BLICK ROTHENBERG

Blick Rothenberg

Establishing a business in the UK

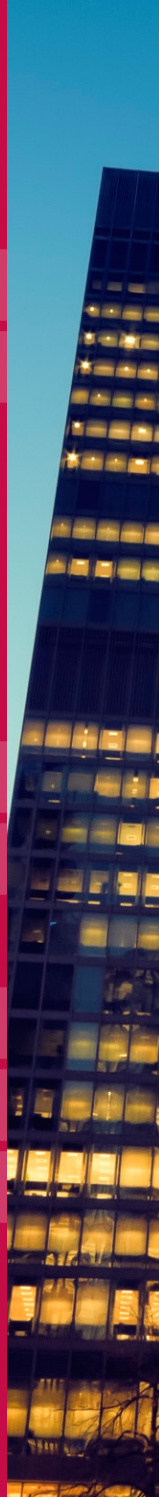
Blick Rothenberg
16 Great Queen Street
Covent Garden
London WC2B 5AH

T:
+44 (0)20 7486 0111

E:
email@blickrothenberg.com

W:
www.blickrothenberg.com

Twitter:
@BlickRothenberg



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Introduction

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

Successive governments have reformed the UK corporation tax regime making it more attractive to international investors. This has included reductions in the headline rate of corporation tax, the introduction of a number of innovation incentives (including the Patent Box regime and Research and Development tax credits) and wider reforms that make the UK an attractive jurisdiction in which to do business.

Despite the prospect of Brexit, the UK continues to be a premier destination for inward investment and international expansion. This is supported by the UK's competitive tax regime, excellent communication links, ease of doing business and access to talent.

Where a company is looking to do business with or in the UK, the fiscal implications are neither complicated nor overly burdensome.

This guide concentrates on providing practical information to make it easier for overseas businesses to establish a presence in the UK.

In particular, this guide considers the types of activities that might create a taxable presence in the UK, the procedures involved in establishing a UK limited company or establishment, tax rates, implications for individuals working for a company and other related issues.

The team at Blick Rothenberg are passionate about assisting you with your expansion plans.

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

What creates a taxable presence in the UK?

Under UK tax legislation, UK incorporated or tax resident companies will be subject to UK corporation tax. Furthermore, an overseas company trading in the UK through a UK branch or "permanent establishment" will be subject to UK corporation tax, but principally only on profits relating to UK activities.

The issue to be considered is whether an activity creates a UK taxable presence/ permanent establishment ("PE") and, if so, what type of entity or presence the overseas company should establish.

Permanent establishment

Broadly, an overseas company will have a PE in the UK if:

a. the non-UK company has a fixed place of business through which the business of the company is wholly or partly carried on (a 'fixed place of business' PE); or
b. an agent acting on behalf of the company habitually carries on business activities which bind the overseas company (a 'dependent agent' PE).

Typically therefore, the opening of a UK-based office or appointment of UK-based sales employees may give rise to a UK PE.

In some circumstances, an overseas company will fall outside of the above and may have no UK PE. For example, an overseas company that is trading from abroad with customers in the UK but does not have any UK presence or activity may not create a UK PE. Similarly, "preparatory and auxiliary" activities performed in the UK may not give rise to a UK PE - this may be the case if an overseas company undertakes initial research of the UK market to see if it makes commercial sense to establish a UK presence.

The threshold of when a PE is created in the UK is, however, complex and very fact specific. Overseas companies should also note the UK has specific anti-avoidance (the diverted profits tax) that can apply if a group has artificial arrangements in place to avoid a PE. Specific rules also apply to transactions in land (real estate) which may give rise to a UK taxable presence even where an overseas company has no UK PE.

Some groups may decide at the outset to establish a UK presence or subsidiary. This may be the case if there is a long-term plan to trade in the UK or a UK entity is required for regulatory reasons or because of customer preference. The question then becomes what form of presence should be established.

Establishment or subsidiary?

This section considers the main issues overseas companies need to bear in mind when choosing the most appropriate form of entity. Many of these are driven by legal or commercial factors and separate legal advice should be obtained. We have focussed on two options we see most regularly, being:

1. A registered branch/establishment

2. A UK limited company

Note that other options and forms of legal entity exist, for example a UK limited liability partnership, but these options have not been discussed in detail here.

Legal liability

An establishment is not a separate legal entity from the parent company but merely an extension operating under the laws of the UK. An establishment does not therefore provide limitation of liability that a subsidiary does.

If the nature of the business is such that it is important to ring-fence liabilities in the UK then a subsidiary may be the preferred option.

Costs of administration

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.

Registered presence

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

Losses

It may be possible for losses of an establishment to be relieved against profits of the overseas parent. This may not be the case with a subsidiary (where losses would need to be carried forward for relief against future profits of the subsidiary itself, subject to restrictions). The treatment may also be dependent on any elections made in the parent juristiction.

Financial statement disclosure

If the group is sensitive to the type and level of information that is publicly available about its business in its own jurisdiction, then a subsidiary may be the better option as only financial statements of the UK subsidiary need to be filed with UK Companies House (whereas a UK establishment is required to file financial statements of the parent company with UK Companies House).

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 by-laws 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, in the form of a limited company, is relatively 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.

Typically, a limited company can be incorporated in a matter of days once all relevant information and documents have been received.

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 the directors to be resident in the UK.

There is no requirement for the company to have a minimum amount of issued share capital. Typically, a company is normally formed with a minimal amount of issued ordinary share capital (e.g. £1,000). 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 need to be filed in the UK with Companies House (irrespective of whether the parent company has such a requirement in its own jurisdiction). 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. To mitigate this, the parent could form a subsidiary rather than register an establishment. Alternatively, a new company could be incorporated in the home jurisdiction and this entity then registers the UK establishment. When the accounts of the parent are then filed, only information relating to the establishment's activities are then disclosed.

Subsidiary

A subsidiary needs to prepare and file each year a copy of its accounts prepared in accordance with UK company law. The accounts, once filed, are available for public inspection. The type of accounts depends on the company's type and size, and whether it is dormant or trading.

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 (i.e. on a consolidated basis) exceeds two of the following thresholds:

1. Revenues of £10.2m per annum
2. Gross assets of £5.1m
3. 50 employees

If the UK company does require an audit, the cost of maintaining the company compared to an establishment may be slightly higher.

Corporation tax

UK corporation tax is paid on the UK establishment or UK subsidiary's taxable profits.

Corporation tax rate

The UK corporation tax rate is 19% with effect from 1 April 2017. This rate is scheduled to be reduced to 17% from 1 April 2020. Special rates of corporation tax can apply to companies in the oil and gas, banking/insurance or shipping sectors.

Taxable profits

Corporation tax is paid on the tax adjusted profits the UK business makes. UK tax resident companies are subject to corporation tax on their worldwide profits and gains (subject to an option to exempt profits of non-UK branches). A UK establishment is subject to UK corporation tax on profits relating to UK activities of the establishment.

The level of taxable profits will, to an extent, depend upon the trading model adopted. 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 marketing and technical support, a fee would be charged to the parent for the services provided. It is broadly this fee, less related costs of providing these services and maintaining the entity, that would be subject to UK corporation 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 independent parties acting on an arm's length basis.

Businesses often commence trading under the cost plus business model described above and then move to a different arrangement as they grow.

Corporation tax payments

Corporation tax 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 £10m 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 £1.5m or above (or as appropriately divided by the number of associated companies in the worldwide group at the start of the current accounting period).

Corporation tax returns

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.

Research and Development tax incentives

The UK has a generous Research and Development ("R&D") tax credit system that is designed to encourage companies to invest in R&D and base these activities in the UK.

Definition of R&D

Her Majesty's Revenue & Customs ("HMRC") and the Department for Business, Energy & Industrial Strategy have issued 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
- 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.

R&D regimes

There are different regimes applicable to large companies and small and medium-sized enterprises ("SMEs"). A company qualifies as an SME if it has:

- Fewer than 500 employees
- Either an annual turnover not exceeding €100m or a balance sheet total not exceeding €86m

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.

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
- 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. This may be relevant where the UK company provides R&D services to the overseas parent company. However, the company may still qualify for the large company scheme.

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 8.91%.

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.

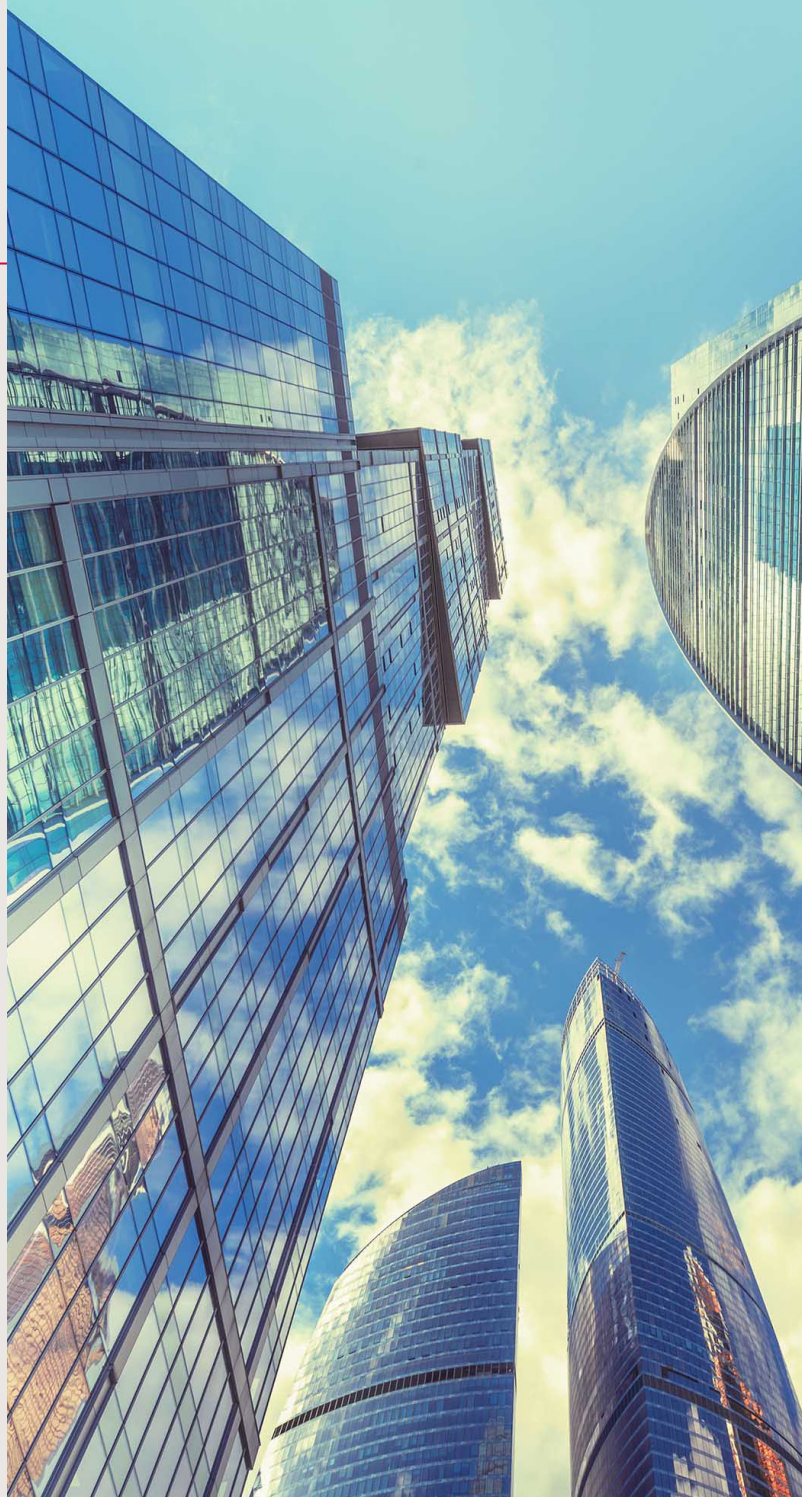
SMEs can claim relief under the large company regime (but not the SME regime) if they undertake work that is subcontracted to them by another company. However, the other company must be either large or not subject to UK tax (broadly, an overseas company). Hence, where an overseas parent company subcontracts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

Making a claim

The claim is included in the corporation 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 and other innovation incentives

Patent Box

The Patent Box was originally introduced in 2013 as part of the government's drive to encourage innovation in the UK.

The original Patent Box regime is available to certain patents filed or acquired before 1 July 2016 and continues to apply until 2021.

However, an amended regime was introduced with effect from 1 July 2016 which continues to provide the effective 10% corporation tax rate to qualifying patents, but only to the extent that research and development relating to the patent has been conducted in the UK.

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% (as compared to the headline rate of corporation tax in the UK which is currently 19%).

Which patents will qualify?

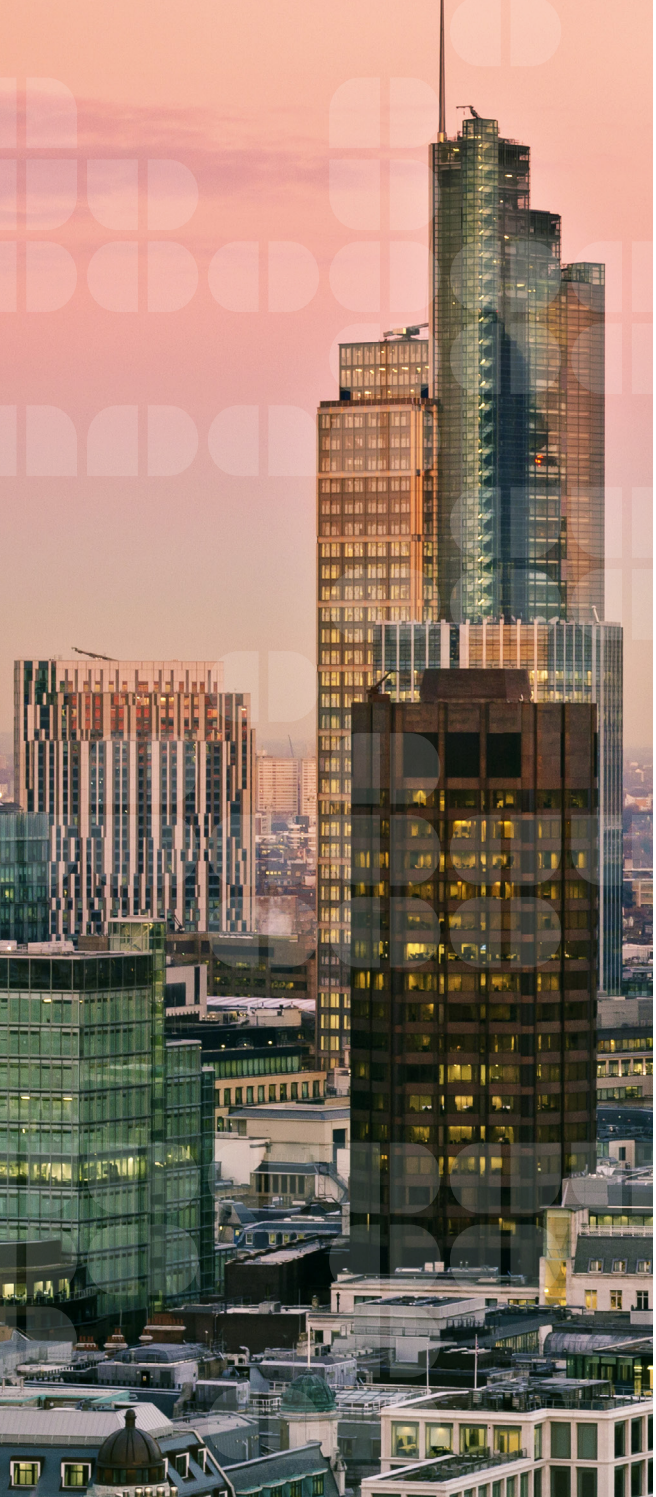
Patents granted by the UK Intellectual Property Office ("IPO") and the European Patent Office, as well as regulatory data protection ('data exclusivity'), Supplementary Protection Certificates ("SPCs") and plant variety rights.

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.

Other innovation incentives

The UK has also introduced multiple tax relief incentives for the creative industries. The reliefs all work in a similar manner, with eligible companies being able to obtain enhanced expenditure deductions and the possibility of a repayable tax credit where the company is loss-making. These reliefs include:

1. Film tax relief
2. High-end television tax relief
3. Animation tax relief
4. Children's television tax relief
5. Video games tax relief
6. Theatre tax relief
7. Orchestra tax relief



The UK as a holding company location

The UK is a very attractive location for establishing a holding company, whether for holding investments in overseas subsidiaries or as an M&A platform for future acquisitions.

This has been driven by a number of changes to the UK tax regime in recent years. In particular, virtually all dividends received by the UK parent company, whether from a UK or overseas subsidiary are exempt from UK tax (although different rules exist for small and non-small recipient companies).

Furthermore, the UK levies no withholding tax on dividends paid, no matter where the recipient is located. These rules ensure there is minimal tax leakage where dividends are paid through a UK holding company.

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.

Disposals of substantial shareholdings of shares in trading companies or holding companies of trading groups are also exempt from UK corporation tax where the conditions of the UK substantial shareholding exemption are met.

All of the above and a main rate of corporation tax of only 19% (falling to 17% from 1 April 2020) have made the UK a very attractive location for forming a holding company. A UK holding company can help a group by acting as a platform for further expansion of operations into other jurisdictions.

Personal taxation

Basic principles

As a general principle, if an individual is tax 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.

Tax 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
- They were not UK resident in any of the previous three tax years and spend fewer than 46 days in the UK
- 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
- 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
- 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.

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 previous 20 years will be treated as 'deemed domiciled' for all UK personal tax purposes. A non-domiciled individual who is 'deemed domiciled' is assessed to UK tax on their worldwide income and capital gains and are not able to claim the remittance basis. In addition, an individual who is 'deemed domiciled' is subject to UK inheritance tax on their worldwide assets.

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 2018 Tax free allowance £11,500 *		
	20	1 - 33,500
	40	33,501 - 150,000
	45	Over 150,000
Year to 5 April 2017 Tax free allowance £11,000 *		
	20	1 - 32,000
	40	32,001 - 150,000
	45	Over 150,000

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

Table 02

National Insurance rates year to 5 April 2018 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%

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 left.

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.

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.

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 £85,000 per annum (effective from 1 April 2017).

If the above threshold is exceeded in any 12-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 £85,000 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 scheme (auto-enrolment) and the Apprenticeship Levy

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

The employer duties include:

- Setting up a workplace pension scheme
- Assessing and categorising UK workers
- Automatically enrolling eligible UK workers into the scheme
- Collecting pension contributions from employees' pay
- Paying the employee and employer contributions to the scheme
- Issuing all workers with certain statutory information
- Keeping permanent records
- Registering with The Pensions Regulator

Staging date

All employers are given a 'staging date', when their auto-enrolment duties begin.

Organisations first starting to employ UK workers 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 (2017/18 tax year) must be auto-enrolled; the employer must also contribute.

All employees aged 16 to 74 earning less than £5,880 (2017/18 tax year) are not automatically enrolled but have the right to join the workplace pension scheme, 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 the 2017/18 tax year this is earnings between £5,880 and £45,000. Minimum contributions are detailed in 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%

Apprenticeship Levy

This is a new tax introduced from 6 April 2017. It imposes a 0.5% levy on employers' pay bills. However, there is an allowance of £15,000 to offset against the levy and so this new tax will only apply where an employer's annual pay bill exceeds £3m.

Anti-avoidance and other recent developments

Transfer pricing

The UK has transfer pricing legislation that requires groups to account for transactions between group companies at an arm's length price and to keep adequate documentation.

SMEs may fall outside the UK transfer pricing provisions although medium-sized entities/groups can receive formal notice from HMRC to apply the UK transfer pricing rules.

In addition, non-UK jurisdictions often do not have a similar exemption for SME entities/groups and therefore applying arm's length methodologies is best practice.

Diverted Profits Tax ("DPT")

DPT was introduced 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.

DPT typically applies to two types of arrangements:

1. Where there is an 'avoided PE'

2. Where a UK company or PE is party to arrangements where there is an 'effective tax mismatch' and the 'insufficient economic substance' condition is met.

Certain exemptions can be afforded to smaller enterprises where UK sales revenues or UK related expenses are below certain thresholds. Groups should review whether these provisions can apply to their proposed operating model and should ensure transfer pricing methodologies are correct.

General Anti-Abuse Rule ("GAAR")

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 action and simply chooses one that is more tax efficient than another.

OECD BEPS action items

The UK has been a supporter of the OECD initiative on Base Erosion and Profit Shifting and has taken a leading role in implementing recommendations from the OECD on each of the BEPS action items. In particular, new legislation has been introduced in the UK covering:

- Action 2 – anti-hybrid rules (these should be considered in the context of hybrid entities/instruments, check the box elections and intragroup payments)
- Action 4 – interest deduction restrictions (relevant to debt funding)
- Action 5 – harmful tax practices (including amendments to the UK Patent Box regime)
- Action 6 – implementation of the multilateral agreement
- Action 7 – permanent establishment status (including introduction of the DPT)
- Actions 8 – 10 – transfer pricing
- Action 13 – Country by country reporting (and introduction of rules on publication of a UK tax strategy)

Many of the above will be relevant to overseas groups looking to establish a presence in the UK. Certain exemptions may apply to smaller businesses/ UK operations but these should be considered on a case by case basis.

Our international team

Nilesh Shah
CEO

+44 (0)20 7544 8866

nilesh.shah
@blickrothenberg.com

James Dolan
Partner
US

+44 (0)20 7544 8972

james.dolan
@blickrothenberg.com

Milan Pandya
Partner
France/Italy

+44 (0)20 7544 8738

milan.pandya
@blickrothenberg.com

Simon Wagman
Partner
Spain/Israel

+44 (0)20 7544 8828

simon.wagman
@blickrothenberg.com

Nils Schmidt-Soltau
Partner
Germany/Austria/Switzerland

+44 (0)20 7544 8931

nils.schmidt-soltau
@blickrothenberg.com

Alex Altmann
Partner
Germany/Austria/Switzerland

+44 (0)20 7544 8747

alexander.altmann
@blickrothenberg.com

Blick Rothenberg

Blick Rothenberg is a market leading UK accounting, tax and advisory practice specialising in helping overseas companies establish a presence in the UK. Based in Central London, the practice has 33 partners and directors and over 250 staff. We focus on providing practical advice to overseas companies to make the process of establishing and maintaining a UK presence as easy as possible.

We currently act for over 800 overseas companies, and in addition to full accounting and tax services, can provide outsourced accounting and administration services.

We can administer payroll, compliance, VAT and also invoicing, debt collection, expense payment and process management accounts to the overseas finance team.

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

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