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Establishing a Business in the UK

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Welcome

I'm delighted to introduce the 2022 edition of our guide to establishing a business in the UK.

This is the first update to our guide since Brexit and Coronavirus. Despite these unprecedented events, I am pleased to say that the UK continues to break records for attracting foreign direct investment and remains a key jurisdiction for groups expanding internationally.

The UK has a proud history of supporting businesses to expand internationally, often driven by the UK's diverse talent pool, culture, and the relative ease of doing business. The UK Government has a strong desire to uphold this rich history and is committed to making the UK the best place in the world for international investors. This is supported by the ongoing reform of the UK tax regime and the launch of new initiatives. These initiatives include the 'Office for Investment' that will provide dedicated support to inward investment projects and a "10 point plan" for the UK to be a leader in green and sustainable technologies and finance.

I personally enjoy working with a diverse range of companies and founders and supporting them with their expansion plans. The UK has a lot to offer in terms of its talent and ecosystems and with appropriate planning groups can be up and running in the UK with relative ease.

We have developed this guide to provide practical information on the UK tax and accounting implications of setting up and running a UK business. Our team are passionate about assisting you with your expansion plans, so if you have any questions, please do not hesitate to get in touch.

Kind regards

James Dolan
Head of International Tax
james.dolan@blickrothenberg.com

Why choose the UK?

There are a wide range of issues to consider when planning expansion into a new jurisdiction. Some of the key reasons the UK is consistently chosen as a global hub for investment are:

Economy

- 6th largest economy in the world
- 5th for global innovation
- Central time zone gives access to multiple markets
- Ecosystems exist and support collaboration and growth in key sectors (e.g., technology, fintech, creative and life sciences)

Talent

- Highly skilled talent pool
- Access to multiple languages and cultures
- 90 outstanding universities including 4 of the global top 10
- Diverse workforce

Legal system

- Stable and well-respected legal system
- UK limited company can be incorporated very quickly
- 8th for ease of doing business globally

Taxation

- Most competitive tax regime in the G7
- Stable and well-respected tax system and tax authority (HM Revenue & Customs)
- Various tax incentives to support innovation and investment
- Tax efficient holding company regime and strong treaty network

Government support

- UK Department for International Trade (DIT) – responsible for promoting and financing international trade and investment in the UK. DIT are available to provide support to businesses considering investment in the UK
- Office for Investment – established in 2021 to support high value investment opportunities in key sectors (e.g., tech, life sciences, advanced manufacturing and clean growth)
- Opportunities for advance engagement with UK Government and HM Revenue & Customs

Does my business need a UK legal presence?

Under UK tax legislation, UK incorporated or tax resident companies are subject to UK Corporation Tax.

An overseas company trading in the UK through a UK branch or 'permanent establishment' is subject to UK Corporation Tax, but principally only on profits relating to UK activities.

When your business starts trading in the UK, you need to know if your activities create a taxable presence in the UK, known as a UK permanent establishment. This may influence the form of legal presence you choose to establish in the UK.

What is a permanent establishment (PE)?

An overseas company has a UK permanent establishment (PE) in the UK if:

- The overseas 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
- 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.

When your business does not have a UK permanent establishment

In some circumstances an overseas company falls outside of the above and does not have a UK permanent establishment, for example:

- If you are trading from abroad with customers in the UK but with no UK presence or activity
- If you are performing 'preparatory and auxiliary' activities in the UK, such as research to see if it makes commercial sense to establish a UK presence
- If as a group you are engaging with an independent third-party reseller or distributor in the UK but have no other presence in the UK.

Important to note

The threshold of when a permanent establishment is created in the UK is complex and fact specific. We therefore always recommend seeking professional advice to help you make an informed decision - you do not want to owe tax you were not expecting to pay.

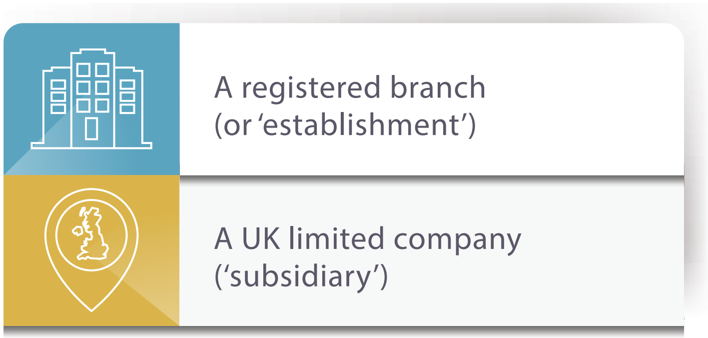
It's important to also note that the UK has specific anti-avoidance rules that can apply if a group puts artificial arrangements in place to avoid a permanent establishment. Additionally, specific rules apply to transactions in land (real estate) which can create a UK taxable presence even if an overseas company has no UK PE. An overseas company with no UK PE can also still be obliged to register for UK Value Added Tax (VAT), which we discuss later in this guide.

Some groups decide to immediately establish a UK presence, particularly if they have a long-term plan to trade in the UK, for regulatory reasons or because their customers prefer it - for example, some customers or UK Government contracts require the formation of a UK presence.

The question then becomes what form of presence should be established?

What form of UK presence – subsidiary or branch ('establishment')?

There are some key things to consider when deciding which UK presence to choose and while there are a range of entity options available in the UK, the two we most regularly see are:



We will explore these two options in this guide, but are happy to explore other options with you, such as a UK limited liability partnership.

The key things to consider when deciding whether to set up an establishment or a subsidiary are:

Legal liability

An establishment is not a separate legal entity from the overseas company. It is an extension of the overseas company that is operating under UK laws.

As a result, it does not provide the limitation of legal liability that a subsidiary does. Therefore, if it's important for your business to ring-fence liabilities in the UK, a subsidiary is likely to be your preferred option.

There are a number of legal issues to consider when setting up in the UK and we always recommend seeking separate legal advice to discuss these.

Costs of administration

Later in this guide we summarise the ongoing compliance obligations of a UK subsidiary or establishment from a tax and accounting perspective. They are broadly similar although a subsidiary may need its accounts to be audited, whereas an establishment does not have to be audited.

In general therefore the costs associated with running a subsidiary can be slightly higher than an establishment. However, with an establishment there can be other costs that arise due to complexity in allocating profits/losses to the establishment (whereas with a subsidiary this is generally much clearer as the subsidiary is a separate legal entity).

We therefore generally advise that an establishment may be more cost effective to set up than a subsidiary. However, the ongoing administration costs tend to be similar whichever you choose.

Registered presence

If it's important for your business to be seen to have a UK presence, especially from a commercial perspective, then setting up a UK subsidiary is likely to be the best option for you. A UK subsidiary is more often perceived as a local business with a greater sense of permanence than an establishment.

Losses

In some cases, it is possible for the losses of an establishment to be relieved against the profits of the overseas parent. However, this can be prohibited by certain tax rules, either in the UK or the head office jurisdiction.

With a subsidiary the losses generally cannot be relieved against the profits of the parent company. Instead losses can be carried forward for relief against future profits of the subsidiary itself – although this may be subject to restrictions.

Financial statement disclosure

If your business is sensitive to the type and level of information that is publicly available in your home jurisdiction, then a subsidiary may be the best option. This is because only the financial statements of the UK subsidiary must be filed with the UK registrar of companies (UK Companies House). For an establishment you must file the financial statements of the parent company with UK Companies House and these are publicly available.

How do I register my business?

Registering an establishment or subsidiary is not complex or time consuming, but there are some differences in the registration process. Even though it is not a complicated process, we recommend seeking professional advice to avoid unnecessary delays.

Establishment

To register an establishment, the overseas head office company must file a form detailing the Shareholders and Directors and the UK address of where business is going to be conducted.
In addition, a certified copy of the memorandum and articles of association (company by-laws or equivalent) will need to be submitted along with a copy of the company's latest set of accounts. If these are not in English, they must be translated.

Registering an establishment takes up to three weeks but can be less if the documents required are readily available.

Subsidiary

A subsidiary, in the form of a UK Limited Company, is also easy to establish and there are no statutory consents needed before the process can commence.

To register the subsidiary, you must submit a form with 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 functions of a company secretary must still be undertaken and is normally outsourced.

Typically, a UK Limited Company is incorporated in a matter of days of the relevant documents being received by UK Companies House.

A UK Limited Company can have just one Director, but normally at least two are appointed to give greater efficiency in managing the company. Directors do not have to be UK residents and the company doesn't need a minimum amount of issued share capital. A company is normally formed with a minimal amount of issued ordinary share capital (e.g. 1,000 £1 ordinary shares). Paid up capital can be increased at the time that the company is formed or later, depending on your commercial requirements.

A company name cannot be the same as, or similar to, an existing UK registered company's name, so it makes sense to register a company as soon as you decide to establish a UK presence.

What are accounting filing obligations?

Establishment

If the law under which the overseas company is registered requires publication of audited accounts, a copy of those accounts must also be filed with UK Companies House.

If the overseas company does not prepare accounts in its head office jurisdiction then a set of UK accounts will need to be prepared and submitted to UK Companies House.

Accounts that are filed with UK Companies House are available for public inspection in the UK. This can sometimes be an issue if the overseas company is not used to having its financial information made public. If this is a concern to your business, then it would be better to form a subsidiary.

Alternatively, a new company could be incorporated in the home jurisdiction which would then register the UK establishment. If this is done, then when the accounts of the overseas company are filed, only information relating to the establishment's activities would be disclosed.

Subsidiary

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

Typically, the accounts must be filed within nine months of the company's financial year-end. A company can choose its year-end and typically does so to coincide with the parent company's.

If a group as a whole (i.e. on a consolidated basis), exceeds two or more of the following then an audit of the UK subsidiary's financial statements will be necessary:

£10.2m	£5.1m	50+
Revenues per annum	In gross assets	employees

What do I need to know about UK Corporation Tax?

UK Corporation Tax is paid on a UK establishment or UK subsidiary's tax adjusted profits.

UK Corporation Tax rate
The UK Corporation Tax rate is currently 19%, and will rise to 25% from 1 April 2023 for companies with more than £250,000 of taxable profits.

Companies with taxable profits of up to £50,000 will continue to benefit from a lower rate of 19%, and a marginal rate will apply to companies with taxable profits between £50,000 and £250,000. The £50,000 and £250,000 thresholds need to be divided by the number of active associated companies in the worldwide group. As a result, companies who are members of larger corporate groups are likely to be subject to UK Corporation Tax at the 25% rate.

This increase has been introduced to help repay the UK debt that has arisen since Coronavirus but has been deferred until April 2023 to limit the impact on UK businesses. Other incentives have been introduced to encourage UK investment and special rates of Corporation Tax can apply to companies in the Oil and Gas, Banking, Insurance and Shipping sectors.

Calculating taxable profits
UK Corporation Tax is paid on the tax-adjusted profits a UK business makes.

UK tax resident companies must pay 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 the activities of the UK establishment.

To some extent the level of taxable profits depends on the trading model adopted. UK transfer pricing legislation dictates that trading between connected parties must be at arm's length. This is to stop international groups manipulating intra-group transactions so that profits flow to the country with the lowest tax rate.

If a UK business provides services to its parent company but does not contract with third-party customers then typically an arm's length fee would be charged to the parent for the services provided. It is broadly this fee, minus the related costs of providing the services and maintaining the entity, that is subject to UK Corporation Tax. If a UK entity directly enters into contracts with third-party customers, then sales are recorded within the UK entity accounts. Intra-group transactions, third-party costs and purchases, overheads and other costs of sales are offset. Broadly, the net tax adjusted profits are then subject to UK Corporation Tax. There are other business models to choose from and we recommend that you seek professional advice to explore all options available to you as part of the initial structuring.

It's often necessary for a UK entity to undertake a transfer pricing study, to demonstrate that the pricing between the parent and its UK entity is the same as would be agreed by independent parties acting on an arm's length basis. This is because UK transfer pricing legislation requires groups to account for transactions between group companies at an arm's length price and to keep adequate documentation.

Small and medium sized groups may fall outside of the UK transfer pricing provisions, although medium-sized entities or groups can receive formal notice from HMRC to apply the UK transfer pricing rules. However, the SME exemption does not apply to transactions if the counterparty is in non-qualifying territories. This is a territory which the UK does not have a double tax treaty with (with an anti-discrimination clause).

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

Where it is proposed that an entity is disregarded for tax purposes, detailed consideration of whether to apply the UK anti-hybrid rules is required because this may impact the calculation of taxable profits in the UK.

Paying Corporation Tax
Corporation Tax must be paid within nine months of the company's accounting year-end.

Large companies

There are provisions for certain 'large' companies to pay tax on account before the year-end. A 'large' company is either:

A company with taxable profits exceeding £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

A company that is large 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). If these criteria are met, the company must pay its Corporation Tax in quarterly instalments. The first instalment is due six months and 13 days from the start of the accounting period, and then every three months thereafter.

For accounting periods beginning on or after 1 April 2019, companies with taxable profits of more than £20 million in a 12-month accounting period must pay Corporation Tax instalment payments earlier. In this instance the first instalment is due two months and 13 days from the start of the accounting period, and then every three months thereafter.

Corporation Tax returns

A Corporation Tax return must be submitted within 12 months of the year-end. A computation of the tax liability should also be submitted with the return.

Common themes & new business models

1

Remote working

The onset of COVID resulted in more employees working remotely across the globe than ever before. Subsequently, many groups have now moved to a remote working model including having employees based in oversees jurisdictions.

We are increasingly being asked about relocating employees to the UK to remotely assist with a company's international expansion. Companies must be aware that this carries tax risk for both the employing company and the employee.

For the employing company, the key tax risk is whether the employee's UK activities result in a taxable presence or permanent establishment. If they do, then the company will have UK tax and accounting filing obligations and they may also have payroll obligations.

The employee will need to consider local tax residence tests and the impact this has on their personal tax filings in both the UK and their home jurisdiction. Such arrangements will need to be reviewed from an Income Tax and social security perspective. There are also various regulatory, immigration and legal issues to consider for both the employer and the employee. None of this can be ignored so we recommend seeking professional advice before proceeding with a remote working model.

2

Professional Employment Organisations (PEOs)

Professional Employment Organisations (PEOs) come in various forms. The simplest PEOs are a third party who acts as the 'employer of record' for employees and manages all payroll, benefits and compliance obligations. A lot of groups use PEOs to handle HR and payroll compliance and obtain discounts for employment benefits such as healthcare.

PEOs are a good option in certain situations (e.g., where new employees are hired on very short term roles before a more formal legal presence is established or following an M&A transaction where an entity may not exist).

However, if you have created a permanent establishment in the UK then PEOs are potentially not the best option for you as they rarely deal with Corporation Tax and accounts filing obligation. If you choose to use a PEO then it is essential that you are clear if they will deal with your compliance obligations or ensure someone else, internally or externally is doing so. If you don't, you could find yourself failing to comply with UK tax and accounting filing obligations and as a result suffer penalties and interest on unpaid taxes or for non-compliance. Additionally, it may negatively impact your brand and public perception.

To mitigate these risks, we recommend that groups obtain professional advice upfront to understand whether proposed operations in the UK give rise to broader accounting or tax compliance obligations or whether a PEO model is appropriate.

Mergers & acquisitions

As an alternative to organic expansion, some groups acquire an existing UK business as a way to enter the UK market.

We have seen an upward trend in UK M&A deals since Q4 of 2020, particularly deals involving overseas buyers. In fact, the first six weeks of 2021 set new records with over £25bn of new UK M&A deals. This increased confidence is driven by a combination of pent-up demand, potential changes to UK Capital Gains Tax rates and perceived value in UK assets. This has all led to very favourable deal conditions.

We recommend that you seek both UK financial and taxation due diligence on any UK target company, and advice on how to structure the acquisition in a tax efficient manner.

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.

These include the following:
- 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).
- 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.
- A UK holding company can help a group by acting as a platform for further expansion of operations into other jurisdictions.

All of the above and a main rate of Corporation Tax of only 19% have made the UK a very attractive location for forming a holding company.

Tax Incentives - Research & Development tax credits

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

Definition of R&D
For an activity to be considered as R&D it must 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:

01	Generates scientific or technical knowledge
02	Creates a process, material, device, product, or service which represents an advance in a field of science or technology
03	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
The UK has different R&D regimes for:

- Small to medium-sized enterprises (SMEs)
- Large companies

R&D for 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

If a company is a member of a group, the holding company and all companies in the group must together meet the SME definition. In this regime the definition of group is complex and based on the EU SME definition. It's therefore essential that more complex group structures are reviewed in detail to ensure they meet the criteria.

If your company does not meet the criteria it is automatically classified as a 'large' company.

SMEs can claim a tax deduction equal to 230% of their qualifying R&D expenditure.

Companies with tax losses can claim R&D tax credit equal to 14.5% of their surrendered loss which is a cash payment from HMRC of up to £33.35 for every £100 spent on R&D. Although, for accounting periods beginning on or after 1 April 2021 the total payment is restricted to three times the company's PAYE and NIC liabilities for the relevant period.

Expenditure that qualifies for the R&D tax relief includes:
- cost of staff directly involved in the R&D work
- 65% of the cost of external independent workers engaged in the R&D work
- 65% of the cost of subcontracting specific elements of the R&D work to an independent third party
- cost of software and consumable items such as fuel, power and water

R&D work cannot be subsidised by grants or relate to R&D subcontracted to the company by another person, for example where the UK company provides R&D services to the overseas parent company. In this instance, however, the UK company could still qualify for the large company scheme which is explored in the next section.

R&D for large companies

Large companies

R&D tax relief for large companies is an above-the-line R&D Enhanced Credit (RDEC) and equates to 13% of the company's qualifying R&D spend and, after tax, yields a net benefit of 10.53%. For loss-making companies, the RDEC can also be repaid as a cash credit. This is capped at the level of payroll taxes for R&D employees during that year. Any excess is carried forward as a credit for the following year.

Qualifying expenditure is defined in broadly the same way as the SME regime. The difference is that subcontracted work has to be undertaken by (self-employed) individuals, certain partnerships, or qualifying research bodies and institutions. The cost of R&D work subcontracted to other companies does not qualify.

If an SME undertakes subcontracted R&D work from another company that is large, or not subject to UK tax, then the SME can claim relief under the large company regime, but not the SME regime. For example, if an overseas parent company subcontracts R&D work to its UK SME subsidiary, that SME may qualify for R&D relief under the large company regime.

Making a claim

You need to include an R&D claim in your Corporation Tax return. It must be made within two years of the end of the accounting period in which the expenditure was incurred.

Proposed changes to R&D reliefs

HMRC has announced various upcoming changes to the UK's R&D relief rules to expand the definition of qualifying expenditure but also to limit the availability of relief where activity is subcontracted to external providers based outside of the UK. Therefore from April 2023, qualifying expenditure will be expanded to include data and cloud costs but payments for subcontractors and externally provided workers will only qualify for relief if the subcontractor or worker is based in the UK. In most cases this should not affect the relief available to overseas groups looking to establish an R&D hub in the UK. However, if most of the R&D work is delegated offshore, relief will be substantially restricted.

The process for making claims will also change. From April 2023, companies will need to notify HMRC in advance that they wish to make a claim, and a greater level of supporting information will be required.

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.

Innovation incentives

To qualify patents must be granted by one of the following:

1

Patent box
The Patent Box was originally introduced in 2013 as part of the Government's drive to encourage innovation in the UK. It provides a rate of 10% Corporation Tax on income derived from qualifying patents, where research & development relating to the patent has been conducted in the UK. This 10% rate of tax on qualifying Patent Box profits is a great incentive when compared to the headline rate of Corporation Tax in the UK which is currently 19%. Companies that receive patent royalties, sell patented products, or use patented processes as part of their business can benefit from this scheme.

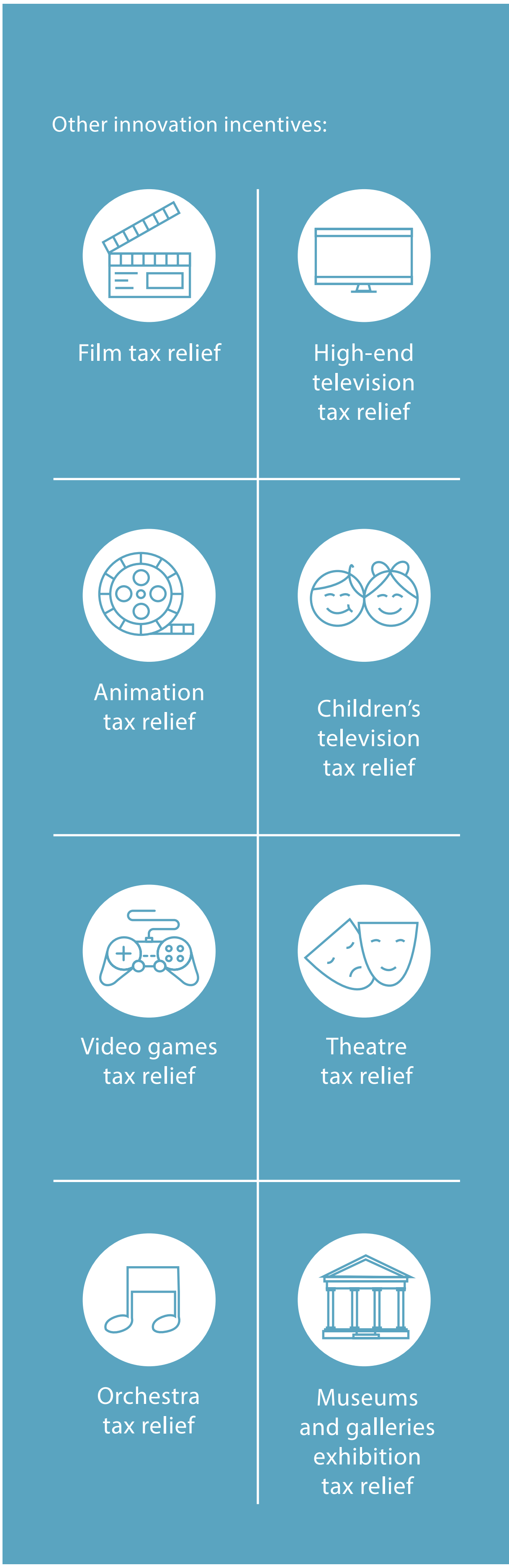
To qualify patents must be granted by one of the following:

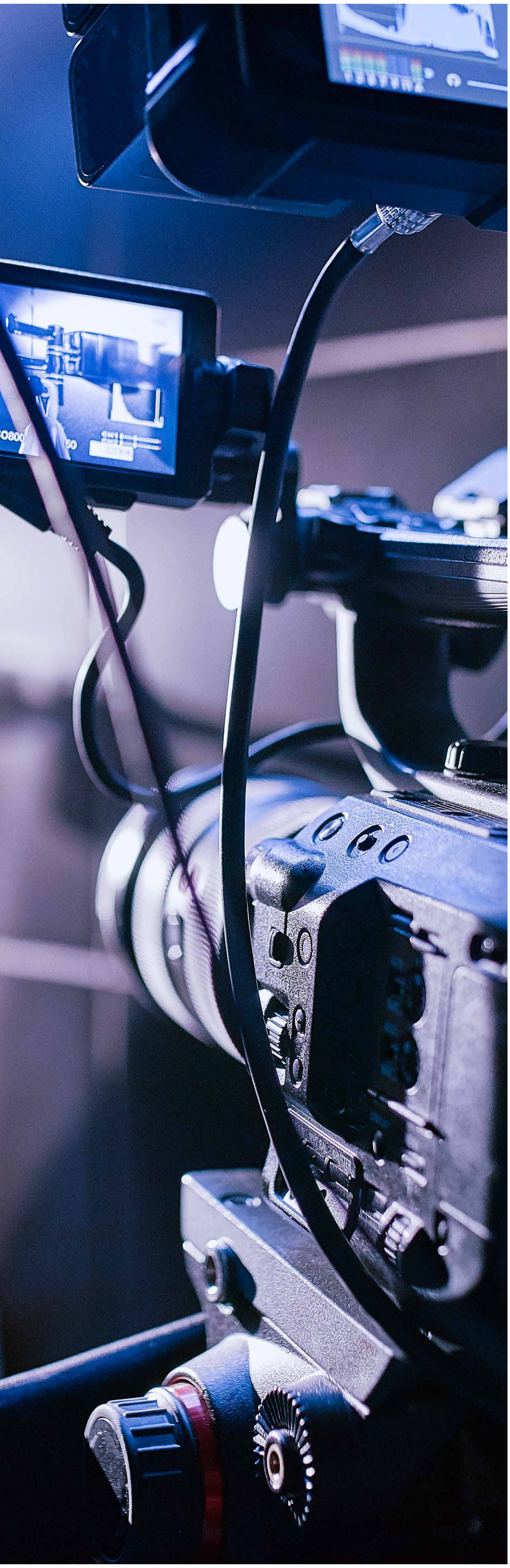
- UK Intellectual Property Office (IPO)
- European Patent Office
- Regulatory Data Protection ('data exclusivity')
- Supplementary Protection Certificates (SPCs)
- Plant variety rights.

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

2

Other innovation incentives
The UK has also introduced multiple tax relief incentives for the creative industries. These reliefs work in a similar manner, with eligible companies obtaining enhanced expenditure deductions and the possibility of a repayable tax credit for loss-making companies. These other innovation incentives are outlined in the graphic to the right.





Capital allowances

In general, deductions for accounting depreciation on fixed assets or capex are not allowed under UK tax legislation. Instead, the UK operates a Capital Allowances incentive that provides tax relief at different rates depending on the fixed asset that has been acquired.

The UK Government has also introduced a new 'Super Deduction' that provides enhanced tax deductible allowances for expenditure on certain plant, machinery and equipment incurred between 1 April 2021 and 31 March 2023. This is intended to encourage additional investment into the UK and to help the economy recover from the Coronavirus pandemic.

This new super deduction allows for a tax deduction of up to 130% of the cost of the qualifying plant and machinery expenditure and is given in full in the accounting period when the expenditure is incurred. This new super deduction has broad application across a number of industries, but it is particularly relevant to UK infrastructure projects and we have already seen a number of overseas investments into such projects.

Value Added Tax (VAT)

VAT is a sales tax chargeable by businesses if they are making taxable supplies (sales) above a certain threshold. If a UK established business sells more than £85,000 per annum, they must register for VAT and the standard rate of VAT in the UK is currently 20%.

If a UK established business exceeds £85,000 in a consecutive 12-month period, or is expected to do so in the next 30-days alone, they must notify the UK tax authorities and register for VAT. Once registered they must charge and account for VAT on the supply of all goods and services made in the UK unless these are specifically zero rated or exempt. There's an extensive list of goods and services that are eligible for a zero rate of VAT and a limited range of goods and services that are subject to a 5% reduced rate of VAT.

VAT registered businesses can recover the VAT that they pay when purchasing goods or services in the UK. At the end of each VAT return period, normally quarterly, the business calculates how much VAT it has paid customers ('Output Tax') and how much VAT it has paid suppliers ('Input Tax'). The net amount is then either claimed from the tax authorities or paid.

VAT is therefore only a cost to the end consumer i.e., private individuals, unregistered businesses and businesses who make exempt supplies.

An overseas business not established in the UK cannot take advantage of the £85,000 annual threshold. If they physically supply goods in the UK, or provide certain services deemed to be supplied in the UK, then they are legally required to register for VAT for all sales.

There are some important VAT issues that overseas entities looking to establish a business in the UK should be aware of.

1. Goods and services supplied to a parent company based outside the UK

If a UK business established by an overseas parent, sells and delivers goods to the parent, they do not have to pay VAT as the exports of goods are zero rated for VAT.

If the UK business provides services, such as consultancy, technical support, sales and marketing services, these are also not subject to VAT.

2. Services supplied to a UK business customer

An overseas company that does not have a permanent establishment in the UK, does not have to register for or charge VAT if it is supplying 'general rule' services from outside the UK. The VAT is accounted for by the UK customer under what is known as the reverse charge procedure.

However, there are exceptions to this rule which mean that some business may have to register for VAT. These include restaurant and catering services, passenger transport services, admissions to events, telecommunications, and electronically supplied services to unregistered business.

3. Goods supplied to the UK customer

An overseas company without a permanent establishment in the UK does not have to register for and charge VAT if their UK customer is prepared to act as the importer of the goods into the UK.

If the UK customer will not act as the importer and only takes ownership of the goods after they've been imported, the overseas supplier may have to pay VAT, normally at the point of importation. To recover the VAT paid at the border, the overseas supplier will have to register for VAT in the UK. Going forwards they will need to charge VAT on sales, even if they invoice from overseas because the goods will now be deemed to have been physically supplied in the UK.

If an overseas company must register for VAT, they do not have to incorporate a UK company or establishment. The overseas entity itself can be VAT registered in the UK.

The decision to incorporate a UK company should come from considering many issues, some of which are discussed in this guide, not just because you're supplying certain goods or services in the UK, so we recommend seeking professional advice.

4. Supply of goods and services to and from the European Union (EU)

On 1 January 2021, the UK ceased being part of the EU Customs Union and VAT system. As a result, all goods sold from the UK to EU customers are regarded as zero-rated exports. However, goods arriving from the EU are regarded as imports and can be liable to import VAT and potentially Customs Duty if they are not of EU origin.

UK VAT registered businesses can use the Postponed VAT Accounting Scheme to avoid payment of import VAT at the border and account for this in their quarterly VAT returns.

There are also special rules for importing goods below £135 where they are sold to UK consumers (non-business buyers).

For both EU and non-EU imports, there is no import VAT or Customs Duty collected at the border, however overseas businesses are required to register and account for 'supply VAT' on their end sales. If these sales are made online, then the online marketplace is responsible for accounting for the supply VAT.

Supplies of goods from the UK to EU consumers (non-business buyers) are also zero-rated as exports from the UK but may be subject to local import VAT and duty. Either the EU consumer must pay these import taxes, or the supplier can agree with the delivery provider to pay these taxes on behalf of the consumer. The EU currently has an EU-wide registration scheme for digital services, known as the Mini One Stop Shop (MOSS). This was extended to business-to-consumer sales on 1 July 2021 with the introduction of the One Stop Shop (OSS) scheme. This allows overseas businesses to optionally register for VAT in one EU country of their choosing and submit a single online return for all business to consumer sales throughout the EU rather than being obliged to register in each EU country.

5. VAT refunds

Overseas companies can be made to pay UK VAT before they are required to register for VAT in the UK. This is often in relation to costs associated with business trips and can be reclaimed through a claim being submitted to the UK tax authorities. Claims must be made by the end of each calendar year for each 12-month period ending 30 June.

If a business does register for VAT in the UK it can usually reclaim VAT on most goods and services purchased prior to registration, as long as the goods are still on hand at the time of registration and the services were supplied no more than six months prior to registration.

6. Submitting VAT returns under Making Tax Digital (MTD)

Businesses registered for VAT in the UK and trading above £85,000 per annum must submit VAT returns under MTD. From 1 April 2022 this will apply to all registered businesses no matter their revenue.

MTD requires VAT records to be in a digital format and for VAT returns to be filed electronically via "functional compatible software". You must therefore have software capable of providing VAT information to HMRC and receiving information from HMRC digitally via their Application Programming Interface (API) platform. Business records can be kept in a range of compatible digital formats but there must be a digital link between all the different softwares used.

All businesses filing UK VAT returns, including advisers who submit on their client's behalf, are now required to file under the MTD regime.

Personal taxation

As a business owner with interests in the UK, or a Director working in the UK, there are personal taxation obligations you should be aware of, either for yourself or your employees.

Basic principles

As a general principle, if an individual is tax resident in the UK in any tax year, they are subject to UK tax laws.

In some circumstances the person's 'domicile' (broadly the country that they consider to be their permanent home) also needs to be taken into consideration.

Even as a non-resident in the UK, individuals can be subject to UK taxes on their UK sourced income.

The UK tax year runs from 6 April to the following 5 April, so for example the 2021/22 fiscal period refers to the personal tax year from 6 April 2021 to 5 April 2022.

Tax residence

The UK uses a 'Statutory Residence Test' to determine if an individual is treated as a UK resident or non-resident for tax purposes. It is quite a complex three-part test, however it can be summarised as below:

1. To be considered a non-resident you must meet one of the following in the relevant tax year:

- You were a UK resident in any of the previous three tax years and spend fewer than 16 days in the UK
- You were not UK resident in any of the previous three tax years and spend fewer than 46 days in the UK
- You work full time abroad

2. To be considered a resident you must meet one of the following in the relevant tax year:

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

If an individual does not meet any of the criteria to the left, then the next step is to do a Sufficient Ties Test. When this is combined with the number of days spent in the UK then you could be considered a UK resident. The test points are:

- You have a UK resident family
- You perform substantive UK work
- You have available accommodation
- You have spent more than 90 days in the UK in either, or both of, the previous two tax years
- You have spent more days 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 and is sometimes referred to as their 'homeland'. The concept of domicile is distinct from the concept of residence. Even if an individual hasn't lived in their homeland for many years, they can still be domiciled there.

If an individual is non-domiciled, then for the first seven years they are a UK resident they can choose each year to claim the remittance basis. This is an alternative tax treatment available to individuals who are resident but not domiciled in the UK and have foreign income and gains.

From year eight they face an annual charge of £30,000 if they have been resident for at least seven out of the last nine tax years. This charge increases to £60,000 if they are resident in the UK for at least 12 out of the last 14 tax years.

Taxation of non-UK domiciles

Since 6 April 2017, non-domiciled individuals who have been a resident in the UK for 15 out of the previous 20 years, have been treated as 'deemed domiciled' for UK personal tax purposes. This means that these individuals are assessed on their worldwide income and capital gains and are subject to UK inheritance tax on their worldwide assets. They are unable to claim the remittance basis.

Individuals who were born in the UK with a UK domicile, but change their domicile are also treated as UK domiciled in the years they are resident in the UK.

Taxable income
Taxable income includes all income and benefits. The rates of personal taxation and the level of personal allowance are shown in Table 01 below. These are amounts that each individual is able to earn before becoming liable to taxation.

Table 01 – Personal tax rates and allowance

	%	Band of Taxable Income (£)
Year to 5 April 2023*		
Tax free allowance £12,570**		
	20	£12,571 – 37,700
	40	£37,701 – 150,000
	45	£150,001 upwards
Year to 5 April 2022		
Tax free allowance £12,570**		
	20	£12,571 – 37,700
	40	£ 37,701 – 150,000
	45	£150,001 upwards

* Proposed rates
** The personal allowance is reduced by £1 for every £2 earned over £100,000
Different income rates (tax bands) apply in Scotland and Wales.

Taxation of employment income for non-UK domiciles
If an employee or Director comes to work in the UK they need to pay UK tax on the employment income they receive which relates to their duties performed in the UK, no matter where this is paid from.

If they also do some work outside of the UK, the employment income they receive for that work is normally only taxed on the amount paid in the UK for the first three years, as long as they haven't 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.

Detached duty relief
If an overseas employee is seconded to the UK for less than two years and the UK is regarded as a 'temporary workplace', UK tax relief is available for accommodation, travel, and subsistence costs during the secondment. This is regardless of whether the employee personally incurs the costs, or the employer funds them, in other circumstances employer funded expenses are taxable. However, it is important that the correct documentation is in place to demonstrate that it was a temporary assignment.

Social security
In the UK Social Security is known as 'National Insurance' and 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 below.

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) they are potentially exempt from paying NIC for the first 52 weeks of the assignment as long as they meet certain conditions.

Table 02 – Proposed National Insurance rates for the year ended 5 April 2023 for employees 21 years of age and above.

		Rate
Employer NIC	Up to £9,100	0%
	From £9,100	15.05%
Employee NIC	Up to £9,880	0%
	£9,880 to £50,270	13.25%
	Over £50,270 on excess	3.25%

National Insurance rates for the year ended 5 April 2022 for employees 21 years of age and above.

		Rate
Employer NIC	Up to £8,840	0%
	Over £8,840	13.8%
Employee NIC	Up to £9,568	0%
	£9,568 to £50,270	12%
	Over £50,270 on excess	2%

Workplace pension scheme (auto-enrolment)

Every individual or business with workers in the UK is obliged to provide a workplace pension scheme for their UK workers. This applies whether they are based in the UK or not.

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
- Submitting a 'Declaration of Compliance' to The Pensions Regulator

Staging date

All employers are given a 'staging date' when their auto-enrolment duties begin which is issued by The Pensions Regulator and is triggered when a new PAYE arrangement is set up.

Worker categories

Employees aged 22 to state pensions age (65 to 67) earning more than £10,000 a year (2021/22 tax year) must be auto enrolled, and the employer must also contribute.

All employees aged 16 to 74 earning less than £6,240 (2020/21 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, and if they do so, the employer must also contribute.

Employees seconded to the UK from overseas may be outside pensions auto-enrolment, for example if they are not considered to be 'ordinarily working' in the UK. We recommend seeking formal advice about employees in this situation.

Minimum contributions

Minimum contributions are based on a band of earnings. For the 2021/22 tax year this is between £6,240 and £50,268. Minimum contributions are:

Employer	Employee
3%	5%
of band earnings	of band earnings

The apprenticeship levy

Introduced in 2017, the Apprenticeship Levy imposes a 0.5% levy on employers' salary bills, which is used to fund apprenticeship training programmes in the UK.

Given there is an allowance of £15,000 to offset against the levy, this tax only applies where an employer's annual salary bill exceeds £3m.

However, all organisations (including those not required to contribute to the levy) are eligible to benefit from this funding if they provide qualifying apprenticeship training programmes to employees.

For organisations that do not contribute to the levy because their salary costs are less than £3m per annum, the Government will meet the cost of up to 95% of apprenticeship standard costs, leaving only 5% to be funded by the business.

Tax transparency & anti-avoidance

The UK is a strong supporter of actions to increase tax transparency and has introduced several new rules to increase transparency.

The UK Government has sought to create and foster a culture of the UK being "open for business" and attractive to overseas investors. At the same time, UK businesses are required to pay the right amount of tax. Therefore, a number of UK anti-avoidance provisions have been introduced in recent years to prevent diversion of profits from the UK and change the behaviours of taxpayers, some of which are summarised below:

Tax reporting & compliance for 'large' groups
The UK has a number of additional tax reporting requirements for certain 'large' groups which broadly include:

- Publication of a UK tax strategy – large businesses are required to publish a tax strategy relating to UK taxation and this is an annual reporting requirement with penalties for late publication.
- Senior Accounting Officer – large businesses must appoint a Senior Accounting Officer who must certify that they have appropriate tax accounting arrangements during the financial year (an unqualified certificate), or, if this is not the case, state that the company did not have appropriate tax accounting arrangements in place (a qualified certificate) and provide an explanation for the deficiencies. This is designed to improve Board level input into controls and procedures relating to UK taxation. Penalties are charged for late notification or filing of the annual declaration.
- Corporate Criminal Offences legislation - the Criminal Finances Act 2017 introduced new Corporate Criminal Offences (CCO) for the failure to prevent the facilitation of tax evasion. This legislation introduced a legal obligation from 30 September 2017 for businesses to have Reasonable Prevention Procedures (RPPs) in place to prevent its associated persons from facilitating tax evasion.
- Uncertain tax positions – large businesses must notify HMRC when they take a position in their tax returns that is uncertain.

Each of these have different qualifying conditions which are not included in this guide. We recommend that detailed advice is taken prior to establishment of a UK business to ensure all UK tax reporting obligations are fully understood.

OECD base erosion & profit shifting (BEPS) action items
The UK is a supporter of the Organisation for Economic Co-operation & Development (OECD) initiative on Base Erosion & Profit Shifting. It has taken a leading role in implementing their recommendations on each of the BEPS action items and new legislation has been introduced in the UK covering:

Action 1:	Ongoing consultation regarding implementation of Pillar 1 and 2. Introduction of a new tax - Offshore Receipts in Respect of Intangible Property
Action 2:	Anti-hybrid rules (these should be considered in the context of hybrid entities/instruments, check the box elections and intragroup payments)
Action 3:	Interest deduction restrictions (relevant to debt funding)
Action 4:	Harmful tax practices (including amendments to the UK Patent Box regime)
Action 5:	Implementation of the multilateral agreement
Action 6:	Permanent establishment status (including introduction of the DPT)
Action 7-9:	Transfer pricing
Action 10:	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 and we recommend seeking professional advice.

Digital Services Tax (DST)
From April 2020 the UK introduced a DST which applies a 2% tax on the UK revenues of certain digital businesses.

Business activities within the scope of the tax include social media platforms, search engines, online marketplaces and certain online advertising activities where in scope UK revenues exceed £25m per annum and where the group's global revenues from relevant activities exceed £500m. Payment of any tax liability is due nine months and one day after the end of the accounting period in which in scope revenue was recognised.

The UK recently agreed a move forward to transition away from its DST towards a global tax system under which larger international groups will pay tax based on where they do business - Pillar 1 and 2

Offshore Receipts in Respect of Intangible Property (ORIP)
In April 2019 the ORIP rules came into effect. They apply a 20% UK Income Tax charge on income received by non-UK entities, derived from certain intangible property rights where the income relates to UK sales.

Broadly, these rules apply to IP owners that are based in low tax or low substance entities, typically in haven jurisdictions or those with which the UK does not have a full double tax agreement. The UK Government has introduced these rules to encourage a change in behaviour of taxpayers with these types of tax planning structures. These rules should be considered by group's that have implemented IP ownership structures where IP revenues are subject to low or no taxation.

Diverted Profits Tax (DPT)
DPT was introduced to counter the use of aggressive tax planning techniques employed by multinational enterprises to divert profits from the UK. Where DPT applies, a 25% (31% from 1 April 2023) tax charge is imposed on the 'diverted' profits of the multinational group. DPT typically applies to two types of arrangements:

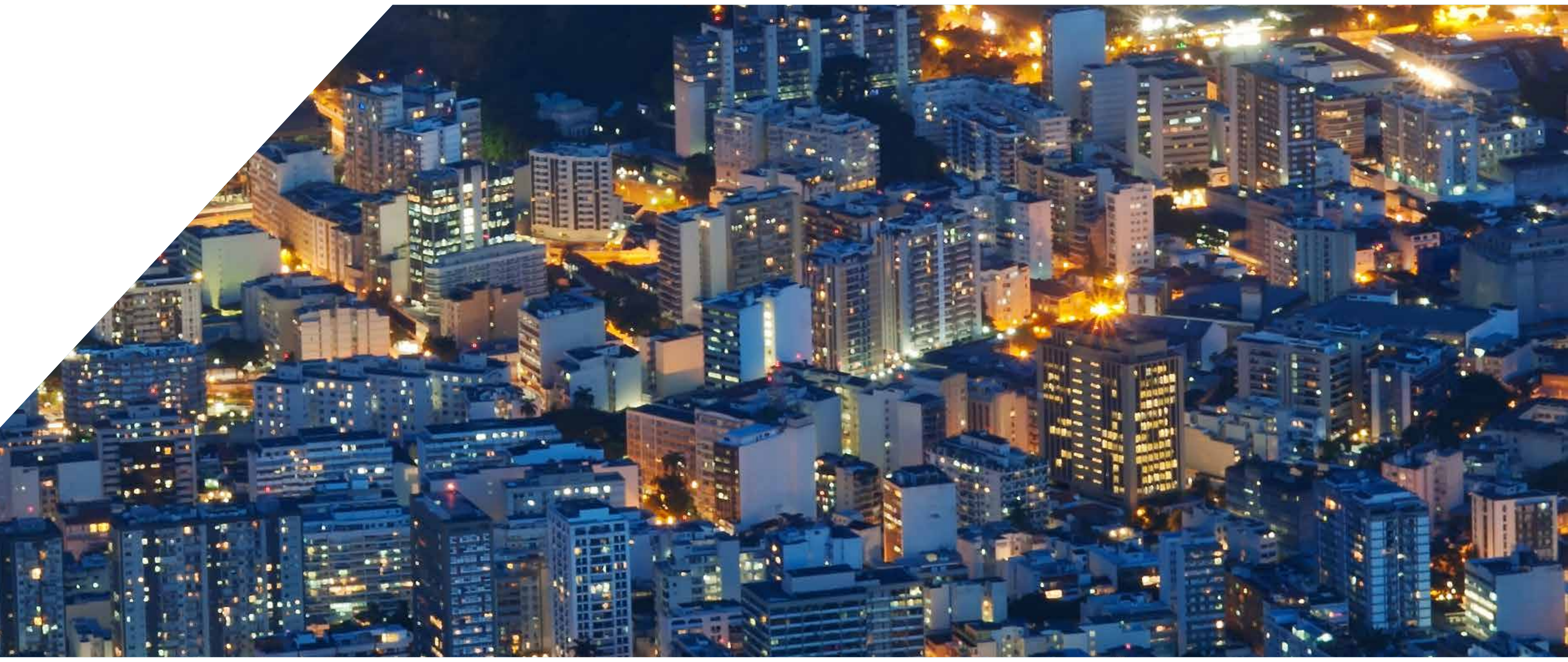
- Where there is an 'avoided PE'
- Where a UK company or PE is party to arrangements where there is an 'effective tax mismatch' and the 'insufficient economic substance' condition is met.

Certain exemptions can be given 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 in July 2013. It aims 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.



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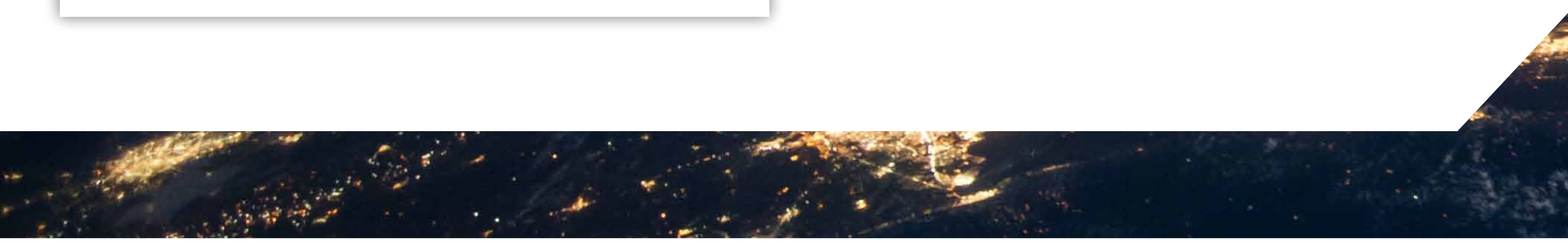

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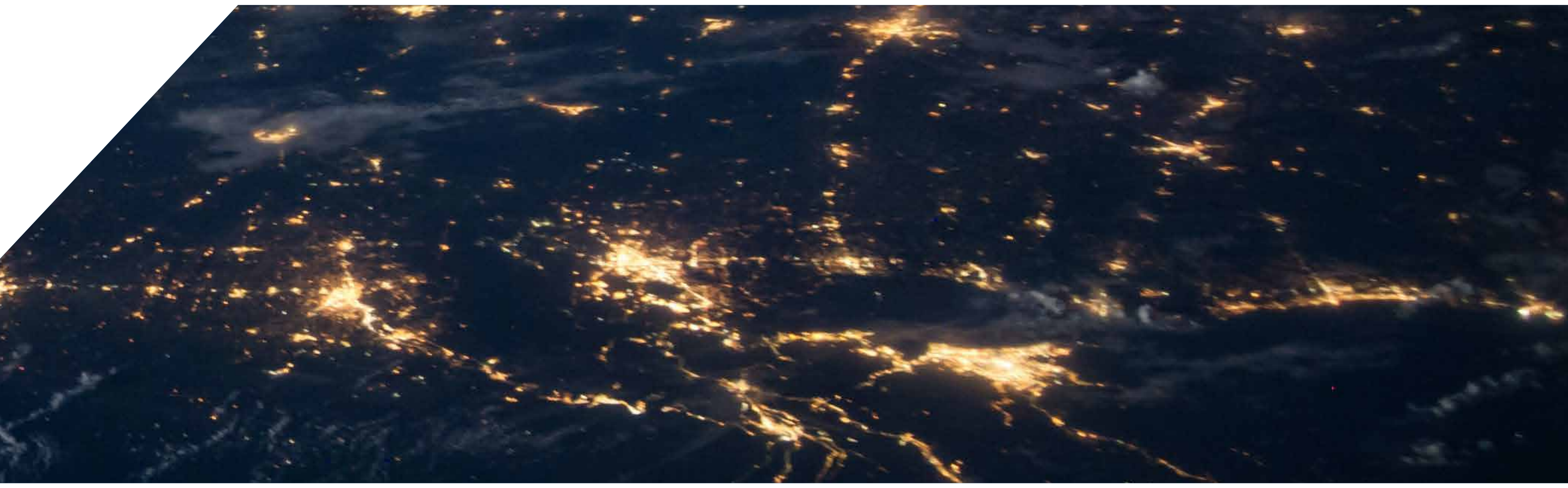

Ourapproach

01

We offer an initial complimentary meeting for you to tell us your objectives, expansion plans and proposed UK operations.

02

Working with your team, we will agree areas of advice and create a blueprint and timeline for your international expansion. Our recommended scope of services and fees will be provided in a proposal for us to agree with you and ensure you are happy with the way forward.

03

Uniquely, we provide a dedicated relationship manager to be your main point of contact and support you with any queries that arise at any time. They will proactively stay in touch to ensure you are always comfortable throughout our relationship with you.

04

Your business is important to us at all stages of your international expansion lifecycle, so we pride ourselves on supporting you throughout that journey. As part of this we appreciate that in addition to our advice, you also want the best legal, regulatory and banking advice. We can introduce you to other UK professionals that we regularly work with and trust. Whether you want our help with this or have your own advisors already chosen we will work together to create an integrated UK ecosystem of professional advisors to support you.

Contact our International Desks

CHINA

Winnie Cao
Partner
Global Mobility
+44 (0)20 7544 8989
winnie.cao@blickrothenberg.com

DACH (GERMANY, AUSTRIA, SWITZERLAND)

Alex Altmann
Partner
International Outsourced Accounting
+44 (0)20 7544 8747
alex.altmann@blickrothenberg.com

Nils Schmidt-Soltau
Partner
Audit, Assurance & Advisory
+44 (0)20 7544 8931
nils.schmidt-soltau@blickrothenberg.com

FRANCE

Vanesha Kistoo
Partner
Global Mobility
+44 (0)20 7544 8975
vanesha.kistoo@blickrothenberg.com

Mary Shepherd
International Business Manager
+44 (0)20 7544 8830
mary.shepherd@blickrothenberg.com

ISRAEL

Russell Tenzer
Partner
Audit, Assurance & Advisory
+44 (0)20 7440 2318
russell.tenzer@blickrothenberg.com

Mary Shepherd
International Business Manager
+44 (0)20 7544 8830
mary.shepherd@blickrothenberg.com

ITALY

Milan Pandya
Partner
Audit, Assurance & Advisory
+44 (0)20 7544 8738
milan.pandya@blickrothenberg.com

James Dolan
Partner
Head of International Tax
+44 (0)20 7544 8972
james.dolan@blickrothenberg.com

Mary Shepherd
International Business Manager
+44 (0)20 7544 8830
mary.shepherd@blickrothenberg.com

Contact our International Desks

NORDICS

Simon Gleeson
Partner
International Outsourced Accounting
+44 (0)20 7544 8977
simon.gleeson@blickrothenberg.com

Mary Shepherd
International Business Manager
+44 (0)20 7544 8830
mary.shepherd@blickrothenberg.com

NORTH AMERICA (USA/CANADA)

James Dolan
Partner
Head of International Tax
+44 (0)20 7544 8972
james.dolan@blickrothenberg.com

Melissa Thomas
International Business Senior Manager
+44 (0)20 7544 8938
melissa.thomas@blickrothenberg.com

Simon Gleeson
Partner
International Outsourced Accounting
+44 (0)20 7544 8977
simon.gleeson@blickrothenberg.com

SPAIN

Alejandro Abad Algarra
Manager
Corporate Tax
+44 (0)20 7544 4896
alejandro.algarra@blickrothenberg.com

Mary Shepherd
International Business Manager
+44 (0)20 7544 8830
mary.shepherd@blickrothenberg.com

OTHER OVERSEAS MARKETS

James Dolan
Partner
Head of International Tax
+44 (0)20 7544 8972
james.dolan@blickrothenberg.com

Mary Shepherd
International Business Manager
+44 (0)20 7544 8830
mary.shepherd@blickrothenberg.com

BLICK ROTHENBERG
a part of AZETS

16 Great Queen Street
Covent Garden
London WC2B 5AH

@BlickRothenberg
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