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Doing Business in the UK

A guide for overseas businesses wishing to take their business to the UK

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Introduction

This guide is intended to introduce you to some of the legal and practical aspects of taking your business to the UK. It describes various possible business structures available to a foreign investor and outlines the basics of how they are taxed.

For a more detailed guide to current taxation, please refer to our UK Taxation Guide.

This guide has been written specifically to deal with the legal position in England and Wales.

Overseas companies setting up business in or trading with any part of the UK (i.e. England & Wales, Scotland and Northern Ireland), should be aware that these three regions are each distinct legal jurisdictions. So, whilst the local laws on company incorporation and employment law in each are broadly similar, differences nevertheless do arise both in substantive and procedural law.

Please note also that the Isle of Man and the Channel Islands, while associated with the UK for defence and foreign policy matters, are also separate jurisdictions, each with its own legal system.

The sources of law in England and Wales are firstly statute law and secondly common law; being the decisions of the courts throughout the country that create laws 'common' to the jurisdiction.

This document is a general guide only. It is intended merely to highlight issues and is not meant to be comprehensive.It does not aim to provide legal advice and should not be relied upon for this purpose.

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1. Different business structures

An overseas company wishing to bring its business to the UK might:

1. Appoint an agent;
2. appoint a distributor;
3. open a representative office;
4. register a branch office;
5. incorporate a subsidiary company;
6. enter into a partnership;
7. form a limited liability partnership; or
8. enter into a joint venture.

The final, but usually key drivers for choice of structure would be the overseas company's commercial strategy and business objectives, including legal and tax considerations.

2. Agency

General

An overseas company appointing an agent will avoid the regulatory burden of say registering a branch office or incorporating a company in the UK. In addition, an overseas company with a UK agent is unlikely to face UK tax liabilities. However, if the agent concludes or has the authority to conclude contracts with customers in the UK on the overseas company's behalf without prior approval, or, if the prior approval of the overseas company is a mere formality to the conclusion of the contract, then this may mean the agent will be treated as a branch of the overseas company, whose trading activities might then be taxable in the UK.

There are no statutory requirements or formalities on entering into an agency in the UK. Having said this, the relationship may be covered by statute governing commercial agents if the trade involves products but not services. The principal and the agent may request the other to set out in writing the terms of the agency. Indeed, it is highly recommended to put in place a detailed, written & signed agency agreement in order to avoid disputes arising between the parties during the course of the agency relationship and on its termination. This is particularly because English law has a habit in this area of implying very few contractual terms into any local arrangement, certainly less than many foreign investors might otherwise assume. So, the lesson is: if you want to be sure that a particular term applies to your arrangements, write it down and take proper legal advice to be sure it works.

There are also certain provisions that cannot be excluded from agency agreements. These include the obligations to remunerate the agent, to advise him of sums owing to him and to pay the agent a sum in compensation for his loss of future benefit on termination other than for breach.

Tax issues

Where the agent has no authority to conclude contracts with UK customers on behalf of the overseas company without prior approval, profits derived from the agency are not liable to UK corporation or income tax.

Otherwise, the overseas company will be liable to UK corporation tax on the trading profits arising from the agency in the UK and on any income from property held for that agency. It can also be taxed on gains arising from the disposal of assets situated in the UK and relating to the trade.

3. Distributorship

General

An overseas company may appoint a local distributor to sell its products. The basic difference between an agent and a distributor is that the agent normally finds customers for the overseas company and any actual sale is conducted directly between the overseas company and the customer (even though the contract may have been negotiated and signed by the agent on behalf of the overseas company). The agent earns a commission of the actual sale.

However, a distributor usually purchases the products from the overseas company and re-sells them on to customers in its own name, so that the sale or supply contract is between the customers and the distributor and there is no direct relationship between the overseas company and the end user. The distributor earns his remuneration based on profits from re-sale.

There is no particular formality or – unlike agency - statute governing the relationship. It is recommended that the overseas company and the distributor agree to set out their respective rights and obligations in a written distributor agreement – once again, this is because English law does not imply many terms into arrangements that foreign Principals might otherwise assume would apply.

Tax issues
Since profit derived from a distributorship would be regarded as resulting from trading with UK, rather than trading in the UK, such profits are not subject to UK taxation in the hands of the overseas company.

4. Representative office

Introduction
If an overseas business does not trade or carry on business in the UK (as opposed to trading with the UK) it is generally not subject to UK registration and taxation.

The fact that an overseas business is carrying on business in the UK does, however, not automatically mean that it has to register as a so-called UK establishment with the Companies House. Registration is only required when the business has some degree of physical presence through which it carries on business.

The first thing to consider therefore is the degree to which your business will have a presence in the UK and the scope of operations that it will carry out. These factors will determine a number of legal and tax issues.

General
An overseas company may wish to set up a representative office in the UK; this is not a recognised form of business and, as such, cannot carry out business activities. It is not registerable.

A representative office is often used in the initial stages of an overseas company's establishment in the UK providing the foreign company with a presence in the British market place without the commitment and administrative requirements that apply to a registered company or branch office.

The main objective is to provide marketing and sales assistance in connection with the products and/or services offered by the overseas company to its British customers.

Legally, a representative office is not defined or regulated. It is, however, important to ensure that the activities of the office are limited to representative functions only, otherwise serious issues can arise especially in the area of tax, but also employment and health & safety. This means for instance that the representative in the UK may not conclude any sales or perform any after sales services.

Tax issues
Under UK law, the profits derived from trading in the UK are generally taxable whereas those derived from trading with the UK are generally not. The UK authorities will look at factors such as where the contracts are made, where the trading operations are conducted and where management and business decisions are made.

An overseas company wishing to establish a representative office and thereby avoid a UK tax charge on its activities should restrict its activities in the UK to that of trading with the UK; for example, advertising, collecting and distributing information, and introducing potential customers to the overseas company. A tight control should be kept over these activities to ensure that the representative office does not at any time engage in activities which may give rise to an unexpected UK tax charge.

5. Branch office

General
Registration is typically required where the overseas company is a limited liability company and has a place of business in the UK from which it carries on business or employs staff.

In these circumstances, the overseas company must within one month deliver a form to register with the Companies House, accompanied by a number of constitutional documents relating to the overseas business. The constitutional documents are typically the company's registration details and articles of association, the directors' names, and the parent company registration certificate and audited annual accounts. Documents originally in a language other than English must be accompanied by a certified translation.

Once registration is complete, the UK establishment will receive a certificate of registration that includes a unique number. This number and other registration details must be displayed on all communication to include business stationery, emails and the office's UK website as per the disclosure requirements applicable to English companies.

The alternative to registering a UK establishment is typically to set up an independent subsidiary in the form of a private limited company. This is recommended in order to ring-fence any liability of the British operations to the subsidiary thus protecting the parent company from claims etc.

Tax issues
An overseas company will be liable to UK corporation tax at the current corporate tax rate on the trading profits arising from the branch or more correctly permanent establishment ("PE") in the UK and on any income from property held for that. It will also be taxed on gains arising from the disposal of assets situated in the UK, and relating to the trade. For further information on tax, please refer to chapter 13 below.

Important note: unpaid UK tax may be collected from present and former group companies and from present and former controlling directors.

6. Subsidiary company

General
The overseas company may wish to form a subsidiary company with its registered office in the UK. This company would typically have a legal structure limited by shares, although its liability could be limited by guarantee or indeed unlimited. They are also called limited companies.

The two principal types of limited liability companies are (1) the Public Limited Company (PLC) and (2) the Private Limited Company (Limited or Ltd). As private limited companies are far more frequently used, this guide will refer to such companies throughout.

Unlike in many other European countries, there is no minimum share capital required for a private limited company although it is, of course, necessary to ensure that the company will have sufficient capital to carry out its activities.

Incorporating a company in the UK is probably easier and involves fewer formalities than in most other European countries. For instance, there is no need to book a physical meeting with a notary during the formation process. It can all be done online.

Under the Companies Act 2006, the UK subsidiary must have at least one member (or shareholder) and one director who is a natural person. Private limited companies are not required to have a company secretary (i.e. an officer of the company responsible for the corporate administration), but may choose to have one.

Tax issues
A subsidiary company will generally be chargeable to UK corporation tax upon its world-wide profits, including both income and capital gains.

The rate of corporation tax is currently 19%. For further information on tax, please refer to chapter 12 below.

Losses sustained in a trade carried on within the UK can be relieved in a number of ways. For corporation tax purposes, losses can typically be:

- Carried forward and offset against future profits from the same trade (unlike those of some other countries, the UK's tax system normally allows trading losses to be carried forward indefinitely providing there is continuity of trading);
- be offset against profits, including other income and chargeable gains, of the relevant accounting period and the accounting period in the immediately preceding year;
- be surrendered to another company liable to UK tax, provided that both the loss-making company and the claimant company are members of the same group.

Please note that any arrangements with affiliated businesses must be conducted at arm's length so as to avoid issues under the transfer pricing regulations, such as can arise from artificially lowering the profits of the subsidiary company.

7. Branch or subsidiary?

Formation and administration

A branch structure is not frequently used in the UK and (for all the above reasons) it is generally preferable to set up a limited liability company which would possess its own legal personality. Naturally, the final decision has to be made on a case by case basis.

The main advantage of using a subsidiary is that liabilities of the UK operation would be ring-fenced to that entity whereas the overseas business would be liable for all contracts properly made by a branch.

Generally, it is a little more cumbersome over time to set up and administer a branch than a subsidiary company.

Commercial and tax issues

The real questions are commercial and tax ones, which cannot always be answered from just a UK perspective. Local tax legislation applicable to the overseas business must be considered, as well as any relevant double tax agreement. An important factor will be how to finance the UK operation. The biggest practical questions are:

- Will the UK operation make a loss in the first few years of operation? Is it required that such losses be offset in the year of creation against taxable profits in the home country in the same year?

  If so, then there may be some sense in setting up a UK branch and operating it until the UK operation has become profitable, depending on how the branch is to be financed and the extent of the financing costs and the availability of tax relief on these borrowings. The use of a branch may enable starting up costs, including capital expenditure, and initial trading losses to be set against other profits for the purposes of taxation in the overseas business' country of residence.

- Once the operation has reached maturity and is operating profitably, will a branch or subsidiary be taxed at a lower effective rate?

  In this case, a subsidiary incorporated and resident in the UK may be entitled to the benefit of the UK's wide network of double taxation agreements; which may be very important as profits remitted from a subsidiary may bear tax at a lower effective rate than those remitted by a branch.

Considerations

The structure adopted by an overseas business wishing to set up business in the UK will depend upon its commercial and practical objectives, and also the way in which it wishes its activities in the UK to be taxed. The following questions should be considered when choosing the structure:

- What activities are to be carried out in the UK? Is actual trade to be carried out, or merely promotion, advertising, and the provision of information?
- Are you prepared to incur the expense of complying with the statutory and formal requirements of setting up and running a company, including filing accounts and annual returns etc.?
- What particular commercial considerations are to be taken account of?
- Do you need to be seen a UK company for marketing purposes?

The answers to these questions will normally govern the most appropriate way for an overseas business to set up its activities in the UK.

Financing of a branch or subsidiary
A UK company that is a party to giving or receiving a loan will usually be subject to the loan relationship rules under domestic law. There are different implications of financing for both branches and subsidiaries.

Borrowing by a branch of the overseas business
A branch cannot be regarded as an entity separate from the overseas business that established it and therefore finance provided out of shareholders' funds will not give rise to any tax relief. However, a borrowing by the overseas business for the purposes of the branch is equally a borrowing by the branch, so relief may be available for interest paid thereon.

Relief may be available not only for interest costs but also for discount, the cost of redeeming debt in excess of its issue price and incidental costs of obtaining finance. In addition, relief is no longer dependent on the nature of the borrowing or the identity of the lender.

The legislation contains a number of anti-avoidance provisions that could be relevant in the context of borrowings by non-resident companies.

Borrowing by a subsidiary
The corporate debt rules will apply to borrowings by a subsidiary so that relief should normally be available for interest costs, although a number of special rules may apply where the borrowing is from a non-resident parent. In particular, certain payments of interest by a UK subsidiary to its overseas parent can be treated as a distribution, with the interest not being deductible by the subsidiary for tax purposes.

Converting branch to subsidiary
If the overseas business were to set up a PE in the UK and then decided that the trade being carried on through that PE in the UK would be better conducted by a subsidiary, this would be possible.

Conversion of the PE into a subsidiary normally involves the transfer of the PE's trade to a subsidiary resident in the United Kingdom. In such circumstances relief from corporation tax on the assets transferred to the subsidiary is available if certain conditions are met.

Converting subsidiary to branch
Conversely, the transfer by a UK resident subsidiary of an overseas business to a PE of that company of assets used for the subsidiary's trade (and which will continue to be used for carrying on a UK trade by the PE) may similarly attract relief from corporation tax, provided that certain conditions are met. The transfer of other types of assets (e.g. an investment property not used for either company's trade) may give rise to a corporation tax liability.

8. Partnership

General
A partnership is the relationship, which subsists between persons carrying on a business in common with a view of profit. In a partnership, the partners share the responsibilities of decision-making, profit and loss of the business and have a duty of good faith to each other. Each partner is personally liable for all the losses of the business, even if the losses are incurred by the actions of other partners. Such liabilities are also unlimited. For these reasons, it is not common for overseas companies to set

up in the UK using a partnership.

There are no formalities relating to setting up a partnership, which may arise orally, by written conduct or even by conduct, provided that the definition of partnership under the Partnership Act 1890 applies. However, a written partnership agreement is invaluable as evidence of the parties' intentions about the relationship and which can also set out clearly the terms of the agreement between different partners. A partnership must have at least two partners but there is no maximum.

Tax issues
Partnerships are transparent for tax purposes; i.e. the partnership itself is not taxed and each partner is liable for the tax arising from its share of the profits of the partnership. That said, partnerships do routinely have to prepare and file accounts for the purpose mainly of the HMRC understanding each partner's entitlement to profits (or share of losses) and the calculation of their individual tax liability.

9. Limited Liability Partnership

General
Limited Liability Partnerships ("LLP") are an alternative corporate business vehicle to limited companies that give the benefits of limited liability but allow its members the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity. While the LLP itself will be liable for the full extent of its assets, the liability of the members will be limited, subject to certain routine exceptions such as fraud. Thus, the members' personal assets are basically separate from the business assets of the LLP. Similar to limited companies, members of an LLP have limited liability up to the amount of their capital in the LLP subject to certain exceptions. There is no maximum number of members in a LLP.

An LLP is incorporated by registration with Companies House and must have at least two members. Members of an LLP can be individuals or companies. They do not have to be resident in the UK. It is not necessary to have a written members' agreement, as the law will automatically apply certain basic terms governing the rights and obligations of the members. However, these terms are likely to be too brief to be sufficient and it is recommended to have a written members' agreement.

The administration of an LLP is similar to that of limited companies under the Companies Act. There is a requirement to file statutory accounts, file an annual return and notify any changes to Companies House.

Tax issues
LLPs transparent for tax purposes in that its activities are treated as being carried on by the members and not by the LLP itself. The taxation of an LLP depends on who its members are. Where the partners are individual members then each member is subject to income tax on their share of taxable profits of the LLP. A corporate partner is subject to corporation tax on its share of profits.

Tax returns of an LLP need to be submitted each year by 31 January, covering the period ending at the immediately preceding 5 April tax year.

There are restrictions for claiming certain types of capital allowances if an LLP includes a corporate member. Likewise, there is a restriction on the amount of losses that can be claimed by the member. The UK government has also introduced legislation which will tax the profit share of partners as employment income in certain circumstances.

10. Joint venture

General
As well as partnership and limited partnership, starting a business by collaboration with other parties can also take the form of a joint venture. Usually, a joint venture is structured using a special purpose vehicle such as a private limited company (see information under subsidiary company above).

Tax issues
The tax treatment will depend on the structure chosen for the joint venture.

11. Summary of UK business structures and taxation

Type	Description	UK taxation
Agent	Independent agent does not and has no authority to conclude contracts without PRIOR approval of the overseas business.	Not liable to UK corporation tax or income tax. However, if overseas company approval is a mere formality then the agency may be deemed to be a permanent establishment subject to UK taxation.
Distributor	Distributor purchases products from overseas company and re- sells them to customers. The contract is between customers and distributor. There is no direct relationship between the overseas company and the end customer.	Not liable to UK corporation tax or income tax.
Limited liability partnership	A corporate body having two or more members which carries on a business.	The profits of the limited liability partnership are generally assessed to tax in the same way as if the members were in a partnership (see above).
Partnership	Two or more persons carry on a trade or business in partnership and sharing income, capital and losses in agreed ratios.	The profits of a partnership are assessed to tax on the partnership shares as the individual partner's income (see taxation of individuals below).
Permanent establishment (including branch)	Non-resident company with a branch or similar structure constituting a fixed place of business in the UK, through which the business is wholly or partly carried on. The UK may also have a double tax treaty with the relevant overseas country which provides further guidance of the meaning of a "permanent establishment" which may include a place of management, a branch, an office, a factory, a workshop etc.	UK corporation tax is chargeable on the profits attributable to the UK permanent establishment and on any gains arising from the disposal of UK assets relating to the trade or permanent establishment.
Representative office	The overseas business trades with UK rather than in the UK. For example, business activities consisting of advertising, collecting and distributing information and introducing potential customers to the overseas company. Sales contracts, trading operations, management and business decisions NOT made in the UK.	Provided that trading is conducted **with** the UK, rather than **in** the UK, not liable to UK corporation tax or income tax (see below).
Subsidiary company	The overseas company incorporates a subsidiary in the UK.	Chargeable to UK corporation tax on worldwide profits of the UK subsidiary, including income and capital gains.

12. Tax on corporations

Corporation tax

The UK corporate tax system is based on a single rate applied to all chargeable profits. The current rate of corporation tax is 19%. Following the recent Budget, the corporation tax rate will increase to 25% from 1 April 2023 for companies with profits over £250,000. Companies with taxable profits of not more than £50,000 will continue to have a rate of 19% and where taxable profits fall between £50,000 and £250,000, the rate will be taxed at 25% less marginal relief

The accounting period for corporation tax purposes (Corporation Tax year) is typically a 12-month periods long and normally matches the company's statutory accounting period. Corporation tax accounting periods can, in some circumstances be shorter than 12 months but never longer. Under the corporation tax self-assessment regime, companies are required to:

- Calculate their own corporation tax liability;
- pay corporation tax no later than nine months and one day after the end of the Corporation Tax year (note different treatment for Large companies as per below); and
- file a corporate tax return by a set deadline (12 months after the end of the Corporation Tax year.

'Large' companies are defined as those with annual profits of more than £1.5 million (divided by the total number of associated companies). Large companies must pay most of their tax during the Corporation Tax year, by Quarterly Instalment Payments (QIPs) based on anticipated Corporation Tax for the current tax year.

Companies are liable to penalties and interest if they do not deliver a corporation tax return by the statutory filing date; and/or fail to pay corporation tax on time.

Value added tax (VAT)

VAT is a general turnover tax which applies to most supplies of goods and services made in the UK by a taxable person (i.e. one who is, or ought to be, registered for VAT); as well as to most imports of goods into the UK. Imports of goods may also be subject to customs duties.

VAT is chargeable on supplies of goods or services within the UK and the rate of VAT chargeable depends on the category of the supply. The standard rate of VAT is currently 20% but there for certain categories such as supplies of domestic fuel and power (charged at 5%) and supplies of food or new dwellings (charged at 0%). Some supplies, such as finance or insurance are completely exempt.

The taxable turnover threshold for compulsory registration for VAT is currently £85,000 (in the previous 12 months) and applies to anyone carrying on a business in the UK. Failure to register can result in significant penalties.

Other direct and indirect taxes

Other direct and indirect taxes which may be relevant to a business operating in the UK include:

- **National Insurance Contributions** (employer's contributions) – The employer pays National Insurance Contributions (NIC) on earnings above £9,100 at the rate of 15.05%.
- **Stamp duty land tax** (SDLT) - is payable on transactions involving acquisition of UK land. The mandatory tax is payable 14 days after the effective date of the transaction, which is generally the date that the buyer acquires the interest in the land. The rate charged for both residential and transfers of land is a percentage of the purchase price (chargeable consideration).
- **Stamp duty** - is paid in respect of transfer of shares and other marketable securities and interests in a partnership that holds stock and marketable securities as partnership property where it is necessary to document or register the transaction. The rate of duty is 0.5% (rounded up to the nearest £5) of the amount of the sum paid (chargeable consideration) with the amount payable. However, the transfer is exempt from stamp duty if the consideration is £1,000 or less; or if the transaction attracts stamp duty of only £5.
- **Stamp duty reserve tax** - is a tax on the sale of shares and certain other securities in UK companies not caught by stamp duty. The standard rate is 0.5% but increases to 1.5% where shares are transferred to or issued in depositaries (such as American Depositary Receipts) or

into a clearance system.

- **Import duties** - the majority of goods arriving in the UK are liable to some or all of the following duties:
  - Customs Duty (General Goods);
  - Excise Duty (Tobacco, Alcohol, Fuel etc.)
  - Import VAT (General Goods)
- **Business rates –** is a levy charged on the occupier or, if there is no occupier, the owner of commercial property by the local council.

For more detailed information about taxes, please see our UK Taxation Guide.

13. Tax on individuals

Connecting factors

An individual's liability to personal taxes (income tax, capital gains tax and inheritance tax is based on these criteria:

1. residence;
2. ordinary residence; and
3. domicile

Brief summaries on residence and ordinary residence for UK tax purposes are set out below. The law on residence and ordinary residence remains uncertain and there have been numerous cases in the courts in which the HMRC has successfully challenged an individual's residence status.

Residence

Generally, an individual is considered UK resident for tax purposes if s/he is physically present in the UK for 183 days or more in the tax year (6 April to the following 5 April). However, when an individual is present in the UK for less than 183 days in a tax year, the guidance emphasises that HMRC will look at the individual's "pattern of lifestyle", including family, property, business and social connections, to determine whether that individual is resident in the UK for tax purposes.

Short-term visitors to the UK, who do not meet the 18-day test, may be found to be resident in the UK, if their visits average 91 days or more per tax year in any four consecutive tax years. HMRC will again consider the individual's "pattern of lifestyle" when assessing his/her residency. Double tax agreements between the UK and the relevant foreign country may also contain special provisions for tax treatment of individuals and businesses and for determining their residence status.

Ordinary residence

Ordinary residence is a 'regular, habitual mode of life in a particular place, which is both adopted voluntarily and for settled purposes'. If it is intended that an individual is to remain in the UK for an "appropriate period", that individual is considered ordinarily resident from the 6 April in the year of arrival. If he comes to the UK with no such intention but remains in the UK on average 91 days over an "appropriate period" (broadly, four tax years) then he is treated as ordinary resident from the 5th tax year. However, ordinary residence is not just residence over a number of tax years; a regular, habitual mode of life can be established after a relatively short space of time. In summary, HMRC will take other factors such as his "pattern of lifestyle" into account when determining ordinary residence, not just presence in the UK. The fact that the individual owned or had leased accommodation in the UK for a period of three years is e.g. an indicator that he is ordinarily resident.

Domicile

An individual is generally domiciled in the country of his permanent home. The concept of domicile is distinct from nationality and residence. In general terms, an individual has a domicile of origin which is derived from the domicile of his father. However, an individual is free to change his domicile when he is aged 16 years or older. To do so, the individual must prove that he has an intention to change his domicile and to live in another country. HMRC will consider factors such as selling the permanent home in the former country of domicile and purchasing and actually residing in the new (chosen) domicile to be cogent evidence of acquiring a new domicile.

Income tax

Individuals are subject to UK income tax on different sources and types of income as follows:

Types of income

(a) Earned income which includes earnings from employment, pensions and income from a trade, profession or vocation.
(b) Unearned income which includes investment income, any other income which is not earned income.

Income tax rates and taxable bands 2021-22
Income tax is imposed on a marginal basis (on bands of income) after deduction of the personal allowance. The basic allowance of £12,570 is available where the individual's total income in the tax year is less than £100,000. Where the income exceeds £100,000, the personal allowance is gradually reduced by half of the amount (i.e. £1 for every £2) over that limit. Non-domiciled individuals claiming on the remittance basis are normally not entitled to a personal allowance.

- *Basic rate* between £12,570 – 50,270: 20%
- *Higher rate* between £50,271 - 150,000: 40%
- *Additional rate* over £150,000: 45% .

For more detailed information about taxes, please see our UK Taxation Guide.

14. Immigration

It is the employer's responsibility to ensure that an employee can legally work in the UK. Employers face up to 5 years in jail and an unlimited fine if they are found guilty of employing workers they knew or had 'reasonable cause to believe' did not have permission to work in the UK. They can also be ordered to pay a civil penalty of £20,000 for each illegal immigrant working for them.

Nationals from an EEA Member State
Free movement ended on 31 December 2020 and newly arriving EU citizens now generally require a visa to enter, live and work in the UK. The EU Settlement Scheme which permits EU nationals who came to the UK before 1 January 2021 to obtain pre-settled/settled status in the UK ended at the end of June 2021. Those who remain in the UK without pre-settled/settled status or a visa may be deported unless a late application under the scheme is accepted.

UK employers are required to apply to the Home Office, UK Visas and Immigration (UKVI) for a sponsor licence if they want to recruit individuals from the EAA and non-EAA countries (who do not have permission to live in the UK). However, there are also new routes for highly talented individuals without a job offer to live and work in the UK under the new UK immigration system. See below.

Visas
International recruits including EEA nationals must first be sponsored by a UK employer. Separately they must obtain a visa to work in the UK – the most popular visas which can be granted for up to a five year stay, are: skilled workers and intra company transfer visas.

Skilled Workers Visa (former Tier 2 visa)
A worker must accrue a minimum of 70 points by meeting the following criteria:

- Issued with a valid Certificate of Sponsorship from the employer to work for the business;
- Offered a job must at the appropriate skill level
- speak English at the required level
- meet salary or qualification requirements.

The salary must be the going rate for a job according to the immigration guidance although the minimum salary is £25,600. The job salary may be less where the employee holds a PHD or is a new entrant.

An employee must also have sufficient funds to support him/herself and any dependants in the UK for a period of time.

Intra Company Transfer Visa
An employer can transfer an employee from an international to a UK subsidiary or branch. The employee must have worked for the overseas employer for more than 12 months unless the annual UK salary is £73,900. To accrue 60 points for this visa, they must be paid at least £41,500 a year, and must also be issued with a certificate of sponsorship and be offered a role that's on the list of eligible occupations.

There is also a Graduate Trainee Visa where trainees transfer to the UK business as part of a graduate training programme for a managerial or specialist role. They must paid a minimum annual salary of £23,000.

EU and international workers without a job offer

The Global Talent Visa
An individual can apply for a Global Talent visa if they are recognised as a leader or potential leader in the following fields: digital technology, arts and culture, and academia and research. In most cases they will need to be endorsed by a UK body, and can stay in the UK for up to five years.

Other visas

Individuals including EU talent who want to live in the UK and or set up or run a business in the UK who do not qualify for the Global Talent visa may be able to obtain the following:

- **Investor Visa** – a requirement to invest £2m in the UK and open a UK bank account;
- **Innovator Visa** – a requirement to invest £50,000 in a new and unique business;
- **Start Up Visa** –provide a new and unique business idea which must be endorsed by a recognised body; or
- **Youth Mobility Scheme Tier 5 Visa** – for applicants from certain countries who are between 18 and 30 to come to the UK for two years.

Sponsorship for employers
UK employers who want to recruit workers from outside the UK are required to apply for a sponsor licence which is valid for four years. The fee depends on the size and or turnover of the business They will not have to apply for a licence if they only employ workers other than British citizens who have an existing right to work in the UK such as:

- EU/EAA citizens with settled or pre-settled status
- Non-EAA citizens with indefinite leave to remain in the UK
- Non UK family member of a British citizen with a right to live and work in the UK

The employer must explain in its sponsorship licence application why it requires an international recruit to carry out the particular role in its business. Once approved, the employer will apply for a certificate of sponsorship for the recruit and pay an immigration skills charge which is based on the length of the visa. Separately, the employee will use the certificate of sponsorship to apply for a visa and pay a healthcare surcharge. The visa application fee is based on the length of visa.

Employers have to comply with Right to Work checks to ensure that a new recruit is able to lawfully work in the UK.

There are other ways to enter the UK.

Standard Visitor Visa
A person can apply for a Standard Visitor visa to visit the UK:

- for leisure, for example on holiday or to see family and friends;
- for some business activities, or to take part in sports or creative events; or
- for another reason, for example to receive private medical treatment

The Standard Visitor visa has replaced the Business Visitor visa and various other specific visas.

An individual can apply for a Standard Visitor visa if they want to visit the UK for business-related activities, as set out below. However, the visa can't be used for paid or unpaid work.

Permitted activities include:

Director's meeting, conference, meeting or training.

- A specific sports-related event.
- Coming to the UK to perform as an artist, entertainer, or musician.
- Doing research or accompanying students on a study abroad program.
- Coming to the UK as a doctor or dentist to take a clinical attachment or observer post.
- Getting funding to start, take over, join or run a business in the UK.

If an individual is paid by a UK company to visit as an expert in their profession, they should apply for a Permitted Paid Engagement visa.

Sole representatives of an overseas business
An experienced employee of an overseas business can apply for the above visa for the purpose of opening a UK branch or subsidiary of the overseas business. Once established the representative can then apply on behalf of the UK branch or subsidiary for a Sponsorship Licence to bring in and employ other employees of the overseas business or elsewhere, which will include EEA nationals. An initial period of three years will normally be granted with the option to extend this for up to another two years. Stay in the UK will count towards Indefinite Leave to Remain applications.

Partners and families
Where a foreign national also wishes to bring his partner and children to the UK to stay during the period of his employment, entry clearance for his or her dependants must usually be obtained by the Home Office.

Indefinite leave to remain
Certain immigration categories, including points based categories, allow an individual who spends a continuous period of five or 10 years in the UK to apply for indefinite leave to remain in the UK.

British citizenship
A foreign national who has held indefinite leave to remain in the UK or settled status as an EU citizen living in the UK for at least last 12 months may apply to naturalise as a British citizen. One of the key requirements is that, during the previous five years, the individual (who is not a spouse of a UK citizen) has not spent more than 450 days outside the UK and not more than 90 days outside the UK in the last 12 months. In addition, the individual must be of "good character", demonstrate sufficient knowledge of the English language, pass a "Life in the UK" test and show an intention to make the UK their home.

15. Employment Law

Employment rights
The principal mandatory and statutory employment rights applying to employees in the UK are as follows:

- Protection from "unfair dismissal" – once an employee has been employed for two complete years he/she will have the right not to be unfairly dismissed. To dismiss an employee fairly, an employer must have a "fair" reason and follow a "fair" process. If an employee is unfairly dismissed, the employer will be liable for a basic award (calculated by reference to age and length of service) and a compensatory award for financial loss of up to one year's salary or £88, 519 (whichever is less);
- protection from discrimination - it is unlawful to discriminate against an employee on the grounds of a "protected characteristic". Therefore, an employee cannot be treated less favourably

because of reasons relating to: age, sex, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, or sexual orientation;
- "whistle-blower" rights –employees cannot be subjected to a detriment or dismissed by reason of disclosing their employer's potential wrongdoing; and
- "TUPE" protection - the Transfer of Undertakings (Protection of Employment) Regulations 2014 (known as "TUPE") provide protection to employees during business transfers or outsourcing arrangements. Protection extends to both the employees' employment and terms and conditions of employment.

There are also statutory minimum levels of annual leave, notice, pay and detailed rules regarding working time. Whilst it is open for the parties to be more generous should they wish, the following minimums must be observed:

- Annual leave - 5.6 weeks (or 28 days) per year;
- notice – where an employee has been employed for one month but less than two years, the entitlement is one week. Thereafter it is one week for every complete year of service up to a maximum of 12 weeks;
- national minimum wage - for employees aged 21 to 22, the rate is presently £9.18 per hour (lesser rates apply to younger workers/apprentices);
- national living wage - for employees aged 23 and above is presently £9.50;
- working time – the standard weekly limit on "working time" is 48 hours, but employees and employers can agree an 'opt out'.

Employment documentation
It is important to have proper contractual documentation for employees as:

- There is a legal obligation to provide employees with a written statement of employment particulars on or before the date of them commencing employment (s.1 Employment Rights Act 1996);
- a well drafted contract allows employers to protect their confidential information, intellectual property and other legitimate business interests;
- it is a key document in clearly defining an employee's duties/rights; and
- it serves as a valuable framework in managing the employment relationship.

It is also advisable to have a non-contractual Employee Handbook setting out policies and procedures on matters such as disciplinary and grievances, anti-corruption, equal opportunities, sickness absence etc.

Protecting "legitimate business interests" is often done by including restrictive covenants in the employment contract. These are restrictions that apply post-termination and stop departing employees from attempting to poach clients, employees, and/or suppliers for a certain period.

Such restrictions are only enforceable to the extent that they constitute a proportionate means of protecting a legitimate business interest. So, a blanket ban on working for a competitor is unlikely to be enforceable. However, a time-limited restriction against approaching key clients with whom the departing employee had dealings with on behalf of the employer is likely to be enforceable.

16. Banking

Setting up a bank account in the UK is often a slow and cumbersome process.

You should expect to come and meet the local bank manager in person in the UK with a view to explaining your business model and the reasons for setting up in the UK. At the same time, the bank would require to take copies of your passport and other documents to verify your identity for compliance purposes.

Typically, it would be easier to open an account if you use the UK branch office of a bank you already use for your domestic business.

At an early stage in the planning, you should therefore consider your banking needs as the process may take several months.

17. Property

General

In England, only the Crown can own land. For everyone else, there are 2 different types of land tenure: (1) "freehold" refers to the outright ownership of land or property for an unlimited period and applies to the majority of properties, whereas (2) "leasehold" refers to a temporary rental of land or real estate from a freeholder. A person who owns the freehold interest in a property may grant a lease on it.

One should be aware that leasehold is not the same as just renting a property in the ordinary sense. A leaseholder who purchases a commercial leasehold property is the outright owner of the leasehold interest and if the term is for more than seven years, the owner is registered at the Land Registry as the registered proprietor and has the right to sell the property in future and make a profit on any appreciation in value of the leasehold interest. Many people prefer to buy freehold properties because their interest will not run out with the expiry of term of the lease, they do not have to pay rent to the freeholder and they will not need to oblige by covenants under a Lease with the owner of the freehold who may restrict certain things such as carrying out alterations without the landlord’s consent.

Renting property

In addition to the two kinds of tenure above, you may also rent property in the traditional sense from either a freeholder or leaseholder. There are no standard form agreements so care must be exercised when reviewing any draft agreement for a lease or licence as the terms may be onerous.

Generally, the commercial lease of property is regulated by the Landlord & Tenant Act 1954.The Landlord & Tenant Act 1954 provides the security of tenure for the tenants when the agreed term of the lease comes to an end. It means that, even though the fixed term of the lease has ended, the tenants of business premises have the right to remain in occupation and the lease will continue on the same terms until either the landlord or tenant serves notice to terminate or enter into a new lease in accordance with the provisions of the Act. Quite often landlords insist that the tenant waives the application of sections 24-28 of the Act (security of tenure) by agreement.

Some of the points that need to be considered when considering taking commercial premises are:

- The question of whether the property is to be purchased or rented.
- If the property is purchased, whether the property is purchased as a freehold or a leasehold interest.
- Whether the property is to be owned directly by a subsidiary company or through an alternative vehicle.
- If the property is rented, how long is the lease period for and do you want an option to terminate the lease during the period, quite commonly referred to in commercial leases as break clauses.
- If the property is rented, whether the parties include or exclude the security of tenure provisions under the Landlord & Tenant Act 1954.

Finding suitable premises

You would normally instruct an estate agent to find suitable premises. Often you may also involve a Chartered Surveyor who may assist with an expert examination of the property to include looking into potential planning issues. A surveyor may also be involved in negotiating the terms of the deal when suitable premises are found.

Typical cost of acquisition of business premises

In addition to the payment of the purchase price or the rent, you should also allow for the costs of a Chartered Surveyor, potentially any further building surveyors, legal advice and stamp duty. Companies purchasing residential property or commercial properties will also incur a stamp duty land tax. For more detailed information about stamp duty land tax (SDLT), please see our UK Taxation Guide.

If a commercial lease is for a term of more than seven years, the ownership will need to be registered and there will be fees payable to the Land Registry (registration of title). Fees to the Land Registry

depend on the premium and the rent payable under the lease and can be from £40 if the total amount is under £80,000 to £910 if the total amount is over £1,000,000.

Rent is typically paid quarterly in advance. The rent does not include other services or costs such as electricity, telephone, gas and business rates (local tax) to local authorities. In addition, it must be expected that the insurance of the property is not included in the usual service charges.

Service charges are usually payable on a leasehold property where the leased premises form part of an office building. These cover joint costs of running the building which are apportioned to and shared by the individual tenants.

Typically, an owner or tenant of property is also liable to pay Business Rates, which are a tax to the local authorities. It is determined locally and is calculated based on the property's rateable value.