BUSINESS IN THE UK
A ROAD MAP

IDEAS | PEOPLE | TRUST

BDO

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INTRODUCTION

This guide is intended to help anyone wanting to set up a business in the UK, or expand their presence here.

Running a business anywhere in the world can be complex and demanding. However, there are many advantages to trading in the UK's mature markets and regulatory and financial burdens of running a UK business compare very favourably with those in many other countries.

For more detail on the most important tax features for businesses operating in the UK, please request our detailed Doing Business in the UK guide from your local BDO contact.

MATTHEW WHITE
PARTNER, CHAIR OF BDO LLP'S PARTNERSHIP COUNCIL

MILES BOORMAN
PARTNER, HEAD OF BUSINESS SERVICES & OUTSOURCING

STUART LISLE
TAX PARTNER

ABOUT BDO

Accountancy and business advisory firm BDO LLP works with businesses to help them to fulfil their growth ambitions, nationally and internationally.

BDO LLP

BDO LLP operates in 18 locations across the UK, employing 5,650 people offering tax, audit and assurance, and a range of advisory services. BDO LLP is the UK member firm of the BDO International network with revenues of £660m.

BDO INTERNATIONAL

The BDO International network provides business advisory services in 167 countries, with more than 91,000 people working out of 1,600 offices worldwide. It has revenues of $10.3bn.

WORKING WITH BUSINESSES INVESTING IN THE UK

Our Business Services & Outsourcing (BSO) team provides companies with a range of accounting, tax, compliance and advisory services to support their growth and changing requirements within the UK and internationally.

As your business expands and your needs change, BDO also offer a coordinated service for your international accounting and compliance requirements, providing you with a globally consistent approach and central control. We continue to support your accounting needs across the globe through a dedicated team based in the UK under a single UK contact.

Read more on BDO's range of accounting advisory and compliance services.

For investors building operations in the UK BDO can provide the advice needed to make the right decisions as well as practical hands on support.

- Advice on what type of entity to create choosing between a representative office, a branch or a limited company
- Creating the trading entity having made the choice above and providing company secretarial services
- Helping you understand your day to day accounting requirements and systems
- Registering, setting up and operating your UK payroll and workplace pension
- Structuring efficient tax planning for remuneration packages of executives relocated from overseas
- Registering for, and assisting with, VAT returns for the UK entity, and other EU reporting requirements
- Advising on transfer pricing arrangements and providing expert guidance on direct and indirect global tax planning issues
- Delivering a full range of back office services from bank account operation to management accounts
- Preparing statutory accounts in New UK GAAP and IFRS and producing a year-end file for audit. Multi-currency management reports under New UK GAAP and IFRS.

BDO also operate with a series of country desks comprising professionals who possess insight and practical experience in specific territories. Desk members have extensive technical and practical expertise in assisting clients structuring and establishing business within the UK.

BDO UK

18 OFFICES **350** PARTNERS **5,650** STAFF

97% OF OUR CLIENTS WOULD RECOMMEND US[1]

2019/2020 RESULTS:
REVENUES[2] UP **14%** TO **£660m**

1. Client Listening Programme (2018)
2. Gross Revenues for BDO LLP

BDO INTERNATIONAL

US$10.3 billion 2019/2020 REVENUE

A YEAR ON YEAR INCREASE OF **7.8%**[1]

167 Countries **1,600** Offices **91,000** Staff

1. At constant exchange rate.

chapter 01

THE UNITED KINGDOM

RETHINK

The COVID-19 pandemic has caused a shift in the operating models – the best ways to manage your supply chains, workforce, cash flow and sales have changed in the last year. As you look to establish a new UK business or grow an existing venture you will be facing some very new challenges.

Rethink is BDO's global framework encouraging a broad reassessment of your assumptions around business models and commercial. The Rethink framework can be used to manage business priorities, address issues and encourage innovative thinking around

1. How to build Resilience throughout your business and protect vital elements of your company where necessary
2. How to Realise the benefits of sensible business decisions and seize the opportunities in a new and changing market.

You can use the framework as part of your strategic level considerations and discussions, regardless of the progress your business has made in the UK.

COVID-19 is changing the UK economy and consumer behaviours. Every business needs to navigate through this 'new reality together' and our Rethink hub is there to help you achieve that goal.

UNITED KINGDOM

ECOSYSTEM

The UK is the only global financial centre that has a 'full-package' innovative ecosystem on offer. Across services, businesses have access to a globally connected market, tap into a deep pool of talent and skills, and benefit from strong regulatory and government support. This one-of-a-kind environment helps businesses succeed and shapes the future.

The UK's regulatory environment is at the forefront of innovation and provides businesses with an environment in which they can access regulatory expertise and effectively test their products and services.

The UK's deep, broad, and innovative market – in size and activity second only to the US – offers a wealth of opportunities for both businesses and investors.

RESILIENT BUSINESS INFRASTRUCTURE

The UK benefits from world-leading business infrastructure and operational resilience. The UK's location on the world map provides for un-rivalled global connections, and the country's strong cyber security framework and digital security measures offer firms a business environment they can operate in with trust.

The UK's banking sector is the most international and globally connected of all global financial centres.

UK-domiciled banks are the most international of all global financial centres: In 2019, their cross-border positions such as claims on or liability to a counter party located in a different country totalled USD 4879bn. This figure compares to total cross-border positions for Japan-domiciled banks of USD 3911bn and United-States-domiciled banks of USD 3122bn.

Of all global financial centres, the UK is the most attractive for international borrowers to raise debt.

GLOBAL BUSINESS CONNECTIVITY

London and the UK's favourable time zone makes it easy to do business with major markets to both east and west within the working day.

London and the UK have one of the strongest government-led cyber security frameworks world-wide. In the latest ITU Global Cyber security Index, assessing a market's cyber security initiatives covering legal, technical, and organisational areas as well as capacity building and cooperation, the UK ranks first amongst all global financial centres. The US and Singapore follow. At city-level, London, New York City, Tokyo, and Singapore are all leading centres for digital security, with London having made the most improvement between 2015 and 2019. The rich ecosystem security created by UK government and industry, supported by the City of London Police and the City Corporation's collaboration with business, underpins this. Whether citizens are aware of digital threats and if cities have dedicated cyber security teams increase a centre's cyber safety and thus operational resilience

TALENT AND SKILLS

With world-leading universities and MBA programmes, an international workforce, and high quality of life driven by a rich cultural scene make London and the UK a global hub for highly-skilled talent. This is supported by labour laws that are flexible and let firms respond to current business needs. Businesses located in the UK's capital can recruit from a diverse pool of talent which helps them establish relationships with clients and partners from around the world.

Oxford University was named 2020 best university in the world. The UK is a world-leading destination for international students, second only to the US. This helps UK businesses find talent from all over the world.

The UK's pool of talent is future-ready and in a better position than any other global centre to work on sustainability issues and achieve ambitious climate goals.

Pre-COVID, London was one of the world's most attractive cities to live in: With an un-rivalled cultural scene, plenty of green space, and improving air quality, London's quality of life acted as a magnet for people from all over the world. Whilst many aspects of city life such as interaction with others, density, and proximity have been affected by the pandemic, London will be ready to open its doors to the world once again.

Source: CoL Our global offer to business

UNITED KINGDOM
INFRASTRUCTURE

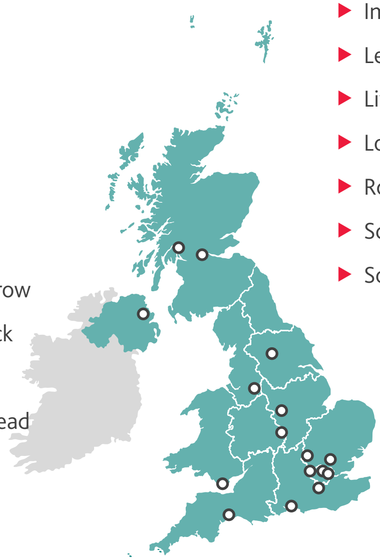
TRANSPORT

The UK is a small country with a large integrated transport system. It has the second largest ports industry in Europe, the largest air transport system in Europe, the most improved rail network in Europe and a huge seven-year investment programme to upgrade roads. This means it's easy to move goods and people around, in and out of the UK.

AIR

The largest air transport system in Europe: the UK has excellent international connectivity from major airports distributed across the country at:

- Belfast
- Birmingham
- Bristol
- Cardiff
- East Midlands
- Edinburgh
- Glasgow
- Leeds
- London City
- London Heathrow
- London Gatwick
- London Luton
- London Stanstead
- Manchester
- Southampton.

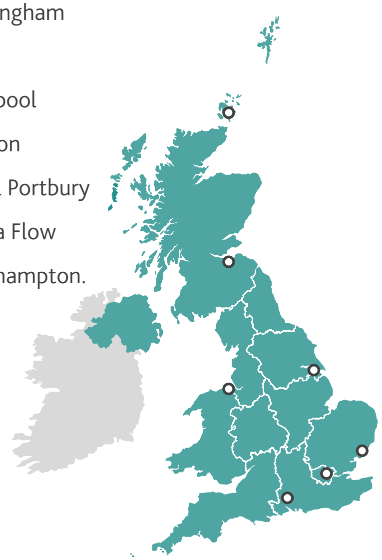


166M INTERNATIONAL TRAVELLERS passed through London's airport gates in 2019

SEA

The second largest ports industry in Europe: the UK has more than 100 commercial ports in the UK, with 40 major ports providing the capacity to handle cargo of every size and type at:

- Avonmouth
- Felixstowe
- Immingham
- Leith
- Liverpool
- London
- Royal Portbury
- Scapa Flow
- Southampton.



TRAIN

To remain competitive, investment in London and the UK's transport infrastructure is key – and with Crossrail and HS2, first steps are being taken.

HOW long it takes to travel by train from London to:

Birmingham	1 hour 22 minutes
Brussels	2 hours 1 minute
Manchester	2 hours 7 minutes
Paris	2 hours 16 minutes
Edinburgh	4 hours 20 minutes
Glasgow	4 hours 31 minutes
Amsterdam	4 hours 38 minutes

UNITED KINGDOM

DISTANCE

KILOMETRES	LONDON	BIRMINGHAM	BRISTOL	CARDIFF	SHEFFIELD	LEEDS	MANCHESTER	LIVERPOOL	EDINBURGH	GLASGOW	BELFAST
London	0	190	190	240	260	315	350	355	640	665	760
Birmingham	190	0	140	175	135	190	155	160	470	465	560
Bristol	190	140	0	70	290	335	285	290	605	630	690
Cardiff	240	175	70	0	325	370	320	325	635	630	595
Sheffield	260	135	290	325	0	60	60	125	410	415	525
Leeds	315	190	335	370	60	0	75	120	360	355	480
Manchester	350	155	285	320	60	75	0	55	350	345	470
Liverpool	355	160	290	325	125	120	55	0	355	355	430
Edinburgh	640	470	605	635	410	360	350	355	0	75	280
Glasgow	665	465	630	630	415	355	345	355	75	0	205
Belfast	760	560	690	595	525	480	470	430	280	205	0

DIGITAL

The UK has the best super-fast broadband service of any major European economy:

- More 'network ready' than any major European economy
- Hosts the first 5G technologies and services roll-out
- Has open and competitive broadband and telecoms markets meaning lower prices and more choice
- The UK has one of the highest levels of Internet freedom world-wide, enabling businesses to operate freely and efficiently.

Source: Department for International Trade

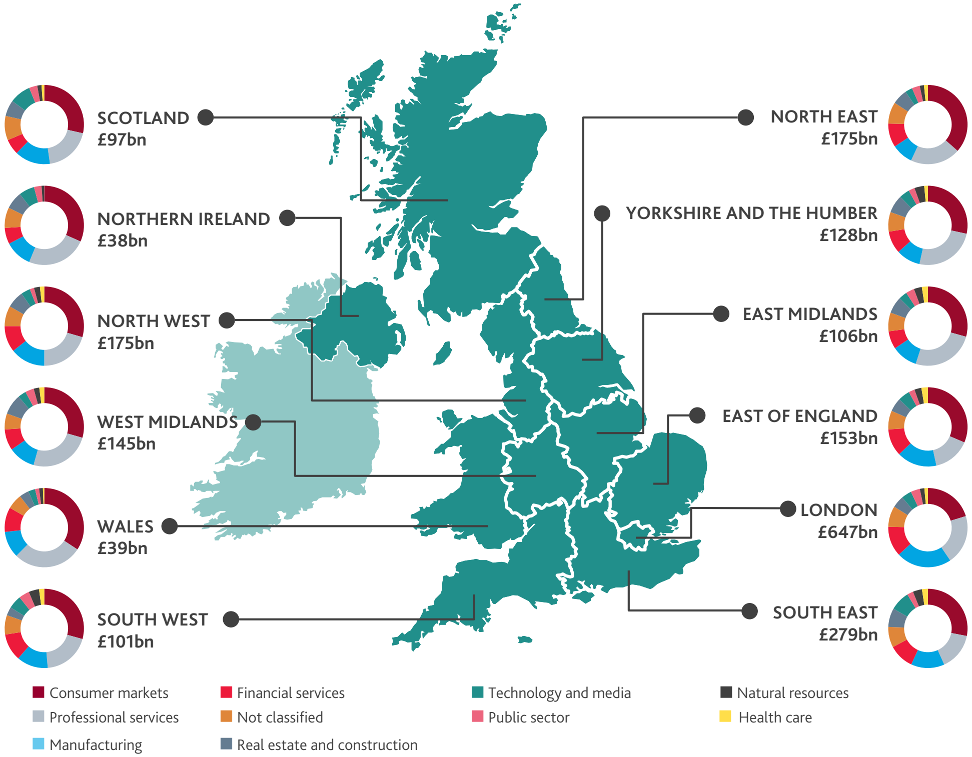
UTILITIES

- The UK is one of only three countries worldwide with a World Energy Council 'AAA' rating
- Privatisation of the major utilities means greater choice and lower prices for industrial energy consumers
- Investment in 'smart grid' technology will support the security of the UK's energy supply for future decades.

UNITED KINGDOM
REGIONS AND SECTORS

TOP 5 SECTORS BY REGION

The UK's regional economic profile continues to evolve. The traditional dominance of sectors such as Manufacturing in the Midlands, Financial Services in London and Technology and Media in London and the South East are by no means the complete picture. Within the broader sector definitions are also the sector powerhouses (Life sciences, New Energy, Fintech are examples), centred in key locations and exhibiting high rates of growth. BDO has undertaken an analysis of UK mid-market businesses (turnover £10-300m), PE-backed or AIM-listed businesses - by region and sector. Read more at www.bdo.co.uk/en-gb/business-in-the-uk/uk-regional-sector-maps.



LONDON £647BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Professional services	3,037	131,248,816
Financial services	2,737	130,676,050
Consumer markets	2,648	146,046,947
Technology and Media	1,724	79,342,967
Not classified	1,204	55,153,645

SOUTH EAST £279BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	1,601	78,317,363
Professional services	961	42,367,071
Manufacturing	868	38,074,431
Financial services	584	28,770,744
Technology and Media	582	23,457,819

NORTH WEST £175BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	1,174	51,499,903
Manufacturing	882	35,819,325
Professional services	634	24,940,427
Financial services	416	18,654,942
Real estate and construction	394	14,480,942

SOURCES AND DEFINITIONS

- Economic Engine: Mid-market businesses with annual turnover of £10m to £300m, PE-backed or AIM-listed
- FAME data (accessed Sep 2019) provided the details of registered businesses, including location, annual turnover and number of employees; businesses were mapped regionally based on their registered addresses
- Standard Industry Classifcation (SIC) codes were mapped/recoded as per BDO sector definitions.

UNITED KINGDOM
REGIONS AND SECTORS

EAST OF ENGLAND £153BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	1,005	48,185,127
Manufacturing	542	23,241,710
Professional services	521	25,046,436
Real estate and construction	400	17,014,796
Financial services	272	11,718,283

EAST MIDLANDS £106BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	671	31,021,232
Manufacturing	633	27,140,452
Professional services	272	11,186,420
Real estate and construction	208	7,760,408
Financial services	201	8,075,350

NORTH EAST £46BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	261	16,972,646
Manufacturing	255	9,491,211
Professional services	124	4,051,454
Financial services	99	4,504,168
Real estate and construction	96	4,095,130

WEST MIDLANDS £145BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	884	42,736,147
Manufacturing	813	36,223,349
Professional services	399	15,928,087
Financial services	283	12,486,759
Real estate and construction	248	9,438,192

SOUTH WEST £101BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	665	29,621,663
Manufacturing	459	19,483,693
Professional services	311	12,925,964
Financial services	224	11,221,053
Real estate and construction	221	8,007,391

WALES £39BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Manufacturing	289	13,402,311
Consumer markets	274	11,025,290
Professional services	108	4,237,708
Real estate and construction	100	3,930,750
Financial services	81	2,440,065

YORKSHIRE AND THE HUMBER £128BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	784	36,383,296
Manufacturing	770	32,005,676
Professional services	351	12,629,093
Financial services	287	11,688,696
Real estate and construction	256	10,233,133

SCOTLAND £97BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	564	27633637
Manufacturing	418	18,567,771
Professional services	415	14,070,459
Financial services	230	6,154,507
Real estate and construction	230	9,616,218

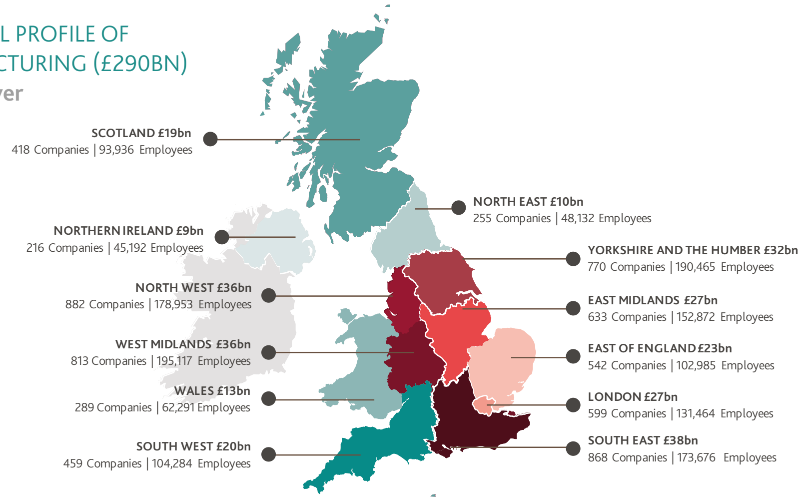
NORTHERN IRELAND £38BN

TOP 5 SECTORS	NUMBER OF COMPANIES	TURNOVER £'000
Consumer markets	309	11,920,783
Manufacturing	216	9,238,327
Real estate and construction	115	4,188,764
Professional services	75	2,483,221
Financial services	67	3,150,942

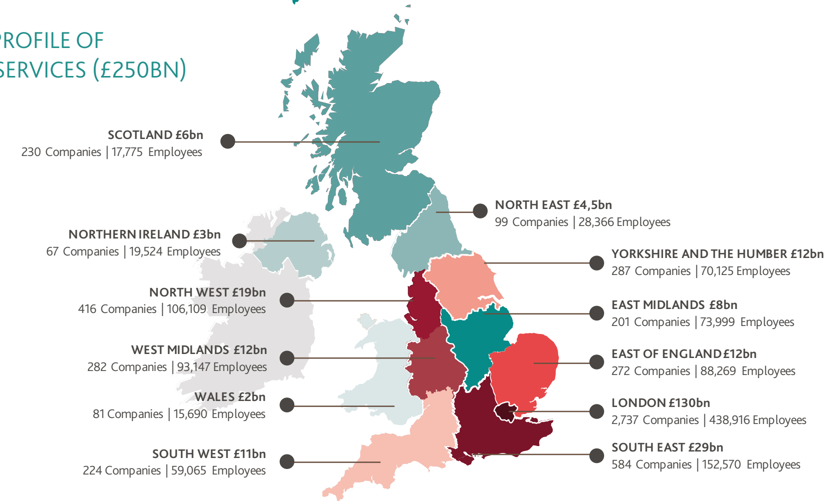
Source: FAME database, accurate to time of collection 08/04/2021

UNITED KINGDOM
REGIONS AND SECTORS

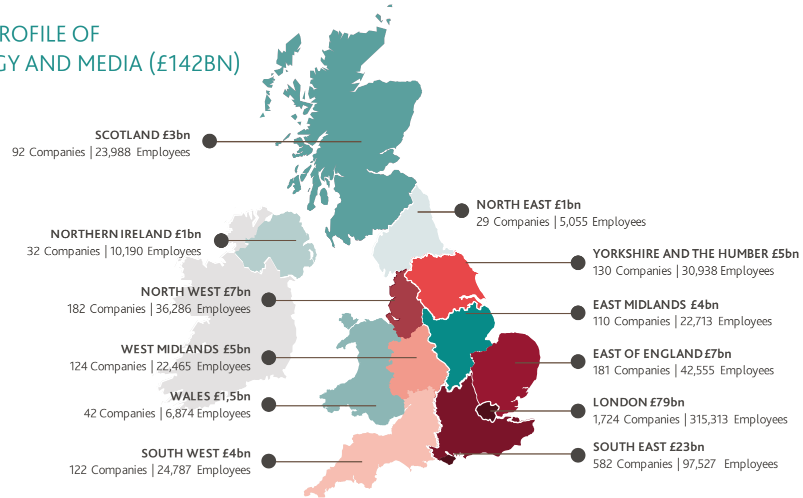
REGIONAL PROFILE OF MANUFACTURING (£290BN)
By turnover



REGIONAL PROFILE OF FINANCIAL SERVICES (£250BN)
By turnover



REGIONAL PROFILE OF TECHNOLOGY AND MEDIA (£142BN)
By turnover



For more information on the key sectors for investment in the UK please visit: https://invest.great.gov.uk/int/

Source: FAME database, accurate to time of collection 08/04/2021
£10m to £300m, PE-backed or AIM-listed

UNITED KINGDOM

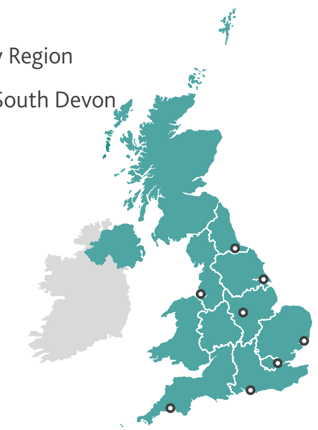
REGIONS AND SECTORS

FREEPORTS IN THE UK

Freeports operate as secure customs zones, usually located at ports or airports, where business can be carried out inside a country's land border, but where different customs rules apply. Freeports around the world offer a mixture of customs flexibilities; reliefs from duties, import taxes and administrative burdens; tax measures to incentivise private investment; regulatory flexibilities; and investment in infrastructure.

The UK Government plans to support regional development in the UK by creating a bespoke Freeport model and has begun developing new Freeports across the UK; the locations approved at the time of publication are shown below:

- East Midlands Airport
- Felixstowe & Harwich
- Humber
- Liverpool City Region
- Plymouth & South Devon
- Solent
- Thames
- Teesside.



HOW WILL UK FREEPORTS WORK?

The UK Freeport model will require a primary customs site designated in or near a seaport, airport or rail port within which the customs benefits will apply. Additional Freeport subzones may also be permitted to enable multiple sites to benefit from the Freeports customs model.

Freeports will also include a defined site within which Freeport tax reliefs will apply. The purpose of the reliefs will be to incentivise business investment in capital assets and employment. However, clear eligibility criteria will apply, to prevent tax evasion and avoidance.

FREEPORTS AND CUSTOMS

Businesses operating within Freeport customs sites will receive tariff benefits, including duty deferral while the goods remain on site, and duty inversion if the finished goods exiting the Freeport attract a lower tariff than their component parts.

Subject to the UK's trade agreements, businesses may also be able to take advantage of customs duty exemption on goods that are imported into a Freeport, processed into finished goods and subsequently re-exported. The customs administration for businesses operating in Freeports will be streamlined.

Businesses will also be able to suspend import VAT on goods entering the Freeport. In addition, businesses operating in Freeports will be authorised to use simplified import procedures. This model expands on existing customs facilitations and procedures available to business.

UK TAX BENEFITS FOR OPERATING IN A FREEPORT

Businesses will be able to claim reliefs from key business taxes within the bounds of a Freeport; the current proposals include:

Stamp Duty Land Tax (SDLT) relief

There will be no SDLT charged on land purchases within Freeport tax sites in England where that property is to be used for qualifying commercial activity: this relief will apply from 1 April 2021 until 31 March 2026.

Capital investment

The government intends to offer an enhanced rate of the usual Structures and Buildings Allowance (SBA), providing quicker tax relief for firms constructing or renovating structures and buildings for non-residential use within Freeport tax sites.

There will also be Enhanced Capital Allowances for companies investing in qualifying new plant and machinery assets. This accelerated relief is intended to allow firms to reduce their taxable profits by the full cost of the qualifying investment in the same tax period the cost was incurred. This will apply to qualifying investments made on or after 1 October 2021 until 30 September 2026.

Staff costs

The government intends to enable employers operating in a Freeport tax site to pay 0% employer National Insurance Contributions on the salaries of any new employee working in the Freeport tax site. This 0% rate would be applicable for up to three years per employee, on earnings up to a £25,000 per annum threshold.

An employee will be deemed to be working in the Freeport tax site if they spend 60% or more of their working hours in that tax site. The relief is intended to be available until at least April 2026, but is expected to be extended until 2031.

Business Rates Relief

The government intends to offer up to 100% relief from business rates on certain business premises within Freeport tax sites. This relief is intended to be available to new and certain existing businesses in Freeport tax sites in England from 1 October 2021, and would apply for five years from the point at which the beneficiary first receives relief (which must start by 30 September 2026.

Read more on UK Freeports.

UNITED KINGDOM
REGULATORY ENVIRONMENT

UK AND EUROPEAN UNION

On 1 January 2021, the UK's departure from the EU was finalised (after a transition period), and it continues to trade with the EU under the terms of the EU-UK Trade and Cooperation Agreement (TCA).

Within the EU, the UK's regulatory environment had to reflect EU directives, as do all member states. As part of its plans for departure from the EU, the UK Government replicated most of its EU-dependent regulations in stand-alone UK legislation – so that the immediate changes for businesses and individuals were kept to a minimum. However, over time, much of the UK regulatory environment can be expected to diverge from that of the EU.

For example, the UK is designing its own "state subsidy control" system to replace the EU state aid rules that previously set out rules and limits for Government grants and subsidies provided to businesses. However, the UK has signed up to various commitments within the TCA and other free trade agreements, as well as World Trade Organisation rules, to maintain a level playing field on subsidies with its trading partners. Therefore, it is quite likely that regulatory divergence from the EU (in this area at least) will be relatively limited for the foreseeable future.

UK CORPORATE GOVERNANCE CODE

The UK legal and regulatory framework is supplemented by the UK Corporate Governance Code. The Code is not a rigid set of rules - rather, it sets out good practice for companies on issues such as board leadership and effectiveness, pay, accountability and relations with shareholders. At the heart of its flexibility is the trademark 'comply or explain' approach.

UK listed companies are required either to comply with the provisions of the Code, or explain to investors in their annual report why they have not done so. This approach, widely admired and imitated internationally, gives businesses flexibility to adopt a governance framework that fits their specific circumstances and requirements.

Read more on corporate governance.

UNITED KINGDOM
REGULATORY ENVIRONMENT

MONEY LAUNDERING AND TERRORIST FINANCING

The following money laundering and terrorist financing legislation applies to businesses in the regulated sector:

The Proceeds of Crime Act 2002 (POCA) defines the money laundering offences that can be committed by those within and outside of the regulated sector. It introduces the requirement on the regulated sector to report knowledge or suspicions of money laundering, and the offence of 'tipping off', which involves making a disclosure that would prejudice an investigation following a suspicious activity report (SAR). POCA also introduces the requirement to obtain consent from the National Crime Agency if a service provided to a customer could result in the firm committing a money laundering offence.

The principal money laundering offences include:

1. Concealing, disguising, converting, transferring or removing (from the UK) criminal property
2. Entering into, or becoming concerned in, an arrangement which facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
3. The acquisition, use and possession of criminal property.

Money laundering is widely defined in the UK, therefore the proceeds of all crimes constitute a predicate offence to money laundering. The Terrorism Act 2000 defines terrorism, and introduces similar provisions to those in the POCA to report knowledge or suspicion of terrorist financing.

The Money Laundering Regulations 2017 define the policies, procedures and controls that regulated firms are required to implement in order to protect against money laundering and terrorist financing. The Regulations introduce the requirement to apply customer due diligence measures before establishing a business relationship. They also introduce further requirements on businesses, including to conduct ongoing monitoring of a customer, retain customer due diligence records, develop training programmes, and establish internal procedures for reporting knowledge or suspicions of money laundering.

UNITED KINGDOM
BRIBERY AND TAX EVASION

Anti-corruption law in the UK is governed by the Bribery Act 2010: it covers bribery in both the private and public sectors. The Act imposes stringent penalties for bribery-related offences, potentially affecting every commercial organisation operating in the UK, wherever its headquarters are based and wherever it transacts business in the world.

The pitfalls of not understanding how the law can affect businesses could prove costly. Convictions under the Bribery Act can result in years behind bars for employees, and/or potentially unlimited fines. There are four offences under the Act:

1. Offering, promising or giving a 'financial or other advantage'
2. Requesting, agreeing to receive, or accepting a financial or other advantage
3. Bribing a foreign public official
4. As a commercial organisation, failing to prevent bribery by a person associated with it. It is a defence if the organisation can demonstrate it has adequate procedures in place to prevent bribery being committed by those associated with it.

The Criminal Finances Act 2017 introduced new corporate offences of failure to prevent the facilitation of tax evasion. The aim is to overcome the difficulties in attributing criminal liability to companies for the criminal acts of 'associated persons' in facilitating tax evasion by other parties, e.g. customers or suppliers.

Businesses can have a strict criminal liability for failing to prevent the facilitation of tax evasion, without the need for prosecution of the underlying facilitation or evasion offences. The offence can occur in respect of evasion of any tax (in the UK or an overseas jurisdiction), and will be relevant to all corporate bodies and partnerships, whatever their size or industry sector. A successful prosecution under these rules could lead to the business facing an unlimited fine, as well as significant reputational damage and adverse publicity.

As with the Bribery Act (point 4 above) it is a defence that the corporate had put in place 'reasonable' prevention procedures to stop associated persons facilitating tax evasion (or It was not reasonable, in all the circumstances, to expect the corporate to have any prevention procedures in place).

The UK government has adopted the OECD common reporting standard, and requires its financial institutions to report on the UK income and assets of foreign nationals. This data is exchanged with the individual's home tax authorities annually to help all countries clamp down on overseas tax evasion. The tax authorities also require businesses to report on certain cross-border transactions that could lead to tax evasion (although the types of reportable issue are limited to the basic OECD standard, whereas far more reporting is required by EU countries under the EU DAC6).

UNITED KINGDOM

DATA PROTECTION

The Data Protection Act 2018 (DPA) controls how an individual's personal information is used by organisations, businesses or government. Everyone responsible for using data must follow strict rules called the 'data protection principles'.

They must make sure the information is:

- Used fairly and lawfully
- Used for limited, specifically stated purposes
- Used in a way that is adequate, relevant and not excessive
- Accurate
- Kept for no longer than is absolutely necessary
- Handled according to people's data protection rights
- Kept safe and secure
- Not transferred outside the European Economic Area without adequate protection.

There is stronger legal protection for more sensitive information, such as:

- Ethnic background
- Political opinions
- Religious beliefs
- Health
- Sexual health
- Criminal records.

The stated aim of the rules is 'to protect the fundamental rights and freedoms of natural persons, in particular their rights to privacy with respect to the processing of personal data'.

The DPA applies to personal data irrespective of the form in which it is held. Databases, word-processed documents, spreadsheets and proprietary computer systems are all included; so are paper files, collections of business cards, photographs, videos and sound recordings.

The Act also specifies various rights enjoyed by data subjects, including the right to request information being held about them, and what it is being used for.

The EU General Data Protection Regulation (GDPR) was enacted in the UK through the DPA 2018. It requires organisations to show that they are compliant with the principles through having appropriate policies and procedures in place. The new DPA introduced tougher fines for businesses that breach the rules - for example, the maximum fine that the Information Commissioner's Office can impose for repeated breaches is 4% of a business's global turnover. However, the risk of adverse publicity and significant reputational damage is likely to be the most important motivation for businesses to comply with the rules.

The EU-UK Trade & Cooperation Agreement (TCA) provides for an interim period of up to 6 months from 1 January 2021 where any data transfers from the EU to the UK shall not be considered a transfer to a 'third country', i.e. data transfers can take place as they did before Brexit. The "adequacy" of the UK's data protection standards is expected to be confirmed at the end of this interim period (so that such data transfers can continue), and the UK rules will be subject to review every four years in future.

UNITED KINGDOM

DATA PROTECTION

COMPETITION POLICY

The UK competition regime has a strong global reputation, and the UK is seen as having open and fair markets which work well. For entrepreneurs looking to start or expand a business in the UK, competition law protects them from anti-competitive practice in the market. While the UK now applies its own competition policy outside the EU, this only applies to UK markets, and UK companies must still comply with EU competition law where their activities may affect competition within the EU.

The aims of the UK Competition and Markets Authority (CMA) are to:

'…Work to promote competition for the benefit of consumers, both within and outside the UK. …To make markets work well for consumers, businesses and the economy.'

Its responsibilities include investigating anti-competitive behaviour, and it has extensive law enforcement powers.

Anti-competitive behaviour which may affect trade within the UK is prohibited by the Competition Act 1998 and the Enterprise Act 2002. Other global territories - particularly the US - have similar anti-trust laws.

The two main types of anti-competitive activity prohibited in law are:

- Anti-competitive agreements (e.g. cartels, fixing prices, bid rigging, sharing markets or sources of supply, limiting production)
- Abuse of a dominant market position (e.g. imposing unfair trading terms, predatory pricing, refusal to supply).

WHEN the UK left the EU, the UK government formally committed to continue to maintain the highest of standards in competition law.

Non-compliance can have serious consequences for both companies and individuals, including:

- Substantial fines (up to 10% of group turnover)
- Void and/or unenforceable commercial agreements
- Civil damages
- Individual criminal sanctions for serious breaches (particularly for engagement in cartel activity, with the possibility of up to five years in prison and/or substantial fines)
- Director disqualification
- Reputational damage arising from lengthy investigations.

UNITED KINGDOM
INTELLECTUAL PROPERTY

Taking control of the exploitation and protection of inventions, designs, branding, and goods and services is critical to innovation and to the success of any business starting up in the UK.

The UK's robust intellectual property (IP) system helps entrepreneurs and innovators to effectively protect their innovations and creativity.

The UK Intellectual Property Office (IPO) helps businesses, innovators and entrepreneurs understand how IP can create value from their ideas, turning inspiration into sustainable business success. The IPO grants patents, registering trademarks and designs. It can also help businesses use and manage IP, and enforce their IP rights to achieve their IP's full potential.

WHY do scientific research in the UK?

As well as a highly-skilled workforce, access to many of the world's leading universities, and generous tax incentives to conduct research and development, UK law offers world-leading protection for the intellectual property that research creates. Read more about research and development tax credits in the UK.

IP rights are treated as intangible forms of property that are capable of ownership and, in some cases, registration:

- **Patents:** A monopoly protection of a new invention capable of industrial application
- **Trademarks:** Marks used to differentiate goods, which are capable of registration
- **Design rights:** Protect the appearance of a purely functional product, which are capable of registration
- **Copyright:** Protects the form of expression of ideas and, while not capable of registration, is often asserted with the '©' mark
- **Know-how:** Practical information resulting from experience and testing that can be protected as confidential information to maintain its secrecy and, therefore, is not capable of registration
- **Goodwill:** Custom and exclusive right to carry on a business under the business name. Goodwill is not strictly an IP right and not, therefore, capable of registration
- Registering a business's IP rights is an important investment that generates significant practical, commercial and legal benefits.

PROTECTING IP AFTER BREXIT

EU law applied to all IP rights in the UK before Brexit, but has been replaced for UK markets by UK protected rights from 1 January 2021. Companies that held IP rights under EU rules before Brexit automatically have parallel rights under UK and EU law so that they can take protective legal action in either jurisdiction if required. For more details see the Intellectual Property Office website.

LOWER TAX ON PATENT INCOME IN THE UK

The UK Patent Box scheme is available to companies earning profits from goods and/or services that have been patented in the UK or with the European Patent Office. It takes the form of a lower effective tax rate, just 10%, of the relevant profits derived from patents.

It is necessary for companies to accurately identify the income streams from their patents to make a qualifying claim, and the company must be carrying out ongoing R&D work in the UK in order to claim: broadly, the more UK R&D you carry out, the more you can benefit from a patent box claim. Therefore, for businesses setting up a UK presence, it is important to consider your IP strategy carefully to get the most benefit. Read how BDO can help you benefit from the Patent Box rules.

UNITED KINGDOM
BANKING AND FINANCIAL SYSTEM

The UK has a highly sophisticated banking and financial services system, with numerous financial instruments available for those wishing to raise funds or manage financial risks. The UK has not introduced the Euro, and the Pound (sterling) is used in England, Scotland, Wales and Northern Ireland. There are currently no exchange controls in force in the UK.

A current account is used by a business to manage its finances and this facility can be opened with any bank, subject to the identification and other requirements of POCA and the Money Laundering Regulations 2017 (see Money laundering and terrorist funding). The majority of individual retail transactions take place either in cash, or by credit or debit card, with electronic and online payments increasing rapidly and cheque payments declining.

chapter 02

CHOOSING A BUSINESS STRUCTURE

CHOOSING A BUSINESS STRUCTURE
OVERVIEW

Anyone wishing to set up business operations in the UK for the first time has a number of options for structuring those operations. There are a number of different types of UK legal and reporting consequences. Different types of entity can also have different UK and home country taxation consequences.

OVERVIEW

This chapter gives an overview of the types of business entities that are available in the UK and the relevant registration and reporting requirements. It also describes and expands upon the following commonly used structures:

1. Small UK presence: representative office, service centre, independent sales agent, independent distributor
2. Branch
3. Subsidiary (limited company)
4. Joint Venture company
5. Limited Liability Partnership
6. Partnership.

All these business entities are liable to UK taxes and the chapter also sets out the key principles of UK corporation tax, UK Value Added Tax (VAT), UK payroll taxes that apply to them.

Most taxes apply throughout the UK but the Government has devolved some tax powers to the Scottish, Welsh and Northern Ireland assemblies, e.g. land and property purchases taxes, some income tax rates and bands, assignment of half of VAT receipts (in Scotland only) and corporation tax rates (in Northern Ireland only).

The assignment of VAT receipts to the Scottish government and the development of corporation tax to Northern Ireland has been delayed.

Special consideration, which modify the usual rules, may apply to specific industries and sectors, such as online gaming, oil and gas and investment management. These are not covered in this guide.

WHAT is the best structure for our business?

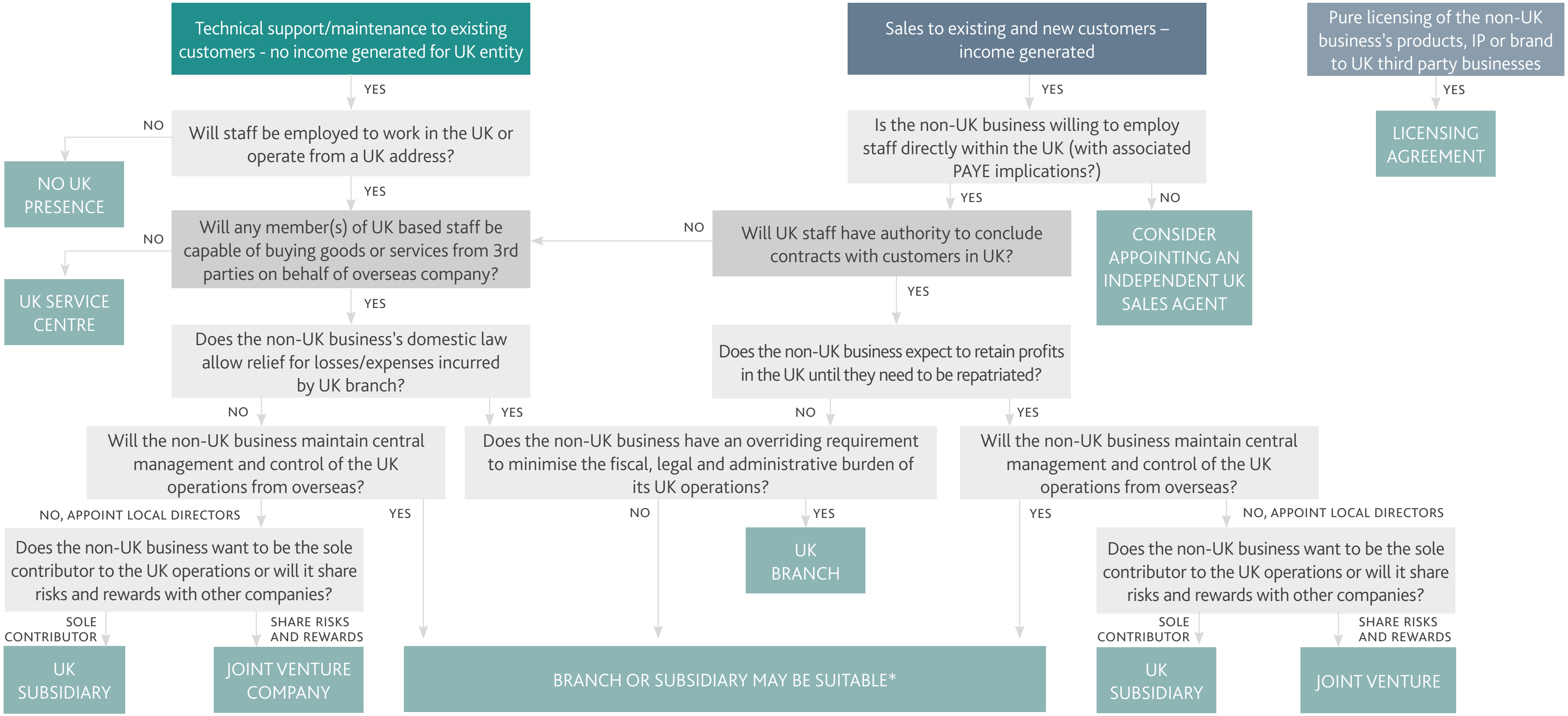
The nature of a business's intended activities in the UK will help management focus on the most suitable UK business structure to consider in detail. The flowchart on the next page shows key questions to consider, and suggests the possible UK business structures.

CONTENT

CHOOSING A BUSINESS STRUCTURE

BUSINESS STRUCTURE FLOWCHART

HOW A BUSINESS'S UK ACTIVITIES CAN HELP ITS MANAGEMENT DECIDE WHICH UK BUSINESS STRUCTURE TO CONSIDER



* The comparative tax positions of having a UK branch or subsidiary for the non-UK parent would need to be considered. Administrative requirements for a UK branch are less than those for a UK subsidiary.

This flowchart only provides an outline of the key issues. There are many further factors should be taken into account before deciding on the most efficient structure Expert, bespoke advice is essential to find the right UK business structure for a business.

Read about BDO's corporate international tax services.

CHOOSING A BUSINESS STRUCTURE

COMMONLY USED BUSINESS STRUCTURES

SMALL UK PRESENCE

Distance selling

In certain markets, it may be feasible to sell goods and services to UK customers without UK-based employees or infrastructure. In particular, direct selling from overseas to UK customers online or via mail order does not, of itself, create a corporation tax liability in the UK if none of the operations from which the profits are derived take place in the UK.

Licensing and distribution agreements with third parties

A common method for an overseas company to introduce their products to the UK market is to enter into a licensing or distribution agreement with a local manufacturer or retailer. The UK licensee typically produces and/or markets the product in return for a one-off and/or recurring payment.

Licenses may be exclusive (giving exclusive rights to produce or market the product in the UK) or, less commonly, non-exclusive.

Selling through a licensing or distribution arrangement in the UK with a completely independent third party should not result in corporate income tax liabilities for an overseas company. However, where a UK branch of the overseas company acts as a distributor, the branch will be taxed on its UK profits.

Where a licensing arrangement is entered into, it is possible that the fee paid by the licensee will constitute a royalty for UK tax purposes, notably where the licensee is granted rights to use patents, trademarks or intellectual property owned by the licensor. Here, the licensee may be required to withhold UK income tax from the payments made to the licensor, and pay this to HM Revenue & Customs (HMRC). Typically, the licensee will expect the licensor to inform if where a withholding tax requirement arises.

The UK rate of withholding tax on royalties is 20%, although this may be reduced or eliminated depending on the terms of the double tax agreement between the UK and the territory in which the overseas company is resident for tax purposes.

WHAT is the UK tax rate of withholding tax on royalties?

The rate is 20% but the UK has a wide network of double tax treaties with other countries and most of these reduce or eliminate the withholding tax. However, intra-group royalty payments that relate to the exploitation or use of intellectual property in the UK and that achieve an 'artificially low' rate of tax are targeted with new withholding tax rules from April 2019 onwards.

From 6 April 2019, the offshore receipts in respect of intangible property (ORIP) regime has imposed an income tax charge (currently 20%) on the gross income that certain non-UK resident persons receive from exploiting intangible property to 'enable, promote or facilitate' UK sales. There are exemptions to these rules, most notably where the intellectual property is held in a jurisdiction which has a full treaty (i.e. a treaty with a sovereign state which includes a non-discrimination clause) with the UK.

Independent sales agents

Overseas companies frequently use UK-based agents to provide sales staff on the ground in the UK, but without the need to deal with the tax and legal implications of employing staff directly in the UK. The agent will typically fulfill the role of accepting sales orders and referring them back to the overseas principal. An agent is therefore different in nature from a distributor who purchases and resells goods on his own account.

A permanent establishment (PE) should not be created if the agent acts on behalf of the company in the ordinary course of the agent's business and is 'independent' from the company.

UK representative office

There are a range of preparative or auxiliary activities that an overseas business may wish to perform in the UK which falls short of directly making sales. For example, it may wish to collect information on the UK market, carry out technical research, or advertise the overseas business to potential UK customers.

A 'representative office' may be opened in the UK for those purposes. The term is commonly used in practice but not found in tax legislation.

No corporation tax liability will be created provided there is no UK PE. Particular care must be taken with business development functions undertaken by the representative office to ensure that these do not constitute a PE.

UK service centre

A physical base in the UK may, in some cases, be required as a service centre from which the overseas business provides support and maintenance services. Typically, the UK base will operate as a cost centre and will not directly generate additional revenue for the business.

As for representative offices, a PE and corporation tax liability will arise if the service centre generates profits on sales through the UK (or the diverted profits tax may be triggered if profits from such trading arise overseas).

A PE may not arise if sales and service functions are strictly separated, however the UK has introduced anti-fragmentation rules which mean that the business as a whole must be considered. Expert advice is therefore recommended on such structures.

Read about BDO's business planning and advisory services.

CHOOSING A BUSINESS STRUCTURE

UK BRANCH OR SALES OFFICE

Many overseas companies find that they can only develop their UK sales effectively if they employ staff directly in the UK. This could consist of one or two sales staff working from home, a sales office, or a full-blown operation. With the exception of VAT, the tax and legal implications are essentially the same – whatever the extent of the UK operations.

Where only a small number of sales staff are employed in the UK, it may be possible to prevent a corporate income tax presence of the overseas company from being created here. In order to achieve this, it is important that no contracts with customers are concluded in the UK. However, in such circumstances the diverted profits tax may well apply (at a higher rate that corporation tax). In other words, sales staff must refer all contracts to head office for approval and signature.

Business tax issues

Where there is a taxable presence in the UK, the profits attributable to the branch operations will be subject to UK corporation tax. In most cases, a UK branch permanent establishment will be taxed in the same way as a UK resident company, benefitting from various reliefs available to companies in a group relationship.

The company will be required to register in the UK for corporate income tax purposes by filing an online form within three months of the start of doing business in the UK (having first obtained a Unique Taxpayer Reference (UTR) for the company).

There also may be a requirement for the overseas company to register a UK establishment with Companies House. This will result in annual filing requirements of certain documents.

Profits of the UK branch subject to corporation tax must be calculated on a yearly basis. It is necessary to calculate the profits as if the branch is a separate legal person acting on arm's length terms with the rest of the company. Its profits are calculated by attributing to the branch turnover earned from sales generated by its activities. Expenses incurred in carrying on the UK taxable activity may be deducted, and it is possible to claim a deduction for recharges from head office for management services provided to the branch.

There is no requirement for the branch to withhold tax on the repatriation of funds back to the territory in which the company is resident.

A US company began making sales to customers in the UK. It recruited three UK sales representatives but had no fixed place of business. It was not sure whether its operations gave rise to PE and was also worried that it could be caught by the UK's diverted profits tax which had received global press attention in the wake of the Base Erosion and Profit Shifting (BEPS) project.

BDO met with the sales director to discuss its current UK activities and review its UK business plan. It soon became apparent that a permanent establishment had been created and BDO assisted the company in making a disclosure to HMRC.

UK SUBSIDIARY (LIMITED COMPANY)

Many subsidiaries set up in the UK tend to include one of the two following functions:

- Sales and distribution centres – through which the UK sales of the group are made using UK based sales staff
- Shared service centres – which carry out functions for the benefit of the rest of the group on which they earn an arm's length rate of remuneration (e.g. group R&D function).

Although setting up and running a subsidiary generally entails far greater time and cost commitments than a branch arrangement, there can be considerable benefits.

Customers and suppliers often feel more comfortable dealing with a separate UK incorporated company than a branch operation. There are also benefits in limiting the domestic tax payable by the overseas company on profits generated in the UK.

Legal requirements

The incorporation of a UK company involves drafting and filing a number of constitutional documents. The process can seem daunting to the inexperienced, but can be completed relatively quickly and painlessly with the help and advice of a professional adviser. Read more in Chapter 3.

Business tax

It is likely that the subsidiary will be treated as resident in the UK for tax purposes if it is incorporated here, although residence may be determined elsewhere if the company is effectively managed from overseas. This is a complex area and it is essential that professional advice is sought before the company is registered in the UK. If the company is UK resident it will be taxed in the UK on its worldwide profits.

Read about BDO's corporate international tax services.

CHOOSING A BUSINESS STRUCTURE

JOINT VENTURE COMPANY

Many overseas companies find it beneficial to set up a separate company through which they can establish a commercial presence in the UK. Clients and customers alike sometimes take more comfort from dealing with a UK incorporated company than a branch operation.

However, some businesses lack the funds or expertise to establish a wholly owned subsidiary, or wish to share the risk inherent in a new venture with other parties. For these reasons, they may wish to set up a UK joint venture company held jointly with one or more other companies.

The issues arising on setting up a UK joint venture are broadly the same as those for UK subsidiaries.

PARTNERSHIPS

Unincorporated partnerships may exist where two or more individuals carry on business in common with a view to a profit. There are no formalities relating to the setting up of a partnership under the Partnership Act 1890. However, an overseas company wishing to enter into partnership with one or more other individuals should ensure that a written partnership agreement clearly specifies the profit- sharing and other arrangements intended.

Partnerships have unlimited liability for losses of the business, and this is borne by the partners. It is, therefore, unusual to find partnerships used by overseas companies wishing to set up in the UK.

Partnerships are transparent with relation to corporation tax, so if the partnership is carrying on a trade in the UK through a PE, the overseas company will be liable for corporation tax on its share of the partnership profit.

LIMITED LIABILITY PARTNERSHIP (LLP)

LLPs are commonly used in the UK for various forms of commercial and investment activity such as professional services (e.g. legal, accounting), collective investment schemes and private equity backed businesses. As LLPs must have at least two members, they may also be used as a vehicle for a joint venture in the UK. For more on the legal requirements read Chapter 3.

Business tax issues

Despite having a separate legal personality from its members, LLPs - like partnerships - are transparent for UK tax purposes. There is one exception: where the LLP ceases to carry on business, the LLP will be taxed as if it were a separate company.

This transparent treatment means that everything done by the LLP is deemed to have been done by its members for tax purposes. Therefore, each member (with the exception of 'salaried' members) will be treated as self-employed and will be taxed on their share of profits, whether or not drawings are made by the member from the LLP.

In the same way, if the LLP disposes of assets, those assets are deemed to have been disposed by the members for tax purposes and the members will be allocated shares of gains or losses under the LLP's asset sharing agreement.

The LLP does not have its own tax liability. However, a partnership tax return does need to be completed, from which the members' tax may be calculated.

Where a non-resident company is a member of an LLP, it will only be subject to tax on a share of the UK profits of the LLP. If the LLP has trading activities outside the UK, non-resident members will not be subject to UK tax on the profits arising from these activities. However, specific anti-avoidance rules exist to tax profits on the individual partners where profits are artificially allocated to corporate entities.

Read about BDO's services for partnerships.

CHOOSING A BUSINESS STRUCTURE

KEY TAX PRINCIPLES

CORPORATION TAX

It is necessary to establish whether the overseas incorporated company is UK tax resident and, assuming it is not, whether or not it has a PE in the UK.

UK tax residence of companies

A UK resident company is liable to corporation tax on its worldwide profits, including capital gains. A company is resident in the UK if it is incorporated in the UK, or if it's central management and control is in the UK.

A non-UK resident company is liable to corporation tax on the profits of a trade carried on through a PE in the UK. The UK also levies a two percent tax on UK digital services revenues, arising in connection with certain types of digital services activities (i.e. social media service, Internet search engines and Online marketplaces) that are attributable to UK users.

It will be liable for corporation tax on capital gains on assets situated in the UK relating to that trade.

Read about BDO's corporation tax services.

Permanent establishment (PE)

There are two types of UK PE:

- A fixed place of business through which the business of the overseas company is carried on, or
- A dependent agent which possesses, and habitually exercises in the UK, authority to do business on behalf of the overseas company.

A company is not regarded as having a PE where the activities at the fixed place of business are only of a preparatory or auxiliary nature.

This might include the purchase, storage, display or holding of goods for processing by the company or another person.

For an overseas company not subject to diverted profits tax (see page 28), a PE represents the minimum level of substance in the UK, below which there should be no liability to UK tax on profits at all.

Base Erosion and Profit Shifting (BEPS)

BEPS is a term used to describe tax planning strategies that rely on mismatches and gaps that exist between the tax rules of different jurisdictions, to minimise the overall tax payable - either by making tax profits 'disappear', or shifting profits to operations in low tax jurisdictions where there is little or no genuine activity.

Following the major Organisation for Economic Cooperation and Development (OECD) project on BEPS the UK has adopted many measures to counter such activity by international groups.

For example, the UK has introduced new concepts into its law, and in some cases tax treaties, in a number of ways including:

- Introduction of measures to counter the use of hybrid entities and instruments taking advantage of mismatches in tax legislation between the UK and other countries
- Rules to restrict the amount of interest deduction companies can claim on intra-group debt – read more here
- A Diverted Profits Tax to tackle manipulation of the UK rules on permanent establishments.

CHOOSING A BUSINESS STRUCTURE

DIVERTED PROFITS TAX (DPT)

DPT applies to large businesses which enter into arrangements to divert profits from the UK in two situations:

- A person carries on activity in the UK in connection with sales, but that activity does not create a PE in the UK. An exception applies if UK-related sales are less than £10m, or UK-related expenses are less than £1m
- A UK resident company, or a UK PE of a non-UK resident company, is party to one or more transactions with a connected company with little economic substance in order to exploit tax mismatches.

The rate of DPT is 25%, which is higher than the rate of corporation tax (currently 19%, and 17% from April 2020). Companies have a duty to notify HMRC that they are within the regime, and registration is required within three months of the end of the accounting period in which chargeability arises.

Read more on DPT.

VALUE ADDED TAX (VAT)

An overseas business may have VAT obligations in respect of its UK activities, whether or not it has a physical business establishment in the UK. A 'business establishment' in the UK for VAT purposes is either:

1. The place where essential management decisions are made, and the business's central administration is carried out, is in the UK, or
2. The permanent place with the human and technical resources to make or receive taxable supplies, is in the UK.

This is not necessarily the same thing as a PE for corporation tax purposes. An overseas business without a business establishment in the UK must also register for VAT in the UK if it makes taxable supplies of goods and services in the UK in the course of its business (irrespective of the value). Post-Brexit, this includes all EU based businesses.

However, there is no need to register if the only UK supplies are supplies of services on which the business customer is liable to account for any VAT due under the 'reverse charge' procedure.

The rules governing cross-border supplies of goods and services are complex and depend, among other things, on whether it is goods or services that are being supplied and whether the customer is a business or a consumer. Professional advice is essential.

The UK's existing VAT legislation is based on core EU law, so the Government may decide to make some changes now that the UK has left the EU. However, VAT has proved a highly efficient way of gathering tax in the UK and it is therefore unlikely that major changes will be implemented, in the short term at least. Read more on VAT.

PAYROLL TAXES

UK employers, including UK subsidiaries and UK branches, are required to register with the UK tax authorities (HMRC) as a new employer under Pay-As-You-Earn (PAYE). A payroll system will also need to be operated through which the salaries of UK staff are paid, and income tax and national insurance contributions are withheld and sent to HMRC. Read more in Chapter 8.

COMPANIES HOUSE REGISTRATION REQUIREMENTS

If the overseas company does not maintain a place in the UK at which it may be contacted, there is no requirement to register the company with UK Companies House. However, and irrespective of whether or not a PE has been created for corporation tax purposes, registration with Companies House will be required if there is physical location in the UK at which the overseas company may be contacted. Read more in Chapter 3.

chapter 03

HOW TO SET UP A BUSINESS ENTITY IN THE UK

HOW TO SET UP A BUSINESS ENTITY IN THE UK

In the UK, businesses take various different legal forms, and there are many factors to consider when deciding what legal identity a business should take, for example, taxation considerations. In this decision-making process, the advantages and disadvantages of the relevant business model must be examined carefully.

WHICH ENTITY?

Whilst there are many legal forms, and advice should be sought to obtain the right structure for your business, by far the most common is a private (or sometimes public) company limited by shares.

Other structures available in the UK include unincorporated businesses, partnerships, Limited Liability Partnerships, Trusts and social business organisations such as Community Investment Companies. Some organisations are regulated by other bodies and legislation either in addition to, or separate to, UK Company Law depending on the activities they undertake and their legal structure. In some circumstances, where the main trading entity is overseas, a UK Establishment (formally known as a branch) can be the best solution (see Branch or place of business in the UK for more detailed information on UK Establishments).

COMPANIES

PRIVATE LIMITED COMPANIES

A private limited company (Ltd) is a legal entity - a separate 'person' under UK law. This basic principle means that a company can hold assets in its own right, conduct business, employ people, sue and be sued, and, importantly, it can outlive its directors and shareholders.

The shareholdings of a limited company determine its ownership and the business can be transferred in part or in whole to other owners by a simple transfer of shares. This represents a significant advantage over a sole trader or traditional partnership.

Another major benefit to individuals conducting business through a limited company is the principle of limited liability. This means that the personal assets of the shareholders/owners of the limited company are not normally at risk should the company fail and enter liquidation or administration.

Similarly, directors of a failed company are not normally personally liable for debts of the company. Limited liability restricts the ability of an administrator to recover any shortfall from a company's shareholders to the limit of the value of shares registered in a shareholder's name that are unpaid at the time of entering liquidation or administration.

Key points:

- Private limited company with shares – minimum one share, maximum unlimited
- Suitable for any normal commercial trading purposes
- Suitable for the vast majority of businesses in the UK
- Can undertake any nature of business
- Can operate anywhere in the world
- Must file annual Confirmation Statements and Annual Accounts with Companies House
- Members have limited liability
- Can have a sole director and sole shareholder
- Limited companies are often advantageous for their shareholders regarding taxation.

PUBLIC LIMITED COMPANY

Many private companies choose to become public limited companies once they have become well established. A public limited company (plc) differs from a private limited company, primarily in that it can sell its shares to the public. However, many plcs are effectively privately owned until, or if, they become listed on either the London Stock Exchange or the Alternative Investment Market (AIM).

There is no obligation for a plc to offer its shares to the public or, indeed, to become a listed company. It is also possible to convert a private company to a public company, and vice versa. Many companies that have become listed plcs started life as private limited companies.

HOW TO SET UP A BUSINESS ENTITY IN THE UK

SPECIAL CONDITIONS

- A plc must have a minimum issued capital of £50,000
- At least 25% (£12,500) of this minimum must be fully paid up before the Registrar of Companies can issue a Certificate for Commencement of Trading (this Certificate must be issued before the company commences any business transactions)
- A plc must have at least two directors
- A plc must have a Company Secretary who has the necessary professional qualification.

Key points:

- A plc is the only type of company that can offer its shares to the public
- Can be listed on the Stock Exchange
- Can undertake any nature of business
- Can operate anywhere in the world
- Shareholders have limited liability
- High initial capital commitment
- Must file annual Confirmation Statements and Annual Accounts with Companies House.

Read about BDO's company formation and secretarial services.

A US-based international oilfield services company with interests in North America, South America, Africa and Southeast Asia, aspired to increase growth by expanding into new geographical markets.

With no presence in the UK, the company had little knowledge of UK company legislation and initially wanted to set-up a hub and finance company. The company established two private limited companies. BDO advised that they should instead establish a UK holding company. The company has continued to require advice on UK statutory requirements and on-going changes to legislation.

PRIVATE COMPANY LIMITED BY GUARANTEE

A guarantee company does not have a share capital, but has members who become guarantors instead of shareholders. The guarantors give an undertaking defined in the company's Articles of Association to contribute a nominal amount towards the winding up of the company in the event of a shortfall upon cessation of business.

A guarantee company cannot distribute its profits to its members, and is therefore eligible to apply for charitable status. Common uses of guarantee companies include clubs, membership organisations, sports associations and charities.

Key points:

- Non-profit corporate entity – assets or financial surplus cannot be distributed to members
- A guarantee company is not owned by its members and cannot be transferred by its members for value – it has no share capital
- Suitable for clubs, membership organisations, sports associations, etc.
- Can apply for charitable status
- Must file annual Confirmation Statements and Annual Accounts with Companies House
- Members have limited liability
- Some input required from client to establish main objects if required, or objects can be unrestricted.

UNLIMITED COMPANY

It is possible to create an unlimited company, with or without a share capital, which operates in a similar way to a limited company, without filing a set of accounts. However, the key difference is that the company members or shareholders have a joint and several obligation to meet any shortfall in the assets of the company to meet its debts (in much the same way as a general partnership). This has clear disadvantages for owners.

In return for taking this risk, an unlimited company is not required to file accounts publicly at Companies House so is sometimes used as a service company, for example to provide payroll for employees.

LEGAL REQUIREMENTS FOR COMPANIES

Companies are incorporated under the Companies Act 2006. The Act is overseen and administered by Companies House in Cardiff, Wales. The most important company documents that needs to be drafted are the Articles of Association ('Articles'). The Articles set out the rules for the running and regulation of the company's internal affairs including placing restrictions on the scope of its activities if appropriate.

The Companies Act 2006 provides model articles which a company adopts by default but custom articles can be drafted by a lawyer, or other suitably qualified professional, to cover all manner of situations regarding the directors, shareholders and share rights.

In addition, officers (directors) of the company must be appointed, and the owners must subscribe and pay for shares in the company if it is to be limited by shares. An accounting reference date must be set for the company, and accounts must be prepared based on the results and financial position of the company up to each accounting reference date.

HOW TO SET UP A BUSINESS ENTITY IN THE UK

BRANCH OR PLACE OF BUSINESS IN THE UK

Statutory accounts need to be filed at Companies House within nine months of the financial year end for all forms of private company and within six months of the financial year end for public companies. Accounts may need to be audited by a qualified independent auditor, depending on various factors including UK auditing thresholds for companies and groups. All public companies are required to have their accounts audited.

A Confirmation Statement must also be filed at least once every 12 months at Companies House and must include details of, for example, changes to shareholder information, changes to share capital, changes to the company's SIC code (which defines its business activities) and changes to the PSC's ('persons with significant control'). Companies are now required to maintain a PSC Register detailing individuals or UK entities having a controlling interest of 25%+ in the company. We recommend specialist advice is sought regarding this requirement. You can find out more in the section on the financial reporting and audit requirements.

An annual general meeting (AGM) must be held each year by public companies. Although many private companies also hold an AGM, this is not a legal obligation and they can opt to deal with many matters by written resolution instead.

However, a meeting would still need to be called to dismiss a director or remove an auditor before the end of its term of office. There are many other rules governing the way UK companies are administered (set out in the Companies Act 2006).

BRANCH OR PLACE OF BUSINESS IN THE UK (UK ESTABLISHMENT)

An overseas company planning to expand into the UK may choose to set up a branch through which to carry on business (now known as a 'UK Establishment'). Since a UK Establishment is the same legal entity as the overseas parent company, the overseas parent will be directly responsible for liabilities incurred by its UK establishment and will need to execute all contracts made on behalf of the UK Establishment. UK Establishments can, however, be registered for corporation tax, VAT and run payrolls for employees.

The Companies Act 2006 (together with associated regulations) is the main piece of legislation governing UK Establishments of overseas companies.

Under the regulations, a foreign company must, within one month of opening a UK Establishment, register prescribed particulars of the foreign company and the UK Establishment with the Registrar of Companies (who has the authority for the administration of UK companies) including:

- A certified copy of the foreign (parent) company's constitutional documents (with a certified translation if they are not in English)
- Details of the directors and secretary of the foreign company, and
- The name and address of any permanent representative or person authorised to accept service of documents on behalf of the foreign company in respect of the UK Establishment.

A UK Establishment has two distinct appointments other than the officers of the overseas company:

- Permanent representative (mandatory but doesn't need to be in the UK)
- Person authorised to accept service (discretionary but does need to be in the UK).

Read about BDO's company formation and secretarial services.

An internationally-focused company, headquartered in the United States offers logistical support services in many remote and complex environments throughout the world. The company currently does not have any presence in the UK.

The business required assistance with the initial company formation formalities including the provision of statutory registers, dealing with share allotments and the issuing of certificates.

WHERE does a non-UK company have to file annual accounting documents?

In most cases, the foreign company is required to file accounting documents with the UK Registrar of Companies for each financial period. The specific filing requirements vary, depending on factors such as whether the foreign company is required to prepare and disclose accounts under its parent law, whether it is a credit or financial institution, and whether it is incorporated in a state in the European Economic Area (EEA).

HOW TO SET UP A BUSINESS ENTITY IN THE UK

PUBLIC LISTING

PUBLIC LISTING

Companies seeking admission to a public market in the UK have several choices of market depending on their size, stage of development, complexity of the securities being offered, business objectives, proposed investor type, and eligibility for the particular market.

London Stock Exchange plc is one of the world's oldest stock exchanges and the most international with around 2,500 companies from 70 countries admitted to trading on its markets, approximately a quarter of them being international companies. Other exchanges operating in the UK include Aquis Stock Exchange Main Market and Aquis Stock Exchange Growth Market, which are smaller and not covered in this article.

THE LONDON STOCK EXCHANGE'S MARKETS

The London Stock Exchange offers the following markets:

	SECURITIES ADMITTED TO OFFICIAL LIST	SECURITIES NOT ADMITTED TO THE OFFICIAL LIST	
EU-Regulated Market	Main Market - Premium listing Main Market - Standard listing	Main Market - High Growth Segment	Specialist Fund Market
Exchange-regulated Markets	Professional Services Market	AIM	

When applicable, responsibility for the approval of prospectuses and admission of companies to the Official List lies with Financial Conduct Authority (FCA). The Exchange is then responsible for the admission to trading of companies to the relevant markets. Markets are designated as 'UK-regulated markets' or 'Exchange-regulated markets'. The rules that apply to UK-regulated markets are heavily influenced by the UK versions of EU Regulations and Directives, whereas exchange-regulated markets operate in a lighter regulatory environment with a greater emphasis on rules imposed by the exchanges themselves.

The Main Market is London's flagship UK-regulated market for larger, more established companies:

- The Premium Segment is only open to equity shares issued by trading companies and closed and open-ended investment entities. Issuers with a Premium listing are required to meet the UK's 'super-equivalent' rules (including strict eligibility requirements) which are higher than the minimum requirements set out in the UK version of the EU's requirements.
- A Premium Listing means the company is expected to meet the UK's highest standards of regulation and corporate governance and, as a consequence, it may achieve a lower cost of capital through greater transparency and enhanced investor confidence
- The Standard Segment is open to issuance of equity shares, Global Depositary Receipts, debt and securitised derivatives, with issuers required to comply with the UK version of the EU's minimum requirements. A Standard Listing allows issuers to access the Main Market by meeting the UK version of the EU's harmonised standards only rather than the 'super-equivalent' requirements
- The High Growth Segment (HGS) is designed specifically for high growth, revenue generating businesses which are incorporated in an EEA state and that, over time, are aspiring to join the Premium Segment. HGS has UK-regulated market status but sits outside the UK's Listing Regime. HGS companies would, therefore, be subject to London Stock Exchange's HGS Rulebook and existing Admission and Disclosure Standards. In addition, as a UK-regulated market, the relevant UK versions of EU Directives (including the Prospectus Directive, Transparency Directive and the Market Abuse Directive) apply.

The Specialist Fund Segment (SFS) is a segment of London Stock Exchange's regulated Main Market and is designed for highly specialised investment entities that wish to target institutional, highly knowledgeable investors or professionally advised investors only. The SFS appeals to a variety of different types of investment managers, including those managing large hedge funds, private equity funds, and certain emerging market and specialist property funds, seeking admission to a public market in London.

The Professional Securities Market (PSM) is a specialised market designed to suit the specific needs of issuers. It facilitates the raising of capital through the issue of specialist debt securities or depositary receipts to professional investors. As an exchange-regulated market, the PSM enables issuers to enjoy the benefits of a flexible and pragmatic approach to regulatory requirements.

For example, issuers are allowed to report historical financial information under domestic accounting standards, rather than IFRSs, in both listing documents and annual accounts.

AIM is an exchange-regulated market for smaller, growing companies and is one of the most successful growth markets in the world. It offers the benefits of a balanced approach to regulation, which is suited to smaller and emerging companies.

HOW TO SET UP A BUSINESS ENTITY IN THE UK

PARTNERSHIPS

Post Brexit, the UK Government will seek to maintain the strength of the UK financial sector and access to, and for, European businesses so it is possible that common standards will need to be maintained to achieve this.

Read about BDO's capital markets services.

WHAT types of advisers will we need to 'float' in the UK?

Completing a successful flotation process typically involves using investment banks, lawyers, accountants, public relations and investor relations firms. The importance of planning and preparing a company for flotation cannot be over-emphasised: BDO can guide businesses through the process.

PARTNERSHIPS

After companies, partnerships are the most commonly used business structure in the UK: there are three main types of legal partnership.

GENERAL PARTNERSHIP

Where two or more persons (including non-natural persons) carry on a business to generate a profit as co-owners, this will be treated as a partnership. All partners are general partners and have joint unlimited liability for the partnership's debts. If there is no written partnership deed setting out respective rights and obligations, the default position is that all partners share profits and liabilities equally and have authority to act as agent for the partnership. This gives little legal protection for the participants but is easy to create. General partnerships are tax transparent and each partner returns their own share of the partnership's profits on their own tax return.

LIMITED PARTNERSHIP

Here the partnership is formed with one or more general partners and one or more limited partners. Like general partnerships, Limited Partnerships are tax transparent. Limited partners share in the partnerships profits but do not take part in the active management of the Limited Partnership, which is conducted by the general partner(s) on their behalf.

However, a limited partner's personal liability is limited to the capital they contribute to the partnership. Due to the combination of flexibility, limited liability and tax transparency, Limited Partnerships are extensively used as investment vehicles by the asset management industry. Limited partnerships registered in either England, Wales or Northern Ireland have no separate legal personality from the partners. In contrast, Scottish limited partnerships (SLPs) have a separate legal personality which means that the SLP itself can own assets, enter into contracts and sue or be sued, etc. SLPs are commonly used commercially where a partnership is needed to act as a limited partner in another Limited Partnership, for example, as a carried interest vehicle. However, they are now subject to new transparency rules (see Trusts below) as the Government suspects that many have been used for illegal activity.

LIMITED LIABILITY PARTNERSHIP

The UK Limited Liability Partnership (LLP) structure gives its owners the benefit of limited liability whilst retaining many of the characteristics of a traditional business partnership. Generally speaking, an LLP is tax transparent and taxed in much the same way as a non-general partnership. Unlike a limited company, an LLP has no Articles of Association, but is usually governed by a Partnership Agreement which determines how the business structure works, sets out responsibilities of those involved, and provides dispute resolution and exit strategies.

Like a limited company and SLP, the LLP is a separate legal entity. Whilst the LLP itself is responsible for its assets and liabilities, the liability of its members is limited and the members' assets are protected in the event of winding up the business. As with limited companies, however, legal action may be taken against individual members who are found to be negligent or fraudulent in their dealings.

Any firm consisting of two or more members engaged in a profit-making venture may become an LLP. The LLP must be formally incorporated and register its members with Companies House. This can be done by completing an application form which is returned to Companies House along with a fee. The LLP must have at least two designated members who have more responsibilities than ordinary members. These responsibilities include registering the partnership with HMRC for income tax and VAT purposes, appointing auditors, keeping accounting records and sending accounts and Confirmation Statements to Companies House.

HOW TO SET UP A BUSINESS ENTITY IN THE UK

An LLP is a body corporate in law and many of the regulations written into the Companies Act 2006 apply equally to LLPs as well as to limited companies, including the rules relating to the name of the LLP, and many of the requirements for filing of information at Companies House.

As with any business partnership, it is vital that the partners draw up a suitable written agreement to determine issues such as control, division of revenue and exit strategies.

Key points:

- LLPs are suitable for new and existing partnerships wishing to obtain limited liability status, and are aimed particularly at professional partnerships such as accountancy and solicitors' firms
- Maintains tax status of a partnership
- All members have limited liability
- Suitable for many commercial business activities where the owners wish to maintain elements of trading as a traditional partnership
- Must file Confirmation Statements and Annual Accounts with Companies House
- Professional advice on tax matters must be sought before making decisions.

Read about BDO's partnerships tax services.

TRUSTS

UK law allows an individual to create a relationship under which one or more persons (the trustees) hold and manage that individual's property subject to certain duties, i.e. to use and protect it for the benefit of the individual and/or others. Such 'trusts' can take many forms and are used for many purposes which can include holding shares in a family company or other business or pension scheme assets.

Many business structures, particularly family businesses, include a trust to protect the business assets and ensure continuity down the generations. In the past, trusts have also been used to ensure business ownership privacy. However, recent UK laws on transparency now mean that 'persons with significant control' over a UK company or LLP (or SLP) must be disclosed on the public register maintained by Companies House. These rules look through trusts and an individual who has significant influence or control' over a trust (e.g. has a right to direct and or replace the trustees) must be disclosed as a 'person with significant control' where the trust controls a UK company. If a trust incurs a UK tax liability or is a UK express trust, details of the settlers, trustees, beneficiaries and assets must be added to the HMRC Trust Registration Service. Access to this service is restricted to those with a 'legitimate interest' who can provide evidence of counter money laundering or terrorist financing activity and to government departments.

chapter 04

ACQUIRING AN EXISTING COMPANY

CONTENT

ACQUIRING AN EXISTING COMPANY

THE UK MARKET

Buying an existing company may be a quick way to acquire a profitable UK business with an established customer base, goodwill and supplier relationships but the costs and risks can be nearly as high as starting a new business.

Under UK law, the historic liabilities of the business stay with it no matter who the new shareholders are.

So, in many cases, simply acquiring the particular trade and assets that the business really wants, rather than the whole company, is the best option. However, for tax reasons, the vendors will often prefer a share sale.

When a UK company is acquired, it is not necessary to re-register the company with UK Companies House or HMRC – registrations completed when the company was originally set up continue.

However, that does not prevent the new parent company amending the company's existing articles of association to ensure they meet its needs, for example, by removing any restrictions on the issue of new shares.

The ongoing legal, accounting and tax requirements of an acquired company will be exactly the same as those for a company which has been set up from scratch.

Read about BDO's mergers and acquisitions services.

THE UK MARKET

The UK has one of the most mature mergers and acquisitions markets in the world, with experienced advisers, a clear legal system, exceptional talent, access to funding, and well established custom and practice.

The UK also benefits from having Europe on its doorstep, close relations with the US, and the Commonwealth opening up many of the fastest growing economies on the planet. Combine this with a culture of entrepreneurial and innovative thinking, and UK companies are naturally a target for international investors.

KEY STEPS

Once a non-UK business has a clear idea of what sort of UK business is to be bought, there are numerous advisers (including professional services firms and investment banks) who can help a potential buyer to map the market and help identify potential investments.

Having identified a target, those advisers can then facilitate an introduction whilst maintaining confidentiality for the potential buyer, and provide support around the valuation and transaction structuring.

WHAT are 'heads of terms'?

'Heads of terms' (also known as 'letters of intent' and 'memoranda of understanding'), is an initial document which sets out the key parameters of the deal (e.g. valuation, timetable, due diligence requirements and the key conditions). Usually, these heads of terms are not legally binding but clauses setting out an exclusivity period and confidentiality clauses should be legally enforceable.

The identification of the target and negotiation of the heads of terms will usually be based on limited information, provided by the target through its advisers.

A formal 'due diligence' process allows the buyer's advisors to find out more about the business and subject the information available to independent scrutiny to give the buyer a clear understanding of the target's viability and value.

ACQUIRING AN EXISTING COMPANY

KEY INBOUND TAX CONSIDERATIONS

DUE DILIGENCE

Due diligence is not a legal requirement so there are no UK laws setting out the process. In the UK, it is common for vendors to commission independent vendor due diligence for potential investors. It is equally common for potential investors to engage an adviser to comment on and 'top up' this work and suggest what legal protection should be sought through warranties and indemnities to be incorporated in the acquisition agreement. Read more on this process on page 42.

Read about BDO's mergers and acquisitions services.

WIDER CONSIDERATIONS

The consideration of a suitable acquisition candidate clearly involves a wider range of issues than are detailed in this section. The compatibility of systems and processes, corporate culture and management style, to name a few.

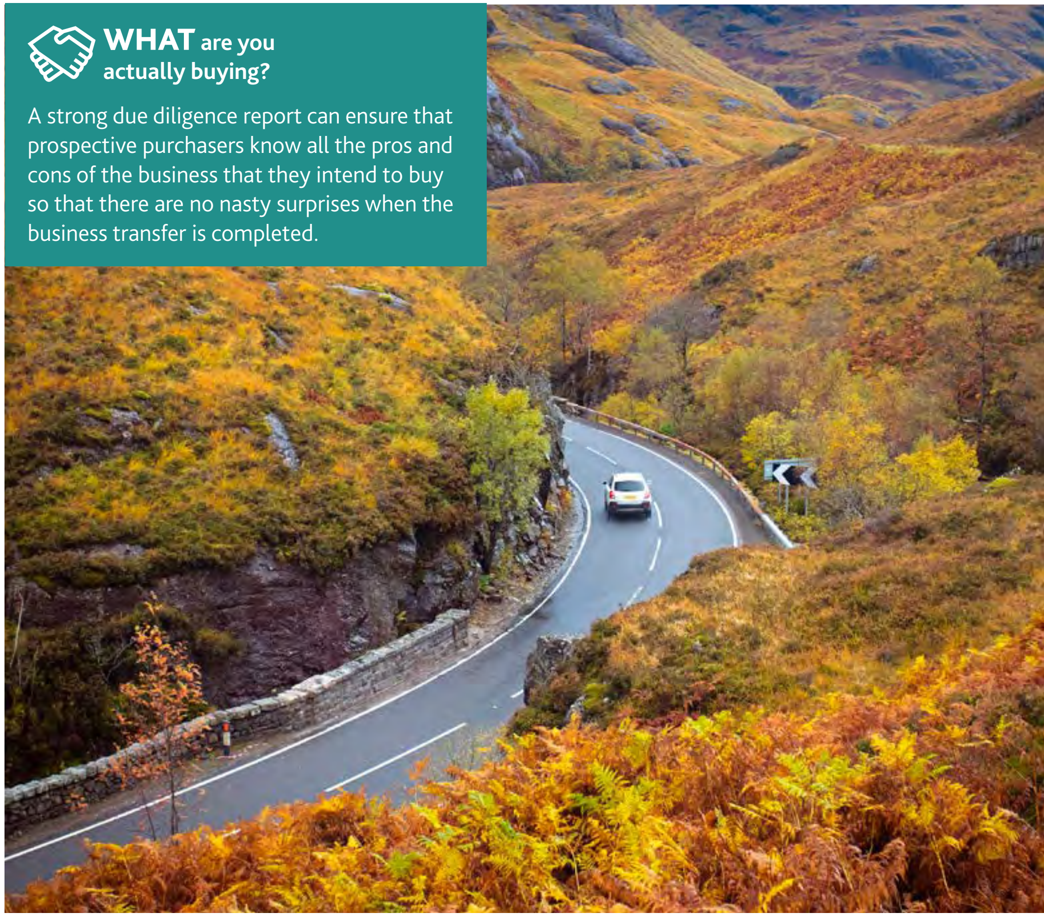
KEY INBOUND TAX CONSIDERATIONS

There are a number of tax implications which may influence how non-UK investors structure the acquisition of an existing UK operating company. The table that follows addresses the tax position of the purchasing company. However, some consideration of the vendor's tax position is necessary: the more a purchaser understands the vendor's position and motivations the easier it is to negotiate acquisition terms that are acceptable to all parties.

The table on the next page provides a high level overview of the main tax consideration we cover in this chapter. This should not be considered an exhaustive list and other tax consequences may be encountered in practice.

WHAT are you actually buying?

A strong due diligence report can ensure that prospective purchasers know all the pros and cons of the business that they intend to buy so that there are no nasty surprises when the business transfer is completed.



ACQUIRING AN EXISTING COMPANY

<table>
<tr><th>TAX CONSIDERATIONS</th><th>ASSET PURCHASE</th><th>SHARE PURCHASE</th></tr>
<tr><td rowspan="2">Purchaser</td><td>▶ Stamp Duty Land Tax (Land and Buildings Transaction Tax in Scotland) payable within 30 days on land/property involved
▶ VAT may apply to the purchase price (can be exempt subject to certain conditions)
▶ Increase in tax base cost of assets acquired
▶ Capital allowances available on property (subject to joint election), but the tax losses of the target are left behind
▶ The acquiring company must register for UK taxes with HMRC (corporation tax, VAT, and payroll taxes), but tax history of target remains with the vendor.</td><td>▶ Stamp Duty payable within 30 days on land/property involved
▶ No VAT applicable (but recovery of VAT on advisors' fees relating to the deal if more complex)
▶ No increase in the tax base cost of the underlying assets
▶ Acquire the tax attributes of the company (tax losses and capital allowances) subject to anti-avoidance provisions
▶ Inherit the tax history of the company (with protection afforded via tax warranties and indemnities).</td></tr>
<tr><td colspan="2">▶ What type of entity to use for the acquisition
▶ How to finance the acquisition (debt or equity)
▶ Future exit strategies.</td></tr>
<tr><td>Vendor</td><td>▶ Taxable disposal subject to corporation tax less any base cost of the assets sold
▶ Generally no base cost for internally generated intangibles (e.g. goodwill) leading to potentially significant taxable profits for the vendor
▶ Consideration would then need to be given to the personal tax implications of the ultimate shareholder in terms of extracting the cash from the company.</td><td>▶ If the vendor is an individual, subject to capital gains tax but could qualify for lower tax rate if entrepreneurs relief applies
▶ If the vendor is a company, the disposal may be tax-free under the substantial shareholding exemption.</td></tr>
</table>

ACQUIRING AN EXISTING COMPANY

WHAT TO BUY: ASSET PURCHASE

Generally, it is more common in practice to see acquisitions structured as a share purchase than as a trade and assets sale.

Although there may be other commercial and practical considerations, from a tax perspective the primary reason for this is the availability for the vendor of a tax-efficient exit (see further comments in Chapter 5).

ASSET PURCHASE

Suppose, as illustrated below, that a new UK limited company ('UK Newco') is to be incorporated to facilitate a trade and asset purchase from the vendor company ('UK Target'). There are also other UK business entities (such as Limited Partnerships or LLPs) which could be utilised to facilitate such an acquisition.

The UK Newco will have an obligation to register with HMRC for corporation tax, VAT (sales tax) and payroll taxes.

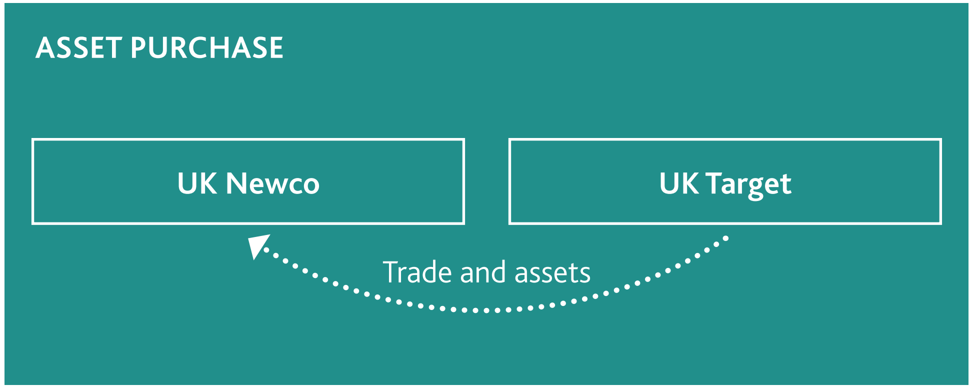
The following taxes will be relevant in a trade and asset purchase from UK Target.

VAT

No VAT applies to the transaction where the purchase qualifies as a Transfer of a Going Concern (TOGC) for VAT purposes. To qualify as a TOGC there are many detailed conditions to be met and prospective purchasers should take expert advice well in advance of any transaction.

If the purchase will not meet the conditions to qualify under the TOGC rules then VAT at 20% would be added to the price. Depending on the trade undertaken by UK Newco, it may be possible to recover the VAT – although this may not be recovered for a period of months and may have a negative impact on the cash flow of UK Newco.

Read about BDO's VAT services.



STAMP DUTY LAND TAX (SDLT)

As discussed in Chapter 6, purchasers must pay SDLT (or Land and Buildings Transaction Tax in Scotland or Land Transaction Tax in Wales) if they buy property or land over a certain price in the UK (note that SDLT rates may be substantially higher if acquired property contains 'residential' elements). SDLT also applies to purchases of certain rights over land, for example, if UK Target has any leasehold interests. Any SDLT must be paid by the purchaser within 30 days of the transaction date on the total consideration (i.e. the price paid for the property or land, and any assets, fixtures, goodwill, fittings and any VAT paid). An SDLT return must be filed within 14 days of completing the land transaction.

Where the sale price includes payment for other assets (such as moveable machinery) these assets must be valued at a rate reflecting their fair market value and deducted from the consideration for SDLT purposes. Such an allocation of the purchase price should be included in the asset purchase agreement. It is important to give thought (and to seek necessary advice) in the early stages of any purchase as to how the consideration will be split and the tax implications, and to enlist the help of a valuations expert.

Read about BDO's real estate tax services.

ACQUIRING AN EXISTING COMPANY

CORPORATION TAX – CAPITAL ALLOWANCES ON A PROPERTY PURCHASE

When a property is acquired, if the vendor has been claiming capital allowances in respect of plant and machinery within the building, an attribution of the sale proceeds will need to be made in respect of assets which qualify for capital allowances.

This figure will need to be brought into the vendor's capital allowance computations included within their final tax return. Similarly, UK Newco will need a figure on which to claim allowances in future.

The parties must, under UK tax legislation, enter into a formal election to fix the values of the assets for capital allowance purposes (or apply to the Tax Tribunal for a value to be determined). How this is structured can have immediate tax implications for the vendor and ongoing implications for the purchaser so expert advice is needed in this area.

A buyer of a 'second-hand' building can also only obtain capital allowances if the vendor has 'pooled' its capital expenditure – this is another issue that purchasers will need to investigate at an early stage in the due diligence process to avoid potential loss of valuable allowances.

Read about BDO's capital allowances services.

CORPORATION TAX – TREATMENT OF PURCHASED GOODWILL

A general benefit of an asset purchase is that, for tax purposes, it increases the base costs (recorded value) of the assets to the price paid. However, there is no corporation tax relief for companies that write off the cost of purchased goodwill and certain customer related intangible assets (where not acquired with 'qualifying intellectual property' such as patents or licences), on the acquisition of a business from a third party. Any taxable profit or tax loss would crystallise when such an asset was subsequently sold. Where acquired with qualifying IP, some restricted relief may be available in respect of such asset purchases.

In contrast, the write off of the cost of other intangibles not included within the definition of goodwill and customer related intangibles above, is generally treated as deductible for corporation tax purposes.

Read about BDO's mergers and acquisition services.

WHAT tax liabilities will arise if the transaction is structured as an asset purchase?

There can be both VAT and SDLT liabilities to be paid if a purchaser opts to buy the trade and assets of a business rather than buying the whole company. However, the risks of acquiring the company's other obligations associated with the individual assets can also be high so careful research will usually be needed.

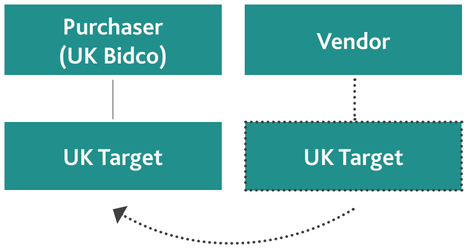
ACQUIRING AN EXISTING COMPANY

WHAT TO BUY: SHARE PURCHASE

SHARE PURCHASE

If shares in the UK Target company are acquired, all its assets, past liabilities and obligations are acquired. To avoid taking on hidden liabilities (e.g. claims from customers triggered by failure of goods bought years ago or claims arising for incorrect advice given in the past), purchasers usually prefer to undertake an asset purchase (and acquire only the specific assets and liabilities agreed). However, from a vendor's perspective, a share sale is normally preferred as this often enables a tax-efficient exit and achieves a clean break with the business sold.

Suppose a new UK Limited company ('UK Bidco') will be incorporated to facilitate the purchase of the shares in UK Target, as illustrated below:



As the tax history of UK Target will be acquired along with the shares of the company, it is normally recommended that a comprehensive due diligence exercise is undertaken.

There is no 'standard' tax due diligence exercise. Each acquisition will have a different risk pattern, and will also be dependent on the nature of the underlying business, the market in which it operates, and the attitudes of the vendor and purchaser to risk. The due diligence exercise will normally include a review of the main UK taxes for a period of up to four years (four years represents the default time period that HMRC can make a 'discovery assessment' on historic tax liabilities). Note though that these time limits are amended to six years and 20 years for cases involving careless and deliberate action respectively by the taxpayer).

There are key benefits of a tax due diligence when undertaking a share purchase. It should:

- Reveal any historical or future tax exposures or any unfunded tax liabilities which could impact price negotiations (i.e. whether or not filings and payments are complete and up-to-date)
- Provide a clear picture of the tax affairs of UK Target including quantifying any 'tax assets' being acquired (i.e. losses or capital allowance pools)
- Identify any potential tax charges that may be triggered by a change in ownership (i.e. degrouping charges) so that such issues can be factored into the proposed transaction structure.

TAX INDEMNITIES AND WARRANTIES

Typically, a buyer will seek protection against any potential tax liabilities inherited from the vendor. A tax due diligence exercise will help decide the scope of tax indemnities and warranties to be included in the Share Purchase Agreement (SPA). The warranties and indemnities, and any limitations on their application, will be an important – and potentially substantial – part of the negotiation process. It is critical to seek the necessary legal and tax advice in this process.

TAXES TRIGGERED ON A SHARE PURCHASE

The acquisition of the shares in UK Target will give rise to stamp duty of 0.5% payable in respect of the consideration for the shares. The stamp duty and supporting documents must be provided to HMRC within 30 days of the acquisition.

If UK Target owns property with 'residential' elements, then an Annual Tax on Enveloped Dwellings ('ATED') return and potential charge (dependent on property value) may apply – reliefs are available in certain instances though.

Unlike an asset purchase, there is no VAT applicable on a share purchase. No tax relief will be available for the underlying or consolidated goodwill bought.

Other key tax considerations in a share purchase acquisition include:

- The recovery by the purchaser of any input VAT paid on the fees charged by its advisors (i.e. lawyers, tax advisors etc.) – specific guidance should be sought at the earliest stages of planning an acquisition
- Under UK tax rules, trading losses can be carried forward indefinitely and offset against future trading profits but there are conditions to be met and specific anti- avoidance provisions (in order to target 'loss buying' situations)
- From 1 April 2017, UK corporate loss rules have been made more flexible in that (broadly) all tax losses arising after 1 April 2017 (except capital losses) will be available to offset against any other type of income in any UK 'Group' company. In addition, under these changes groups will (broadly) only be able to shelter 50% of their tax adjusted profits over £5m with brought forward losses. Where groups are utilising their £5m allowance, there are administrative procedures which are required to be followed. Note that there are also anti-avoidance provisions to counter 'corporate loss buying'.

Read about BDO's mergers and acquisition services.

ACQUIRING AN EXISTING COMPANY

CORPORATION TAX - TREATMENT OF WRITE DOWN OF INTANGIBLES

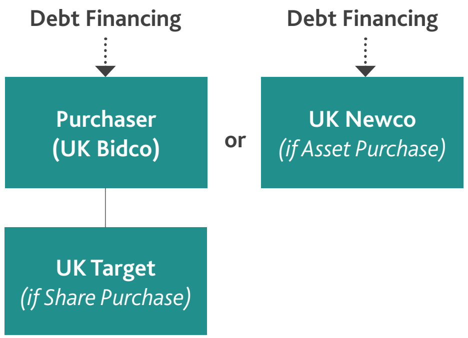
CORPORATION TAX – TREATMENT OF WRITE DOWN OF INTANGIBLES

On the acquisition of the shares in a company holding intangibles, the tax treatment of the write down of such assets will depend on the historic origins of the creation of those assets (see acquisition of trade and assets section above). Any write down of goodwill arising on accounting consolidation following the share purchase is not deductible for corporation tax purposes.

HOW TO FINANCE THE ACQUISITION

Purchasers may choose to finance the acquisition with debt (borrowing) or equity (share capital): the key tax considerations for each route are outlined below but please also see Chapter 5 Business Finance.

FINANCING AN ACQUISITION WITH DEBT



Read about BDO's mergers and acquisition services.

UK WITHHOLDING TAX ON INTEREST PAYMENTS

In most circumstances, UK law requires income tax (normally referred to as withholding tax) to be deducted from interest payments. 20% of the interest payment will need to be paid to HMRC each quarter when the interest is paid. However, in some circumstances no UK withholding tax will be due, including:

- Where the recipient is a UK company (or a company in a country with which the UK has a relevant double tax treaty – see comments below)
- Payments of interest on a quoted Eurobond
- Payments of interest paid to or by a UK bank (or a UK branch of a foreign bank) – for this purpose it is also important to consider who the ultimate lender(s) are, if for example the debt has been syndicated
- Payments of 'short' interest – essentially interest on loans that will not be outstanding for more than a year. However, this definition can be contentious, and detailed advice should be taken if intending to use this exemption.

If the recipient is an individual, UK withholding tax will apply. Where the recipient is a non-UK entity, withholding tax will need to be deducted at 20% and paid to HMRC, unless treaty clearance has been obtained to apply a lower rate of withholding tax before the interest is paid.

Read about BDO's Corporate International Tax Services.

UK CORPORATION TAX DEDUCTIONS FOR INTEREST PAYABLE

Interest payable by a UK company will generally be deductible from its profits for tax purposes on an accruals basis (although see considerations in respect of quantum of interest to be treated as deductible below), unless:

- The paying company is 'close' and the individual/corporate recipient is a participator in that company, or
- The loan is made to the company by trustees of an occupational pension scheme.

In these circumstances, the interest charge will only be deductible if it is actually paid (either in cash or in kind).

As well as the above late paid interest rules, the quantum of loan interest payable to potentially be treated as deductible, will be subject to a number of considerations. These include:

- Transfer pricing
- Thin capitalisation
- Corporate interest restriction
- Anti-hybrid provisions
- Other UK anti-avoidance provisions.

The corporate interest restriction rules (broadly) limit interest deductions to 30% of 'tax – EBITDA' where interest paid exceeds a de minimis level of £2m per year.

The anti-hybrid rules are complex, but (broadly) seek to neutralise tax mismatches arising in the case of hybrid financial instruments and hybrid entities for a range of potential arrangements.

The affected arrangements may include instances whereby:

- Double deductions are claimed for the same expense, or
- Deductions are claimed for an expense without the corresponding receipt being fully taxed.

Read about BDO's transfer pricing services.

HOW is the purchase going to be financed?

If the purchaser is not buying the business wholly with cash, assessing whether it is better to fund the purchase with borrowing or through a share issue is vital because it can have a significant impact on short-term costs and the overall return from the investment.

ACQUIRING AN EXISTING COMPANY

EXIT STRATEGIES

FINANCING AN ACQUISITION WITH EQUITY

The UK does not impose withholding tax on the payment of dividends by a UK resident company irrespective of the recipient of the dividend.

No corporation tax deduction is available to the paying company making distributions by way of dividends to its investors.

USING A UK COMPANY (I.E. UK BIDCO) AS A HOLDING COMPANY

For share purchases, buyers should carefully consider in which jurisdiction the holding company for the acquisition should be incorporated. In recent years, the UK has become a more attractive location for holding companies for a number of tax reasons:

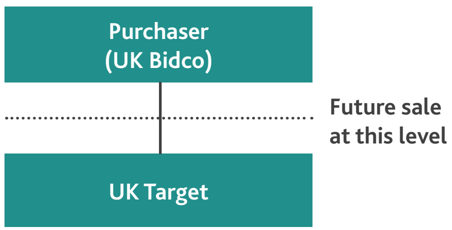
- It has one of the lowest corporation tax rates in the G20
- Dividends received by a UK holding company from other UK companies or from overseas companies will (in most cases) be exempt from UK corporation tax
- The UK has an extensive network of international double tax treaties which allow for access to potentially favourable withholding tax rates
- Numerous corporation tax reliefs are available, such as the UK Research and Development (R&D), Patent Box regime, and Annual Investment Allowance for capital expenditure
- Other UK tax reliefs for individual investors and management
- Certain tax-efficient exit strategies are available (see below).

Read about BDO's corporation tax services

The UK is also often considered an attractive base by investors due to its established and well regarded legal and regulatory structure and operating environment (see Chapter 1).

EXIT STRATEGIES

The UK tax regime allows for a tax-free disposal on the sale of the shares of a company by a UK holding company under the substantial shareholding exemption (SSE). For example, in the share purchase scenario above, UK Bidco could potentially make a future tax-free disposal of UK Target:



In broad terms, for the SSE to apply, UK Bidco must own at least a 10% stake in UK Target for a period of 12 consecutive months in any of the six years prior to the date of disposal. The 10% stake must consist of:

1. 10% of the 'ordinary share capital' of UK Target (by nominal value), and
2. A beneficial entitlement to 10% of the profits available for distribution, and
3. A beneficial entitlement on a winding up to 10% of the assets available for distribution.

The UK Target company must be a trading company (or the holding company of a trading group) for 12 consecutive months before the disposal. This relief makes it attractive for non-UK businesses to invest in UK businesses.

If the owner is a UK resident individual (as opposed to a corporate entity), various reliefs such as Business Asset Disposal Relief (previously Entrepreneur's relief) may be available to reduce the marginal tax rate.

However, there are qualifying conditions so it is important to plan carefully. The UK does not impose withholding tax on non-UK residents selling shares in a UK company (subject to very limited exceptions in the case of companies owning residential property).

FURTHER TAX CONSIDERATIONS

Relocating or utilising employees from overseas to assist in the UK activities may give rise to UK payroll obligations (including pension auto enrollment (see Chapter 7).

International trading from the UK can give rise to EC VAT registrations, Customs Duty and distance selling requirements (see Chapter 8).

There are also regulatory issues and financial reporting requirements to consider.

chapter 05

BUSINESS FINANCE

BUSINESS FINANCE
THE BASIC OPTIONS & GRANTS

The UK is a highly developed economy and many diverse sources of funding are available to businesses although stringent vetting and security is often required. There are a wide range of financial institutions that offer business finance in different ways ranging from traditional banks through to peer-to-peer lending through online platforms.

THE BASIC OPTIONS

For traditional financing, security is usually required by the lending institution with a charge being taken over one or more of the company's assets (see below). Depending upon the company's risk profile and credit rating, personal guarantees may be also required. A simple option is to negotiate an overdraft facility on current accounts, although security may be required as with loans. Overdrafts are usually repayable on demand and charges can be higher than other borrowing. The management of cash flow in a trading business can be assisted by debt factoring. The general principle is that the supplier company sells the right to receive the invoice amount to the Factoring company in return for a percentage of the face value of the debt, receivable immediately. The full debt is later collected either by the factor or the supplier. Costs and the percentage paid will vary depending upon the nature of the trade debtors.

Of course, reducing capital costs can be just as important in financing a business. Often, businesses starting out do not want to incur large initial capital expenditure, therefore, hire-purchase (HP) and leasing are widely used methods of acquiring assets. With HP transactions, the finance company purchases the goods and the lessee (the buyer business) uses the goods in return for regular payments. Legal title to the goods remains with the HP company until all payments have been made, at which point legal title transfers to the lessee. Leasing is very similar, except that the lessee does not necessarily become the legal owner.

GRANTS

Government grants are available at regional, national and European levels. To help businesses fund future R&D projects, develop assets and create jobs. Applying for a grant can be time-consuming and complex and many SMEs or large groups miss grant funding opportunities either due to a lack of information, expertise in public funding requirements or time to prepare a high standard grant proposal.

Usually businesses receive grant:

- **To grow and expand:** Businesses may plan to invest in infrastructure, training, R&D and, as a result of this investment, they will create jobs. There are local grant providers who will be able to support this investment to boost the economy (for e.g. LEP funds, Scottish Enterprise, Invest NI or Welsh Government)
- **To innovate and undertake R&D:** When a company want to introduce disruptive technology and commercially innovative service/product offering, there are grant providers who can help support the journey (for e.g. Innovate UK, Welcome Trust or European grant providers).

Our grant team in BDO can support client organisations through the whole journey, from identifying the right funding to preparing and submitting a high quality application as well as providing financial coordination services during the project to accelerate the grant repayment.

CASE STUDIES

Innovation (full service): Our Grants team within BDO's Innovation and Technology group helped a leading real-estate virtual content depository/tour provider company access an Innovate UK grant of about £700,000 towards a total project cost of £1 million that will allow them develop a disruptive automated property valuation solution. The Grants team supported them in the preparation of a high-quality grant application, ensuring minimal time and resource involvement from their side, while also efficiently coordinating the large project consortium.

Innovation (review service): We supported a client in securing £2.5M of grant from Innovate UK for a £7M project to develop a new passenger emergency oxygen delivery technology, which will have significant operational and environmental savings for the aerospace industry.

Regional growth: Our Grants experts assisted a client involved in the wholesale distribution of office imaging consumables receive a local business growth grant for 30% of total capital expenditure of £165,000 on a project to expand their office and warehouse space.

BUSINESS FINANCE

Post Brexit, the government has to set out its new subsidy control governance and rules (previously administered by the European Commission).

To that end, a consultation has been launched to seek every industry and domain expertise's feedback on to maintain on how to meet its WTO international obligations in terms of state aid whilst supporting their growth and innovation agenda.

As part of the agreement reached between the UK and the EU, the UK has announced that it will associate to Horizon Europe subject to ratification of the overall deal and finalisation of the regulations. UK participants continue to receive EU grant funding for the lifetime of individual Horizon 2020 projects, including projects finishing after the transition period ends at the end of 2020.

The Government has confirmed their continuous commitment to support businesses and innovators through local business grants. They recently announced the levelling up funds to promote key investment on infrastructure, which will complement the current support from the Government:

The UK Community Renewal Fund with £220 million to invest in skills, enterprise and employment, the UK Community Ownership Fund targeted at social wellbeing of local communities, the Plan for Jobs, the Freeports programme and the UK Infrastructure Bank, Innovate UK is still supporting UK innovators and more funds will be announced Q2 2021.

Read about BDO's grant advisory services.

BUSINESS FINANCE

SOURCE OF FINANCE - DEBT

A business looking to set up in the UK will require capital to finance its operations and investment in fixed assets. There are a number of different sources of finance available, each with their own advantages and disadvantages.

BANKS – SECURED LOANS

A secured loan is a loan obtained with the use of property or other business assets as security for the loan. Borrowers will need to have a suitable credit rating to be approved for a secured loan.

The bank will set a term for the loan along with a schedule of repayments (amortisation) and lending covenants that must be complied with. Occasionally, it may be possible to agree a single bullet repayment at the end of the loan, or a mixture of amortisation and bullet. The bank would usually want to see a business plan covering the use of the loan, including financial projections and supporting documents, such as tax returns, bank statements, credit history and other financial information. Loans may be fixed rate or floating rate, and will usually have an arrangement fee and a margin over base lending rate.

Advantages:

- Relatively cheap source of finance
- Interest is usually a deduction for tax.

Disadvantages:

- Not achieving the funding target may mean returning any pledged amounts to investors
- Failed applications can risk damage to the reputation of the business
- Getting the rewards or returns wrong could mean giving away too much of the business to investors
- Having to communicate with a large number of disparate investors may be time consuming and difficult
- The need to make repayments over the life of the loan along with set up costs and documentation required to obtain
- The quantum may be limited by the amount of security, profits and covenants
- Aside from property, loans would not usually be for periods of longer than five years.

Often available from banks and specialist debt funds.

BUSINESS FINANCE

ASSET-BASED LENDING

This is an advance secured by business assets such as debtors, inventory, or plant and machinery. These types of loans are usually used for working capital purposes to help a business bridge the gap between the timing difference of payments and receipts. A facility is usually advanced up to a percentage of the assets on which it is secured, and exclusions may apply for, say, concentration of debt or certain overseas debt.

A bank letter of credit is a similar form of finance typically advanced against overseas contracts and orders. Another form of finance would be HP or a lease to finance capital expenditure on fixed assets such as plant and motor vehicles.

Advantages:

- The ability to grow the facilities available as the underlying assets (such as debtors) grow with sales, can make it attractive
- Relatively quick to document and conduct due diligence on the assets.

Disadvantages:

- Can be expensive due to the inherent interest cost
- Technically repayable on demand.

Often available from banks, specialist asset based lenders and leasing companies.

Read about BDO's business restructuring services

FINANCIAL INSTRUMENTS

Bonds can be both a vehicle for investment and a source of long-term finance, with either fixed or floating interest rates. Companies issue bonds, pay interest at regular intervals and repay capital on redemption. Such bonds may also carry a right for conversion into the ordinary shares of the company.

Mini-bonds

Over the past few years, a number of companies have issued mini-bonds as a way of obtaining debt-based finance.

Often they are marketed to the customer base and may be better suited to consumer product type businesses. Some offer rates such as 7-8% interest to investors, or some form of the company's product alongside. They are generally unsecured, non-convertible and non-tradable.

Disadvantages:

- Unlike traditional bonds, mini-bonds cannot be traded and are not listed on any market. This means that they must be held until maturity and cannot be cashed in early - which can make them a less flexible choice for investors
- The issue of bonds requires an offering memorandum approved for financial promotion purposes under the Financial Services and Markets Act.

Often offered to investors by the company with assistance from professional advisors.

Other financial instruments

There are many different types traded on stock exchanges and often highly complex in their operation, are widely available in the UK.

Futures contracts, for instance, are agreements between two parties to undertake a transaction at an agreed price on a specified date in the future and are most commonly used to buy or sell commodities and foreign currency against sterling. Swaps are exchanges of cash payment obligations. Currency swaps are agreements to use a certain currency for payment under a contract in exchange for another currency, and enable the companies involved to buy one of the currencies at a more favourable rate. Swaps remain a commonly used financial instrument. Similarly, there are interest rate swaps, which enable one company to exchange a fixed rate obligation for the variable rate obligation of another.

Read about BDO's capital markets services.

WHAT are 'mini-bonds'?

Mini-bonds are a means for businesses to borrow from private investors. They are effectively 'IOUs' which the company issues to investors. Typically, they have terms of three to five years, and investors earn regular interest receipts during the life of the mini-bond. At the end of the term, the investors are due back their initial investment.

BUSINESS FINANCE

SOURCE OF FINANCE - EQUITY

VENTURE CAPITAL OR PRIVATE EQUITY

Venture capital investors are institutions that invest in companies where they can see a growth opportunity evidenced by a compelling business plan.

Venture capital investors look for a strong management team, a large potential market and a unique product or service with strong competitive advantage. Some will take a minority investment in a company, while others may prefer a controlling interest. In any event, they will have some legal form of investor rights and protections as they are not actively involved in managing the company.

Advantages:

- Venture capital investors will usually come with the capacity to add additional funding in the future which allows for future expansion opportunities and the ability to up-scale the business
- They may also have other investments where some mutual business benefits could be obtained.

Disadvantages:

- Many venture capital sources are more private equity in nature, preferring to invest in more mature businesses than start-ups or early stage businesses
- They are returns and exit driven - meaning that they will need to agree a valuation and a share of the equity that will deliver their required return (typically two to three times their investment and more for an earlier stage company), and will require an exit in a typical three to five-year investment horizon.

WHAT types of company qualify for EIS?

Companies operating in some business sectors will not qualify for EIS. Banking, insurance, stock broking, legal and accounting business do not qualify, nor do businesses trading in land or developing property. As always, it is important to take advice on which Government sponsored schemes a business may be eligible to benefit from.

There are a wide range of venture capital and private equity companies in the market. The British Venture Capital Association ('BVCA') maintains a register and details on them.

Read about BDO's services for private equity.

ENTERPRISE INVESTMENT SCHEMES (EIS) AND SMALL ENTERPRISE INVESTMENT SCHEMES (SEIS)

This is a program used in the UK to make it easier for smaller companies to raise capital by providing their investors with tax relief as an added incentive to their investment. The Enterprise Investment Scheme (EIS) provides 30% of what the investor invests for the shares as a credit to reduce the investor's individual income tax owed for the year the shares are issued.

The maximum amount of relief a taxpayer can claim on standard EIS investments is £300,000 a year, or the total tax liability, whichever is less. However, the £1m investment limit is increased to £2m (i.e. £600,000 in tax relief) where the funds over the standard £1m limit are invested in shares in a qualifying 'knowledge intensive company'. In addition, there is no capital gains tax when the shares are disposed of, provided a three year qualifying period has been met.

Broadly, companies qualifying for EIS must:

- Be commercially trading with a view to a profit
- Be unquoted (although AIM quoted companies are unquoted for this purpose)
- Have a UK permanent establishment
- Less than seven years trading or ten years if a 'knowledge intensive company'
- Put the capital invested at 'risk' (as assessed by HMRC against seven tests)
- Not be dealing in commodities, property or financial services or any other 'excluded trade'
- Not be under control of another company
- Have gross assets of no more than £15m before (£16m after) the investment
- Have fewer than 250 employees (500 if a knowledge intensive company)
- Not have raised more than £5m under EIS/ SEIS the related VCT scheme, and other relevant State aid in the past 12 months (however, EIS companies that also qualify as 'knowledge intensive' can raise up to £10m capital in a 12 month period)
- Use the money within two years of the investment.

Since April 2018, EIS companies that also qualify as 'knowledge intensive' can raise up to £10m capital in a 12 month period, subject to EU State aid approval.

Small Enterprise Investment Scheme (SEIS)

The SEIS follows the nature of EIS. However, this scheme is more effective and attractive to start-up businesses as the qualifying business must have been trading for less than two years, and has a higher tax relief for investors. The main qualification conditions are similar to the EIS scheme, with the following differences:

- Gross assets of no more than £200,000 before the investment
- Less than two years trading
- Fewer than 25 full time employees
- Not previously raised funds under EIS or VCT
- Raise no more than £150,000 under SEIS
- Use money within three years of investment.

Advantages

- Tax advantages improve the appeal of the investment and the returns.

Disadvantages

- Relatively complex laws and restrictions on the operations of the business.

Read about BDO's venture capital tax reliefs services. For more about EIS and SEIS read the EISA Funding Guide here.

BUSINESS FINANCE

VENTURE CAPITAL TRUSTS (VCTS)

A VCT is a tax efficient UK collective investment scheme designed to provide private equity capital for small expanding companies, and income and capital gains for investors.

VCTs are a form of publicly traded private equity, comparable to business development companies in the United States. Qualifying companies are unquoted Companies (which have a UK permanent establishment) with qualifying trades (similar to EIS).

- In the 2019/20 tax year, close to £619m was raised by VCTs to invest in companies.

Advantages:

- Ability to invest funds up to £5m (£10m in 'knowledge intensive' companies).

Disadvantages:

- As investors, VCTs are similar to venture capital and private equity.

Read about BDO's business planning and advisory services.

BUSINESS ANGELS

A business angel is an investor who provides financial backing for smaller start-ups or entrepreneurs. The capital provided can range from a one-time injection of seed money, to ongoing support to carry the company through subsequent funding rounds.

An angel may be able to take advantage of tax benefits offered under the Enterprise Investment Scheme, which would also tie them in for a qualifying period.

The investor may be seeking an exit at the end of the period which may come in the form of a buy back by the company, a sale to another investor, an IPO, or the sale of the business.

Advantages:

- Angel investors may be the only source of equity available for an early stage business, and may be less involved in the business than a typical private equity institution
- An angel may choose to invest in a business or sector where they made their own money and may then be able to offer support and insight for the company.

Disadvantages:

- Typically for smaller sums of money and involves giving up a share of your business
- Angels may be harder for a company to find, compared to the well-known institutional sources of finance
- It may prove difficult to agree a valuation of the business for investment purposes.

There are a number of Business Angel networks.

CROWDFUNDING

Crowdfunding is a way of raising finance by spreading the funding required over a large number of people so that each is investing a smaller amount of money. Crowdfunding uses internet based platforms to communicate with potential investors.

Typically, those seeking funds will set up a profile of their project on the platform. There are different types of crowdfunding: donation, debt and equity.

Donation/reward crowdfunding

People invest simply because they believe in the cause. Rewards can be offered such as acknowledgements on a product, tickets to an event, regular news updates, product gifts.

Returns are considered intangible. Donors may have a social or personal motivation for putting their money in and expect no return back, except perhaps to feel good about helping the project.

Debt crowdfunding

Investors should receive their money back with interest. Also called peer-to-peer lending, it allows for the lending of money while bypassing traditional banks. Returns are financial, but investors also have the benefit of having contributed to the success of an idea they believe in. In the case of microfinance, where very small sums of money are leant to low income borrowers (often in developing countries), no interest may be paid on the loan and investors are rewarded by the social benefit.

Equity crowdfunding

People invest in an unquoted company in exchange for equity. Money is invested for shares representing a small stake in the business, project or venture. As with other types of shares, if it is successful the value should go up, but it carries the risk of value going down.

Advantages

- Different types of crowdfunding require different types of return and it can frequently be a fast (or the only) way of raising finance
- Investors may become loyal customers
- The pitching of the business on the platform may be a valuable form of marketing for the business.

Disadvantages

- Business failures during the Coronavirus pandemic have made investors more wary and costs for this type of finance have risen
- Not achieving the funding target may mean returning any pledged amounts to investors
- Failed applications can risk damage to the reputation of the business
- Getting the rewards or returns wrong could mean giving away too much of the business to investors
- Having to communicate with a large number of disparate investors may be time consuming and difficult.

chapter 06

FINANCIAL AND MANAGEMENT REPORTING, AUDIT AND TAX

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

STATUTORY ACCOUNTING REQUIREMENTS AND PRINCIPLES

REQUIREMENT TO KEEP ACCOUNTING RECORDS

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

There is no specific legal requirement for sole proprietors to keep accounting records. However, tax legislation requires the retention of records used in the completion of tax returns, and these must be adequate to support the figures shown on the tax return. Partnerships must keep records of all receipts and payments, and all sales and purchases of goods.

Generally, tax legislation requires that accounting records be kept for at least six years. If accounting records are kept outside the UK, accounts and returns sufficient to disclose the financial position of the business and to enable directors to prepare a balance sheet and a profit and loss account, must be sent and kept in the UK.

The Companies Act 2006 doesn't specify the form in which the accounting records are to kept, but they must be sufficient to:

- Show and explain the company's transactions (i.e. all sums of money received and expended and the reason for the receipts or expenditure)
- Disclosure with reasonable accuracy, at any time, the company's financial position (its assets and liabilities) at that time
- Enable the directors to ensure that any accounts required to be prepared comply with the requirements of the Act.

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).

A parent company that has a subsidiary for which these requirements do not apply (e.g. an overseas subsidiary) must take reasonable steps to ensure the subsidiary keeps appropriate accounting records, to enable the parent company to ensure that any accounts required to be prepared (e.g. consolidated accounts) comply with the statutory requirements.

It also essential that a company maintains a number of statutory registers, and that they are kept up to date - for example, to show the current directors, the secretary (if applicable) and the members. These records can be inspected by the general public.

Read about BDO's outsourced accounting and bookkeeping services.

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

ACCOUNTING PERIOD

All companies and UK establishments must report in respect of each accounting reference period. Typically, this will be for 12 months however, a company may shorten this period or extend it by up to 18 months. Where a company chooses to alter its accounting reference period, specified conditions must be met (for example, an accounting reference can typically only be lengthened once in every five years) and notice must be given on a prescribed form to the Registrar of Companies before the filing deadline for that period.

Listed and AIM companies must also prepare half-yearly reports as required by their respective listing rules (although there are some exemptions).

ACCOUNTING FRAMEWORKS FOR DIFFERENT SIZE COMPANIES

There is an overriding requirement for a company or LLP to prepare accounts for each financial year that show a true and fair view. A company is permitted to prepare its accounts under either UK GAAP (generally accepted accounting principles, ie, UK reporting standards all related rules and guidelines) or IFRS. The IFRSs a company can prepare its accounts under will depend on the start of the entity's financial year and when the accounts are approved.

During the Brexit transition period, the UK was still bound to the EU endorsement process for IFRSs.

EU endorsement of an IFRS makes that standard available for use in a set of IFRS accounts prepared by a UK company. Following the end of the transition period at 23:00 GMT on 31 December 2020, the UK can no longer recognise EU endorsements of IFRS. Companies whose annual accounting period starts after 23:00 GMT on 31 December 2020 (i.e. periods beginning on or after 1 January 2021) must apply UK-endorsed IFRSs only. Companies whose accounting periods begin on or before 31 December but which were not approved by the end of 2020 must apply EU endorsed IFRSs as at 23:00 GMT on 31 December 2020. They can also take into account any IFRSs that are endorsed by the new UK endorsement mechanism after the end of the Implementation Period.

Once a company elects to prepare its accounts under IFRS, it cannot revert to UK GAAP, except in limited circumstances or once every five years. Companies listed on the London Stock Exchange or AIM are required to use IFRS in their consolidated financial statements. Both accounting frameworks require the presentation of comparative (prior period) information.

Read about BDO's financial reporting services.

A company or LLP can qualify as a micro-entity, a small company, a medium company or a large company. The size of the company determines both the legal and accounting options available to individual accounts as follows:

	IFRS	UK FRS 101[1]	UK FRS 102[2]	UK FRS 105
Micro-entity	✓	✓	✓	✓
Small	✓	✓	✓[3]	
Medium	✓	✓	✓	
Large	✓	✓	✓	

[1] Effectively, EU adopted IFRS but with reduced disclosure requirements

[2] The main UK reporting standard

[3] A small company applying FRS 102 will follow the standard recognition and measurement principles but is not required to make the same volume of disclosures

Generally, a company will qualify as the respective size if it meets at least two of the three following conditions for both the current accounting year and the previous accounting year:

	MICRO-ENTITY	SMALL	MEDIUM
Turnover	Not more than £632,000	Not more than £10.2m	Not more than £36m
Balance sheet total	Not more than £312,000	Not more than £5.1m	Not more than £18m
Number of employees	Not more than 10	Not more than 50	Not more than 250
Companies and LLPs that do not meet the criteria to be classed as Micro, Small or Medium will qualify as Large.			

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

There are some exclusions where an entity will not qualify as the respective size despite meeting the right quantitative criteria.

The exclusions are complex, and entities would be well advised to discuss their specific circumstances with an advisor to determine the correct size classification for their business.

Dormant companies can also claim additional exemptions in relation to preparation and filing of accounts which will depend on the facts and circumstances of the company.

These exemptions are varied and again can be complex to assess so advice should be sought.

A company is dormant in circumstances where no significant accounting transactions have arisen during the financial period (as defined in the Companies Act).

THE FINANCIAL STATEMENTS

The directors of a company must prepare a complete set of financial statements to comprise a statement of financial position, a statement of profit or loss and other comprehensive income, a statement of changes in equity, a statement of cash flows and notes. The relevant rule for the size of the company prescribes the form and content of the balance sheet, profit and loss account and additional information to be provided by way of notes, for example, details of directors' remuneration.

In addition to the financial statements, the annual report must include a directors' report (unless the company qualifies as a micro-entity) and a strategic report (unless the company qualifies as a micro-entity or small). Where the company is listed on the London Stock Exchange it must prevent, in addition to a directors' report and strategic report, a directors' remuneration report and a corporate governance statement.

The accounts may also need to be accompanied by an auditors' report – see who needs an audit?

Small companies

Companies that qualify as small are entitled to prepare accounts in accordance with the small companies' regime. Although these are still full accounts, small companies will be subject to less onerous disclosure requirements in FRS 102 and are not required to produce a cash flow statement and a statement of changes in equity. This option is not available to IFRS reporters or, for example, traded companies defined as 'a company any of whose transferable securities are admitted to trading on a regulated market'. However, a company in the same group as a plc, or an AIM-listed company, may still qualify for the small companies' regime (because its own shares are not traded) provided other relevant criteria are met. Companies in the same group as a fully listed company will not, however, qualify for the small companies' audit exemption.

Small companies may also elect to prepare and the 'abridged' accounts in place of the 'shorter-form' full accounts. A company may elect to prepare for its members an abridged balance sheet, an abridged profit and loss account – or both.

Parent companies

Parent companies must prepare group accounts consolidating their subsidiaries, unless entitled to an exemption. 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. Please note that, as a result of the end of the Brexit Implementation period, the legislation underlying these exemptions has changed slightly and this will impact accounting periods beginning on or after 1 January 2021. Previously, s400 of the Companies Act would have provided an exemption from the need to undertake an intermediate consolidation at the UK level where the intermediate parent is included in the consolidated accounts of an EEA parent. This will continue to be the case until the accounting period that begins on or after 1 January 2021, when the company would need to look to s401. This would work for consolidations prepared under EU-IFRSs as the UK has already granted EU-IFRSs the necessary 'equivalence' badge but it may not work for EU domestic GAAPs.

A UK parent company that prepares group accounts must ensure that its UK subsidiaries adopt the same accounting framework in their own accounts. However, there are some exceptions to this general rule.

A parent company that would qualify for the small companies' regime but for being a public company, and is not a traded company, is also exempt from preparing group accounts.

Read about BDO's financial reporting services.

WHY would a small company choose to only produce 'abridged' accounts?

To make the process simpler – abridged accounts cut down on some of the analysis (and costs) but they must still show a 'true and fair view' of the business. The company must get the consent of its members (shareholders) first and send a statement to the Registrar of Companies to prove it.

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

FILING REQUIREMENTS

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 a least one director. The directors' report and the strategic report must be signed by either a director or company secretary.

The signature on the accounts must be on the company's balance sheet. The date on which the directors approved the accounts should be stated, ideally next to the signature on the balance sheet.

Filing a public record

Private limited companies must file their accounts and reports at Companies House within nine months and public companies within six months of the accounting reference date. For those filed late, private companies face a penalty of between £150 and £1,500; and plcs could be fined between £750 and £7,500.

Accounts and reports are available for public inspection at beta.companieshouse.co.uk. Quoted companies must file a complete a set of accounts and reports (which will also include a directors' remuneration report), and must also publish their accounts and reports on a website maintained by the company, or on its behalf. These must remain freely available on the website until the following year's accounts and reports are published.

The following exemptions from preparing or filing accounts are allowed:

- An intermediate parent may be exempt from preparing group accounts if certain criteria are met, which include filing the group accounts in which it is included (see above)
- A dormant company that is a subsidiary may be exempt from filing accounts if certain criteria are met, including the giving of a guarantee by its parent.

Circulation of accounts

A copy of the accounts, together with the directors' strategic and auditors' reports on those accounts, must be sent to the shareholders, debenture holders (if any), and any persons who are entitled to receive notice of general meetings (unless the company does not have the 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 their consent 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, having advised the person of the name of the website where the documents can be accessed.

A public company must comply with the above accounts circulation requirements at least 21 days before the date of the Annual General Meeting (often known as AGM) at which the accounts and reports will be laid.

Read about BDO's outsourced financial reporting services.

Overseas companies

Overseas companies with a presence in the UK (i.e. a UK establishment), are required to register with Companies House. 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. Registration is not required if there is no physical presence in the UK.

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

Overseas companies incorporated within the EEA that are not required to deliver accounting documents under their own national law do not have to file any accounting documents with the UK Registrar.

A company incorporated outside of the EEA 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
- IFRS as adopted by the EU.

There is no requirement that the accounts must 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 and include the audit report. 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. For example, if an overseas company ceases to have a place of business in any part of the UK, it must give notice to the Registrar for that part and is, from the date on which notice is given, under no obligation to deliver any document to the Registrar.

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

CONFIRMATION STATEMENT

An annual confirmation statement must also be filed with Companies House giving details of any changes to the share capital or the company's SIC code (individual classification), as well as a company's officers and shareholders as at a certain date, and the last annual return date.

Register of beneficial owners

UK registered companies and LLPs are required to identify and record the people who own or control their company and report this to Companies House: records must be updated within 14 days of any change. A publicly available register of Persons with Significant Control (PSC) is maintained by Companies House to increase transparency as to who owns and controls UK companies.

Any individual who directly or indirectly (e.g. via another company) meets one or more of the following conditions must be recorded as a PSC:

- Owns more than 25% of the shares (50% or more for overseas companies that control UK companies)
- Holds more than 25% of the voting rights (50% or more for overseas companies that control UK companies)
- Holds the right to appoint or remove the majority of directors
- Otherwise has the right to exercise, or actually exercises, significant influence or control
- Holds the right to exercise, or actually exercises, significant influence or control over the activities of a trust, or firm which is not a legal entity, but would itself satisfy any of the first fur conditions if it were an individual.

Note that there are many more complicated rules for listed entities, trusts etc.

For each PSC, the register will show the individual's:

- Name
- Date of birth
- Nationality and country, state, or part of the UK where they live
- Residential and service address (although residential addresses will remain hidden both at Companies House and in the company's register)
- The date the individual became a PSC
- How the individual qualifies as a PSC
- Any applicable restrictions on disclosing the PSC's information.

Similar rules are soon to be applied to overseas companies seeking to buy UK land and property from 2021. It is expected that companies will have to supply data on their beneficial owners before a transaction can take place and that this will be held on a publicly available register. The register will show who owns and controls overseas companies and other legal entities that own UK property. All legal entities will be in scope, including trusts. However, the beneficiaries of trusts will not be named on the register for confidentiality reasons.

Read about BDO's company secretarial services.

HOW much does it cost to file a Confirmation Statement?

From November 2016, a fee of £13 must be paid to file a Confirmation Statement electronically or £40 is a business files a paper form. Of course, businesses that engage a professional adviser to complete and file the form will also have to pay professional charges.

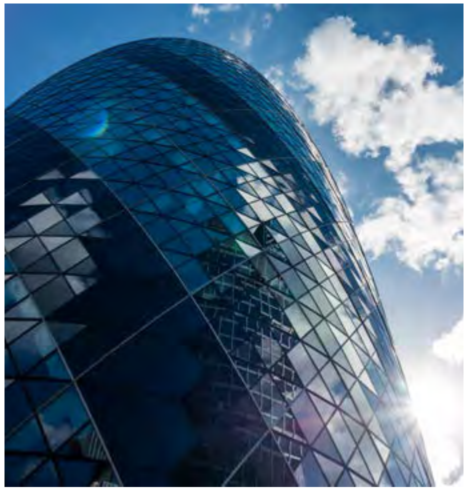
FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

AUDIT REQUIREMENTS

WHO needs an audit?

At the time of publication, all UK businesses incorporated under the Companies Acts (companies and LLPs) must have their accounts audited, unless they qualify for exemption.

Read about BDO's audit services.



AUDIT EXEMPTIONS

The regulations give non-charitable companies, total exemption from an audit if all of the following conditions are satisfied:

- The company qualifies as 'small' under the Companies Act 2006 (see below); and
- The company was not any of the following at any time during the year:
- A public company
- An authorised insurance company, a banking company, an e-money issuer, a MiFID investment firm or a UCITS management company, or a company that carries on insurance market activity, or
- A special register body as defined (e.g. trade unions and employers' associations).

Exemption from audit is not available to companies where any member or members holding at least 10% of the issued share capital (or at least 10% of the number of members of the company if the company does not have a share capital) deposits a written notice at the registered office not later than one month before the end of the financial year stating that they require the accounts to be audited.

Generally, a company or LLP is treated as 'small' if it meets two out of three of the following tests in two out of three consecutive years:

- Has total assets of less than £5.1m
- Has total turnover of less than £10.2m
- Has less than 50 employees at the balance sheet date.

In addition to the above, the UK company should not be part of a non-small group if it wishes to be exempt from an audit.

Companies which would be entitled to audit exemption in their own right but are also members of a group (i.e. are a parent and/or a subsidiary company) will be exempt from audit if all of the following are satisfied:

- The wider group qualifies as a small group during the financial year, and
- The wider group was not an ineligible group at any time during that year.

Note: When considering the 'wider group' parents and fellow subsidiaries above the company seeking to take the exemption must also be considered, not just other entities in the group headed by the company seeking to take the exemption. The term 'group' means the parent company together with all its associated undertakings. For this purpose undertakings are associated if one is a subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking. This would include any overseas undertakings.

If the above criteria are not satisfied the audit exemption for eligible subsidiary companies with an EEA parent guarantee (for periods beginning on or before 31 December 2020) or a UK parent guarantee (for periods beginning on or after 1 January 2021) could be considered. This exemption applies irrespective of the size of the subsidiary but is not available to certain types of company. (s479A & s479B).

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

This group criteria includes any companies outside of the UK. Alternatively, subsidiary companies (including dormant ones) are exempt from the mandatory audit requirement, subject to the following conditions:

1. For periods beginning on or before 31 December 2020, its parent undertaking must be established under the law of an EEA state and prepare consolidated accounts in accordance with the 7th Company Law Directive or IFRS
2. For periods beginning on or before 1 January 2021, its parent must be established under the law of any part of the United Kingdom and prepare consolidated accounts in accordance with UK-adopted international accounting standards
3. The shareholders must unanimously agree to dispense with an audit in the financial year in question
4. The parent must give a statutory guarantee of all the outstanding liabilities to which the subsidiary is subject at the end of the financial year
5. The company is not listed on a stock exchange, nor an authorised insurance company, a banking company, an e-money issuer, a MIFID investment firm or a UCITS management company, nor carry on insurance market activity, and cannot be a trade union or an employer's association.

This exemption is not limited by the size of the subsidiary or the size of the group as a whole, nor are members of a group with a public company member excluded. Certain documents will need to be filed at Companies.

House, including confirmations of shareholder agreement and the parent guarantee, and the group accounts will need to disclose that the exemption has been taken by the subsidiary/ies and be filed with the subsidiary accounts.

If there is any doubt, advice should be sought to determine whether or not the company or LLP is exempt from the audit requirement.

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

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

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

WHAT IS THE ROLE OF AN AUDITOR?

The auditor will examine the accounts and accounting records of the company, and prepare a report for the company's members: this report will be included in the company's published report and accounts. The auditors' report must state whether the accounts have been properly prepared in accordance with the relevant financial reporting framework (e.g. IFRS as adopted by the EU or IFRS as adopted by the UK); have been prepared in accordance with the Act; and whether they give a true and fair view. The auditor must also report on whether the information given in the directors' report, any strategic report and any separate corporate governance statement, is consistent with those accounts, and whether the reports have been prepared in accordance with applicable legal requirements.

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 this opinion?

If they are not satisfied on any of these issues, the auditors must say so in their report. If the required disclosures for directors' remuneration have not been made by the company, the auditor must, as far as he is able to do so, give that information in his report. If the directors have prepared accounts in accordance with the small companies' regime, or prepared a strategic report or directors' report in accordance with small companies' exemptions when they are not entitled to do so, the auditor is required to state that fact in the audit report.

WHO CAN ACT AS AUDITOR?

The eligibility and qualifications for acting as an auditor are set out in company law. Eligibility is also governed by ethical considerations. An auditor must be independent of the company, so a person cannot be appointed as an auditor if he or she is:

- An officer or employee of the company or an associated company
- A partner or employee of such a person
- A partnership of which such a person is a partner.

APPOINTING AN AUDITOR

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 of a private company will generally be appointed within 28 days of the earlier of: the date of circulation of a company's accounts to its shareholders, or the date for circulation.

For a public company, the auditor will generally be appointed before the conclusion of the accounts meeting at which their re- appointment is approved.

An auditor's term of office for a private company 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.

For a public company, it will run from the conclusion of the accounts meeting to the conclusion of the next accounts meeting. If an auditor of a private company 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.

CAN AN AUDITOR PROVIDE OTHER SERVICES?

Yes, subject to observing ethical standards to ensure that the auditor's independence is in no way impaired. There are stricter ethical rules for auditors of listed companies.

Read about BDO's audit services.

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

OVERVIEW OF UK TAX REQUIREMENTS

This section gives a brief overview of the most relevant UK taxes. For key dates and deadlines relating to tax please see key corporate tax deadlines. For full details of UK taxes and the current rates, allowances and reliefs please see BDO's tax data guide.

The principal UK direct taxes are income tax, corporation tax, inheritance tax (IHT) and capital gains tax (CGT). While not strictly a tax, national insurance contributions (NIC) are also charged on salaries and an individual's self-employed earnings. In addition, certain indirect taxes are charged on transactions entered into by both individuals and businesses, such as VAT, property taxes and customs duty. The rates of tax are applied uniformly throughout England and Northern Ireland.

The Scottish and Welsh Parliament set their own respective income tax rates. For property purchase taxes, England and Northern Ireland have SDLT, Scotland applies a similar LBTT and Wales has its own LTT: while the rules are similar, the rates of tax are different (see Taxation of UK property).

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

WHO runs the tax system in the UK?

The assessment and collection of taxes is administered by HMRC. There are a few regionally based tax offices dealing with taxpayers in the regions. There are also many specialist divisions and units, including an international division, which review the more technical areas of UK tax and deal with the more substantive or serious cases. All taxpayers subject to UK direct taxes are required to assess their own tax liabilities, and many are required to make returns. Returns and payments are normally made electronically.

The only truly local taxes in the UK are property taxes levied by the local authorities in whose area the property is situated (see page 70).

INCOME TAX

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

In general, UK resident individuals are assessed on their worldwide income, whereas non-resident individuals are assessed on income arising from a UK source (subject to the terms of any applicable double taxation treaties). Special rules apply for UK residents who are legally domiciled outside the UK.

Profits from dealing in and developing UK land are taxable irrespective of the residence status of the landowner and regardless of whether or not the activity is conducted through a permanent establishment.

An individual's tax liability is calculated by aggregating all income, deducting relevant allowances and reliefs, and then applying the appropriate rates to income over the tax exempt threshold.

Read about BDO's private client services.

CORPORATION TAX

Corporation tax is levied on the taxable worldwide profits of UK resident companies and on the profits of non-resident companies attributable to permanent establishments located in the country. However, as with individual landlords, corporate profits from dealing in and developing UK land are taxable irrespective of the residence status of the landowner and regardless of whether or not the activity is conducted through a permanent establishment.

There are also special rules for digital services sold to UK residents – read more here.

A company's taxable profits are based on its annual accounts. Corporation tax is normally payable nine months and one day after the end of the period for which a company prepares its accounts, although larger companies are required to pay their tax liability by instalments during the course of the year. As part of the government's Making Tax Digital program, in future, all businesses will more to a system of in year payments of tax.

A UK company must normally submit a tax return within 12 months of its accounting year end. Companies usually have to file their corporation tax return online and pay any corporation tax and related payments due electronically (for example, by direct debit).

The tax return, computations and – crucially – usually the accounts must be submitted in an electronic format called iXBRL (inline extensible business Reporting Language). Accounts can also be filed with Companies House in iXBRL format.

Read about BDO's iXBRL tagging services.

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

CAPITAL GAINS TAX

Both companies and individuals are subject to tax on capital gains. Corporate gains are subject to corporation tax, whilst gains made by individuals and trusts are liable to CGT. CGT only applies to disposals of chargeable assets. The most frequently encountered chargeable assets are interests in land and buildings, shares, goodwill, intellectual property, and plant and machinery. The principal non-chargeable assets are sterling cash balances, motor cars, debtor receivables and an individual's main home. Different tax rates and reliefs apply depending on the nature of the asset sold, whether the gain is reinvested and, for individuals, on the level of their income in the same tax year.

For companies, individuals and trusts, the taxable gain is normally the difference between the disposal proceeds and the acquisition cost.

INHERITANCE TAX

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

The IHT rules are complex and individuals should seek advice from BDO LLP, especially with regard to protecting offshore assets from the UK IHT net if there is an intention to come to the UK to live for some time.

Read about BDO's private client services.

NATIONAL INSURANCE CONTRIBUTIONS

NIC is a social security charge on earnings. Contributions are payable by employers, employees and self-employed people.

Businesses (or individuals) employing individuals to work permanently in the UK will have to deduct NIC from the salary paid, and pay the NIC element to HMRC. There are exemptions for short-term periods of employment where the employing business is based outside the UK. However, even if a business does not have a permanent establishment in the UK, it may be necessary for payroll deduction arrangements to be set up.

There are specific NIC reliefs for employers: a £4,000 annual allowance against NIC payments for smaller employers, exemptions for lower paid employees under age 21 and lower paid apprentices under age 25. The UK has a number of reciprocal arrangements with other countries that operate social security systems.

Read about BDO's employment tax services.

VALUE ADDED TAX AND CUSTOMS DUTIES

VAT is a sales tax charged on the supply of goods and services provided in the course of doing business in the UK. Consequently, the real burden of the tax normally falls on the final consumer, with the intervening businesses acting as collecting agents for the Government.

In general, when the turnover of a business exceeds the registration threshold, it will have to register for VAT, charge VAT on the supplies it makes, and pay it to HMRC. However, it is possible for companies in a UK group to elect for transactions between them to be free from VAT. All non-UK established businesses making taxable supplies of goods or services in the UK will need to register for VAT – i.e. they are subject to a nil threshold.

Businesses that are required to charge VAT on the goods or services they sell can recover the VAT incurred on the purchases made in generating those sales. However, VAT cannot be recovered on purchases used to generate sales that are exempt from VAT. Input VAT recovery is limited to VAT on costs relating to taxable supplies (i.e. sales of standard-rated, reduced-rated or zero-rated goods or services). Where a business makes both taxable and exempt supplies, the VAT on general business overhead costs is apportioned so part of the VAT can be recovered.

The net amount of VAT, after deducting recoverable VAT, must be paid to HMRC on a regular basis (usually quarterly) supported by a tax return – these must all be submitted digitally from accounting systems that are 'digitally linked' (to reduce errors from manual inputs). Large businesses may be required to make monthly payments on account. VAT is also charged on the importation of goods into the UK and the receipt of many international services in the UK.

Following the UK's departure from the EU, there is a free-trade agreement in place that limits the customs duties payable on many goods moved between the UK and the EU.

Read about BDO's VAT and indirect taxes services.

A French construction group sought to open their first UK branch. With this aim in mind, the firm needed to understand the various tax implications of expanding into the UK.

BDO assisted the firm with the preparation of tax returns, understanding VAT and ensuring the company met UK employment tax obligations. With the help of BDO, the company was also able to implement arm's length transfer pricing between their French head office and the UK establishment.

Having navigated the UK tax landscape as a first-time entrant, the company is now looking to expand its UK operations further.

FINANCIAL AND MANAGEMENT REPORTING AUDIT AND TAX

LAND TAXES

SDLT (or LBTT in Scotland and LTT in Wales) is charged on transactions relating to land and buildings in the UK (see Chapter 7).

Read about BDO's real estate tax services.

For more detail on the most important tax features for businesses operating in the UK, please request our Doing Business in the UK tax guide from your local BDO contact.

MANAGEMENT REPORTING AND BUSINESS INFORMATION

As businesses become established and begin trading, they require a different range of accounting, advisory and compliance functions to support their growth. Management reporting and timely business information is essential.

- Relevant and timely management information
- Clear performance reporting
- Compliance with UK regulations
- Access to experts when required
- Flexible solutions to support as the business changes.

Read about BDO's tax compliance and reporting services.

A major overseas snack food business set up a subsidiary in the UK, as part of its market entry into both the UK and European markets. BDO were invited to provide a full outsourced accounting, tax and compliance service for the business, on a phased basis.

During the pre-trading phase BDO's work involved:

- Confirming charts of accounts, providing due diligence on the systems and procedures
- Setting up company and compliance as required (company secretarial, payroll, year- end reporting, management accounts, VAT)
- Setting up financial reporting.

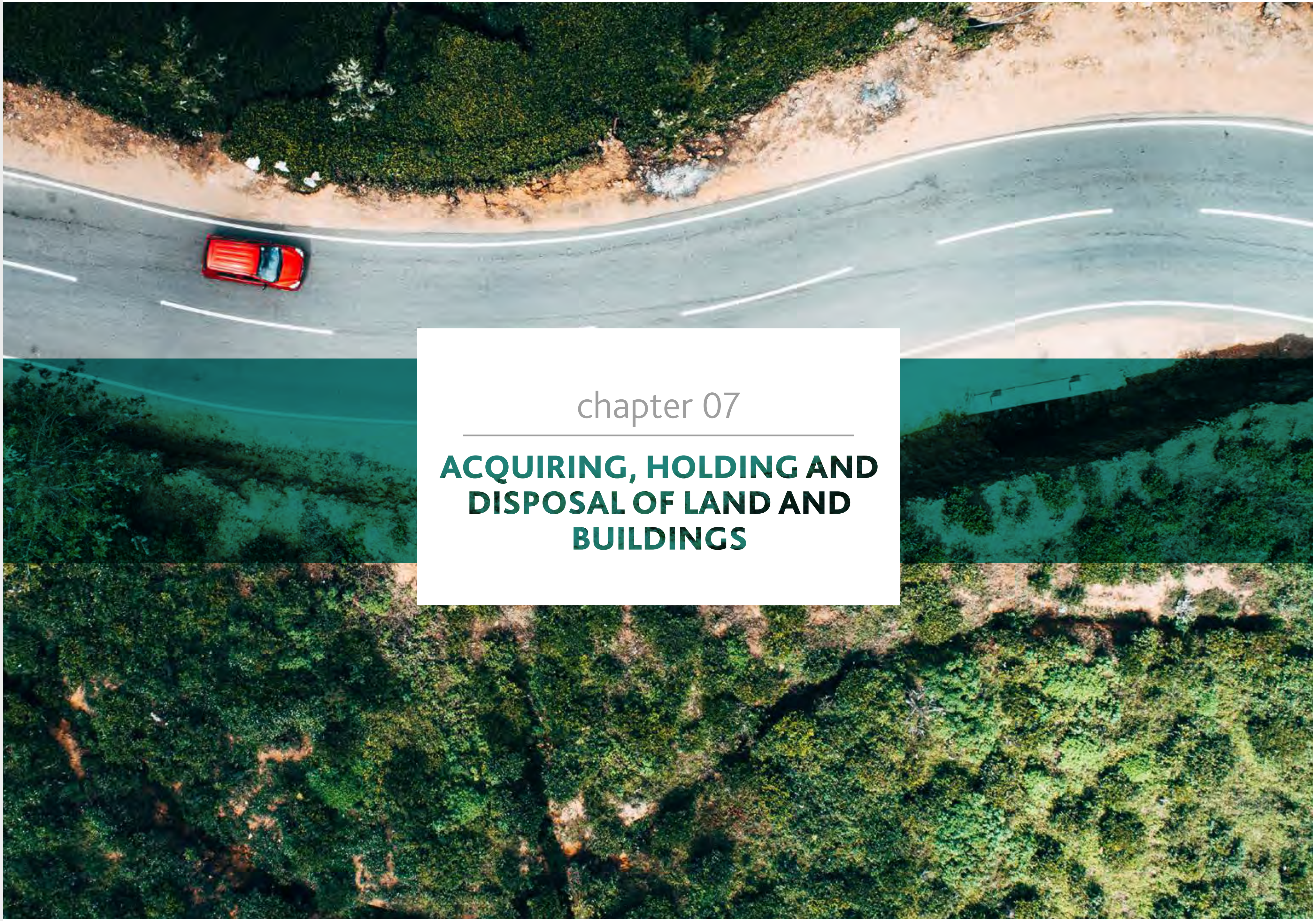
Phase two involved:

- Building links to the stock system
- Undertaking VAT, payroll and other ongoing compliance
- Ongoing financial reporting, including KPIs and monthly reporting
- Preparation of year-end financial statements and dealing with audit queries in relation to the following year.

Later phases have consolidated this work and helped facilitate the continued growth and overseas expansion of the business.

BDO provides businesses with support, at all stages of their lifecycle, from start-up to mature businesses, to run their operations, and help them realise their goals through BDODrive.

Read about BDODRIVE.



chapter 07

ACQUIRING, HOLDING AND DISPOSAL OF LAND AND BUILDINGS

ACQUIRING, HOLDING AND DISPOSAL OF LAND AND BUILDING

OWNERSHIP OF UK PROPERTY

PURPOSES OF OWNING UK PROPERTY

Each owner of UK property will have their own purpose for acquiring it. Typically, there are three main reasons to acquire UK property:

- **For occupation:** For example, as a residence or as premises from which to carry on a business such as a shop, factory or hotel
- **As stock in trade:** For example, a property development or land dealing trade
- **As an investment:** For example, to rent out and/or hold for long term capital appreciation.

The legal process for the acquisition and sale of property is the same irrespective of the intended use.

Read about BDO's real estate services.

LEGAL PROCESS FOR THE ACQUISITION AND SALE OF UK PROPERTY

Two different systems of land ownership operate in the UK – one in England, Wales and Northern Ireland, and a separate system in Scotland.

ENGLAND, WALES AND NORTHERN IRELAND

Types of legal ownership

There are two basic types of legal ownership of property:

1. **Freehold ownership:** Owning the land in perpetuity
2. **Leasehold ownership:** Owning a right to occupy the property for a fixed period (less than 12 months).

For most short leaseholds (less than 12 months), there is typically no lease 'premium' to acquire the leasehold interest. Instead, rent is paid to the freehold owner, and usually a service charge. Those renting a property for less than 12 months have fewer legal rights than under a longer lease.

For long leases, there may often be a premium paid at the outset in addition to rental payments for the duration of the lease. Individuals buying long leases of residential property may have the right to buy the freehold, or a share of the freehold, subject to certain conditions.

Types of joint ownership

In the case of joint ownership of property there are two forms in which the beneficial interest in freehold and leasehold property can be owned:

- **Joint tenancy:** All the co-owners own the whole of the property. They do not own an identifiable share. On the death of any of them, the property passes to the surviving co-owners automatically – there is no divisible 'share' for a co-owner to leave to anyone under the terms of their will. Furthermore, all co-owners must agree to a sale or other disposition of the property
- **Tenancy in common:** Each owner owns an identifiable share of the property and can dispose of it unilaterally. They can also leave their share to who they chose under the terms of any will – it will not automatically pass to any co-owner in the event of their death. In the absence of a will, the deceased owner's share may pass under the intestacy rules of their country of domicile.

ACQUIRING, HOLDING AND DISPOSAL OF LAND AND BUILDINGS

Legal stages of sale and purchase

There are four main stages to the sale and purchase of land and property (both freehold and long leasehold) under English law: negotiation and offer; searches; exchange of contracts and completion.

The time span in which these stages are completed varies. In the case of a sale at auction, for example, the total time from offer to completion is likely to be fairly short compared to an off-market, privately negotiated sale for a niche property.

WHAT are the legal differences between buying commercial (business) and residential property?

There are no significant differences in the legal process but Local Authorities have to be consulted if there is a wish to 'change the use' of the property, for example, convert a factory into apartments. Different rates of SDLT (LBTT in Scotland, LTT in Wales) apply depending on whether the purchaser is buying commercial or residential property (see page 68).

Negotiation and offer

Usually, the two parties to the transaction agree a price based on an initial inspection of the property by the purchaser. Changes to the price may be agreed up until exchange of contracts.

Searches

On exchange of contracts, the buyer and seller become legally bound to complete the transaction. Before this happens, the buyer must therefore be satisfied as to what they are buying before committing to the purchase. This includes having various searches and enquiries carried out, usually by a property lawyer (conveyancer) including:

- Enquiries of the local authority, utility companies, etc. to establish many issues including the planning status of the land and nearby property, and the likelihood of future repair work
- Enquiries of the seller's solicitors regarding ownership, boundaries of the property, disputes, etc
- Inspection of the seller's legal title to the property (i.e. to confirm that the seller is the legal owner of the land concerned)
- A survey of the property by a qualified building surveyor to ascertain structural defects and for environmental purposes.

Exchange of contracts

This is the point at which a date for completion is set, having been agreed between the parties. When exchange takes place, the buyer and seller become legally bound to complete the transaction. If either party fails to complete, the other can sue for any loss and may apply to the courts for an order of specific enforcement, i.e. forcing the other party to complete.

At exchange, the buyer is required to pay a deposit (traditionally 10% of the sale price) to the seller. This provides additional protection for the seller: if the buyer then pulls out, the seller is allowed to keep the deposit rather than pursuing the buyer for damages.

Often, the risk of the property becoming damaged or destroyed passes to the buyer on exchange. The buyer should check this and take out insurance on exchange as appropriate. The date of exchange of contracts becomes the tax point (and the date of acquisition) for capital gains tax purposes.

Completion

At completion, the buyer pays over the balance of the sale price and takes possession of the land. The seller hands over the transfer deed and any other legal documents required to register the buyer's title at the UK's Land Registry. The buyer may also forward any 'old' title deeds and documents relating to the property.

The buyer must also pay SDLT at this point (if payable), and complete an SDLT return. VAT may also be due on the purchase which must be collected by the seller.

Following completion, the buyer sends the transfer to the Land Registry for registration. A legal charge (a debt secured on the property) is also registered where a lender has issued a mortgage on the property. If the buyer or seller is a UK company, any discharges or new charges must also be registered at Companies House.

Read about BDO's real estate tax services.

ACQUIRING, HOLDING AND DISPOSAL OF LAND AND BUILDINGS

SCOTLAND

Types of legal ownership

Scottish law recognises two classes of rights in relation to land:

1. **Personal rights:** Enforceable against a defined person or group of people
2. **Real rights:** Enforceable against anyone.

Under Scottish law, interests in land can arise through contracts (which are personal rights) and through ownership (which is a real right).

Unless the grant of a lease by an owner to a tenant is specifically made a 'real' right, the lease will be regarded as merely a contract for hire of the land under Scots law and, therefore, will only be enforceable by the tenant against their landlord. This can impact on the tenant's security of tenure in some circumstances, for example, where the landlord becomes insolvent or uses his interest in the land as a security granted to a third party - who then seeks to enforce that security.

In the case of a lease exceeding twenty years, the tenant will have a 'real' right if the lease is registered in the Land Register of Scotland. However, leases for residential dwellings in Scotland cannot be granted for periods exceeding twenty years.

For leases of up to twenty years, the tenant will acquire a real right under the Leases Act 1449 where the lease is in writing (if it is for more than one year), it is for a specified period, it provides for the payment of rent and the tenant takes actual possession of the land.

In Scotland, a tenant is not obligated to vacate the property on the termination of a lease unless his landlord has served a notice to quit.

Legal stages of sale and purchase

There are generally four main stages to the sale and purchase of land and property under Scottish law: missives; examination of title; settlement and transfer of ownership.

Missives

A contract of sale is completed and, at the point of completion, becomes binding on both the purchaser and vendor unless the contract is either conditional on a future event, in which case it will not become binding until that event happens, or one of the parties commits a material breach of the contract - which will then release the other party from their obligations. This might be the case if, for example, it were to be identified during the examination of title that the vendor does not have good title to the land.

Examination of title

For registered land, this stage typically only requires an examination of the land certificate at the Land Register of Scotland, and an examination of the Register of Inhibitions and Adjudications, to confirm that the vendor is not prohibited from entering into a sale of the property. Registration of title was introduced in Scotland in 1981. Prior to this, the Register of Sasines recorded deeds relating to land.

However, whilst registration of deeds was a legal requirement, the inclusion of the deed on the Register of Sasines does not guarantee ownership. Therefore, in the case of older land it can be more complex to demonstrate that a vendor has title to the land.

Settlement

Settlement is the date on which the vendor delivers the deed conveying title to the purchaser. The purchase consideration is normally payable by the purchaser on this date and will be the date on which the purchaser is entitled to enter the property. However, the property will still be legally owned by the vendor at this stage.

Transfer of ownership

Legal title to the land will be transferred on the date the deed conveying title is registered in the Land Register of Scotland.

Contact BDO Edinburgh or Glasgow.

ACQUIRING, HOLDING AND DISPOSAL OF LAND AND BUILDINGS

FINANCING THE PURCHASE OF UK PROPERTY

FINANCING THE PURCHASE OF UK PROPERTY

Unless a buyer is able to pay for the purchase out of available funds, a loan (mortgage) will be needed to enable the buyer to pay the sale price. UK mortgages are usually issued by banks and building societies in the UK for both residential and commercial purchases.

A mortgage is secured on the property and a legal charge is registered with the Land Registry, or in the Land Register of Scotland. This means that if the borrower defaults on the loan, the lender can take possession of the property. It is, therefore, important that the buyer ensures they are able to pay the monthly mortgage payments.

DEVELOPMENT OF UK PROPERTY

Where land and property is acquired for development, it will usually be necessary to obtain a number of different permissions from the Local Authority and other bodies before work on the project can commence. In many circumstances, the granting of such permissions will involve the developer formally entering into a negotiated planning obligation to pay for local infrastructure improvements to support the development (for instance, improved roads or traffic controls). The local authority may also impose certain obligations in relation to the design of the development, such as a requirement to incorporate a specified number of affordable homes.

There may also be a Local Authority tax charge (the Community Infrastructure Levy). Each local authority is at liberty to set its own rates after taking into consideration the local demand for property development and infrastructure. However, if a charge is imposed, it will be levied at an amount in pounds sterling per square metre on the net additional increase in floor space resulting from the development.

Irrespective of size, a business carrying on a trade of property development and which is engaging subcontractors to undertake works, must register with the UK tax authorities as a contractor and operate the Construction Industry Scheme. This primarily involves checking the status of subcontractors with the tax authorities and deducting tax at source from payments made to them where required.

Read about BDO's real estate services.

KEY CONSIDERATIONS WHEN RENTING UK PROPERTY

In most cases, freeholders marketing property for rent will engage the services of an agent. Therefore, it is usual to approach an agent, or a number of agents, rather than make a direct approach to a landlord.

Most properties are listed for rent (lease) on agents' websites and for a residential letting it is relatively straightforward to arrange a property viewing.

For commercial property, if the purchaser has specific requirements, it will usually be easier for the purchaser to appoint an agent to identify appropriate properties and negotiate the rental amount and other terms of the lease agreement with the landlord. Depending on the nature of the property and market conditions, it may be necessary to pay a 'premium' to secure a lease in addition to paying rent.

For both residential and commercial properties, a property transfer tax may be charged on the tenant when taking up a lease depending on the value (see below).

TAXATION OF UK PROPERTY

There are a number of UK taxes that can apply to interests in UK property:

PROPERTY TRANSFER TAXES (SDLT IN ENGLAND AND NORTHERN IRELAND, LBTT IN SCOTLAND AND LTT IN WALES)

Tax is levied on purchases of UK property and applies to acquisitions by both resident and non-UK resident taxpayers. For example, the purchase of a freehold commercial property in England and Northern Ireland will trigger SDLT at a rate of 2% on consideration (purchase price) between £150,001 and £250,000; and at a rate of 5% on consideration in excess of £250,000.

The acquisition of leasehold commercial property in England and Northern Ireland will trigger SDLT at a rate of 1% on the net present value of rental payments arising under the lease to the extent that the net present value is between £150,001 and £5m; and at a rate of 2% to the extent that the net present value exceeds £5m.

For freehold residential property, there is a much wider range of tax bands with progressive rates of tax, for example, in England and Northern Ireland, the top rate applies to properties valued at over £1.5m. Each rate only applies to the part of the proceeds within that rate band so multiple rates can apply to one transaction. In many cases, these rates will be uplifted by an additional 3% for all purchases by companies, and for purchases by individuals where the individual owns more than one residential property after the transaction. Purchases of residential property by non-UK residents will be subject to a further 2% surcharge from April 2021.

The acquisition of leasehold residential property in England and Northern Ireland will trigger SDLT at a rate of 1% on the net present value of rental payments arising under the lease to the extent that the net present value exceeds £125,000.

ACQUIRING, HOLDING AND DISPOSAL OF LAND AND BUILDINGS

In England and Northern Ireland, a special 15% rate applies to purchases of residential properties valued at over £500,000 by bodies corporate (largely companies); collective investment schemes; and partnerships whose members include a company and/or a collective investment scheme. However, an exemption from the 15% rate is available where the property is acquired for the purposes of a property rental business or a property development trade.

A separate Land and Buildings Transaction Tax (LBTT) applies for property purchases in Scotland and the Land Transaction Tax applies in Wales.

For detail on the current rates of property transfer taxes in the UK see our Tax Data Guide.

INCOME TAX (IT)

UK resident and non-UK resident individuals and trusts renting UK property or realising trading profits from the sale of UK land are chargeable to UK income tax on the profits of their trade/property rental business. Different tax treatments can arise for non-UK resident taxpayers who are resident in a territory with which the UK has a double tax treaty.

CORPORATION TAX (CT)

UK resident companies and non-UK resident companies renting UK property or trading in UK land (whether or not through a permanent establishment) are chargeable to UK corporation tax on the profits of their property rental business/property trade.

UK resident companies and non-UK resident companies trading in UK land through a permanent establishment are chargeable to UK corporation tax on most capital gains arising on the disposal of property.

Non-UK resident companies without a permanent establishment in the UK are chargeable to corporation tax on capital gains either in respect of disposals of UK land (both commercial and residential) or in respect of disposals of shares in companies which derive their value from UK land.

In some cases where assets were held prior to April 2019, the tax base of the asset could be subject to a rebasing to the market value in April 2019 (in the case of commercial properties or shares and some residential properties) or April 2015 (in the case of residential properties).

Different tax treatments can arise for non-UK resident taxpayers who are resident in a territory with which the UK has a double tax treaty. Businesses involved in a building or major renovation project may also need to register for the construction industry scheme.

CAPITAL GAINS TAX (CGT)

Both UK and non-UK resident individuals (including certain trusts) are chargeable to UK capital gains tax on any chargeable gains arising from the disposal of both commercial and residential UK property. Disposals by non-UK residents must be reported on a capital gains tax return with the tax due for payment within 30 days of completion. The same deadline applies to UK residents in the case of residential property but, for UK residents, gains on commercial property and tax due thereon is reportable and payable on 31 January following the end of the tax year (to 5 April) in which the disposal takes place.

Non-UK resident individuals will also be chargeable to capital gains tax on any gains they make on disposals of interests in 'property rich entities', typically shares in companies.

An entity is 'property rich' if, at the time of the disposal, 75% or more of the value of the asset disposed of derives directly or indirectly from UK land (whether commercial or residential).

In addition to CGT on the increase in the capital value of land, a specific tax can now be levied by the Local Authority (LA) on the growth in land value that occurs when the owner obtains planning permission to develop it (i.e. build houses or commercial buildings on the land). The community infrastructure levy (CIL) seeks to provide a commercial alternative to the longstanding 'section 106' agreements between developers and LAs. The rate of the CIL (per square metre of developed land) for a particular location will be set by the LA so may vary considerably from region to region.

ANNUAL TAX ON ENVELOPED DWELLINGS (ATED)

Residential properties valued at more than £500,000 and which are not owned by individuals, for example properties owned by companies (either UK resident or non-UK resident), can be charged to ATED. ATED, where applicable, is charged at an annual amount at progressive rates determined by the property value. A number of exemptions are available, in particular for properties let as part of a property rental business or which are held as trading stock by a property developer.

Read about BDO's real estate services.

ACQUIRING, HOLDING AND DISPOSAL OF LAND AND BUILDINGS

VAT

VAT at a rate of 20% can be chargeable on transactions involving new commercial property (defined as less than three years old), or older commercial property where the seller has made an election in respect of the property that brings it into charge for the purposes of VAT.

The VAT treatment of dealings in property and land is complex and subject to constant change Different rules apply depending on whether the property is residential or commercial, and whether or not exploitation is by way of sale or lease. The large amounts of money involved in property transactions mean mistakes can be costly, with the added risk of penalties imposed by HMRC for errors. Consult BDO LLP at an early stage for expert help in ascertaining the VAT profile of the proposed project.

Read about BDO's VAT services.

INHERITANCE TAX

UK property owned by individuals and trusts can give rise to IHT in a number of circumstances, but most typically following death. Similarly, where a property is owned by a UK resident company and the shares in the company are owned by an individual or trust, a charge to IHT can arise on the value of the shares in the company.

Since 6 April 2017, the value of offshore companies (broadly those controlled by five or fewer shareholders) or partnership interests will fall within the UK estate of non-UK domiciled individuals to the extent that the company (or partnership) derives its value from UK residential property. The new rules also apply to trusts with non-UK domiciled settlors and to all chargeable events (e.g., a death or a trust ten year anniversary) after 5 April 2017.

Read about BDO's private client services.

COUNCIL TAX/BUSINESS RATES

Local authorities in the UK raise funds to meet the cost of local services via a charge on property in the area for which they have responsibility. In the case of residential property, this is implemented via a charge to council tax set at varying levels by reference to the valuation band in which the property falls. Payment of council tax is usually the responsibility of the occupier, which may be the tenant in the case of residential property let as part of a property investment business.

In the case of commercial property, this is implemented via a charge to business rates which is calculated by reference to the rateable value of the property and a multiplier determined by the size of the business.

To support businesses during the COVID-19 pandemic, the UK Government has reduced business rates for certain businesses - read more.

chapter 08

THE EMPLOYMENT OF STAFF, INCLUDING LOCAL HIRE AND EXPATRIATE (INBOUND AND OUTBOUND)

THE EMPLOYMENT OF STAFF, INCLUDING LOCAL HIRE AND EXPATRIATE (INBOUND AND OUTBOUND)

EMPLOYING STAFF FOR THE FIRST TIME

EMPLOYING STAFF FOR THE FIRST TIME

There are a number of aspects to consider when employing staff for the first time:

- Decide how much to pay the employee: they must be paid at least the National Minimum Wage
- Check if they have the legal right to work in the UK (employers may have to do other employment checks as well)
- Check if there is a legal requirement to apply for a Disclosure and Barring Service (DBS) check (formerly known as a Criminal Record Bureau (CRB) check) if the business operates in a field that requires one, e.g. working with vulnerable people or security
- Get employment insurance/employers' liability insurance as soon as a business becomes an employer
- Send details of the job (including terms and conditions) in writing to each employee - employees must be given a written statement of employment particulars on or before the start date of their employment
- Tell HM Revenue and Customs (HMRC) by registering as an employer – registration can take place up to two months before new staff are paid
- Check if employees need to be automatically enrolled in a workplace pension scheme.

A Norwegian food company was looking to grow operations in the UK. With just one employee on its payroll, the company was aiming to increase in size and therefore, was seeking greater understanding of UK payroll compliance requirements and payroll legislation.

In the UK, PAYE and NIC must be deducted (and payments sent to HMRC) each time employees are paid. The company required assistance with the registration of a PAYE scheme with HMRC and help to consolidate employee data to enable payroll set-up. The company is now better positioned to achieve further growth through its expansion within the UK market.

PENSION AUTO-ENROLMENT

Under UK employment law, most workers must be automatically enrolled into a workplace pension scheme by their employer when they start work. Although employees can personally opt out in the first month, if they do not they will be enrolled in the scheme. Most pension scheme providers require a UK bank account to be held in the entity name in order to set up the scheme. This is required even for schemes where the employee is opting out.

Once an employee is enrolled, both the employer and the employee must make monthly pension contributions to a qualifying pension scheme (in addition to paying NIC). For employers the minimum contributions in 2020/21 are 3% of earnings between £6,240 and £50,000 but this is a tax deductible expense for the business. Employees must contribute the amount needed to make the total minimum contribution 8% e.g. if the employer contributes 3%, the employee will need to contribute 5% but if the employer contributes 7%, the employee need only contribute 1%. The employee will also get tax relief on their contribution.

HEALTH AND SAFETY

UK employers have to comply with a number of health and safety standards in relation to their employers - read more about UK health and safety rules for employers here.

PAYROLL REQUIREMENTS

All UK payrolls must operate under a system of Real Time Information (RTI). This means that all employees' pay and deductions must be reported to HMRC on or before each payday.

To set up a payroll, a business must first register as an employer with HMRC either online or over the phone. The business will then need to choose payroll software. For businesses with fewer than ten employees, HMRC provide free software. Businesses with more than ten employees, should purchase software that is recognised by HMRC. Alternatively, a business may choose to use a payroll provider or bureau.

Employers must collect employees' details (e.g. full name, address, date of birth, and National Insurance Number) and keep these for a minimum of three years from the end of the tax year they relate to.

HMRC must be informed about new employees. Employers can use the new starter checklist to provide the information and register them on the payroll using the monthly Full Payment Submission (FPS).

For each pay period, employers must report and record their employees' pay, including any deductions (e.g. NIC). Employers must also record the employer's NIC payment. This should all be reported on payslips and reported to HMRC on the FPS.

THE EMPLOYMENT OF STAFF, INCLUDING LOCAL HIRE AND EXPATRIATE (INBOUND AND OUTBOUND)

There is an employment allowance available for most businesses which can reduce the NIC during the year by up to £4,000, but it cannot create a repayment. If a business employs an apprentice aged under 25 using an approved training programme, employer NIC is no longer payable up to the Apprentice Upper Secondary Threshold (See Chapter 6).

Once an employer has registered a payroll, it will receive notification from HMRC with the employer's PAYE reference number and Accounts Office reference. The employer will need these to make the relevant payments of tax and NIC to HMRC. The payments can be made electronically, and by post (only if the employer has less than 250 employees). Payments should usually be made monthly but you may be able to register to make quarterly payments to HMRC if you usually pay them less than £1,500 per month.

In some circumstances, the Direct Collection scheme can apply to employee NIC. The collection of NIC would be quarterly during the year. Any income tax due will be collected through self- assessment.

An employer will also then need to enrol for PAYE Online in order to file monthly payroll reports and receive other information directly from HMRC, such as tax coding notices. Alternatively, a business may choose to use a payroll provider or bureau.

An employing entity is also responsible for ensuring that an individual is engaged on the correct basis. In other words, the employer must decide if an individual can be engaged on a self-employed basis, i.e. paid directly without deduction of PAYE and NIC.

A leasing management platform company has recently established a new office in the UK with only a handful of employees. Known for creating innovative leasing technology for the commercial real estate industry, the company helps landlords and brokers increase visibility, save time, and reach more tenants. They do this by providing real time leasing analytics on the performance of real estate portfolios.

Having not conducted business in the UK before, the company had little information about UK statutory requirements of setting up a business, including payroll legislation.

Working with BDO, a full reconciliation of payroll calculations and employee data was undertaken. In addition, BDO advisers were able to offer on- going statutory advice, registering a PAYE scheme with HMRC and assisting with the resolution of liability payments from the previous tax year. As a result, the company is now looking to expand their operations further.

All UK based payroll services can be supported internationally via BDO's global payroll services.

OFF-PAYROLL WORKERS

Many business operating in the UK for the first time will initially wish to use consultants and agents rather than directly employing their own staff. This is a low impact way to operate but care should be taken that the workers used are genuinely treated as self-employed or operating correctly through their own company under UK employment and tax laws - mistakes in this area can be costly. The Government has already tightened the rules for off-payroll workers used by public sector organisations (e.g. the National Health Service and other Government departments) and these rules were extended to medium and large sized organisations in the private sector from 6 April 2021.

WHEN will a worker be treated as self-employed?

In theory, whether an individual is treated as an employee or self-employed is a matter of fact dictated by the nature of the arrangements in place between the individual and the engager. In practice, this is often a contentious issue in the UK as new business models in the 'gig' economy have evolved. It is vital to take expert advice on contractual arrangements with any workers a business uses so that the business can achieve certainty on what taxes it should pay and what rights the workers can claim.

THE EMPLOYMENT OF STAFF, INCLUDING LOCAL HIRE AND EXPATRIATE (INBOUND AND OUTBOUND)

SHARE PLANS AND INCENTIVES

SHARE PLANS AND INCENTIVES

The UK is quite unique in that it offers a number of tax advantaged share schemes for employees. The main intention of these schemes is to move share-related gains out of income tax and into capital gains tax, which are taxed at a lower rate for those employees resident in the UK.

There are two discretionary schemes under which the company can grant an option to acquire shares: the Enterprise Management Incentive (EMI); and a less generous scheme, the Company Share Option Plan (CSOP). It is important that companies seek advice if they are interested in implementing one of these schemes as a number of conditions must be met, for instance, in relation to the size of the company or how it is controlled, before the company can qualify.

The UK tax system also offers tax relief to encourage owners to sell their businesses to their employees through and Employee Ownership Trust: this can help owners achieve a tax-efficient exit from the business - see Chapter 10.

Read about BDO's reward services.

Which UK employee share plan would be best for your business? Try our online tool.

NON-UK EMPLOYEES

If there are non-UK based employees working for a UK business, there are a number of factors to consider:

IMMIGRATION

The citizens of nearly all EEA countries, as well as citizens of Switzerland, used to have the right to live and work in the UK. This included setting up a business. This 'freedom of movement' for EU and EEA nationals has ended after the UK left the EU on the 31 December 2020.

EU, EEA AND SWISS CITIZENS RESIDENT IN THE UK BEFORE BREXIT

EU, EEA and Swiss nationals have until 30 June 2021 to apply for settled status provided they were legally resident in the UK before 1 January 2021 and have established five continuous years of legal UK residence by the time they apply. Unless the application is declined on the grounds of criminality (or because the individual was not legally resident at Brexit day), the UK Government will be obliged to grant all such applicants settled status.

Those who will not meet the five-year residence test before the application deadline will not qualify for settled status but can instead get a pre-settled status.

This will allow them to remain in the UK until they have established five years residence and can then apply for settled status.

However, they will still have had to be legally resident in the UK before 1 January 2021. Details of the EU Settlement Scheme can be found here.

ALL FOREIGN CITIZENS ENTERING THE UK AFTER BREXIT

Under the new system, all foreign nationals are treated equally from 1 January 2021. and a visa will be required to work in the UK. However there is an exception for Irish citizens who remain free to work in the UK without a visa.

The new system is described as a 'points-based' system. Each visa category will have a fixed set of requirements to meet, albeit there are ways in which certain requirements (points) can be traded. Details of the tiered system can be found here.

THE EMPLOYMENT OF STAFF, INCLUDING LOCAL HIRE AND EXPATRIATE (INBOUND AND OUTBOUND)

SKILLED WORKERS

The current Tier 2 (General) visa category has been replaced by a new 'Skilled Worker' category. The requirements under this are as follows:

- The job offered must be at skill level RQF3 or over (this is equivalent to an A-level)
- The prospective employee must speak English
- The sponsoring employer must pay a salary of £25,600 or the going rate for the job (whichever is higher)
- Minimum salary can be reduced to a minimum of £20,480 if able to 'trade' points based on certain specific characteristics, for example if it's a 'shortage occupation' or if the individual has a relevant PHD.

It will be possible to switch into the Skilled Worker route from most other visa categories without having the employee to leave the UK. Employers should also note that many occupations not currently qualifying for a Tier 2 (General) visa will qualify for a Skilled Worker visa. This includes office managers, sales executives, IT support technicians, estate agents, chefs, electricians, plumbers, etc.

As with existing Tier 2 visas, employers wishing to hire foreign nationals in the Skilled Worker category will need a sponsor licence, so employers who have never sponsored anyone for a work visa will need to apply to be a sponsor.

LOW-SKILLED JOBS

There is to be no visa category for designated low-skilled jobs which will be a blow to certain industries. The only people allowed to do deemed low-skilled jobs will be British citizens, Irish citizens and other individuals with the right to work in the UK (for example, those with settled or pre-settled status).

VISAS FOR SOLE REPRESENTATIVES OF AN OVERSEAS COMPANY

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

INVESTORS

Investors are able to qualify for a visa based on their ability to invest £2m in the UK.

Funds must be invested in UK government bonds, share capital or loan capital in active and trading UK registered companies. Investment should not be in companies mainly engaged in the investment, management or development of property.

THE EMPLOYMENT OF STAFF, INCLUDING LOCAL HIRE AND EXPATRIATE (INBOUND AND OUTBOUND)

INNOVATORS

The innovator visa is for those wanting to set up a business in the UK. Individuals must be able to show that the business idea is new and viable; individuals investing in an existing business will not qualify. Individuals must also obtain endorsement from an authorised endorsing body.

Unless being provided by the endorsing body, an individual must have at least £50,000 investment funds.

HEALTHCARE

Free healthcare is available to all UK residents which is a major advantage to employers.

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

Although the service provided by the NHS is generally adequate for minor ailments or treatment requiring emergency attention, many people take out private medical insurance in order to receive more prompt treatment.

This also gives them more control over the timing of any hospital visit required and the standard of accommodation provided. However, the cover provided by insurance will often not include major surgery or the treatment required for serious chronic conditions.

All foreign nationals applying for a visa to come to live in the UK for longer than six months must pay a 'health surcharge' to gain access to the NHS (payable at the same time their visa application is made online).

Certain groups are exempt from the surcharge, including Australia and New Zealand nationals. Other categories of people who are exempt from paying the IHS, are members of armed forces, eligible healthcare workers, people applying for indefinite leave to enter or remain, asylum seekers, victims of slavery or human trafficking etc.

LOCAL TRANSFERS TO THE UK

This is the simplest scenario for inbound employees to the UK. They will move onto UK payroll with immediate effect, and will be subject to UK PAYE withholding tax and National Insurance deductions.

There are no particular tax consequences associated with this. However, a tax reconciliation is likely to be required at the end of the tax year, as the individual will be issued with an 'emergency tax code' when they join the UK payroll because they have not previously been employed in the UK.

This may not capture their personal circumstances adequately, so an under-payment or over-payment of PAYE withholding may arise.

SHORT-TERM ASSIGNMENTS/VISITS TO THE UK (LESS THAN SIX MONTHS)

It is a common misconception that PAYE withholding is not required for short-term business visitors to the UK. However, the default position is that employers are obliged to start withholding tax from the individual's first day working in the UK.

Many countries have a 'double taxation agreement' in place with the UK.

The majority of these agreements allow an exemption from UK tax for employees working for short periods in the UK, assuming that a number of conditions are met, most importantly:

- The individual works in the UK for less than 183 days in a year
- The costs of the individual's employment remain in their home country (broadly speaking).

Under these circumstances, it may be possible to put in place an arrangement known as a 'Short-term Business Visitors Agreement' (STBV) with HMRC which offers a relaxation of these strict PAYE rules.

If STBV exemption is not available, either because the employee comes from a country with which the UK does not have a double tax agreement, or because they do not meet the conditions of the agreement, then the employer must withhold PAYE from the employee's first UK work day.

This can cause issues in terms of dual withholding (in both home and host countries) and requires additional compliance (including filing tax returns) to avoid double taxation of the same income.

HMRC has published guidance indicating that where certain employees who do not qualify for STBV treatment and spend fewer than 60 work days in the UK each tax year, it will be possible to report and tax an appropriate amount of their annual salary via the UK payroll in a single submission at the end of the tax year.

To do this the employer will need to enter into an agreement with HMRC first.

THE EMPLOYMENT OF STAFF, INCLUDING LOCAL HIRE AND EXPATRIATE (INBOUND AND OUTBOUND)

LONG TERM ASSIGNMENTS TO THE UK

LONG TERM ASSIGNMENTS TO THE UK (MORE THAN SIX MONTHS)

Where an employee remains employed in their home country but comes to work in the UK for more than six months, they will almost certainly be subject to PAYE on their salary (regardless of whether their salary is paid outside the UK), because of the host employer's obligations. Liability to UK National Insurance Contributions would need to be reviewed.

If the employee remains taxable in their home country, double taxation (and possibly dual withholding) is likely to occur. Clearly, this could have a cash flow impact on the individual, and the employer may then decide to settle the UK tax on the individual's behalf. The home country should accept a credit for UK taxes paid to ultimately restrict this double taxation burden (via the home country tax return). The resulting refund relating to the credit would be payable back to the employer.

However, the home country will only give credit for taxes up to the employee's marginal rate of tax (for example, if the UK tax is 40% but the home marginal rate is 35%, credit will only be given for 35% - so the balancing 5% will be lost).

Whether the individual is responsible for the shortfall or not is a policy decision for the employer to make.

Certain assignment-related tax relief claims may also be available to such employees, such as temporary workplace relief or overseas workday relief. Any assignment policies should be carefully structured to ensure that relevant claims are not prevented and the opportunity for tax efficiency lost.

SOCIAL SECURITY

The general principle of social security is that individuals pay contributions where they work. There are exceptions for individuals working outside their home country for temporary periods, and is dependent on the agreement the UK has forged with the other country concerned.

EU: The detached (or posted) worker rules apply to individuals seconded/assigned by an employer to work in the UK or an EU territory. An employee sent temporarily by their employer to perform work in another state will continue to be subject to the social security legislation of their home country provided that the duration of the posting doesn't exceed 24 months and they are not replacing another detached worker (the 24 month period cannot be extended for any postings that started post 2020).

Multi-state workers are individuals who work in two or more EU/UK countries, spending at least 5% of their time in a second EU/UK state.

Multi-state workers will be covered by the legislation of the State of habitual residence if they carry out a substantial part of their activity (25% or more) in that State. If this is not the case, then generally the social security liability will fall under the legislation of the country in which the employer is situated.

It will be necessary to apply for A1 certificates to show in which jurisdiction social security is due.

EFTA Countries: There are special rules for posting between the UK and the EFTA countries (Norway, Switzerland, Iceland and Liechtenstein) which started post 31 December 2020. Any arrangement which was already in place as at 31 December 2020 will be covered by the EU rules discussed above. For new arrangements starting from 1 January 2021 advice will need to be sought as the rules are different in each case.

Reciprocal agreement countries: There are certain countries which have 'reciprocal social security agreements' with the UK, including the US, Japan, and Canada. Where the individual is posted temporarily to the UK from one of these countries, they remain subject to social security in their home country provided certain conditions are met. A 'Certificate of Coverage' should be obtained from the home country authorities to support this position.

Other countries: Individuals coming to the UK on a temporary posting are subject to an exemption from UK National Insurance for the first 52 weeks of their assignment.

Read more here.

chapter 09

THE IMPORT AND EXPORT OF GOODS AND SERVICES INTO AND OUT OF THE UK

THE IMPORT AND EXPORT OF GOODS AND SERVICES INTO AND OUT OF THE UK

SELLING INTO THE UK FROM ABROAD

The VAT and customs duty implications of selling into or out of the UK depend on whether goods or services are supplied; the nature of the goods; where they are sold to/from; and whether the customer is in business or a private consumer. The rules have changed significantly since the UK has left the EU.

SELLING INTO THE UK FROM ABROAD

IMPORTING GOODS INTO THE UK

Goods imported into the UK are normally subject to VAT and/or customs duties at the time and place they are imported into the EU although the new UK customs tariff applies a zero rate to many goods.

All goods have a commodity code which must be declared at import which determines the duty rate applicable to the shipment, as well as a range of other requirements and reliefs such as import licensing, quotas and tariff suspensions. Import VAT is also payable. Using an incorrect commodity code can result in paying the wrong amount of duty and/or VAT and other errors with customs requirements and reliefs. As with customs duty rates, commodity codes are harmonised throughout the EU.
Read more on commodity codes.

It is often possible to obtain a preferential duty rate when the goods have been sourced from particular countries with which the UK has a trade agreement. For example, most movement of goods between the UK and the EU can be exempt from customs duties but only where the goods concerned originate in either the UK or the EU as determined by the Rules of Origin rules in the Trade and Cooperation Agreement (TCA). However, it can be difficult for importers to accurately determine origin of the goods (for example, a product assembled from a range of components) and a formal HMRC ruling may have to be sought in cases of doubt.
Read more on origin of goods.

If the customer is responsible for clearing the goods through Customs and paying any duties and VAT on importation, the selling company is not regarded as making any supplies for VAT purposes and is not liable to be VAT registered in the UK. However, if the overseas business selling into the UK is responsible for the importation of the goods and delivering them to its customer, that overseas business will be required to pay the duty and may have to pay VAT too, though in most cases new Postponed VAT Accounting (PVA) rules should allow the VAT to be dealt with through the UK VAT return). It will also be required to register for VAT in the UK in respect of the onward sale, irrespective of whether or not it has a UK presence. The agreed freight terms should specify whether the buyer or the seller is responsible for importation.

WHAT is duty deferment relief?

If the duty and VAT (if paid physically rather than through PVA) due on import are significant, an importer can consider applying for duty deferment, which allows all customs charges to be paid monthly in arrears, and/or customs warehousing, which allows imported goods to be stored under customs control (without payment of customs charges) until needed. Import VAT and duty are then paid on the date the goods are released from the warehouse. Should the goods be re-exported instead of released for free circulation, VAT and duty are avoided altogether.

THE IMPORT AND EXPORT OF GOODS AND SERVICES INTO AND OUT OF THE UK

DIRECT SALES INTO THE UK

Overseas businesses selling goods directly to UK consumers and UK businesses that are not VAT registered must apply new VAT and Customs Duty rules from 1 January 2021 – many will need to register for VAT in the UK as a result.

For sales to consumers of consignments of goods that are under £135, there is no import VAT due, but instead there is a requirement for the seller to declare supply VAT. This means that the seller must be VAT registered in the UK and pay the VAT due on such sales to the UK VAT authorities. The seller will need to collect this VAT from the customer, or else the VAT will be deemed to be included in the price paid.

For sales to UK VAT registered businesses of consignments of goods that are under £135, the VAT due must be paid by the customer through its UK VAT return (ie the seller is not require to collect VAT from the customer or pay VAT to HMRC).

For sales over £135 to UK consumers who act as importer, a non-UK seller (including EU sellers) would be able to zero-rate the export sale, but the consumer will have to pay import VAT and possibly customs duty. The duty bill will depend on whether the goods are tariff-free under the EU/UK trade agreement or other arrangements the UK has with countries outside the EU. There are several other EU harmonised duty relief schemes intended to make EU economic operators more competitive in the global marketplace.

Such schemes offer cost savings opportunities, but are tightly regulated and require the importer to put adequate controls in place.

Read about the new rules for selling to UK customers after Brexit.

Selling goods to UK customers through an online marketplace

This is another area where non-UK businesses have to deal with new rules from 1 January 2021.

Where an overseas business sells to UK consumers (not VAT registered), through an online marketplace, using stock already in the UK this is non-longer treated as a sale to the consumer: instead it is treated as a deemed sale by the overseas business to the online marketplace, with VAT chargeable at a new zero rate. The online marketplace then makes a sale to the final consumer, and is responsible for charging the appropriate VAT and paying it to HMRC.

However, where a business sells goods in consignments worth £135 or less, through an online marketplace and the goods are moved into the UK after the sale is made, this is treated as a deemed to make a sale to the online marketplace, but the sale is treated as occurring outside the UK and so is outside the scope of UK VAT. Again it is the online marketplace then makes a sale to the final consumer, and is responsible for charging the appropriate VAT and paying it to HMRC.

Read about the new UK rules for selling through marketplaces.

SERVICES INTO THE UK

The VAT position of cross-border services is determined by 'place of supply' rules, which are broadly the same, regardless of whether the services are provided to a UK recipient by an EU or a non-EU business so there are few changes as a result of Brexit.

For B2B transactions, the general rule is that the service is deemed to be supplied where the recipient belongs. Therefore, a UK business receiving the service from an overseas business must account for VAT as a 'reverse charge' at the rate applicable in the UK and the services bought in will count towards the UK VAT registration threshold of £85,000. This VAT may be recoverable by the recipient of the service. No VAT would be payable by the supplier, who is not required to register for VAT in the UK.

However, there are some specific exceptions to this rule. This includes land related services which are subject to the VAT rules of the country where the land is located; and the supply of admission to an event, which is deemed to take place in the country where the event is held. If that supply takes place in the UK, it will be necessary to register for VAT in the UK.

The place of supply of B2C services varies according to the precise nature of the supply. Some EU based service businesses suppling services to UK consumers must now treat UK consumers the same as 'rest of the world' consumers. This means that certain services provided to UK consumers by EU suppliers that were previously liable to local VAT will become 'outside the scope' of VAT. Amongst others, this affects most professional services to consumers (legal, accounting etc.) who will no longer need to charge VAT to UK based individuals.

Some B2C service providers with customers in the UK (e.g. suppliers of digital services such as software, music, and e-books) must now register and account for VAT in the UK (after Brexit the UK is not part of the EU member states Mini One Stop Shop (MOSS) scheme).

Read about BDO's customs duty services.

HOW much customs duty is paid on services?

Strictly, there is no customs duty on services. However, some services related to a specific import of goods (e.g. selling commission, royalties and licence fees) may have to be taken into account when calculating the customs value of imported goods.

THE IMPORT AND EXPORT OF GOODS AND SERVICES INTO AND OUT OF THE UK

SELLING FROM THE UK TO OVERSEAS CUSTOMERS

SELLING FROM THE UK TO OVERSEAS CUSTOMERS

GOODS OUTBOUND FROM UK

Selling goods from the UK

No VAT is chargeable on the sale of goods that are physically exported from the UK, provided the exporter obtains and keeps official and/or commercial documentary proof of export (e.g. a copy of the Goods Departed Message created by HMRC's National Export System or an authenticated air waybill). It is, however, usually beneficial for the exporter to be VAT registered in the UK to recover any UK VAT incurred on the purchase of the goods or general business overheads.

Exports of certain goods, such as military and dual-use equipment, sensitive technology, artworks, plants and animals, medicines and chemicals, may require a licence from the appropriate Government department. In addition, the UK upholds trade sanctions against certain listed persons, entities and countries. Trading with such denied parties may still be possible should the goods be of humanitarian aid or where an export licence has been acquired from the UK Government.

From 1 July 2021, VAT on goods sold in consignments under €150 to EU consumers can be dealt with under a new EU-wide scheme called IOSS rather than import VAT being paid by customers or the supplier acting as importer, and the current 'distance selling' rules will disappear as well as the EU low import limit of €22. Under the scheme, the VAT on the sale is paid through a single EU portal in any member state rather than import VAT being due.

SERVICES OUTBOUND FROM THE UK

The VAT position of cross-border services is determined by 'place of supply' rules, which are broadly the same as the pre-Brexit EU rules.

Where a UK business sells a service to a business located overseas (including within the EU), the general rule is that the service is deemed to be supplied where the recipient belongs. Therefore, the sale is outside the scope of UK VAT and no UK VAT need be charged. The seller should obtain commercial evidence to show that the customer belongs outside the UK and receives the supply for a business purpose. It may be possible for the UK supplier to register for VAT in the UK to recover any UK VAT incurred on related purchases and general business overheads.

There are some exceptions to the general rule, such as land related services, which are subject to the VAT rules of the country where the land is located; and the supply of admission to events, which are deemed to take place in the country where the event is held. These may trigger a need to register for VAT in the local jurisdiction.

The place of supply of B2C services varies according to the precise nature of the supply. A supplier of B2C services to EU customers may be required to register in more than one member state. B2C suppliers of digital services (e.g. software, music, e-books) must register for and account for VAT in all EU member states where they have customers, or opt for a simplified registration in one member state under the MOSS scheme.

From 1 July 2021, this scheme is expanded to all online sales of services where the place of supply is the EU and some intracommunity sales of goods, and will be called a One Stop Shop scheme (OSS).

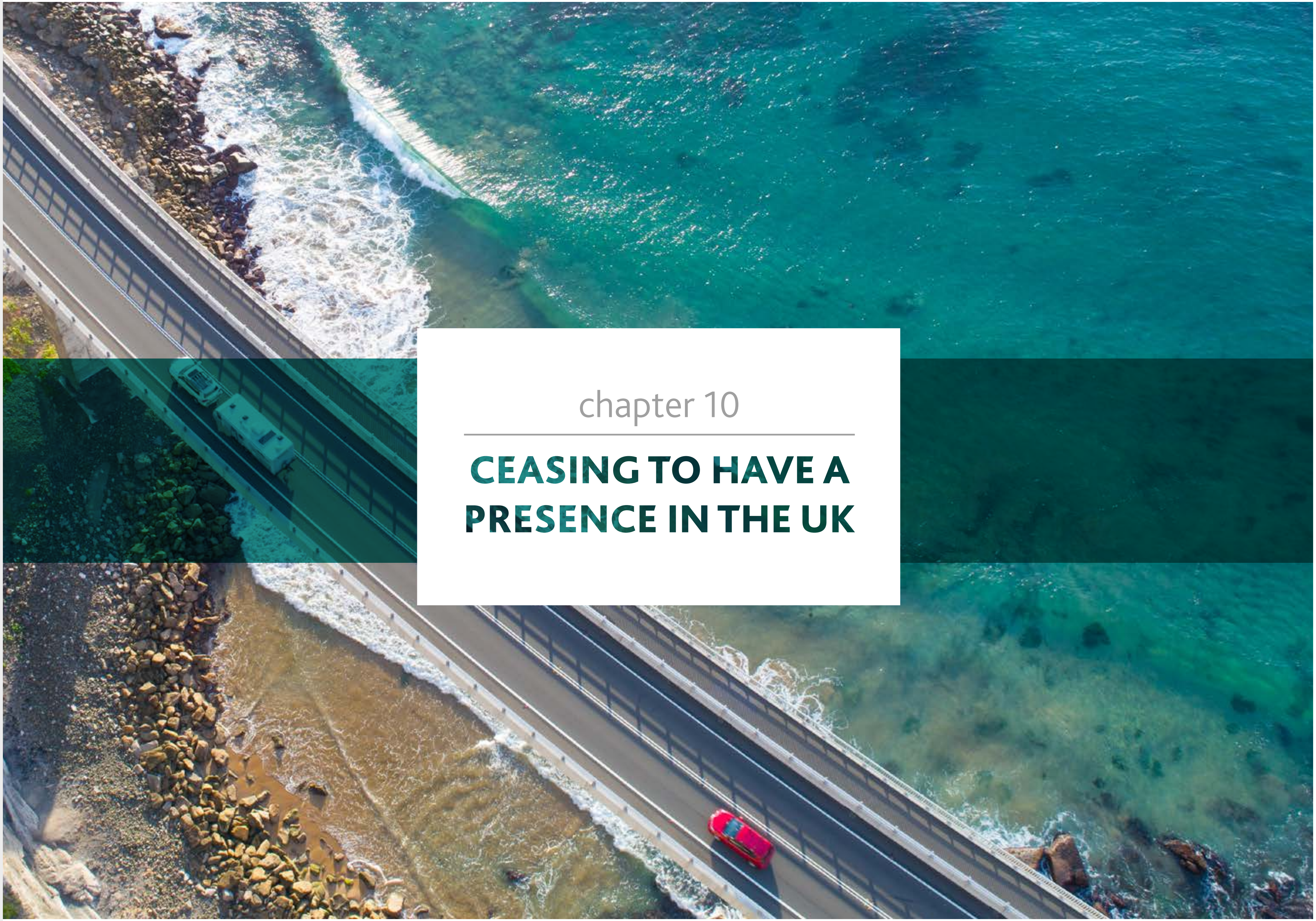
Some non-EU countries have similar schemes requiring foreign suppliers of B2C digital services (e.g.. software, music, e-books) to register and account for VAT in their country.

In practice, the VAT place of supply can be difficult to get right, and any errors in determining the precise nature of the service or the country in which the recipient is established can completely change the outcome for VAT purposes.

Read about BDO's international VAT services.

WHAT impact will Brexit have?

The laws affecting sales of goods and services from the UK to EU member states have changed from 1 January 2021 and there are likely to be additional costs and administrative barriers to navigate. Read more on the implications of Brexit.



chapter 10

CEASING TO HAVE A PRESENCE IN THE UK

CEASING TO HAVE A PRESENCE IN THE UK

DISPOSAL OF A BUSINESS OR SUBSIDIARY

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

DISPOSAL OF A BUSINESS OR SUBSIDIARY

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

LEGAL AND COMMERCIAL CONSIDERATIONS

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

TAX CONSIDERATIONS

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

A UK resident seller may suffer UK tax on the capital profit arising on the sale of shares in a company. Where the business is unincorporated, capital profits can arise on assets such as land and buildings, goodwill, intellectual property, or equipment if sold for more than cost.

Where the seller is a UK resident company, it may be exempt from tax on gains arising on the sale of shares in a trading company where it has held at least 10% of the share capital of the other company for a minimum of 12 months in any of the prior six years (see Chapter 4). Where the owner is an individual, they may qualify for a number of tax reliefs depending on the circumstances.

WINDING-UP, OR STRIKING A COMPANY OFF THE REGISTER AT COMPANIES HOUS

A business could cease to have a presence in the UK because the owners decide to close it down by a process of winding-up (also known as 'liquidation'); or because the company has become inactive and the owners wish to cancel its registration at Companies House. If an overseas company closes a UK registered establishment, it is only required to file a 'Notice of closure of a UK establishment of an overseas company' (form OS DS01) at Companies House.

UK workers have various employment protections so statutory redundancy payments will need to be made and other termination of employments costs will arise when a UK business ceases trading.

TAX CONSIDERATIONS

When a company goes into liquidation, it is still required to pay tax and to continue to file a tax return (although the administrative responsibility for this will fall on the company's liquidator rather than the company). One of the main tax planning considerations will be maximising the use of any available trading losses.

These losses cannot be carried forward beyond the cessation of trading and, therefore, it is important to ensure the most tax-efficient timing of events. There are no special tax rules for corporate insolvency, winding-up or striking off. A business will normally prepare a tax return to the same date as its annual accounts, but this will be brought forward to the date of cessation of trade, if earlier.

Read about BDO's corporation tax services.

WHAT happens if the business shuts down because it is making losses?

Loss making businesses can opt to carry losses back to the previous year to set against profits in that year and possibly get a tax refund. There is an extension to this rule for any trading losses incurred in the last 12 months of trading, such losses can be carried back and offset against the profits of the previous three years.

CEASING TO HAVE A PRESENCE IN THE UK

COMPANY MIGRATION

LEGAL CONSIDERATIONS

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

Where the company has not yet gone into liquidation, but the directors ought to know that the company has no reasonable prospect of avoiding the situation, the directors will be personally (and jointly and severally) responsible for additional liabilities of the company - unless they can show that they took every reasonable precaution to minimise the potential loss to the company's creditors.

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

COMPANY MIGRATION

It is possible for a company to become non-resident for UK tax purposes. This could happen to a UK incorporated company as a result of having its place of effective management in another treaty jurisdiction outside the UK. Most of the UK's tax treaty tie-breaker clauses deem the tax residence of a company to be in the country of effective management. In recent UK tax treaties, the tie-breaker is settled by the Mutual Agreement Procedure (MAP) rather than the effective management test. A MAP tie-breaker has also been included as part of the OECD's Multilateral instrument (MLI) which is now relevant for those territories which have both adopted this part of the MLI matching provisions.

Likewise, a non-UK incorporated company, either needs to ensure that its central management and control is no longer exercised in the UK so that it is not treated as UK resident under UK domestic tax rules, or it needs to become non-resident under a tax treaty.

For tax purposes, in each case the company will cease to be within the charge to UK tax and will be treated as disposing of all of its assets. There will be a deemed disposal of capital assets (principally land, buildings and goodwill) and intangible fixed assets held by the company at their market value of at the time of migration.

No exit charges apply in respect of assets that remain in use for the purposes of a trade carried on by the company through a permanent UK establishment after the company has ceased to be UK resident.

An eligible company may apply for an exit charge payment plan if it ceases to be resident in the UK (and for accounting periods ending on or after 1 January 2020), the company carries on a business in 'relevant' EEA state (ie an EEA state that is a member of the EU, or a non-EU state that is a member of the EEA which has entered into an agreement concerning the mutual collection of tax debts with the EU or the UK). For accounting periods ending before 1 January 2020 the requirement was that the company carry on a business an EEA state. On ceasing UK residence, the company must not be treated as resident in a non-EEA territory for the purposes of any double tax arrangements.

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

Read about BDO's international tax services.

chapter 11

USEFUL ORGANISATIONS, CONTACTS AND FURTHER INFORMATION

USEFUL ORGANISATION, CONTACTS AND FURTHER INFORMATION

BDO AROUND THE UK

National and regional organisations support the inward investment journey as well as helping businesses seeking to expand their presence in the UK.

For international enquiries or collaborations, your local Department of International Trade contact would be the best place to start. See the department for International Trade visit www.gov.uk/government/organisations/department-for-international-trade.

For the umbrella organisation of the The British Chambers of Commerce visit www.britishchambers.org.uk.

BDO has worked with all the organisations named. There are also localised sources of help and information in London and the Regions.

See BDO contacts around the UK.

BELFAST

- Invest Northern Ireland
- Northern Ireland Chamber of Commerce and Industry
- Belfast chamber of Trade and Commerce
- DIT

BOURNEMOUTH & POOLE

- Dorset LEP
- Dorset Chamber of Commerce

BRISTOL

- Invest Bristol and Bath
- Business West – Bristol Chamber of Commerce
- DIT

CARDIFF

- Invest in Cardiff
- South West Chamber of Commerce

EDINBURGH

- Invest Edinburgh
- Edinburgh Chamber of Commerce

GLASGOW

- Invest Glasgow
- Glasgow Chamber of Commerce

LEEDS

- DIT
- Leeds City Region
- West and North Yorkshire Chamber of Commerce

LIVERPOOL

- Liverpool vision
- Liverpool and Sefton Chamber of Commerce

LONDON

- DIT
- London and Partners
- London Chamber of Commerce and Industry

MANCHESTER

- MIDAS – Invest in Manchester
- Greater Manchester Chamber of Commerce
- DIT

MIDLANDS

- DIT
- Business Birmingham
- Greater Birmingham Chamber of Commerce
- East Midlands Chamber
- Made in the Midlands

READING

- Thames Valley Chamber of Commerce
- Thames Valley LEP local enterprise partnership

SHEFFIELD

- DIT
- Sheffield City Region
- Sheffield Chamber of Commerce and Industry

SOUTHAMPTON AND PORTSMOUTH

- Invest in Hampshire
- Solent LEP
- Hampshire Chamber of Commerce

SCOTLAND

- Development International (SDI)

USEFUL ORGANISATION, CONTACTS AND FURTHER INFORMATION

UK CONTACTS

INTERNATIONAL ADVISORY SERVICES CONTACTS

All UK contacts.

International Liaison Partner
KIM HAYWARD
kim.hayward@bdo.co.uk

Head of Business Services & Outsourcing
MILES BOORMAN
miles.boorman@bdo.co.uk

International Private Client Services
WENDY WALTON
wendy.walton@bdo.co.uk

Expatriate Tax
ANDREW BAILEY
andrew.bailey@bdo.co.uk

US Advisory Services
IAIN HENDERSON
iain.henderson@bdo.co.uk

CORY BLACKMORE
cory.blackmore@bdo.co.uk

India Advisory Services
ARBINDER CHATWAL
arbinder.chatwal@bdo.co.uk

China Advisory Services
JINGRU LIU
jingru.liu@bdo.co.uk

MATTHEW WHITE
matthew.white@bdo.co.uk

		BSO CONTACTS	TAX CONTACTS
WEST	Bristol +44 (0)117 930 1500	JEREMY HAYLLAR jeremy.hayllar@bdo.co.uk	PAUL FALVEY paul.falvey@bdo.co.uk
	Reading +44 (0)118 925 4400	MIKE MCALLISTER mike.mcallister@bdo.co.uk	NEIL BRACKSTONE neil.brackstone@bdo.co.uk
EAST ANGLIA	Cambridge +44(0)122 326 6300	SARAH ELMS sarah.elms@bdo.co.uk	PHIL HALL phil.hall@bdo.co.uk
	Ipswich +44 (0)147 332 0700	SARAH ELMS sarah.elms@bdo.co.uk	PETER HARRUP peter.harrup@bdo.co.uk
	Norwich +44 (0)160 361 5914	SARAH ELMS sarah.elms@bdo.co.uk	PHIL HALL phil.hall@bdo.co.uk
SOUTH	Gatwick +44 (0)129 359 1000	DUNCAN BERRY duncan.berry@bdo.co.uk	PAUL LAVERCOMBE paul.lavercombe@bdo.co.uk
	Guildford +44 (0)148 356 4646	DUNCAN BERRY duncan.berry@bdo.co.uk	JO GILBEY jo.gilbey@bdo.co.uk
	Southampton +44 (0)238 088 1700	DAVID I'ANSON david.ianson@bdo.co.uk	JANE MULHOLLAND jane.l.mulholland@bdo.co.uk
LONDON	London +44 (0)207 486 5888	IAN MCBANE ian.mcbane@bdo.co.uk	TIM FERRIS tim.ferris@bdo.co.uk

		BSO CONTACTS	TAX CONTACTS
MIDLANDS	Birmingham +44 (0)121 352 6200	SUK AULAK suk.auluk@bdo.co.uk	RICHARD ROSE richard.rose@bdo.co.uk
NORTH WEST	Liverpool +44 (0)151 237 4500	LAURA STUFFINS laura.stuffins@bdo.co.uk	ANGELA CROSS angela.cross@bdo.co.uk
	Manchester +44 (0)161 817 7500	MARK SYKES mark.sykes@bdo.co.uk	ANGELA CROSS angela.cross@bdo.co.uk
NORTH EAST	Leeds +44 (0)113 244 3839	MARK SYKES mark.sykes@bdo.co.uk	DAN BROOKES dan.brookes@bdo.co.uk
SCOTLAND	Edinburgh +44 (0)131 347 0347	ANDREW MCNAMARA andrew.mcnamara@bdo.co.uk	JAMES PATERSON james.paterson@bdo.co.uk
	Glasgow +44 (0)141 248 3761	ANDREW MCNAMARA andrew.mcnamara@bdo.co.uk	MARTIN BELL martin.bell@bdo.co.uk

www.bdo.co.uk

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