BLICK ROTHENBERG
Chartered Accountants

Blick Rothenberg LLP

Establishing a Business in the UK

Blick Rothenberg LLP
16 Great Queen Street
Covent Garden
London WC2B 5AH

T:
+44 (0)20 7486 0111

F:
+44 (0)20 7935 6852

E:
email@blickrothenberg.com

W:
www.blickrothenberg.com

Twitter:
@BlickRothenberg


SIXTEEN

Contents

This booklet is for guidance only and advice should be sought to consider specific circumstances.

Introduction

The United Kingdom ("UK") has always been a major trading nation and partner for many other countries around the world. Whilst still maintaining a strong manufacturing base, the country's economy has evolved to one that now is at the forefront of new developments in technology, biosciences and finance.

The UK's attractive taxation regime makes it a good location for a holding company where businesses are looking to expand further into Europe or beyond.

Where a company is looking to do business with the UK, the fiscal implications are neither complicated nor overly burdensome. This booklet concentrates on providing practical information to make it easier for overseas businesses to establish a presence in the UK.

We will therefore address what creates a taxable presence in the UK, the procedures involved in setting up a company here, tax rates, implications for individuals working for a company, and other related issues.

What creates a taxable presence in the UK?

UK legislation provides that a UK corporate entity will be subject to UK tax. Furthermore, an overseas entity trading in the UK is likely to be subject to UK tax as well, but principally only on its activities in the UK.

The issue to be considered is whether an activity creates a UK tax liability and, if so, what type of entity the overseas company should establish.

The right entity – trading with or in the UK

Where a company is trading in the UK, there are a number of factors to be considered.

Where a company is trading with the UK (i.e. has customers in the country to whom goods or services are sold), there is unlikely to be a need to establish an entity and comply with various related regulations (there is one exception in relation to Value Added Tax which is considered on page 22).

In many instances, an overseas business will initially wish to research the market to see if it makes commercial sense to establish a presence in the UK. This may either involve making frequent visits to the UK (this booklet does not consider any work permit issues) or having someone based here on a more permanent basis. The role of this individual will be to research the market, make initial contact with potential customers, send out marketing literature and other similar promotional activities. In tax terms, these are generally known as preparatory or auxiliary activities and commonly do not give rise to any corporate tax implications. There is, however, a need to register as an establishment which is considered in the next section on page 06. Tax advice should be sought to determine whether the activities of the establishment fall outside the scope of UK corporate tax.

Alternatively, the overseas company may decide at the outset that there is an existing or potential market for it and would proceed to establish a presence in the UK, which would have a corporate tax presence.

In such circumstances, the overseas company needs to consider whether to register as a taxable establishment (formerly referred to as a ‘branch’) or a subsidiary.

Establishment or subsidiary?

This section considers the issues overseas companies need to bear in mind when choosing the correct entity.

We consider the procedures for registering an establishment or subsidiary on page 06.

An establishment is not a separate legal entity from the parent company but merely an extension operating under the laws of another jurisdiction. As such, it does not provide the limited liability that a subsidiary company does.

If the nature of the business is such that it is important to ring-fence liabilities arising in a specific jurisdiction, the subsidiary will afford the safer option.

The other issue to consider is whether it is important for the overseas company to be seen to have a UK presence. Although an establishment and a company provide a UK presence, the perception is that a UK company is a local business with a greater sense of permanence. If this is important from a commercial perspective, you may wish to establish a subsidiary.

The costs of maintaining an establishment or subsidiary need to be taken into account and these have a correlation to the level of filing requirements, which are considered in the following sections.

Finally, is the group sensitive to the type and level of information that is publicly available about its business in its own jurisdiction? If it is, the subsidiary will be the better option. This is also considered in greater detail in the following section.

Registering an establishment or subsidiary

Establishment

The process of registering an establishment involves the overseas company filing a form giving details of its shareholders and directors. With the form, it also needs to submit a certified copy of its memorandum and articles of association (company bylaws or equivalent). If these are not in English, they need to be translated. The form needs to provide details of the UK address from where business is going to be conducted. The process of registering an establishment can take up to three weeks but can be less if the documents mentioned above are readily available.

Subsidiary

A subsidiary is also very easy to establish. There are no statutory consents that need to be obtained prior to setting up the company. A company can be formed by submitting a form providing the consent of at least one person who is prepared to act as a director. There is no requirement to formally appoint a company secretary, although there is still the requirement for the functions of a company secretary to be undertaken. This function is normally outsourced.

It is normal for a company to have at least two directors to allow for greater efficiency in managing the company, should one director be absent.

There is no requirement for an officer to be resident in the UK.

There is no requirement for the company to have a minimum amount of issued share capital.

Such a company is normally formed with one £1 issued ordinary share. Paid up capital can be increased at the time that the company is formed or later, depending on commercial requirements.

The name chosen for the company must not be the same as, or similar to, an existing company's name. It therefore makes sense to register a company as soon as a decision is made to establish a UK presence.

Accounting and related filing requirements

Establishment

If the law under which the parent is registered requires publication of audited accounts, a copy of those accounts needs to be filed in the UK. If the parent company has no such requirement, it must prepare and deliver for filing its accounts. These should be prepared in accordance with the requirements of UK company law.

The accounts that are filed are available for public inspection in the UK. This can sometimes be an issue if the parent is not used to having its financial information made public. In such circumstances, the parent should either form a subsidiary rather than register an establishment or, in its home jurisdiction, establish another company which then registers the UK establishment. When the accounts of the parent are then filed, only information relating to the establishment activities is contained.

Subsidiary

A subsidiary needs to prepare and file annually a copy of its accounts prepared in accordance with UK company law. The accounts, once filed, are available for public inspection.

The accounts need to be filed within nine months of the company's financial year-end. A company can choose its year-end. This will typically coincide with that of the parent company.

An audit of the UK company's financial statements is required if the group as a whole exceeds two of the following:

a. revenues of £10.2million per annum
b. gross assets of £5.1million
c. 50 employees

If the UK company does require an audit, the cost of maintaining the company compared to an establishment will be slightly higher. Remember though, that a company does provide the protection of limited liability.

Corporation tax

Having registered an establishment or subsidiary we need to consider what level of corporate tax liability may arise in the entity. For this, one needs to determine both the applicable rate of tax and the level of taxable profits.

Tax rates

The UK corporation tax rate is 20% for the tax years ended 31 March 2016 and 31 March 2017. The rate will be reduced to 19% from 1 April 2017 and further reduced to 17% from 1 April 2020.

Taxable profits

The level of taxable profits will, to an extent, depend upon the trading model adopted (the comments that follow apply to both an establishment and a company). Due to UK transfer pricing legislation, trading between connected parties needs to be on an arm's-length basis. This is to stop international groups manipulating intra-group transactions so that profits always flow to the country with the lowest tax rate.

If the business model is such that the UK entity is to provide just marketing and technical support, a fee would be charged to the parent for the services provided. It is this fee, less related costs of providing these services and maintaining the entity, that would be subject to UK tax.

If the UK entity is structured so that it can enter into contracts with third party customers in its own right, it is more likely to have a buy/sell arrangement.

In this case, sales to third parties will be recorded within the UK entity accounts.

Intra-group, third party purchases and other costs of sales will be offset against this, as will all overheads and other intra-group and third party costs.

In many circumstances, it may be necessary for the UK entity to undertake a transfer pricing study to demonstrate that the pricing between the parent and its UK presence is what would be agreed by parties acting on an arm's-length basis.

Corporation tax payment and return

The corporation tax liability needs to be paid within nine months of the company's accounting year-end. There are provisions for certain 'large' companies to pay taxation on account before the year-end.

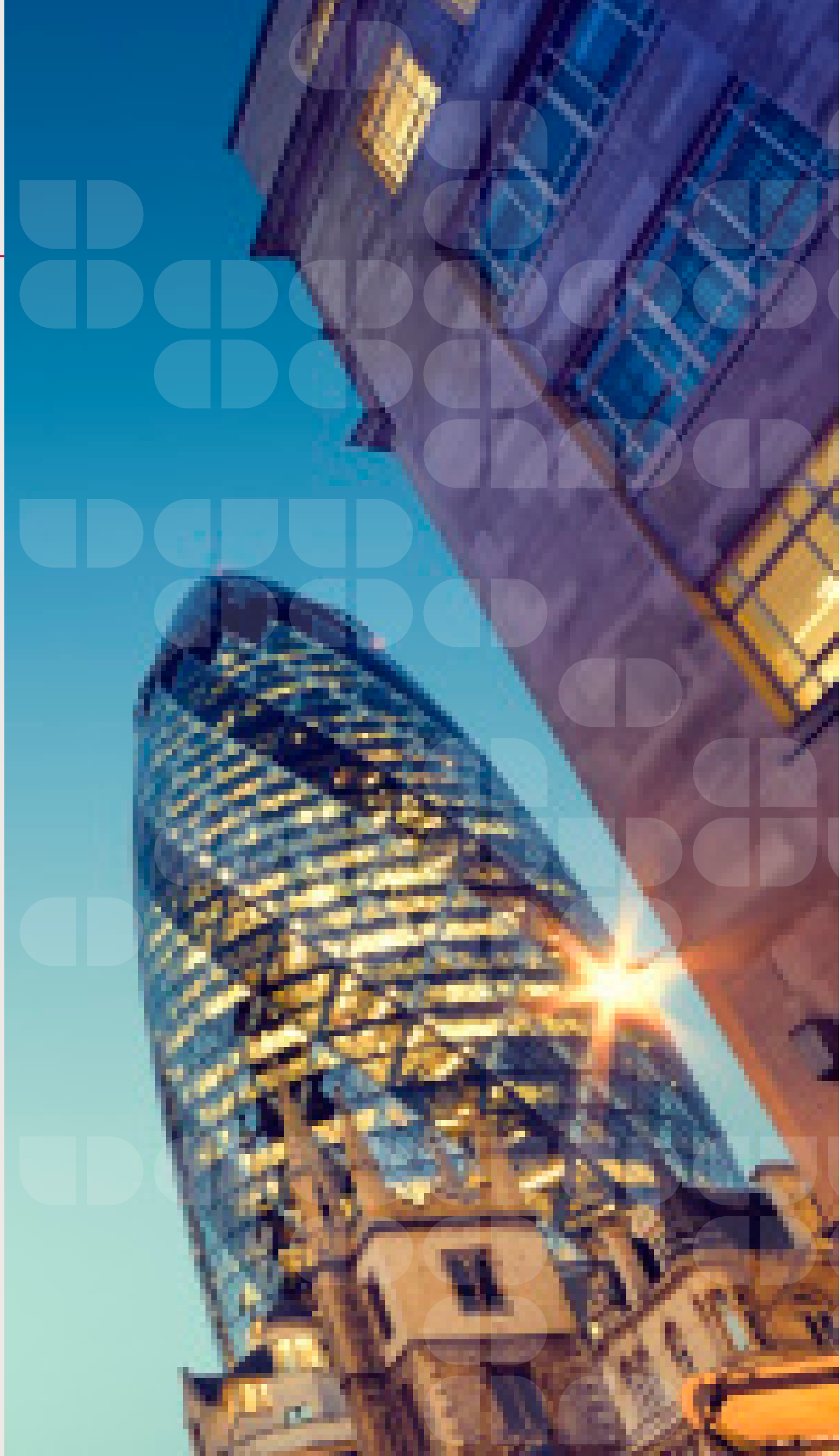
A company is defined as 'large' for payment on account purposes if either;

a. its taxable profits exceed £10million in the current accounting period (or as appropriately divided by the number of associated companies in the worldwide group at the start of the current accounting period);

or

b. it was a large company in the 12 months preceding the period and is also large in the current period. For these purposes, 'large' is defined as having taxable profits of £1.5million or above (or as appropriately divided by the number of associated companies in the worldwide group at the start of the current accounting period).

The corporation tax return needs to be submitted within 12 months of the year-end. A computation of the tax liability will also be submitted with the return.



Losses

The decision on whether to register an establishment or a subsidiary could be affected by the anticipated results of the business in its formative stages.

If an establishment incurs a loss, this could be available for offset against parent company profits, in the parent's jurisdiction. Additionally, the establishment losses can be carried forward in the UK for offset against future taxable profits.

If a subsidiary is formed and it incurs losses, these can be carried forward indefinitely for offset against future taxable profits of the subsidiary, providing they are from the same trade.

From 1 April 2017, new rules will enable companies to offset carried forward losses against other income streams and other UK companies within the same tax group. However, with effect from the same date the profit which can be offset against losses carried forward will be restricted to 50% of the amount of the profits in excess of £5million.

Generally the losses will not be available for offset against the parent company profits, where they are based outside the UK, subject to their own local tax laws.

The UK as a holding company location

The UK is an attractive location for establishing a holding company, which is used to expand into other parts of the world.

The UK has a well-developed tax treaty network meaning that withholding taxes on payments from overseas companies, such as interest and dividends, may be reduced and can often be eliminated altogether.

In addition, virtually all dividends received by the UK parent company, whether from a UK or overseas subsidiary are exempt from UK tax. Furthermore, the UK levies no withholding tax on dividends paid, no matter where the recipient is located. This ensures there is minimal tax leakage where dividends are paid through a UK company.

Where a UK company holds shares in other companies, and the shares are subsequently sold, any resulting gain is exempt from UK corporation tax. This is providing the company held at least 10% of the shares in the 12 months leading up to the sale and it was a trading company, or part of a trading group, before and after the transaction.

All of the above and a main rate of corporation tax of only 20% (falling to 17% by 1 April 2020) has made the UK a very attractive location for forming a holding company.

Research and Development tax incentives

The UK Government provides some significant tax incentives to encourage companies to undertake Research and Development (“R&D”) work.

Definition of R&D

Her Majesty’s Revenue & Customs (“HMRC”) and the Department of Trade and Industry have issued some guidance on the meaning of R&D for tax purposes. For an activity to be considered as R&D, it should aim to achieve an advance in science or technology through the resolution of a scientific or technological uncertainty. An advance in science or technology includes work which:

- generates scientific or technical knowledge;
- creates a process, material, device, product or service which is new to the field; or
- appreciably improves something which already exists through scientific or technological change.

The intended outcome of the R&D should not be something which is already available or could easily be made available by a competent professional working in the relevant field.

Two regimes

There are two regimes depending on the size of the company. A company qualifies as a small or medium-sized company (“SME”) if it has:

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

Where a company is a member of a group, the holding company and all companies in the group must together meet the SME definition.

Any company that does not meet these criteria is classified as a large company.

Small and medium-sized companies (“SMEs”)

SMEs can claim a tax deduction equal to 230% of their qualifying R&D expenditure. For companies which have tax losses, an R&D tax credit equal to 14.5% of their surrenderable loss can be claimed. This is a cash repayment from HMRC of up to £33.35 for every £100 spent on R&D.

Expenditure that qualifies for the R&D tax relief includes:

- the cost of staff directly involved in the R&D work;
- 65% of the cost of either independent externally provided workers engaged to work on R&D, or the cost of subcontracting specific elements of the R&D work to an independent third party; and
- the cost of software and consumable items such as fuel, power and water.

The R&D work must not be subsidised by grants and must not relate to R&D subcontracted to the company by another person. However, if these conditions are not met, the company may still qualify for the large company rate of deduction.

Large companies

Historically, large companies could claim a tax deduction for 130% of their R&D expenditure. This has now been replaced by an above-the-line R&D Enhanced Credit (“RDEC”). The RDEC equates to 11% of the company’s qualifying R&D spend, and after tax yields a net benefit of 8.8%.

The RDEC for loss-making companies may also be repaid as a cash credit, capped at the level of payroll taxes incurred in respect of R&D employees during that year. Any excess is then carried forward as a credit for the following year.

Qualifying expenditure has the same criteria as the SME regime, except that subcontracted work must be undertaken either by (self-employed) individuals or certain research bodies and institutions. The cost of R&D work subcontracted to other companies will not qualify.

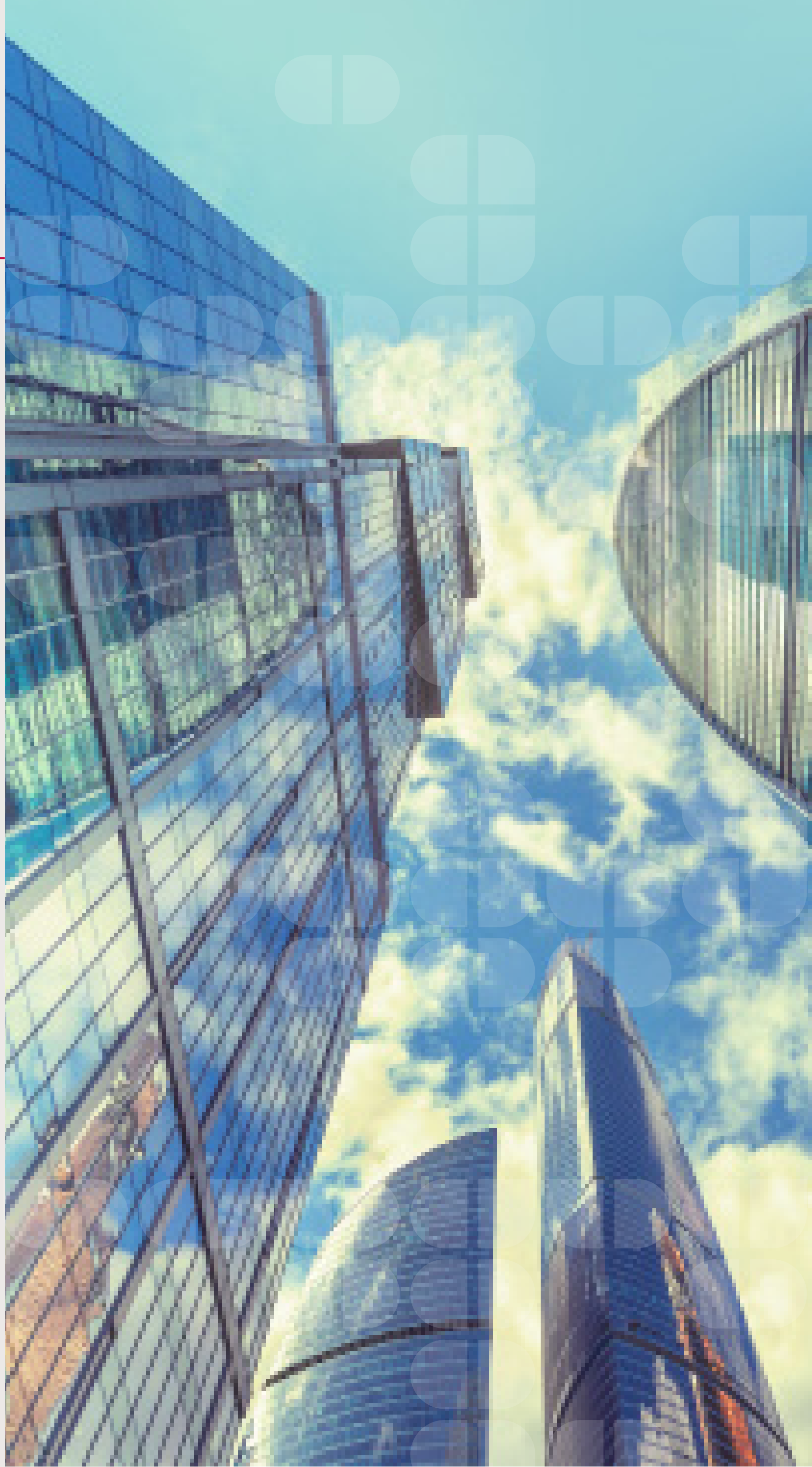
SMEs can claim relief under the large company regime (but not the SME regime) if they undertake work that is subcontracted to them by another company. However, the other company must be either large or not subject to UK tax (broadly, an overseas company). Hence, where an overseas parent company subcontracts the R&D work to its UK SME subsidiary, the latter will qualify for R&D relief under the large company regime.

Making a claim

The claim is included in the corporate tax return and must be made within two years of the end of the accounting period in which the expenditure was incurred.

Additional relief for capital expenditure

In addition to the reliefs described above, tax depreciation of 100% is available for expenditure on capital assets, excluding land, used for R&D activities.



UK Patent Box

The Patent Box will allow companies to elect to apply a 10% rate of corporation tax to all profits attributable to qualifying patents, whether paid separately as royalties or embedded in the sales price of products.

Who will it benefit?

Companies that receive patent royalties, sell patented products, or use patented processes as part of their business.

What are the benefits?

The effective rate of tax on qualifying Patent Box profits is 10%. The benefit has been phased in since 1 April 2013. From 1 April 2016, approximately 90% of the adjusted profit is eligible (giving an effective rate of tax of 11% on Patent Box profits), rising to 100% from 1 April 2017.

Which patents will qualify?

Patents granted by the UK Intellectual Property Office ("IPO") and the European Patent Office, as well as regulatory data protection ('data exclusivity'), Supplementary Protection Certificates ("SPCs") and plant variety rights.

The Patent Box will apply to new and existing Intellectual Property ("IP") as well as acquired IP where further development has been made to the IP or the product which incorporates it.

Future of the Patent Box

Following conclusion of the Base Erosion and Profit Shifting ("BEPs") project, undertaken by the Organisation for Economic Co-operation and Development, a review of all Patent Box regimes, including the UK's regime has been undertaken. Going forward, the benefits of the Patent Box will only apply where the underlying development activity has been undertaken at least partly in the UK, with the profits which benefit from the reduced rate being calculated by reference to the level of activity undertaken in the UK.

The existing regime will remain applicable to current claimants until 2021, and there is an opportunity for new claimants to elect into the existing regime before 30 June 2016, and still be able to benefit from the existing regime until 2021. However, any new IP or new entrants to the regime on or after 1 July 2016 will only be able to claim under the new regime.

Personal taxation

Basic principles

As a general principle, if an individual is resident in the UK in any tax year, he/she will be subject to UK tax laws. In certain circumstances the person's "domicile" also needs to be taken into consideration.

The UK tax year runs from 6 April to the following 5 April. A reference to a 2016/2017 fiscal period refers to the personal tax year from 6 April 2016 to 5 April 2017.

Residence

A Statutory Residence Test is used to determine whether individuals are treated as resident or non-resident for tax purposes in the UK. The test is in three parts and involves some complexity, but, in summary, an individual will automatically be treated as non-resident in the UK in the tax year in question if they meet any one of the following tests;

- they were UK resident in any of the previous three tax years and spend fewer than 16 days in the UK; or
- they were not UK resident in any of the previous three tax years and spend fewer than 46 days in the UK; or
- they left the UK for full time work abroad.

An individual who does not meet any of these automatic overseas tests will be automatically UK resident in the tax year if they meet any of the following tests;

- they are present in the UK for at least 183 days; or
- they have a UK home available for at least 90 days during a time when they have either no overseas home or an overseas home in which they spend fewer than 30 days. Their UK home must be available for at least 30 of the 90 days and they must spend at least 30 days in that UK home during the relevant UK tax year; or
- they work full time in the UK.

Where an individual does not meet any of the above, the sufficient ties test noted below combined with UK days could still make them resident in the UK:

- UK resident family
- substantive UK work
- available accommodation
- more than 90 days spent in the UK in either or both of the previous two tax years
- more days of presence in the UK than in any other country.

Domicile

A person's country of domicile is broadly the country that they consider to be their permanent home. The concept of domicile is quite distinct from that of residence. A country of domicile is sometimes referred to as the person's 'homeland'. Even if the person has not lived in their homeland for many years, this does not prevent them from being domiciled there.

Taxation of employment income of non-UK domiciliaries

An employee (or director) coming to work in the UK will be liable to UK tax on the employment income relating to duties performed in the UK, wherever paid. If the employee also partially works outside the UK, employment income for that work is generally taxed only on the amount remitted to or paid in the UK for the first three years (provided they have not been UK resident previously). It is important to get offshore bank account structuring right and HMRC requires a relevant overseas bank account to be nominated.

A non-domiciled individual can decide each tax year if they wish to claim the remittance basis. For the first seven tax years of UK residence, an individual can freely claim the remittance basis. Thereafter, an annual charge of £30,000 is payable for individuals resident in the UK for at least five out of the last nine tax years. The annual charge increases to £60,000 for individuals resident in the UK for at least 12 out of the last 14 tax years and £90,000 for individuals resident in the UK for at least 17 out of the last 20 tax years.

Change to the taxation of non-UK domicillaries

With effect from 6 April 2017, non-domiciled individuals who have been UK resident for 15 out of the past 20 years will be treated as 'deemed domiciled' for all UK tax purposes. A non-domiciled individual who is 'deemed domiciled' is assessed to UK tax on their worldwide income and capital gains and will no longer be able to claim the remittance basis.

Taxable income

Taxable income includes all income and benefits. The rates of personal taxation are shown to the right in table 01, together with the level of personal allowances. These are amounts that each individual is able to earn before becoming liable to taxation.

Detached duty relief

Where an overseas employee is seconded to the UK for less than two years and, provided the UK is regarded as a 'temporary workplace', UK tax relief is available for accommodation, travel and subsistence costs during the assignment. This is regardless of whether the employee personally incurred the costs or the employer funded them (employer funded expenses would normally be taxable). It is important to ensure that the correct documentation is in place to demonstrate the temporary assignment.

Table 01

Personal tax rates and allowances

	%	Band of Taxable Income (£)
Year to 5 April 2017 Tax free allowance £11,000 *		
	20	1 - 32,000
	40	32,001 - 150,000
	45	Over 150,000
Year to 5 April 2016 Tax free allowance £10,600 *		
	20	1 - 31,785
	40	31,786 - 150,000
	45	Over 150,000

* The personal allowance is reduced by £1 for every £2 earned over £100,000

Share (stock) option plans

Share incentive arrangements can often be an attractive part of an individual's total remuneration package.

The UK has certain 'approved' arrangements which provide considerable tax advantages to the employee and at times also to the employer.

There are, however, pitfalls as well as reporting obligations. This is an area of considerable complexity which cannot be addressed within this booklet.

The following section, on pages 18-19, summarises the types of arrangements available. However, detailed advice should be sought as soon as consideration is being given to establishing a share option plan or granting options under an existing arrangement.

Share (stock) option plans

	Outline	Income Tax ("IT")
Enterprise Management Incentive ("EMI")	Up to £250,000 of options per employee (valued at the date of grant and restricted if CSOP options also held - see below). Options must be capable of being exercised within ten years of grant. Options can be granted at a discount from prevailing share values.	No income tax on grant. If option granted at a discount an income tax charge will arise on exercise of the option. This may be subject to Pay As You Earn ("PAYE") and National Insurance Contributions ("NIC").
Company Share Option Plan ("CSOP")	Up to £30,000 of options per employee, valued at date of grant. Must be exercisable between three to ten years from grant. Options should be granted at prevailing share values.	No IT charge when the employee exercises the option, unless exceptionally the option exercise price is less than market value on the date of grant.
Savings Related Share Option Plan ("SAYE options")	In conjunction with monthly savings contract, savings of £5 to £500 per month can be accumulated to purchase shares on exercise of options (after three, five or seven years). Options should be granted at prevailing share values.	No IT charge on grant or when the employee exercises the options.
Employee Shareholder Status ("ESS")	Employees are given shares in their employing company in exchange for giving up certain employment rights. Employees must be awarded shares worth at least £2,000.	No IT charge on award of shares worth £2,000. Shares awarded which exceed this value will attract an IT charge and possibly NIC.
Unapproved Share Option Scheme	No limit on value of options granted to employees. Options can be exercisable at any time and can be granted at a discount from prevailing share values if required.	No IT charge on grant. IT charge when exercised and may be subject to NIC and require payment via PAYE.
Phantom Share Plan	Bonus paid to employees based on increase in value of shares (no shares actually provided to employees).	PAYE and NIC will apply. IT charge on full amount when paid to employee.
Share Incentive Plan ("SIP")	Shares held in trust for employees. Company can offer up to £3,600 shares ("free shares"). SIP can allow employees to purchase further £1,800 shares ("partnership shares") - using income before tax and NIC. Company can match these with further free shares ("matching shares") - up to two for each share employee acquires. (Maximum shares = £7,500 per annum).	No IT charge on acquisition of shares. IT charge if shares are withdrawn from trust before five years.
Stock awards for internationally mobile employees (e.g. restricted stock units, stock options, restricted shares etc.)	Share awards under non-UK plans are usually unapproved for UK tax purposes (although some planning is available).	The exact treatment will depend on the specific stock plan and employee's circumstances but there is typically an IT charge at exercise on the stock gain apportioned to days worked in the UK between award and vest.

Capital Gains Tax ("CGT")	HMRC	Who can?
CGT on gain when shares sold, deduction for any value charged to IT. Shares acquired under EMI options granted on or after 6 April 2012 may benefit from Entrepreneurs' Relief ("ER") (providing certain conditions are met), reducing the effective rate of tax to 10%. If ER is not available CGT will be payable at either 10% or 20% (depending on employees level of income and gains).	No approval, but necessary to notify HMRC of option grants. Recommended to agree the market value of the shares under option with HMRC for advance assurance that no income tax liability will arise on exercise.	The granting company needs to have a 'Permanent Establishment' ("PE") in the UK (or a subsidiary with a PE in the UK). Available to any number of employees. Total value of EMI options granted can be no greater than £3million. Company (or group) must have gross assets less than £30million and fewer than 250 employees. Option must be to acquire shares in the parent company. Not available for employees who already hold more than 30% of share capital.
CGT will be payable on disposal of the shares at either 10% or 20% (depending on employees level of income and gains). ER may be available provided certain conditions are met, reducing the effective tax rate to 10%.	Must notify HMRC that the CSOP has been established and declare that the plan meets the qualifying requirements.	Not available for employees holding 30% or more of share capital. Company has some discretion over which employees participate.
CGT will be payable on disposal of the shares at either 10% or 20% (depending on employees level of income and gains). ER may be available provided certain conditions are met, reducing the effective tax rate to 10%.	Must notify HMRC that the SAYE arrangement has been established and declare that the plan meets the qualifying requirements.	Must be available to all employees on similar terms.
On disposal of the shares there is no CGT on the gain up to a lifetime limit of £100,000. If shares were valued at over £50,000 on acquisition then a portion of the gain will be chargeable.	Annual reporting requirements exist.	Company has full discretion over which employees may participate, but strict rules must be followed in order to qualify.
CGT will be payable on disposal of the shares at either 18% or 28% (depending on level of gain). ER may be available provided certain conditions are met, reducing the effective tax rate to 10%.	No approval required but annual reporting requirements exist.	Company has full discretion over which employees may participate.
No CGT (as no shares received).	No approval required.	Company has full discretion over which employees may participate.
No CGT on value of shares on withdrawal from trust after five years. CGT on gain when shares sold (if previously held in trust for full five years: base cost = value on exit from trust). Taxed at either 18% or 28% (depending on level of gain). A 5% shareholding is highly unlikely.	Must notify HMRC that the SIP arrangement has been established and declare that the plan meets the qualifying requirements.	Must be available to all employees on similar terms.
If the employee is not UK domiciled and the stock is in a non-UK company then it is possible that there would be no UK CGT unless the proceeds were remitted to the UK.	Reportable to the HMRC following the end of the tax year in which the shares/ options were provided to the employee.	Depends on the overseas stock plan rules.

Social security

Social security, otherwise known as 'National Insurance' in the UK, is payable by both the employer and employee.

The current rates of National Insurance Contributions ("NIC") by the employer and employee are shown in table 02 to the right.

An employee on secondment to the UK can claim exemption from UK employer and employee NIC if they meet certain conditions and remain employed in a country that the UK has a social security agreement with. (See the list of relevant countries on page 21.)

Where an employee is seconded from a non-agreement country such as Australia, China or India, then they are potentially exempt from paying NIC for the first 52 weeks of the assignment provided they meet certain conditions.

Table 02

National Insurance rates year to 5 April 2017 for employees not under 21 years of age

		Rate
Employer	Up to £8,112	0%
	Over £8,112	13.8%
Employee	Up to £8,060	0%
	£8,061 - £43,000	12%
	Over £43,000 on excess	2%

Reciprocal agreements

The UK has a social security agreement with the following countries. These agreements allow overseas employees to potentially claim exemption from UK employee and employer NIC:

- Barbados
- Bermuda
- Bosnia-Herzegovina
- Canada
- Croatia
- Israel
- Jamaica
- Japan
- Jersey/Guernsey
- Macedonia
- Mauritius
- Montenegro
- New Zealand
- Philippines
- Republic of Korea
- Serbia
- Turkey
- USA; and
- All members of the European Economic Area:
    - Austria
    - Belgium
    - Bulgaria
    - Cyprus
    - Czech Republic
    - Denmark
    - Estonia
    - Finland
    - France
    - Germany
    - Greece
    - Hungary
    - Iceland
    - Italy
    - Latvia
    - Liechtenstein
    - Lithuania
    - Luxembourg
    - Malta
    - The Netherlands
    - Norway
    - Poland
    - Portugal
    - Republic of Ireland
    - Romania
    - Slovakia
    - Slovenia
    - Spain
    - Sweden
    - Switzerland

An employer must apply for a formal certificate of exemption in each instance. The agreements only allow exemption for a certain period, typically up to five years.

Each agreement works differently therefore further advice should be sought with regards to specific countries.

Value Added Tax (“VAT”)

VAT is a sales tax. It is chargeable by businesses if they are making supplies (sales) above a certain threshold. The registration threshold for a UK established business is £83,000 per annum, effective from 1 April 2016.

If the above threshold is exceeded in any 12 consecutive monthly period (or the threshold is expected to be exceeded within the next 30 days), a UK established business must notify the UK tax authorities and register for VAT. It must then charge and account for VAT on the supply of all goods and services made in the UK, unless they are specifically zero rated or exempt. The standard rate of VAT in the UK is currently 20%. There is also a limited range of goods and services subject to the reduced rate of 5%.

Where a registered business incurs VAT on the purchase of goods or services in the UK, it is able to recover this VAT from the tax authorities. At the end of every quarter, the business calculates the amount of VAT it has charged to its customers as well as that which it has paid to its suppliers. The net amount, depending on whether more has been charged or paid, is either remitted to the tax authorities or claimed back. Therefore, VAT is ultimately only a cost to private individuals, unregistered businesses and businesses which make exempt supplies.

An overseas business not established in the UK cannot take advantage of the £83,000 annual threshold. If supplies of goods physically located in the UK, or certain services deemed to be supplied in the UK, are made by non-established businesses, then registration is legally required whatever the level of sales.

There are a number of important issues that overseas entities looking to establish a business in the UK need to be aware of:

a. Goods and services supplied to a parent company based outside the EU – when a UK entity established by its parent sells and delivers goods to the parent, there is no VAT chargeable as exports are zero rated for VAT. If the UK entity provides services such as consultancy, technical support and marketing these are also not subject to VAT.

b. Services supplied to a UK business customer – an overseas company, not having its own permanent establishment in the UK, does not have to register for or charge VAT as long as it is making those supplies from outside the UK. The VAT is accounted for by the customer under what is known as the Reverse Charge procedure. The exceptions to this rule include catering services, passenger transport and admissions to events. From 1 January 2015, telecommunications and other electronically supplied services to private individuals belonging in the UK are also exceptions to the general rule. Under these scenarios a UK VAT registration may be required.

c. Goods supplied to the UK customer – an overseas company, not having a permanent establishment in the UK, does not have to register for and charge VAT, provided the UK customer is importing the goods into the UK. If the customer is expecting to take ownership of the goods after they have been imported into the UK, the overseas company may have to pay VAT at the point of importation then register in the UK in order to recover the VAT paid at the border. Once it has done this, it will then have to charge VAT on its sales even if invoiced by the overseas company as the goods will now be deemed to have been physically supplied in the UK.

The need for the overseas company to register for VAT described above does not necessarily require it to incorporate a UK company or establishment, as the overseas entity may itself be VAT registered. This will depend upon the issues discussed earlier in this guide and not just because certain supplies of goods or services are made in the UK.

d. Supply of goods and services within the European Union – an entity registered for VAT in the UK does not have to charge VAT on the supply of most goods or services to businesses in other EU countries. The VAT is accounted for by the EU customer under the intra-EU rules.

An overseas company established outside the EU can often suffer UK or European VAT before it is required to register for VAT in the UK or the wider European market. This could be in relation to costs associated with business trips (hotels, conferences, etc.) or maybe exhibitions attended as participants.

This VAT can be reclaimed under a special provision whereby a claim is submitted to the tax authorities in the country where the expenditure has been incurred.

Where a business does register for VAT it can reclaim VAT on most goods and services purchased prior to registration - provided the goods are still on hand at the time of registration and the services were supplied no more than six months prior to registration.

Workplace pension plan (auto-enrolment)

Any individual or organisation, whether situated in the UK or not, is obliged to provide a workplace pension plan for any workers it has based in the UK.

The employer duties include:

- setting up a workplace pension plan
- assessing and categorising UK workers
- automatically enrolling eligible UK workers into the plan
- collecting pension contributions from employees' pay
- paying the employee and employer contributions to the plan
- issuing all workers with certain statutory information
- keeping permanent records; and
- registering with The Pensions Regulator.

Staging date

Auto-enrolment is being introduced in the UK over a five year period which started in 2012. All employers are given a 'staging date', when their auto-enrolment duties begin.

Organisations first starting to employ UK workers after 1 April 2012 can expect their allotted staging date to be between April 2017 and February 2018. The Pensions Regulator normally provides 12 months' notice of the staging date, in order to give employers the required time to prepare.

From October 2017, any new employer will have an immediate duty to comply.

Worker categories

All employees aged 22 to state pensions age (65 to 67) earning more than £10,000 a year (2016/17 tax year) must be auto-enrolled; the employer must also contribute.

All employees aged 16 to 74 earning less than £5,824 (2016/17 tax year) are not automatically enrolled but have the right to join the workplace pension plan, although the employer does not have to contribute.

All other employees aged 16 to 74 are not automatically enrolled but have the right to join. If they choose to do so, the employer must also contribute.

Minimum contributions

Minimum contributions are based on a band of earnings. For 2016/17 tax year this is earnings between £5,824 and £43,000. Minimum contributions are detailed in the table 03 to the right.

Table 03

Minimum contributions

	Employer	Employee
Until 5 April 2018*	1%	1%
6 April 2018* until 5 April 2019*	2%	3%
From 6 April 2019*	3%	5%

* Dates subject to Parliamentary approval

Other issues

Anti-avoidance legislation

In more recent years, the UK has introduced tax legislation to discourage the use of aggressive tax planning arrangements. These include more detailed transfer pricing legislation, a General Anti-Abuse Rule ("GAAR") and a Diverted Profits Tax ("DPT").

Transfer pricing

In common with the majority of other countries, the UK has introduced detailed transfer pricing legislation that requires groups to account for transactions between group companies at arm's-length and to keep adequate documentation. This is so they are able to justify to tax authorities why the prices charged are considered to be arm's-length. The requirements are mentioned in the Corporation Tax section above. There are reduced requirements for SME companies.

General Anti-Abuse Rule

The GAAR was introduced into UK law with effect from 17 July 2013. Its primary objective is to deter taxpayers from entering into abusive arrangements and to deter the promotion of tax abusive arrangements.

The GAAR operates to counteract an abusive tax advantage by applying a 'just and reasonable' tax adjustment.

However, the GAAR is not intended to apply where a taxpayer makes a reasonable choice of a course of actions and simply chooses one that is more tax efficient than another.

Diverted Profits Tax

This tax was introduced by the Government on 1 April 2015 to "*counter the use of aggressive tax planning techniques used by multinational enterprises to divert profits from the UK*". Where DPT applies a 25% tax charge is imposed on 'diverted' profits of the multinational group. It is important to note that this tax only applies to 'large' companies and will not apply to an SME. Please note that the criteria used to qualify as an SME for the purposes of this tax are different from those which apply to R&D tax incentives discussed above. For DPT purposes, an SME is a company where its group has less than 250 staff and its turnover is less than €50million, and/or its balance sheet is no more than €43million.

DPT typically applies to two types of arrangements:

1. Where there is an 'Avoided PE'

2. Where an intra-group expense, such as a royalty, is paid by a UK company to a non-UK group company and where, essentially, the rate of tax paid on its receipt is less than 16%.

An 'Avoided PE' is typically where a non-UK company ("Foreign Co") makes sales to the UK from abroad and a related party (e.g. a UK group company) provides marketing and sales support services to Foreign Co. In this way Foreign Co does not have a permanent establishment ("PE") in the UK and there is an 'Avoided PE'.

The DPT does not apply in cases where annual UK sales revenues do not exceed £10million, nor where the UK related expenses do not exceed £1million in an annual accounting period. Nor does a DPT liability arise where tax (UK or foreign) is being paid by Foreign Co at the rate of at least 16%.

The intra-group expenses case applies where the arrangements lack economic substance, exploit a 'tax mismatch' and where it is reasonable to assume that the arrangements were designed to reduce tax. Similar provisions apply where, instead of there being a UK expense, there is a diversion of income away from the UK.

Whilst the provisions of this tax are widely drafted, it is expected that HMRC will seek to apply DPT to a modest number of large multinationals that have entered into aggressive tax planning arrangements.

Apprenticeship Levy

This is a new tax that is to be introduced from 6 April 2017. It will impose a 0.5% levy on employers' paybills. However, there will be an allowance of £15,000 to offset against the levy and so this new tax will only apply where an employer's annual paybill exceeds £3million.

Our team

Bob Rothenberg MBE
Asia Pacific

+44 (0)20 7544 8888

bob.rothenberg
@blickrothenberg.com

Nilesh Shah
US/Canada/India

+44 (0)20 7544 8866

nilesh.shah
@blickrothenberg.com

Milan Pandya
France/Italy

+44 (0)20 7544 8738

milan.pandya
@blickrothenberg.com

Simon Wagman
Spain/Israel

+44 (0)20 7544 8828

simon.wagman
@blickrothenberg.com

Melissa Thomas
Canada

+44 (0)20 7544 8938

melissa.thomas
@blickrothenberg.com

Nils Schmidt-Soltau
Germany/Austria/Switzerland

+44 (0)20 7544 8931

nils.schmidt-soltau
@blickrothenberg.com

Alex Altmann
Germany/Austria/Switzerland

+44 (0)20 7544 8747

alexander.altmann
@blickrothenberg.com

Blick Rothenberg

Blick Rothenberg is a leading UK accounting and tax practice specialising in helping overseas companies establish a presence in the UK. Based in Central London, the practice has 27 partners and directors and around 210 staff with exceptional experience and expertise in all the major financial disciplines. We aim to make the process of establishing and maintaining a UK presence by an overseas entity as easy as possible.

We currently act for over 800 overseas companies and have also recognised the need to assist them manage their UK presence. To this end, we can provide a full outsourced accounting and administration service. We can administer invoicing, debt collection, expense payment, management accounts and European VAT reclaim.

If you are an overseas business with operations in a number of different territories, Blick Rothenberg can also provide a centralised solution to the challenges of international expansion.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