your business.

When deciding which type of property best suits your business needs, you should consider:

- How quickly you need to occupy the property.
- How you will fund the acquisition along with any security deposit and rent requirements.
- What you intend to use the property for, and whether this will require specific equipment and/or facilities or permission from a local planning authority.
- Whether you wish to make changes and alterations to the property.
- Whether you require flexibility to dispose of the property. For example, if you took a lease of a property and your business requirements changed, you may wish to assign the lease or underlet some or all of the space.

Owning a freehold property means that you will be liable for all the costs of occupation including, but not limited to, repair, upkeep, decoration, insurance, utility costs, local rates and taxes. If you take on a leasehold interest the costs for items such as repair, decoration and insurance will most likely be payable by way of a service charge to the landlord. Items such as utility costs and local rates and taxes will be part of the liabilities under the terms of the lease.

Purchasing a freehold property usually means fewer restrictions on the use and occupation of the property than taking a lease. For example, if you purchased a freehold property you could make any alterations that you wished (within what is permitted under planning legislation) but if you took on a leasehold interest you would need to obtain landlord's permission for the same works.

Both freehold and leasehold property can be subject to covenants and restrictions which bind the property and which can limit the use of the property. These can be enforced by third parties. It is therefore important that the title is carefully examined by a solicitor before you enter into a binding legal agreement in relation to purchasing a freehold or leasehold interest.

The owner of a freehold property, or a party who is entering into a lease, would also need to ensure that the anticipated use of the property complies with all statutory requirements, including the need for the use of the property to be authorised.

When looking for properties you should take advice from specialist advisers known as estate agents or surveyors to ensure that the terms and conditions of the transaction suggested are fair and commercial. The estate agent or surveyor will also help you negotiate your requirements for the purchase or lease of the property. As a general rule, until you sign and complete a formal contract/lease of the property, the offer to purchase or lease the property via an estate agent or surveyor is not legally binding on either party (although it should be noted that there are significant differences in the legal process where the property is situated in Scotland).

Freehold properties and long leases (over 99 years) which are free of restrictions usually offer good security for debt finance.

Leasehold property

Taking a lease of a property may involve the party in occupation (the tenant) being subject to a number of conditions on use, as the person granting the lease (the landlord) has a greater interest in preserving the state of the property and their income. On the purchase of a leasehold interest the tenant may sometimes be required to pay the landlord a sum of money (known as a premium) to acquire the lease.

The tenant would normally be required under the lease to pay rent to the landlord, as well as being liable for the same costs for the occupation of the premises as would be payable with a freehold (such as utilities and local taxes). It is common for the landlord to charge the tenant for the costs of providing services to the property, and for insuring it. Leases may require the consent of the landlord for the lease to be sold (known as an assignment) or for the property to be underlet. The consent of the landlord may also be required for alterations to the property, including works which are needed to fit the property out for your use.

Leases are a practical way to manage your time in the UK. Rental payments, as opposed to acquisition costs, may also assist with cash flow, although you should be aware that it is common in many leases for rent to be payable for a period of three months in advance. It may be that inducements – such as initial rent free periods, or contributions towards the costs you incur in fitting out a property – can be negotiated with the landlord.

For immediate occupation requirements, serviced offices are available and short term leases of up to a year are available on occasion.

Medium term leases between three and five years are available. They are often used for certain types of properties such as small offices and retail properties. Long term leases for a term up to 15 years or more are usual for larger premises and manufacturing sites. Such leases usually provide for the tenant to pay a rent to the landlord which is reviewed every five years on an upwards only basis, so that they increase in line with any increase in rental values in the property market. This means that as you progress through the lease the rent paid (following each designated review) will reflect the current 'market rent'.

You may wish to negotiate with the landlord to have an option in the lease to allow you to terminate the lease during the term to give you more flexibility. This is known as a break clause. You should obtain legal advice on the drafting of such clauses, as courts tend to enforce their terms strictly, so that tenants who do not fully comply with conditions in such clauses are not able to successfully terminate their lease. A landlord may also seek to include an option to enable it to end a lease early.

The acquisition process

The legal process of acquiring property in the UK can be complicated and it is strongly recommended you seek the advice of a specialist property lawyer before making any commitment. A typical transaction to acquire a freehold property or to take a lease would involve:

- negotiation of heads of terms with agents;
- commissioning surveys of the property;
- carrying out due diligence on the title;
- legal due diligence, involving searches of local authorities and other bodies, and enquiries of the seller/landlord;
- contract negotiation;
- exchange of contracts which usually involves the payment of a deposit (usually 10% of the purchase price); and
- completion and (where relevant) payment of Stamp Duty Land Tax ('SDLT') and registration at the Land Registry.
- The base cost of the property should also be ascertained as this will determine the chargeable gain when the property is sold in the future.

PwC can assist with this process.

Before proceeding with any property acquisition you should be aware of the following:

- If the property is acquired directly, SDLT will be payable on the purchase price (including VAT) where the property is located in England or Northern Ireland (there are similar land taxes in Scotland and Wales). The rates are higher for residential property compared to non-residential property. If the property is acquired via a corporate vehicle, SDLT would not generally apply. Therefore purchasing via a corporate vehicle can result in significant SDLT savings for a buyer. The UK does however charge Stamp Duty at 0.5% on the purchase of company shares if the share register of the target company's shares is located and maintained in the UK;
- if you are purchasing a property or a lease of seven years or more, this will require registration at the Land Registry;
- National non-domestic rates, also known as business rates, will also be payable every year to the local authority for the property. The charge is normally still payable by the occupier or the owner/leaseholder if the property is vacant. The amount payable can be determined from published information and some reliefs and exemptions may apply in specific circumstances;
- the purchase price, rent and other payments to a landlord may be subject to payment of VAT and you may need to consider if this is recoverable;
- environmental issues are an important consideration in property transactions, as you will need to know whether you have a potential liability for the cleanup of contaminated land and whether contamination is likely to have an impact on the value of your land. Before proceeding with the purchase or lease you should have appropriate checks carried out to ensure that the land is not at risk of being contaminated. As an occupier of the land you should ensure that you do not cause or permit pollution to occur;
- if your occupation of the premises will lead to high energy consumption, you may be impacted by legislation which may oblige you to participate in the CRC Energy Efficiency Scheme ('CRC'). CRC stands for 'Carbon Reduction Commitment'. It is recommended that you take legal advice on whether it will be applicable to your occupation of the property;
- before purchasing or occupying land you should ensure that the property has statutory consent (known as planning permission) for the use intended, or if not, that the use has continued for a sufficiently long time without challenge for it

to be deemed as lawful. You should ensure that you are able to comply with the terms of the planning permission as failure to do so may mean the relevant authority takes action against you and can lead to conviction for a criminal offence. A party seeking planning permission for a more complex or substantial development may also be required to enter into additional agreements with the local authority. The obligations in such documents – including requirements to pay contributions to enable a development to proceed – would bind the property. If you are applying for planning permission there is a short period of time once it is granted for it to be appealed. Any changes required to a planning permission will need to be applied for separately;
- in a building that has recently been constructed, a tenant or purchaser will want the benefit of warranties from the parties who were involved in the design and construction of the building, to enable it to bring actions directly if there are any defects.

If you decide a lease is the best option for you, you should consider the following:

- a lease usually provides for the payment of rent to the landlord for the right to occupy the property. If the lease is for part of a building or an estate, it will usually provide for the tenant to make payments for the insurance of the building and services supplied to the property, such as cleaning and maintenance of the common areas. Payments for gas, water and electricity supplied to the property are usually paid directly to the utility companies providing the service;
- landlords sometimes require that a tenant pays a deposit or provides a guarantee, either from a parent company or bank, as protection against non-payment of rent and other expenses. The landlord will almost certainly demand a deposit or guarantee when the tenant is a new company or based overseas;
- when you wish to dispose of the property by assigning the lease to a new tenant (an 'assignee'), it is standard practice for leases to oblige you to obtain the landlord's consent before you do so. The landlord may be able to refuse his consent if the conditions for granting consent in the lease are not satisfied (one example would be if the assignee is not of sufficient financial standing). It is common in new leases for the landlord to require that an outgoing tenant guarantees the assignee's performance of the obligations in the lease. Previous tenants can also remain liable for the whole of the term of certain 'old' leases, even if the lease changes hands (with a few exceptions, these are leases granted before 1 January 1996);
- a lease will usually require the tenant to maintain the property in a good condition and, at the end of the term, deliver the property back to the landlord in the same good condition. If this is not done, the landlord may ask the tenant to pay the costs of putting the property into a good condition. A tenant can also be required to remove any alterations that it has made during the term;
- with a few exceptions, a lease of commercial property would gain 'security of tenure', meaning that at the end of the term the tenant has the statutory right to a new lease, and the landlord can object to granting that lease only on limited grounds. To avoid this, the parties to the lease may decide to exclude security of tenure by following a process where a statutory notice is served by the landlord on the tenant prior to the parties entering into the lease, and the tenant responds by completing a declaration or statutory declaration in a set form. This procedure is commonly used for short leases, where the landlord needs the comfort that it can easily get the property back at the end of the term; however, if the parties agree to follow this procedure, a tenant may have to look for new premises at the end of the term;
- a lease will usually contain a provision to enable the landlord to end the lease (known as forfeiture) if the tenant does not pay its rent, breaches the terms of the lease or the tenant becomes insolvent. Forfeiture is subject to a statutory right for the tenant to apply to the court for denial of this remedy which would normally be granted if the breach in question is corrected; and
- it may be that the grant of a lease is conditional on certain events happening. For example, either the landlord or the tenant may need to carry out works, or planning permission or vacant possession of a property may need to be obtained. In such circumstances, it is common for the parties to enter into an agreement for lease, where they agree to enter into the lease once the conditions have been satisfied.

It is important that you seek advice on the tax impact of the various ways in which property can be owned. It should also be noted that the tax rules relating to UK residential property differ substantially from those relating to UK commercial property.

Tax structuring work should also ordinarily be undertaken to ensure that a tax efficient structure is put in place for the acquisition taking into consideration the latest tax rules and the specific profile and goals of the investor.

You should obtain advice on the consequences of all of the issues above – from legal and tax perspectives – before taking any action. The Sales and Purchase Agreement ('SPA') should also be agreed by all of the professional advisors involved in the transaction to ensure you are adequately protected and that the value of the deal is reflected appropriately.

Below we have briefly set out other potential relevant specific tax considerations of a transaction.

Other specific tax considerations

- Capital allowances are a form of tax deductible depreciation and can reduce taxable profits, therefore a potential investor must review the capital allowances position to determine whether they will be available following acquisition. Making appropriate elections with HMRC can potentially increase the amount of capital allowances available on acquisition of a property.
- VAT could be charged on the purchase of a property, if this is the case, it would be charged in addition to the agreed price. The nature of the property being purchased, whether the property is being purchased directly or indirectly and whether it has been opted to tax by the vendor will determine whether VAT will be charged. It is critical to seek advice to maximise the chances of recovering VAT from HMRC if incurred. VAT being chargeable will also adversely impact the SDLT payable as even if VAT is recoverable, it will form part of the purchase price for SDLT purposes.
- Rental income from UK property held by a corporate vehicle (resident or non-resident) is now subject to corporation tax. This introduces various complications and advice should be sought on the implications of this for the ordinary taxpayer.
- Individuals receiving rental income would ordinarily be subject to UK income tax and should consider the mortgage interest relief restrictions where higher tax relief is restricted for buy-to-let landlords on the costs of finance.
- Annual Tax on Enveloped Dwellings ('ATED'), is a type of property tax and is charged on dwellings in the UK valued at more than £500,000, and owned by a company, a partnership in which one partner is a company, or a collective investment scheme. There are various potential reliefs and exemptions so that ATED is not applicable.
- Disposals of UK property are subject to tax regardless of where the vendor is resident. Historically, disposals of UK commercial property by non-UK resident investors were not subject to UK tax (unless they were seen to be 'Trading in Land'), however, from April 2019, the tax position has been aligned such that gains on direct and indirect disposals of UK real estate are within the scope of UK taxation. Disposing of UK residential property directly can be subject to higher rates of taxation compared to disposing of commercial property directly.
- There will be full business rates relief in freeport tax sites in England. Relief will be available to all new businesses, and certain existing businesses where they expand (until 30 September 2026) and will apply for five years from the point at which each beneficiary first receives relief.
- There will be full relief from SDLT on the purchase of land or property for use in a qualifying commercial purpose within freeport sites in England. The relief will be available until 30 September 2026.

Exchange control

The UK does not have exchange control. There is complete freedom of movement in respect of all capital and current account transactions with all countries.

DAC6/EU MDR

The EU Mandatory Disclosure Regime ('EU MDR', also known as DAC6) is a European Union Directive requiring the real time disclosure of certain 'cross-border arrangements' which include certain characteristics or 'hallmarks' which may be indicative of aggressive tax avoidance or even tax evasion. However, the rules have been set deliberately wide and hence many ordinary commercial transactions without any tax motivation will be disclosable.

The Directive took effect on 25 June 2018 and was required to be implemented in all 28 Member States. As the UK was a full EU Member State at the time DAC6 was implemented, the UK was required to implement the rules in full, which it duly did. Whilst initial disclosures were meant to take place from July 2020, the UK extended the reporting deadline for six months due to the Coronavirus pandemic, so reporting has been required since January 2021.

However, following the agreement of the EU/UK Trade and Cooperation Agreement in December 2020, HMRC made significant amendments to the scope of the UK version of DAC6. More specifically, they removed 17 of the 19 hallmarks, leaving only the 'D' hallmarks, which are based on the OECD's recommended version of MDR.

These require the disclosure of, firstly, arrangements which circumvent the Common Reporting Standard (CRS) and, secondly, arrangements which result in opaque ownership structures.

The primary disclosure obligation typically rests with any UK-based intermediaries providing services to a taxpayer. However, this obligation can transfer to UK taxpayers in certain circumstances, such as when there are no UK based intermediaries or such intermediaries are relying on legal professional privilege.

Failures to comply with the UK implementation of DAC6 can lead to penalties, which are normally set at £5,000 but can exceed £1.0 million in certain cases.

HMRC have indicated that they intend to repeal the Regulations which have introduced DAC6 in due course, with the intention of replacing the rules with MDR rules more directly based on the OECD's version.

Customs and international trade

On the 31 December 2020 at 11pm, the Brexit transition period ended and a customs border was created between Great Britain and the EU. Therefore, the UK (excluding Northern Ireland) is no longer within a customs union with the EU and all goods imported and exported from the UK (excluding certain specific arrangements for Northern Ireland) will now be treated as an international movement of goods and subject to customs clearance procedures.

If your business involves the importation of goods into the UK, the goods will have to be declared for customs purposes and may be subject to customs duties and import VAT.

Movements of goods between Great Britain and Northern Ireland are unique and careful consideration needs to be given to the customs requirements to move goods in both directions. Movement of Northern Ireland goods into the Republic of Ireland will continue to be treated as EU acquisitions and despatches under EU VAT regime and will not be a customs movement as the border is now between Great Britain and Northern Ireland.

There are essentially three areas that determine the amount of duty payable on goods imported from outside the EU:

- **Classification** – the amount of duty payable depends on how the goods are classified for customs purposes, as the commodity code (also known as the tariff heading or HTS code) determines whether goods are subject to ad valorem duty rates or to specific duty rates based on volume. The commodity code is also used to determine whether a particular product may be eligible for preferential treatment or subject to additional measures. It is also used for trade statistics.
- **Valuation** – where goods are subject to ad valorem duty rates, customs valuation rules require the addition of certain cost elements, e.g. freight and insurance. Some elements may, in certain circumstances, be excluded. It should be noted that, where the parties are related, the customs authorities may require evidence that prices are at arm's length. Service agreements and agreements relating to intellectual property, particularly royalties, should also be reviewed from a customs perspective.
- **Origin** – it should be noted that the UK has many free trade agreements and preferential trade arrangements in place and is expected to agree additional Free Trade Agreement (FTA) post Brexit with a large number of countries, which means that eligible goods enter the UK at reduced or zero rates of duty. Conversely, certain goods from certain countries may be subject to trade defence measures, such as anti-dumping, anti-subsidy (also known as countervailing) or safeguard measures, which generally take the form of additional duty. Careful consideration must therefore be given to the customs implications of any sourcing or production decisions.

Depending on whether imported goods undergo further processing or are stored for any length of time, there is a range of customs reliefs, regimes and simplified procedures available to UK importers to delay or suspend the payment of customs duty and import VAT. The rules relating to these areas are complex and it is, therefore, important to seek advice before imports commence.

For more information please visit our sites about supply chains and trade matters.

In the 2021 Budget the Chancellor announced the creation of 8 freeport sites across England, located at East Midlands Airport, Felixstowe and Harwich, the Humber region, the Liverpool City Region, Plymouth, Solent, Thames and Teesside.

The proposed model provides for:

- **Duty suspension** – no tariffs, import VAT or excise to be paid on goods imported into a freeport from overseas until the goods are distributed outside the freeport zone and enter the UK's domestic market (similar to Customs Warehousing).
- **Duty inversion** – if the duty on a finished product is lower than that on the component parts, a company could benefit by importing components duty free, manufacture the final product in the freeport, and then pay the duty at the rate of the finished product when it enters the UK's domestic market (this used to be known as Processing Under Customs Control PCC).
- **Duty exemption for re-exports** – a company could import components duty free, manufacture the final product in the freeport, and then pay no tariffs on the components when the final product is re-exported (similar to Inward Processing).
- **Simplified customs procedures** – introduce a streamlined customs procedures to reduce administrative costs.

You can see from the above that locating your business in a Freeport can provide the combined benefits of several different customs approvals, all of which would have to be separately applied for if operated from a location outside of a freeport.

Excise duty

If your business involves the manufacture, storage, movement or sale of alcohol, tobacco or oil products in the UK then the goods will be subject to excise duty. Excise duty becomes payable upon the importation or manufacture of an excise product.

In the UK, excise duty rates on alcohol, tobacco and oil are high when compared to other indirect taxes. It is not unusual for excise duty to represent over half the final retail price and, when VAT is taken into account, the tax amount within the retail price can be as high as 70%. Due to the high rates of excise duty, products are highly regulated with registrations needed before importing, manufacturing, bottling, storing under duty suspension, transporting or selling goods.

If you wish to move duty paid excise goods or excise goods under duty suspension, strict criteria must be met to ensure the correct duty treatment of the movement. It is very easy to become non-compliant with the many rules and regulations affecting excise goods and the assessments/penalties levied for compliance breaches can be significant. Advice should be sought before entering into any business involving excise products.

Grants

Various financial incentives and other forms of support can be obtained by businesses wishing to establish or develop operations in the UK. The availability and potential level of grant support is influenced by the following factors:

- geographical location within the UK;
- the number and quality of jobs created or safeguarded;
- the need for assistance; and
- the size of the company to be assisted.

Incentives are available for both manufacturing and service sector companies.

Some of these incentives are targeted specifically at SMEs (small and medium-sized enterprises). Broadly, an SME is a company that has:

- fewer than 250 employees; and
- not more than 25% of its share capital is owned by non-SMEs;

and either:

- a turnover of less than €50m; or
- a balance sheet total of less than €43m.

Further information on UK grant incentives has been provided at **Appendix C**.

Horizon 2020 (H2020) European framework programme for research and innovation funding

Up until the end of 2020 H2020 was available to UK companies. The programme ended on 31 December 2020 and will be replaced by alternate EU schemes - which as this time, due to Brexit, it is unlikely UK companies will be able to access. The programme, backed by Europe's leaders, was designed to improve the competitiveness of the EU by driving economic growth and to maintain world class science by encouraging the public and private sectors to work together. The three main categories or 'pillars' of activity:

- **Excellent science** – Forward looking activities to advancing science and technology research.
- **Industrial leadership** – Supporting breakthrough technologies to drive innovation.
- **Societal challenges** – Collaboration to enhance the lives of citizens through a challenge-based approach.

Grant support for all organisations

All sizes of companies and research organisations were eligible to participate in H2020 grant competitions. Companies had to be legal entities from a Member State of the EU or an associated.

Collaborative projects had to involve legal entities from at least three different EU Member States to form an eligible application. Depending on the type of project, grant intervention rates vary from 70% to 100% of eligible costs and grant sizes start from €1m upwards.

Intellectual property

Intellectual property is a valuable asset for most businesses and it is important that appropriate steps are taken to ensure the company's intellectual property is properly protected. It is important to understand that intellectual property rights ('IPRs') are territorial in nature and therefore, depending upon the nature of the particular IPR in question, may require active steps to ensure protection in any overseas jurisdiction where the IPR is intended to be used, as well as in the UK. You may, for example, wish to register trademarks to protect your company or group corporate name, trading style or product/ service brands. Given IPRs can be among a company's most valuable assets, effective protection of them and ensuring enforcement of your IPRs in the event of infringement by others is of crucial importance. Equally, where the company uses IPRs belonging to third parties, you may have obligations to ensure that any third party IPRs are protected and must take steps to prevent infringement that may arise as a result of your use of those IPRs.

The most common rights to consider are:

- patents;
- registered trademarks;
- rights in passing off (common law rights for protecting an unregistered trade mark);
- registered and unregistered designs;
- copyright and associated rights;
- database rights; and
- confidential information, trade secrets, know-how (strictly speaking, these are not IPRs but are often treated as such).

Some of these IPRs (such as patents, registered trademarks and registered designs) require registration in order for the right to arise. Other rights (such as those relating to copyright and unregistered design rights) arise automatically in the UK.

In many cases (but not all) IPRs developed by an employee will be owned by the employer. In situations where IPRs are created by someone outside the organisation (for example through the use of third party consultants), you should ensure that your IPRs are protected by way of a contract with that third party, as rights will not always vest automatically in the party that commissioned those IPRs to be created.

Some examples of when expert legal advice should be sought:

- to understand/identify the extent of your registered and unregistered IPR portfolio and secure appropriate protection for your entire IPR estate, whether by registration or otherwise, as and when necessary;
- if you are looking to enter into any IPR licensing arrangements, whether that involves you licensing out your IPR to third parties, or if you are to become a licensee or sublicense recipient of any third party's IPR;
- to identify if you may be infringing the IPR of a third party, or if you need to understand what steps you must undertake to avoid infringing a third party's IPR, and/or if you have received notification or a warning from a third party alleging that you have infringed (whether that is actually the case or not);
- if you believe a third party may be infringing your IPR, and/or believe that you have a right to bring a legal claim against that third party for infringement of your IPRs.

Given their territorial nature, the impact of Brexit on your IPRs will very much depend on the type of intellectual property in question, whether or not IPRs are being used in one or more EU member states, if products reliant upon IPRs are being manufactured or distributed in one or more EU member states (including whether the principle of 'exhaustion' of rights applies), whether or not your IPR has been, or will in future, require registration in a particular EU member state, or in all of them etc. The law in this area is complex, particularly where there is a cross-border element to IPR use, and it is important that you seek legal advice to assist with your company's IPR strategy. Below is a non-extensive list of examples of the main types of IPR that a company is likely to hold followed by some examples of the potential impact that Brexit could have on your company's IPR estate.

Patents

Patents are monopoly rights that protect technical inventions that meet certain requirements (see below). Patent registration and enforcement can be both complex and expensive. You can apply for a patent in the UK either through the UK Intellectual Property Office (UKIPO) or the European Patent Office (EPO). If you apply for a patent through the European Patent Office, this operates as a collection of national patents rights in the countries designated by the applicant.

For a patent to be valid an invention must be:

- novel (not 'anticipated by the prior art');
- inventive (not 'obvious to a person skilled in the art');
- capable of industrial application; and
- not excluded from patentability (for example schemes, rules or methods for performing mental acts, playing games or doing business as well as computer programs 'as such' are excluded); however, the law in this area is complex and it is possible to obtain patent protection for computer related inventions despite the exclusion provided certain criteria are met.

Even after a grant, a patent can be vulnerable – it may be revoked if its validity is challenged at any time by a third party.

A patent can be infringed in the UK by a third party:

- making, disposing of, offering to dispose of, using, importing or keeping a patented product or a product obtained directly by means of a patented process;
- using or offering for use in the UK a patented process (knowing that use without consent would be an infringement, or where it is obvious that this would be the case); and/or
- disposing of, offering to dispose of, importing or keeping any product obtained directly by means of a patented process or supplying or offering to supply in the UK the means for putting the invention into effect.

The acts of infringement do not necessarily require knowledge of the patent.

Expected changes to the current law

As the EPO is not an EU body, the European Patent system is not affected by Brexit. As such, European patent applications will continue to include the UK as one of up to 38 designated jurisdictions.

The UK had signed the Unified Patent Court Agreement, which, subject to ongoing negotiations, is intended to create an exclusive jurisdiction for litigation relating to European patents and European patents with unitary effect; however, the UK has since confirmed that it will not seek membership of the Unitary Patent and Unified Patent Court post-Brexit.

Trade secrets

Trade secrets law can be used to protect a company's confidential business information, trade secrets, innovations, know-how and any other commercially sensitive information which a company might seek to safeguard.

Expected changes to the current law

UK trade secrets laws are unaffected by Brexit. The law on trade secrets has recently been harmonised by the Trade Secrets Directive which was brought into force in 2016. The level of protection in the UK had been high in comparison to other EU member states and the effect of the directive was to bring others more into line with the UK position.

Trademarks and domain names

A company's:

- trading name;
- product/service brands as well as associated strap lines;
- logos; and
- other aspects of get-up or brand image

can be protected as registered trademarks. A wide variety of marks can be registered: a word, design, shape, colour, smell or sound – so long as it can be described graphically. In practice, it is very difficult to register colour, smell or sound marks.

Whilst you may have rights in relation to an unregistered brand (see paragraph on passing off) registration is still advisable, because it confers a statutory monopoly in the use of that trade mark in relation to the same or similar goods or services in respect of which it is registered. As a result, an action for infringement of a registered trade mark is usually simpler and cheaper than a passing off action.

Passing off

If you have not registered a mark, you may be able to enforce your common law rights through a 'passing off' action. In order to succeed in a passing off action, you will need to prove:

- you have goodwill or a reputation in the name, logo or 'get-up' in question such that members of the public associate the mark with your goods and/or services;
- there has been a misrepresentation by a third party leading or likely to lead members of the public to believe that the third party's goods/services and goods/services of your business are the same; and
- you have suffered or are likely to suffer damage (financial loss) as a result of the misrepresentation.

Use of new trade marks

Before launching a new branded product or service, or commencing use of a company or trading name, it is prudent to take steps to ensure, in so far as possible, that the trading names or logos you wish to use do not infringe anyone else's trade mark or similar rights. It is advisable to carry out searches of the relevant registers in the territories in which you want to use a brand.

Registration

A trade mark can be registered in relation to specified goods and services in the following ways:

- as a UK registered trade mark at the UK Intellectual Property Office; or
- under the Madrid Protocol, as an international registration (resulting in a series of national registrations rather than a unitary international registration).

A trade mark cannot be registered if it is not sufficiently distinctive or if it is merely descriptive of the goods or services to which it is being applied.

After an application is made to the relevant registry, it will be examined to ensure that it satisfies the above criteria and if successful, it will be advertised in an official journal. Following advertisement, third parties have a period of two months in which to oppose the trade mark application e.g. on the basis that it is too similar to an existing registration owned by a third party.

Once registered, a trade mark can be revoked if it remains unused for a continuous period of five years or if a third party successfully argues that it is invalid and should not have been granted.

What constitutes an infringement?

An infringement occurs when a third party without consent uses in the course of trade:

- an identical mark on identical goods or services to those registered;
- an identical mark on similar goods or services – and there is a likelihood that the public will be confused; or
- a similar mark on identical or similar goods and services to those registered – and there is a likelihood that the public will be confused.

Further, a trade mark that has a reputation in the UK is infringed if a third party, without due cause, uses an identical or similar mark in relation to any goods or services, even if dissimilar to those covered by the registered mark, and this takes advantage of, or is detrimental to, the character or repute of the registered trade mark.

Examples of acts of infringement include:

- using the mark on goods and packaging;
- offering goods for sale under the mark;
- supplying services under the mark;
- importing or exporting goods under the mark; and
- using the mark on business papers, a website or in advertising.

A person may use a competitor's trade mark for the purpose of comparative advertising provided such use is 'in accordance with honest practices in industrial or commercial matters' and does not take unfair advantage of, and is not detrimental to, the distinctive character or repute of the registered trade mark.

Domain names

Effectively, a domain name serves to identify the source of a website and may therefore be capable of registration as a trade mark (if it meets the requisite criteria, see above). Domain names must be registered and this can be done via an accredited registrar or a registration company. Domain names are also capable of infringing other's rights in their trade marks, whether registered or unregistered.

Expected changes to the current law

In respect of domain names, if a UK company has registered a '.eu' domain name, but does not have an EU registered office, principal place of business or place of establishment within the EU/EEA, now that the UK has left the EU, it will no longer be permitted for that UK company to hold the '.eu' domain name as being located in the EU is a requirement of being a '.eu' domain name holder.

Post-Brexit, EU Trade Marks no longer have effect in the UK. The UK will grant owners of EU Trade Marks which were registered before 31 December 2020 a new UK equivalent. There will be no action necessary or cost incurred on the part of the trade mark owner and these rights will not be re-examined by the UK Intellectual Property Office.

Owners of pending EU Trade Mark applications and EU designations will have to actively apply in the UK for equivalent national UK trade mark protection within 9 months after the end of the Transition Period.

From 1 January 2021, trade mark protection in the UK is only available through filing a separate UK trade mark application or filing an application which designates the UK under the Madrid Protocol.

Registered and unregistered designs

Designs are protected in the UK by a complex set of rights:

- UK registered design (UKRD); and
- UK unregistered design.

The key features of these are described below.

Registered designs ('RDs')

RDs protect a 'design' which means 'the appearance of the whole or a part of a product resulting from the features, in particular, the lines, contours, colours, shape, texture or materials, of the product or its ornamentation'.

In addition, the design must:

- be new (i.e. not identical or substantially similar to another design publicly disclosed prior to the application date);
- have individual character (i.e. produce a different overall impression from other designs); and
- not be solely dictated by the technical function of the product.

RDs last for an initial period of five years. They can be renewed for successive periods of five years up to a maximum of 25 years.

UK unregistered designs ('UKUDs')

A UKUD arises automatically in respect of an 'original design' that comprises 'any aspect of the shape or configuration (whether internal or external) of the whole or part of an article'. It does not subsist in:

- a method or principle of construction (which would be covered by patent law);
- the aspects of a design of an article that:
  - 'enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function' (the so-called 'must fit' exception); or

- 'are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part' (the so-called 'must match' exception); or
- surface decoration.

Essentially, the purpose of the right is to give relatively short-term, informal protection to technical designs.

UKUDs expire 15 years after the end of the calendar year in which:

- the design is first recorded in a design document; or
- an article is first made to the design, whichever is the sooner.

Alternatively, if an article made to the design is made available for sale or hire anywhere in the world within five years of that calendar year, the right will expire 10 years after the end of the calendar year in which such sale or hire first occurred.

Expected changes to the current law

As with registered community trade marks (see above), post-brexit any registered European designs that were registered and fully published on 31 December 2020 have been duplicated onto the UK designs register as equivalent UKUDs. Owners of pending european registered design applications can apply to register it as a UK design within 9 months of the end of the transition period.

From 1 January 2021, registered design protection in the UK are only available through filing a separate UK registered design application.

Copyright

Copyright prevents third parties from copying or otherwise exploiting a copyright work without the permission of the owner.

Copyright protects the following types of work provided that they are original and that basic qualifications for protection are met:

- original literary, dramatic, musical or artistic works (including computer programme);
- sound recordings, films or broadcast; and
- the typographical arrangements of published editions.

In the UK, copyright arises automatically on the creation of a work (subject to certain qualifications and requirements, e.g. a literary, dramatic or musical work must be recorded, in writing or otherwise) – registration of the right is not required.

Overseas companies that have copyright protection in their home countries are likely to find that their copyright is also recognised in the UK due to the fact that the UK, like many other countries, is a signatory to many international conventions relating to copyright, such as the Berne Convention.

In the UK, copyright for literary, dramatic, musical and artistic works generally lasts until the end of a period of 70 years from the end of the calendar year in which the author dies. A similar period of 70 years also applies for films. Copyright in sound recordings and broadcasts generally last until the end of a period of 50 years after the end of the year in which the recording or broadcast was first made.

Copyright is infringed by any person who without a licence from the copyright owner:

- copies the work, which includes copying all or any substantial part of the work, or reproducing it in any form or storing it electronically;
- issues copies, rents, lends, or performs the work in public;
- communicates the work to the public e.g. by means of the internet; or
- makes an adaptation of the work.

This is subject to some limited exceptions, e.g. for purposes of research and private study, criticism, review and news reporting, and – more recently – pastiche, caricature and parody, and the making of personal copies for private use.

A 'secondary infringement' is also committed if any person knowingly imports, possesses or deals with an infringing copy or provides means for making an infringing copy.

Recent changes to the law

In terms of Brexit, most UK copyright works are still protected in the EU and the UK because of the UK's participation in the international treaties on copyright. For the same reason, EU copyright works continue to be protected in the UK.

It should be noted that the UK Government has announced that it will not implement the new Copyright Directive which was intended to create certain exceptions to copyright law, such as in respect of text and data mining, digital and cross-border teaching, the preservation of cultural heritage and in respect of the licensing of 'out of commerce' works. The Copyright Directive also created new rights for the press such as in respect of digital publications as well as imposing new obligations on internet service providers (ISPs) storing online user content, placing new requirements on ISPs to maintain the integrity and security of such data and obligating ISPs to monitor and filter data to check whether such content infringes the copyright of others.

The UK Government will instead propose a new Online Safety Bill and though there will likely be some overlap, it is expected that there will be some significant divergence between the copyright regime in the UK and the EU.

Database right

Database right is a right which arises where there has been substantial investment in obtaining, verifying or presenting the contents of a database. It belongs (in the first instance) to the person who takes the initiative and assumes the risk of investing in making the database. In order to qualify for protection, at least one of the makers of the database must be an EEA national or an entity incorporated in the EEA.

Database right lasts for a period of fifteen years from the end of the calendar year in which the database was created, but will be renewed where there is substantial change to the content of the database resulting from further substantial investment.

Database right is infringed by any person who extracts or re-utilises all or a substantial part of the content of the database without the consent of the owner. This can include systematic and repeated use of otherwise insubstantial parts of the database.

Expected changes to the current law

Database rights are an EU law creation. New UK originating database rights are no longer enforceable in the EU post Brexit. Only UK citizens, residents, and businesses will be eligible for new database rights in the UK.

However, existing database rights will continue to be protected in the UK, and rights owned by UK nationals that qualified for protection in EU member states before 31 December 2020 will also continue to be protected.

Sustainability

In 2008 the UK passed the Climate Change Act (CCA) which legally binds the UK Government to achieving future carbon reductions. The CCA requires the government to set five-yearly carbon budgets, after taking advice from the Climate Change Committee, to ensure the UK meets its emissions reductions commitments.

In June 2019, the UK became the first major economy to pass a net-zero emissions law, to commit the UK to legally binding targets of net-zero emissions by 2050 (by amending section 1 of the CCA).

Low carbon economy incentives

There are a range of schemes to provide incentives for low carbon investment in the UK. These include:

- **Tax reliefs:** The research and development (R&D) tax incentive regime provides additional tax deductions for R&D activities, including low carbon R&D.
- **Renewable energy incentives:**
  - **The contracts for difference scheme (CfD)** is the primary mechanism for supporting new low carbon generation in the UK. One of the main distinctions from the renewable obligation scheme, which it supersedes, is that in addition to renewable generation, CfDs extend to other forms of low carbon generation, including nuclear. CfDs are awarded to eligible low carbon generators through a competitive auction process (allocation round) who then in turn receive flat (indexed) rate payments for the electricity they produce over a 15-year period.*
  - **The domestic renewable heat incentive (Domestic RHI)** is a government financial incentive that opened in 2014 to promote the use of renewable heat. Under the scheme, households receive quarterly payments for a period of seven years based on the estimated amount of clean, green renewable heat their system produces.
  - **The proposed green gas support scheme (GGSS)** is designed to increase the proportion of green gas in the grid, through support for biomethane injection by the process of anaerobic digestion (AD). The scheme is expected to open in Autumn 2021.
- **Small scale renewables:** Feed-in tariffs (FiTs) have been introduced to support small scale renewable electricity production. These are based on similar programmes elsewhere in the world.

Climate-related disclosures

- The UK government has indicated that it will make disclosing in-line with the Task Force on Climate-related Financial Disclosures (TCFD) mandatory by 2025 at the latest, and sooner for most types of companies.
- Listed companies with a premium listing in the UK are required to disclose in-line with the TCFD in 2022 for reporting periods beginning in January 2021. The UK government has published a roadmap which sets out the timeline for the phasing in of rules and regulations for different types of companies.
- Disclosing in-line with the TCFD requires companies to describe to investors how they are managing the risks and opportunities climate change brings. Disclosures are required in the areas of governance, strategy, risk management, and metrics and targets.

* Hinkley Point C signed a 35yrs contract.

Regulation and taxation

Any investment decision at present must carefully consider the impact of volatility in international energy and carbon markets on the underlying business proposition. Taxes and regulations will naturally form a part of this assessment. Like many countries, the UK has some forms of energy tax and carbon trading systems in place.

- **UK Emissions Trading Scheme:** This is the carbon trading scheme that covers energy intensive activities such as electricity generation, manufacturing and metal production. From 1 January 2021 it has replaced the EU Emissions Trading System, however the decision was only made to have a UK ETS in mid-December, so some participants are still unaware of the scheme. Companies have to purchase one carbon allowance for each tonne of relevant greenhouse gas emissions. Free allowances are available to sectors at risk of carbon leakage. The UK Government is looking at extending the scope of the UK ETS to other sectors and tightening targets under the UK ETS from those under the EU ETS.
- **European Union (EU) Emissions Trading Scheme:** This is the large EU market for carbon emissions covering high intensity activities such as electricity generation, and metal production. The scheme is extending its scope in 2013. Participants are required to buy permits that can be traded to cover their emissions each year. A compensation scheme is available to certain industries to mitigate the indirect impact on competitiveness of the EUETS and carbon price support mechanism.
- **Climate change levy:** This is a tax on the supply of energy products (primarily coal, gas and electricity) which is charged by energy suppliers. Oil and petrol are covered by a separate tax – hydrocarbon oil duty or fuel duty. The climate change levy is not paid on fuel used domestically; it is aimed at use by businesses; however, domestic users do have to pay fuel duty. There are voluntary agreements (climate change agreements) that certain businesses can enter into with the Government, to reduce the amount of climate change levy due. The UK Government removed the exemption for electricity generated from renewable sources with effect from 1 August 2015. Other exemptions and reliefs remain available.
- **Carbon price support mechanism:** This tax was introduced on 1 April 2013 to achieve a carbon price floor which rises from £16 per tonne today to £30 by 2020. The tax applies to fossil fuels used to generate electricity and is on top of the price of EU carbon permits – it is intended to support nuclear and renewables generation. In the 2014 budget the Government announced that prices would be capped at £18 per tonne from 2016 to 2020 to limit the competitive disadvantage faced by business and reduce energy bills for consumers. In the 2020 budget the cap was extended to 31 March 2022.
- **Landfill tax:** This is a tax on waste sent to landfill. There are two rates: a standard rate (currently £94.15 per tonne) which applies to active waste and a lower rate (currently £3 per tonne) which applies to inactive wastes. Exemption is available for waste derived from certain sources. Landfill tax is a devolved tax and is subject to separate regimes in Scotland and Wales.
- **Aggregates levy:** This is charged on the use of aggregates (such as sand, gravel) in the UK. Following a challenge from the European Commission, the exemption for shale has been removed. Relief is available for certain industrial and agricultural processes.
- **Plastic packaging tax:** This is a new tax being introduced from 1 April 2022 on plastic packaging with less than 30% recycled content at a rate of £200 per tonne. Any business which manufactures plastic packaging in the UK or imports plastic packaging materials or packaged goods into the UK needs to register, even if no tax is due because the recycled content threshold is met.

The challenge for any business wanting to expand in the UK market place is to take advantage of the current regulations to ensure that reductions in carbon emissions are recognised both financially and at a reputational level under the above regulatory regime. Companies are also looking at how to price carbon risk into commercial contracts

Modern Slavery Act

The Modern Slavery Act requires obligated businesses (including private companies and partnerships) to publish a statement each financial year, disclosing either: (a) the details of any steps they have taken to ensure that slavery and human trafficking is not taking place in its own operations or supply chain; or (b) the fact that no such steps have been taken. All businesses which do business in the UK and have a turnover of over £36 million have to comply and its provisions have also been extended to the public sector. The Act came into force in October 2017 and companies have been publishing statements since April 2016. A robust response requires; the development of a policy; risk assessment of operations and supply chain; due diligence processes; effective anti-slavery measures; training of staff; and KPIs to measure progress.

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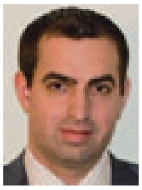

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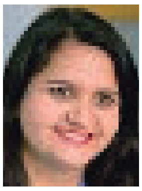

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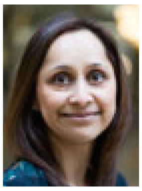

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7. How do I close a UK business?

- Solvent winding up
- Insolvent winding up

Solvent winding up

In our experience, in order to successfully wind down the trade of a UK entity, five key phases, which we set out below, should be followed to progress the company from the point at which the decision is taken to cease trading, through to elimination. The five key phases are as follows:

- identify the issues to be resolved;
- interdependencies between them and likely timescales for resolutions;
- prepare a wind down plan;
- implement the wind down plan; and
- closure.

This document deals with some of the technical and statutory issues when a client is looking to wind up a UK entity, specifically in the closure phase.

There are two processes to eliminate a solvent UK corporate entity:

- members' voluntary liquidation; and
- striking off application under Section 1003 of the Companies Act 2006.

Members' voluntary liquidation (MVL)

An MVL is one of the processes available to bring the life of a company and LLP to an end, following which it is termed 'dissolved' and no longer exists as a legal entity.

Only solvent companies can enter into an MVL, all other types of liquidation relate to insolvent companies.

There are three elements to an MVL, being:

- realisation of assets;
- identification and settlement of valid creditor claims (if any); and
- distribution of any surplus funds/assets to the company's members.

An MVL provides a legal process for all remaining assets to be distributed by the liquidator to the members once creditor claims have been dealt with. By contrast, any assets remaining in the company at the time that it is struck-off become 'bona vacantia' (without an owner) and transfer to the Crown. An MVL can therefore be beneficial in avoiding the risk of assets being left behind.

An MVL also provides a legal framework for the identification and resolution of creditor claims by allowing a liquidator to adjudicate on the validity and quantum of claims. Such claims would typically be identified either in the course of a pre liquidation review or would be notified to the liquidator as a result of advertising the liquidation appointment and setting a deadline for the receipt of claims. This process brings finality to the potential exposure to claims and protects any distribution to shareholders that is subsequently made.

A creditor does have the right to appeal to court if they disagree with the liquidator's rejection of a claim, but like most litigation, this is rare and usually a last resort.

With an MVL the liquidator provides a buffer between the company and its directors. The liquidator has the executive power to take or defend legal proceedings on behalf of the company and all actions/transactions undertaken during the liquidation process are taken by the liquidator, not the directors.

Directors' responsibilities and actions

- Directors pass board resolutions to:
  - recommend to the member(s) that the company is placed into MVL;
  - authorise directors (or a majority of them) to prepare and swear a declaration of solvency.
- Directors (or a majority of them) prepare and swear a declaration of solvency (which includes a statement of the company's assets and liabilities, prepared at the most recent convenient date). The declaration of solvency is governed by s89 Insolvency Act 1986. In swearing the declaration of solvency, the directors confirm they are of the opinion that the company can pay its debts in a period not exceeding 12 months. The penalties (imprisonment or a fine or both) apply if a director is found to have made the declaration without having reasonable grounds to do so.
- Directors circulate to the members proposed resolutions to place the company into liquidation.
- The declaration of solvency must be sworn within five weeks before the date of liquidation.

Members' responsibilities and actions

To place a company into members' voluntary liquidation the member(s) are required to pass a winding up resolution, which is a special resolution requiring members representing 75% of the total shareholdings that vote or 75% of those represented at the meeting (in person or by proxy).

- General meeting (option 1)
  - a general meeting of the members of the company is called to consider the proposed resolutions.
  - short notice of the meeting may be given if agreed by members representing 90% (95% for a public company) of the voting shares.
  - the general meeting is held and resolutions passed to commence liquidation and appoint liquidators.
- Written resolutions (option 2)
  - written resolutions passed by 75% of the members.

MVL process

- The liquidator files statutory papers with the registrar of companies and advertises the appointment of liquidators in the London/Edinburgh Gazette.
- The liquidator advertises in the London/Edinburgh Gazette for creditors to submit claims (also, in some cases, a national newspaper) (creditors are given a period of at least 21 days for claims to be submitted, most liquidators allow at least 30 days).
- The liquidator has wide ranging powers to realise assets and take and defend actions on behalf of the company.
- The liquidator should insure any relevant assets and can operate a liquidation bank account.
- Any creditor claims are examined and adjudicated by the liquidator and either rejected, or accepted (in full or in part).
- Any valid claims are settled.
- Any outstanding tax returns to the date of liquidation are submitted.
- Any tax returns required for the liquidation period are submitted.
- All tax liabilities are settled and clearance sought and obtained from HMRC.
- Surplus funds/assets are distributed to the members as a distribution of capital (distributed 'in-specie' if assets are non-cash).
- The liquidator can make more than one distribution to members depending upon the need to retain funds to meet potential claims, or claims that have yet to be agreed and settled.
- The liquidator issues a draft final account to members (England & Wales)/final report (Scottish and Northern Irish companies).
- Assuming no objections are raised by members (England & Wales), following the expiry of an eight week period (or earlier if the unanimous consent of members can be obtained), the liquidator files the final account with the Registrar of Companies; for Scottish & Northern Irish companies a final meeting of members is held subject to one month's notice being given and then a final return in the winding up is filed at Companies House.
- The company is removed from the company register three months later (i.e. is deemed dissolved).

Striking off

Strike-off is normally cheaper than MVL but involves higher risk for the directors and is therefore normally used for low value and/or risk companies or companies that have not recently traded.

The Registrar of Companies in the UK may, on application from the company, strike a company off the register, but before doing so it is necessary to satisfy each of the following:

- HM Revenue & Customs.
- Any third parties that may have an interest in, or any contract with, the company and obtain any consents;
- Any creditors.
- Distribute any assets currently held by the company.
- Ensure that there are no other tax liabilities either here or abroad.

Advice will need to be taken on the repayment of any issued share capital which is still represented by the company's assets to avoid an unlawful reduction in share capital from being made.

To invoke the striking-off procedures, the directors are required to certify that the company has ceased to trade and they are satisfied that the company has no assets or liabilities. It is advisable to convene a general meeting ('GM') or circulate written resolutions to seek the shareholders' approval.

Striking-off procedure

Under section 1003 of the Companies Act 2006 (the 'Act') certain legal and administrative procedures are also required to be followed.

The provisions apply to public and private companies and permit the directors to make an application on the prescribed form (DS01) for striking-off. The Registrar publishes a notice in the London Gazette allowing objections to be made within three months, after which period he may strike the company off and publish a notice of dissolution in the Gazette.

The person or persons making the application must distribute a copy to every 'notifiable person' which includes every member, employee, creditor, director and manager or trustee of the company pension fund. Application may not be made if the company has within the previous three months:

- changed its name;
- traded or otherwise carried on business;
- sold property or rights; or
- engaged in any other activity.

The company must also not already be subject to an agreement with its creditors, e.g. a company voluntary arrangement.

Directors must withdraw an application if a company ceases to be eligible for striking-off e.g. because it trades or carries on business, changes its name or disposes for value of any property or rights other than those which it needed to retain to make or proceed with the application. The prescribed form for this purpose is a DS02.

The provisions also allow for a company to be restored on application by any 'notifiable person' within six years and the liability of directors, shareholders and managing officers continues and may be enforced as if the company had not been dissolved.

A £10 fee must accompany each strike-off application.

It will be an offence:

- to apply when the company is ineligible;
- to provide false or misleading information in, or in support of, an application;
- not to copy the application to all relevant parties within seven days; and
- not to withdraw the application when the company becomes ineligible.

Offences will attract a potentially unlimited fine. If the directors deliberately conceal the application from interested parties, they will be liable not only to a fine but also up to seven years imprisonment. Anyone convicted of these offences may also be disqualified from being a director for up to 15 years.

After a company has been struck-off, the company ceases to exist. However, the liabilities, if any, of every director, managing director and shareholder of the company will continue and may be enforced as if the company had not been dissolved. Under the Act, a company may be restored to the register within six years of the publication of the notice in the London Gazette. The Court can make such orders as it deems necessary to place the company and all other persons in the same position as if the company had not been dissolved.

Please also note that once a company has been struck off and dissolved:

- the company would not be entitled to any income or its capital as all assets (including property) would become bona vacantia i.e. 'ownerless goods' which could pass to the Crown;
- the directors would be personally liable if they entered into any contracts in the name of the company after striking off;
- the directors should not hold themselves out as being directors of the company or seek to conduct business on behalf of the company; and
- the liability of directors and other officers of the company continues as if the company had not been dissolved. This does not necessarily mean that they will be liable for any debt of the company, but they will remain liable for breaches of their fiduciary duties occurring before the company was dissolved.

Insolvent winding up

Insolvency arises when individuals or businesses either have liabilities whose value exceeds the value of their assets or are unable to settle their debts as they fall due.

It is the directors' responsibility to know whether or not the company is trading while insolvent and under the wrongful trading provisions they can be held legally and personally responsible for any losses to creditors that arise.

The primary legislation governing insolvency, the Insolvency Act 1986, was modified by the Enterprise Act 2002. These changes created a shift in insolvency culture, with a greater emphasis placed on company rescue and rehabilitation, fairness for all creditors, and making it tougher for offending directors. Separate sectors such as financial services have their own tailored insolvency procedures.

The procedures open to an insolvent company are:

- administration;
- company voluntary arrangement (CVA);
- receivership (for property generally);
- compulsory liquidation; and
- creditors' voluntary liquidation (CVL)

Administrations, CVAs and receiverships all provide the potential for the rescue of the company or its business whereas liquidations do not. All of these procedures are led by insolvency practitioners.

There are also schemes of arrangement under the Companies Act which are popular alternatives to insolvency, but have some similar characteristics. They are often used to reduce debt levels in highly leveraged companies.

In June 2020, a new insolvency law was passed, called the Corporate Insolvency and Governance Act, or CIGA. There are two new procedures introduced in CIGA, namely a standalone moratorium and a restructuring plan. The former provides a company and its directors with a short period during which they can manage the business, without the threat of creditors' taking recovery action; the moratorium is predicated on the strong likelihood that the company can be rescued.

The restructuring plan is a variant of schemes of arrangement under Companies Act, Part 26, which provides for a distressed business to propose a court supervised restructuring plan. It is more flexible that a traditional schemes, notably providing for the opportunity to cram down junior creditors, in a similar way to chapter 11.

There is also a new power for all insolvencies to ensure that creditors cannot terminate contracts to the insolvency entity by reason of its insolvency alone, the ipso facto rule. Finally there have been numerous suspensions of directors' duties, notably in respect of wrongful trading, during 2020, in response to COVID-19. At the time of writing these are due to remain in place until 31 March 2021.

The decision to appoint administrators, liquidators, and receivers is the responsibility of the appropriate funding bodies, creditors, the courts, the directors or the company itself depending on the procedure.

Going into insolvency is a major step for any company, large or small, and the successful outcome of any insolvency process is highly dependent on making sure you seek the right advice.

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Solvent winding up

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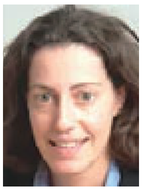

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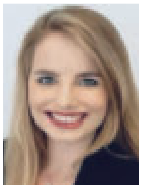
Striking off



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8. How do I acquire a business in the UK?

- General overview
- Acquiring a UK public company
- Acquiring a private company or business

General overview

One of the ways in which overseas investors can access UK markets is by acquiring a business that already operates in those markets. While there are hurdles to be cleared, the process is not unduly difficult and appropriately experienced professional advisers will be able to guide you through it.

There are relatively few restrictions as to who may acquire or operate a UK company, whether public or private. In general, legitimate foreign investors should be able to make acquisitions without legal impediment, save where there are national security concerns.

There are various legal limitations relating to the public interest and to the promotion of competition within industry sectors that may apply to specific acquisitions. These are not discussed further here, so you should ask your professional advisers to consider and advise on their applicability.

This section deals with the process for acquiring shares in a public company, for acquiring shares in a private company, and for acquiring the assets and liabilities of a business without acquiring the shares of the company that owns them.

Acquiring a UK public company

Overview

In the UK, a listed company will in almost all cases be a public company; however, not all public companies (PLCs) are listed. The rules relating to the takeover of public companies apply whether the company is listed or not.

Acquisitions of public companies (listed and unlisted) are governed by the City Code on Takeovers and Mergers, commonly referred to as the Takeover Code or simply 'the Code'. However, the Takeover Panel (which administers the Takeover Code) will in practice often permit derogations from some or all of the Code for acquisitions of unlisted public companies, depending on the circumstances. Your advisers will be able to engage with the Takeover Panel in this area if appropriate.

While this guide sets out some of the key rules of the Takeover Code, the Takeover Panel has recently undertaken a consultation on possible changes to the Code, including the offer timetable. It is therefore important to seek advice to ensure compliance with any updated rules.

The takeover process is led by the bidder, who should seek effective advice from suitably experienced lawyers and from a bank or broker who will advise on the financial aspects of the bid. While offers were traditionally made in the UK by investment banks on behalf of a bidder (or 'offeror'), this is no longer market practice and the bidder now makes the offer directly.

The Takeover Code is designed to ensure fairness for all shareholders, who are given certain rights and sufficient time to decide on whether a takeover should proceed. There are six general principles, derived from European law, that underpin the Takeover Code and govern its interpretation. These relate to:

- equality of treatment of shareholders;
- adequacy of time and information;
- directors' duties;
- maintenance of the integrity of markets;
- the ability of bidders to fulfil any bid they might make; and
- minimising disruption to the target company.

Breaches of the Takeover Code may attract sanctions, which the Takeover Panel has statutory power to enforce.

If the target company's board of directors chooses to recommend a takeover bid to the shareholders, the bid is known as a 'recommended bid'. If the board declines to recommend a takeover bid, the bid is known as a 'hostile bid'. In most cases, the shareholders will follow the board's recommendation. Consequently, an offeror will usually seek to proceed by way of a recommended bid, by obtaining the board's approval of the terms of the offer in advance.

It is very common practice to acquire a significant stake in the target company before beginning the formal offer process; however, you should take care not to exceed the thresholds triggering a mandatory offer until:

- it is your firm intention to make an offer; and
- you are certain that you have in place the resources to enable you to satisfy the offer in full.

As well as direct equity interests, economic interests in target shares held via contracts for differences (derivatives) are taken into account when looking at the thresholds.

Summary of some key rules of the Takeover Code

- A person who acquires (together with others acting in concert with him, and whether over a series of transactions or otherwise) interests in shares which result in him holding 30% of the voting rights in a company, or who holds between 30% and 50% of such shares and acquires further interests in such shares must make an offer for the remaining shares in the company.
- A person making an offer must be unconditionally able to implement the offer in full (and the offeror's financial adviser has responsibilities in this area).

- If, during the offer period for a company, the offeror (or any person acting in concert with him) acquires shares for cash, he must make an equivalent cash offer (or cash alternative) available to all other shareholders.
- An offer must be on no less favourable terms than the best terms on which any shares have been acquired in the twelve-month period prior to the offer being made, or during the offer period.
- An offer must be open for at least 21 days following the date on which the offer document is posted and, if the offer is revised, it must be open for a further 14 days from the date on which the revised offer document is posted.
- Shareholders must be given sufficient information to enable them to reach a decision.
- The offeree company must appoint a competent independent adviser whose views on the offer must be made known to all shareholders.
- Actions during an offer to frustrate the takeover are generally not permitted without prior shareholder approval.

Takeover timetable

The Takeover Code imposes a strict timetable on a takeover bid. This timetable not only seeks to give shareholders sufficient time to consider the bid, but also looks to limit the period during which the offeree company is distracted by the bid.

The outline timetable for a recommended bid is summarised in the table below:

Before announcing offer	Appoint advisers. Approach the board of the target company for recommendation. Secrecy prior to 'A Day' is strictly required and if this appears to have been breached, an earlier announcement may be required.
'A Day'	The date on which the announcement of the offer is published, which starts the bid process.
'D Day' ('A day' plus 28 days)	The offer document must be posted no more than 28 days after the bid announcement. In practice, this tends to be done well in advance of this deadline.
'D Day' +14 days	The last day on which the target company's board must advise shareholders of its views on the offer, by means of a circular to shareholders.
'D Day' + 21 days	The earliest date the offer can become unconditional as to acceptances. If all conditions are not satisfied within 21 days of going unconditional as to acceptances, shareholders may withdraw their acceptances.
'D Day' + 35 days	The earliest date the offer can close.
'D Day' + 46 days	The last day for posting a revision of the offer if still conditional as to acceptances.
'D Day' + 60 days	The last day on which the offer can become unconditional as to acceptances. If the offer does not become unconditional by this date, it lapses. The Takeover Panel can extend this deadline in certain circumstances, including where a competing bid has been announced.

The consideration for the shares must be settled no later than 14 days after the final condition to the offer is satisfied, which may not be later than 'D Day' + 95 days but is usually considerably earlier than this.

'Squeeze out rights'

If a minority of the target company's shareholders have not accepted the offer, it may be possible for the bidder to compel the minority shareholders to sell their shares to him. This will apply if the bidder:

- has successfully acquired or unconditionally contracted to acquire at least 90% of the shares to which the bid applied; and
- now holds shares conferring at least 90% of the voting rights in the target company.

If these conditions are satisfied, the bidder must exercise its right to acquire the remaining shares within three months of the last date for acceptance of the bid.

The minority shareholders have a parallel right to require the bidder to acquire their shares.

Takeovers by way of a scheme of arrangement

It is quite common in the UK for recommended bids to proceed by way of a scheme of arrangement, which is a statutory process involving the law courts, and is therefore driven by a strict court timetable. Under this process, the approval of a majority of 75% of the target company's shareholders will be sufficient to enable the scheme to proceed. The Takeover Code applies to takeovers under this process, with certain necessary modifications. There are advantages and disadvantages to this approach that your professional advisers will be able to explain in detail.

Acquiring a private company or business

Overview

The acquisition of a private company or the assets of a business is less regulated than the acquisition of a public company (save in some exceptional cases where a private company may be subject to the Takeover Code). There are certain regulations protecting buyers of shares from misrepresentations as well as rules on financial promotions to be considered. Otherwise, however, English law allows the parties considerable freedom to agree the terms of the acquisition in the associated contractual documentation. It is common for UK documents relating to private company/ business acquisitions to exclude all rights and remedies that are not set out in the contract, save as required by law (for example, certain mandatory rules such as public policy considerations).

There are many conventions and market practices – all of which will be familiar to your advisers. For the most part, however, these have no basis in law.

There are many similarities between acquiring the shares in a private company and acquiring the assets of a business, and for this reason they are dealt with together here; however, there are also several differences:

- When you acquire a company, it is acquired together with all of its assets and all of its liabilities, including any liabilities unknown to the seller or the buyer.
- When you acquire business assets, you acquire only those assets and liabilities you agree to buy – though the contract may specify that you acquire 'all the assets and liabilities of the business', which may include assets and liabilities of which you are unaware.
- When you acquire a company, you take on most of its tax liabilities; when you acquire a business, most tax liabilities remain with the seller.
- When you acquire shares, stamp duty will be payable at 0.5% on the total price; when you acquire the assets of a business, stamp duty will only be payable on some of its assets, though at a higher rate.
- When you acquire a company, its contracts usually continue without interruption (subject to change of control wording that may appear in the underlying contracts); in most business acquisitions, contracts will remain with the seller unless they are novated or assigned.
- When you acquire a company, the existing relationships with employees continue without interruption; when you acquire a business, the employees will transfer to the purchaser under the Transfer of Undertakings (Protection of Employment) Regulations ('TUPE') and any dismissals for a reason connected with the transfer may be deemed in law to be unfair dismissals that entitle the employee to bring a claim for compensation (this is a complex area of law and specialist legal advice will be necessary).
- When you acquire a company, the employees will continue to enjoy any pension rights they had prior to the acquisition (and arrangements, which may be subject to governmental review, will have to be made to ensure that the company's participation in any relevant pension scheme is addressed). On a business acquisition, the TUPE regulations may apply so that the employees do not retain their existing pension rights but there is an obligation to provide a minimum pension. Again, this is a highly regulated area and expert advice will be essential.

Principles of the deal

There are several fundamental questions that a buyer must consider before embarking on the deal process:

- Do you wish to acquire shares or assets?
- Do you want key management members (possibly including the seller if he is a key member of the management team) to remain with the business for a period after completion?
- How do you propose to determine the price you are willing to pay?
  - Net asset value?
  - A multiple of past year or projected profits?
  - Should the price include a contingent, deferred or variable element?
- How do you propose to pay the consideration?
  - Cash?
  - Loan notes?
  - Shares?
  - A combination of these?
- Will there be a mechanism to adjust the deal consideration after completion occurs, based on a set of completion accounts agreed between the parties?
- Is it appropriate to place some of the consideration into an escrow account to protect against claims or changes to the value of the target?
- Do you wish to restrict the seller from competing with the target for a period after completion?

Before the deal

Many private acquisitions begin with the prospective buyer, or his advisers, contacting the directors or the owners of the target company or business to discuss his proposal.

Some acquisitions begin when an owner decides to sell and initiates an auction process. This is usually managed and co-ordinated by the owner's corporate finance advisers, who will contact a range of prospective buyers with a brief information memorandum (or 'teaser') setting out important information about the target.

In an auction, several interested buyers may be invited, with their advisers, to review information placed in a data room (which is usually made available online), and may be asked to submit secret bids. It is common for the seller's advisers to prepare a sale and purchase contract and invite bidders to submit their formal mark-up of that document, indicating the terms on which they are prepared to engage with the seller, together with their bid. The seller will then review these bids and proposed terms and will decide which buyer has submitted the most attractive offer. Depending on the process followed by the seller, these transactions often proceed very quickly from this point onwards (the seller will typically have invested considerable time and effort in the earlier stages).

If there is no auction or data room, there are usually several distinct phases to the process:

- the seller and buyer agree the main terms of the proposed deal and sign a document summarising these terms (usually not legally binding), and may also agree an exclusivity period and commit the buyer to confidentiality obligations (which will be legally binding);
- the buyer conducts due diligence on the target company or business;
- the buyer arranges its finance, if necessary;
- the buyer and seller negotiate and agree the contractual documentation in readiness for completion of the transaction.

Due diligence is a vital part of pre-acquisition planning. It is usually much better to enter into a purchase fully informed than to place reliance on the warranty and indemnity protection that may be included in the contract. Professional advisers can assist with due diligence, which normally includes several strands:

- financial due diligence, including an examination of the statutory accounts, cash flow and profit and loss forecasts and, sometimes, a valuation or assessment of the major assets;
- legal due diligence, including a review of the business contracts, title to the assets, employment arrangements and compliance with all relevant laws and regulations;
- commercial due diligence, including an analysis of the sector in which the business operates, its prospects and major competitors.

It is absolutely essential that due diligence addresses the matter of any pension scheme in which the company or its employees participate. Changes to pensions regulation in recent years have had a significant impact on the viability of transactions. Many deals now abort because, on analysis, the target company's pension liabilities are found to be disproportionately large relative to the size of the target company or because the requirements of the Pensions Regulator are considered by the buyer to be unacceptably onerous.

During due diligence, it is also important to review any equity reward arrangements, particularly if tax-advantaged options (such as Enterprise Management Incentives (EMI)) have been used, to ensure that all of the relevant conditions are met and that there will be no unexpected payroll taxes liabilities arising.

Deal documentation

There are a number of legal documents that are usually prepared and negotiated for a share or business acquisition. These include:

- a share or asset purchase agreement;
- a disclosure letter;
- a tax indemnity deed or covenant (for share acquisitions only);
- service agreements for senior management;
- finance agreements, where the buyer is seeking external funding for the acquisition.

Other documents may also be prepared depending on the precise terms of the transaction. These may include:

- a loan note instrument, where the consideration is wholly or partly satisfied in loan notes;
- an environmental indemnity where the target business is one that may have an environmental impact;
- asset transfers, in a business sale where some of the assets require formal transfer, such as land and intellectual property;
- consents or novations, in a business sale where some of the business contracts or assets can only be transferred subject to the consent of another party;
- a transitional services agreement, where necessary for a smooth transition of the business;
- documentation for new equity incentive or investment arrangements for management teams.

The purchase agreement

Although there are differences between an agreement for the sale and purchase of the shares in a private company and an agreement for the sale and purchase of the assets of a business, there are also many similarities. Consequently, their key features are summarised together here.

A typical agreement comprises several distinct parts:

- the operative clauses, which deal with the sale and purchase itself and the payment of the consideration;
- where completion is not to happen at the same time as the signing of the agreement, any conditions to which completion of the agreement is subject, and any other provisions dealing with the conduct of the business between signing and completion;
- warranties and indemnities, by means of which the seller assumes liability for certain problems or risks in the business and agrees to pay back some of the purchase price if these risks materialise;
- limitations on the application of the warranties and indemnities, which may include financial and time limitations, and may also limit claims for matters disclosed to or known by the buyer;
- restrictions on the seller's future business activities, particularly where they might compete with the target business;
- provisions dealing with confidentiality, announcements, and other general issues.

The warranties and indemnities, and the limitations on their application, are usually the most controversial part of the agreement and negotiating them can take a long time. The warranties usually cover such matters as the operation of the business, the ownership of the target company's assets, claims and disputes in relation to the business, and tax. They take the form of statements of fact, and the purchaser can bring a claim against the seller if any of these facts is found to be untrue and the purchaser has suffered loss. Indemnities will typically provide cover against specific potential liabilities.

Although there are no hard and fast rules, generally speaking, the seller's lawyers will draft the purchase agreement in an auction sale, while the buyer's lawyers will draft the purchase agreement for sales outside that context.

Disclosure letter

In almost every deal, the warranties are limited by the information provided to the buyer in a disclosure letter. This document sets out details of matters known to the seller that could constitute a breach of a warranty. By setting out these matters in the disclosure letter, the seller ensures that the buyer cannot bring a claim under the warranties in relation to them. The warranties in the purchase agreement must therefore be read alongside the qualifications set out in the disclosure letter.

For example, a warranty may state the target business has no external debt, while the disclosure letter may refer to that warranty and state that, in fact, the business has a term loan facility with a specified bank amounting to a specified sum.

Tax indemnity

In an acquisition of the shares of a company, but not of a business, there will usually be a tax indemnity. This document will set out the way in which the buyer and the seller will apportion any taxes that may be due from the company. Usually, the seller will indemnify the buyer for the amount of any taxes payable by the company that relate to the period before the purchase, but no claim will be possible for taxes that relate to the period after the purchase. There are many detailed provisions that may elaborate on or deviate from this position and which will be negotiated between the parties. The tax indemnity may be a separate document or appear as a schedule to the main purchase agreement.

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Acquiring a UK public company/Acquiring a private company or business

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9. How do I list on a UK stock exchange?

- **Listing on a UK stock exchange**

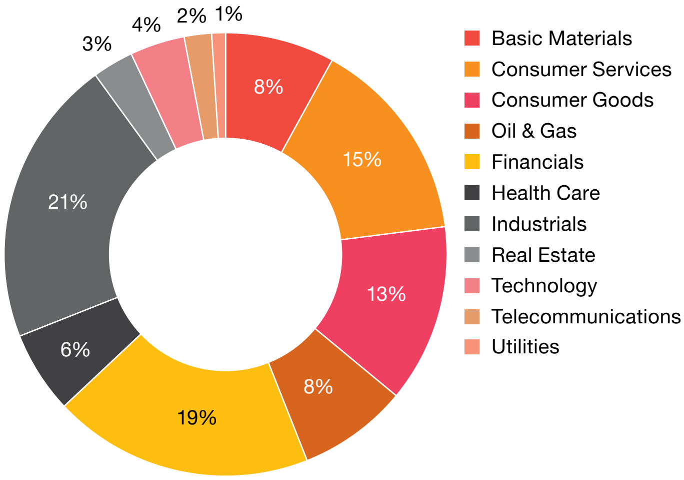
Listing on a UK stock exchange

Overview

London remains one of the most influential financial centres in the world. It owes much of its continuing appeal to its cosmopolitan status, the liquidity of the London markets and the regulatory and political framework that supports those markets. At the end of December 2020, there were approximately 1,125 companies listed on the London Main Market with a total market capitalisation of approximately £3.5 billion and approximately 820 companies quoted on AIM (the London market for small and emerging companies) with a market capitalisation of approximately £130 billion.

It is worth noting the UK Listings Review which reported into the Treasury in early January. The review is aimed at ensuring London, as a capital market, continues to remain competitive as a listing venue for companies. It is being chaired by Lord Hill who will provide a report and recommendations to the Government and FCA in early 2021.

Market capitalisation of London listed companies by industry as at 31 December 2020



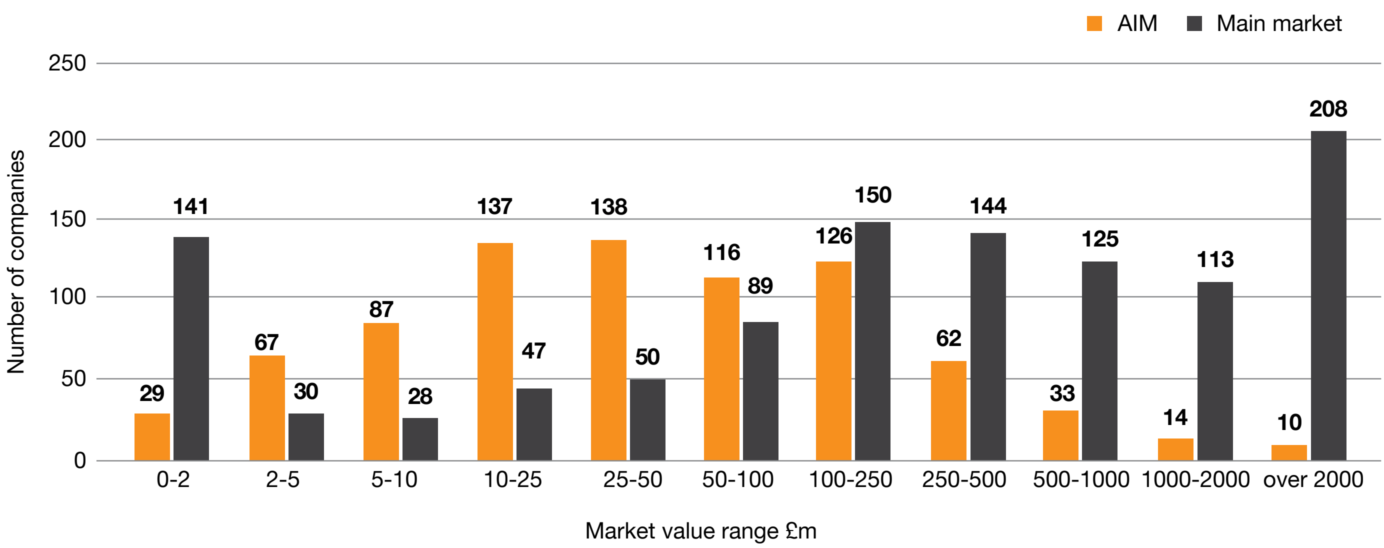
Source: London Stock Exchange data

Companies listed on the London Stock Exchange at 31 December 2020 (by number and value £bn)

*As at 31 Dec 2020	Main Market	AIM
Number of companies	1,125	819
Number of international companies	215	112
Total market capitalisation (£bn)	3,505	131

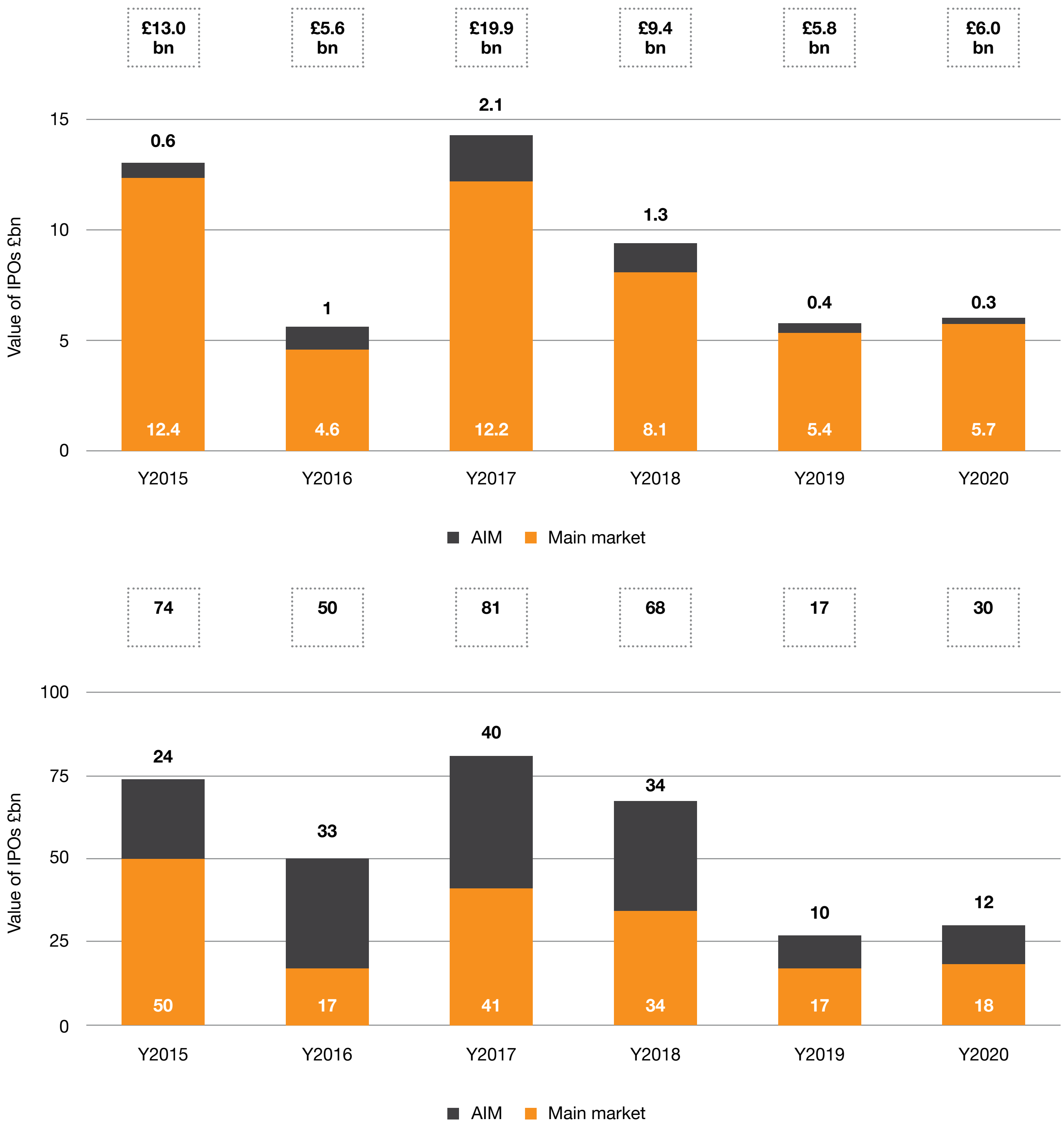
Source: London Stock Exchange data

Spread of companies by market capitalisation as at 31 December 2020



Source: London Stock Exchange data

London IPO trends by offering value and by volume



Source: PwC IPO Watch Europe

The data in this report is based on data extracted from Dealogic and includes 'greenshoe' (if exercised). Only transactions with a minimum of $5 million raised

Different types of listing

The London Stock Exchange (LSE) is one of the world's oldest exchanges and offers a wide choice of routes to market, for UK and international companies. Which market a company should consider will depend upon different criteria including the:

- stage of the company's development;
- complexity of the offer and securities issued;
- investors who are being targeted;
- size of the company;
- overall strategy and objectives; and
- eligibility

The principal options available to companies seeking a listing of equity share or global depositary receipts (GDRs) in London are set out below:

London listing options

Official list/EU-regulated			EU-regulated (not admitted to official list)	Exchange-regulated
Main Market				**AIM/PSM**
Premium listing of equity shares on the Official List maintained by the Financial Conduct Authority (FCA).	Standard listing of equity shares on the FCA's official list.	Standard listing of Global Depositary Receipts (GDRs) on the FCA's official list.	High Growth Segment listing of equity shares.	Admission to trading on AIM or other 'Exchange-Regulated' markets, such as the Professional Securities Market (PSM).
• The UK's 'premium brand' of listing, available to both UK and non-UK companies. • A premium listing imposes more stringent requirements and standards than other forms of London listings. • Premium listed securities are eligible for admission to trading on the London Stock Exchange's main market.	• The standards that apply to a standard listing are based on the minimum standards required under EU directives. • Standard listed securities are eligible for admission to trading on the London Stock Exchange's Main Market.	• GDRs are negotiable certificates that represent ownership of a company's shares; they can be listed and traded independently of the underlying shares. • The standards that apply to a listing of GDRs are based on the minimum standards required under EU directives. • GDRs are quoted and traded in US dollars on the International Order Book of the London Stock Exchange.	• The high growth segment is designed for entrepreneurial companies with high growth potential that need funds to achieve the expansion they desire and are also ready for a public listing. For many companies it will be a stepping stone to a Premium Listing in the future.	• These are markets that operate outside the scope of many of the provisions of the EU directives and are not 'EU-Regulated' markets. • The regulations are set out in rulebooks specific to the particular exchange. • AIM is the London Stock Exchange's market for small and emerging companies; its success is built on a simplified regulatory environment designed for their needs. • The PSM facilitates the raising of capital through the issue of specialist debt securities or depositary receipts to professional investors only. • Securities quoted on these markets are not 'listed' securities in that they are not included on the official list.

In addition, closed end investment funds can be admitted to trading on the Specialists Fund Segment (SFS). The SFS is a segment of London's EU regulated market for specialised investment entities that target professional or institutional investors.

What are the rules of the game?

The FCA maintains the Official List of UK listed securities (Official List). The FCA rules and guidance for companies listed or seeking to list on an EU-Regulated market in London are set out in three separate books:

- The Listing Rules, which focus on eligibility, the Sponsor regime and certain continuing obligations.
- The Prospectus Regulation Rules, which include the rules, regulations and guidance as to when a prospectus is required and its contents.
- The Disclosure Rules and Transparency Rules, which include the rules and guidance in relation to the publication and control of inside information, the disclosure of information by management and connected persons, access to information and adequate transparency of information in the UK financial markets.

What about AIM?

Since the launch of the market in 1995, AIM has emerged as the most successful market of its type in the world. It has developed rapidly in terms of the number and diversity of companies admitted to the market, as well as the range of institutional and retail investors involved.

Its success is built on a simplified regulatory environment that has been specifically designed for the needs of small and emerging companies.

AIM is not an EU-Regulated market and AIM Companies are not governed by the FCA's rules. Instead, AIM companies are governed by the AIM Rules for Companies published by the London Stock Exchange. The AIM Rules are based on the FCA Prospectus Regulation Rules and Disclosure and Transparency Rules, but are less onerous in certain areas.

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A comparison of the eligibility requirements and continuing obligations

Eligibility requirements and continuing obligations for admission to the official list (Premium, Standard (Equity shares and GDRs)), High Growth Segment and AIM.

	Official List (Premium)	Official List (Standard – Equity Shares)	Official List (Standard – GDRs)	High Growth Segment	AIM
Eligibility requirements					
Transferability of shares	• Shares must be freely transferable, fully paid, free from liens and any restriction on transfer.	• Shares must be freely transferable, fully paid, free from liens and any restriction on transfer.	• GDR's must be freely transferable, fully paid, free from liens and any restriction on transfer. • Underlying shares must also be freely transferable.	• Shares must be freely transferable, fully paid, free from liens and any restriction on transfer.	• Shares must be freely transferable (except where statutory restrictions apply).
Minimum free float	• A minimum of 25% of the shares must be in public hands.	• A minimum of 25% of the shares must be in public hands.	• A minimum of 25% of the DRs must be in public hands.	• A minimum of 10% of shares must be in the public hands with a value of at least £30 million.	• No minimum number of shares must be in public hands.
Financial eligibility test	• Must have three year revenue earning record for not less than 75% of the business, and have controlled the majority of assets in this period. • Main activity must be an independent business. • Financial information must be presented under IFRS*. • The minimum aggregate market value for shares is £700,000.	• Financial information required for three years, or such shorter period as the issuer has been in operation. • Financial information must be presented under IFRS*. • The minimum aggregate market value for shares is £700,000.	• Financial information required for three years, or such shorter period as the issuer has been in operation. • Financial information must be presented under IFRS*. • The minimum aggregate market value for the DR's is £700,000.	• Ability to demonstrate growth in audited consolidated revenue, prepared in a form consistent with that which will be adopted in the issuer's next published financial statements, of at least 20% on a CAGR basis over the prior three financial years. • Financial information must be presented under IFRS. • Value of shares in public hands at least £30million.	• Financial information required for three years, or such shorter period as the issuer has been in operation • Financial information prepared in accordance with IFRS*, or company legislation if not a parent. If not incorporated within EEA, US GAAP, Canadian GAAP, Japanese GAAP or Australian IFRS permitted. • No minimum market capitalisation requirement save as regard cash shells where a minimum capital raising of £6m is stipulated.

A comparison of the eligibility requirements and continuing obligations (continued)

	Official List (Premium)	Official List (Standard – Equity Shares)	Official List (Standard – GDRs)	High Growth Segment	AIM
Audited history	• Audited information cannot be more than 6 months old. Audit opinion must be unqualified.	• Audited information cannot be less than 15 months old. Unaudited interim information (with comparatives) is also required if audited information is more than nine months old.	• Audited information cannot be less than 15 months old. Unaudited interim information (with comparatives) is also required if audited information is more than nine months old.	• Audited information cannot be less than 15 months old. Unaudited interim information (with comparatives) is also required if audited information is more than nine months old.	• Audited information cannot be less than 15 months old. Unaudited interim information (with comparatives) is also required if audited information is more than nine months old.
Pre-vetting of documents	• Pre-vetting of admission documents by the UKLA.	• Pre-vetting of admission documents by FCA.	• Pre-vetting of admission documents by the FCA.	• Pre-vetting of admission documents by FCA.	• Admission documents are only pre-vetted by the UKLA if a prospectus is required.
Appointment of Sponsor	• Sponsor required.	• No Sponsor requirement.	• No Sponsor requirement.	• Key adviser required.	• Nominated adviser required.
Working capital statement	• Statement by the issuer that there is sufficient working capital available for the group's requirements for at least the next 12 months.	• Statement by the issuer that there is sufficient working capital available for the group's requirements for at least the next 12 months.	• No requirement for working capital statement.	• Statement by the issuer that there is sufficient working capital available for the group's requirements for at least the next 12 months.	• Statement that the directors have no reason to believe that the working capital available to it or its group will be insufficient for at least 12 months.
Continuing obligations					
Appointment of Sponsor	• Sponsors are needed for certain transactions.	• No Sponsor requirement.	• No Sponsor requirement.	• No Sponsor requirement for transactions – issuer is required to seek advice of the Key Adviser for certain key events.	• A Nominated Adviser is required at all times.

A comparison of the eligibility requirements and continuing obligations (continued)

	Official List (Premium)	Official List (Standard – Equity Shares)	Official List (Standard – GDRs)	High Growth Segment	AIM
Significant transactions	• Shareholder approval, a circular and appointment of a Sponsor are required for significant transactions exceeding 25% of any class tests. • FCA approval of circular required ahead of publication.	• Shareholder approval only required for reverse takeovers.	• Shareholder approval not required for transactions.	• Shareholder approval only required for reverse takeovers. • Announcement is required for notifiable transactions exceeding 25% of any of the class tests.	• Shareholder approval required for reverse takeovers and disposals in a 12 month period exceeding 75% in any of the class tests. • Announcement is required for notifiable transactions exceeding 10% of class tests.
Related party transactions	• Shareholder approval, a circular and appointment of a Sponsor is required for related party transactions exceeding 5% of any class tests. FCA approval of circular required ahead of publication. • Announcement is required for significant transactions such as acquisitions and disposals, exceeding 5% of any class tests.	• No related party transaction or share buyback disclosure approval requirement at time of transaction.	• No related party transaction or share buyback disclosure approval requirement at time of transaction.	• Announcement is required for related party transactions exceeding 5% of any of the class tests.	• Announcement is required for related party transactions exceeding 5% of any of the class tests.

A comparison of the eligibility requirements and continuing obligations (continued)

	Official List (Premium)	Official List (Standard – Equity Shares)	Official List (Standard – GDRs)	High Growth Segment	AIM
Financial reporting obligations	• Annual audited financial report required no later than four months after year end. These must contain consolidated IFRS (or equivalent) accounts and parent company accounts prepared in accordance with national law of country of incorporation.	• Annual audited financial report required no later than four months after year end. These must contain consolidated IFRS accounts and parent company accounts prepared in accordance with national law of country of incorporation.	• Annual audited financial report required no later than four months after year end. These must contain consolidated IFRS accounts.	• Annual audited financial report required no later than four months after year end. These must contain consolidated IFRS accounts and parent company accounts prepared in accordance with national law of country of incorporation.	• Annual audited financial report required no later than six months after year end. Where the company is incorporated within the EEA, the accounts should be prepared under IFRS. Where non-EEA incorporated, company can prepare under IFRS, US GAAP, Canadian GAAP, Australian GAAP or Japanese GAAP.
	• Half year report required no later than three months after period end containing condensed financial statements, including condensed balance sheet, condensed profit and loss account and explanatory notes.	• Half year report required no later than three months after period end containing condensed financial statements, including condensed balance sheet, condensed profit and loss account and explanatory notes.	• Half year report not required. Disclosures may be made as a matter of best practice.	• Half year report required no later than three months after period end containing condensed financial statements, including condensed balance sheet, condensed profit and loss account and explanatory notes.	• Half year report required within three months after period end detailing balance sheet, profit and loss account and cash flow statement in same format as annual accounts.
Corporate Governance	• 'Comply or Explain' disclosures in accordance with UK Corporate Governance Code.	• Compliance with certain corporate governance statements.	• Compliance with certain corporate governance statements.	• Compliance with certain corporate governance statements.	• Expected market practice.

A comparison of the eligibility requirements and continuing obligations (continued)

	Official List (Premium)	Official List (Standard – Equity Shares)	Official List (Standard – GDRs)	High Growth Segment	AIM
Relationships with majority shareholders	• A premium listed company with a controlling shareholder (30% of the equity share capital) is required to have an agreement in place that contains ‘independence provisions’. These are that transactions and relationships with the controlling shareholder should be on an arm’s length basis on normal commercial terms.	• Relationship agreement not required.	• Relationship agreement not required.	• Relationship agreement not required.	• Relationship agreement not required.
Cancellation	• Cancellation requires 75% shareholder approval.	• Cancellation does not require shareholder approval.	• Cancellation does not require shareholder approval.	• Cancellation requires 75% shareholder approval unless cancelling to transfer to Premium.	• Cancellation requires 75% shareholder approval.

What is IFRS or 'equivalent' financial information?

IFRS or 'equivalent' information is required for all London flotations except high denomination GDRs. 'Equivalent' financial information can be used by overseas companies and may be prepared under US GAAP or Japanese GAAP, or with a GAAP of a country which is subject to convergence to IFRS, such as India.

The financial information required for a listing must be presented on the basis to be applied in the company's first annual financial statements as a listed company. In the majority of cases, this requires the restatement of a company's historical financial information.

The flotation process

During the IPO process you will need to convince investment banks, advisers, investors and stock exchange regulators that your company has a coherent strategy with well-developed reasons for considering flotation. At an early stage, you should identify:

- those aspects of your company's operations that will be attractive to investors, and
- the reasons why an offering will benefit the business.

The flotation process

Pre-flotation	Flotation	Post-flotation
• Development of a coherent strategy • Choosing the right market to optimise the offer of securities • Understanding the composition of the historical financial track record • Selection/alignment of 'best practice' accounting policies • Selection of an experienced board and management team • Understanding of the current and future financial prospects of the business • Quality of management information and financial reporting systems and procedures • Review of Corporate Governance • Review of tax impact • Timetable management	• Registration document and Prospectus – Drafting of registration document and prospectus – Verification/validation of information • Historical financial information and future prospects – Audit of historical financial track record – Working capital review – Due diligence – Business and financial due diligence – Legal due diligence • Corporate governance – Appointment of non-executive directors – Establishment of corporate governance framework – Review of financial reporting procedures • Other areas – Appointment of advisers – FCA confirmation of eligibility – Drafting of legal documents – Marketing of the offer – Timetable management	• Establishing investor relations team to ensure timely and reliable information is provided to the market • Complying with the Disclosure and Transparency rules (or AIM rules) including requirements relating to dealings by directors and senior management and applicable corporate governance codes • Meeting the demands/requirements of the new board and committees • Upgrading existing systems and processes and embedding key financial reporting procedures within the business • Integrating acquired/merged businesses • Management training and development

After a prospectus has been approved by the FCA and publicly issued, the Prospectus Regulation Rules allow it to be used for up to 12 months in connection with an offering to the public.

The issuer's latest audited accounts can be no more than nine months old at the time of admission. This limits the time a prospectus could remain 'live' in the UK to a maximum of nine months.

The key factors to consider

Key factors include:

- **Raising cash/long-term capital** – a successful flotation can generate substantial cash proceeds. The funds raised will enable your company to grow by reducing existing debt, increasing working and investment capital, providing funds for research and development, and allowing the diversification and expansion of its operations.
- **Marketability of shares** – a listing provides access to a market in which shares can be easily traded, enabling shareholders to convert their investment into cash. This is particularly useful when operating employee equity plans, as the participants have an available market for shares following exercise of options.
- **Raising the profile/reputation of your company** – your company's profile will be raised both during and after the flotation process, resulting in press comment and analysis of your results, and higher public profile for your management team. Your company's standing can be enhanced with the public, investors, customers, suppliers and your employees. Commercial benefits should arise from this publicity for your company and its products or services.
- **Raising shareholder value through demerger of a subsidiary** – the listing of a subsidiary entity forces the market to assess the value of that particular business in isolation from the rest of the group. This increased level of focus on a company can often result in a much higher value being placed on the business than when it was valued as part of the group.
- **Debt-free finance equity** – although initially expensive – represents debt-free financing. It does not need to be repaid, can increase your company's net worth and may permit additional borrowing on more favourable terms (because of an improved debt-to-equity ratio – 'gearing').
- **Market for further capital** – once you have successfully listed, raising additional capital through further share issues should be easier.
- **Realising your investment** – a successful flotation often provides substantial personal wealth creation opportunities for the company's management, allowing them to realise a portion of their stake, whether at the time of IPO or a later date. It can also give family shareholders an attractive way to realise their investment in a family business.
- **Increased disclosure requirements** – your company will be subjected to close public scrutiny at the time of the flotation. As a listed company, you will have to comply with the significant additional regulatory and disclosure requirements contained in the relevant Prospectus Rules, Listing Rules or AIM Rules, Disclosure and Transparency Rules, Companies Act and related regulations and Accounting Standards.
- **Loss of control** – your existing shareholders will have their control diluted by any initial shares issued on flotation and by any subsequent issues. In day-to-day matters, management may in effect have reduced control. Decisions that may previously have been made by just one or two people will now need approval by an enlarged board of directors (including non-executive directors).
- **Greater focus on short-term performance** – investors will typically expect a good return on their investment in the form of dividends and/or capital growth. This may result in a greater emphasis on achieving short-term results rather than concentrating on overall long-term growth.
- **Share price volatility** – downward share price movements can have an adverse impact on your business. Customers, suppliers, bankers and investors can view a decrease in share price adversely and employees may be demotivated, especially if they have an interest in the company, e.g. under company share plans. Managing the impact of volatility of your share price, especially for smaller capital companies, can be extremely difficult.
- **Ongoing costs and reporting** – there will be ongoing costs in respect of more detailed reporting regulations and further publicity. For example a listed company is required to produce half-yearly results in addition to annual financial statements.
- **Restrictions on share dealings** – despite the apparent attraction of an available market for shares, management may be unable to sell their shares freely because they are subject to strict rules concerning share dealing.

What are the major challenges?

Going public by flotation is a major challenge for all companies. Planning and good preparation are crucial. This is not simply a question of appointing advisers but about ensuring the company is fit to be listed on a public market.

A successful public offering or flotation can not only provide the funds to satisfy the plans of a company's management team but also greatly enhance the company's prestige. However, a flotation:

- represents a considerable challenge for any company; and
- may not be suitable for all companies.

Consequently, a flotation demands careful thought and planning before the detailed work begins. Issues that are highlighted at this early stage can then be tackled before the offering, saving both time and money. Some of the key issues are:

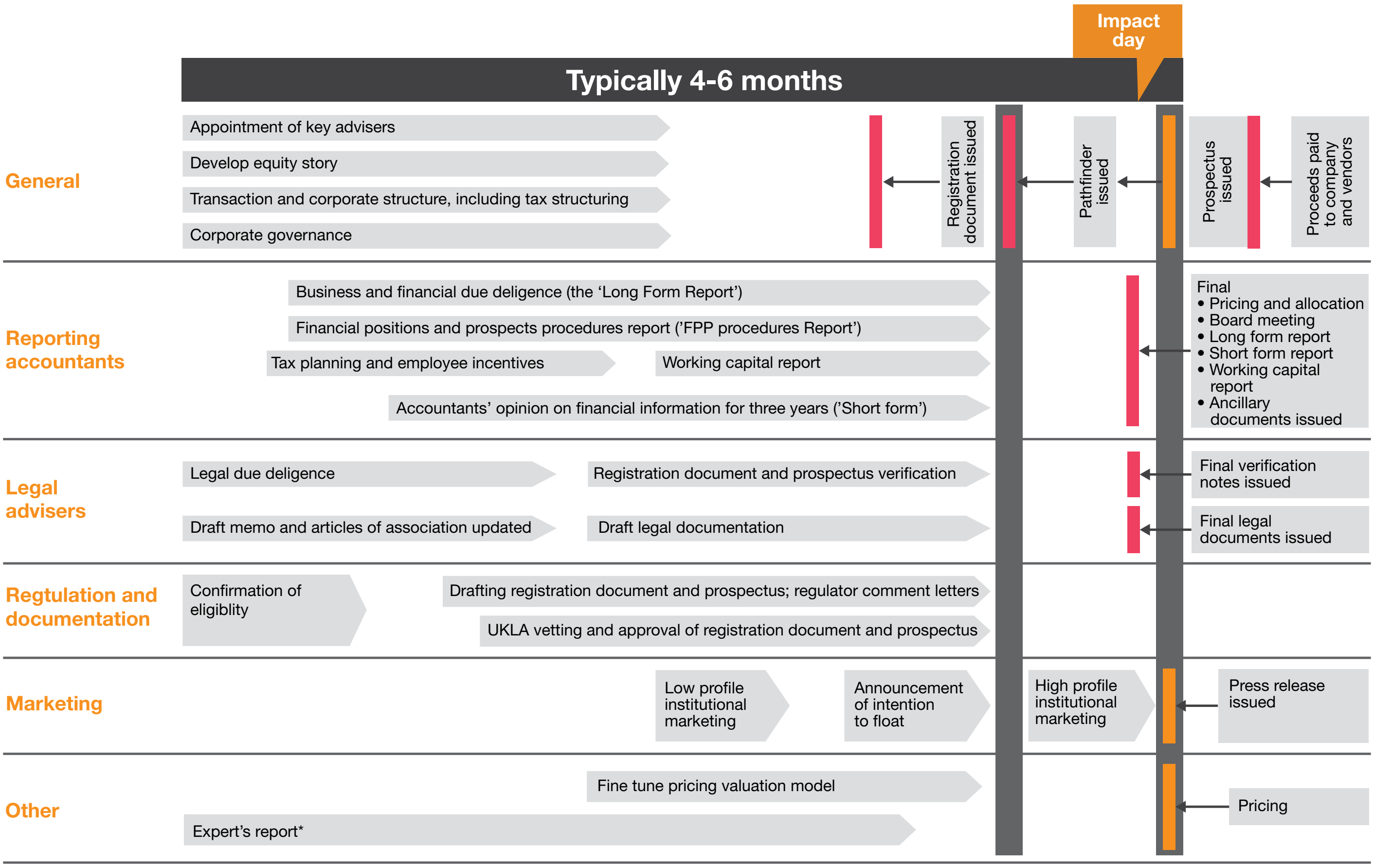
- **Track record:** Potential investors will look at the historical record of your company's business to make an assessment of how the business might develop. They will be most encouraged by a trend over several years of rising profits and cash inflows, with good reasons for any acquisitions and disposals. If the business does not have such a history, it may still be suitable for a public offering, but the choice of markets and the range of investors may be more limited. You should, therefore, think carefully about how you will explain any problems in your track record.
- **Management team:** The investment community will also be interested in the reputation and experience of the senior management team. They will want to see a certain level of continuity of management. In addition, the management team must be able to survive the rigours of the offering process, while not neglecting the running of the business. Investors will also wish to see the management advised and supported by independent and experienced non-executive directors.
- **Financial prospects:** The present financial position of your company should be satisfactory and its ability to keep pace with future working capital requirements should be understood. Shortfalls in working capital after the offering are likely to cause considerable adverse publicity, as well as operational problems. Any such future shortfalls can be avoided through a careful review of the business requirements and by considering the need for banking facilities before the offering.
- **Building the financial reporting system:** Once the offering has occurred, your company is likely to be under much greater public scrutiny than before, with demands to produce more detailed information on a regular basis. This could strain your company's present reporting systems. Weaknesses in the business reporting systems could cause public embarrassment as well as headaches for management.
- **Financial information:** Potential investors will review your company's accounting policies, contrasting them with other public companies in your company's industry sector. A public offering provides an ideal opportunity to review accounting policies, to compare them with industry 'best practice' and to change them where necessary.
- **Tax aspects:** It is important to understand the tax consequences both for your company and the current owners prior to an offering as there is the potential for these to be substantial.
- **Managing the timetable:** Any public offering needs careful planning and will take up significant management time. Most sponsors will require that a due diligence review be completed before the public documentation is prepared. A strong team of advisers with sufficient knowledge and experience will help the process run smoothly; they should have your company's best interests in mind and make its public offering a priority.

All these areas involve a significant amount of time and resource and need to be undertaken in addition to the day job of running the business itself. The challenge does not end once the flotation is complete. Once the company is in the public domain, it will need to fulfil its ongoing reporting requirements.

Flotation timeline

An illustrative timeline for the preparation period of an IPO on the Premium segment of the Main Market is shown below. A timetable from initial decision to impact day of less than six months is a challenge and an expectation of between 6-12 months is more realistic. This is dependent on the complexity of the business, the sophistication of a company's internal and external reporting and other factors around the general state of readiness. For Standard Listings, High Growth segment listing, listing of GDRs and AIM admissions, a shorter timetable may be possible.

Indicative flotation timeline



What about FTSE Index inclusion?

FTSE Russell (FTSE) is an independent company, entirely owned by the London Stock Exchange. The FTSE indices are used extensively by investors world-wide. Under FTSE's index calculation rules, companies are allocated to a single country determined by FTSE based on the company's country of incorporation, where it is listed, where its shareholders reside and other factors.

For inclusion in the FTSE UK Index series, which include the FTSE 100, FTSE 250 and FTSE All Share indices, a UK company must have a Premium listing, have its primary listing in the UK, and have a minimum free float of 25%.

In addition, it should be noted for overseas issuers that the FTSE index eligibility criteria state that to be eligible for inclusion in the FTSE UK indices, a non-UK company must have a free float of not less than 50%.

What is a Sponsor?

A company seeking a premium listing in the UK is required to appoint a Sponsor. A Sponsor is an advisory firm, typically an investment bank, which will advise the company on the application of the UK Listing Rules and provide key confirmations to the FCA. These include confirmations on working capital, financial position and prospects procedures and compliance with the FCA's Listing Principles. To act as Sponsor, a firm must be accredited as such by the FCA.

A company seeking admission to AIM is required to appoint a Nominated Adviser (Nomad) and a company seeking high growth admission is required to appoint a Key Adviser. The role of the Nomad and Key Adviser is similar to that of a Sponsor.

The reporting accountant

As part of the IPO process, the reporting accountant will prepare a number of reports that either meet specific regulatory requirements, or assist the directors and Sponsor/Nomad/Key Adviser in meeting their obligations. The main reports prepared by the reporting accountant are:

Typical reports prepared by a reporting accountant

A long-form report	A detailed report to support the disclosure of historical financial information in the prospectus or admission document. The report is a private report covering a period of at least three years and is addressed to the company's directors and the sponsor or nomad or key adviser.
A working capital report	A detailed report on the company's cash flow projections and the company's 'working capital' statement included in the prospectus or admission document. For a Premium listing, a listing on AIM or admission on the high growth segment, the company must be able to make an unqualified working capital statement covering a minimum period of 12 months. The report is a private report addressed to the company's directors and the sponsor or nomad or key adviser. A working capital statement is not required for a GDR listing, however the investment bank managing the IPO process may still request that the reporting accountants perform due diligence in this area.
A report on the company's financial position and prospects procedures	This report describes the procedures that the company has in place to enable the board and senior management to make an ongoing assessment of the company's financial position and prospects, and report required financial information to the market on a timely basis. The report is a private report addressed to the company's directors and the Sponsor or Nomad or Key Adviser.
A report on the company's historical financial information	A public report on the company's historical financial record contained in the registration document and prospectus or admission document. While this can be achieved by audit opinions provided for each set of financial statements included, market practice is for an Accountant's report to be issued on the entire financial track record. This forms part of the registration document and prospectus and is equivalent to an audit report, but provides greater flexibility as it does not need to be issued by the same firm that issued a previous audit opinion.
Other reports	If a company includes pro forma financial information in the registration document and prospectus or admission document, or makes a profit forecast to the market during the period of admission, an Accountant's report on the compilation of this information must be included in the registration document and prospectus. While companies rarely choose to include a profit forecast, owing to the additional risk, cost and time involved, pro forma financial information is commonly used to illustrate the effect of the transaction. The reporting accountant also provides a 'comfort letter' to the directors and Sponsor to assist with the verification of other financial information in the prospectus or admission document.

What is the UK Code on Corporate Governance?

The UK Corporate Governance Code (the 'Code') sets out the standards of good practice in relation to such issues as board leadership, composition, succession and evaluation, company purpose, remuneration, audit, risk and control. At the heart of the Code is a set of Principles that emphasise the value of good corporate governance to long-term sustainable success. By applying the Principles, following the more detailed Provisions and using the associated guidance, companies can demonstrate throughout their reporting how the governance of the company contributes to its long term sustainable success and achieves wider objectives.

All Premium listed companies, whether incorporated in the UK or elsewhere, are required to include a statement in their annual reports detailing how they apply the principles and comply with the provisions of the UK Corporate Governance Code.

In addition, both Premium and Standard Listed companies are required to comply with the corporate governance requirements of the Disclosure and Transparency Rules which stem from the EU Company Reporting Directive. These require the inclusion of a statement on corporate governance in the Annual Report, which must refer to the corporate governance code that the company is subject to, or has voluntarily adopted, and if no code has been applied the practices applicable to the company under its national law. The rules also require that the company describe the main features of its internal control and risk management systems, in relation to financial reporting and consolidation.

Whilst the rules for AIM companies do not contain any specific disclosure requirements in relation to corporate governance procedures, best practice is to provide some level of disclosure – either with reference to the UK Corporate Governance Code or the Quoted Companies Alliance (QCA) Corporate Governance guidelines for AIM companies.

A summary of the main principles of the UK Corporate Governance Code 2018

Board leadership and company purpose

The role of the board – A successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society.

Purpose, values and culture – The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned. All directors must act with integrity, lead by example and promote the desired culture.

Resources and controls – The board should ensure that the necessary resources are in place for the company to meet its objectives and measure performance against them. The board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed.

Shareholder and stakeholder engagement – In order for the company to meet its responsibilities to shareholders and stakeholders, the board should ensure effective engagement with, and encourage participation from, these parties.

Workforce policies and practices – The board should ensure that workforce policies and practices are consistent with the company's values and support its long-term sustainable success. The workforce should be able to raise any matters of concern.

Division of responsibilities

The role of the chair – The chair leads the board and is responsible for its overall effectiveness in directing the company. They should demonstrate objective judgement throughout their tenure and promote a culture of openness and debate. In addition, the chair facilitates constructive board relations and the effective contribution of all non-executive directors, and ensures that directors receive accurate, timely and clear information.

Board composition – The board should include an appropriate combination of executive and non-executive (and, in particular, independent non-executive) directors, such that no one individual or small group of individuals dominates the board's decision-making. There should be a clear division of responsibilities between the leadership of the board and the executive leadership of the company's business.

Non-executive directors – All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively. Non-executive directors should have sufficient time to meet their board responsibilities. They should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account.

Information and support – The board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently.

Composition, succession and evaluation

Succession and diversity – Appointments to the board should be subject to a formal, rigorous and transparent procedure, and an effective succession plan should be maintained for board and senior management. Both appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.

Board skills, experience and knowledge – The board and its committees should have a combination of skills, experience and knowledge. Consideration should be given to the length of service of the board as a whole and membership should be regularly refreshed.

Board evaluation – Annual evaluation of the board should consider its composition, diversity and how effectively members work together to achieve objectives. Individual evaluation should demonstrate whether each director continues to contribute effectively.

Audit, risk and internal control

Audit – The board should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions and satisfy itself on the integrity of financial and narrative statements.

Fair, balanced and understandable – The board should present a fair, balanced and understandable assessment of the company's position and prospects.

Risk management – The board should establish procedures to manage risk, oversee the internal control framework, and determine the nature and extent of the principal risks that the company is willing to take in order to achieve its long-term strategic objectives.

Remuneration

Link to long-term sustainable success – Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success. Executive remuneration should be aligned to company purpose and values, and be clearly linked to the successful delivery of the company's long-term strategy.

Development of policy – A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management remuneration should be established. No director should be involved in deciding their own remuneration outcome.

Use of judgement and discretion – Directors should exercise independent judgement and discretion when authorising remuneration outcomes, taking account of company and individual performance, and wider circumstances.

Continuing obligations

The FCA Disclosure and Transparency Rules set out the continuing obligations for companies listed on the UKLA's Official List. These include rules on:

- the disclosure and control of inside information;
- the disclosure of transactions by persons discharging managerial responsibilities;
- the periodic reporting requirements of listed companies;
- the notification of transactions by major shareholders (more than 3%);
- the process used for the dissemination of information to shareholders;
- corporate governance disclosures.

These rules and disclosure requirements are not covered in this publication; however a summary of the key periodic financial reporting requirements for UK listed companies is set out in the table above.

What should be your areas of focus?

In our experience, some of the key areas for those considering flotation in London are:

- Planning and good preparation. For many companies there is a significant amount of work needed up front to get into shape for the flotation.
- Understanding the financial track record issues, such as complex financial histories, the need to transition to IFRS and sourcing additional disclosure information.
- The flotation process is time consuming for key executives, leaving less time for them to carry out their day jobs, thereby increasing the risk of business issues not being addressed or not enough time being dedicated to the flotation.
- A focus on project management. Many flotations take longer than initially envisaged. This is often due to issues uncovered during due diligence; changing market conditions; unrealistic timetables; and the complexity of preparing the historical financial track record.

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Appendices

Appendix A – Pathfinder

- **Working out what's important to your business plan**

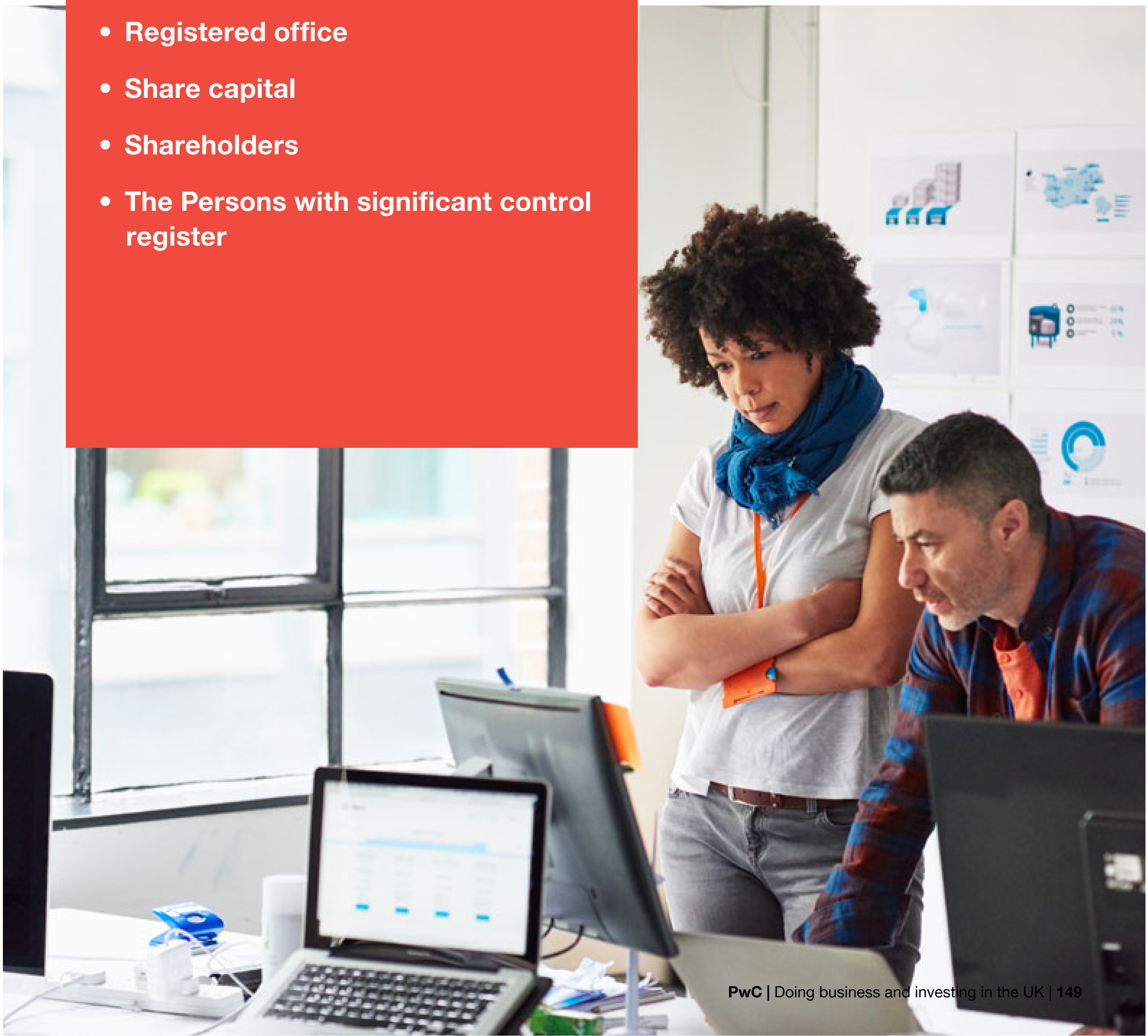
Working out what's important to your business plan

1 What are your short-term objectives?	2 Where does the new business fit into you existing structure?	3 What are your long-term objectives?	4 What type of legal presence do you require?	5 How do you establish the entity?
Exploring opportunities in new territories.	What activities will it carry out or continue?	What is the future of this business?	Types of presence may include representative office, branch company partnership.	Legal registration requirements, minimum share capital etc.
Enhancing the competitiveness of the business.	How many people will it employ and what authority will they have?	How will stakeholders extract value (e.g. long-term hold, new investors, trade sale etc.).	Each type of presence will have different legal and tax implications and different disclosure requirements for the business and its owners.	Role and responsibilities of shareholders, directors and company officers.
Buying a new business.	Where is your intellectual property located?	Is a listing/exit planned?	Local regulations may require or prohibit foreign parents owning certain vehicles.	Trading name?
Entering into a joint venture.	How will it be funded?			Meeting quorum, any changes required to memorandum or constitution document?
	What do the profit projections look like?			

6 What else should you be aware of at setup?	7 How do you reward employees?	8 What tax issues arise now that I am operating in multiple countries?	9 What operational matters do I need to consider going forward?	10 How can PwC Pathfinder help me?
Registration for corporate income tax, payroll tax and VAT/GST.	Advice on remuneration, employment terms and benchmarking.	More complicated VAT/ GST compliance.	Cash management and treasury function.	We have specialists who can help you with all areas shown on this chart.
Other legal registrations e.g. environmental; data protection; local trading.	Employment contracts.	Customers and import duty planning.	Preparation of management accounts and annual reporting.	We will provide a dedicated point of contact for all of your queries.
Bank account set-up.	Payroll function.	Transfer pricing – Making sure you have the right policy and adequate documentation.	Company secretarial/ legal compliance.	We will provide you with an easy-to-understand menu of services and a fixed fee.
Business insurances.	Structure of equity investment (incl share schemes).	Withholdings tax requirements, claiming treaty relief and claiming double tax relief.	Global tax issues and risk management	
Reliefs and incentives e.g. patent box, R&D tax relief.		International reporting requirements (e.g. CbCR, PSC etc.).	Audit requirements.	
Recruitment, work permits, immigration.				
Property and real estate				

Appendix B – Checklist for purchase of a 'new' private limited company

- Directors
- Secretary
- Registered office
- Share capital
- Shareholders
- The Persons with significant control register



Checklist for purchase of a 'new' private limited company

To put a new company in a position to commence business, you will require the following information:

Directors

In respect of each new director of the company:

- full name (i.e. first names, surname and former name – if used for business purposes in the previous 20 years) or, in the case of a corporation, its corporate name;
- nationality;
- residential address (or, in the case of a corporation, its registered office or principal place of business). This address will not be made publically available;
- service address, such as the registered office address of the company;
- business occupation (if any); and
- date of birth.

Each director must sign a consent to act as a director or provide his or her electronic pin details.

Secretary

In respect of the new company secretary:

- full name including any former names used for business purposes in the previous 20 years;
- service address, such as the registered office address of the company.

If a company chooses to appoint a secretary, that person must also sign a consent to act or provide his or her electronic pin details. The secretary is a governance officer and does not have the same responsibilities or liabilities as a director.

Registered office

In respect of the proposed registered office:

- the full postal address.

The registered office determines the tax district that will deal with the company's affairs. It must be in England, Wales, Scotland or Northern Ireland, depending on where the company is incorporated and may not be a PO Box address. PwC can provide a registered office facility.

Share capital

The classes of shares to be created (for example ordinary or preference) and the rights attaching to those share classes, such as voting rights and rights to dividends, the amount to be paid up on each share including any premium and the nominal value.

Shareholders

In respect of each shareholder:

- an address (or in the case of a corporation, its registered office or principal place of business. In the case of an individual it does not need to be a residential address);
- the number of shares he or she will be allotted; and
- the amount guaranteed.

Each subscriber must sign a statement of compliance that the necessary requirements to form a company have been complied with or provide electronic pin details of the individual or of a director of a corporate shareholder. Private and public companies need to have only one shareholder.

The persons with significant control register

In respect of a person with significant control (PSC) or relevant legal entities (RLE), a register is to be created recording the details of any persons or relevant legal entities exercising significant control over the company ('PSC Register'). Companies coming into existence after 26 June 2017 must also file a statement of initial significant control at Companies House.

Where a company is unable to identify either a person or relevant legal entity exercising significant control, they are still required to create a PSC register confirming that:

- The company has completed its investigations and has concluded that no person is registrable in its PSC register.
- The company knows or has reasonable cause to believe that there is a registrable PSC or registrable RLE, but that PSC or RLE has not yet been identified.
- The company has identified a registrable PSC, but the company has not yet confirmed that individual's required particulars – this statement does not apply to RLEs, as their details do not have to be confirmed before entry in a PSC register.
- The company has either not yet started or has not yet completed taking reasonable steps to find out if anyone is a registrable PSC or registrable RLE. This statement may only be included if none of the three preceding statements applies.
- The company has identified a registrable PSC or registrable RLE and, in the case of a PSC, has confirmed that individual's required particulars.

The requirement to create and keep a PSC Register now also applies to companies with voting shares admitted to trading on a prescribed market (i.e. AIM) and unregistered companies.

Name

The proposed name of the company (which are subject to certain restrictions, see earlier in the guide for further details).

Articles of Association

Whether any special provisions are required (e.g. special rights attached to different classes of shares or pre-emption rights on allotment or transfer of shares).

Auditors

The name and address of the firm that will be appointed.

Accounting reference date

The date to which the company's annual accounts are to be prepared (this would generally be the same as the date to which the parent's accounts are prepared).

Bankers

The name and branch of the bank that will act as banker to the company and instructions as to the proposed signing arrangements (e.g. names of signatories and how they will sign).

Appendix C – UK grant incentives

- Incentives for R&D
- UK incentives
- UK research and innovation
- Regional aid areas (2014-2020)
- Innovate UK (Technology strategy board)

UK grant incentives

- Continual investment in researching and developing existing and new technologies is a given in today's world of rapid-paced technological change and almost all businesses manufacturing a product will invest to some degree in the technology underlying their product portfolio; however, research and development activity tends to go far beyond this as businesses address wider technological developments that can impact how products and services are delivered, including investing in the development of both front and back end systems, as well as evaluating and strategising against the risk of new disruptive technologies (think digital cameras and e-readers). On top of this, businesses are starting to appreciate the potential boost that can be obtained from investing in technology to unlock big data and obtain potentially powerful insights into how customers interact with their products and services.
- There are a wide range of grants and incentives available across the UK to support and stimulate private sector investment. In addition, the UK Government will invest an additional £4.7 billion by 2020-21 in R&D funding.
- These grants can cover capital investment, job creation/ safeguarding, R&D, property development, training, energy and infrastructure investment. All grants are discretionary and negotiable and businesses looking to obtain grants should not make an irrevocable commitment to an investment project prior to receiving a grant offer letter. There is no automatic entitlement to grant funding.

Incentives for R&D

- Governments around the world are aware that R&D operates in a competitive global marketplace and are increasingly introducing incentives to attract skills-based investment and boost economic recovery. The strong international reputation of the UK's research and innovation base gives our country great influence on the global stage, however, emerging evidence from the 'International comparative Performance of the UK research base' suggests that the UK's global leading research position could be at risk. The UK's strengths and capabilities can also be used to leverage foreign direct investment that looks to plug gaps in the UK supply chain and invest in complementary capabilities that also support the government's commitment of achieving the OECD average for investment in R&D (2.4% of GDP within 10 years).

UK incentives

- UK R&D incentives are intended to encourage companies to undertake more R&D activities in the UK. The 'large' company R&D expenditure credit (RDEC) regime is a 13% expenditure credit that is more akin to a grant, giving the incentive more visibility and making it easier to evaluate the reduced cost of locating development in the UK compared to other territories.
- There is also a UK R&D incentive available for small and medium-sized ('SME') businesses. These companies can claim a deduction of 230% of the qualifying spend on R&D, with loss-making companies able to turn qualifying expenditure into a cash payment giving a significant boost to such companies investing in new technologies. One of the key government objectives is to make the UK the technology centre of Europe. It is intended that creative sector reliefs will help support technological innovation and growth.
- The UK Government also provides direct funding for R&D and typically spends an estimated £2.5 billion per annum on business support which includes grant funding through the regional growth fund in England; Wales economic growth fund and repayable business finance in wales; and the regional selective assistance in Scotland. In addition the European commission makes a significant contribution via grants to R&D, infrastructure and training through a range of European programmes. The availability of European funding is still being discussed following Brexit.

UK research and innovation

UK research and innovation (UKRI) is the national funding agency investing in science and research in the UK. Operating across the whole of the UK with a combined budget of more than £6 billion, UKRI brings together the 7 research councils, innovate UK and research England.

Regional aid areas (2014-2020)

Assisted areas are those areas where regional aid can be offered to undertakings, typically businesses, under European commission state aid rules. Special provisions, under the Brexit agreement will replace the state aid provision - though they are expected to operate in a similar way to the state aid provisions. In the UK the main examples of these schemes offering regional aid include:

- Regional growth fund – operates in England and supports projects and programmes that are using private sector investment to create economic growth and sustainable employment.
- Regional selective assistance – primary Scottish scheme under the regional aid guidelines and is administered by Highlands and Islands enterprise and Scottish enterprise. grants may be given in conjunction with support under other aid frameworks, for example R&D or skills and training.
- Welsh Government repayable business finance – offers discretionary financial support to eligible businesses in key business sectors and certain strategically important projects outside these. It helps fund capital investment, job creation, research, development and innovation and certain eligible revenue projects throughout Wales.
- Selective financial assistance – Invest Northern Ireland provides support for investment in Northern Ireland by indigenous and foreign owned companies that create, maintain or safeguard employment. The scheme aims to achieve higher levels of business growth, leading to long-term high quality employment.

The 2014-2020 UK assisted areas map came into force on 1 July 2014. There is a maximum grant funding ceiling applied by the European commission (the regional aid map) that varies dependent upon location. This varies from 10% to 45% of eligible costs for capital grants. We expect the new provisions in the Brexit agreement will operate in a similar manner.

Innovate UK (Technology strategy board)

Innovate UK's principal objective is to stimulate R&D and innovation activity, encouraging businesses to develop innovative products, processes and services with future commercial potential.

It explains how it will find, support and grow innovative businesses this year to speed up economic growth. It also explains some changes in the way it works:

- a new sector grouping approach to its programmes;
- simplified funding competitions including a single 'open' programme for applications from any technology, sector or size of business;
- an enhanced role for the innovation networks.

Innovate UK aims to promote and improve the UK's technology base. Its primary focus for the last five years has been to invest and drive innovation across the UK. Its new focus is, building on the innovation momentum, to accelerate sector growth. It has restructured into focusing on four sector groups. These are:

- emerging and enabling technologies;
- health and life sciences;
- infrastructure systems; and
- manufacturing and materials.

It also has an open programme that is not sector based.

Innovate UK also supports other grants such as:

- catalysts;
- collaborative research and development (CR&D);
- feasibility studies;
- knowledge transfer partnerships (KTPs);
- launchpads; and
- small business research initiative (SBRI).

Appendix D – UK tax datacard

- **Spring Budget 2020 and 2021**

UK tax datacard

Spring Budget 2020 and 2021

Facts and figures

Income tax

Bands – main rates (a)

2021/22	2020/21	Rate
£1-37,700	£1-37,500	**20%**
£37,701-150,000	£37,501-150,000	**40%**
over £150,000	over £150,000	**45%**

The first **£2,000** of dividends is taxed at **0%**, and this amount is taken into account in determining the income tax band. Dividends above **£2,000** are taxed at **7.5%, 32.5%** or **38.1%** as the top slice of total income.

The personal savings allowance exempts interest income of **£1,000** for basic rate taxpayers (20%) and **£500** for higher rate taxpayers (40%). The allowance does not apply to additional rate taxpayers (45%).

In addition to the personal savings allowance, other non-dividend savings income (typically bank and building society interest) is taxed at 0% up to **£5,000**. This 0% rate is not available if income from other sources, including dividends, exceeds **£5,000**.

There are special rules for trusts, and also for individuals with income assessable on the remittance basis.

An additional tax charge applies to clawback child benefit where one income in a household exceeds **£50,000**, with full clawback by **£60,000**.

The tax rates above also apply in Wales.

Scottish rates - Tax year 2020/21

Tax rate	Tax band name	Earnings band
0%	Personal allowance	Up to £12,500 (tax free)
19%	Starter rate	£12,500 and £14,585
20%	Basic	£14,585 and £25,158
21%	Intermediate	£25,158 and £43,430
41%	Higher	£43,430 and £150,000
46%	Additional	Earnings of £150,000 or more

Northern Ireland – 2021
(Single, widowed or surviving civil partner)

Tax rate	Earnings band
20%	35,300(a)
40%	Over 35,300(a)

a. Earnings rate bands thresholds increase to 39,300 if qualify for single person child carer credit

Northern Ireland – 2021
(Married or in a civil partnership – one spouse with income)

Tax rate	Earnings band
20%	44,300(a)
40%	Over 44,300

a. If both spouses have income, the increase in rate band is capped at the lower of €26,300 or the income of the lower earner. The increase cannot be transferred between spouses or civil partners.

	2021/22	2020/21
Personal allowance (a)	£12,570	£12,500
Income limit for personal allowance (b)	£100,000	£100,000
Blind person's allowance	£2,520	£2,500
Married couple's allowance (c)	£9,125	£9,075
Marriage allowance (d)	£1,260	£1,250
Trading income allowance (e) (f)	£1,000	£1,000
Property income allowance (f)	£1,000	£1,000

a. The personal allowance applies to all individuals.

b. The personal allowance is reduced by **£1** for each **£2** by which income exceeds £100,000, irrespective of age or date of birth.

Relief is limited to **10%**, and extends to civil partnerships. At least one spouse/partner must have been born before 6 April 1935. The allowance is reduced where income exceeds **£30,200 (£30,400 in 2021/22)**, subject to an absolute minimum of **£3,510 (£3,530 in 2021/22)**.

c. A non taxpayer can transfer up to **£1,250 (£1,260 in 2021/22)** of the personal allowance to a spouse or civil partner who is a basic rate taxpayer. Relief is given at **20%**.

d. The trading income allowance applies to certain miscellaneous income from providing assets or services in the course of a trade.

e. Trading or property income (before expenses) within these allowances is exempt. Individuals with gross trading or property income above the allowance can choose between deducting **£1,000** or actual allowable expenditure.

Cap on income tax reliefs

Certain income tax reliefs are capped at the greater of **£50,000** or **25%** of income. This excludes charitable donations.

Company cars – annual benefits

The annual benefit is a percentage of list price, with the percentage dependent on the level of CO2 emissions. For 2020/21, the percentage charge for cars with emissions up to 50g/km depends on the maximum distance that the car can be driven in electric mode without recharging the battery. The benefit is 15% for emissions of 51–54g/km. For emissions of 55g/km the rate is 16%, increasing by 1% for every 5g/km increase up to a maximum of 37%. Emission levels are rounded down to the nearest multiple of five. List price includes certain accessories, but is reduced for capital contributions of up to **£5,000**.

There is a diesel supplement of **4%**, subject to the maximum charge of 37%.

The taxable benefit for significant private use of vans is **£3,430**.

Where fuel is provided for private use in a company car, the taxable benefit percentage is applied to **£24,500**. The benefit for fuel provided for a van with significant private use is **£666**.

Pensions

	2020/21 to 2025/26
Lifetime allowance (a)	£1,073,100
Equivalent to defined benefit pension	£53,655
Maximum contribution annual allowance (b)	£40,000
Tax on excess	Marginal rate
Normal minimum pension age	55

a. Special rules apply to individuals with benefits exceeding the lifetime allowance, or any previous protected amount. Excess over this amount may be subject to a **25%** charge plus income tax on balances drawn, or **55%** for lump sum benefits.

b. There is a reduction in the annual allowance by **£1** for every **£2** of adjusted income in excess of £150,000, up to a limit of £210,000.

An income tax exemption and NICs disregard covers the first £500 worth of pension advice provided to an employee in a tax year.

Capital gains tax

	2020/21 to 2025/26
Basic rate taxpayers (a)	10%
Trustees and **40%/45%** (40%/45%) taxpayers (a)	20%
Annual exempt amount – individuals	£12,300
Annual exempt amount – trusts	£6,150
Entrepreneurs' relief lifetime limit	£1m
Entrepreneurs' relief rate	10%

a. Gains on residential properties not qualifying for principal private residence relief, and on carried interest, are taxed at **18%** and **28%** respectively.

Inheritance tax

	2020/21 to 2025/26
Up to **£325,000** (£325,000) ('nil rate band')	0%
Over **£325,000** (£325,000) (frozen to 2020/21)	40%

An additional nil rate band of **£175,000** is available when a main residence is passed on death to a direct descendant. If the net value of the estate exceeds **£2m**, this additional nil rate band will be reduced by **£1** for each **£2** by which the net value exceeds that amount.

A surviving spouse or civil partner may claim the unused proportion of an earlier deceased spouse's, or civil partner's, nil rate band and additional nil rate band, up to the current nil rate band/additional nil rate band.

A reduced rate of **36%** applies when 10% or more of a net estate is left to charity.

Reduced charges apply on lifetime gifts within seven years of death.

Tax-efficient investments

	2021/22	2020/21
ISA limit (a)	£20,000	£20,000
Junior ISA limit (b)	£9,000	£9,000

a. Investment can be in cash, shares, or peer to peer lending platforms.

b. Investment can only be in cash or shares.

Venture Capital Trusts (VCTs): income tax relief at up to **30%** on investment up to **£200,000**, with capital gains tax reliefs.

Enterprise Investment Scheme (EIS): income tax relief at up to **30%** on qualifying share subscriptions up to **£1m** (**£2m** if the excess over £1m is invested in knowledge-intensive companies), with capital gains tax reliefs.

Seed Enterprise Investment Scheme (SEIS): income tax relief of **50%** on qualifying share subscriptions up to **£100,000**, with capital gains tax reliefs.

Social Investment Tax Relief (SITR): income tax relief of 30% on investment up to £1m with capital gains tax reliefs.

Lifetime ISAs: available to adults under the age of 40, who can contribute up to **£4,000** per year. Contributions made before the age of 50 qualify for a **25%** bonus from the Government, up to a maximum of £1,000 per year. Funds from Lifetime ISAs can be used to buy a first home at any time from 12 months after the account opening, or can be withdrawn from age 60.

Air passenger duty

Rates per passenger from 1 April 2020 (a) (b)	Reduced rate	Standard rate	Higher rate (c)
Band A (0-2,000 miles from London)	**£13**	**£26**	**£78**
Rates from 1 April 2021 will remain the same			
Band B (over 2,000 miles from London)	**£80**	**£176**	**£528**
Rates from 1 April 2021	**£82**	**£180**	**£541**

a. Flights from airports in the Scottish Highlands and Islands, and long haul flights from airports in Northern Ireland are exempt.

b. Air passenger duty is not charged for the lowest class of travel for children aged 16 and under at time of flight.

c. Aircraft over 20 tonnes and seating fewer than 19 passengers.

Corporation tax

Financial year (from 1 April)	2021 and 2022
Main rate	19%
Surcharge on bank profits	8%
Loss annual allowance per group	£5m
Restriction of losses (% of profits above allowance)	50%

From 2023 the rate will increase to 25%. Businesses with profits of £50,000 or less will continue to be taxed at 19% and a taper above £50,000 will be introduced so that only businesses with profits greater than £250,000 will be taxed at the full 25% rate.

Diverted profits tax

Companies with diverted profits pay diverted profits tax at 25% on such profits plus any 'true-up interest'. Where taxable diverted profits are ring-fence or notional ring-face profits in the oil sector, DPT is charged at a rate of 55% plus true-up interest.

From 1 April 2023, the rate of DPT will increase from the current rate of 25% to 31%.

Capital allowances

Expenditure on:	2020/21 and 2021/22
Plant and machinery (a)	18%
Plant and machinery in certain designated assisted areas	100%
Motor cars – CO2 emissions;	
≤50g/km (≤75g/km) (a)	100%
50-110g/km (75-130g/km) (a)	18%
>110g/km (>130g/km) (a)	6%
New and unused zero emission goods vehicles	100%
Long life assets/integral features in buildings (a)	6%
Patent rights and know-how (a) (b)	25%
Research and development	100%
Energy-saving and water efficient plant and machinery (c)	100%

A 100% **annual investment allowance** is given on the first **£1m** (to 1 January 2022) per annum of capital expenditure per group of companies or related entities, on plant and machinery including long life assets and integral features, but excluding cars.

From 1 April 2021 until 31 March 2023, companies investing in qualifying new plant and machinery assets will benefit from a 130% first-year capital allowance. Investing companies will also benefit from a 50% first-year allowance for qualifying special rate (including long life) assets.

a. These allowances are given on a reducing balance basis.
b. Tax relief for expenditure on certain intangibles is given by accounting write downs (and not capital allowances).
c. 100% only available in respect of Enterprise Zones.

National insurance contributions

Class 1 employees:

Weekly earnings	2021/22
Up to **£184**	**NIL**
£184-£967	**12%**
Over **£967**	**2%**

Class 1 employers (a) (b):

Weekly earnings	2021/22
Up to **£170**	**NIL**
Over **£170**	**13.8%**

a. Most businesses and charities can claim a reduction of up to **£4,000** of their employers' contributions ('NIC employment allowance').
b. No employers' contributions are payable in respect of weekly earnings up to **£962 (£967 in 2021/22)** paid to employees under 21 and apprentices under 25.

Other:

Class 1A (employers only): **13.8%** on the amounts of taxable benefits.

Class 1B (employers only): **13.8%** in respect of amounts in a PAYE settlement agreement and the income tax thereon.

Class 2 (flat rate for self-employed): **£3.05** per week on profits above **£6,475 (£6,515 in 2021/22).**

Class 3 (voluntary): **£15.30 (£15.40 in 2021/22)** per week.

Class 4 (self-employed): **9%** of profits between **£9,501** and **£50,000** per annum and **2%** on profits above **£50,000**.

The thresholds increase to £9,568 and £50,270 respectively in 2021/22.

Apprenticeship levy

A 0.5% annual levy will be payable by employers, charged on payroll costs in excess of £3m.

Patent box and research and development tax credits

Financial year (from 1 April)	2020
Patent box – effective corporation tax rate	10%
R&D tax credit for SMEs	130%
R&D expenditure credit – minimum rate	13%

Value added tax

Registration threshold: taxable supplies at the end of any month exceed **£85,000** either in the past 12 months or the next 30 days.

Standard rate	**20%**
Lower rate	**5%**
Zero rate	**0%**

Insurance premium tax

Standard rate	**12%**
Higher rate	**20%**

Annual tax on enveloped dwellings

An annual tax on enveloped dwellings is payable by a company (or similar entity) owning a residential property with a value more than **£500,000** on 1 April 2017 (or date of acquisition, if later). Tax is charged in bands, from a minimum of **£3,700** to a maximum of **£236,250 (£237,400 in 2021/22)**.

Stamp duties and property transaction taxes

Stamp duty land tax (a)

Non-residential land and buildings – rates applied cumulatively

2020/21 to 2021/22	
£0-£150,000	0%
£150,001-£250,000	2%
Over £250,000	5%

Residential land and buildings (b) (c) (d) – rates applied cumulatively up to 31 June 2021.

2020/21 to 2021/22	
Up to £500,000	0%
£500,001 - £925,000	5%
£925,001 - £1,500,000	10%
Over £1,500,000	12%

From 1 July 2021, the Nil Rate Band will reduce to £250,000 until 30 September 2021 and will reduce to £125,000 on 1 October 2021.

a. All figures are calculated inclusive of any VAT. For leases, the rate is based on the discounted rental values.
b. Where residential property over **£500,000** is purchased by a company (or similar entity) a **15%** rate applies.
c. A **3%** surcharge applies to all second and additional residential properties on transactions of **£40,000** or more.
d. From **22 November 2017** first time buyers paying £300,000 or less for a residential property will pay no stamp duty land tax. For purchases between £300,000 and £500,000 stamp duty land tax will be payable at 5% on the excess over £300,000.

Scotland: Land and buildings transaction tax

Land and buildings transaction tax applies in Scotland instead of stamp duty land tax, with different rates and bands.

Wales: Land transaction tax

From 1 April 2018 land transaction tax replaced stamp duty land tax in Wales, with different rates and bands.

Other stamp duty	2020/21
Stamp duty – shares and securities	**0.5%**
Stamp duty reserve tax	**0.5%/1.5%**

Stamp duty, and stamp duty reserve tax, is not charged on recognised growth markets, including AIM and ISDX.

https://www.pwc.co.uk/facilitating-global-growth/pathfinder-service.html

pwc.co.uk