Doing business and investing in the UK

March 2018

pwc
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Chairman’s welcome

Welcome to the 2018 edition of our guide, Doing Business and Investing in the UK.

The UK has consistently attracted considerable investment from overseas and has a long and successful history of trade with the rest of the world. The importance of foreign investment into the UK has never been more critical as the UK focuses on building a vibrant and sustainable economy in a Post Brexit world.

The UK is an attractive place to do business thanks to factors such as our diversified economy, legal system, talent pools, universities and culture providing lots of opportunities to prosper.

This guide provides insight into the key aspects of undertaking business and investing in the UK, from establishing an entity to dealing with employees. It provides answers to the many questions facing the community of overseas investors and is a good starting point for anyone looking to conduct business in the UK.

With offices throughout the UK, PwC has long been advising companies and individuals on how to establish themselves here. We have over 20,000 people with specialist knowledge and practical experience in the full range of business and legal issues ready to advise across all industries.

I hope that you find this book interesting and useful. If you have any questions or comments, please do not hesitate to contact me or one of my fellow partners.

Kevin Ellis
Chairman and Senior Partner
PwC UK
About PwC

At PwC, our purpose is to build trust in society and solve important problems. We’re a global network of firms in 157 countries with more than 223,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

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About this guide

How to use this guide
This guide is designed so that you can go directly to any section that is of interest. That said, we hope you will take the opportunity to read the guide in its entirety.

Whichever way you use it, we hope that you find the guide useful should you choose the UK as the location for your business.

We would ask you to let us know if you see any errors/spelling or other areas we should change as this guide is a continuous developing document.

The purpose of this book
This guide does not attempt to cover every issue nor does it cover specific tax and regulatory issues relating to particular industries/sectors that might impact on you when doing business in the UK. It merely seeks to answer generally the questions that most commonly arise. You should always seek independent advice as the guide has been prepared for general guidance on matters of interest only.

Legal differences
The UK consists of three distinct jurisdictions:

• England and Wales
• Scotland
• Northern Ireland

Each of which has its own legal system. Although the three systems broadly adopt the same approach to business, there are some important distinctions. Accordingly, if you are planning to set up your business in Scotland or Northern Ireland, we would recommend that you take expert advice to understand the differences.

Please note that we will, for the purposes of this publication:

• focus on issues to be considered when setting up a business in England or Wales; and
• view the UK as a single jurisdiction in which the laws of England and Wales apply throughout, unless stated otherwise.

Please contact our team for further information, although if you have any comments on the guide please feel free to contact Mike Curran (mike.curran@pwc.com) or call him on +44 (0)7718 581101.
Perspectives on the UK as an investment opportunity
The UK – a profile, by the Department for International Trade

The UK is the number one destination for inward investment in Europe and remains a top investment destination globally, with an open, liberal economy, flexible and dynamic labour market, business-friendly taxation and regulation and strong, transparent rule of law.

Consistently attracting high international capital inflows, the UK offers investors an excellent business environment, strong demographic growth, a thriving economy, and a broad and diverse range of businesses and projects to invest in.

The global economy is more fluid, more dynamic than ever before. In this environment, the UK has fundamental strengths which make it a great place to do business. As we move into a more global future outside the EU, foreign investors have reaffirmed their confidence in the UK. By the end of 2016, the UK's inward FDI stock levels reached £1,199 billion. This is the highest level in Europe and up 76% on 2010 – a strong endorsement of the UK's attractiveness and stability as a business location.

The UK is truly international in outlook and many international investors benefit from strong personal links to the UK, having been educated here, or enjoying our famous culture and heritage. A global business culture stems from its multicultural population, showcasing the enduring strength of international networks, innovation-rich environment and access to overseas markets.

The World Bank ranks the UK within the top ten in the world for ease of doing business. In order to support investment and economic growth, the government offers a corporate headline tax of 19%, the lowest in the G7 and joint lowest in the G20.

In 2016, the UK government established the Department for International Trade (DIT) to oversee trade promotion, policy and finance to ensure the UK takes advantage of global opportunities and meets international demand. As an international economic department, DIT is responsible for:

- Bringing together policy, promotion and financial expertise to break down barriers to trade and investment, and help businesses succeed.
- Delivering a new trade policy framework for the UK as we leave the EU.
- Promoting British trade and investment across the world.
- Building the global appetite for British goods and services.

DIT champions global free trade and support is targeted where government can add most value. DIT assists investors to find appropriate projects, smoothing investment journeys with tailored advice, insight and introductions. We promote investor-ready schemes selected by our specialist teams.

The international campaign, Invest in GREAT Britain and Northern Ireland, launched in January 2017 and helps overseas companies locate and grow in the UK. Invest in GREAT provides logistical guides on visa application processes, banking, tax incentives, legal frameworks and recruitment.

Another campaign, Exporting is GREAT, was launched in November 2015 to inspire and support more UK companies to take their first steps towards selling overseas and to help existing exporters to grow further. The campaign has over 65 partners to help create a culture of exporting and movement in the UK.

In 2012 the GREAT International Trade Campaign was launched in order to help match foreign companies and buyers with innovative, high-quality products and services provided by British companies. Since its inception, the campaign has been seen in 144 countries worldwide and nearly 300 cities – from Shanghai to San Francisco, from Copenhagen to Cape Town.

It is an exciting time for the UK. Our fundamental strengths, strong track record and new initiatives to maintain our competitive edge will ensure the UK is a great place to do business today and tomorrow.

Dr Liam Fox
International Trade Secretary
Did you know over 1000 new businesses start up in the UK every day?

The UK is one of the leading business locations in the world and the number one destination for inward investment (FDI) in Europe. Discover a land alive with opportunity at invest.great.gov.uk
Doing Business in the UK – The tax landscape

It’s hard to overstate the bearing a country’s tax system can have on the ease of doing business.

It’s not simply the amount of tax a business has to pay, but the time it takes to pay it. The degree of digitisation can make a big difference – filing taxes online is usually a lot swifter. A higher number of different taxes will usually add to the time spent on compliance.

And when looking at tax rates, you also have to consider whether there are tax reliefs and incentives geared at your type of business (and how easy or not it is to access these). Tax systems need to be considered in the round.

So how does the UK stack up against other countries? Pretty well, according to the latest PwC and World Bank Paying Taxes index. We’re ranked the second most effective tax system in the G20.

Take the time it takes an average medium sized business to prepare and file all its taxes – the global average is 240 hours. A business in the UK would spend under half that time.

And the Government is working to make further improvements to ease the compliance burden. As this report notes, the UK tax authority, HMRC, has recently announced more support to businesses at certain stages of growth, including information on incentives and reliefs they may be able to claim.

Longer term, HMRC’s ambition is to become one of the most digitally advanced tax administrations in the world. There’s much to be done but this has to be the right answer and already every individual and business now has access to their own personalised digital tax account.

Tax rates themselves are also competitive. Most notably the tax rate on profits – corporation tax – has been falling steadily. It currently stands at 19% and is set to fall to 17% by 2020. These reductions are part of a package of measures to keep the UK open for business.

Of course alongside efforts to keep tax rates competitive, is the need to respond to International proposals to tighten the tax rules – primarily the OECD’s recommendations to counter so-called base erosion and profit shifting. A lot of these anti-avoidance measures are ultimately about narrowing the use of incentives and reliefs. It’s a delicate balancing act.

So too is the need for tax reform against the desire for certainty and continuity. Like most economies, the UK is currently very reliant on income tax. At a time of increasing automation and the change in working patterns, it’s up for debate whether this is sustainable. Brexit and alongside that the challenge of taxing the digital economy call into question whether it’s time for a fundamental rethink of the tax system.

Stability can go hand in hand with tax reform, providing the Government sets out clear road maps, mapping out the future direction so business can consult and prepare.

So watch this space on UK tax policy, and tax policy internationally. US tax reform could well have a ripple effect, and keeping up with the evolving tax landscape will be key for businesses as they consider where to invest and locate.

Kevin Nicholson
Head of UK Tax, PwC
Finding ways to compare economies on a like for like basis, whether they are economic peer group countries or geographically near neighbours, is not an easy task. But there are some robust studies worth taking a looking at.

The World Bank ‘ease of doing business’ index\(^1\) ranks economies across 10 different indicators using a case study company, a medium sized manufacturing business. The indicators include amongst others, starting a business, getting credit, registering property, enforcing contracts and resolving insolvency. In the most recent report, Doing Business 2018 ranks the UK at number 7 out of 190 economies. Of the G7 nations only the United States is above the UK, and the only other G20 nation with a higher ranking is South Korea. In Europe, only Denmark has a better placing.

The Doing Business index also includes a ‘Paying Taxes’ indicator which measures the ‘ease of paying taxes’ for the case study company. PwC has worked with the World Bank on this indicator since its inception in 2004, and a comprehensive joint report\(^2\) is issued annually in November. Tax is undoubtedly an important consideration for businesses looking at where to base themselves or to invest, but it’s not simply the tax rate that’s relevant, the compliance burden is also key. The Paying Taxes study looks at both aspects – it measures the overall tax rate (the Total Tax and Contribution rate or TTCR), the time spent preparing, filing and paying taxes, the method used to make payment, and also some of the interactions with the tax authority after tax returns have been filed. The UK is ranked a stellar 23 out of 190 economies. The UK’s position had been improving until the most recent report (methodology refinements aside), largely due to the falling TTCR. This reflects the recent falls in the corporation tax (CT) rate and employer National Insurance Contributions, with the most recent CT rate reductions still to be reflected. The Paying Taxes Indicator shows that the UK has the second most effective tax system in the G20 behind Canada but is still ahead of South Korea and Australia.

An effective tax system is a crucial component of a strong economy and is a key element to ensuring the UK remains attractive as it looks to a post Brexit future. There are elements within the indicator that can still be improved upon, particularly in relation to post-filing processes. More resource for the tax authority (HMRC) could play a role in helping to ensure tax queries can be dealt with more quickly.

Over the years covered by the study, the use of technology in tax compliance by business and government has driven continued simplification and a reduction in the compliance burden for business globally. In the future the use of real, or near real time data has the potential to change how tax authorities can use data and analyse returns in a more efficient way.

Further PwC Analysis\(^3\) undertaken using the Paying Taxes indicators suggests not only that lower TTCRs correlate with higher investment and growth in an economy, but also that there is an even stronger positive correlation of growth in GDP with reductions in administrative complexity in the tax system. This highlights that governments which are keen to create a more business friendly tax climate which is more supportive of economic growth, need to focus not only on overall tax rates, but also on minimising the time and effort which businesses need to spend complying with their tax systems.

Turning to another study, in the PwC Cities of Opportunity report\(^4\) issued in 2016, London once again came out top in the ranking of 30 global cities. The report noted the city as one of the most cosmopolitan in the world, a global hub with a large, flexible economy and rich human capital to keep building its future.

An effective tax system is a crucial component of a strong economy and is a key element to ensuring the UK remains attractive as it looks to a post Brexit future. There are elements within the indicator that can still be improved upon, particularly in relation to post-filing processes. More resource for the tax authority (HMRC) could play a role in helping to ensure tax queries can be dealt with more quickly.

\(^1\) http://www.doingbusiness.org/rankings
\(^2\) https://www.pwc.com/gx/en/services/tax/publications/paying-taxes-2018.html
\(^3\) Paying Taxes 2013 page 23 – ‘An economic analysis – taxation, economic growth and investment – Andrew Sentance – senior economic adviser PwC UK
In this most recent report London increased its margin of victory over the second-place city. It pulled away from other cities in the first group of indicators, tools for a changing world, which increasingly determine global success or failure in an urban world driven by knowledge and connectivity. London finished first in intellectual capital and innovation and city gateway, second in technology readiness, and outscored the other top 10 cities overall by a substantial margin. London is often represented as a financial overachiever, but its dramatic success in the first of the indicator groupings confirms that its number 1 ranking in this report goes much deeper than economic might.

The major story from the report in comparing cities as gateways to world travel was that London remained first in this indicator by a clear margin. It is the premier gateway city, not only to Europe but to many other regions of the world (Africa, the Middle East, and, for those flying west, the Americas).

The report also notes that the UK’s June 2016 vote to exit the European Union came after the time period which the data reflects. London’s performance, was based on data predominantly from 2014 and 2015. While the report notes that it cannot predict what Brexit may mean to the future of London as a preeminent world city, it states that today London is one of the world’s most cosmopolitan and well balanced cities, as shown by the research. Any effects Brexit may have on London will take place in a process that will evolve over time and not overnight. Questions on talent mobility and migration, trade, investment and regulation, among others, will need to be resolved. Currently London remains the most European and global in the UK, and a major financial centre with a rich foundation of human capital and flexible tradition to build on. PwC’s latest ‘World in 2050’ projections indicate that in 2030 the UK and Germany will be the only two European economies in the top 10 world economies at PPP exchange rates and the UK will still be the sixth largest at market exchange rates. The Government has the opportunity to build on the fundamental strengths which come through in both the Doing Business report and Cities of Opportunity reports referred to above to achieve sustainable growth, and to maintain the attractiveness of the UK to inward investment. Looking to the potential challenges and opportunities of Brexit, UK businesses need a consistent policy framework to support investment and guide key decisions over the years ahead. With the right policies, the UK can and should maintain its position as one of the world’s leading economies.

Neville Howlett
External relations director for Tax, PwC
The UK’s decision to exit the EU has created significant uncertainty within the corporate world. Investors now face years of uncertainty over what trade deals might emerge, what access to European markets will be maintained and many other business-critical issues.

The UK remains the top-ranking destination in Europe for foreign direct investment (FDI) by a long measure, capturing 22% of all greenfield investment into Europe in 2016. But the announcement of the referendum in early 2016 triggered a year of doubt, with figures from Financial Times data service fDi Markets showing greenfield FDI projects (i.e. new physical presence or facility in the UK or expansion of existing facility by a foreign company) into the UK declining 19% and estimated capital investment dropping by as much as 38% in the year following the vote.

<table>
<thead>
<tr>
<th>Time period</th>
<th>Projects</th>
<th>Capex ($m)</th>
</tr>
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<tbody>
<tr>
<td>July 2015-6une 2016</td>
<td>1,058</td>
<td>48,884.9</td>
</tr>
<tr>
<td>July 2016-June 2017</td>
<td>861</td>
<td>30,301.0</td>
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**Overall greenfield FDI into the UK**

Investment from steadfast ally the US held mostly stable with a slight decline in the number of fDi projects in the UK between July 2016 and June 2017 compared with the same period of 2016 and an increase in capex from $8.6bn to $8.9bn – showing the close links between the two countries might help offset Brexit-related turbulence in the eyes of American investors.

But some key European investors are pulling back, with fDi from France, Germany, Ireland, Italy and Sweden declining in project numbers and value. While Chinese FDI is buoyant (with a small decline in project numbers but a rise in capex), investment from India – statistically a more significant greenfield investor into the UK in recent years even though it receives less hype than Chinese investment – has halved in the past year.

Overall, the 38% decline in capital investment highlights the loss of capital-intensive investments such as those in the energy sector. Most of the UK’s key fDi sectors have been hit as companies hedge their bets on what a post-Brexit UK trade, tax and regulatory scenario will be.

Investors in the business and financial services sectors are understandably stalling investment and looking towards EU member countries. Banking is one of the main industries considering relocation from the UK, with Ireland and Germany poised to receive a portion of the investment. The UK’s tech supremacy is also under threat, with investment in software and IT as well as the communications sectors in the UK declining since the referendum, with access to talent and movement of people being important considerations for the tech community.

Manufacturing-intensive sectors saw a decline in 2016 as Brexit worries first began to bite, but the latest figures show that fDi in manufacturing projects has risen in the year since the referendum. Projects increased from 87 to 108 from July 2015-June 2016 to July 2016-June 2017, while capex increased from $2.7bn to $3.3bn. Access to the European market and the potential for trade tariffs remains a huge concern for manufacturers, and production facilities geared towards export will likely go to the Continent in future; however, those aimed towards serving the UK consumer market may find it necessary to produce in-country instead of serving the market from European bases.

fDi into the UK looks set to continue to be volatile given the ongoing uncertainty and slow process of Brexit.

Not all investors view Brexit as a concern, of course. Many suggest that they will continue to invest in the UK, with plans to create new jobs and open data centres in 2017. In the long term, when the dust settles, the UK may well be able to maintain or even consolidate its world-class fDi stature.

There will be variance in how different foreign companies choose to react to Brexit. Some will be incentivised to increase their footholds in the UK, if this is seen a solid home base or a crucial market for them. Others will spread their odds by putting one foot in the UK and one in an EU country. And some others might give up on the UK entirely. How big of a share each of those groups accounts for in the end will shape the UK’s future as an fDi destination.
UK economic prospects in a changing world economy

As we enter 2018, the outlook for the world economy looks to be the most favourable we have seen since before the Global Financial Crisis. Both the IMF and the OECD are forecasting world GDP to increase by 3.7 percent for next year, which would make 2017/18 the strongest two growth years since the short-lived post-crisis bounce in 2010/11. Most private sector forecasters share this positive growth outlook and some are even more optimistic.

Meanwhile, unemployment has been falling in most major economies. The average unemployment rate across the G7 group of advanced economies is forecast by the IMF to be below 5 percent next year, for the first time since the 1970s.

All this is taking place against a background of fairly subdued inflation. Consumer price increases are expected to average just below 2 percent in the G7 economies next year, in the comfort zone for central bankers. Even in the UK – where inflation has risen to around 3 percent – it is expected to fall back gradually during 2018.

This positive economic picture has come up under the radar, emerging from a political fog which appears to have engulfed various major territories.

Consumers and businesses in most major economies, however, do not appear to have been phased by political developments. It is consumer spending and business investment which are the main drivers of global growth.

Three other factors are supporting the positive outlook for the global economy next year.

First, all the major regions of the global economy – North America, Europe and Asia – are performing reasonably well and contributing to global economic growth. Earlier in the post-crisis recovery, at least one of these engines of global growth has been spluttering. The most impressive turnaround in economic fortunes in the past few years has been in Europe. The euro area economies grew at 2.5 percent in 2017 – faster than both the US and the UK. The latest figures show that more than 200,000 jobs have been created every month in the Eurozone over the past year.

Second, the global economic recovery – which started in mid-2009 – is now into its ninth year and moves into its tenth year in 2018. That means households, businesses and financial institutions have had a long period to improve their financial positions and memories of the shocks of the financial crisis are becoming more distant. This provides consumers and businesses with more confidence that they can continue to increase their spending and investment, even though living standards have not been rising as strongly as they did before the crisis.

Third, monetary policy in the Western World remains very supportive of economic growth. Even though the US Federal Reserve has recently pushed its benchmark interest rate up to 1.5% and the Bank of England has returned its key borrowing rate to 0.5%, interest rates remain very low by historical standards. The euro area benchmark rate is still 0.05%.

In the US, gradual interest rate rises have not so far had any noticeable negative impact on growth, and I believe the same would have been true here in the UK if the Bank of England had followed a similar policy.

The cumulative impact of a long period of very low interest rates, alongside large injections of ‘Quantitative Easing’, is interacting with other positive features of economy to reinforce the current recovery, and to push up asset prices. With growth picking up against a background of low unemployment, Central Banks are likely to start to be more vigilant and continue to withdraw the monetary stimulus injected during the financial crisis.

2018 therefore looks set to be a good year for the global economy. What does this mean for the growth and employment environment in the UK? The current outlook for UK economic growth looks disappointing historically and by comparison with our peer group of economies in the G7. Latest PwC forecasts point to 1.5% GDP growth for the UK economy in 2018, just above Italy and Japan but below US, Germany, France and Canada which are expected to grow by 2-2.5% this year. This is a very different picture from the situation in the mid-2010s when UK growth was either the strongest or second-strongest in the G7 for a number of years.

This slowdown does not just reflect short-term factors or a Brexit effect. The two main drivers of economic growth in an economy are the ability to generate new jobs and the rate of increase of productivity. Jobs growth in the UK in recent years has been supported by the ability to take up slack in the labour market, as the unemployment rate has fallen from over 8 percent to 4.3 percent. This is the lowest jobless rate recorded for over 40 years, and the internal supply of labour is therefore likely to be less plentiful in the future.

UK productivity growth has averaged around 0.7 percent per annum in the eight years 2010 to 2017. This is about a third of the pre-crisis average growth rate of 2 percent. The UK is not unique in experiencing a productivity growth slowdown – it is an international phenomenon affecting all major western economies. But the change in trend has been more striking here in the UK – partly because our productivity performance was boosted before the crisis by the strong growth in the financial sector.

The medium-term prospect for the UK economy is still reasonably positive, even though Brexit will have some effects on the trade and investment climate in which businesses are operating. But headline GDP growth rates are likely to average below 2 percent – PwC’s medium-term forecast is for 1.8 percent in the first half of the next decade.

There are a whole host of factors which are still advantageous to the UK economy in the 2020s – our flexible labour markets, international business culture, a strong legal and regulatory framework, a competitive corporate tax structure, and our language and culture.

Andrew Sentance
Senior Economic Adviser, PwC
The UK regions

Geography and politics

The UK comprises 12 separate regions, which historically comprised government office regions, but while they no longer fulfil this role, they continue to be used for statistical and administrative purposes, with the Office for National Statistics (ONS) the main source of statistical information. Nine of these regions are in England (North East, North West, Yorkshire and the Humber, East Midlands, West Midlands, East of England, London, the South East and South West of England). The remaining three regions comprise the devolved nations of Scotland, Wales and Northern Ireland.

Devolution: The English regions

Since 2014, there has been a steady move towards devolution in the English regions by way of proposals for the transfer of additional central powers to local authorities, or to local areas.

The first ‘devolution deal’ was announced by the Government and the Greater Manchester Combined Authority in November 2014. Following the 2015 General Election, the then Chancellor, George Osborne, announced that powers would be devolved from Westminster to cities, giving greater control over local transport, housing, skills and healthcare. With these new powers for cities would come new city-wide elected mayors who work with local councils.

Six combined authorities held mayoral elections in May 2017, with a further election, in the Sheffield City Region, due to be held in May 2018.

Devolution deals have been negotiated between Government and local authority leaders in the English regions. Once the deal document has been agreed and published, each council involved must then itself approve its participation in the deal. Government reports regularly on the deals done via the Annual Report on Devolution, which lays out nature and financial implications of the devolved arrangements.

Our seventh annual PwC Good Growth for Cities 2017 index offers a different perspective on the competitiveness and attractiveness of the UK’s leading cities. The index measures the performance of 42 of the UK’s largest cities against a basket of ten indicators. These include employment, health, income and skills, housing affordability, commuting times, environmental factors, income inequality and the number of new business starts – all key factors that can influence investment, labour and skills availability and the cost of doing business.

The highest ranked cities in the Index tend to be mostly in the South of England, but the top-10 improvers in the 2017 Index include Birmingham, Leeds, Newcastle, Liverpool and Derby, suggesting that the Midlands and North of England are steadily narrowing the gap. Only London and Southampton are among the top 10 improvers relative to last year’s index.

Our Good Growth for Cities Index 2017 includes an analysis of English Combined Authorities and reflects a strong performance in these relatively new metro mayor cities. In May 2017, six new metro mayors were elected and three of these were elected into regions containing cities in the top 10 improvers in our Good Growth index: Birmingham, Middlesbrough and Liverpool. Other core cities in the top 10 improvers were Leeds and Newcastle – highlighting the increased pace of recovery in major urban centres in the UK.

Source: European parliament

5 https://www.ons.gov.uk/
6 https://www.ons.gov.uk/methodology/geography/ukgeographies/eurostat
7 https://www.ons.gov.uk/methodology/geography/ukgeographies/eurostat
9 http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7975
11 https://www.pwc.co.uk/industries/government-public-sector/good-growth.html
Our **Good Growth Index** also concluded that there has seldom been a better time to embed a more inclusive place based approach to growth across cities and regions, supported by a more localised industrial strategy. In the light of Brexit, there is also an opportunity for cities and regions to do more to build city-to-city trading links in overseas markets, further reinforcing the significance of the regions as attractive to investors and as contributing to overall UK wealth and prosperity.

While London remains a global financial services capital, the potential exists for considerable additional growth in financial services across the UK and particularly in some of our leading cities. In 2017 TheCityUK and PwC launched a strategic vision for UK-based financial and related professional services, *A Vision for a transformed, world-leading industry.* The report looks beyond Brexit to 2025 at the role that the industry can play in making possible the country’s long-term success outside the EU.

The UK is the world’s leading international financial centre, but a backdrop of rapid global change brings significant challenges which need to be addressed if it is to retain its competitive advantage and remain a leading part of the economy. The implementation of the vision will ensure a transformed and renewed industry that continues to be world-class, highly innovative and digitised and better able to meet the changing needs of customers and will see the industry:

- Embrace innovation and new technologies to provide better and more tailored products and services and be a leader in cyber security, using data in a secure and sophisticated way.
- Enhance the prominence of hubs in regional and national centres, developing specialist roles and ensuring a strong supply of local talent with relevant skills.
- Retain its full ecosystem of financial and related professional services and keep the UK at the global forefront of financial innovation by continuing to be a world-leading FinTech centre.

The report includes an economic analysis that measures the likely impact of the recommendations. This would lead to an increase in export competitiveness, innovation and efficiency, leading to an additional £16bn, or 9%, of industry GVA in 2025, compared to the current scenario. Seventy percent (70%) of this additional output will come from cities outside London. The fastest growing regions for the industry by 2025 would be the North East (30%), Northern Ireland (25%), the West Midlands (23%), Yorkshire and the Humber (23%) and the East Midlands (19%).

### Devolution: Scotland, Wales and Northern Ireland

In 1997, referenda were held in Scotland and Wales, with both parts of Ireland following in 1998. These resulted in the creation of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

It should be noted that there are some legal, employment and regulatory differences between England and the three devolved nations and potential investors should take appropriate advice if proposing to invest there. The table below gives an overview of the main powers given to the Northern Irish and Welsh assemblies, and the Scottish Parliament.

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<tr>
<th>Scotland</th>
<th>Wales</th>
<th>Northern Ireland</th>
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<tr>
<td>Agriculture, forestry and fishing</td>
<td>Agriculture, forestry and fishing</td>
<td>Agriculture</td>
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<td>Education*</td>
<td>Education</td>
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<td>Environment</td>
<td>Environment</td>
<td>Environment and planning</td>
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<td>Health, including abortion law</td>
<td>Health and social welfare</td>
<td>Health and social services</td>
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<td>Housing</td>
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<td>Enterprise, trade and investment</td>
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<td>Justice, policing and courts, including speed limits and railway policing*</td>
<td>Local government</td>
<td>Local government</td>
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<td>Local government</td>
<td>Fire and rescue services</td>
<td>Justice, policing and prisons</td>
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<td>Fire service</td>
<td>Economic development</td>
<td>Control over air passenger duty</td>
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<td>Economic development</td>
<td>Highways and transport</td>
<td>Transport</td>
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<td>Some transport</td>
<td>Control over stamp duty and landfill tax</td>
<td>Pensions and child support</td>
</tr>
<tr>
<td>Taxes including income tax, air passenger duty, stamp duty and a share of VAT receipts</td>
<td>Welsh language</td>
<td>Culture and sport</td>
</tr>
</tbody>
</table>

Source: BBC

Support for industry and economic development in the three devolved nations is negotiated directly with the economic development organisations in those regions. These are respectively, Invest in Scotland\textsuperscript{13} Trade and Invest Wales\textsuperscript{14} and Invest Northern Ireland.\textsuperscript{15}

There may be additional support for investment in England, Scotland, Wales and Northern Ireland via Enterprise Zones and Local Enterprise Partnerships (LEPs).\textsuperscript{16}

**Economic Prospects for the UK Regions**

According to the most recent PwC UK Economic Outlook\textsuperscript{17} parts of the UK are likely to see some moderation in growth in 2017-18 with London no longer leading the pack. In contrast to previous years where London has generally had one of the strongest growth rates of any UK region, our latest projections suggest London’s growth rate may fall to close to the UK average in 2017-18.

This is partly due to the greater exposure of some London activities (e.g. the City) to adverse effects from Brexit-related uncertainty, as well as growing constraints on the capital in terms of housing affordability and transport capacity.

Most other regions are projected to expand at around the UK average of 1.4% in 2018, although Northern Ireland is predicted to lag behind somewhat with growth of around 1% in 2018.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{growth_chart.png}
\caption{\textsuperscript{18}Source: PwC analysis}
\end{figure}

\textbf{Industrial clusters}

Clusters represent a key factor in the development and prosperity of the UK regions. The 2014 Centre for Cities report, \textit{Industrial revolutions: capturing the growth potential}\textsuperscript{18} found that the 31 clusters identified in GB (excluding Northern Ireland) contained 8% of total UK businesses, accounting for 20% of total UK Gross Valued-Added (GVA) – see map. Separate Northern Ireland clusters include, amongst others, Aerospace and defence (£1bn pa) and Agri-food (£1.1bn pa).

\textsuperscript{13} https://www.sdi.co.uk/
\textsuperscript{14} https://www.sdi.co.uk/
\textsuperscript{15} https://www.investni.com/
\textsuperscript{16} https://www.gov.uk/government/policies/local-enterprise-partnerships-leps-and-enterprise-zones
\textsuperscript{17} https://www.pwc.co.uk/economic-services/ukeo/ukeo-nov17-full-report.pdf
The 31 identified clusters employed circa 4 million people – one in seven of UK employees in employment – and paid average salaries/wages in excess of the UK average. Clusters foster innovation, research and development (R&D) and create valuable industry/education links that, in turn, attract academic excellence, generating further innovation and GVA.

**PwC in the regions**

PwC has a network of offices across the UK regions where particular expertise on economic activity, labour market issues and regional opportunities exists. The main regional offices are situated in: Birmingham, Leeds, Manchester, Belfast, Reading, Edinburgh and Cardiff.

**John Compton**

Deputy Head of UK Media Relations – Corporate Affairs, PwC
The UK as a business hub
The use of the UK as a hub location is becoming increasingly popular amongst global businesses and we are seeing a growing number of businesses centralising functions in the UK. Two main factors, the strong business environment and a relatively stable and competitive tax regime help draw these businesses to the UK.

**Strong business environment**

- A well-established corporate and commercial legal system, based on English common law.
- The UK attracts an internationally mobile, diverse and highly skilled workforce.
- Attractive location for senior executives and their families, with high quality housing, schools and leisure activities.
- Open market and diversified economy with a long and successful history of international trade.
- A strong international business community.
- The UK is a familiar gateway into the rest of Europe.
- Excellent transport links with the rest of Europe and internationally.
- Top class environment for research and development work.
- Leading global financial centre.
- Access to capital through the UK markets.

**Key features of the UK’s tax regime**

- Lowest corporate tax rate in the G20 at 19%, reducing to 17% from 1 April 2020.
- A truly territorial regime for companies – with a focus on taxing profits from UK activities, achieved through an exemption for foreign dividends and foreign branches and well understood controlled foreign company rules.
- An exemption from tax on dividends received in almost all circumstances was introduced from 1 July 2009. Unlike some other countries, the exemption is 100 per cent, there is no holding or minimum underlying tax rate requirement.
- The UK continues to offer tax deductions for interest expense subject to limitations based on level of EBITDA, external debt and anti-avoidance provisions. The UK rules have recently been updated to ensure compliance with the BEPS recommendations.
- The UK offers an exemption from corporation tax on chargeable gains made on sale of shares in trading companies for investments in which the UK company has had a substantial shareholding.
- The UK operates a territorial tax system for companies, where the focus is on taxing profits earned in the UK. As well as the dividend exemption, companies may elect to exempt overseas branches and benefit from the Controlled Foreign Company regime.
- The UK has a large number of tax treaties (over 130) and bilateral investment treaty networks, significantly reducing the level of withholding tax on royalties, dividends and interest both into and out of the UK.
- There is no withholding tax on dividends under domestic law.
- Proﬁts in the Patent Box regime are taxed at 10%.
- Research & Development relief for all companies.
- Tax-deductible amortisation on most intellectual property.
- A broad variety of government grants are also available for investment in R&D and innovation.

**In detail – Features of doing business in the UK**

**Dividends**

- An exemption from tax on dividends received in almost all circumstances was introduced from 1 July 2009. Unlike some other countries, the exemption is 100 per cent, there is no holding or minimum underlying tax rate requirement.

**Established interest deductibility regime**

- The UK continues to offer tax deductions for interest expense subject to limitations based on level of EBITDA, external debt and anti-avoidance provisions. The UK rules have recently been updated to ensure compliance with the BEPS recommendations.

**Substantial shareholdings exemption**

- The UK offers an exemption from corporation tax on chargeable gains made on sale of shares in trading companies for investments in which the UK company has had a substantial shareholding.

**Territorial tax system**

- The UK operates a territorial tax system for companies, where the focus is on taxing profits earned in the UK. As well as the dividend exemption, companies may elect to exempt overseas branches and benefit from the Controlled Foreign Company regime.

**Extensive treaty networks**

- The UK has a large number of tax treaties (over 130) and bilateral investment treaty networks, significantly reducing the level of withholding tax on royalties, dividends and interest both into and out of the UK.
- There is no withholding tax on dividends under domestic law.

**Tax incentives for innovation**

- Profits in the Patent Box regime are taxed at 10%.
- Research & Development relief for all companies.
- Tax-deductible amortisation on most intellectual property.
- A broad variety of government grants are also available for investment in R&D and innovation.
Customs duty and VAT rates

- Value Added Tax (VAT) has a main rate of 20% which is broadly in line with the average EU standard rate and is applied to both goods and services. Certain supplies are exempt from VAT (no VAT on the supply, but no refund of the VAT incurred on the costs of supply), while others are at a reduced rate (5%). Uniquely, the UK also has a broad range of zero-rate supplies, which means VAT on the supply is 0% but input VAT may be reclaimed.
- Currently customs duties only apply to the imports of certain goods from outside of the European Union.

Personal tax

- Significantly lower employer and employee social security tax rates.
- Competitive personal tax rates, which helps to attract overseas talent.
- Flexible private pension schemes.
- Expatriate incentives for secondees including:
  - detached duty relief: tax deductions on accommodation, subsistence and home-to-work travel for secondments under two years;
  - overseas workdays relief: tax exemption on workdays performed outside of the UK, subject to condition; and
  - remittance basis of taxation: currently a tax exemption for non-UK-domiciled individuals on non-UK source income/gains which are not remitted to the UK.

Why are businesses moving to the UK?

There are a number of reasons why businesses are considering moving their operations to the UK. Outlined below are the key considerations which suggest the UK is an attractive place to operate in.

**Business environment**
- Attractive business environment
- Strong economy
- Central time zone
- Good transport infrastructure, English language, giving access to world markets

**Skilled workforce**
- World leading for numerous industries e.g. financial sector, creative and pharmaceutical industries
- Top class universities and R&D infrastructure
- Attractive location for employees with access to good schools, leisure activities
- Workforce diversity

**Business focused tax regime**
- UK has one of the lowest headline CT rates in G20 at 19%, reducing to 17% in 2020
- Northern Ireland corporate tax rate 12.5% from 2018
- Other devolution plans which may add to dynamism of UK regions
- Relatively low social security costs vs other European countries

**Innovation incentives**
- R&D credits giving ‘above the line’ benefit for large business
- IP amortisation regime gives tax deduction for post April 2002 IP
- Patent Box gives 10% tax rate on certain profits from patented IP
- A regime of tax credits for creative industries

**Territorial tax regime**
- Territorial tax regime largely seeking to tax only UK related profits
- Tax-free sale of subsidiary companies
- Extensive treaty network which limits withholding taxes
- Interest deductibility rules

**Government support and certainty**
- HMRC engagement before businesses commit to move to UK
- Ongoing certainty available through tax agreements and other corporate tax clearances, often in accelerated time
- Same regional grants available plus practical help from the government’s UK Trade and Investment (UKTI)
Potential functions that could be undertaken by a UK hub company

When considering the possibility of creating a hub in the UK there are a number of options to explore. Some of the common types seen are outlined below.

**HoldCo**
A UK company can hold shares in worldwide subsidiaries. Dividend exemptions and exemption from tax on gains on sale of shares are available.

**Principal**
A UK company can act as the key commercial hub for the region. The UK offers low corporation tax rates and access to a skilled workforce.

**IP Centre**
A UK company can hold the group’s intellectual property. IP amortisation, patent box and potentially R&D incentives may well be available.

**Treasury Centre**
A UK company can perform the treasury function for the group. Such a company would have access to capital market.

**TopCo**
Worldwide groups can create their ultimate parent, the ‘TopCo’ in the UK. The benefit of having a UK TopCo would be to gain credibility as a result of the UK’s status as a global financial centre.
Family Businesses in the UK
Introducing UK family businesses

Family Businesses are the oldest and most common type of economic organisation around the world. In the UK, family businesses account for a quarter of the GDP and contributed £125 billion in taxes in 2014.

While a family business can be defined as a business where several members of the same family are involved as major owners or managers, they come in all shapes and sizes and are present in all industries. There is however a tendency in the UK for family businesses to concentrate in real estate, construction, storage and communication sectors and a tendency to rely on the domestic economy according to the report ‘The State of the Nation’ issued by Family Business United. While the majority of family business are small and medium-sized firms, the concept of ‘mum and dad shops’ has been long since over-taken with some of the biggest companies in the country being family-owned.

Every two years, PwC publishes its Family Business Survey\(^\text{19}\) where family businesses are interviewed on their concerns, challenges, successes and thoughts for the future. The 2016 survey is the biggest to date, with 2,802 respondents. The result is a rich, unique and global insight into what’s on the minds of today’s and tomorrow’s leaders. In 2016, the survey showed that family businesses in the UK need to focus on developing a coherent strategic plan to guide the direction of innovation investment.

Doing business with family businesses

Family businesses are driven by values, by culture and by ‘doing things right’. When doing business with this type of organisation, it will be far from focusing on immediate returns and quick fixes. Family businesses display a very different dynamic as they are driven by the values that shaped their history and legacy. Family businesses focus on sustainable long-term success which makes them some of the most resilient groups in the face of economic downturns. Family businesses also strongly commit to their people and their markets; they usually display strong relationships built on trust across all stakeholders. Additionally, they are more entrepreneurial and have a bigger appetite for risk.

These characteristics are important to keep in mind when going into businesses with family-owned companies, as they have a tendency to look for stakeholders that display a similar approach to business, performance and relationships.

How global family businesses can differ from other types of business:

<table>
<thead>
<tr>
<th></th>
<th>Strong culture and values</th>
<th>Measure success differently — more than just profit and growth</th>
<th>Decision making is faster/more streamlined</th>
<th>More entrepreneurial</th>
<th>Take a longer term approach to decision making</th>
<th>Take more risks</th>
<th>Find it harder to access capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>74%</td>
<td>72%</td>
<td>71%</td>
<td>61%</td>
<td>55%</td>
<td>40%</td>
<td>32%</td>
</tr>
</tbody>
</table>

Source: PwC Family Business Survey 2016

\(^\text{19}\) https://www.pwc.co.uk/private-business-private-clients/insights/family-business-survey-2016-17.html
What’s happening in this space?

Brexit is arguably the biggest cause for disruption currently faced by family businesses. The uncertainty created has led family businesses to expect a drop in exports from 19% to 5% over the next 5 years; however, and in alignment with the behaviour described above, family businesses are unfazed with this and are treating it as just another obstacle to deal with and overcome20, with the potential opportunity to focus on new markets.

The UK Corporate Governance reform looming on the horizon is another driver for change within this space. Family relationships are close by nature; these bonds typically allow unfiltered communication and a very casual interaction. It comes therefore as no surprise when that level of familiarity is passed on into the business, rendering established processes, structural design and clear communication channels as superfluous, irrelevant or not even thought about.

The reform is set to bring quite a lot of change to this casual approach as it will require greater transparency, accountability and formality around communication and decision-making processes. More specifically, the changes ask for a greater risk infrastructure as part of the overall governance strategy, greater transparency in remuneration and an increased use of boards and non-executive directors – as well as diversity in its members. These alterations aim to develop defined and efficient processes but they also enable a greater influence from the stakeholder group outside the family. This creates the need for a greater focus on governance at family level so that the rules of interaction between family and company can be understood by all. The reform will lead to increasingly professionalised family businesses, impacting their performance and organisation in a positive way.

Tomorrow’s Leaders

Family businesses are nimbler, more flexible regarding decision-making and they pride themselves on the ability to change quickly. Innovation is a top priority for the majority of family businesses but experience suggests that passing on the business from generation to generation can cause resistance to change, caused by a pigeon-holed vision, lack of fresh perspective and of external knowledge.

On the other hand, conversations between generations on digital strategy and how to prepare for a future shaped by digital disruption, artificial intelligence and dizzying fast-paced technological developments are increasingly emerging. PwC is working with family businesses in these specific areas, where we support them in building the bridge between generations, enable them to accompany change and help them to remain innovative in the face of disruption and succession challenges. By implementing the necessary governance tools, both at family and governance levels, the different generations prepare for the long-term while maintaining their family brand and corresponding values.

We have noticed that up until now, next generations have filled in the role of stewards of the business, making sure it gets passed on to the following generation in better shape than first received.

This approach is shifting. The current generation of next gens, the millennials, in addition to wanting to take care of the business, also want to leave their personal mark and to drive a real social impact. We are witnessing the rise of a generation that views the environmental, social and ethical impact of a business as important as performance and profit. They who are vocal in their desire to participate in a career that is both meaningful and that will make a difference: ‘Profit with Purpose’. These new priorities define them as drivers for change inside their families and family businesses, at a pace that the previous generations might struggle to keep up with.

These will be the business-owners and leaders of one of the biggest groups driving economy in a few years’ time, which may indicate a sector about to become one of the most innovative in the future. And yet, they will still be able to maintain an emotional connection to historical roots and a legacy of doing business with care.
Conclusion – ‘Watch this space’

Family firms are performing consistently with 60% showing revenue growth. They are also optimistic about the future, being that robust growth strategies focused on improving skills of the workforce, diversification and finding new markets outside of the UK are on the agenda as top priorities. In parallel, these businesses are also increasingly acknowledging the relevance of good governance and a solid familiar organisation in order to withstand time, conflict and change. And in this time and age, those who can react to adversity and deal with change have a good probability to drive economy in whichever markets they’re in.

It is time to recognise the impact and contribution of these types of businesses, as they are a force for good. And it’s a force that’s not going away any time soon.

Taking over the Business – Plans and expectations from the Next Generation:

- **92%** Feel a responsibility to hand over a sound business to the generation after them
- **88%** Want to leave their stamp and do something special with the business
- **79%** Have lots of ideas about how to take the business forward
Common questions to consider

- What type of legal presence do I require?
- How do I establish the entity?
- What tax issues do I need to consider?
- How do I deal with my employees?
- What regulatory matters do I need to consider?
- How do I close down a UK business?
- What other factors impact my ‘doing business in the UK’?
- How do I acquire a business in the UK?
- How do I list on a UK stock exchange?
1. What type of legal presence do I require

- Choice of entity
- UK establishment
- Private limited company
- Limited Liability Partnerships
There are three principal ways for a foreign investor or company to carry on business in the UK. You may:

- register a UK establishment;
- incorporate a private limited company; or
- incorporate a limited liability partnership.

Before making your choice, you should consider the following questions:

- How substantial will your business activity in the UK be?
- What risks do you anticipate during the initial set-up?
- How long do you expect to do business in the UK?
- What are the associated regulatory costs?
- What are the disclosure requirements?
- What are the tax implications?
- What are the commercial considerations?

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**UK establishment**

A UK establishment is:

- a branch within the meaning of the Eleventh Company Law Directive; or
- a place of business that is not a branch that is located within the UK.

Generally, if an overseas entity has established a place of business in the UK from which it does business, it must register a UK establishment; however, the definition of a UK establishment is not clear cut and advice should be sought regarding the requirement to register. If you are required to register you must within a month submit the following documents to the UK Registrar of Companies:

- a completed form (Form OSIN01) that provides such information as:
  - the official name of your company;
  - the country of incorporation;
  - the address of the establishment in the UK and overseas;
  - details of the directors and secretaries including the extent of their authority to represent your company;
  - details for the person authorised to accept service of process on behalf of the company;
  - details of the permanent representatives of your company in respect of the business of the UK establishment and the extent of their authority to represent the company;
- a certified copy of your company’s constitutional documents;
- a certified translation of those documents (if they are not in English);
- a copy of the company’s latest set of audited accounts (if the company is required to file accounts publicly in its country of incorporation);
- a certified translation of those accounts and the company’s constitutional documents (if they are not in English); and
- the registration fee (£20 for the standard service; £100 for same day registration).

PwC has a wealth of experience in registering UK establishments, knowing what the Registrar is looking for when accepting a registration. This can be invaluable when your registration is time critical, for example when awaiting a visa for an employee to transfer to the UK.
**Private limited company**

A private limited company is a separate legal entity with its own assets and limited liabilities.

If you choose to set up a private limited company as a UK subsidiary, the parent company will not be liable for the debts and other liabilities of the subsidiary beyond the amount of the subsidiary’s share capital, unless the parent company has provided an express guarantee in respect of the subsidiary’s liabilities.

On the one hand, a private limited company:
- is the most common form of trading entity in the UK;
- can be more credible than a branch operation and is often more desirable for the purposes of holding regulatory licences with its trading activities ring fenced from its parent company; and
- offers flexibility of ownership (it can have one or more shareholders).

On the other hand, it must comply with accounting, audit and regulatory requirements. The main compliance obligations for a private limited company are:
- filing a confirmation statement on the anniversary of incorporation with the Registrar of Companies confirming that information held by the Registrar, such as its share capital and officers, is up to date;
- filing statutory accounts for the company for each financial year/period and circulating those accounts to its members;
- notifying the Registrar of Companies of any event-driven changes to the company (for example, resignation and appointment of directors, a change in the share capital and a change of registered office address); and
- maintaining statutory registers for the company in country.

**Other options**

There are many other forms of partnership such as general and limited, as well as other types of company including public, companies, company limited by guarantee and a European company Societas Europaea (SE). The most appropriate vehicle will depend on specific facts and circumstances.

PwC can help to incorporate companies electronically on a same day basis. This is an efficient means of registering companies using articles of association which can be tailored specifically for subsidiary companies.
Limited Liability Partnerships

Historically a partnership structure has been the vehicle of choice of ‘people businesses’ such as accountancy and law firms many of which have operated as partnerships for more than a century. Until 2000, these businesses would have operated as general partnerships or limited partnerships.

Limited Liability Partnerships (‘LLPs’) have been in existence in the UK since 2000 and have become increasingly popular. They have been widely adopted across various sectors e.g. insurance brokers and architects.

Like a limited company, an LLP is a body corporate which has a separate legal personality and is governed by the provisions of the Limited Liability Partnerships Act 2000 and Companies Act 2006. It is therefore an alternative to a simple company limited by shares.

**Key characteristics**

As a body corporate, profits, assets, and liabilities belong to the LLP and not to its members. Much of existing company legislation, set out in the Companies Acts, the Insolvency Act 1986 and the Company Directors Disqualification Act 1986 also applies to an LLP.

An LLP is deemed to be transparent for UK tax purposes and therefore tax will be assessed on the members individually rather than on the LLP entity.

All the Companies Acts provisions on financial disclosure which apply to companies also apply to LLPs, other than those relating to share capital. The Limited Liability Partnership Act 2000 (‘The Act’) and the Limited Liability Partnership Regulations 2001 (‘The Regulations’) also apply many of the other company disclosure requirements to LLPs, so that:

- the appointment of new members must be notified to Companies House as must the retirement of existing members; and
- an LLP must have a registered office and any change in that office must be notified to Companies House. In addition, an LLP is required to deliver a confirmation statement to Companies House confirming that the information held by the Registrar, such as the names and service addresses of the members, is up to date.

The key differences between a limited company and an LLP are:

- an LLP does not have a Memorandum or Articles of Association, it is governed by its own unique and private agreement which may be amended whenever desired;
- an LLP does not have share capital, it is owned by its members through their capital contribution;
- an LLP may have profit sharing members who have no capital share in the LLP; and
- an LLP is transparent for direct tax purposes.

**Commercial benefits**

The key commercial benefits for adopting an LLP are:

- limitation of personal liability for the partners;
- flexibility to adapt the business structure as commercial needs change;
- flexibility over the allocation of profit shares to each individual partner to align reward with performance (of the individual, the business unit or the business more widely); and
- a potential source of working capital for the business if the LLP decides to utilise individuals’ undrawn profits.

**Other benefits**

As well as commercial benefits for the business, an LLP offers an enhanced ability to incentivise and retain personnel including:

- the opportunity to offer key individuals a ‘stake’ in the business by becoming a member of the LLP;
- running a business and working within a collegiate, collaborative environment.
Members of an LLP

A member of an LLP may be any natural or legal person, e.g. an individual, a company or another LLP, and there is no limit on the number of members that an LLP may have. Members are those who subscribe upon the registration of the LLP and those who join subsequently with the agreement of existing members. Partnership in the LLP ceases upon the retirement or death of the relevant member, the dissolution of the LLP or by agreement of the members.

The Act and Regulations introduce a separate class of members called ‘designated’ members who are appointed upon registration or by agreement amongst the members. Designated members are responsible for ensuring compliance by the LLP with procedural and administrative requirements imposed by the Act and the Regulations, and might be compared to company secretaries.

If there were fewer than two designated members appointed, every member would be deemed to be a designated member.

On becoming a member of the LLP, every member must complete a Form LLAP01 or LLAP02 (Appointment of a Member to a Limited Liability Partnership). The form includes the following information about the member:

- full name;
- usual residential address (office addresses cannot be used)
- service address; and
- date of birth.

By signing the form the person is consenting to be a member of the LLP.

As a consequence of the filing requirements, the residential address of every member is obtainable by members of the public from Companies House. It is however technically possible for a member of an LLP to apply to the Secretary of State for a confidentiality order as to his/her address if they are considered ‘at risk’.

After a member has become a member of the LLP, any subsequent change in his/her name or address must be notified to the Registrar within 28 days of the change on Form LLCH01.
2. How do I establish the entity?

- Legal requirements
- Is my corporate name available?
- What are my duties as a director?
- Companies Act 2006
- Pathfinder
**Legal requirements**

**Registration requirements**

A business seeking incorporation as a private limited company must file the following with Companies House:

- **memorandum of Association** – a statement that the subscribers wish to form a company and have agreed to become shareholders of the company;
- **articles of Association** – the rules under which the company must operate;
- **completed Form IN01** – details of the registered office, director(s) and secretary if you wish to appoint one (appointment of a secretary is optional for a private limited company), share capital, initial shareholders, people with significant control and a statement of compliance confirming the various requirements relating to the incorporation have been met; and
- **the registration fee** (£14 for the standard service via electronic means, £40 for the standard service in paper format, £30 for a same day registration via electronic means and £100 for a same day registration in paper format).

When satisfied that all formalities have been followed, the Registrar of Companies issues a certificate of incorporation. This is conclusive evidence that the company is duly incorporated and established, so the company may commence trading immediately.

For the information you must provide when establishing a company, please refer to **Appendix A**.

**Additional requirements**

Every company must:

- have at least one natural director (i.e. an actual person rather than a corporation);
- appoint auditors, unless its turnover and balance sheet total are below specified thresholds;
- keep a register of its shareholders (known as members), including their names and addresses, the number and class of shares they hold, details of the rights attaching to the different classes of shares and the date when they became members of the company;
- keep a register of charges (mortgages and other secured interests);
- keep a register of its directors and secretary (if it chooses to have a secretary) and a register of directors’ and secretary’s residential addresses;
- deliver to the Registrar of Companies (on Form CS01) a confirmation statement, no later than the filing deadline, which is 14 days from the date to when the CS01 has been prepared;
- deliver to the Registrar of Companies statutory accounts for each financial year/period, no later than the filing deadline for delivery of the accounts, which is (usually) nine months from the end of the accounting reference date.

There are penalties for not meeting these obligations including automatic financial penalties for the failure to file statutory accounts by the due date. Continued non-compliance can lead to the compulsory dissolution of the Company by the Registrar of Companies with potential liability for the directors.

PwC provide a full compliance service to help the directors meet these requirements giving peace of mind to directors, particularly when located outside the UK and/or where there is no in-house local expertise in this area.
Is my corporate name available?

You may not choose a name for your private limited company that has already been registered on the UK companies register. You may be in danger of infringing a trade mark if you choose a company or trading name that is identical to or similar to that of another company and you also risk becoming the target of a ‘passing off’ action by that other company.

Trade mark infringement and passing off is usually limited to situations where the two businesses are in a similar trade; however, it can occur even where the businesses are not in a similar trade.

To avoid these problems you should conduct a series of searches, including searches at Companies House and the UK Intellectual Property Office, as well as wider searches, for businesses using the relevant name. It is recommended that you employ the services of a professional firm that specialises in this area of the law.

In some cases, your company’s name may not include certain words without the prior approval of the Registrar of Companies or the provision of third party consent. It is not generally possible to form a company with a name that is similar to another that is already registered (for example ABC Limited and ABC 1 Limited) unless your company is part of the same group as that company. In such cases approval is required from the Registrar of Companies. PwC can work with you and the Registrar in order to obtain the necessary approvals.

What are my duties as a director?

As a director, you are responsible for the day-to-day management of the company and you are subject to various statutory duties that, if breached, can result in personal liability. The duties, which are set out in the Companies Act 2006, include the requirements to:

• act in accordance with the company's constitution and only exercise your powers for the purpose for which they were conferred; and

• act in a manner that you consider, in good faith, to be the most likely to promote the success of the company for the benefit of its members as a whole. When exercising this duty, you must have regard to a number of issues, including:
  – the likely consequences of any decision in the long term;
  – the interests of the company’s employees;
  – the impact of the company’s business on the community and the environment;
  – the need to foster the company’s business relationships with suppliers, customers and others;
  – the desirability of the company maintaining a reputation for high standards of business conduct; and
  – the need to act fairly between members.

• In discharging your duties, you must also exercise:
  – reasonable skill, care and diligence; and
  – independent judgement.

You also have a duty to avoid a situation in which you have, or may have, a direct or indirect interest that conflicts with the interests of the company and to disclose the existence of any interest in any proposed or existing contract with the company. You also have a duty not to accept benefits from third parties if they could give rise to a conflict of interest.

In cases of actual or prospective insolvency, your duties are still owed to the company but you must act in the best interests of the creditors, rather than its shareholders. Personal liability is also imposed in certain situations for permitting an insolvent company or prospectively insolvent company to continue trading, unless you can demonstrate that it is beneficial for the creditors to continue to do so.

The above is a merely a summary of a director’s duties but you should be aware that this can be a complex and technical area of law. For a comprehensive advice PwC can assist.
Companies Act 2006

The formation, management and organisation of a company in the UK are largely governed by the provisions of the Companies Act 2006. Whether you choose to establish a new company or acquire an existing one, the provisions of the Companies Act 2006 will have a significant impact on your company.

The Act governs:
- the establishment of companies;
- how they are operated, owned, governed and managed;
- the extent to which they are required to publish information relating to their affairs (including their financial affairs);
- their liabilities and duties to their members and other stakeholders.

It addresses among other things:
- how share capital is organised, reduced and increased (and the records that must be kept of the company’s ownership);
- how distributions are made to members;
- how directors must regulate their affairs;
- the requirement for a company to be audited;
- how creditors of a company can protect themselves (and how their competing claims shall be dealt with in the event of insolvency);
- how a company can be wound up and its affairs brought to an end.

The 2006 Act has, in many areas, materially changed the rules that apply to companies. These are too numerous and complex to cover here; however, it is important to note that, as a result of these changes, previous knowledge or advice may be out of date. Consequently, expert legal advice should be taken to ascertain the current position.

Pathfinder

We have a PwC service offering called Pathfinder which has been designed to help clients expanding in to (or indeed out of) the UK navigate the many issues raised in this book. We offer a single point of contact who will coordinate all of the necessary PwC teams so as to deliver a coordinated service, tailored to your individual requirements. We can assist with any element of corporate expansion. A brochure is attached in Appendix D and any of the team would be happy to talk you through this service in more detail.
3. What tax issues do I need to consider?

- Corporation tax
- Patent Box
- Developing and managing Intellectual Property in the UK
- Research and Development
- Enterprise Investment Scheme (EIS) – UK tax incentive for investment in certain trading companies
- VAT
- Personal taxation
- Tax Transparency
Corporation tax

There is one main tax on companies’ profits, which is corporation tax and which is currently levied at a rate of 19%. By 2020 the UK rate of corporation tax will reduce to 17%. Rates are fixed in advance and announced in the Budget each year. Some industries do attract other profit related taxes but these specifics are outside the scope of this paper.

Support from HMRC

Before moving into the detail of the corporate tax rules, it is worth noting that HMRC have recently announced that they will be providing additional support to mid-sized businesses (defined as businesses with turnover of more than £10m and/ or at least 20 employees) that are experiencing certain types of growth to help them understand the tax issues they may face at their particular stage, including information on incentives and reliefs they may be able to claim.

The support will be in the form of helping business to:
- understand any new tax issues and reporting requirements;
- get the tax right before the return is filed;
- consider reporting and governance risks caused by the growth of the business;
- access financial incentives and reliefs the company may be eligible for; and
- access other HMRC specialists, services and guidance that are relevant.

Support is restricted to certain types of growth listed below but may be available for other types of growth subject to HMRC decision:
- turnover increased by 20% or more in the last 12 months, where this increase is at least £1 million;
- combining with, or buying, companies or other business organisations, or their operating units, resulting in growth of the business;
- changing the composition of a group of companies for the purpose of business growth (excludes insolvency);
- initial and subsequent offerings of shares on any stock exchange for public purchase;
- introducing capital that increases the balance sheet total by more than 20% where that capital is at least £1 million;
- first time notification of meeting Senior Accounting Officer (SAO) conditions and completion of the first SAO certificate;
- paying corporation tax by quarterly instalments for the first time because profits are above the ‘upper limit’;
- making VAT Payments on Account for the first time, because in any period of 12 months or less you have a total liability of more than £2.3 million;
- selling goods or services from the UK to another country for the first time; and
- setting up a business operation in a new country.

This is an indication of the more open and proactive relationship HMRC is looking to adopt with tax payers.

Registration for UK corporation tax

Within three months of commencing trade or becoming active, a UK company or establishment is required to notify Her Majesty’s Revenue & Customs (HMRC) that it falls within the charge to UK corporation tax. Failure to notify can result in a penalty.

Generally a UK company or organisation is considered to be active for Corporation Tax purposes when it is, for example:
- Carrying on a business activity such as a trade or professional activity;
- Buying and selling goods with a view to making a profit or surplus;
- Providing services;
- Earning interest;
- Managing investments; and
- Receiving any other income.

This definition of being active for Corporation Tax purposes is not necessarily the same as that used by HMRC in relation to other tax areas such as VAT, or by other government agencies such as Companies House. The need to register for Corporation Tax can therefore often occur earlier than may be expected (e.g. when you start buying/selling, when you start advertising, renting a property or employing someone). It may also not match definitions in the various accounting conventions that are used to prepare audited accounts, such as the Financial Reporting Standards (FRS) issued by the
Establishment’ for consistency with company law terms; however, for tax purposes this type of entity may also be referred to as a ‘branch’ or ‘permanent establishment’.

Following introduction of the branch exemption, an election can be made to exempt the profits of an overseas establishment from the charge to UK tax. The election applies to all accounting periods which commence after the date on which the election was made and the election is irrevocable. The election takes profits out of the charge to UK tax but also means that losses of the permanent establishment cannot be set against UK taxable profits. Consideration should therefore be given as to whether or not to make the election and also as to the timing of the election.

The Northern Ireland Corporation Tax Act 2015\(^{21}\) has devolved to the Northern Ireland Assembly, the power to set and vary the level of Corporation Tax levied on eligible entities based in Northern Ireland. While this power has not been formally enabled, UK companies establishing subsidiary operations in Northern Ireland should be aware that the rate of Corporation Tax may vary in respect of their subsidiary operations and that additional reporting regulations may apply.

The charge to corporation tax

A company (including the subsidiary of an overseas company) that is resident in the UK for tax purposes was historically liable to corporation tax on its worldwide profits and chargeable gains. There is now an exemption from tax for qualifying overseas branches of a UK company (if an election is made and notably, made before the start of the accounting period).

UK establishments of non-UK resident companies are generally liable to UK corporation tax on:

- Trading income arising directly or indirectly through the UK establishment;
- Income from property or rights used by, or held by or for, the UK establishment;
- Chargeable gains accruing on the disposal of assets situated in the UK and used for the purposes of the establishment.

Corporation tax is assessed on total taxable profits (see next page) and chargeable gains in respect of each ‘accounting period’. The income tax year applicable to individuals, which runs from 6 April to the following 5 April, is irrelevant for corporation tax purposes. The rate of corporation tax is set for the financial year ending on 31 March. If the rate is changed, the profits of an accounting period that straddles the date of change are apportioned and charged at the appropriate rates (see Appendix C). Please note that we have referred to a foreign company doing business in the UK as a ‘UK Establishment’ for consistency with company law terms; however, for tax purposes this type of entity may also be referred to as a ‘branch’ or ‘permanent establishment’.

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Corporation tax rates

The rate of corporation tax applicable in the financial year 2018 (being 1 April 2017 to 31 March 2018) and financial year 2017 is as follows:

<table>
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<tr>
<th>Rate of corporation tax Financial year 2018 (%)</th>
<th>Rate of corporation tax Financial year 2017 (%)</th>
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<tbody>
<tr>
<td>Corporation tax rate</td>
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<td>20</td>
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In the past there had been multiple tax rates application to entities within the charge to UK corporation tax depending on the level of taxable profits. These multiple rates are no longer in place and instead, there is one rate payable by all companies (the timing of tax payments can vary depending on the size of the company and this is covered below). The corporate tax rate will fall to 17% in FY 2020.

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**Taxable profits**

Profits chargeable to corporation tax are calculated by adding together income from various sources. These will principally include trading profits, rents, investment income, deposit interest and chargeable gains.

Taxable trading profits are calculated in accordance with generally accepted accounting principles, with certain statutory adjustments. Some of the most common adjustments include:

- expenditure that is incurred wholly and exclusively for business purposes may be deducted;
- amortisation of capital expenditure deducted in the accounts by way of depreciation must be added back to the net profit or loss figure in the accounts and statutory 'capital allowances' are deducted instead;
- certain expenses are allowed to be deducted against total profits, rather than trading profits, on a 'paid basis' (e.g. patent royalties);
- only certain provisions are permitted to be deducted for tax purposes (e.g. holiday pay must be settled within 9 months of the year end in order for tax relief to be available for the accrual); and
- the expenditure on intellectual property assets is generally tax deductible based on amortisation rates in the company’s accounts, with profits on sales being taxed as income (and not capital gains).

**Capital allowances**

Accounting depreciation on fixed assets is generally not an allowable expense in determining taxable profit and instead, tax relief is provided via capital allowances (UK tax depreciation regime). There are several different categories of capital allowances, each attracting a unique rate of tax relief and fixed asset expenditure is allocated to one of these. These include:

- Main pool plant and machinery – 18% writing down allowances per annum on certain equipment, plant and machinery
- Special rate pool plant and machinery – 8% WDAs on integral features and long life assets (UEL over 25 years)
- Enhanced capital allowances – 100% first year allowances in respect of certain energy and water saving technologies.
- Research and development allowances – 100% first year allowances in respect of assets, including buildings, used to carry out qualifying research and development.
- Cars – 100%, 18% or 8% depending on the CO2 emissions of the car.

No tax relief is available on non-qualifying assets and expenditure including structural and building works.

There is no definitive list of assets that qualify for tax relief through capital allowances and it is important to consider tax legislation, case law and HMRC guidance when identifying qualifying expenditure.

There are further incentives provided by the government including a first year allowance in respect of £200,000 of qualifying plant and machinery expenditure in an accounting period, enterprise zones offering accelerated relief on expenditure in designated areas and short life elections to accelerate the relief on disposal of certain assets.

Recent legislative changes mean that capital allowances need to be considered in detail as part of property transactions by both the buyer and seller. Furthermore when leasing property, landlord incentives including contributions and cash, need to be carefully considered as these have capital allowances implications for both the landlord and tenant.
**Dividends**

Dividends and other distributions of an income nature, whether received from UK or overseas companies, are within the charge to UK corporation tax unless they are exempt. Distributions received by small companies (fewer than 50 employees and either turnover of less than €10m or balance sheet total of less than €10m) will be exempt where the payer is resident in the UK or a territory with which the UK has a double taxation treaty that includes a non-discrimination provision. In respect of large companies, dividends will be exempt if they fall within one of five exempt classes and are not caught by the targeted anti-avoidance rule. The exempt classes include dividends received from a company controlled by the payee, dividends in respect of non redeemable ordinary shares and dividends received from portfolio companies (i.e. ones in which the payee owns less than 10% of the issued share capital); however, the specifics of the exempt classes are complex and specialist help should be sought.

**Relief for losses**

The way in which losses can be utilised changed as of 1 April 2017. Prior to that date, the use of trading losses and in particular the use of brought forward trading losses was fairly limited. As has always been the case, current period trading losses can be used in the following ways by an UK resident company:

- Against other income or chargeable gains arising in the same accounting period;
- Against profits of any description in the previous 12 months;
- As group relief in the same accounting period to qualifying companies.

Any unutilised trade losses can then be carried forwards and this is where the main changes to the relief arise. Historically, brought forward corporation tax losses could only be used by the company that incurred the loss and there were restrictions around the type of profits against which the loss can be set, for example, brought forward trade losses could only be set against future profits of the same trade. There was however no restriction on the amount of brought forward loss that could be offset against a current year profit (other than the quantum of the profit itself).

**Tax on chargeable gains**

UK resident companies pay corporation tax on their chargeable gains at the relevant corporation tax rate. UK establishments of foreign companies are also liable to corporation tax on chargeable gains arising on the disposal of any assets that are situated in the UK and used for the purposes of the UK establishment or its trade.

The chargeable gain is calculated as the difference between the net proceeds of sale of a chargeable asset and its purchase price together with any allowable expenditure (such as the incidental costs of acquisition) incurred on that asset. The resulting gain is then reduced by an ‘Indexation Allowance’ to ensure that the proportion of any gain produced by inflation is not taxed. It should be noted that the recent Budget (2017) announced that Indexation relief would be frozen as of 1 January 2018.

There is an exemption for capital gains and losses on substantial (more than 10%) shareholdings in trading companies disposed of by corporate shareholders. This is commonly referred to as the ‘Substantial Shareholdings Exemption’.

A non-UK company disposing of shares in a UK company will not generally be subject to UK taxation, unless it has a permanent establishment in the UK. The rules governing the taxation of gains arising on the disposal of immovable property situated in the UK are ever changing and it is anticipated that all such gains regardless of whether the company owning the asset is situated in the UK or not, will be brought within the charge to UK tax by 2019.
**Taxation of residential property**

The rules concerning the taxation of residential property have been subject to significant change in recent years. For corporates, the Annual Tax on Enveloped Dwellings (‘ATED’) was introduced a few years ago and the scope of the tax has been increasing ever since.

ATED is an annual tax which is payable by companies owning UK residential property valued at more than £500,000 (as at 1 April 2012 or acquisition if later). An annual return must also be filed. There are reliefs and exemptions from the tax but often a return/claim is still required. The annual charge will depend on the value of the property.

In addition to the annual charge, when the property is disposed of, ATED-related capital gains tax must also be paid at 28% (by 31 January following the end of the tax year). The disposal should be reported on a special tax return and there is a specific calculation to ascertain the relevant gain and the associated tax charge.

**Timing of tax payments**

The date by which the corporation tax should be settled depends on whether the company is large or not for corporation tax purposes. There are various steps to walk through to ascertain whether or not a company is large for these purposes but at a high level, a company will likely be large for these purposes if its profits exceed £1.5m (divided by the number of companies in the worldwide group and pro-rated for short accounting periods) in any given year. The number of companies is calculated by looking at the number of 51% subsidiaries in the worldwide group (branches/permanent establishments are not counted).

If a company is large for these purposes, tax will be due by four equal instalment falling due:

1. 6 months and 13 days after the first day of the accounting period;
2. 3 months after the first instalment;
3. 3 months after the second instalment (14 days after the last day of the accounting period); and
4. 3 months and 14 days after the last day of the accounting period.

**Taxation of foreign branches**

Profits of foreign branches were historically taxable in the UK and losses were reliefable. This treatment remains the default position but it is now also possible to elect into the branch exemption. The branch exemption is an optional regime and applies from the start of the first accounting period following that in which a company makes an election for exemption. Once a UK resident company has elected into the regime, the income and gains of all the foreign permanent establishments (PEs) through which it carries on business are exempt from UK corporation tax. Conversely, there is no relief for PE losses. Once the exemption has come into effect, it is irrevocable.

As well as those UK companies currently suffering UK tax on their overseas branches, the exemption may also be of interest to groups:

- considering overseas expansion; or
- looking to simplify their corporate structure.

There are some business and industry sector related reasons why companies prefer to operate through branches including:

- Regulatory simplicity e.g. in the financial services sector; and
- For local legal reasons e.g. oil and gas companies operate through branches which helps minimise the need for local (third party) share ownership.

However, similar considerations may be relevant for groups outside these sectors, especially where local legal and regulatory issues are a barrier to incorporation. Additionally groups looking to transform business operations (e.g. supply chain, procurement etc.) may find that a branch rather than corporate solution deals with exit charge issues and ensures that the legal structure is kept as simple as possible.
So for a company with a 31 December year end, the payments are due on 14 July and 14 October (during the year) and 14 January and 14 April following the end of the accounting period.

If a company is not large for these purposes, 100% of the tax should be settled 9 months and 1 day after the end of the accounting period. So for a company with a 31 December year end, the tax will fall due on 1 October following the end of the year.

For accounting periods beginning on or after 1 April 2019, it is proposed that companies with annual taxable profits of over £20 million (pro-rated for the number of companies in the worldwide group) will be required to make instalment payments as set out above for large companies but the payment dates will be 4 months earlier than currently set for large companies. For a 12 month accounting period, payments will be due in months 3, 6, 9 and 12 of the period to which the liability relates.

**Base Erosion and Profit Shifting Project**

The OECD undertook a project (the BEPS project) in response to concerns that the interaction between various domestic tax systems and double tax treaties can often lead to profits falling outside the charge to tax altogether or be subject to an unduly low rate of tax. The OECD published a 15 point action plan in July 2013 setting out proposals to address base erosion and profit shifting and the final BEPS package was published in October 2015. The 15 key actions are summarised below. The detail is outside the scope of this publication (although some points are picked up within other sections) but as can be seen, the changes are wide reaching and many are only now being brought within local legislation. The BEPS project was considerable and has had a marked effect on UK tax. The UK has adopted changes to its legislation to accommodate the relevant BEPS recommendations.

- **Action 1**: Addressing the tax challenges of the digital economy
- **Action 2**: Neutralise the effects of hybrid mismatch arrangements
- **Action 3**: Strengthening CFC rules
- **Action 4**: Interest deductions and other financial payments
- **Action 5**: Counter harmful tax practices more effectively
- **Action 6**: Prevention of treaty abuse
- **Action 7**: Preventing the artificial avoidance of PE status
- **Actions 8 – 10**: Risks and capital
- **Action 11**: BEPS data
- **Action 12**: Mandatory disclosure rules
- **Action 13**: Country by country reporting and transfer pricing documentation
- **Action 14**: Making dispute resolution mechanisms more effective
- **Action 15**: Multilateral instrument

**Hybrid mismatch rules**

The UK introduced new rules dealing with hybrid mismatches. These rules took effect on 1 January 2017. The rules are complex, and will apply to a broad spectrum of situations and require careful consideration but at a high level, the rules effectively seek to address the situations where there is i) a mismatch between the deduction which arises and the income which is taxed or ii) a deduction taken into account in two jurisdictions. This could arise in situations involving a hybrid entity (such as a US company for which the check the box election has been made), a hybrid instrument (e.g. on which is treated as debt for one party but equity for the other), dual resident companies etc.

Where a mismatch is caught by these rules, a counteraction will be applied to seek to deny the deemed benefit.

**Diverted Profits Tax (DPT)**

Diverted Profits Tax (DPT), introduced in April 2015, is part of the UK’s response to the shifting tax environment, most notably highlighted in the OECD’s BEPS reports. It’s separate from other corporate taxes and is levied at 25% (or 55% in the case of UK ring fence operations, i.e. broadly oil extraction operations, i.e. broadly oil extraction operations) on diverted profits (as defined) and may apply in two circumstances:

- where groups create a tax benefit by using transactions or entities that lack economic substance (as defined), and/or
- where foreign companies have structured their UK activities to avoid a UK permanent establishment.

Companies are required to notify HMRC if they are potentially within the scope of DPT within three months of the end of the accounting period to which it relates (extended to six months for the first year). The legislation is complex and subjective in places, and has the potential to apply more widely than might be expected.
**Transfer pricing**

**Recent developments**

The outputs from the OECD's Base Erosion and Profit Shifting (BEPS) Project include a number of transfer pricing related actions. These include changes to documentation requirements, the treatment of intangible assets, consideration of risks and the circumstances in which a permanent establishment is created. The UK government has been a supporter of the BEPS project.

Legislation has been introduced in respect of Country-by-Country Reporting (‘CbCR’). Broadly, this applies for accounting periods beginning from 1 January 2016 for groups with consolidated turnover greater than €750m.

It is not anticipated that Brexit will have a significant impact on the UK’s transfer pricing legislation. Compliance with the arm’s length principle is tested primarily by reference to publications issued by the OECD. The European Commission has also proposed the introduction of specific measures connected to transfer pricing, such as CbCR. The detail of the proposals does, in some respects, go beyond the current OECD requirements (such as public disclosure of CbCR reports); however, such measures are currently only proposals and could be implemented unilaterally by the UK government post Brexit.

**Background**

The UK transfer pricing legislation is widely drafted and covers transactions between related parties that are both UK tax resident as well as those with overseas related parties.

UK taxpayers are required to prepare and file tax returns on the basis of revenues and costs calculated using arm’s length prices for transactions with related parties. The arm’s length principle to be applied in evaluating prices is that set out in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

If any intra-group transactions have not been priced on arm’s length terms, taxpayers are required to make transfer pricing adjustments in their tax returns where these result in increased taxable profits or reduced allowable losses. Taxpayers can only reduce their taxable profits (or increase allowable losses) by making compensating adjustments in the case of UK – UK transactions, or through the formal competent authority procedures in the case of cross-border transactions where a Double Taxation Agreement exists with the UK. For transactions where the counterparty is in another European territory, the EU Arbitration Convention can also be used to eliminate double taxation arising from a transfer pricing adjustment.

Evidence to support the taxpayer’s filing position should exist at the time when the tax return is filed. A request for access to such documentation can be made with as little as 30 days notice.

The normal enquiry window during which HMRC can commence a transfer pricing audit is the same as for any other tax issue, being one year from the filing deadline for the relevant tax return. This time limit is extended if the tax return is filed late. If the taxpayer has not made sufficient disclosure of the relevant facts needed for the tax authority to assess potential issues within its tax return, HMRC can make a discovery assessment up to four years after the end of the accounting period, or six years if there was a failure to take reasonable care. In the event of a deliberate understatement of profits the time limit can be extended to as much as 21 years.
Exemptions

A company which is part of a small enterprise (fewer than 50 employees and either balance sheet total assets less than €10m or turnover less than €10m) is exempt from the UK transfer pricing rules unless it has transactions with a resident of a non-qualifying territory, broadly a tax haven, or transactions with related parties that form part of the calculation of profits to be taxed under the UK Patent Box regime.

Companies which are part of a medium-sized enterprise (fewer than 250 employees and either balance sheet total assets less than €43m or turnover less than €50m) are similarly exempt subject to one additional caveat. For medium-sized enterprises, HMRC has the ability to issue a ‘direction’ that the transfer pricing rules should apply in the circumstances specified in the direction. The issue of a direction can only be made after HMRC has opened a formal enquiry into the relevant tax return to undertake a transfer pricing audit. This is likely to require HMRC to establish a prima facie case that transactions are not at arm’s length, so partially shifting the initial burden of proof which ordinarily lies with the company.

Related parties

The legislation applies to transactions where one party controls the other, or both parties are under common control.

A person or company controls another company if the first company has the power to secure that the affairs of the second company are conducted in accordance with its wishes. Control may be exercised either through share ownership, voting rights or power over the company granted by some other corporate document.

The UK transfer pricing rules can also apply to joint venture companies, in particular where a UK party has an interest of at least 40% in the subordinate and where there is another party which also holds at least 40%.

Content of documentation

There are currently no specific regulations governing the documents that a taxpayer is required to prepare in order to support its transfer pricing. The documentation required falls under the general rule for Self-Assessment that requires taxpayers ‘to keep and preserve the records needed to make and deliver the correct and complete return’.

HMRC has published general guidance on record keeping and, in the absence of other more specific regulations, this guidance is likely to be persuasive.

As noted above, it is not expected that the documentation requirements will change significantly going forward. The main change is that regulations have been enacted, with effect from 2016, to incorporate Country by Country Reporting (for very large multinationals) into UK legislation. While the more prescriptive documentation requirements proposed by the OECD relating to the Master File and Local File are not currently expected to be incorporated within the UK transfer pricing legislation, they do provide the recommended format when preparing transfer pricing documentation from a UK perspective.

Penalty regime

There is no separate penalty regime for transfer pricing. Penalties may apply for filing an incorrect tax return (or, if an error or mistake later becomes known, failing to report this in a timely fashion).

The current penalty regime determines the level of penalty based on the behaviour which gave rise to the error. Penalties are fixed within a band depending on whether the error has arisen as a result of a failure to take reasonable care, a deliberate understatement or a deliberate understatement with concealment. The penalty is then mitigated according to whether the error was disclosed without prompting and according to the level of disclosure demonstrated. Disclosure is defined as including telling HMRC about the inaccuracy, giving help in quantifying any tax liability and allowing access to information.

Tax geared penalties are applied where adjustments are made which could give rise to additional tax payable; however, in this context, it is the amount of the adjustment itself which is used as the basis for the calculation of the penalty, and a penalty cannot be avoided solely as a result of, for example, having sufficient losses available to prevent additional tax becoming payable. Penalties can also be applied for a failure to provide information or documents under a formal notice.

To avoid a suggestion of carelessness, taxpayers should have set a reasonable transfer pricing policy and must in practice apply it. The policy must be capable of being documented to show that the taxpayer had grounds for considering its arrangements and prices to be in accordance with the arm’s length principle.

Separate penalties can be applied for failing to maintain adequate transfer pricing documentation. A penalty of up to £3,000 per tax return can potentially be applied.
**Advance Pricing Agreements (APA)**

Taxpayers can obtain certainty on the pricing arrangements for related party transactions by entering into an APA with HMRC. APAs typically last for five years with the possibility of a renewal at the end of this period. Although the UK has had an APA regime for many years, there has, until recently, been a significant increase in the number of APAs being sought by taxpayers. HMRC has increased the level of resource committed to APAs. Taxpayers do have to be accepted into the APA program and typically only the more complex and high value transactions are considered suitable. There is a requirement to include a Diverted Profits Analysis with an APA application. This has increased the time it takes to agree an APA.

**Thin Capitalisation**

The UK thin capitalisation legislation is incorporated within the transfer pricing legislation. It includes provisions that cover loans made to a UK company by a related party, or where the UK company has been able to borrow more than an arm’s length amount from a third party on the strength of a related party guarantee.

The measure for determining whether the amount of the loan or the interest rate is excessive is the arm’s length principle i.e. whether a third party would have loaned the UK company that amount of money or at that interest rate.

There are no formal safe harbour ratios, such as debt to equity or acceptable interest cover (profit before interest and tax to total interest payable) included within the legislation. Each case is examined individually and the suitability of a particular metric as well as the acceptability of a specific ratio arising therefrom could well be influenced by the averages for the particular industry sector.

Deductibility of interest payments is another area that has been considered in detail by the OECD as part of the BEPS project. The recommendations arising signify a significant divergence from the current UK legislation and include reference to specific ratios. Legislation has been enacted to incorporate the recommendations into UK law with effect from 1 April 2017. This adds an additional layer of legislation but does not replace the existing thin capitalisation rules, which still need to be considered in all financing situations.

**Repatriation of profits and financing**

A UK company can repatriate profits to the home territory of its parent company in a number of ways, the most common being via dividend. The main impact is from withholding taxes and transfer pricing. In the case of a dividend, the UK does not impose a withholding tax charge. This is the case whether or not the parent company or individual shareholder is in a treaty country or otherwise.

The deductibility of costs for intra-group supplies, services and finance costs may be (usually depending on the size of the group) subject to the UK transfer pricing rules, in which case the company or UK establishment needs to be comfortable that an arm’s-length standard has been applied. A UK company also needs to be able to demonstrate that it is adequately capitalised to support a deduction for intra-group interest payable.

For accounting periods commencing after 1 January 2010 a ‘debt cap’ will apply. The debt cap limits the tax deduction to the extent that the UK company’s net finance expense exceeds the worldwide group’s gross external finance expense. The legislation is extremely complex and specialist advice should be sought.

**Anti-avoidance – General Anti-Abuse Rule (GAAR)**

The GAAR was introduced in 2013 in response to concerns about the number of artificial tax avoidance schemes over the previous decade. The stated intention of the Government was that the GAAR should act as a deterrent to taxpayers to encourage them not to enter into abusive tax planning arrangements, and to promoters not to promote such arrangements.

The GAAR has effect in relation to tax planning arrangements entered into on or after 17 July 2013. The GAAR applies to income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, annual tax on enveloped dwellings (ATED), stamp duty land tax (SDLT), national insurance contributions (from 13 March 2014), diverted profits tax (from 1 April 2015) and apprenticeship levy (from 15 September 2016).

If a taxpayer submits a return, claim or document to HMRC which includes arrangements which are later found to come within the scope of the GAAR, a penalty of up to 60% of the counteracted tax can be charged. This is in addition to any other penalties issued in accordance with existing penalty rules (e.g. late filing, error in a return). Total penalties will be restricted to 100% of the tax, or the maximum allowed under existing legislation if this is higher.
Patent box

**Background**

As part of the Government’s aim to encourage innovation in the UK a low effective 10% corporation tax rate applies to profits arising from patented technology from 1 April 2013. This has been phased in over four years from 2013 to 2017.

The relief applies to worldwide profits from patented inventions protected by UK Intellectual Property Office (‘IPO’) or European Patent Office (‘EPO’) patents, or patents under the law of specified EEA States (currently Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Poland, Portugal, Romania, Slovakia and Sweden).

It is not just royalties and income from the sale of IP that qualifies – the profit (minus a routine profit and a deemed marketing royalty) from sales of products which incorporate a patented invention potentially qualifies.

A fairly broad range of revenues qualify for the patent box, including sales of products which include at least one patented invention, patent royalties and income from qualifying licensing, income from the sale of qualifying patents, qualifying patent infringement income and notional royalties for exploitation of qualifying process patents and supply of goods.

The UK company does not need to own the patent rights outright – an exclusive licence to exploit the patent is sufficient. The UK company need not have developed the invention or the product – it is sufficient for development to have been undertaken elsewhere in the group provided the UK has sufficient management activity in relation to the IP.

The existing ‘pre-nexus’ regime closed to new entrants from 30 June 2016. But, companies meeting the qualifying condition prior to 30 June 2016 have two years from the end of the accounting period straddling 30 June 2016 to formally elect into the pre-nexus regime. Claimants with pre-existing qualifying IP rights can continue to benefit from the pre-nexus regime until June 2021.

Following a review of all IP regimes, a modified UK IP regime is phased in from 1 July 2016. This modified regime is referred to as nexus. The new regime limits benefits of the patent box based on the proportion of relevant company research & development (R&D) undertaken as a proportion of overall R&D.
Eligibility
A trading company qualifies if it has ownership (either registered owner or via an exclusive licence) of patents (and some other forms of IP) and it has either performed significant qualifying development, or if another group company did the development then it must perform a significant amount of management activity in relation to the rights e.g. responsibility for ongoing decision making concerning further development and exploitation of the IP. Fulfilling these tests is critical to qualify for patent box and is not always straightforward.

Computation – calculating the benefit
There is a formula to calculate the qualifying profits designed to minimise the burden for businesses. The calculation of patent box can be summarised as follows, with the starting point for the calculation being taxable profits:

Stage 1 – profits and expenses must be allocated to patents or products incorporating patents apportioned in the ratio of patent income to total gross income. Alternatively a streaming election can be made to allocate expenses and profits on a just and reasonable basis.

Stage 2 – deduct a routine return which is computed as 10% of certain internal value adding costs within the patent stream. There is a prescribed list of costs which excludes R&D costs and brought in materials.

Stage 3 – a deduction is taken for a notional royalty in respect of marketing assets, which is determined based on arm’s length principles.

There are a number of other requirements that must be considered as part of a detailed calculation for example impacts from a shortfall in R&D expenditure.

Nexus
The nexus rules apply to new entrants to the patent box on or after 1 July 2016 and to all companies from 1 July 2021. As detailed above the calculation under nexus is similar to pre-nexus. The fundamental difference is an additional step in the patent box calculation. This limits the qualifying IP profits based on the proportion of R&D undertaken by the company, by applying ‘the R&D fraction’.

Stage 4 – The qualifying IP profits are multiplied by the R&D fraction to arrive at the relevant IP profits that qualify for the effective 10% rate of corporation tax.

Tracking and tracing of R&D expenditure is required to be able to calculate and apply the R&D fraction within claims.

The fraction should be calculated at the highest level of granularity possible, therefore applied on an IP asset, product, or product grouping basis as appropriate to the business.

Companies with patent box profits below a certain threshold (qualifying residual profit less than £1m or less than £3m divided by one plus the number of its associated companies elected into the patent box) can elect for a simplified ‘small claims treatment’ when calculating the notional marketing royalty. In addition, these small companies can calculate the R&D fraction for the claimant company as a whole.

Essentially nexus requires the claimant company itself to hold qualifying IP rights, undertake R&D activities (itself or via third party subcontracting) and have qualifying income.

There are many areas to think about to in respect of Patent Box including:

• IP ownership model – moving or retaining more patented technology in the UK.

• Licensing of patents – where beneficial ensuring licences to the UK meet the relevant exclusivity requirements to fulfil the ownership test.

• How to track and trace R&D expenditure.

• Considering patenting behaviours and strategy.

• Calculating the benefit – tracking patents to products, R&D expenditure to patents or products and extracting the other financial data required for the calculation.

• Business model – the way in which a group organises its activities between different group companies can have a significant impact on the availability of the Patent Box incentive.
Developing and managing Intellectual Property in the UK

The Government is committed to a modern industrial strategy as a critical part of its plan for post-Brexit Britain with a vision that long-term prosperity depends upon science, technology and innovation. Its aim is to create ‘the World’s most innovative economy’ taking what it feels are ambitious steps to reshape the research and innovation landscape. It is looking to build on world class strengths in research and to further improve the economic impact of our research investments. It is interesting then to consider how the UK tax rules encourage the creation and management of IP in the UK. Over recent years, a number of tax changes have been announced which should help put the UK on any global short-list of locations for developing and managing IP.

Measures include:
- enhanced tax deductions of 230% for Small and Medium sized Enterprises (‘SME’) on qualifying R&D expenditure;
- a new R&D expenditure credit (‘RDEC’) available for large companies, reducing the cost of R&D in the P&L (by virtue of putting the credit above the PBT line in the accounts);
- both SMEs and large companies can obtain a payable credit from HMRC in respect of qualifying R&D expenditure where they are loss making, subject to certain conditions;
- the Patent Box regime provides a 10% Corporate Tax rate on profits from products and services backed by patents (there are specific criteria for this including a limit on the benefit of the patent box based on the proportion of R&D undertaken in the UK); and
- a corporate tax deduction on the cost of most acquired IP, with the deduction typically being taken in line with accounting amortisation.

But how does this compare on an international scale. Whilst some other territories also offer IP tax regimes or lower rates of applicable taxes, the above UK IP tax regime is expected to be of relevance to groups meeting the following profiles:

1. Groups wanting to locate their R&D activities in a major market where there is easy access to universities and other research companies with proven IP development expertise; and
2. Companies whose operating models comprise the development of patentable products or processes as it will both now be able to claim a R&D Tax Credit in the UK, with any profits from sales generated by the underlying product being taxable at 10%.

Conclusion

Along with the work that the Intellectual Property Office does to create IP frameworks that promote growth and access to information, granting high quality IP rights, and helping businesses to enforce their rights around IP value, the UK offers a tax regime to support IP development and management. Groups considering either the creation of R&D centres or establishing international IP structures should give serious consideration to the UK.
Research and Development (R&D)

Relief for expenditure of a revenue nature on research and development that is related to a company’s trade and is undertaken by the company or on its behalf is wholly allowable as a tax deduction. In certain circumstances, either enhanced relief is available, or a credit is available which is offset against R&D costs in the company’s profit and loss account.

Expenditure of a capital nature on research and development related to a company’s trade is also wholly allowable as a tax deduction (i.e. 100% capital allowances are available). This covers capital expenditure on the provision of laboratories and research equipment; however, no allowance is available for expenditure on land. If any proceeds are received from the disposal of the capital assets, the receipt is taxed as a trading receipt.

R&D tax credits

Where an SME company has a ‘surrenderable loss’ it may claim an R&D tax credit. Generally, a surrenderable loss arises where the company incurs a trading loss.

The surrenderable loss is the lower of:

- the unrelieved trading loss; or
- 230% of the qualifying research and development expenditure.

The cash payment is 14.5% of the amount of losses surrendered (post 1 April 2014), limited to the lower of the excess trading loss and the enhanced amount of R&D expenditure (i.e. where available, losses may only be surrendered up to the equivalent of the 230% enhanced deduction). This equates to a cash repayment of up to 33.35% (being 230% at 14.5%) of the qualifying expenditure. Where the R&D tax credit is claimed, the trading loss carried forward is reduced by the amount of the surrendered loss.

R&D relief: small and medium-sized enterprises

Certain companies incurring research and development expenditure of a specific nature are entitled to claim R&D tax relief.

A standalone company (or the group where the UK company is part of a global group) must be a small or medium-sized enterprise, as defined by the EU. The company (broadly together with any company of which it owns 25% or more, or which has more than 25% interest in it, subject to some exceptions) should have:

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

The research and development may be undertaken by the company, or directly on its behalf. The R&D must be related to the company’s trade. Expenditure for which State Aid is received is excluded. R&D which is deemed to be funded or subcontracted to the company may only be claimed under the large companies scheme.

Detailed below are the types of expenditure which may be included within claims.

Enhanced R&D tax relief is given by increasing the deduction for qualifying research and development in a company’s corporation tax computation from a 100% deduction to 230% deduction for expenditure incurred on or after 1 April 2015.

R&D relief: large companies

Relief under the large company scheme is available to large companies (unless subcontracted to the claimant company by a UK SME) and SME companies where expenditure has been funded or subsidised (by grant income, customer funding or otherwise).

For expenditure incurred pre 1 April 2016, companies may claim an additional deduction in computing trading profits for the relevant period. The additional deduction is 30% of qualifying expenditure identified (giving a total tax deduction of 130% for each item of qualifying expenditure). From 1 April 2016 this enhanced deduction is no longer available and the Research & Development Expenditure Credit (RDEC) is the only large company relief available. This credit is different to the payable credit referred to above for SMEs.

Up until 31 March 2016 large companies (and relevant SMEs) could elect into RDEC. From 1 April 2016, RDEC became mandatory and replaced the enhanced deduction relief for large companies described above.

From 1 April 2015, under the RDEC scheme, companies may claim to receive a taxable credit payable at 11% (increasing to 12% from 1 January 2018). The credit is brought into account ‘above the line’ and reflected in the operating profits of the company, similar to a grant. The credit itself is taxable and so taking a 20% corporation tax rate into account, the net benefit to the company of the credit is 8.8% from 1 April 2015 (or 9.72% post 1 January 2018 @ 19% corporation tax rate).
The credit is monetised by being offset against the company’s corporation tax liability, such that the company has to physically hand over a smaller amount to HMRC when paying its corporation tax liability. Where the credit exceeds this liability there are seven steps to determine the cash amount (if any) payable to the company. This can be complex. Similarly, the accounting for the credit may not be straightforward.

**Qualifying expenditure**

The types of expenditure which may be included within claims are detailed in the table below:

<table>
<thead>
<tr>
<th>Spending</th>
<th>SME</th>
<th>Large Company/SMEs with Funded Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staffing costs (salaries, wages, employer’s NIC, employer’s pension contributions, any cash remuneration)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Expenditure on materials consumed or transformed in the process of undertaking qualifying activities (special rules exist to exclude certain expenditure on consumable materials incorporated into products that are subsequently sold), including software and heat, light and power</td>
<td>Yes (restricted to 65%, unless provided by a connected party)</td>
<td>Yes (restricted to 65%, unless provided by a connected party)</td>
</tr>
<tr>
<td>Payments in respect of qualifying activities subcontracted out to other parties</td>
<td>Yes (restricted to 65%, unless provided by a connected party)</td>
<td>No (unless activities are subcontracted to ‘qualifying bodies’, such as universities or charities, designated bodies, or entities/individuals not subject to income tax – in which case 100% may be claimable)</td>
</tr>
<tr>
<td>Payments to subjects of clinical trials</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Contributions to independent research</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Enterprise Investment Scheme (EIS) – UK tax incentive for investment in certain trading companies

Under the EIS, the UK offers tax reliefs to individuals who are UK taxpayers and subscribe for ordinary shares in independent unlisted qualifying trading companies, or companies which conduct research and development. It therefore assists such companies to raise finance. There is no requirement that the company is incorporated in the UK or trades in the UK – it must have a UK permanent establishment.

Income tax relief is given at a rate of 30% for amounts subscribed for qualifying shares – the maximum subscription permitted by an individual in a tax year is £1m for 2012/13 and onwards. There is no requirement that the subscriber is UK resident to obtain the income tax relief – they only need to have UK source income against which to set the relief. The maximum subscription which a company may receive from EIS investors or other source treated as EU State Aid in any 12 month period is £5m and it may not have gross assets of more than £15m before the share issue or more than £16m immediately after.

For individuals liable for UK capital gains tax on disposals of shares, there is the added incentive that if a profit arises on disposal of the shares after they have been held for the longer of 3 years from subscription or commencement of trade, the disposal will be free of capital gains tax, whereas there may be income tax or capital gains tax relief for a loss on disposal.

Most trades conducted by a company, or within a group of companies will qualify for EIS purposes; the legislation specifies those trades which will not qualify. The trades which do not qualify include some with an element of asset-backing (e.g. farming, hotels) – the tax relief is given because the investments are expected to be high risk.

There are many complex conditions to be met relating to the company, its trade, its shares and the individual investor, in order that the subscriber obtains and then retains the income tax relief.

Changes were made to the EIS rules in the second Finance Act of 2015. These include the introduction of a lifetime cap of £12m on the amount of the funding that most companies can raise under the EIS rules (and under certain other schemes such as funding from Venture Capital Trusts) and an ‘age limit’ requirement that the first EIS investment should generally be made within 7 years of the company starting to trade.

If the company is ‘knowledge intensive’, the lifetime cap increases to £20m and age limit increases to 10 years (broadly a company is knowledge intensive if it is focused on research and development) – certain conditions need to be met for the higher limits to be available. These limits will be expanded further in the Finance Bill 2017/18 such that; the EIS investment limit for individuals will be doubled to £2m provided any amount over £1m is invested in knowledge intensive companies, the annual investment limit will be increased from £5m to £10m and greater flexibility will be introduced over how the maximum age limit is applied.

As part of HM Treasury’s response to the Patient Capital Review, a new principles based test called the ‘risk-to-capital condition’ will be introduced in the Finance Bill 2017/18. This is to ensure that venture capital schemes are focused on support for companies with high growth potential.

This new measure will be aimed at excluding tax motivated investments, where the tax relief provides most of the return for the investor, with limited risk to the original investment (that is preserving an investor’s capital) and will apply to all investments made after 6 April 2018.

Broadly, it will mean taking a ‘reasonable’ view as to whether an investment has been structured to provide a low risk return for investors and will have two tests:

1. whether the company has objectives to grow and develop the business over the long term; and
2. whether there is a ‘significant risk’ that there could be a loss of capital i.e. where the amount of the loss could be greater than the net investment return (considered to be any income, capital or tax relief received by the investor).
The system of Value Added Tax (VAT) in the UK is essentially the same as that used in the rest of the EU. There remain, however, some significant and confusing differences of detail between different member states of the EU and after the UK leaves the EU there are expected to be further differences which develop over time. Please visit our site for more information.

VAT is charged on the supply of goods and services in the UK made by a taxable person in the course of furtherance of a business, unless the supplies are an exempt supply. A UK taxable person is anyone registered or liable to be registered for UK VAT.

VAT is effectively a tax on consumer expenditure so, in theory, the final burden of the tax should not fall on business activity. This objective is achieved by an arrangement known as the input/output system. When a business buys goods or services, it pays VAT to the supplier (input tax). When the business sells goods or services, whether to another business or to a final consumer, it is required to charge VAT (output tax) unless the supplies are specifically relieved from the VAT charge. If the business makes only taxable supplies, it must periodically total the input tax it incurs and deduct this from the output tax charged, paying the balance to HM Revenue and Customs. The result of this is that the final consumers bear the cost of VAT on the final price of the goods or services they purchase.

There are three rates of VAT on taxable supplies in the UK:

- standard rate 20%;
- zero rate; and
- a 5% reduced rate that applies to limited goods and services.

Unlike some EU member states, the UK has a fairly high VAT turnover registration limit (currently £85,000 from 1 April 2017). This means that a large number of small turnover businesses are not within the VAT system.

A taxable person is liable to register for VAT if their combined value of taxable supplies in the UK exceeded the registration limit in the preceding 12 months, or there are reasonable grounds for believing that the value of taxable supplies to be made in the next 30 days alone will exceed the registration limit.

A business may also de-register if the anticipated value of the taxable supplies in the next 12 months is less than the UK de-registration limit (currently £83,000).

The VAT registration and de-registration thresholds will not be increased or decreased in the next two years.

It is highly likely that a company seeking to set up in the UK will wish to register for VAT or be required to do so. The registration process requires the non-resident company to complete a registration form verifying the basis under which it will become a taxable person and provide evidence of its taxable business activities.

The VAT registration threshold for non-established businesses making taxable supplies in the UK is nil. Non-established businesses making taxable supplies in the UK are required to immediately register for UK VAT. The registration should normally be processed in three to six weeks.

The standard VAT reporting requirement for a company/branch following registration is to submit returns to HMRC every three months. If a business wishes to recover its input VAT more quickly, it may request permission to submit monthly VAT returns. There are other returns that will need to be completed if a UK based business trades with customers/suppliers located outside of the UK.

The distance selling threshold in respect of supplies from other member states is £70,000. This threshold applies per calendar year.

### VAT online registration and filing

Since April 2012 almost all VAT-registered businesses are required to submit their VAT returns online and pay any VAT due electronically.

### Betting and gaming

Machines gaming duty (MGD) was introduced on 1 February 2013 – the standard rate is 20% of net takings, the higher rate is 25%, the lower rate is 5%.

General betting duty, pool betting duty and remote gaming duty applies at a rate of 15% of net takings. These duties apply for transactions entered into with customers established in the UK (this was introduced from 1st December 2014).
Personal taxation

Income tax

UK income tax is chargeable on any UK source income received by an individual in the UK if they are UK resident. Foreign income is subject to UK tax where the individual is either:
• domiciled in the UK;
• not domiciled in the UK but the income is remitted to the UK; or
• not domiciled in the UK but the individual chooses to be taxed on the arising basis of taxation.

For the 2017/18 tax year, the starting rate of income tax is 20% for the first taxable slice of income up to £31,500, 40% between £31,501 and £150,000 and 45% over £150,000 (for England, Wales and Northern Ireland). A table is attached at Appendix C with more detail on UK personal tax rates.

Scottish taxation

A referendum on Scottish devolution was held on 11 September 1997, with 74% voting in favour of a Scottish Parliament to have powers to vary the basic rate of income tax. This led to the introduction by the UK government of the Scotland Bill, which received Royal Assent on 19 November 1998 and became the Scotland Act 1998.

Subsequent Scotland Acts of 2012 and 2016 gave additional powers to the Scottish Parliament, including the power to introduce a new Scottish rate of income tax (SRIT) applicable to Scottish residents, new borrowing powers for the Scottish Government, full control of stamp duty land tax and landfill tax from April 2015 and the power to introduce new taxes, subject to agreement of the UK Government.

In December 2017, the Scottish Finance Minister delivered the Scottish draft budget for 2018–19, which included a starter rate of 19p in the pound, a new tax band of 21p for those earning more than £24,000, while the higher rate of tax will increase from 40p to 41p and the top rate from 45p to 46p.

<table>
<thead>
<tr>
<th>Tax Year 2017–18</th>
<th>Tax Year 2018–19</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tax rate</strong></td>
<td><strong>Tax band name</strong></td>
</tr>
<tr>
<td>0%</td>
<td>Personal allowance</td>
</tr>
<tr>
<td>20%</td>
<td>Basic</td>
</tr>
<tr>
<td>40%</td>
<td>Higher</td>
</tr>
<tr>
<td>45%</td>
<td>Additional</td>
</tr>
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<td></td>
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</tbody>
</table>
Basis of taxation
For individuals the UK tax year runs from 6 April in one year and ends on 5 April in the following year.
The UK operates a system of independent taxation.
In determining an individual’s liability to UK tax it is first necessary to consider their residence and domicile status.

Residence
The statutory residence test (SRT) came into force from 6 April 2013.
The SRT is designed to provide straightforward tests that enable individuals to be clear on when they will become a UK resident and what actions are required for them to break UK residence.

Broadly the SRT looks at a person’s history of residence in the UK and level of connectivity with the UK.
There are three parts to the SRT.

Part A: time based conclusive tests that establish an individual as non resident in the UK
• resident in the UK in one of the last 3 tax years but present for less than 16 days in the current year; or
• not resident in the UK in the past three years and present in the UK for less than 46 days in the current year; or
• works full time abroad and present in the UK for less than 91 days in the current year, of which 30 days or less is spent working in the UK.

If a person meets one of these criteria then an individual is non resident.

Part B: conclusive tests to establish an individual is resident in the UK
• present in the UK for 183 days in a tax year; or
• has a home(s) in the UK at which present for 30 or more separate days in the year and for at least 91 continuous days (wholly or partly in the tax year) and has either no overseas home or an overseas home at which present for fewer than 30 days in the year; or
• carry out full-time work in the UK.

A person meeting these criteria will be treated as resident in the UK.

Part C: connection and day counting tests where individual’s residence position is not determined by Part A or B
There are separate tests for individuals arriving and leaving the UK which are a combination of connection tests and days actually spent in the UK. The more connecting factors you have the less time can be spent in the UK before you are considered UK tax resident.
i) Individuals arriving in the UK (individuals who were not resident in all of the previous three tax years)

The number of days an individual can spend in the UK without being resident in this case will again depend on their number of connecting factors. The relevant factors for someone coming to the UK are:
• has UK resident family;
• has substantive UK employment (or self employment) in the UK;
• has accessible accommodation in the UK; and
• spent 90 days or more in the UK in either of the last two tax years.

<table>
<thead>
<tr>
<th>Days spent in the UK</th>
<th>Impact of connection factors on residence status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 46 days</td>
<td>Always non resident</td>
</tr>
<tr>
<td>46-90 days</td>
<td>Resident if individual has 4 factors (otherwise non resident)</td>
</tr>
<tr>
<td>91-120 days</td>
<td>Resident if individual has 3 factors or more (otherwise non resident)</td>
</tr>
<tr>
<td>121-182 days</td>
<td>Resident if individual has 2 factors or more (otherwise non resident)</td>
</tr>
<tr>
<td>183 days or more</td>
<td>Always resident</td>
</tr>
</tbody>
</table>

ii) Individuals leaving the UK – (individual resident in at least one of the previous three tax years)

The number of days an individual can spend in the UK will again depend on their number of connecting factors. The relevant factors for someone leaving the UK are:
• the four factors set out above for ‘Arrivers’; plus
• spending more days in the UK than any other single country.

<table>
<thead>
<tr>
<th>Days spent in the UK</th>
<th>Impact of connection factors on residence status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 16 days</td>
<td>Always non resident</td>
</tr>
<tr>
<td>16-45 days</td>
<td>Resident if individual has 4 factors (otherwise non resident)</td>
</tr>
<tr>
<td>46-90 days</td>
<td>Resident if individual has 3 factors or more (otherwise non resident)</td>
</tr>
<tr>
<td>91-120 days</td>
<td>Resident if individual has 2 factors or more (otherwise non resident)</td>
</tr>
<tr>
<td>121-182 days</td>
<td>Resident if individual has 1 factor or more (otherwise non resident)</td>
</tr>
<tr>
<td>183 days or more</td>
<td>Always resident</td>
</tr>
</tbody>
</table>

Definitions

Clearly the definition of the terms used in the tests will be of paramount importance to the application. The full texts of the definitions are set out in the legislation but the following are some of the important points.

‘full-time working overseas’
• employment or self employment must be for at least 35 hours per week;
• it must last a full tax year with no significant break;
• not more than 30 working days in the UK; and
• spends no more than 90 days in the UK in the tax year.

‘working day’ – any day where three hours or more is worked in the UK.

‘only home’ – no statutory definition and the individual need not own the property; residential accommodation for sale or let is not counted provided individual lives in another residence.

‘family’ – an individual has family in the UK in a tax year if either:
• their spouse, civil partner or common law equivalent is resident in the UK in that tax year (unless separated); or
• their minor children are resident in the UK and the individual spends 61 days or more with them (including part days) in the UK.
Children in the UK attending school or college will not be resident in the UK provided they spend fewer than 21 days in the UK whilst not present at educational establishment and the child’s main home is not in the UK.

‘accommodation’ – a place to live in the UK (including a weekend or holiday home) and:

• it is available to be used for a continuous period of at least 91 days in the tax year (ignoring gaps of fewer than 16 days); and
• at least one night is spent in that place during the year (increased to 16 where the accommodation is the home of a close relative).

‘work ties’ – employed or self employed in the UK for 40 or more days in the UK.

Individuals should take advice on the application of the SRT as it will impact on their tax status.

Domicile
Domicile is a general law concept and is distinct from nationality and residence. In very broad terms, an individual is regarded as domiciled in the country they consider their ‘home country’ (often the country where they have their long term permanent home).

UK Tax Position
If an individual is UK resident but non-UK domiciled, they can be taxed in the UK either on the ‘remittance basis’ or on the ‘arising basis’.

An individual can decide each year (after the end of the relevant tax year) whether to be assessed on the remittance basis or the arising basis.

Arising basis
If no election is made for the remittance basis to apply, the individual will be assessed on their worldwide income and gains as they arise.

Remittance basis
If an individual elects to be taxed on the remittance basis, they will be subject to UK tax on:

• UK source income and the proceeds from gains on assets situated in the UK; and
• non-UK source income and the proceeds from gains on assets situated outside the UK only to the extent that the income or proceeds are remitted to or used in the UK.

The remittance rules are fairly complex, but in simple terms income or gains are remitted to the UK when the funds are transferred into the UK or used to pay for goods or services in the UK.

It is necessary to elect for the remittance basis to apply. This election must be made on an annual basis on the individual’s UK tax return.

From 6 April 2017 onwards, the remittance basis will not be available for non-UK domiciled taxpayers who have been UK resident in at least 15 of the previous 20 tax years, or to individuals who had a UK ‘domicile of origin’ and were born in the UK.

Remittance basis charge (RBC)
Where non-UK domiciled individuals have been resident in the UK for more than 7 out of the previous 9 tax years and they elect to be taxed on the remittance basis, they have to pay the RBC. The RBC is an annual charge of £30,000. This is payable in addition to the individual’s tax liability on UK source income and gains, and non-UK income and gains remitted to the UK.

From 6 April 2015, where individuals have been resident in the UK for more than 12 of the previous 14 tax years, the RBC will be £60,000 (from 6 April 2012 to 5 April 2015 the RBC was £50,000).

For the tax years ended 5 April 2016 and 5 April 2017, where individuals have been resident in the UK for more than 17 of the previous 20 tax years, the RBC will be £90,000. As mentioned above, for the tax years ending 5 April 2018 and later, the remittance basis is no longer available for people who have been resident in the UK for at least 15 of the previous 20 tax years, hence, this band of RBC is no longer relevant.

Since April 2008, the remittance basis only applies automatically to individuals who are not domiciled in the UK in respect of a tax year in which:

• the individual’s unremitted foreign income and gains are less than £2,000; and
• the individual either has no UK income or gains, or has no UK income and gains other than taxed investment income not exceeding £100, and does not remit any foreign income or gains to the UK, and either has been a UK resident for more than 6 out of the previous 9 years, or is under the age of 18 throughout the year.
**Meaning of remittance**

Non-UK income and gains are remitted to the UK if they are brought to, received in, or used in the UK by or for ‘relevant persons’.

Broadly, a relevant person is the individual, their spouse/civil partner/co-habitee, child/grandchild, a close company in which any of the aforementioned is a participator and trustees of a settlement or trust which was set up to benefit any of those persons.

The following are some examples of instances which may trigger a UK tax charge where overseas income or capital gains are remitted (or treated as being remitted) to the UK:

1. Transferring cash, bank balances, cheques, promissory notes or any other form of money to the UK.
2. Receiving payment in the UK.
3. Servicing or repaying, outside the UK, interest or capital on a UK loan.
4. Servicing or repaying outside the UK, foreign loans that have been used in the UK.
5. Using overseas credit cards in the UK, if the settlement is made using foreign income or gains.
6. Bringing assets purchased abroad to the UK.

**Actions before arriving in the UK**

If an individual wishes to claim the remittance basis of taxation there are a number of practical steps which should be taken before arrival in the UK. Specific advice should be taken to look at any income and gains which arises before an individual becomes UK resident.

**Business investment relief**

An exemption is available on remittances of foreign income or capital gains brought to the UK for the purpose of business or commercial investment. In order to benefit from this new relief for investing in the UK, certain conditions will need to be met before, during and after making the investment to ensure that a remittance of income or gains to the UK does not inadvertently lead to a tax charge. There are strict time limits for bringing funds to, and withdrawing funds from, the UK and some of the key conditions are set out below.

**Qualifying company**

The investment must be in an ‘eligible trading company’. An eligible trading company is a private limited company which broadly carries on a trade in the UK or is preparing to carry on a trade within two years.

**Timing**

The time limit for making a qualifying investment is within 45 days of remitting funds to the UK. A claim for relief must also be made on an individual’s tax return that year so that the remittance is not treated as taxable.

**Type of investment**

A qualifying investment comprises shares or securities issued to the investor or a loan made by the investor, either secured or unsecured, to the company. There is no limit on the amount of the investment.

**Continued qualification**

There is no time limit on the duration of the investment but the qualifying conditions must continue to be met to avoid triggering a crystallising event. Clearly a sale of the shares or repayment of the loan is a ‘potentially chargeable event’; however, there are some other situations that would cause the investment to cease to be a qualifying investment including:

- the company ceases to qualify, for example the company gains a full listing;
- an individual ceases to be a relevant person;
- value is received as a result of the investment which is not treated as income for tax purposes;
- trading activities do not commence within two years of making the investment.

If an investment ceases to be a qualifying investment, the individual will be treated as having remitted the income and/or gains to the UK, unless appropriate action is taken.
**Withdrawing from the investment**

The most straightforward way of withdrawing from an investment would be to sell the shares in the investee company or receive a repayment of loaned funds. Payments of interest or dividends should not result in a clawback of relief.

Action will need to be taken, however, following a sale or repayment in order to avoid creating a taxable remittance of income or gains. The funds will need to be taken outside the UK within 45 days or reinvested in another qualifying investment. Failure to do so will result in the funds being treated as a taxable remittance to the UK at the end of the 45 day period.

These actions will be equally applicable where an investment ceases to be a qualifying investment as a result of any of the situations mentioned above.

We recommend further guidance is sought.

**Capital Gains Tax (CGT)**

Individuals who are resident in the UK are liable to capital gains tax on:

- Worldwide gains – if domiciled in the UK, or non domiciled and subject to tax on the arising basis;
- Gains on UK situate assets, and gains on foreign assets only if remitted to the UK – if domiciled outside of the UK and they elect for the remittance basis to apply.

For the 2017/18 tax year, basic rate taxpayers are subject to tax on capital gains at 10% (or 18% for disposals of UK residential property and carried interest) and higher rate taxpayers at a rate of 20% (or 28% for disposals of UK residential property and carried interest).

From 6 April 2015, individuals who are not resident in the UK are also liable to capital gains tax on the disposal of residential property based in the UK. There are two methods for calculating the chargeable gain:

- Using the property’s value at 5 April 2015 as the base cost.
- Using the original acquisition cost, but pro-rating the amount of chargeable gain based on the time elapsed between 6 April 2015 and the date of disposal in comparison to the total ownership period.

**Entrepreneurs’ relief**

Entrepreneurs’ relief is available for individuals who make a material disposal of a business asset; namely:

- shares or securities of an individual's ‘personal’ company;
- the whole or part of a business, including partnership interests;
- assets used for the purpose of the business at the time the business ceased;
- trust business assets; or
- assets owned by individuals and used in a business in which the individual was a partner or by their ‘personal’ company.

- there are qualifying conditions attached to each category, for example in the case of the personal company the requirements are that for at least 12 months prior to the disposal:
  - the individual must hold at least 5% of the ordinary share capital and 5% of the voting rights exercisable by virtue of that holding; and
  - the company must be a trading company or holding company of a trading group; and
  - the individual must be an officer or employee of the company or a company within the group.

The rate of tax on gains qualifying for Entrepreneurs’ Relief is 10%. The maximum amount of gains which qualify for Entrepreneurs’ Relief during an individual's lifetime is £10million.

**UK personal allowance/(CGT) exemption**

Generally, individuals who are resident in the UK are entitled to an annual personal allowance (£11,500 for 2017/18) and a CGT exemption (£11,300 for 2017/18). This means that an individual can receive £11,500 of income and £11,300 of capital gains, tax free.

However, individuals who are resident in the UK but non-UK domiciled and elect for the remittance basis to apply are not entitled to the personal allowance or the capital gains tax exemption.
**UK inheritance tax (IHT)**

The UK does not impose wealth tax; however individuals may be subject to IHT if they die owning or transfer any assets located in the UK, irrespective of their residence or domicile.

A person’s IHT exposure depends on their domicile rather than residence position. Accordingly, UK domiciled individuals are subject to IHT on their worldwide assets, wherever they are situated.

A person who is non-UK domiciled (and not deemed domiciled), is only subject to UK IHT in respect of assets situated in the UK; any assets located outside the UK are outside the scope of UK IHT.

From 6 April 2017, UK IHT will also apply to UK residential properties even where they are held by non-UK companies (which previously would have been treated as a non-UK asset).

A person is regarded as deemed domiciled for IHT purposes, if they have been resident in the UK for more than 15 out of the past 20 years.

UK inheritance tax is due on an individual’s worldwide assets if they die whilst domiciled or deemed domiciled in the UK.

The amount that UK domiciliaries can pass to their non-domiciled spouse or civil partner is currently capped at £325,000. No IHT is charged on gifts transferred from one individual to another, provided that the person making the gift outlives the gift by seven years. IHT is charged at 40% on death, on relevant assets, subject to a £325,000 nil rate band (NRB).

Certain lifetime gifts, e.g. to a trust or company, will be subject to an immediate 20% charge to IHT if an individual is domiciled or deemed domiciled at the time of making the gift.

Individuals with direct descendants who have an estate (including a main residence) with total assets above the standard NRB will be eligible for an additional NRB when a residence is passed on death to a direct descendant. This will be:

- £100,000 from April 2017
- £125,000 from April 2018
- £150,000 from April 2019
- £175,000 from April 2020

It will then increase in line with inflation from April 2021 onwards. Any unused NRB will be able to be transferred to a surviving spouse or civil partner.

The additional NRB will also be available when a person downsizes or ceases to own a home on or after 8 July 2015 and assets of an equivalent value, up to the value of the additional NRB, are passed on death to direct descendants.

There will be a tapered withdrawal of the additional nil-rate band for estates with a net value of more than £2 million. This will be at a withdrawal rate of £1 for every £2 over this threshold.

**Capital gains tax extension**

The extension of the capital gains tax regime to apply capital gains tax to gains realised on the disposal of UK residential property held by non UK resident non-natural persons is to align the treatment to that of UK residents.

Capital gains tax will be charged at 28% for both UK and non UK resident companies on disposals of high value residential property (£2m+). There will be a tapering relief where the value of the property is just over £2m.

The gain is calculated using the 6 April 2013 value in place of the original base cost (or at 6 April 2015 where the property was valued between £1m and £2m at 1 April 2012, or at 6 April 2016 where the property was valued between £500k and £1m at 1 April 2012). Gains accruing prior to 6 April 2013/2015/2016 will be subject to tax under existing legislation.

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**Payroll taxes**

All UK employers must operate a Pay As You Earn (PAYE) system. Under PAYE, employers must deduct income tax and social security contributions from employees’ pay, provide them with a written pay statement, make payments to HM Revenue and Customs on a monthly or quarterly basis and keep adequate records.

From April 2013, all employers have been required to tell HM Revenue and Customs about payments to employees before or when they make those payments, online. This information may be shared with other Government departments such as The Department for Work and Pensions and the UK Borders Agency. It is the employer’s responsibility to ensure that the information is accurate and up to date. HM Revenue and Customs can impose penalties for late or inaccurate submissions.

Under the Pensions Act 2008, every employer in the UK must put certain staff into a pension scheme and contribute towards it. This is called ‘automatic enrolment’. To comply with most automatic enrolment schemes, employers will need a UK bank account.

From 6 April 2017:

- Some salary sacrifice schemes will no longer continue to offer the same savings on tax and National Insurance contributions. There are some exemptions to this – schemes related to pension savings (including pensions advice), childcare, cycle-to-work and ultra-low emission cars.
- Employers with a pay bill over £3 million each year are obliged to pay the apprenticeship levy. Employers will report and pay the levy to HMRC through the PAYE system.
- New gender pay gap regulations will mean that private and voluntary sector organisations employing 250 or more people as of 5 April 2017 must publish the details of their gender pay gap by 4 April 2018.

**Establishing a mobility strategy**

Where an organisation is re-locating to the UK to establish a new business or relocating a function, it is important to identify the key employees who may need to relocate or work in the UK. For example where a company becomes tax resident in the UK, it may need to hold its board meetings in the UK to demonstrate that the centre of management and control takes place in the UK. This will trigger overseas travel for the board directors and senior executives. As the company further expands its operations in the UK, other employees may need to increase their working time in the UK or formally relocate to the UK. The extent to which employees commute to the UK or who are required to second or relocate will depend on the role that the UK entity has within the group and the employees’ preferences. This increases the complexity of the movement of people – either with increased commuting to the UK or a need for secondments or transfer of staff to the UK.

Identifying the different groups of stakeholders who need to undertake business travel or relocate to the UK is important as differing personal tax obligations and corporate reporting or payroll requirements may arise for each population. For example the tax treatment of board directors is more complex given the fiduciary duties performed in the UK and their pattern of visits to the UK.

Early involvement of various stakeholder in business expansion plans (such as HR, tax, reward and mobility teams) and anticipating the associated resourcing needs will enable organisations to smoothly deploy people and proactively manage the operational and compliance risks associated with the movement of employees.

**Board meetings in the UK**

In today’s globalised world, UK business frequently draws upon global talent and experience to fulfil board director roles. For non UK tax resident directors of UK companies, both executive and non-executive, the tax and social security position can be complex and the cross-border aspects should be considered. Consideration also needs to be given to the tax treatment of expenses and benefits incurred e.g. where the company is meeting the cost of flights and accommodation in the UK. Some tax reliefs may be available where the individuals are domiciled outside of the UK or where the UK is considered a ‘temporary workplace’.

Companies will need to establish a compliant payroll and social security process for board directors from the outset of entering the UK.

Some companies may also be required to report in the UK on directors’ fees. The level of reporting and transparency has increased with the introduction of revised remuneration disclosures under the Department for Business Innovation and Skills (BIS) and accountability for companies under the Senior Accounting Officer regime.
Broader mobility considerations

Apart from the Board of Directors’ meetings, in some circumstances other personnel may also be required to be present in the UK for work or to participate in various management meetings held in the UK.

The timing, frequency and the length of stay of employees entering the UK is also critical to achieving a company’s strategy in establishing its presence in the UK and the role of the UK in the wider group. It is important to engage the individual stakeholders which the business needs to work in the UK as there may be personal circumstances which may impact the timing of individuals being able to relocate e.g. children may be in school which may delay moving to the UK. In addition, ensuring that individuals understand the UK tax personal tax regime, are rewarded appropriately as well as receive support in relocating to the UK are also important criteria to ensure that the relocations occur smoothly and without disruption to the business. Below are some examples of other considerations:

- **Immigration:** It is important to review the immigration requirements and ensure that the right permits and immigration documents are in place. Some requirements may take longer to apply for or fulfil and so it is important to establish timings to ensure that key employees can be deployed to the UK in line with the corporate strategy.

- **Reward packages:** Considering the impact of the UK tax (and potentially social security) regime is important to determine how to structure reward and compensation packages for senior executives and employees. In addition the compensation package may differ where individuals are commuting to the UK as opposed to formally relocating e.g. on a secondment or transfer. Where the UK tax rate is higher than the individuals’ home country tax rate, companies may need to consider how to incentivise strategic employees to work in the UK to ensure that they are no worse off e.g. offering assignment allowances, benchmarking of pay, tax equalisation etc. Companies may also wish to estimate the tax costs of relocation so that the employees understand their individual global tax position and so that the business can accrue for the costs of relocating its people.

- **Understanding the availability of UK tax reliefs:** The UK has a number of tax reliefs to which mobile employees who are working in the UK may be entitled, such as detached duty relief, which provides deductions on accommodation, subsistence and home-to-work travel for secondments under two years, and overseas workdays relief, which gives an exemption on workdays performed outside of the UK (subject to certain conditions being met).

- **Reward and pension schemes:** The UK has complex rules regarding the taxation of equity compensation – non-UK based individuals may in some cases be taxed in the UK on UK workdays for equity compensation. Furthermore foreign pension schemes are likely to be subject to the UK pension rules. As of 6th April 2016, pension relief for high earners is restricted in the UK. Therefore the position for employees relocating to the UK should be reviewed in light of this to understand the consequences and whether any alternative compensation needs to be considered.

- **Costs of living:** Businesses need to consider the different types of employees moving as incentives for a senior executive to relocate compared to a manager might differ. A company may also wish to benchmark cost of living differentials and relocation packages to assess the right level of allowances or benefits to offer.

- **Relocation services:** Companies will need to appoint relocation providers to provide services in relocating their people. Relocating to a new country can be burdensome to employees and therefore ensuring that seamless support is provided will help employees remain focused on the business needs.

- **Mobility policy:** As companies begin to move larger populations of employees to the UK, it should consider developing a mobility framework that enables them to move the right people, into the right roles, at the right cost and in a fair and consistent way.

- **Payroll compliance:** Companies will need to register in the UK for PAYE purposes and operate payrolls in compliance with the UK ‘real-time’ information rules. More complex expat payrolls may be required where individuals are tax equalised (modified payroll). Interaction with the home country tax and payroll positions should also be considered, in particular where individuals have a complex working pattern and commute.

- **Short Term Business Visitors (STBVs) –** Where the company is UK headquartered, STBVs are a common issue and may increase the complexity of compliance. Companies need to track travel for business visitors to the UK to disclose to HMRC and processes need to be put in place to manage this. The position should also be reviewed to determine whether any individuals may trigger UK tax as a result of their duties in the UK.

- **Social Security:** The social security position should be reviewed where individuals are working cross-border. It may be possible in certain positions to retain an individual in their home country social security regime and the relevant applications would need to be made to the social security authorities.
Brexit and mobility

Although much remains unknown about the exact shape of the UK’s future relationship with the EU following Brexit, people considerations will rank highly among the practical implications of Brexit. In considering moving people to the UK to fulfil companies’ expansion strategy, companies should consider the impact of Brexit which may present more challenges from an immigration, social security and cost perspective.

For example, employees moving into the UK from the rest of the EU, the EEA or Switzerland on a temporary basis are often able to remain in their home country social security regime rather than them and their employer paying UK National Insurance contributions under the rules currently in force. These rules are dependent on an EU regulation and it is unclear whether the UK will continue to be subject to that regulation when it leaves the EU. If the EU regulation does not apply, the position of those employees will depend on the terms of any social security agreement that the UK might have with the employee’s home country. Some overseas revenue authorities will now only grant permission for employees to remain in their home country social security scheme where their assignment is due to end prior to the UK’s departure from the EU.

There are some notable exceptions. The Common Travel Area (CTA) is a special border-free zone comprising the UK, Ireland, the Channel Islands and the Isle of Man and facilitates the principle of free movement for British and Irish citizens between the UK, Ireland and the Islands.

The Ireland Act 1949 states that Ireland ‘is not a foreign country for the purposes of any law in force in any part of the United Kingdom’. The Irish Government also legislated in 1949 to ensure that British citizens in Ireland enjoy similar rights and privileges to those enjoyed by Irish citizens in the UK. As a result of these historic arrangements, the reciprocal rights for UK and Irish nationals include the right to enter and reside in each other’s state without being subject to a requirement to obtain permission. The UK and Irish Governments and the EU have agreed that this principle of freedom of movement could continue, post Brexit.

Please visit our site for information about possible impact of Brexit on your workforce planning.

Summary of considerations

Companies looking to expand its operations to the UK, or indeed any new territory, should consider their strategy for moving people to ensure the expansion is successful. To this end, they should plan ahead and consider:

• engaging right stakeholders from various parts of the business early on in the process;
• identifying the right talent for the expansion and incentivising them in the right way;
• aligning the company’s objectives with the individuals;
• understand the overall cost involved in moving the different profile of individuals – from board members, to senior executives and employees;
• understanding operational and compliance requirements for both the company and its employees.
Tax Transparency

The prevailing economic conditions of the last decade, including economic crises and significant budget deficits, have created increased demand for tax transparency. Consequently, the management of the UK tax system, as part of the globalised economy, and the contribution of large companies and High Net Worth individuals (HNWIs) to the UK Treasury, has become the subject of significant debate. Tax has attracted increasing attention from politicians, the media and the public, with mounting public pressure on businesses and HNWIs to not only pay their ‘fair share’ but also to publicly disclose what they pay.

The UK government has been clear about its goal of increasing and encouraging tax transparency and indeed the trend for greater transparency is also reflected in the agendas and action plans of the Organisation for Economic Co-operation and Development (OECD), the G20, the European Union and the United Nations. Automatic exchange of financial information between tax authorities is now a reality as a result of The Foreign Account Tax Compliance Act in the US and the Common Reporting Standard and the transparency agenda continues to push forward. We are now moving from the exchange of information between global revenue authorities to a more public sharing of information through registers of beneficial ownership such as the People with Significant Control register in the UK with further proposals at EU level currently being considered. In the corporate sphere, public debate is becoming more focused on the tax policies of corporates and the tax they pay, with increasing demands for public Country by Country Reporting. These initiatives aimed at increasing transparency have been accompanied with increased civil and corporate deterrents in respect of those deemed to be evading or avoiding tax as well as those enabling others to do so.

The pace of change means that businesses, individuals and their advisors are having to adapt quickly to the increased regulation and the inherent tensions arising from the transparency agenda: the need to balance transparency with data protection, privacy, personal security and other considerations. Whilst acknowledging that the transparency agenda represents some challenges, it’s also important to recognise the opportunities it presents.

The tax transparency debate is likely to continue to evolve and lead to some further changes in terms of regulation and taxpayer behaviour; however, as well its goal of ensuring the correct amount of tax is paid by all relevant taxpayers, the UK has a twin goal of attracting mobile capital and remaining globally competitive. If the UK tax authorities encourage fair and proportionate tax enforcement and compliance through a transparent relationship with tax payers, they can enhance the UK’s investment climate, and have a favourable impact on the economy.

The UK has been an international leader in implementing automatic exchange of information agreements and other tax transparency measures. The aim of the measures is to increase the effectiveness of HMRC’s compliance activity as well as increasing the deterrent effect for those who attempt to evade UK tax by holding financial assets outside of the UK.

The Common Reporting Standard

The UK is signatory to the OECD’s Common Reporting Standard (CRS) and in order to comply with the CRS has introduced regulations creating due diligence and reporting obligations for UK financial institutions. The obligations require financial institutions to:

- identify accounts maintained for specified persons, that is, account holders who are tax resident in jurisdictions with which the UK has entered into an agreement to exchange information about a wide range of financial accounts and investments to help tackle tax evasion.
- collect and report information in a specified manner on specified persons to HM Revenue and Customs (HMRC).

Beneficial Ownership Registers

In June 2015 the EU introduced the Fourth Money Laundering Directive, with Member States being required to have implemented the Directive through national law by 26 June 2017. The Directive introduced numerous measures designed to increase transparency and identify beneficial owners of companies, partnerships and trusts. In order to comply with the 4th EU Money Laundering Directive, the UK has introduced The People with Significant Control Register and the Trust Register.

The People with Significant Control Register

The People with Significant Control (PSC) register includes information about the individuals who own or control companies including their name, month and year of birth, nationality and details of their interest in the company. From 30 June 2016, UK companies (except listed companies) and limited liability partnerships (LLPs) need to declare this information when issuing their annual confirmation statement to Companies House.

A person of significant control is someone that holds more than 25% of shares or voting rights in a company, has the right to appoint or remove the majority of the board of directors or otherwise exercises significant influence or control. This information will form a central public register of people with significant control, which is free to access.

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The Trust Register

The Trust Register is a central register held by HMRC and updated annually by trustees. Information to be provided includes:

- details of trust assets, including values and addresses where relevant;
- the identity of the settlor, trustees, protectors, beneficiaries or class of beneficiaries and any other persons exercising effective control over the trust. Identity information required will include:
  - name;
  - date of Birth;
  - National Insurance number if UK resident, unless they are a minor; and
  - for those with no National Insurance number, an address and passport or ID number.

The register will apply for any and all trusts that are UK resident or are non UK resident but have UK Source income or UK assets on which they are liable to UK tax.

The Requirement to Correct

Finance (No 2) Act 2017 introduces a ‘Requirement to Correct’ (RTC) obligation to compel those taxpayers with offshore interests who have yet to put their UK tax affairs in order to do so by September 2018, ahead of the widespread adoption of the Common Reporting Standard.

Failure to carry out the necessary corrections by 30 September 2018 will render the taxpayer liable to a new failure to correct (FTC) penalty which starts at 200% of the offshore potential lost revenue (PLR), and which may not be reduced below 100% of the tax. Additionally, the FTC penalty does not take into account the seriousness of the cause of the original error/omission, thus treating technical errors/cases where reasonable care was taken when a return was submitted in the same way as those where a person deliberately omitted income or gains. Therefore this is a very significant new penalty, reflecting HMRC’s tougher approach to offshore non-compliance.

Failure to Prevent Tax Evasion

On 27 April 2017 the Criminal Finances Act received Royal Assent. This legislation introduced two new corporate criminal offences of failure to prevent criminal facilitation of tax evasion and came into force on 30 September 2017.

The aim of the legislation is to require companies to put in place reasonable procedures to prevent those providing services for it or on its behalf from deliberately and dishonestly facilitating tax evasion, and this will be the case whether the tax evaded is owed in the UK or in a foreign country. The new offences do not extend the scope of tax evasion, but are designed to change who can be held to account for facilitating evasion making it easier to take action against the company concerned.

Failure to implement these procedures could result in companies facing criminal prosecution if their employees or related counterparties facilitate tax evasion along with unlimited fines and associated reputational damage. Companies should carry out a risk assessment to identify the specific risks of facilitation. This process will identify current controls in place, whether they are proportionate and where it is necessary to implement new ones.

HMRC’s guidance states that due diligence of staff, third parties and clients should be undertaken in proportion to the risks that they pose to the business. There should also be top level commitment within the organisation to prevent the facilitation of tax evasion. Communication (including training) to employees and third parties should also be given to ensure procedures are embedded and understood. The risk assessment and controls should be monitored and reviewed on an ongoing basis.
Publication of a UK Tax Strategy

Schedule 19 of the UK Finance Act 2016 introduced a requirement for large companies to publish a tax strategy in relation to UK taxation. The strategy should be published by the end of the first financial year commencing after 15th September 2016. It must be published on the internet, be publicly accessible and free of charge.

In order to comply with the legislation, the strategy should cover 4 areas:

• the approach of the UK group to risk management and governance arrangements in relation to UK taxation;
• the attitude of the group towards tax planning (so far as it affects UK taxation);
• the level of risk in relation to UK taxation that the group is prepared to accept; and
• the approach of the group towards its dealings with HRMC.

Senior Accounting Officer (SAO)

The SAO provisions were introduced in 2009 to ensure that tax became a priority at board level and to ensure businesses have robust tax accounting systems and governance. Qualifying companies include UK companies (under Companies Act 2006) which had in the previous accounting year, turnover greater than £200m or gross balance sheet assets greater than £2bn alone or in aggregate with other UK companies in the same group (over 50%).

The company must appoint an SAO and notify who this is to HMRC every year. A SAO must be a director or officer of the company who has overall responsibility for the financial accounting arrangements e.g. CFO rather than a Head of Tax.

The appointed SAO of a qualifying company must take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements i.e. to ensure tax is calculated and disclosed correctly in all material respects in the relevant tax return (the ‘main duty’). An annual certificate must be submitted, by the SAO, to HMRC stating whether or not there are appropriate tax accounting arrangements in place.

There are financial penalties for failure to comply as follows:

• £5,000 on the SAO for failing in main duty; and/or
• £5,000 on the SAO for failure to certify or providing a certificate with a careless or deliberate inaccuracy; and
• £5,000 on the company for failure to notify HMRC of the identity of the SAO.
4. How do I deal with my employees?

- Employment contracts
- Employee benefits
- Immigration
- Human rights and gender diversity
Employment contracts

UK law grants employees a range of protections that create obligations and potential risks for employers. Although these are generally less stringent than in other European countries, you will nonetheless need to be aware of them.

The obligations an employer owes its UK employees include:

• a general duty to provide a safe place of work, safe access and safe work systems, supported by related obligations, among other things, to take out employer’s liability insurance, consult with employees or their representatives over health and safety issues and provide staff with certain health and safety information;
• a requirement to provide a written statement of terms and conditions of employment to employees within two months of commencement of employment. A contract of employment can satisfy this obligation;
• an obligation not to discriminate against employees, including job applicants, on a range of grounds, including race, colour, nationality, ethnic origin, age, gender (this includes sexual harassment), pregnancy and maternity, marital or civil partnership status, religion or religious belief, sexual orientation, gender reassignment, disability, or part-time or fixed-term status;
• an obligation to pay employees at least the national minimum wage, which is a fixed hourly rate and is increased annually. At present this is £7.38 per hour for those 21 years old and over. Since April 2016 there has been a new rate for workers aged 25 and over, known as the National Living Wage, which is currently £7.83 per hour;
• various benefits in connection with giving birth, adoption and other family situations. (These include maternity absence for up to 12 months, part of which is paid, and a right to time off to deal with domestic emergencies). The weekly rate of statutory maternity, paternity and adoption pay is currently £140.98;
• a requirement to provide qualifying employees who have been absent from work for four or more consecutive days with statutory sick pay of £89.35 per week for up to 28 weeks. Employers may choose to provide their employees with a contractual right to additional sick pay;
• a requirement not to allow a worker to work beyond 48 hours per week (on average over, normally, a 17-week period) without express consent (there are additional limits on working time, including daily and weekly time off and specific limits related to younger workers and night workers);
• a duty to give each employee a minimum amount of 5.6 weeks' paid holiday each year;
• a requirement to observe limitations on the freedom of an employer to process personal data obtained about its employees and job applicants, including transferring it to third parties (these limitations are more strict in relation to personal data which is ‘sensitive’ and where the data may be transferred outside the EU to countries with lower levels of privacy protection); and
• various rights for employees to protect them in the event of termination of employment. These include a minimum notice entitlement that can be as long as 12 weeks and a right to a statutory payment on being made redundant with more than two years’ continuous service. Where service exceeds two years, a dismissed employee has a right to claim compensation for unfair dismissal and that claim will be successful unless the employer can show there was a permitted reason for the termination and that a fair and legal process was followed.

Union or other collective rights are less significant in the UK than in many other European countries. The law in the UK requires an employer to recognise a trade union or establish a national works council or committee in certain circumstances, but only where such an arrangement is specifically requested by a union or workers. As a result, many UK employers have no such arrangements in place.

Employers making collective redundancies will need to assess and manage a number of legal risks. It is worth noting that where there are between 20 and 99 employees affected, the collective redundancy consultation period is 30 days; however, where 100 or more employees are being made redundant the consultation period is 45 days. It is worth noting that employees whose fixed-term contracts are coming to an end will not count towards the total number of employees for the purposes of collective consultation obligations.
It is beneficial for an employer to establish a comprehensive contract of employment to be issued to each employee. This can include all of the terms and conditions of employment, covering the rights described above, and in addition protect the employer's business interests by placing obligations on the employee. Examples are specific requirements to keep information about the business and its customers confidential, provisions securing ownership of inventions and developments made in the course of employment, and covenants restricting certain competitive activities after employment ends, such as poaching customers or key staff.

Employers frequently supplement this contract with a formal staff handbook setting out company policies, including ones that support compliance with the issues referred to above, such as discrimination/harassment and data protection.

An employer is under an obligation to make a pension arrangement available to staff who meet certain eligibility criteria. In 2012 new employer duties came into force requiring all employers in the UK to automatically enrol eligible jobholders into a qualifying pension scheme. Auto enrolment has been introduced on a phased basis since 2012, with a deadline of February 2018 for all employers to comply with the auto enrolment obligations. From April 2018 the auto enrolment minimum contributions will be rising from 2% to 5%, at least 2% of which must be paid by the employer.

Additional benefits such as bonus, health insurance and car allowance are a matter of choice for the employer. The contract of employment is an important tool in setting out the terms of any benefits provided, most notably bonuses. Precise language in the contract can clarify the employee’s rights and may save the employer unexpected costs on termination of employment.
**Employee benefits**

The contract of employment will include terms relating to:

- salary;
- potential bonuses;
- benefits provided by the employer to employees.

In the UK it is also common to find some sort of equity incentive arrangement as part of a senior executive's reward package (and in some organisations employee share ownership is spread across the workforce in general) though this is usually made available outside the contract of employment. Providing certain benefits, rather than paying a higher salary, is an option to consider which may affect the tax treatment. Changes from 6 April 2017 mean this advantage is restricted to certain approved benefits, such as pensions and childcare vouchers. The employer is responsible for reporting relevant taxable benefits provided to an employee in an annual return (form P11D).

As previously mentioned, historically every employer of five or more people must offer a pension arrangement; however, the employer was not obliged to contribute to that arrangement. This changed in 2012, from when it was intended that all UK employers must automatically enrol all workers into a pension scheme and ensure minimum contributions are paid equal to a percentage of total earnings (the percentage starting at 2% and increasing to 8% by April 2019). This is called ‘auto-enrolment’ and has been phased in gradually starting with the largest employers in 2012. The current plan is that all employers must have complied with auto-enrolment by February 2018.

The provision of pension benefits has gone through a process of further significant changes with dramatic alterations in the tax treatment of pension contributions for ‘high-earners’. The challenge for an employer is how to maintain pension provision as an attractive part of the reward package or at least develop tax-efficient savings arrangements as an alternative.

The use of equity for long-term reward is not confined to listed companies and it can be particularly attractive to provide share-based incentives in listed and unlisted companies where those companies are eligible for share plans that have been created by the Government to encourage employee share participation. These Government-supported plans provide the opportunity to generate value for employees without income tax implications, if all of the qualifying conditions are met. Where these structures are used, there are capped limits on the level of awards, but these are normally straightforward to set up and administer if the relevant qualifying conditions are met (a key condition being that the company whose shares are used is an independent company i.e. not controlled by another company). There is no requirement for the parent company to be a UK company to qualify for these plans, and the UK employing company will normally get a corporation tax deduction for value delivered to employees. The Enterprise Management Incentive (EMI) plan, allows shares worth up to £250,000 to be awarded to employees via EMI options – this is limited to groups with gross assets of under £30m and fewer than 250 employees. Plans are available on an all-employee basis or discretionary basis, so the company can design arrangements to suit its own circumstances. Performance conditions and vesting periods are common, to ensure that the arrangements retain and motivate your employees. Where qualifying conditions are not met for these arrangements, the commercial benefits of providing employees with the chance to hold shares or share options may still make it worthwhile to extend equity arrangements to employees, though care must be taken to understand potentially complex tax rules.
The UK government operates an immigration system known as the ‘Points Based System’ (‘PBS’). The PBS is a five-tier system, with Tiers 1 and 2 the most relevant tiers for inward investors.

When establishing a business in the UK, there are a number of options under both the PBS and other immigration categories. The first employee of a company can elect to come to the UK as a Sole Representative of an Overseas Business, whereas individual investors may prefer to apply as either a Tier 1 (Investor) or Tier 1 (Entrepreneur), depending on their particular circumstances. For a company wishing to expand its presence in the UK, subsequent employees can also be sponsored to come into the country as Tier 2 migrants, subject to the company holding a valid sponsor licence. These options are discussed in more detail below.

**PBS routes**

**Tier 1**

The Tier 1 route is aimed at attracting high value migrants to invest in the UK. The two most popular routes in this category are the Tier 1 (Investor) and Tier 1 (Entrepreneur) routes. Applicants under either route will be granted an initial visa for 3 years and 4 months, following which the applicant may seek an extension for a further 2 years. After 5 years in the UK, applicants may apply for settlement in order to remain in the UK indefinitely.

The Tier 1 (Investor): The Tier 1 (Investor) route is designed for high net worth individuals making a substantial financial investment into the UK. As part of the requirements for Tier 1 (Investors), applicants are required to invest a minimum of £2,000,000 in the UK. UK Visas and Immigration (UKVI) stated that the prohibitions against using investment funds held in offshore custody or taking loans out using investments stated that the prohibitions against using investment funds have been waived for applicants who entered the UK on temporary assignment. For applications received after 13 December 2012, these prohibitions continue to apply and so investments against which the investor has taken loans or those held offshore will not qualify for the Tier 1 (Investor) category.

The Tier 1 (Entrepreneur): In contrast, the Tier 1 (Entrepreneur) route is directed at migrants wishing to establish, join or take over one or more UK businesses which create new jobs. A ‘business’ for this purpose can be any enterprise, whether this is carried out as a sole trader, through a partnership or as a UK-registered company. In addition, Tier 1 Entrepreneurs are also required to show a minimum of £200,000 available to either invest or establish a business in the UK.

UKVI introduced a genuine entrepreneur test as a way of testing the credibility of incoming applications. This allows the UKVI to request additional information, for example business plans and evidence of market research, in order to confirm the genuineness of the application. Applicants must also show that they continue to have access to the necessary minimum funds ahead of them being invested in a UK business rather than solely at the time of application. This is designed to tackle abuse of this route whilst protecting genuine entrepreneurs and ensuring that Britain remains open to business.

**Tier 2**

The Tier 2 route allows UK companies to sponsor migrants for the purpose of bringing them into the UK on assignment, for training or to fill a gap in the workforce that cannot be filled by a resident worker. The Government imposes a limit on the number of Tier 2 migrants coming into the UK each year; for 2017, the total cap for Tier 2 General applications is set at 20,700.

- Tier 2 (General): This category is for permanent transfers to the UK. The minimum salary requirement is set at £30,000. The Resident Labour Market Test is applicable for those earning less than £159,600. Applicants can apply for up to 5 years and can extend to take the total stay up to a maximum of 6 years. This route can lead to settlement after 5 years.

- Tier 2 (Intra Company Transfer): This category is for applicants travelling to the UK on temporary assignment. The minimum salary requirement is set at £41,500 and no Resident Labour Market Test is required. Applicants must have worked for their employer overseas for at least 12 months prior to making an application unless their salary is higher than £73,900. Applicants can apply for a maximum of 5 years however this route does not lead to settlement.

Any migrant applying for immigration permission under Tier 2 requires their role to be mapped to a SOC Code. This is to determine if the role is at the appropriate skill level as identified by the Home Office. The SOC code also specifies the occupation specific minimum salary threshold (which may exceed the threshold for the visa category).

Companies wishing to sponsor migrants must apply for a sponsor licence from the UKVI. Once licensed, the sponsor may issue Certificates of Sponsorship, provided that the organisation also complies with certain duties designed to ensure that immigration controls remain effective. These duties include:

- maintaining up-to-date, accurate and comprehensive records for each migrant worker, including up to date contact details, immigration status and entitlement to work;

- ensuring that checks are made on individuals with temporary permission to remain in the UK;
• notifying the UKVI of any changes to a migrant’s circumstances;
• maintaining robust HR policies to ensure compliance with the PBS, data protection and privacy principles; and
• co-operating with the UKVI to allow them to manage the Sponsorship System properly by allowing the UKVI’s staff access to any of the sponsor’s premises on demand, adhering to any action plan and seeking to minimise the risk of immigration abuse by complying with any good practice guidance notes that the UKVI may introduce.

Companies that fail to uphold these duties may face a range of penalties, including fines and removal from the Sponsorship Register, which prevents the issue of further Certificates of Sponsorship under Tier 2.

Certificates of Sponsorship can only be assigned to skilled workers who are able to do a specific skilled job of at least graduate level. In addition, the UK company must also fulfil the Resident Labour Market Test (RLMT) for Tier 2 (General) applications by providing evidence that no settled workers were available or suitable for the role. There are certain exceptions to this requirement, such as where the role is identified on the UKVI Shortage Occupation List, has a salary package of at least £159,600, or where the migrant falls within the Intra-Company Transfer route. In addition, specified PhD-level occupations jobs and jobs where individuals are paid more than £73,900 are now no longer required to be advertised in Jobcentre Plus; however, these positions will need to be advertised in at least two other media.

On 6 April 2017, the UK Government introduced a number of changes to the Tier 2 category:
• Introduction of the Immigration Skills Charge, a fee of £1,000 per year, per sponsored employee for the duration of the visa which applies to all employers sponsoring Tier 2 workers (so for example, an individual sponsored under a 5 year work permit would be subject to a £5,000 Immigration Skills Charge). This fee must be borne by the business and cannot be passed to the employee.
• Extension of the Immigration Health Surcharge (£200 per year for the length of the visa for each applicant and each dependant family member) to the Tier 2 (ICT) category.
• Closure of the Tier 2 ICT Short Term category and increase in the minimum salary requirement for Tier 2 ICT migrants to £41,500.
• Revisions have also been made to the minimum salary requirements for both the relevant Tier 2 sub-category and the specified salary for the role under the SOC system. These minimum salary thresholds are changing in line with both annual wage inflation and current wage data.

Non-PBS routes
Sole representative of an overseas company
The Sole Representative visa route is separate from the PBS and enables overseas companies to relocate a senior employee to the UK for the purpose of establishing a wholly-owned subsidiary or to register a UK establishment for the overseas parent company. The company must not already have a branch, subsidiary or other representative in the UK. In addition, the proposed UK establishment must be concerned with the same type of business activity as the overseas parent company.

In order to be a successful applicant, the senior employee must have previous experience in a senior role, work full time as a representative of the overseas parent company and have full authority to make operational decisions. The individual must also be competent in English language to a basic user standard and cannot be a majority shareholder of the overseas parent company.

Personal immigration categories
Depending on their specific circumstances, certain individuals may be eligible to apply for a visa in a personal immigration category. Examples of such categories includes;
• Spouse/Civil Partner/Unmarried Partner
• UK Ancestry
• British National by descent
• PBS Dependant

The rules relating to personal immigration categories are dependent on the specific category an individual is applying under. In most cases there will be limited restrictions on their ability to work in the UK.

Business visitors
It is possible for an individual to enter the UK on business for up to six months in any twelve month period, provided that they do not carry out any ‘productive’ work and restrict themselves to the permitted activities for Business Visitors. These include:
• attending meetings, including interviews that have been arranged before coming to the United Kingdom, or conferences;
• arranging deals or negotiating or signing trade agreements or contracts;
• undertaking fact-finding missions;
• conducting site visits; and
• speaking at ‘one-off’ conferences where this is not run as a commercial concern.
Business visitors should ensure they check whether it is necessary for them to apply for a Tier 2 visa for their visit. It is also crucial that tax, social security, immigration and employment law issues are considered for short-term business visitors. Business visitors face serious consequences if they make false representations about their proposed activities in the UK. In such circumstances, they could face sanctions preventing them from re-entering the UK for up to 10 years. Furthermore, if employees travel to the UK and undertake activities over and above those permitted under the business visitor rules, this could be classed as illegal employment.

Those who intend to live for extended periods in the UK through frequent or successive visits do not meet the requirements for entry as a visitor.

**Illegal employment**

Under UK immigration legislation, it is illegal to employ an individual who does not have the appropriate permission to work in the UK. If a company employs an individual illegally, it may be liable to a civil penalty of up to £20,000 for each illegal worker. A company can establish a statutory excuse if they undertake the appropriate documentary checks for each worker before they commence employment. For any worker with limited permission to work in the UK, further checks should be undertaken when their current permission expires.

If a company knowingly employs an individual without the right to work in the UK, they will be subject to a criminal penalty of an unlimited fine and/or imprisonment (of the Authorising Officer in the company) of up to 5 years. A company may not rely on the statutory excuse in this instance.

Government authorities in the UK, including immigration authorities, tax authorities, the police and customs agencies are interconnected and can easily monitor the movements of foreign nationals in the UK. UK businesses must therefore ensure consistency and compliance when employing foreign staff.

**Brexit**

Following the Government’s triggering of Article 50, commencing the process for the UK to formally exit the EU, negotiations are ongoing in regards to the implications for EEA nationals already in the UK, as well as what a future immigration system will be.

The Government has issued its initial proposals indicating that following Brexit, there will be a 2 year transitional period in which EEA nationals residing in the UK will be required to apply for either ‘settled’ or ‘temporary’ status depending upon their length of residence. Under these proposals, individuals who do not immediately qualify for ‘settled’ status during this transition phase will be able to convert into settled status once they meet the relevant length of residence conditions.

It is suggested that individuals entering the UK after an agreed cut off point will be subject to the immigration system applying to non-EEA nationals (any such cut off point has yet to be agreed). The final system will be dependent upon the outcome of negotiations.

The Government has also indicated that free movement of workers will end following Brexit and immigration controls will be applied. The Migration Advisory Committee has been commissioned to advise on the potential options for a new system post Brexit.

For more information please visit our [site](#).
Human rights and gender diversity

In May 2010, the UK government announced its intention to ensure that directors’ social and environmental duties are covered in company reporting. This has now resulted in revision to the Companies Act 2006 and the requirement for companies to prepare a strategic report as well making some amendments to the existing directors’ report. These requirements apply to companies whose financial reporting periods end on or after 30 September 2013.

The strategic report, amongst other key items, is required to contain, to the extent necessary for an understanding of the development, performance or position of the company’s business, information about:

a. environmental matters (including the impact of operations of the company on the environment);

b. the company’s employees (gender breakdown of directors, senior manager and employees); and

c. social, community and human rights issues.

In the directors’ report, there is a requirement to provide details of the company’s annual global greenhouse gas (GHG) emissions footprint for which they are responsible. The GHG emissions resulting from combustion of fuels, such as gas, oil, diesel (known as ‘scope 1, direct emissions’) and those resulting from using energy supplied by third parties, such as electricity (known as ‘scope 2, indirect emissions’). The company is required to report absolute numbers as well as normalised metrics (known as an ‘intensity ratio’), such as GHG emissions per tonne of production or per employee or per £ million turnover. Currently there is no obligation to have the emissions numbers assured.

Companies must comply with these regulations and make every reasonable effort to prepare all material data; however there may be certain circumstances where it may not be possible to prepare the required data in a timely manner. In such circumstances, the company must state what is omitted and explain why in the directors’ report. It is recommended that companies should set out the steps being taken to address any limitations.

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24 This is also a requirement of the EU Non-Financial Reporting Directive December 2006.

25 The reporting period should be for 12 months and should correspond to the company’s financial year. However they can be different and this must be clearly noted in the reporting.
5. What regulatory matters do I need to consider?

- The regulatory environment
- What are the accounting and audit requirements?
- Consumer credit
- Money Laundering Regulations 2017
- Financial Sanctions
- Data protection
- Bribery Act 2010
- EU and UK competition rules
- Financial Services
The regulatory environment

While various EU rules impact on trade in general, the UK attaches great importance to competitive markets. As a result:

- price controls are not imposed (other than on certain regulated sectors);
- there is a complete absence of exchange controls; and
- in general, no restrictions are imposed on foreign ownership or investment.

Businesses in the UK can be impacted by numerous regulations including but not limited to:

- health and safety (of employees, consumers and the general public);
- certain technical standards (e.g. to guarantee quality and inter-operability);
- product liability;
- anticorruption; and
- advertising and the environment.

It is recommended you take professional advice to ensure all appropriate regulations are identified and complied with.

Amongst other industry sectors, financial services and certain utilities (see below) are subject to additional regulations.

To ensure that competition works effectively for consumers – encouraging efficiency and innovation and driving down prices – legislation prohibits certain anti-competitive practices and imposes requirements to treat customers fairly. EU and UK competition law place restrictions on certain agreements, particularly those between competitors (for example price-fixing or market-sharing cartels). It also prohibits a firm exploiting its dominant position in a market through anti-competitive practices, such as predatory pricing or refusal to supply. The authorities can impose sanctions, and these can include:

- fines for the company involved, with the magnitude of fine being based on the turnover of the business;
- disqualification of directors; and
- custodial sentences for executives (but only where there has been a flagrant breach of the regulations, such as price fixing).

Because mergers and joint ventures can reduce the effectiveness of competition, they are subject to regulatory clearance under UK and EU competition law. Those that qualify for investigation by the European Commission (by reason of their size and cross-EU dimension) must be notified to the EC. There is a voluntary merger notification system for those transactions that qualify for UK investigation (where transaction size and market share tests apply); however, as the UK competition authorities can investigate the effects of a transaction on competition, whether or not it was notified to the authorities, it is usually recommended that companies notify the authorities in advance of a deal closing. The UK and EU authorities have the power to prohibit or unwind mergers, or to impose remedies (such as forced divestment of parts of the merged business).

The Competition and Markets Authority (CMA) has prime responsibility for ensuring that markets function effectively, consumers are treated fairly, and EU and UK competition law is enforced.

The UK also has a separate appeals body for competition matters called the Competition Appeal Tribunal.

In most sectors, the combination of technical regulation and competition law is seen as sufficient to ensure that markets function effectively. In certain sectors, however, economic/price regulation is applied because of known factors that inhibit the effectiveness of competition. These are primarily the utility sectors, where the suppliers are former nationalised entities that were privatised in the 1980s and 1990s.

Specialist regulators have been established in these sectors. Each has responsibility for enforcing competition law in its sector (effectively assuming the powers of the Competition and Markets Authority). They also carry out other functions, notably placing limits on price increases and imposing licence conditions on other aspects of the business, such as required coverage of the market and compulsory access to its infrastructure for other operators.

The main sectors subject to economic/price regulation are:

- energy (gas and electricity) – regulated by the Office of the Gas and Electricity Markets (Ofgem);
- water – regulated by the Water Services Regulation Authority (Ofwat);
- telecommunications, post and broadcasting – regulated by the Office of Communications (Ofcom);
- airports – regulated by the Civil Aviation Authority (CAA); and
- railways – regulated by The Office of Rail and Road (ORR).

From April 2013, the healthcare regulator, Monitor now part of NHS Improvement, has taken over responsibilities for economic regulation and competition within the National Health Service.
What are the accounting and audit requirements?

Accounting records

The Companies Act 2006 (‘the Act’) requires that a company keeps adequate accounting records. There is no requirement as to the form in which accounting records are kept, but they must be sufficient:

• to show and explain the company’s transactions;

• to disclose with reasonable accuracy, at any time, the company’s financial position; and

• to enable the directors to ensure that the annual accounts comply with the requirements of the Act.

These records must in particular detail the following:

• all sums of money received and expended, and the reason for the receipts or expenditure;

• the assets and liabilities.

If the company’s business involves dealing in goods, records must be kept of the following:

• all stock held (inventory) at the date to which the accounts have been drawn up, and all stocktaking records from which such statements have been prepared;

• all goods sold and purchased, including the identity of the buyers and sellers (except in the case of goods sold in ordinary retail trade).

The accounting records must be kept at the company’s registered office or at such other place as the directors think fit. The records may be kept outside the UK, but, if they are, certain accounts and returns must be sent to and retained in the UK. Normally, the records must be kept for at least six years from the end of the last company financial year. But they might need to be kept for longer if:

• they show a transaction that covers more than one of the company’s accounting periods;

• the company bought an asset that it expects to last more than six years;

• the company was late in submitting its tax return; or

• HMRC has started a compliance check into the company’s tax return.

Accounting reference period

The accounting reference period determines a company’s ‘financial year’, in respect of which accounts must be prepared. Each financial year ends on the last day of the accounting reference period and accounts are made up to that date (or to a date within seven days of that date).

On incorporation, a company chooses an ‘accounting reference date’ (i.e. the day and month on which an accounting reference period ends). If it fails to do so, then it is assigned an accounting reference date that is the last day of the month in which the anniversary of its incorporation falls. Its first accounting reference period begins on the date of incorporation and ends on the accounting reference date, which must be not less than 6 months, but not more than 18 months, after the company’s date of incorporation.

Subsequent accounting reference periods are successive periods of 12 months, unless the company elects to alter its accounting reference date.

Although a company may alter its accounting reference date, this option is subject to certain limitations. A company’s accounting reference period may not be more than 18 months.
**Accounts and reports**

A company must prepare individual (that is, non-consolidated) accounts for each financial year and is permitted to prepare them under either UK GAAP or IFRS (International Financial Reporting Standards as adopted by the European Union). Where a company elects to prepare its individual accounts under either accounting framework, it can adopt the other framework in a subsequent financial year but there are restrictions on multiple changes from IFRS to UK GAAP in a five year period.

UK GAAP accounts can be prepared under:
- FRS 101 if the company is a ‘qualifying entity’;
- FRS 102;
- FRS 102 with reduced disclosures if the company is a ‘qualifying entity’; or
- FRS 105 (for micro-entities).

A qualifying entity is a member of a group where the parent prepares publicly available consolidated accounts that are intended to give a true and fair view and that member is included in the consolidation.

Under FRS 101, the company applies the recognition and measurement rules of IFRS but is exempt from some of the IFRS disclosure requirements. A company must prepare individual accounts for each financial year, comprising:
- a statement of financial position as at the end of the period;
- a statement of comprehensive income for the period (may be presented as two statements: an income statement and statement of comprehensive income) (see below);
- a statement of changes in equity for the period (see below);
- a statement of cash flows for the period (qualifying entities are exempt from this requirement); and
- notes to the accounts.

An FRS 102 reporter is permitted to present ‘a statement of income and retained earnings’ instead of ‘a statement of comprehensive income’ and ‘a statement of changes in equity’ if the only changes to its equity during the periods presented arise from profit or loss, payment of dividends, correction of prior period material errors and changes in accounting policy.

Both accounting frameworks (UK GAAP and IFRS) require the presentation of comparative (that is, prior period) information.

A company that is a parent company must prepare group accounts consolidating its subsidiaries. An EU listed parent company must prepare its group accounts under IFRS; other companies may choose to prepare their group accounts under either UK GAAP or IFRS, but a UK GAAP reporter cannot prepare its consolidated accounts under FRS 101. Certain companies are exempt from the requirement to prepare group accounts. For example, companies that are themselves included in the group accounts of a larger group are exempt, subject to conditions. A UK parent company that prepares group accounts must ensure that its UK subsidiaries adopt the same accounting framework in their own accounts, but there are some exceptions to this general rule.

Some small companies (see below) are entitled to prepare ‘abridged’ individual accounts. The parent of a small group is not required to prepare consolidated accounts.

The minimum required content for abridged accounts is set out in law and in section 1A of FRS 102. The recognition and measurement requirement rules for adopters of Section 1A of FRS 102 are the same as for other FRS 102 adopters but there are fewer disclosure requirements.

For financial years beginning on or after 1 January 2016, a company qualifies as ‘small’ if, for the year in question and (except in the case of a new company) for the preceding financial year, two or more of the following conditions are satisfied:
- the amount of its turnover for the year is not more than £10.2m;
- its balance sheet total is not more than £5.1m; and
- the average number of persons employed by the company in the year (determined on a weekly basis) does not exceed 50.

However, a company will not be deemed to be a small company if it is:
- a public company;
- an authorised insurance company, a banking company, an e-money issuer, a MiFID investment firm or a UCITS management company;
- a company that carries on insurance market activity; or
- a member of an ineligible group (for example, a member of a group that includes a company whose securities are traded on a regulated market).

The accounts must be accompanied by an auditors’ report (for companies requiring an audit) a directors’ report and, except for small companies, a strategic report. There are additional reporting requirements for quoted companies (that is, those whose equity share capital is listed in the UK or another EEA State or is listed on the New York Stock Exchange or Nasdaq); these relate, for example, to corporate governance and directors’ remuneration.
**Audited accounts for UK companies**

At the present time, all UK businesses incorporated under the Companies Act require statutory audits unless they qualify for an audit exemption. Audit exemptions are available to certain dormant and small companies, and also to subsidiary companies which meet certain criteria.

**Auditors**

Where a company is required to have its accounts audited it must appoint an auditor. An auditor must be appointed for each financial year of the company. A company’s first auditors are usually appointed by the directors. For any financial year other than the first, the auditor will generally be appointed within 28 days of the circulation of a company’s accounts to its shareholders or, if the company is required to have an annual general meeting (‘AGM’), from the conclusion of the AGM at which their re-appointment is approved. An auditor’s term of office will usually run from the end of the 28 day period following circulation of the accounts until the end of the corresponding period in the following financial year or from the conclusion of the AGM to the start of the next AGM. If an auditor has not been re-appointed by the end of the next period for appointing auditors the current auditors will be deemed to be re-appointed except in certain circumstances.

**When do I need an audit?**

There is no specific requirement under tax law for the production of audited accounts; however, the revenue authorities normally insist on receiving audited accounts where these are required by the Companies Act or other relevant legislation.

The auditors are required to report to the members on the annual accounts (including group accounts, if prepared). The auditors’ report must state whether, in their opinion, the accounts have been properly prepared in accordance with the relevant financial reporting framework (e.g. IFRSs as adopted by the European Union), have been prepared in accordance with the Companies Act 2006 and whether they give a true and fair view.

Auditors must also report, based on the work undertaken in the course of the audit, whether the information given in the directors’ report and strategic report (if any) is consistent with the annual accounts and whether the directors’ report and strategic report are prepared in accordance with applicable legal requirements. Auditors are also required to state whether, in the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, they have identified material misstatements in the directors’ report and strategic report (if any), and if applicable give an indication of each of the misstatements.

In forming their opinion, auditors must also consider whether the following conditions have been satisfied:

- Have adequate accounting records been kept?
- Are the annual accounts in agreement with the accounting records?
- Have they received all information, explanations and returns necessary to form their opinion?

If they are not satisfied in any of these respects, the auditors must state that fact in their report. If the required disclosures for directors’ remuneration have not been made by the company, the auditors must, as far as they are able to do so, give that information in their report.

There are additional reporting requirements for auditors of listed entities, other public interest entities and entities that are required, and those that choose voluntarily, to report on how they have applied the UK Corporate Governance Code. These include the requirement to describe the ‘key audit matters’ of most significance to the audit, an explanation of how the auditors applied the concept of materiality, and an overview of the scope of the audit.
Foreign registered entities

Overseas companies with a presence in the UK, a 'UK Establishment', are required to register with the Registrar of Companies.

The type of accounts required for filing in the UK by the overseas company will depend on whether it is required to prepare, have audited and publicly disclose its accounts in the country of incorporation.

For companies that are required to publicly file accounts in their home territory, a copy of those accounts, together with any directors’ report and auditors’ report, must be filed with the UK Registrar.

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

A company incorporated outside of the EEA that is not required to disclose accounts publicly under the law in its country of incorporation must prepare accounts under one of the following accounting frameworks:

• section 396 of the Companies Act 2006;
• the law of the country of incorporation; or
• IFRS.

There is no requirement that the accounts be audited but the accounts must state whether an audit has been performed. If the accounts have been audited in accordance with generally accepted auditing standards, the accounts must state the name of the body that issued those standards.

If an overseas company is a parent company, the directors must prepare group accounts for the year instead of individual accounts, subject to certain exemptions.

Frequency of reporting

All companies and UK Establishments must report in respect of each accounting reference period; typically, this will be for 12 months but may be up to 18 months if the company has changed its accounting reference date. Listed companies must also prepare half-yearly reports if they do not publish quarterly reports.

Accounts signatories

A company’s annual report and accounts must be approved by the board of directors and signed on its behalf. The accounts must be signed by at least one director and the directors’ report must be signed by either a director or company secretary. The signature on the accounts must be on the company’s balance sheet. The date the directors approved the accounts should be stated, ideally next to the signature on the balance sheet.

Circulation of accounts

A copy of the accounts (both individual and consolidated, if any), together with the directors’ and auditors’ reports on those accounts, must be sent to the shareholders, debenture holders (if there are any) and any persons who are entitled to receive notice of general meetings (unless the company does not have their current address). This should happen by no later than the end of the period for delivering the accounts and reports or, if earlier, the date on which it actually delivers its accounts and reports for filing.

Companies are permitted to send the accounts and reports to the relevant persons electronically provided they have received the consent of those persons in advance. A company can either send the documents to an address notified to the company by the person or it can publish the documents on a website, having advised the person of the name of the website where the documents can be accessed.

A public company’s accounts must be laid before shareholders at a general meeting. This is usually done at the AGM but any general meeting can be used for this purpose.

Public availability of accounts

Private limited companies must file their accounts and reports at Companies House within nine months and public limited companies within six months of the accounting reference date. Accounts and reports are available for public inspection, on payment of a small fee, at Companies House.

Quoted companies must also publish their accounts and reports on a website maintained by the company, or on its behalf, and these must remain freely available on the website until the following year’s accounts and reports are published.

A small company need not file a profit and loss account or directors’ report.
The Consumer Credit Act 1974 (CCA) is the main piece of legislation regulating lending and credit related activities in the UK. This has been supplemented by the European Union Directive on Consumer Credit with effect from 1 February 2011.

The Directive is more limited in extent than the CCA but in implementing it the UK has broadened the scope of the Directive. For example, the CCA applies to dealings with individuals and sole traders and business partnerships of two or three individuals, whilst the Directive as issued would apply only to individuals acting in their personal capacity rather than their business capacity.

Consequently, if your proposed business will involve any one of the following:

• providing credit or otherwise being a creditor to an individual consumer, sole trader or a small partnership;
• hiring goods to an individual consumer, sole trader or a small partnership;
• carrying on activities that relate to credit and hire agreements, such as credit brokerage, debt-adjusting, debt-counselling or debt-collecting,

then it is likely that you will need to be authorised by the Financial Conduct Authority (FCA) to undertake consumer credit business.

You are not likely to be authorised by FCA if:

• you only deal with limited companies (or, in the case of credit reference agencies, you only provide information about limited companies);
• you are just accepting credit cards for payment or trading references issued by someone else (and you did not introduce the borrower to them);
• you are just allowing customers to pay their bills for goods and services in twelve or fewer instalments within a year beginning on the date of the arrangement and do not charge extra for paying by instalments.

The rules relating to consumer credit are very complex and you should obtain your own legal advice if you are uncertain as to whether your proposed business might need to be authorised. You should note that failure to comply with the CCA and FCA requirements will attract criminal liability and other sanctions.

FCA authorisation can take up to six months from submission of complete information to obtain authorisation. If your business comprises more than one company or partnership, then each entity that carries on consumer credit business will need to be authorised.

Before the FCA approves authorisation, it must be satisfied that you are a fit person to engage in the activities identified on the application. Once the FCA has approved your authorisation, you will be required to maintain the required standard of fitness and ensure that you continue to comply with the requirements of the FCA and CCA.

For general information on the regulation of financial services in the UK, please refer to the Financial Services section of this book.
Money Laundering Regulations 2017

The Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017 became effective in the UK in June 2017, and built upon the existing Money Laundering Regulations introduced in 2007. These regulations require certain businesses to register with their relevant supervisory authority, have systems in place to prevent money laundering, and to report suspicious transactions. The categories of business within the scope of the regulations include:

• credit institutions;
• financial institutions (including money service businesses);
• auditors, insolvency practitioners, external accountants, tax advisers and independent legal professionals;
• trust or company service providers;
• estate agents;
• high-value dealers (businesses that accept cash payments for goods worth €15,000 or more either in a single transaction or in instalments);
• gambling providers.

The regulations specify the need to establish whether a Business Relationship has taken place, which is defined as a business, professional or commercial relationship between a relevant person and a customer, which:

a. arises out of the business of the relevant person, and
b. is expected by the relevant person to have an element of duration.

These regulations generally do not apply to those engaging in financial activity on a very occasional basis, with a turnover of under £100,000; however, you should establish at an early stage whether your new business:

• will be subject to the regulations; and
• needs to be registered with a relevant supervisory authority.

It is also worth noting the key requirements of the Proceeds of Crime Act 2002:

• the requirement to report suspicious activity to the National Crime Agency; and
• to avoid ‘Tipping Off’
Financial Sanctions

In addition to the Money Laundering Regulations outlined above, the UK, and therefore those looking to conduct business in the UK, must also adhere to UN and EU sanctions. These generally apply to:

- any person in the UK;
- any UK citizen wherever located;
- any corporate entity operating in the UK; and
- any corporate entity incorporated or constituted under the law of any part of the UK.

The UK Sanctions Regime is broad, however the most frequently applied measures are:

- arms embargoes;
- bans on exporting equipment that might be used for internal repression;
- export controls;
- asset freezes and financial sanctions on designated individuals and corporate entities;
- travel bans on named individuals; and
- bans on imports of raw materials or goods from the sanctions target.

Those who are currently subject to financial sanctions or believed to be involved in terrorist activity are referred to as Designated Persons. In general terms, it is a criminal offence to:

- deal with funds or economic resources belonging to, owned, held or controlled by a Designated Person; and
- make funds available to, or for the benefit of, a Designated Person.
Currently, you must comply with the Data Protection Act 1998 (the ‘DPA’) in relation to your business’ collection and use of details relating to individuals, such as customer or employee records; however, a new General Data Protection Regulation (the ‘GDPR’) has been promulgated by the EU and will come into force in 2018. Owing to the need to prepare for the GDPR’s arrival, many, if not all, organisations are already looking to its terms as the standard for GDPR compliance. Therefore, we have focused on its provisions, rather than those of the current DPA.

The GDPR
The GDPR will automatically come into effect in all EU Member States on 25th May 2018, without the need for any national implementing laws. From that moment on ‘data controllers’ and ‘data processors’ will be exposed to the full effect of the law, which includes the risk of regulatory action (enforcement notices and fines) and the risk of compensation claims brought by individuals.

Who does it apply to?
The law applies to the ‘processing’ of ‘personal data’ by controllers and processors based in the EU; by ones based outside of the EU, if they are offering goods or services to people in the EU, or monitoring their behaviour in the EU; to personal data that are exported from the EU to other countries.

What is processing?
Processing means any operation that is performed on personal data, from the moment of its initial collection. The GDPR applies to processing that is conducted wholly or partly by automated means and to wholly manual data that is structured in indexed files.

What is personal data?
Information relating directly or indirectly to an identified or identifiable human being, which includes obvious identifiers (such as name, address); value judgments about people (as in HR records); online identifiers (such as IP addresses and browsing histories); and advanced medical information (genome, biometrics and DNA data). Publicly available information are all in scope (so gathering personal data from social media websites is regulated).

Key features of the GDPR
The GDPR gives the data subject an increased level of control over their information. It also aims to ensure that data controllers and processors are safe custodians of data through obligations to evidence compliance and put in place appropriate governance around data use (the ‘Accountability’ principle). The GDPR provides for enhanced supervision by increasing the powers of the regulators.

As was the case under the previous regime, controllers must ensure that they collect data fairly, lawfully and in a transparent manner. Data should be processed only upon a legal ground for doing so and these include, amongst other grounds, consent and the legitimate interests of a data controller (provided these are balanced with the interests of a data subject).

Areas of focus are:

- Data protection by design and default – Controllers must implement appropriate technical and organisational measures and procedures to ensure that processing safeguards the rights of the data subject by design. As part of this, organisations must obey the principles of only collecting data that is necessary for the processing, as well as retaining that data only for the period of time for which it is needed.

- Data subject rights – Data subjects will have enhanced rights to access, rectify, restrict, and erase their data. Some of the rights avail themselves to data subjects in prescribed scenarios, such as the right to object, and others are pervasive to any processing on any lawful basis. Other rights available to data subjects include the right to portability of data in certain scenarios so as to effect a seamless transition between one service provider and another.

- Increased data breach penalties – For serious offences, the GDPR allows for fines of up to EUR 20 million or 4% of total worldwide turnover (whichever is higher). A further ramification of a data breach may be the need to notify regulators and affected data subjects in certain situations. This has the potential to inflict reputational damage to a brand.

- Data protection officer – Under the GDPR, a data protection officer (DPO) is to be responsible for reducing risk, ensuring compliance and responding to requests from regulators and data subjects. A DPO is not mandatory unless an organisation is undertaking processing on a large scale of special categories of personal data and/or data related to criminal convictions, or is conducting systematic monitoring of data subjects on a large scale. Public Authorities must have a DPO.
A compliance journey

The GDPR contains a series of new rules that require entities to revisit and refresh their systems and operations for data protection. Collectively these new rules lay down a new ‘Compliance Journey’ that entities will have to follow to keep on the right side of the law. There can be little doubt that the GDPR presents a big issue for many entities and particularly those with large stores of personal data or business models based on the commercial exploitation of personal data. The compliance journey involves innumerable challenges and the task is complex.

Brexit & GDPR

The GDPR will come into force before the UK exits the EU and the government has signalled its intention to maintain parity with EU data protection law after Brexit. In August 2017, the government released the first draft of the Data Protection Bill; the piece of legislation which will aim to achieve the government’s parity objective.
Bribery Act 2010

The Bribery Act 2010 was introduced to update and enhance UK law on bribery, including foreign bribery. It is now among the strictest legislation internationally on bribery.

The Act imposes criminal liability on individuals for the offering, promising or giving of a bribe as well as the acceptance of a bribe. There is also a specific offence relevant to the bribery of a foreign public official.

In addition to imposing criminal liability on individuals, the Act contains a corporate offence relevant to the failure of a commercial organisation to prevent a bribe being paid by persons associated with it for the purposes of obtaining or retaining business or a business advantage. This is a strict liability offence meaning the prosecuting authority does not need to prove any intention or positive action on the part of the commercial organisation. In order to protect against criminal liability in relation to the corporate offence, commercial organisations need to be able to demonstrate that they have in place adequate procedures to prevent bribery.
Businesses must comply with European Commission and UK competition law which affects (amongst others) the areas described below.

**Agreements**

Certain agreements that have the effect of restricting or distorting competition within the EU are prohibited – unless they fall within certain automatic exclusions or exemptions. For example, price-fixing or market-sharing agreements between competitors that limit competition are in almost all cases prohibited.

A clause or entire agreement that is anti-competitive and does not fall within obvious exemptions will be void and unenforceable. This could threaten the entire agreement. In such circumstances, a party to an agreement may be able to make a claim for damages against the other party. Third parties affected by the agreement may also be able to claim damages. Finally, fines or other remedies could also be sought by national competition authorities or even by the European Commission.

There is no longer a process for clearing agreements with the competition authorities, so companies have to rely on their own assessment.

The above rules also apply to actions by associations of businesses or concerted practices – that is, all types of behaviours involving several parties, not just written agreements.

**Abuse of dominance**

The competition rules prohibit a firm with a dominant market position abusing that position, and in so doing distorting competition and affecting trade between EU states. For example, a firm with significant market power is restricted from pushing rivals out of the market with predatory pricing. The authorities can impose significant fines and other remedies on a firm found to be abusing its dominance.

**Merger control**

There are controls on some mergers and joint ventures. These depend on the scope of the merger and the expected impact on competition. Turnover thresholds and share of supply determine the mergers that qualify for notification to the competent authorities. Notification is compulsory if the European Commission’s thresholds are met. In the UK notification is voluntary, however, it is advisable if the merger is expected to have an impact on competition in the market. Notification is to the Competition and Markets Authority (CMA).

**State aid**

To maintain a level playing field for companies across Europe there are restrictions on the ability of Member States to subsidise companies with state funds on a selective basis. This selective State Aid could have the effect of distorting competition by favouring the aided company over unaided companies. The European Commission assesses State aid matters. Unless the aid is necessary in order to provide a Service of General Economic Interest, it will be necessary to demonstrate that the investment was made on commercial terms equivalent to those of a Market Economy Private Investor. If the aid is found to be non-compliant it will be required to be returned.
The Financial Services industry is strictly regulated in the UK by the Financial Services and Markets Act 2000 as amended (FSMA) and its subsidiary legislation. Under the FSMA, any person who carries on a regulated activity in the UK must be authorised in accordance with UK financial services legislation or benefit from an exemption. A business that is in breach of this requirement may be committing a criminal offence. It will also be unable to enforce its agreements and may have to return money and pay compensation to its customers.

It is important, therefore, to establish at an early stage whether your proposed business requires you to apply for authorisation to carry on regulated activities. If your business does need to be authorised, certain individuals related to the business, including, for example, the chief executive officer, and all directors (including executive directors), will also need to be approved by the firm’s financial services regulator(s).

It is also worth bearing in mind that the type of entity and business model you choose to carry on a Financial Services business in the UK may be subject to special rules. For example, if you are based in a non-EEA country, and your new business is established as a UK limited company, it may be able to exercise rights under EU Single Market Laws to ‘passport’ certain Financial Services activities into other EEA states. Passports rights will not be available if your UK business is set up as a branch. Passport rights may change when the UK leaves the EU, in which case your UK limited company may not have automatic rights to provide financial services to EU clients (and you may require an EU registered entity).

Before providing authorisation, the financial regulators will need to be satisfied that your business meets certain fundamental conditions, including, for example, that the business will have adequate resources. Once authorised, your business will need to comply with relevant UK financial services rules and requirements, including the regulatory capital requirements.

Examples of the types of business that are likely to require authorisation include:
- banks;
- investment firms;
- asset managers;
- insurance companies and insurance intermediaries; and
- mortgage lenders and intermediaries.

### Financial Services regulatory requirements

The Financial Service Act 2012 (the Act), passed by the UK Parliament in 2012 introduced a new UK financial services regulatory structure known as a ‘Twin Peaks’ structure, which separates the regulation and supervision of conduct issues from prudential issues. The Act renamed the UK Financial Services Authority the Financial Conduct Authority (FCA) and it has responsibility for regulating the conduct of financial services firms undertaking investment business and firms which provide consumer credit. It also regulates financial markets and oversees prudential requirements for smaller firms. The Act also created the Prudential Regulatory Authority (PRA), a subsidiary of the Bank of England, and this entity regulates prudential matters for deposit taking institutions, insurers and large financial institutions. The new regulators commenced operations on 1 April 2013.

If you intend to carry out regulated activity in the UK, you will currently fall under the supervision of the FCA. For the types of firms identified above, they will be regulated by both the FCA for conduct requirements and by the PRA for prudential requirements. In such circumstances, your company will have to comply with any FCA and PRA regulations that apply to the business to be carried out by your company. Those regulations are set out in the respective FCA and PRA Handbooks.

The globalisation of business means that regulators now operate on a more international basis; however, different regulators continue to take different approaches to managing relationships and adopt different supervisory techniques. It is vital, therefore, to understand the UK financial services regulatory approach and techniques and build strong relationships with your UK supervisors.

Every regulated firm in the UK must be adequately capitalised. The minimum level of capital required is determined by FCA or PRA’s prudential rules, depending on whether the firm is prudentially regulated by the FCA or the PRA.

In practice, the FCA and PRA require most firms to assess their exposure to risk and undertake an Independent Capital Adequacy Assessment Process (ICAAP). After receiving the results of the ICAAP, the regulator may adjust the minimum capital requirement proposed in the ICAAP to one that it deems appropriate and proportionate. The regulators are the final arbiters on this issue.
Following the financial crisis, the FSA implemented more stringent liquidity rules for banks and complex investment firms. These firms now have to maintain a buffer of highly liquid assets and carry out an internal assessment of the adequacy of their liquid resources to meet their obligations in both business as usual and stressed conditions. All EU banks and many investment firms are required to comply with the Capital Requirements Directive IV, which has implemented the Basel III international capital standards.

UK financial services firms have a significant range of other UK and EU financial services regulation to comply with. This includes, but is not restricted to: MiFID II, EMIR, Solvency II, BRRD, PSD2 and AIFMD. This means firms sufficiently resourced compliance functions to help follow, interpret and implement the regulations.

**Financial services supervisory regime**

The FCA has a single strategic objective of ensuring that financial markets function well and three operational objectives:

- to secure an appropriate degree of protection for consumers;
- to protect and enhance the integrity of the UK financial system; and
- to promote effective competition in the interests of consumers in the markets for regulated financial services and services provided by recognised investment exchanges.

When discharging its general functions, such as making rules, the FCA must act so far as is reasonably possible in a way that is compatible with its strategic objective and advances its operational objectives. The FCA’s supervisory activities involve inspections of individual firms and thematic reviews conducted across the industry by its supervisory teams. The FCA operates separate prudential supervisory and conduct supervisory divisions.

The PRA’s general objective is to promote the safety and soundness of PRA-authorised persons, by avoiding adverse effects on financial stability and minimising adverse effects from the failure of such persons.

Under FSMA, the FCA have the authority to take enforcement action against regulated firms for breaches of the FSMA and their respective regulatory rules. A range of enforcement actions may be pursued. The regulatory bodies may, among other things, withdraw a firm’s authorisation, discipline firms and individuals, apply to the courts for injunctions and restitution orders, and bring prosecutions for various offences.

Financial services regulators place great emphasis on the importance of corporate governance, systems and controls. They focus in particular on the effectiveness of companies’ arrangements, the responsibility of senior management for oversight of their businesses and on the outcomes of a firm’s policies and practices. Specific senior manager appointments are registered with the FCA, where required, as ‘Approved Persons’ who need to uphold the integrity of the regulatory rules and can be personally held accountable by the regulators for their actions.

The recent change in UK regulatory philosophy from ‘principles based’ regulation to ‘outcomes-focused’ regulation has meant that it is no longer possible for companies to rely on prescriptive rules and the adequacy of systems and controls without reference to client outcomes. Instead, companies must demonstrate that they are achieving the correct outcomes regardless of the quality of the controls. Ultimately, responsibility for this falls to senior management. Not surprisingly, since the global financial crisis of 2008/9, there have been an increased number of regulatory enforcement cases against senior management relating to failed corporate governance, systems and controls or where client outcomes have simply been judged to be unacceptable.

Senior management must ensure that their businesses have sound compliance risk management frameworks. These should be flexible enough to allow business growth and changes in regulation, and be proportionate to the nature, scale and complexity of those businesses. Compliance risk management frameworks should meet certain regulatory monitoring requirements e.g. in relation to a firm’s major exposures, liquidity and capital position.

Upon being authorised in the UK, companies are required to comply with certain ongoing reporting requirements, the frequency and nature of which are set out in the Supervision (SUP) section of the FCA and PRA Handbooks. These FCA and PRA reporting requirement requirements include transaction reporting, compliance reports and financial reports, and vary according to the nature of the company’s business. UK banks are also required to submit prudential (financial) reports to the Bank of England. It is essential to have systems in place to ensure that these reports are accurate, complete and submitted in a timely manner.
6. How do I close a UK business?

- Solvent winding up
- Insolvent winding up
**Solvent winding up**

In our experience, in order to successfully wind down the trade of a UK entity, four key phases as identified below should be followed to progress the company from the point at which the decision is taken to cease trading, through to elimination. The four key phases are as follows:

- identify the issues to be resolved, interdependencies between them and likely timescales for resolutions;
- prepare a wind down plan;
- implement the wind down plan; and
- closure.

This document deals with some of the technical and statutory issues when a client is looking to wind up a UK entity, specifically in the closure phase.

In the UK, there are two processes to eliminate a solvent UK corporate entity:

- members’ voluntary liquidation; and
- striking off application under Section 1003 of the Companies Act 2006.

**Members’ Voluntary Liquidation (MVL)**

An MVL is one of the processes available to bring the life of a company and LLP to an end, following which it is termed ‘dissolved’ and no longer exists as a legal entity.

Only solvent companies can enter into an MVL, all other types of liquidation relate to insolvent companies.

There are three elements to an MVL, being:

- realisation of assets;
- identification and settlement of valid creditor claims; and
- distribution of any surplus funds/assets to the company’s members.

An MVL provides a legal process for all remaining assets to be distributed by the liquidator to the members once creditor claims have been dealt with. By contrast, any assets remaining in the company at the time that it is struck-off become ‘bona vacantia’ (without an owner) and transfer to the Crown.

An MVL also provides a legal framework for the identification and resolution of creditor claims by allowing a liquidator to adjudicate on the validity and quantum of claims. Such claims would typically be identified either in the course of a pre-liquidation review or would be notified to the liquidator as a result of advertising the liquidation appointment and setting a deadline for the receipt of claims. This process brings finality to the potential exposure to claims and protects any distribution to shareholders that is subsequently made.

A creditor does have the right to appeal to court if they disagree with the liquidator’s rejection of a claim, but like most litigation, this is rare and usually a last resort.

With an MVL the liquidator provides a buffer between the company and its directors. The liquidator has the executive power to take or defend legal proceedings on behalf of the company and all actions/transactions undertaken during the liquidation process are taken by the liquidator, not the directors.

**Directors’ responsibilities and actions**

- Directors pass board resolutions to:
  - recommend to the member(s) that the company is placed into MVL;
  - authorise directors (or a majority of them) to prepare and swear a declaration of solvency.

- Directors (or a majority of them) prepare and swear a declaration of solvency (which includes a statement of the company’s assets and liabilities, prepared at the most recent convenient date). The declaration of solvency is governed by s89 Insolvency Act 1986. In swearing the declaration of solvency, the directors confirm they are of the opinion that the company can pay its debts in a period not exceeding 12 months. The penalties (imprisonment or a fine or both) apply if a director is found to have made the declaration without having reasonable grounds to do so.

- Directors circulate to the members proposed resolutions to place the company into liquidation.

- The declaration of solvency must be sworn within five weeks before the date of liquidation.

**Members’ responsibilities and actions**

To place a company into members’ voluntary liquidation the member(s) are required to pass a winding up resolution, which is a Special Resolution requiring members representing 75% of the total shareholdings that vote or 75% of those represented at the meeting (in person or by proxy).

- General meeting (option 1)
  - a general meeting of the members of the company is called to consider the proposed resolutions;
  - short notice of the meeting may be given if agreed by members representing 90% (95% for a public company) of the voting shares;
  - the general meeting is held and resolutions passed to commence liquidation and appoint liquidators.

- Written resolutions (option 2)
  - written resolutions passed by 75% of the members.
**MVL process**

- The liquidator files statutory papers with the registrar of companies and advertises the appointment of liquidators in the London/Edinburgh Gazette.
- The liquidator advertises in the London/Edinburgh Gazette for creditors to submit claims (also, in some cases, a national newspaper) (creditors are given a period of at least 21 days for claims to be submitted, most liquidators allow at least 30 days).
- The liquidator has wide ranging powers to realise assets and take and defend actions on behalf of the company.
- The liquidator should insure any relevant assets and can operate a liquidation bank account.
- Any creditor claims are examined and adjudicated by the liquidator and either rejected, or accepted (in full or in part).
- Any valid claims are settled.
- Any outstanding tax returns to the date of liquidation are submitted.
- Any tax returns required for the liquidation period are submitted.
- All tax liabilities are settled and clearance sought and obtained from HMRC.
- Surplus funds/assets are distributed to the members as a distribution of capital (distributed ‘in-specie’ if assets are non-cash).
- The liquidator can make more than one distribution to members depending upon the need to retain funds to meet potential claims, or claims that have yet to be agreed and settled.
- The liquidator issues a draft final account to members (England & Wales)/final report (Scottish and Northern Irish companies).
- Assuming no objections are raised by members (England & Wales), following the expiry of an eight week period (or earlier if the unanimous consent of members can be obtained), the liquidator files the final account with the Registrar of Companies; for Scottish & Northern Irish companies a final meeting of members is held subject to one month’s notice being given and then a Final Return in the Winding Up is filed at Companies House.
- The company is removed from the company register three months later (i.e. is deemed dissolved).

**Striking Off**

Strike-off is normally cheaper than MVL but involves higher risk for the directors and is therefore normally used for low value and/or risk companies or companies that have not recently traded.

The Registrar of Companies in the UK may, on application from the company, strike a company off the register, but before doing so it is necessary to satisfy each of the following:

- HM Revenue & Customs;
- Any third parties that may have an interest in, or any contract with, the company and obtain any consents;
- Any creditors;
- Distribute any assets currently held by the company; and
- Ensure that there are no other tax liabilities either here or abroad

Advice will need to be taken on the repayment of any issued share capital which is still represented by the company’s assets to avoid an unlawful reduction in share capital from being made.

To invoke the striking-off procedures, the directors are required to certify that the company has ceased to trade and they are satisfied that the company has no assets or liabilities. It is advisable to convene a general meeting (‘GM’) or circulate written resolutions to seek the shareholders’ approval.
**Striking-off procedure**

Under section 1003 of the Companies Act 2006 (the ‘Act’) certain legal and administrative procedures are also required to be followed.

The provisions apply to public and private companies and permit the directors to make an application on the prescribed form (DS01) for striking-off. The Registrar publishes a notice in the London Gazette allowing objections to be made within three months, after which period he may strike the company off and publish a notice of dissolution in the Gazette.

The person or persons making the application must distribute a copy to every ‘notifiable person’ which includes every member, employee, creditor, director and manager or trustee of the company pension fund. Application may not be made if the company has within the previous three months:

- changed its name;
- traded or otherwise carried on business;
- sold property or rights; or
- engaged in any other activity.

The company must also not already be subject to an agreement with its creditors, e.g. a company voluntary arrangement.

Directors must withdraw an application if a company ceases to be eligible for striking-off e.g. because it trades or carries on business, changes its name or disposes for value of any property or rights other than those which it needed to retain to make or proceed with the application. The prescribed form for this purpose is a DS02.

The provisions also allow for a company to be restored on application by any ‘notifiable person’ within six years and the liability of directors, shareholders and managing officers continues and may be enforced as if the company had not been dissolved.

A £10 fee must accompany each strike-off application.

It will be an offence:

- to apply when the company is ineligible;
- to provide false or misleading information in, or in support of, an application;
- not to copy the application to all relevant parties within seven days; and
- not to withdraw the application when the company becomes ineligible.

Offences will attract a potentially unlimited fine. If the directors deliberately conceal the application from interested parties, they will be liable not only to a fine but also up to seven years imprisonment. Anyone convicted of these offences may also be disqualified from being a director for up to 15 years.

After a company has been struck-off, the company ceases to exist. However, the liabilities, if any, of every director, managing director and shareholder of the company will continue and may be enforced as if the company had not been dissolved. Under the Act, a company may be restored to the register within six years of the publication of the notice in the London Gazette. The Court can make such orders as it deems necessary to place the company and all other persons in the same position as if the company had not been dissolved.

Please also note that once a company has been struck off and dissolved:

- the company would not be entitled to any income or its capital as all assets (including property) would become bona vacantia i.e. ‘ownerless goods’ which could pass to the Crown;
- the directors would be personally liable if they entered into any contracts in the name of the company after striking off;
- the directors should not hold themselves out as being directors of the company or seek to conduct business on behalf of the company; and
- the liability of directors and other officers of the company continues as if the company had not been dissolved. This does not necessarily mean that they will be liable for any debt of the company, but they will remain liable for breaches of their fiduciary duties occurring before the company was dissolved.
Insolvent winding up

Insolvency arises when individuals or businesses either have liabilities whose value exceeds the value of their assets or are unable to settle their debts as they fall due.

It is the directors’ responsibility to know whether or not the company is trading while insolvent and under the wrongful trading provisions they can be held legally and personally responsible for any losses to creditors that arise.

The primary legislation governing insolvency, the Insolvency Act 1986, was modified by the Enterprise Act 2002. These changes created a shift in insolvency culture, with a greater emphasis placed on company rescue and rehabilitation, fairness for all creditors, and making it tougher for offending directors. Separate sectors such as financial services have their own tailored insolvency procedures.

The procedures open to an insolvent company are:

- Administration;
- Company voluntary arrangement (CVA);
- Administrative receivership;
- Compulsory liquidation; and
- Creditors’ voluntary liquidation (CVL)

Administrations, CVAs and administrative receiverships all provide the potential for the rescue of the company or its business whereas liquidations do not. All of these procedures are led by insolvency practitioners.

There are also schemes of arrangement under the Companies Act which are popular alternatives to insolvency, but have some similar characteristics. They are often used to reduce debt levels in highly leveraged companies.

The decision to appoint receivers, liquidators, and administrators is the responsibility of the appropriate funding bodies, creditors, the courts, the directors or the company itself depending on the procedure.

Going into insolvency is a major step for any company, large or small, and the successful outcome of any insolvency process is highly dependent on making sure you seek the right advice.
7. What other factors impact my ‘doing business in the UK’?

- Bank account set-up
- Business insurances
- Acquiring property
- Exchange control
- Customs and international trade
- Excise duty
- Grants
- Intellectual property
- Sustainability
**Bank account set-up**

Generally, all new businesses will require a bank account in order to conduct their business in the UK. If you require a bank account in the UK, the major UK retail banks are likely to have branches close to your chosen site.

Before setting up a bank account for their new customers, UK banks undertake customer due diligence, which is part of the anti-money laundering regime and is a key requirement of the Money Laundering Regulations 2007 in the UK.

‘Know Your Client’ procedures, in other words, identification of customers and their source of funds, help to ensure that the banks know who they are dealing with, thereby protecting themselves by identifying the customer, verifying the identity of the customer, identifying the beneficial owner of the customer and obtaining information on the intended purpose and nature of the proposed bank account.

You should not therefore underestimate the time it takes to set up a business bank account and should begin liaising with the bank of your choice as soon as possible. This is particularly important if you intend to have direct payment arrangements set up to enable your employees to be paid directly by bank transfer from the outset of business.

**Business insurances**

There are a lot of different business insurance products available, but it is very important to consider that not every business will need all of them.

For example, a smaller home business or sole trader will not need the same cover as a bigger company that has multiple employees.

You should take some time to consider a few questions:

- What is the size of the business?
- Will your employees be working from home?
- Will your employees be travelling?
- Will you be responsible for the business’ premises, or the equipment in the office?
- Do you provide a service or a product?
- Will public access be required?
- What insurances will you provide to employees?
- Can you combine insurances to obtain a discount?

The following is not an exhaustive list but summarises popular insurance cover:

**General Liability Insurance**

Every business, even if home-based, should consider liability insurance, e.g. provides cover against claims made by members of the public who have been injured or had their property damaged by your business (where the business being claimed against has been found legally liable for the damage or injury caused). Public liability (product liability) provides both defense and damages if you, your employees or your products or services cause or are alleged to have caused bodily injury or property damage to a third part.

For example, if you are attending a trade event such as a summer fair or festival and a member of the public gets injured while visiting your stall, any compensation awarded as a result could be claimed from your business not necessarily the organisation that arranged the event.

**Property Insurance**

If you own a building or have business property, including office equipment, computers, inventory or tools you should consider purchasing a policy that will protect you if you have a fire, vandalism, theft, smoke damage etc. You may also want to consider business interruption/loss of earning insurance as part of the policy to protect your earnings if the business is unable to operate. Business interruption insurance is expensive but now becoming more common.
Commercial Auto Insurance
This protects a company's vehicles. You can protect vehicles that carry employees, products or equipment. With commercial auto insurance you can insure your work cars, SUVs, vans and trucks from damage and collisions. If you do not have company vehicles, but employees drive their own cars on company business you should have non-owned auto liability to protect the company in case the employee does not have insurance or has inadequate coverage.

Employers liability or Worker’s Compensation
This provides insurance to employees who are injured on the job. This type of insurance provides wage replacement and medical benefits to those who are injured while working. In exchange for these benefits, the employee gives up his rights to sue his employer for the incident. As a business owner, it is very important to have workers’ compensation insurance because it protects yourself and your company from legal complications – it is a requirement to have employers liability/ workers’ compensation if you have employees.

Professional Liability Insurance
The policy provides defense and damages for failure to or improperly rendering professional services. Your general liability policy does not provide this protection, so it is important to understand the difference. Professional liability insurance is applicable for any professional firm including lawyers, accountants, consultants, notaries, real estate agents, insurance agents etc. Having at least £5 million worth of employer’s liability insurance is a legal requirement for all employing businesses. Any employers without this cover can be fined up to £2,500 a day.

You can even be fined up to £1,000 if your certificate of insurance is not made readily available to your employees. So make sure to display your proof of employer’s liability clearly! Or make it readily accessible to every employee.

Directors and Officers Insurance
This type of insurance protects the directors and officers of a company against their actions that affect the profitability or operations of the company. If a director or officer of your company, as a direct result of their actions on the job, finds him or herself in a legal situation, this type of insurance can cover costs or damages arising as a result of a lawsuit.

Data Breach
If a business stores sensitive or non-public information about employees or clients on their computers, servers or in paper files they are responsible for protecting that information. If a breach occurs either electronically or from a paper file a data breach policy will provide protection against the loss.

Homeowner’s Insurance
This is one of the most important kinds of insurance you need. This type of insurance can protect against damage to the home and against damage to items inside the home. Additionally, this type of insurance may protect you from accidents that happen at home or may have occurred due to actions of your own. If an employee works from home you need to assess whether their insurance policy will be adequate to cover work matters.

Life Insurance and other employee-related insurances
Life insurance protects an individual against death. If you have life insurance, the insurer pays a certain amount of money to a beneficiary upon death. You pay a premium in exchange for the payment of benefits to the beneficiary. This type of insurance is very important because it allows for peace of mind.

Other types of employee benefits involving insurance include private medical insurance/critical illness in addition to salary. The most common are medical, disability, and life insurance.

Keyman insurance
This is a type of life insurance policy that is taken out by a business on the life of a key employee. It is also possible for the policy to pay out in the event of the key person being diagnosed with a specified critical illness such as cancer or heart attack.

Home business insurance
This insures business activities that take place at your home address (provided that you are allowed to do so under the terms of your rent agreement or mortgage). So if a customer or client trips and injures themselves while visiting you at your home, you will be covered.

Home business insurance will also cover your business contents such as computers, stock and equipment against damage and theft.

Many home workers assume that they will be covered for their business activities under their home insurance policy; however, the reality is that the majority of insurers will not cover your business if it is based at home because of the additional risks that present themselves in this context. While the actual task of working from home is not necessarily one of them, the introduction of stock, office equipment and potential injury to any visitors while at your home office will all put you at risk of your policy becoming invalid.

Travel insurance
This is insurance that is intended to cover medical expenses, trip cancellation, lost luggage, flight accident and other losses incurred while traveling, either internationally or domestically.
Acquiring property

Overview
Property can be owned by corporations and individuals. There are no significant legal differences in the way that corporations and individuals, non-UK or otherwise, may hold property in the UK; however, as a general rule no more than four persons, whether individuals or corporations, can be shown as the legal owners of property at the Land Registry.

Property can be owned either absolutely (freehold) or may be rented for a specified period from another person under a lease (leasehold).

The following information covers commercial property acquisitions in the UK where the property is to be occupied by you as part of your business.

When deciding which type of property best suits your business needs, you should consider:

• How quickly you need to occupy the property.
• How you will fund the acquisition along with any security deposit and rent requirements.
• What you intend to use the property for, and whether this will require specific equipment and/or facilities or permission from a local planning authority.
• Whether you wish to make changes and alterations to the property.
• Whether you require flexibility to dispose of the property.

Owning a freehold property means that you will be liable for all the costs of occupation including, but not limited to, repair, upkeep, decoration, insurance, utility costs, local rates and taxes. If you take on a leasehold interest the costs for items such as repair, decoration and insurance will most likely be payable by way of a service charge to the landlord. Items such as utility costs and local rates and taxes will be part of the liabilities under the terms of the lease.

Purchasing a freehold property usually means fewer restrictions on the use and occupation of the property than taking a lease. For example, if you purchased a freehold property you could make any alterations that you wished (within what is permitted under planning legislation) but if you took on a leasehold interest you would need to obtain landlord’s permission for the same works.

Both freehold and leasehold property can be subject to covenants and restrictions which bind the property and which can limit the use of the property. These can be enforced by third parties. It is therefore important that the title is carefully examined by a solicitor before you enter into a binding legal agreement in relation to purchasing a freehold or leasehold interest.

The owner of a freehold property, or a party who is entering into a lease, would also need to ensure that the anticipated use of the property complies with all statutory requirements, including the need for the use of the property to be authorised.

When looking for properties you should take advice from specialist advisers known as estate agents or surveyors to ensure that the terms and conditions of the transaction suggested are fair and commercial. The estate agent or surveyor will also help you negotiate your requirements for the purchase or lease of the property. As a general rule, until you sign and complete a formal contract/lease of the property, the offer to purchase or lease the property via an estate agent or surveyor is not legally binding on either party (although it should be noted that there are significant differences in the legal process where the property is situated in Scotland).

Freehold properties and long leases (over 99 years) which are free of restrictions usually offer good security for debt finance.

Leasehold property
Taking a lease of a property may involve the party in occupation (the tenant) being subject to a number of conditions on use, as the person granting the lease (the landlord) has a greater interest in preserving the state of the property and their income. On the purchase of a leasehold interest the tenant may sometimes be required to pay the landlord a sum of money (known as a premium) to acquire the lease.

The tenant would normally be required under the lease to pay rent to the landlord, as well as being liable for the same costs for the occupation of the premises as would be payable with a freehold (such as utilities and local taxes). It is common for the landlord to charge the tenant for the costs of providing services to the property, and for insuring it. Leases may require the consent of the landlord for the lease to be sold (known as an assignment) or for the property to be underlet. The consent of the landlord may also be required for alterations to the property, including works which are needed to fit the property out for your use.
Leases are a practical way to manage your time in the UK. Rental payments, as opposed to acquisition costs, may also assist with cash flow, although you should be aware that it is common in many leases for rent to be payable for a period of three months in advance. It may be that inducements – such as initial rent free periods, or contributions towards the costs you incur in fitting out a property – can be negotiated with the landlord.

For immediate occupation requirements, serviced offices are available and short term leases of up to a year are available on occasion.

Medium term leases between three and five years are available. They are often used for certain types of properties such as small offices and retail properties. Long term leases for a term up to 15 years or more are usual for larger premises such as small offices and retail properties. Long term leases for a term up to 15 years or more are usual for larger premises such as small offices and retail properties. Such leases usually provide for the landlord to pay a rent to the tenant which is reviewed every five years on an upwards only basis, so that they increase in line with any increase in rental values in the property market. This means that as you progress through the lease the rent paid (following each designated review) will reflect the current ‘market rent’.

You may wish to negotiate with the landlord to have an option in the lease to allow you to terminate the lease during the term to give you more flexibility. This is known as a break clause. You should obtain legal advice on the drafting of such clauses, as courts tend to enforce their terms strictly, so that tenants who do not fully comply with conditions in such clauses are not able to successfully terminate their lease. A landlord may also seek to include an option to enable it to end a lease early.

The acquisition process
The legal process of acquiring property in the UK can be complicated and it is strongly recommended you seek the advice of a specialist property lawyer before making any commitment. A typical transaction to acquire a freehold property or to take a lease would involve:

- negotiation of heads of terms with agents;
- commissioning surveys of the property;
- carrying out due diligence on the title;
- legal due diligence, involving searches of local authorities and other bodies, and enquiries of the seller/landlord;
- contract negotiation;
- exchange of contracts which usually involves the payment of a deposit (usually 10% of the purchase price); and
- completion and (where relevant) payment of SDLT and registration at the Land Registry.

PwC can assist with this process.

Before proceeding with any property acquisition you should be aware of the following:

- if you are buying or leasing a property, Stamp Duty Land Tax (SDLT) may be payable to HMRC;
- if you are purchasing a property or a lease of seven years or more, this will require registration at the Land Registry;
- national Non-Domestic Rates, also known as Business Rates, will also be payable every year to the local authority for the property. The charge is normally still payable by the occupier or the owner/leaseholder if the property is vacant. The amount payable can be determined from published information and some reliefs and exemptions may apply in specific circumstances;
- the purchase price, rent and other payments to a landlord may be subject to payment of VAT and you may need to consider if this is recoverable;
- environmental issues are an important consideration in property transactions, as you will need to know whether you have a potential liability for the cleanup of contaminated land and whether contamination is likely to have an impact on the value of your land. Before proceeding with the purchase or lease you should have appropriate checks carried out to ensure that the land is not at risk of being contaminated. As an occupier of the land you should ensure that you do not cause or permit pollution to occur;
- if your occupation of the premises will lead to high energy consumption, you may be impacted by legislation which may oblige you to participate in the CRC Energy Efficiency Scheme (‘CRC’). CRC stands for ‘Carbon Reduction Commitment’. It is recommended that you take legal advice on whether it will be applicable to your occupation of the property;
- before purchasing or occupying land you should ensure that the property has statutory consent (known as planning permission) for the use intended, or if not, that the use has continued for a sufficiently long time without challenge for it to be deemed as lawful. You should ensure that you are able to comply with the terms of the planning permission as failure to do so may mean the relevant authority takes action against you and can lead to conviction for a criminal offence. A party seeking planning permission for a more complex or substantial development may also be required to enter into additional agreements with the local authority. The obligations in such documents – including requirements to pay contributions...
to enable a development to proceed – would bind the property. If you are applying for planning permission there is a short period of time once it is granted for it to be appealed. Any changes required to a planning permission will need to be applied for separately;

- in a building that has recently been constructed, a tenant or purchaser will want the benefit of warranties from the parties who were involved in the design and construction of the building, to enable it to bring actions directly if there are any defects.

If you decide a lease is the best option for you, you should consider the following:

- a lease usually provides for the payment of rent to the landlord for the right to occupy the property. If the lease is for part of a building or an estate, it will usually provide for the tenant to make payments for the insurance of the building and services supplied to the property, such as cleaning and maintenance of the common areas. Payments for gas, water and electricity supplied to the property are usually paid directly to the utility companies providing the service;

- landlords sometimes require that a tenant pays a deposit or provides a guarantee, either from a parent company or bank, as protection against non-payment of rent and other expenses. The landlord will almost certainly demand a deposit or guarantee when the tenant is a new company or based overseas;

- when you wish to dispose of the property by assigning the lease to a new tenant (an ‘assignee’), it is standard practice for leases to oblige you to obtain the landlord’s consent before you do so. The landlord may be able to refuse his consent if the conditions for granting consent in the lease are not satisfied (one example would be if the assignee is not of sufficient financial standing). It is common in new leases for the landlord to require that an outgoing tenant guarantees the assignee’s performance of the obligations in the lease. Previous tenants can also remain liable for the whole of the term of certain ‘old’ leases, even if the lease changes hands (with a few exceptions, these are leases granted before 1 January 1996);

- a lease will usually require the tenant to maintain the property in a good condition and, at the end of the term, deliver the property back to the landlord in the same good condition. If this is not done, the landlord may ask the tenant to pay the costs of putting the property into a good condition. A tenant can also be required to remove any alterations that it has made during the term;

- with a few exceptions, a lease of commercial property would gain ‘security of tenure’, meaning that at the end of the term the tenant has the statutory right to a new lease, and the landlord can object to granting that lease only on limited grounds. To avoid this, the parties to the lease may decide to exclude security of tenure by following a process where a statutory notice is served by the landlord on the tenant prior to the parties entering into the lease, and the tenant responds by completing a declaration or statutory declaration in a set form. This procedure is commonly used for short leases, where the landlord needs the comfort that it can easily get the property back at the end of the term; however, if the parties agree to follow this procedure, a tenant may have to look for new premises at the end of the term;

- a lease will usually contain a provision to enable the landlord to end the lease (known as forfeiture) if the tenant does not pay its rent, breaches the terms of the lease or the tenant becomes insolvent. Forfeiture is subject to a statutory right for the tenant to apply to the court for denial of this remedy which would normally be granted if the breach in question is corrected; and

- it may be that the grant of a lease is conditional on certain events happening. For example, either the landlord or the tenant may need to carry out works, or planning permission or vacant possession of a property may need to be obtained. In such circumstances, it is common for the parties to enter into an agreement for lease, where they agree to enter into the lease once the conditions have been satisfied.

It is important that you seek advice on the tax impact of the various ways in which property can be owned. It should also be noted that the tax rules relating to UK residential property differ substantially from those relating to UK commercial property.

You should obtain advice on the consequences of all of the issues above – from legal and tax perspectives – before taking any action.
Exchange control

The UK does not have exchange control. There is complete freedom of movement in respect of all capital and current account transactions, not only with member states of the EU, but with all countries.

Customs and international trade

If your business involves the importation of goods into the UK from outside the EU, the goods will have to be declared for customs purposes and may be subject to customs duties and import VAT. It should be noted that the UK is currently part of the European Union which is a customs union. This means that the EU is treated as a single territory for customs purposes and the same rules and rates apply in each member state. This means that once goods are in ‘free circulation’ (i.e. all duties paid and import formalities completed) in one member state, they can move freely between all other member states without further payment of customs duty.

There are essentially three areas that determine the amount of duty payable on goods imported from outside the EU:

- **Classification** – the amount of duty payable depends on how the goods are classified for customs purposes, as the commodity code (also known as the tariff heading or HTS code) determines whether goods are subject to ad valorem duty rates or to specific duty rates based on volume. The commodity code is also used to determine whether a particular product may be eligible for preferential treatment or subject to additional measures. It is also used for trade statistics;

- **Valuation** – where goods are subject to ad valorem duty rates, EU customs valuation rules require the addition of certain cost elements, e.g. freight and insurance. Some elements may, in certain circumstances, be excluded. It should be noted that, where the parties are related, the customs authorities may require evidence that prices are at arm's length. Service agreements and agreements relating to intellectual property, particularly royalties, should also be reviewed from a customs perspective;

- **Origin** – it should be noted that the EU has many free trade agreements and preferential trade arrangements in place for a large number of countries, which means that eligible goods enter the EU at reduced or zero rates of duty. Conversely, certain goods from certain countries may be subject to trade defence measures, such as anti-dumping, anti-subsidy (also known as countervailing) or safeguard measures, which generally take the form of additional duty. Careful consideration must therefore be given to the customs implications of any sourcing or production decisions.

Depending on whether imported goods undergo further processing or are stored for any length of time, there is a range of customs reliefs, regimes and simplified procedures available to UK importers to delay or suspend the payment of customs duty and import VAT. The rules relating to these areas are complex and it is, therefore, important to seek advice before imports commence.

The UK is however expected to leave the EU anytime from the end of March 2019 onwards and this will result in the UK being required to set its own customs policy. Leaving the EU is likely to result in the loss of access to current EU free trade agreements and the introduction of a customs border between the UK and EU. The latter is expected to create a requirement to submit customs declarations and pay customs duty and import VAT on intra-EU trade. Whilst negotiations are ongoing, the UK government is committed to introducing a highly streamlined customs arrangement between the UK and the EU, with customs requirements that are as frictionless as possible, as well as entering into a new customs partnership with the EU to minimise the impact of any changes following the UK’s proposed departure from the EU. For more information please visit our sites about supply chains and trade matters.
**Excise duty**

If your business involves the manufacture, storage, movement or sale of alcohol, tobacco or oil products in the UK then the goods will be subject to excise duty. Excise duty becomes payable upon the importation or manufacture of an excise product.

The European Commission sets minimum rates for excise duty per product type and provides guidance on how excise duty is to be calculated; however, unlike customs duty, each EU Member State sets its own excise duty rates, providing they are set above this minimum level. Therefore, there is a wide range of excise duty rates applicable to alcohol, tobacco and oil products across the EU. In addition, each Member State will have its own procedures for the reporting and collection of excise duty. This is expected to minimise the impact of the UK leaving the EU on excise duty.

In the UK, excise duty rates on alcohol, tobacco and oil are high when compared to other indirect taxes. It is not unusual for excise duty to represent over half the final retail price and, when VAT is taken into account, the tax amount within the retail price can be as high as 70%. Due to the high rates of excise duty, products are highly regulated with registrations needed before importing, manufacturing, bottling, storing under duty suspension, transporting or selling goods.

If you wish to move duty paid excise goods or excise goods under duty suspension, strict criteria must be met to ensure the correct duty treatment of the movement. It is very easy to become non compliant with the many rules and regulations affecting excise goods and the assessments/penalties levied for compliance breaches can be significant. Advice should be sought before entering into any business involving excise products.

**Grants**

Various financial incentives and other forms of support can be obtained by businesses wishing to establish or develop operations in the UK. The availability and potential level of grant support is influenced by the following factors:

- geographical location within the UK;
- the number and quality of jobs created or safeguarded;
- the need for assistance; and
- the size of the company to be assisted.

Incentives are available for both manufacturing and service sector companies.

Some of these incentives are targeted specifically at SMEs (small and medium-sized enterprises). Broadly, an SME is a company that has:

- fewer than 250 employees; and
- not more than 25% of its share capital is owned by non-SMEs;

and either:

- a turnover of less than €50m; or
- a balance sheet total of less than €43m.

Further information on UK grant incentives has been provided at Appendix B.
**Horizon 2020 (H2020) is the latest European Framework Programme for research and innovation funding**

There is nearly €80 billion of grant funding available in this flagship initiative which runs from 2014 to 2020. The programme, backed by Europe’s leaders, has been designed to improve the competitiveness of the EU by driving economic growth and to maintain world class science by encouraging the public and private sectors to work together. There are three main categories or ‘pillars’ of activity:

- **Excellent Science** – Forward looking activities to advancing science and technology research.
- **Industrial Leadership** – Supporting breakthrough technologies to drive innovation.
- **Societal Challenges** – Collaboration to enhance the lives of citizens through a challenge-based approach.

By December 2014, the EU had already contributed €5.5 billion in grant funding and welcomed 38% new applicants from the first 100 calls for proposals. Collaborative grant competitions are designed to accelerate early research through the lab to commercialisation and out to market.

**Impact of H2020 projects**

- When independent organisations collaborate on research & innovation, technologies progress more effectively to deliver informed customer solutions.
- Cooperating across European research infrastructures improves global access and connectivity.
- Collaborating in H2020 projects raises the profile of companies, their expertise and facilities across new networks and partners.

**Grant support for all organisations**

All sizes of companies and research organisations are eligible to participate in H2020 grant competitions. Companies must be legal entities from a Member State of the EU or an associated. Collaborative projects must involve legal entities from at least 3 different EU Member States to form an eligible application. Depending on the type of project, grant intervention rates can vary from 70% to 100% of eligible costs and grant sizes start from €1m upwards.

**Grant support for SMEs**

As noted above, the majority of funding is available for collaborative research & innovation projects that span Europe; however, there is also a dedicated grant initiative designed to encourage SME entrants to H2020 (the EC has a target of 20% of funding reaching small and medium enterprises, including start-ups). The SME Instrument has two phases and has been streamlined to help increase response times, reduce administration and offer optional collaboration. Eligible proposals must be for innovations at Technology Readiness Level 6 (prototype has been demonstrated in a relevant environment).

- Phase 1 offers a €50k lump sum for feasibility work.
- Phase 2 offers up to €4m funding for R&I projects.
Intellectual property

Intellectual property is a valuable asset for most businesses and it is important that you take appropriate steps to ensure your company’s intellectual property is properly protected. It is important to understand that intellectual property rights (‘IPRs’) are territorial in nature and therefore, depending upon the nature of the particular IPR in question, may require active steps to ensure protection in any overseas jurisdiction where the IPR is intended to be used, as well as in the UK. You may, for example, wish to register trade marks to protect your company or group corporate name, trading style or product/service brands. Given IPRs can be among a company’s most valuable assets, effective protection of them and ensuring enforcement of your IPRs in the event of infringement by others is of crucial importance. Equally, where your company uses IPRs belonging to third parties, you may have obligations to ensure that any third party IPRs are protected and must take steps to prevent infringement that may arise as a result of your use of those IPRs.

The most common rights to consider are:

• patents;
• registered trade marks;
• rights in passing off (common law rights for protecting an unregistered trade mark);
• registered and unregistered designs;
• copyright and associated rights;
• database rights; and
• confidential information, trade secrets, know-how (strictly speaking, these are not IPRs but are often treated as such).

Some of these IPRs (such as patents, registered trade marks and registered designs) require registration in order for the right to arise. Other rights (such as those relating to copyright and unregistered design rights) arise automatically in the UK.

In many cases (but not all) IPRs developed by an employee will be owned by the employer. In situations where IPRs are created by someone outside the organisation (for example through the use of third party consultants), you should ensure that your IPRs are protected by way of a contract with that third party, as rights will not always vest automatically in the party that commissioned those IPRs to be created.

Some examples of when you should seek expert legal advice:

• to understand/identify the extent of your registered and unregistered IPR portfolio and secure appropriate protection for your entire IPR estate, whether by registration or otherwise, as and when necessary;
• if you are looking to enter into any IPR licensing arrangements, whether that involves you licensing out your IPR to third parties, or if you are to become a licensee or sub-licensee recipient of any third party’s IPR;
• to identify if you may be infringing the IPR of a third party, or if you need to understand what steps you must undertake to avoid infringing a third party’s IPR, and/or if you have received notification or a warning from a third party alleging that you have infringed (whether that is actually the case or not);
• if you believe a third party may be infringing your IPR, and/or believe that you have a right to bring a legal claim against that third party for infringement of your IPRs.

Given their territorial nature, the impact of Brexit on your IPRs will very much depend on the type of intellectual property in question, whether or not IPRs are being used in one or more EU member states, if products reliant upon IPRs are being manufactured or distributed in one or more EU member states (including whether the principle of ‘exhaustion’ of rights applies), whether or not your IPR has been, or will in future, require registration in a particular EU member state, or in all of them etc. The law in this area is complex, particularly where there is a cross-border element to IPR use, and it is important that you seek legal advice early to assist with your company’s IPR strategy, both now and in light of the changes that will impact your company’s IPR portfolio upon exit from the EU. Below is a non-extensive list of examples of the main types of IPR that a company is likely to hold followed by some examples of the potential impact that Brexit could have on your company’s IPR estate.
**Patents**

Patents are monopoly rights that protect technical inventions that meet certain requirements (see below). Patent registration and enforcement can be both complex and expensive. You can apply for a patent in the UK either through the UK Intellectual Property Office (UKIPO) or the European Patent Office (EPO). If you apply for a patent through the European Patent Office, this operates as a collection of national patents rights in the countries designated by the applicant.

For a patent to be valid an invention must be:

- novel (not ‘anticipated by the prior art’);
- inventive (not ‘obvious to a person skilled in the art’);
- capable of industrial application; and
- not excluded from patentability (for example schemes, rules or methods for performing mental acts, playing games or doing business as well as computer programs ‘as such’ are excluded); however, the law in this area is complex and it is possible to obtain patent protection for computer related inventions despite the exclusion provided certain criteria are met.

Even after a grant, a patent can be vulnerable – it may be revoked if its validity is challenged at any time by a third party.

A patent can be infringed in the UK by a third party:

- making, disposing of, offering to dispose of, using, importing or keeping a patented product or a product obtained directly by means of a patented process;
- using or offering for use in the UK a patented process (knowing that use without consent would be an infringement, or where it is obvious that this would be the case); and/or
- disposing of, offering to dispose of, importing or keeping any product obtained directly by means of a patented process or supplying or offering to supply in the UK the means for putting the invention into effect.

The acts of infringement do not necessarily require knowledge of the patent.

**Expected changes to the current law**

The UK has signed the Unified Patent Court Agreement (‘UPCA’), which will come into force once ratified by all participating states. The UPCA will create a Unified Patent Court (‘UPC’) with exclusive jurisdiction for litigation relating to European patents and European patents with unitary effect (‘Unitary Patents’). It was expected that the UPCA would come into force in December 2017 but at the time of writing negotiations are still ongoing.

As the EPO is not an EU body, the European Patent system will not be affected by Brexit. Once the UPCA is in force, in respect of member states that are under both systems, a patent owner can choose whether to apply for a European Patent with individual territorial protection in the designated states, or a Unitary Patent with unitary territorial protection in all the states participating in the UPCA.

In respect of any state that is not under both systems, a patent proprietor may choose to combine both schemes and request a European Patent in those member states not belonging to the UPCA and a Unitary Patent for those belonging to the UPCA. This will become important once the UK has exited the EU as the position is currently unclear as to whether the UK will be allowed to remain under the UPCA.

The EU Council has stated that the UPCA will mean that individuals and companies will benefit from a simplified validation procedure and fewer translation and renewal requirements. In addition, the EU Council has said that introduction of a UPC will benefit innovators by bringing down patent litigation costs and increasing legal certainty.

**Trade secrets**

Trade secrets law can be used to protect a company’s confidential business information, trade secrets, innovations, know-how and any other commercially sensitive information which a company might seek to safeguard. The law has not yet been harmonised across the EU and in the UK the level of protection afforded under trade secrets law is relatively high compared to the rest of Europe, which has meant that businesses operating in different member states have better protection in the UK than elsewhere.
Expected changes to the current law

The law on trade secrets is due to be harmonised and a new Trade Secrets Directive was brought into force in 2016 which all EU member states must implement by June 2018. As mentioned above, the level of protection in the UK is already high and therefore implementation of the Trade Secrets Directive will not impact the UK as much as some other EU member states as the effect of the Directive will be to bring others more into line with the UK position.

Trade marks and domain names

A company’s:

• trading name;
• product/service brands as well as associated strap lines;
• logos; and
• other aspects of get-up or brand image

can be protected as registered trade marks. A wide variety of marks can be registered: a word, design, shape, colour, smell or sound – so long as it can be described graphically. In practice, it is very difficult to register colour, smell or sound marks.

Whilst you may have rights in relation to an unregistered brand (see paragraph on passing off below) registration is still advisable, because it confers a statutory monopoly in the use of that trade mark in relation to the same or similar goods or services in respect of which it is registered. As a result, an action for infringement of a registered trade mark is usually simpler and cheaper than a passing off action.

Passing off

If you have not registered a mark, you may be able to enforce your common law rights through a ‘passing off’ action.

In order to succeed in a passing off action, you will need to prove:

• you have goodwill or a reputation in the name, logo or ‘get-up’ in question such that members of the public associate the mark with your goods and/or services;
• there has been a misrepresentation by a third party leading or likely to lead members of the public to believe that the third party’s goods/services and goods/services of your business are the same; and
• you have suffered or are likely to suffer damage (financial loss) as a result of the misrepresentation.

Use of new trade marks

Before launching a new branded product or service, or commencing use of a company or trading name, it is prudent to take steps to ensure, in so far as possible, that the trading names or logos you wish to use do not infringe anyone else’s trade mark or similar rights. It is advisable to carry out searches of the relevant registers in the territories in which you want to use a brand.

Registration

A trade mark can be registered in relation to specified goods and services in the following ways:

• as a UK registered trade mark at the UK Intellectual Property Office; or
• as a European Community trade mark at the Office of Harmonisation for the Internal Market (OHIM) that covers all EU countries; or
• under the Madrid Protocol, as an international registration (resulting in a series of national registrations rather than a unitary international registration).

A trade mark cannot be registered if it is not sufficiently distinctive or if it is merely descriptive of the goods or services to which it is being applied.

After an application is made to the relevant registry, it will be examined to ensure that is satisfies the above criteria and if successful, it will be advertised in an official journal. Following advertisement, third parties have a period of two months (for UK trade marks) or three months (for EUTMs) in which to oppose the trade mark application e.g. on the basis that it is too similar to an existing registration owned by a third party.

Once registered, a trade mark can be revoked if it remains unused for a continuous period of five years or if a third party successfully argues that it is invalid and should not have been granted.
**What constitutes an infringement?**

An infringement occurs when a third party without consent uses in the course of trade:

- an identical mark on identical goods or services to those registered;
- an identical mark on similar goods or services – and there is a likelihood that the public will be confused; or
- a similar mark on identical or similar goods and services to those registered – and there is a likelihood that the public will be confused.

Further, a trade mark that has a reputation in the UK is infringed if a third party, without due cause, uses an identical or similar mark in relation to any goods or services, even if dissimilar to those covered by the registered mark, and this takes advantage of, or is detrimental to, the character or repute of the registered trade mark.

Examples of acts of infringement include:

- using the mark on goods and packaging;
- offering goods for sale under the mark;
- supplying services under the mark;
- importing or exporting goods under the mark; and
- using the mark on business papers, a website or in advertising.

A person may use a competitor’s trade mark for the purpose of comparative advertising provided such use is ‘in accordance with honest practices in industrial or commercial matters’ and does not take unfair advantage of, and is not detrimental to, the distinctive character or repute of the registered trade mark.

**Domain names**

Effectively, a domain name serves to identify the source of a website and may therefore be capable of registration as a trade mark (if it meets the requisite criteria, see above). Domain names must be registered and this can be done via an accredited registrar or a registration company. Domain names are also capable of infringing other’s rights in their trade marks, whether registered or unregistered.

**Expected changes to the current law**

In respect of domain names, if a UK company has registered a `.eu` domain name, but does not have an EU registered office, principal place of business or place of establishment within the EU/EEA, once the UK exits the EU, it may be that UK companies are no longer permitted to hold `.eu` domain names as this being located in the EU is a requirement of being a `.eu` domain name holder.

In April 2015, the European Commission announced that a political agreement had been reached on its proposed package of reforms to trade mark law, encompassing the Trade Marks Directive, European Union Trade Mark Regulation and European Union Trade Mark Fees Regulation. The key objectives of these proposals were to make registration procedures consistent across member states, remove ambiguity in the legislation, clarify the scope and limitation of trade mark rights, incorporate European case law into the legislation and stop counterfeit goods being taken through the EU in transit.

The Trade Marks Directive came into force in early 2016. EU member states have three years from then to implement the Trade Marks Directive into national law, with a seven year period for implementation of administrative invalidation and revocation procedures.

In terms of Brexit, it is likely that Community Trade Marks will no longer have effect in the UK, after a certain period of transition. Once the transition period is over, trade mark owners who do not already own a UK-only trade mark will likely need to make a separate registration. It is not yet known if existing Community Trade Marks will, alternatively, be subject to a conversion process. At the time of writing it is also not known whether this would be automatic, or whether there will be associated costs.
Registered and unregistered designs

Designs are protected in the UK by a complex set of rights:

• European Community registered design (CRD);
• UK registered design (UKRD);
• European Community unregistered design; and
• UK unregistered design.

The key features of these are described below.

Registered designs (‘RDs’)
The two RDs are substantively similar, save as to geographical remit. The CRD is a unitary right that covers the whole of the EU while the UKRD covers only the UK.

Both types of RD protect a ‘design’ which means ‘the appearance of the whole or a part of a product resulting from the features, in particular, the lines, contours, colours, shape, texture or materials, of the product or its ornamentation’.

In addition, the design must:

• be new (i.e. not identical or substantially similar to another design publicly disclosed prior to the application date);
• have individual character (i.e. produce a different overall impression from other designs); and
• not be solely dictated by the technical function of the product.

RDs last for an initial period of five years. They can be renewed for successive periods of five years up to a maximum of 25 years.

Community unregistered design (‘CUD’)
Companies that create numerous new designs on a frequent basis, e.g. in the fashion industry, may consider the registration of each design to be inappropriate. In such instances, companies may wish to rely on the CUD.

To qualify for protection as a CUD, a design must meet the specifications set out above for an RD.

The advantage of the CUD is that it arises automatically – there is no process for registration. A CUD only provides short-term protection – the right lasts for three years from the date on which the design was first made available to the public. Furthermore, the CUD enables the owner of the right to prevent a third party from using the design only if such use results from copying.

UK unregistered designs (‘UKUDs’)
A UKUD arises automatically in respect of an ‘original design’ that comprises ‘any aspect of the shape or configuration (whether internal or external) of the whole or part of an article’. It does not subsist in:

• a method or principle of construction (which would be covered by patent law);
• the aspects of a design of an article that:
  – ‘enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function’ (the so-called ‘must fit’ exception); or
  – ‘are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part’ (the so-called ‘must match’ exception); or
  – surface decoration.

Essentially, the purpose of the right is to give relatively short-term, informal protection to technical designs.

UKUDs expire 15 years after the end of the calendar year in which:

• the design is first recorded in a design document; or
• an article is first made to the design, whichever is the sooner.

Alternatively, if an article made to the design is made available for sale or hire anywhere in the world within five years of that calendar year, the right will expire 10 years after the end of the calendar year in which such sale or hire first occurred.

Expected changes to the current law
As with registered Community trade marks (see above), the fact that a CRD covers the whole of the EU means that once the UK exits the EU, subject to any transition period, it will be necessary for CRD owners to obtain a UKRD. As with registered Community Trade Marks, it is not clear whether existing CRDs will be subject to a conversion process or for example how priority dates will be dealt with. At the time of writing it is also not known if conversion would be automatic, or whether there will be associated costs.
Copyright

Copyright prevents third parties from copying or otherwise exploiting a copyright work without the permission of the owner.

Copyright protects the following types of work provided that they are original and that basic qualifications for protection are met:

- original literary, dramatic, musical or artistic works (including computer programme);
- sound recordings, films or broadcast; and
- the typographical arrangements of published editions.

In the UK, copyright arises automatically on the creation of a work (subject to certain qualifications and requirements, e.g. a literary, dramatic or musical work must be recorded, in writing or otherwise) – registration of the right is not required.

Overseas companies that have copyright protection in their home countries are likely to find that their copyright is also recognised in the UK due to the fact that the UK, like many other countries, is a signatory to many international conventions relating to copyright, such as the Berne Convention.

In the UK, copyright for literary, dramatic, musical and artistic works generally lasts until the end of a period of 70 years from the end of the calendar year in which the author dies. A similar period of 70 years also applies for films. Copyright in sound recordings and broadcasts generally last until the end of a period of 50 years after the end of the year in which the recording or broadcast was first made.

Copyright is infringed by any person who without a licence from the copyright owner:

- copies the work, which includes copying all or any substantial part of the work, or reproducing it in any form or storing it electronically;
- issues copies, rents, lends, or performs the work in public;
- communicates the work to the public e.g. by means of the internet; or
- makes an adaptation of the work.

This is subject to some limited exceptions, e.g. for purposes of research and private study, criticism, review and news reporting, and – more recently – pastiche, caricature and parody, and the making of personal copies for private use.

A ‘secondary infringement’ is also committed if any person knowingly imports, possesses or deals with an infringing copy or provides means for making an infringing copy.

Recent changes to the law

The Enterprise and Regulatory Reform Bill became an act of parliament on 25th April 2013. The legislation, amongst other things:

- repeals section 52 of the Copyright, Designs and Patents Act 1988 which means that if an artistic work is exploited by an industrial process this will not affect the term of protection and it will enjoy the full term of copyright protection rather than just the 25 year term;
- allows for the use of ‘orphan’ works (a work protected by copyright where the rights holder is not known or cannot be found) for commercial and non-commercial use and for the appointment of an authorising body to license this use; and
- extends the length of copyright term in sound recordings and performers’ rights in sound recordings from 50 to 70 years.

In terms of Brexit, the various EU directives and regulations that make up copyright law are significantly harmonised across the whole of the EU. It is not clear yet how these harmonised laws will be dealt with, although the fact that copyright is not a registrable right and requires no registration formalities for the right to subsist, in the initial period after exit, rights holders will not need to make any significant changes and UK law will remain mostly the same.

It should be noted that there are already quite a few EU regulations and directives which are currently in draft form. It is not known, at the time of writing, whether these will come into force before the UK exits the UK. Some examples are: a proposed Geoblocking Regulation which will prevent online traders from being able to ‘block’ the sale of goods and services online (such as the sale of online content and audio-visual copyright-protected works), on the basis that a customer is located in a different place geographically than their ‘usual’ place of residence, establishment, or based on nationality etc. Similarly, a proposed Portability Regulation will protect online customers’ rights to access content on their portable devices, regardless of whether they are in their ‘normal’ resident member state. A new Copyright Directive will create certain exceptions to copyright law, such as in respect of text and data mining, digital and cross-border teaching, the preservation of cultural heritage and in respect of the licensing of ‘out of commerce’ works. The Copyright Directive will also create new rights for the press such as in respect of digital publications as well as imposing new obligations on internet service providers (ISPs) storing online user content, placing new requirements on ISPs to maintain the integrity and security of such data and obligating ISPs to monitor and filter data to check whether such content infringes the copyright of others.
Whilst it is not yet known whether these harmonising laws will come into effect in time, the fact that the UK will no longer be subject to the rulings of the Court of Justice of the European Union means that, even if initially the UK does adopt these new laws, over time, the UK will have the ability to choose whether or not to continue to align themselves with EU copyright law, or to move away from EU legal principles when shaping future copyright law in the UK. Businesses dealing in the EU will of course still be required to comply with EU law.

**Database right**

Database right is a right which arises where there has been substantial investment in obtaining, verifying or presenting the contents of a database. It belongs (in the first instance) to the person who takes the initiative and assumes the risk of investing in making the database. In order to qualify for protection, at least one of the makers of the database must be an EEA national or an entity incorporated in the EEA.

Database right lasts for a period of fifteen years from the end of the calendar year in which the database was created, but will be renewed where there is substantial change to the content of the database resulting from further substantial investment.

Database right is infringed by any person who extracts or re-utilises all or a substantial part of the content of the database without the consent of the owner. This can include systematic and repeated use of otherwise insubstantial parts of the database.

**Expected changes to the current law**

As mentioned, in order to claim the right a database owner must be a national of an EEA member state and therefore upon exit the anomaly will arise that an EEA national will be able to claim the right in the UK, but a UK national would not be able to claim that same right. The position regarding database rights once the UK leaves the EU is therefore not clear as at the date of writing.
In 2008 the UK passed the Climate Change Act which legally binds the UK Government to achieving future carbon reductions. Whilst the overall direction of travel remains broadly unchanged, there has been some shift in momentum in recent years.

Low carbon economy incentives

There are a range of schemes to provide incentives for low carbon investment in the UK. These include:

- **Tax reliefs:** Enhanced capital allowances can be used to offset the capital costs of many low carbon and low water use technologies against tax liabilities. The research and development (R&D) tax incentive regime provides additional tax deductions for R&D activities, including low carbon R&D.

- **Renewable energy incentives:** Renewable Obligation Certificates (ROCs) are used to support the generation of large renewable electricity production. These apply to a wide range of new and developing technologies such as anaerobic digestion, biomass and offshore wind farms. Excess ROCs can be traded. The Renewables Obligation schemes are scheduled to close to new capacity on 31 March 2017 and closed with effect from 1 April 2015 for new large-scale solar PV projects.

- **Small scale renewables:** Feed-in tariffs (FiTs) have been introduced to support small scale renewable electricity production. These are based on similar programmes elsewhere in the world. Additionally the Renewable Heat Incentive (RHI) encourages the uptake of technologies such as biomass heating or ground source heat pumps. A domestic RHI was introduced on 9 April 2014 and has been recently widened to include more items.

Regulation and taxation

Any investment decision at present must carefully consider the impact of volatility in international energy and carbon markets on the underlying business proposition. Taxes and regulations will naturally form a part of this assessment. Like many countries, the UK has some forms of energy tax and carbon trading systems in place.

- **European Union (EU) Emissions Trading Scheme:** This is the large EU market for carbon emissions covering high intensity activities such as electricity generation, and metal production. The scheme is extending its scope in 2013. Participants are required to buy permits that can be traded to cover their emissions each year. A compensation scheme is available to certain industries to mitigate the indirect impact on competitiveness of the EUETS and Carbon Price Support mechanism.

- **Climate Change Levy:** This is a tax on the sale of energy products (primarily coal, gas and electricity). Oil and petrol are covered by a separate tax – Hydrocarbon Oil Duty or Fuel Duty. The Climate Change Levy is not paid on fuel used domestically; it is aimed at use by businesses; however, domestic users do have to pay Fuel Duty. There are voluntary agreements (Climate Change Agreements) that businesses can enter into with the Government, to reduce the amount of Climate Change Levy due. The UK Government removed the exemption for electricity generated from renewable sources with effect from 1 August 2015. Other exemptions and reliefs remain available.

- **Landfill Tax:** This is a tax on waste sent to landfill. There are two rates: a standard rate (currently £82.60 per tonne) which applies to active waste and a lower rate (currently £2.60 per tonne) which applies to inactive wastes. Exemption is available for waste derived from certain sources.

- **Aggregates Levy:** This is charged on the use of aggregates (such as sand, gravel) in the UK. Following a challenge from the European Commission, the exemption for shale has recently been removed. Relief is available for certain industrial and agricultural processes.

- **Carbon Reduction Commitment Energy Efficiency Scheme (CRC):** This is a scheme for companies with low energy intensity business activities such as banks, retail, light industrial, hospitality and other businesses. Following the publication of a consultation: ‘Reforming the Business Energy Efficiency Tax Landscape’, the future of CRC is uncertain.

The challenge for any business wanting to expand in the UK market place is to take advantage of the current regulations to ensure that reductions in carbon emissions are recognised both financially and at a reputational level under the above regulatory regime. The CRC has particular reputational impacts that must be considered.
Modern Slavery Act

The Modern Slavery Act requires obligated businesses (including private companies and partnerships) to publish a statement each financial year, disclosing either: (a) the details of any steps they have taken to ensure that slavery and human trafficking is not taking place in its own operations or supply chain; or (b) the fact that no such steps have been taken. All businesses which do business in the UK and have a turnover of over £36 million will have to comply. The Act came into force in October 2017 and companies have been publishing statements since April 2016. A robust response requires; the development of a policy; risk assessment of operations and supply chain; due diligence processes; effective anti-slavery measures; training of staff; and KPIs to measure progress.

Non Financial Reporting Directive

The Non-Financial Reporting Directive came into effect on the 5th December 2014. Member states were required to transpose (adopt and implement) the Directive into national law on 6 December 2016.

The Directive applies to:

- large public-interest undertakings with more than 500 employees; and
- who have either a balance sheet total (per entity) of more than EUR 20 million or a net turnover (per entity) of more than EUR 40 million

All companies within the UK who met the foregoing requirements have an obligation to prepare a non-financial statement as part of their strategic report. The statement must contain information deemed as necessary to convey information on the company’s development, performance and position and the impact of its activity relating to environmental, social and employee-related matters, respect for human rights and anti-corruption matters.

Accordingly, the report is to contain a brief description for the concerned company of the following:

- their business model;
- information on their policies for the areas listed above including any implemented due diligence processes;
- the outcome of these policies;
- the principal risks related to these matters linked to the company’s operations, including, where relevant and proportionate, its business relationships, products and services which are likely to cause adverse impacts in those areas and how the company manages these risks; and
- any relevant non-financial key performance indicators.

Per the non-binding guidelines, produced in June 2017 by the European Commission, companies concerned will be required to start applying the Directive in 2018 based on information gathered in 2017.
8. How do I acquire a business in the UK?

- General overview
- Acquiring a UK public company
- Acquiring a private company or business
One of the ways in which overseas investors can access UK markets is by acquiring a business that already operates in those markets. While there are hurdles to be cleared, the process is not unduly difficult and appropriately experienced professional advisers will be able to guide you through it.

There are relatively few restrictions as to who may acquire or operate a UK company, whether public or private. In general, legitimate foreign investors should be able to make acquisitions without legal impediment.

There are various legal limitations relating to the public interest and to the promotion of competition within industry sectors that may apply to specific acquisitions. These are not discussed further here, so you should ask your professional advisers to consider and advise on their applicability.

This section deals with the process for acquiring shares in a public company, for acquiring shares in a private company, and for acquiring the assets and liabilities of a business without acquiring the shares of the company that owns them.
Acquiring a UK public company

Overview

In the UK, a listed company will in almost all cases be a public company; however, not all public companies (PLCs) are listed. The rules relating to the takeover of public companies apply whether the company is listed or not.

Acquisitions of public companies (listed and unlisted) are governed by the City Code on Takeovers and Mergers, commonly referred to as the Takeover Code or simply 'the Code'. However, the Takeover Panel (which administers the Takeover Code) will in practice often permit derogations from some or all of the Code for acquisitions of unlisted public companies, depending on the circumstances. Your advisers will be able to engage with the Takeover Panel in this area if appropriate.

The takeover process is led by the bidder, who should seek effective advice from suitably experienced lawyers and from a bank or broker who will advise on the financial aspects of the bid. While offers were traditionally made in the UK by investment banks on behalf of a bidder (or 'offeror'), this is no longer market practice and the bidder now makes the offer directly.

The Takeover Code is designed to ensure fairness for all shareholders, who are given certain rights and sufficient time to decide on whether a takeover should proceed. There are six General Principles, derived from European law, that underpin the Takeover Code and govern its interpretation. These relate to:

- equality of treatment of shareholders;
- adequacy of time and information;
- directors’ duties;
- maintenance of the integrity of markets;
- the ability of bidders to fulfil any bid they might make; and
- minimising disruption to the target company.

Breaches of the Takeover Code may attract sanctions, which the Takeover Panel has statutory power to enforce.

If the target company’s board of directors chooses to recommend a takeover bid to the shareholders, the bid is known as a ‘recommended bid’. If the board declines to recommend a takeover bid, the bid is known as a ‘hostile bid’. In most cases, the shareholders will follow the board’s recommendation. Consequently, an offeror will usually seek to proceed by way of a recommended bid, by obtaining the board’s approval of the terms of the offer in advance.

It is very common practice to acquire a significant stake in the target company before beginning the formal offer process; however, you should take care not to exceed the thresholds triggering a mandatory offer until:

- it is your firm intention to make an offer; and
- you are certain that you have in place the resources to enable you to satisfy the offer in full.

As well as direct equity interests, economic interests in target shares held via contracts for differences (derivatives) are taken into account when looking at the thresholds.

Summary of some key rules of the Takeover Code

- A person who acquires (together with others acting in concert with him, and whether over a series of transactions or otherwise) interests in shares which result in him holding 30% of the voting rights in a company, or who holds between 30% and 50% of such shares and acquires further interests in such shares must make an offer for the remaining shares in the company.

- A person making an offer must be unconditionally able to implement the offer in full (and the offeror’s financial adviser has responsibilities in this area).

- If, during the offer period for a company, the offeror (or any person acting in concert with him) acquires shares for cash, he must make an equivalent cash offer (or cash alternative) available to all other shareholders.

- An offer must be on no less favourable terms than the best terms on which any shares have been acquired in the twelve-month period prior to the offer being made, or during the offer period.

- An offer must be open for at least 21 days following the date on which the offer document is posted and, if the offer is revised, it must be open for a further 14 days from the date on which the revised offer document is posted.

- Shareholders must be given sufficient information to enable them to reach a decision.

- The offeree company must appoint a competent independent adviser whose views on the offer must be made known to all shareholders.

- Actions during an offer to frustrate the takeover are generally not permitted without prior shareholder approval.
Takeover timetable

The Takeover Code imposes a strict timetable on a takeover bid. This timetable not only seeks to give shareholders sufficient time to consider the bid, but also looks to limit the period during which the offeree company is distracted by the bid.

The outline timetable for a recommended bid is summarised in the table below:

<table>
<thead>
<tr>
<th>Before announcing offer</th>
<th>Appoint advisers. Approach the board of the target company for recommendation. Secrecy prior to ‘A Day’ is strictly required and if this appears to have been breached, an earlier announcement may be required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘A Day’</td>
<td>The date on which the announcement of the offer is published, which starts the bid process.</td>
</tr>
<tr>
<td>‘D Day’ ('A Day' plus 28 days)</td>
<td>The offer document must be posted no more than 28 days after the bid announcement. In practice, this tends to be done well in advance of this deadline.</td>
</tr>
<tr>
<td>‘D Day’ + 14 days</td>
<td>The last day on which the target company’s board must advise shareholders of its views on the offer, by means of a circular to shareholders.</td>
</tr>
<tr>
<td>‘D Day’ + 21 days</td>
<td>The earliest date the offer can become unconditional as to acceptances. If all conditions are not satisfied within 21 days of going unconditional as to acceptances, shareholders may withdraw their acceptances.</td>
</tr>
<tr>
<td>‘D Day’ + 35 days</td>
<td>The earliest date the offer can close.</td>
</tr>
<tr>
<td>‘D Day’ + 46 days</td>
<td>The last day for posting a revision of the offer if still conditional as to acceptances.</td>
</tr>
<tr>
<td>‘D Day’ + 60 days</td>
<td>The last day on which the offer can become unconditional as to acceptances. If the offer does not become unconditional by this date, it lapses. The Takeover Panel can extend this deadline in certain circumstances, including where a competing bid has been announced.</td>
</tr>
</tbody>
</table>

The consideration for the shares must be settled no later than 14 days after the final condition to the offer is satisfied, which may not be later than ‘D Day’ + 95 days but is usually considerably earlier than this.

‘Squeeze out rights’

If a minority of the target company’s shareholders have not accepted the offer, it may be possible for the bidder to compel the minority shareholders to sell their shares to him. This will apply if the bidder:

• has successfully acquired or unconditionally contracted to acquire at least 90% of the shares to which the bid applied; and
• now holds shares conferring at least 90% of the voting rights in the target company.

If these conditions are satisfied, the bidder must exercise its right to acquire the remaining shares within three months of the last date for acceptance of the bid.

The minority shareholders have a parallel right to require the bidder to acquire their shares.

Takeovers by way of a scheme of arrangement

It is quite common in the UK for recommended bids to proceed by way of a scheme of arrangement, which is a statutory process involving the law courts, and is therefore driven by a strict court timetable. Under this process, the approval of a majority of 75% of the target company’s shareholders will be sufficient to enable the scheme to proceed. The Takeover Code applies to takeovers under this process, with certain necessary modifications. There are advantages and disadvantages to this approach that your professional advisers will be able to explain in detail.
Acquiring a private company or business

Overview

The acquisition of a private company or the assets of a business is less regulated than the acquisition of a public company (save in some exceptional cases where a private company may be subject to the Takeover Code). There are certain regulations protecting buyers of shares from misrepresentations as well as rules on financial promotions to be considered. Otherwise, however, English law allows the parties considerable freedom to agree the terms of the acquisition in the associated contractual documentation. It is common for UK documents relating to private company/business acquisitions to exclude all rights and remedies that are not set out in the contract, save as required by law (for example, certain mandatory rules such as public policy considerations).

There are many conventions and market practices – all of which will be familiar to your advisers. For the most part, however, these have no basis in law.

There are many similarities between acquiring the shares in a private company and acquiring the assets of a business, and for this reason they are dealt with together here; however, there are also several differences:

• When you acquire a company, it is acquired together with all of its assets and all of its liabilities, including any liabilities unknown to the seller or the buyer.

• When you acquire business assets, you acquire only those assets and liabilities you agree to buy – though the contract may specify that you acquire ‘all the assets and liabilities of the business’, which may include assets and liabilities of which you are unaware.

• When you acquire a company, you take on most of its tax liabilities; when you acquire a business, most tax liabilities remain with the seller.

• When you acquire shares, stamp duty will be payable at 0.5% on the total price; when you acquire the assets of a business, stamp duty will only be payable on some of its assets, though at a higher rate.

• When you acquire a company, its contracts usually continue without interruption (subject to change of control wording that may appear in the underlying contracts); in most business acquisitions, contracts will remain with the seller unless they are novated or assigned.

• When you acquire a company, the existing relationships with employees continue without interruption; when you acquire a business, the employees will transfer to the purchaser under the Transfer of Undertakings (Protection of Employment) Regulations (‘TUPE’) and any dismissals for a reason connected with the transfer may be deemed in law to be unfair dismissals that entitle the employee to bring a claim for compensation (this is a complex area of law and specialist legal advice will be necessary).

• When you acquire a company, the employees will continue to enjoy any pension rights they had prior to the acquisition (and arrangements, which may be subject to governmental review, will have to be made to ensure that the company’s participation in any relevant pension scheme is addressed). On a business acquisition, the TUPE regulations may apply so that the employees do not retain their existing pension rights but there is an obligation to provide a minimum pension. Again, this is a highly regulated area and expert advice will be essential.

Principles of the deal

There are several fundamental questions that a buyer must consider before embarking on the deal process:

• Do you wish to acquire shares or assets?

• Do you want key management members (possibly including the seller if he is a key member of the management team) to remain with the business for a period after completion?

• How do you propose to determine the price you are willing to pay?

  – Net asset value?
  – A multiple of past year or projected profits?
  – Should the price include a contingent, deferred or variable element?

• How do you propose to pay the consideration?

  – Cash?
  – Loan notes?
  – Shares?

  – A combination of these?

• Will there be a mechanism to adjust the deal consideration after completion occurs, based on a set of completion accounts agreed between the parties?

• is it appropriate to place some of the consideration into an escrow account to protect against claims or changes to the value of the target?

• Do you wish to restrict the seller from competing with the target for a period after completion?
Before the deal

Many private acquisitions begin with the prospective buyer, or his advisers, contacting the directors or the owners of the target company or business to discuss his proposal.

Some acquisitions begin when an owner decides to sell and initiates an auction process. This is usually managed and co-ordinated by the owner’s corporate finance advisers, who will contact a range of prospective buyers with a brief information memorandum (or ‘teaser’) setting out important information about the target.

In an auction, several interested buyers may be invited, with their advisers, to review information placed in a data room (which is usually made available online), and may be asked to submit secret bids. It is common for the seller’s advisers to prepare a sale and purchase contract and invite bidders to submit their formal mark-up of that document, indicating the terms on which they are prepared to engage with the seller, together with their bid. The seller will then review these bids and proposed terms and will decide which buyer has submitted the most attractive offer. Depending on the process followed by the seller, these transactions often proceed very quickly from this point onwards (the seller will typically have invested considerable time and effort in the earlier stages).

If there is no auction or data room, there are usually several distinct phases to the process:

- the seller and buyer agree the main terms of the proposed deal and sign a document summarising these terms (usually not legally binding), and may also agree an exclusivity period and commit the buyer to confidentiality obligations (which will be legally binding);
- the buyer conducts due diligence on the target company or business;
- the buyer arranges its finance, if necessary;
- the buyer and seller negotiate and agree the contractual documentation in readiness for completion of the transaction.

Due diligence is a vital part of pre-acquisition planning. It is usually much better to enter into a purchase fully informed than to place reliance on the warranty and indemnity protection that may be included in the contract. Professional advisers can assist with due diligence, which normally includes several strands:

- financial due diligence, including an examination of the statutory accounts, cash flow and profit and loss forecasts and, sometimes, a valuation or assessment of the major assets;
- legal due diligence, including a review of the business contracts, title to the assets, employment arrangements and compliance with all relevant laws and regulations;
- commercial due diligence, including an analysis of the sector in which the business operates, its prospects and major competitors.

It is absolutely essential that due diligence addresses the matter of any pension scheme in which the company or its employees participate. Changes to pensions regulation in recent years have had a significant impact on the viability of transactions. Many deals now abort because, on analysis, the target company’s pension liabilities are found to be disproportionately large relative to the size of the target company or because the requirements of the Pensions Regulator are considered by the buyer to be unacceptably onerous.

Deal documentation

There are a number of legal documents that are usually prepared and negotiated for a share or business acquisition. These include:

- a share or asset purchase agreement;
- a disclosure letter;
- a tax indemnity deed or covenant (for share acquisitions only);
- service agreements for senior management;
- finance agreements, where the buyer is seeking external funding for the acquisition.

Other documents may also be prepared depending on the precise terms of the transaction. These may include:

- a loan note instrument, where the consideration is wholly or partly satisfied in loan notes;
- an environmental indemnity where the target business is one that may have an environmental impact;
- asset transfers, in a business sale where some of the assets require formal transfer, such as land and intellectual property;
- consents or novations, in a business sale where some of the business contracts or assets can only be transferred subject to the consent of another party;
- a transitional services agreement, where necessary for a smooth transition of the business.
The purchase agreement

Although there are differences between an agreement for the sale and purchase of the shares in a private company and an agreement for the sale and purchase of the assets of a business, there are also many similarities. Consequently, their key features are summarised together here.

A typical agreement comprises several distinct parts:

- the operative clauses, which deal with the sale and purchase itself and the payment of the consideration;
- where completion is not to happen at the same time as the signing of the agreement, any conditions to which completion of the agreement is subject, and any other provisions dealing with the conduct of the business between signing and completion;
- warranties and indemnities, by means of which the seller assumes liability for certain problems or risks in the business and agrees to pay back some of the purchase price if these risks materialise;
- limitations on the application of the warranties and indemnities, which may include financial and time limitations, and may also limit claims for matters disclosed to or known by the buyer;
- restrictions on the seller’s future business activities, particularly where they might compete with the target business;
- provisions dealing with confidentiality, announcements, and other general issues.

The warranties and indemnities, and the limitations on their application, are usually the most controversial part of the agreement and negotiating them can take a long time. The warranties usually cover such matters as the operation of the business, the ownership of the target company’s assets, claims and disputes in relation to the business, and tax. They take the form of statements of fact, and the purchaser can bring a claim against the seller if any of these facts is found to be untrue and the purchaser has suffered loss. Indemnities will typically provide cover against specific potential liabilities.

Although there are no hard and fast rules, generally speaking, the seller’s lawyers will draft the purchase agreement in an auction sale, while the buyer’s lawyers will draft the purchase agreement for sales outside that context.

Disclosure letter

In almost every deal, the warranties are limited by the information provided to the buyer in a disclosure letter. This document sets out details of matters known to the seller that could constitute a breach of a warranty. By setting out these matters in the disclosure letter, the seller ensures that the buyer cannot bring a claim under the warranties in relation to them. The warranties in the purchase agreement must therefore be read alongside the qualifications set out in the disclosure letter.

For example, a warranty may state the target business has no external debt, while the disclosure letter may refer to that warranty and state that, in fact, the business has a term loan facility with a specified bank amounting to a specified sum.

Tax indemnity

In an acquisition of the shares of a company, but not of a business, there will usually be a tax indemnity. This document will set out the way in which the buyer and the seller will apportion any taxes that may be due from the company. Usually, the seller will indemnify the buyer for the amount of any taxes payable by the company that relate to the period before the purchase, but no claim will be possible for taxes that relate to the period after the purchase. There are many detailed provisions that may elaborate on or deviate from this position and which will be negotiated between the parties. The tax indemnity may be a separate document or appear as a schedule to the main purchase agreement.
9. How do I list on a UK stock exchange?

- Listing on a UK Stock Exchange
Listing on a UK Stock Exchange

Overview

London remains one of the most influential financial centres in the world. It owes much of its continuing appeal to its cosmopolitan status, the liquidity of the London markets and the regulatory and political framework that supports those markets. At the end of December 2017, there were approximately 1,240 companies listed on the London Main Market with a total market capitalisation of approximately £4,413 billion and approximately 960 companies quoted on AIM (the London market for small and emerging companies) with a market capitalisation of approximately £170 billion.

Companies listed on the London Stock Exchange at 31 December 2017 (by number and value £bn)

<table>
<thead>
<tr>
<th>Category</th>
<th>Main Market</th>
<th>AIM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of companies</td>
<td>973</td>
<td>808</td>
</tr>
<tr>
<td>Number of international companies</td>
<td>267</td>
<td>152</td>
</tr>
<tr>
<td>Total market capitalisation (£bn)</td>
<td>4,413</td>
<td>107</td>
</tr>
</tbody>
</table>

Source: London Stock Exchange data

Market capitalisation of London listed companies by industry as at 31 December 2017

- Financials: 36%
- Industrials: 6%
- Consumer Services: 7%
- Basic Materials: 7%
- Technology: 6%
- Oil & Gas: 6%
- Consumer Goods: 1%
- Health Care: 1%
- Utilities: 11%
- Telecommunications: 15%

Source: London Stock Exchange data

Spread of companies by market capitalisation as at 31 December 2017

Source: London Stock Exchange data
**London IPO trends by offering value and by volume**

Source: PwC IPO Watch
Different types of listing

The London Stock Exchange (LSE) is one of the world’s oldest exchanges and offers a wide choice of routes to market, for UK and international companies. Which market a company should consider will depend upon different criteria including the:

- stage of the company’s development;
- complexity of the offer and securities issued;
- investors who are being targeted;
- size of the company;
- overall strategy and objectives; and
- eligibility

The principal options available to companies seeking a listing of equity share or global depositary receipts (GDRs) in London are set out below:

**London listing options**

<table>
<thead>
<tr>
<th>Official List/EU-Regulated</th>
<th>EU-Regulated (not admitted to Official List)</th>
<th>Exchange-Regulated</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Main Market</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Standard listing of Global Depositary Receipts (GDRs) on the UKLA’s Official List.</td>
<td></td>
<td>Admission to trading on AIM or other 'Exchange-Regulated' markets, such as the Professional Securities Market (PSM).</td>
</tr>
</tbody>
</table>

- The UK’s ‘premium brand’ of listing, available to both UK and non-UK companies.
- A Premium listing imposes more stringent requirements and standards than other forms of London listings.
- Premium listed securities are eligible for admission to trading on the London Stock Exchange’s Main Market.

- The standards that apply to a Standard Listing are based on the minimum standards required under EU directives.
- Standard listed securities are eligible for admission to trading on the London Stock Exchange’s Main Market.
- GDRs are negotiable certificates that represent ownership of a company’s shares; they can be listed and traded independently of the underlying shares.
- The standards that apply to a listing of GDRs are based on the minimum standards required under EU directives.
- GDRs are quoted and traded in US dollars on the International Order Book of the London Stock Exchange.

- The high growth market is designed for entrepreneurial companies with high growth potential that need funds to achieve the expansion they desire and are also ready for a public listing. For many companies it will be a stepping stone to a Premium Listing in the future.

- These are markets that operate outside the scope of many of the provisions of the EU directives and are not ‘EU-Regulated’ markets.
- The regulations are set out in rulebooks specific to the particular exchange.
- AIM is the London Stock Exchange’s market for small and emerging companies; its success is built on a simplified regulatory environment designed for their needs.
- The PSM facilitates the raising of capital through the issue of specialist debt securities or depositary receipts to professional investors only.
- Securities quoted on these markets are not ‘listed’ securities in that they are not included on the UKLA’s Official List.

In addition, closed end investment funds are admitted to trading on the Specialists Fund Segment (SFS). The SFS is a segment of London’s EU regulated market for specialised investment entities that target professional or institutional investors.
What are the rules of the game?

The UK Listing Authority (UKLA), which is a part of the Financial Conduct Authority (FCA), maintains the Official List of UK listed securities (Official List). The FCA rules and guidance for companies listed or seeking to list on an EU-Regulated market in London are set out in three separate books:

• The Listing Rules, which focus on eligibility, the Sponsor regime and certain continuing obligations.
• The Prospectus Rules, which include the rules, regulations and guidance as to when a prospectus is required and its contents.
• The Disclosure Rules and Transparency Rules, which include the rules and guidance in relation to the publication and control of inside information, the disclosure of information by management and connected persons, access to information and adequate transparency of information in the UK financial markets.

What about AIM?

Since the launch of the market in 1995, AIM has emerged as the most successful market of its type in the world. It has developed rapidly in terms of the number and diversity of companies admitted to the market, as well as the range of institutional and retail investors involved.

Its success is built on a simplified regulatory environment that has been specifically designed for the needs of small and emerging companies.

AIM is not an EU-Regulated market and AIM Companies are not governed by the FCA’s rules. Instead, AIM companies are governed by the AIM Rules for Companies published by the London Stock Exchange. The AIM Rules are based on the FCA Prospectus Rules and Disclosure and Transparency Rules, but are less onerous in certain areas.
A comparison of the eligibility requirements and continuing obligations

Eligibility requirements and continuing obligations for admission to the Official List (Premium, Standard (Equity shares and GDRs)), High Growth Segment and AIM

<table>
<thead>
<tr>
<th>Eligibility requirements</th>
<th>Official List (Premium)</th>
<th>Official List (Standard – Equity Shares)</th>
<th>Official List (Standard – GDRs)</th>
<th>High Growth Segment</th>
<th>AIM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transferability of shares</td>
<td>• Shares must be freely transferrable, fully paid, free from liens and any restriction on transfer (26)</td>
<td>• Shares must be freely transferrable, fully paid, free from liens and any restriction on transfer (26)</td>
<td>• GDR's must be freely transferrable, fully paid, free from liens and any restriction on transfer (26)</td>
<td>• Shares must be freely transferrable, fully paid, free from liens and any restriction on transfer (26)</td>
<td>• Shares must be freely transferrable (except where statutory restrictions apply)</td>
</tr>
<tr>
<td>Minimum free float</td>
<td>• A minimum of 25% of the shares must be in public hands</td>
<td>• A minimum of 25% of the shares must be in public hands</td>
<td>• A minimum of 25% of the DRs must be in public hands</td>
<td>• A minimum of 10% of shares must be in the public hands with a value of at least £30 million</td>
<td>• No minimum number of shares must be in public hands</td>
</tr>
<tr>
<td>Financial eligibility test</td>
<td>• Must have three year revenue earning record for not less than 75% of the business, and have controlled the majority of assets in this period</td>
<td>• Financial information required for three years, or such shorter period as the issuer has been in operation</td>
<td>• Financial information must be presented under IFRS as adopted by EU, or equivalent</td>
<td>• Ability to demonstrate growth in audited consolidated revenue, prepared in a form consistent with that which will be adopted in the issuer’s next published financial statements, of at least 20% on a CAGR basis over the prior three financial years</td>
<td>• Financial information required for three years, or such shorter period as the issuer has been in operation</td>
</tr>
<tr>
<td></td>
<td>• Main activity must be an independent business</td>
<td>• Financial information must be presented under IFRS as adopted by EU, or equivalent</td>
<td>• The expected aggregate market value for the DR’s is £700,000</td>
<td>• Financial information must be presented under IFRS as adopted by EU, or equivalent</td>
<td>• Financial information prepared in accordance with IFRS as adopted by EU, or company legislation if not a parent. If not incorporated within EEA, US GAAP, Canadian GAAP, Japanese GAAP or Australian IFRS</td>
</tr>
<tr>
<td></td>
<td>• Financial information must be presented under IFRS as adopted by EU, or equivalent</td>
<td>• The expected aggregate market value for shares is £700,000</td>
<td>• The expected aggregate market value for the DR’s is £700,000</td>
<td>• The expected aggregate market value for the DR’s is £700,000</td>
<td>• No minimum market capitalisation requirement save as regard cash shells where a minimum capital raising of £6m is stipulated</td>
</tr>
</tbody>
</table>

\(26\) The FCA may in certain circumstances relax these requirements
<table>
<thead>
<tr>
<th>Official List (Premium)</th>
<th>Official List (Standard – Equity Shares)</th>
<th>Official List (Standard – GDRs)</th>
<th>High Growth Segment</th>
<th>AIM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audited history</td>
<td>Audited information cannot be more than 6 months old. Audit opinion must be unqualified</td>
<td>Audited information cannot be less than 15 months old. Unaudited information is also required if audited information is more than nine months old</td>
<td>Audited information cannot be less than 15 months old. Unaudited information is also required if audited information is more than nine months old</td>
<td>Audited information cannot be less than 15 months old. Unaudited information is also required if audited information is more than nine months old</td>
</tr>
<tr>
<td>Pre-vetting of documents</td>
<td>Pre-vetting of admission documents by the UKLA</td>
<td>Pre-vetting of admission documents by the UKLA</td>
<td>Pre-vetting of documents by the UKLA</td>
<td>Documents are only pre-vetted by the UKLA if a prospectus is required</td>
</tr>
<tr>
<td>Appointment of Sponsor</td>
<td>Sponsor required</td>
<td>No Sponsor requirement</td>
<td>Key adviser required</td>
<td>Nominated adviser required</td>
</tr>
<tr>
<td>Working capital statement</td>
<td>Statement by the issuer that there is sufficient working capital available for the group’s requirements for at least the next 12 months</td>
<td>Statement by the issuer that there is sufficient working capital available for the group’s requirements for at least the next 12 months</td>
<td>Statement by the issuer that there is sufficient working capital available for the group’s requirements for at least the next 12 months</td>
<td>Statement that the directors have no reason to believe that the working capital available to it or its group will be insufficient for at least 12 months</td>
</tr>
</tbody>
</table>
## Continuing obligations

<table>
<thead>
<tr>
<th></th>
<th>Official List (Premium)</th>
<th>Official List (Standard – Equity Shares)</th>
<th>Official List (Standard – GDRs)</th>
<th>High Growth Segment</th>
<th>AIM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment of Sponsor</td>
<td>• Sponsors are needed for certain transactions</td>
<td>• No Sponsor requirement</td>
<td>• No Sponsor requirement</td>
<td>• No Sponsor requirement for transactions – issuer is required to seek advice of the Key Adviser for certain key events</td>
<td>• A Nominated Adviser is required at all times</td>
</tr>
<tr>
<td>Significant transactions</td>
<td>• Shareholder approval, a circular and appointment of a Sponsor are required for significant transactions exceeding 25% of any class tests.</td>
<td>• Shareholder approval only required for reverse takeovers</td>
<td>• Shareholder approval not required for transactions</td>
<td>• Shareholder approval only required for reverse takeovers. • Announcement is required for notifiable transactions exceeding 25% of any of the class tests</td>
<td>• Shareholder approval required for reverse takeovers and disposals in a 12 month period exceeding 75% in any of the class tests. • Announcement is required for notifiable transactions exceeding 10% of class tests</td>
</tr>
<tr>
<td>Related party transactions</td>
<td>• Shareholder approval, a circular and appointment of a Sponsor is required for related party transactions exceeding 5% of any class tests. UKLA approval of circular required ahead of publication</td>
<td>• No related party transaction or share buyback disclosure approval requirement at time of transaction</td>
<td>• No related party transaction or share buyback disclosure approval requirement at time of transaction</td>
<td>• Announcement is required for related party transactions exceeding 5% of any of the class tests</td>
<td>• Announcement is required for related party transactions exceeding 5% of any of the class tests</td>
</tr>
</tbody>
</table>

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27 Defined as a Class 1 transaction
<table>
<thead>
<tr>
<th>Official List (Premium)</th>
<th>Official List (Standard – Equity Shares)</th>
<th>Official List (Standard – GDRs)</th>
<th>High Growth Segment</th>
<th>AIM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial reporting obligations</td>
<td>• Annual audited financial report required no later than four months after year end. These must contain consolidated EU IFRS (or equivalent) accounts and parent company accounts prepared in accordance with national law of country of incorporation</td>
<td>• Annual audited financial report required no later than four months after year end. These must contain consolidated IFRS accounts and parent company accounts prepared in accordance with national law of country of incorporation</td>
<td>• Annual audited financial report required no later than four months after year end. These must contain consolidated IFRS accounts and parent company accounts prepared in accordance with national law of country of incorporation</td>
<td>• Annual audited financial report required no later than six months after year end. Where the company is incorporated within the EEA, the accounts should be prepared under IFRS. Where non-EEA incorporated, company can prepare under IFRS, US GAAP, Canadian GAAP, Australian GAAP or Japanese GAAP</td>
</tr>
<tr>
<td></td>
<td>• Half year report required no later than three months after half year containing condensed financial statements, including condensed balance sheet, condensed profit and loss account and explanatory notes</td>
<td>• Half year report not required. Disclosures may be made as a matter of best practice</td>
<td>• Half year report required no later than three months after half year containing condensed financial statements, including condensed balance sheet, condensed profit and loss account and explanatory notes</td>
<td>• Half year report required within three months after half year detailing balance sheet, profit and loss account and cash flow statement in same format as annual accounts</td>
</tr>
</tbody>
</table>
### How do I list on a UK stock exchange?

<table>
<thead>
<tr>
<th>Official List (Premium)</th>
<th>Official List (Standard – Equity Shares)</th>
<th>Official List (Standard – GDRs)</th>
<th>High Growth Segment</th>
<th>AIM</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Corporate Governance</strong></td>
<td>• ‘Comply or Explain’ disclosures in accordance with UK Corporate Governance Code</td>
<td>• Compliance with certain corporate governance statements</td>
<td>• Compliance with certain corporate governance statements</td>
<td>• Expected market practice</td>
</tr>
<tr>
<td><strong>Relationships with majority shareholders</strong></td>
<td>• A premium listed company with a controlling shareholder (30% of the equity share capital) is required to have an agreement in place that contains ‘independence provisions’. These are that transactions and relationships with the controlling shareholder should be on an arm’s length basis on normal commercial terms</td>
<td>• Relationship agreement not required</td>
<td>• Relationship agreement not required</td>
<td>• Relationship agreement not required</td>
</tr>
<tr>
<td><strong>Cancellation</strong></td>
<td>• Cancellation requires 75% shareholder approval</td>
<td>• Cancellation does not require shareholder approval</td>
<td>• Cancellation requires 75% shareholder approval unless cancelling to transfer to Premium</td>
<td>• Cancellation requires 75% shareholder approval</td>
</tr>
<tr>
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<td>• Cancellation requires 75% shareholder approval</td>
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<td>• Cancellation requires 75% shareholder approval unless cancelling to transfer to Premium</td>
<td>• Cancellation requires 75% shareholder approval</td>
</tr>
</tbody>
</table>
What is IFRS or ‘equivalent’ financial information?

IFRS or ‘equivalent’ information is required for all London flotations except high denomination GDRs. ‘Equivalent’ financial information can be used by overseas companies and may be prepared under US GAAP or Japanese GAAP, or with a GAAP of a country which is subject to convergence to IFRS, such as India.

The financial information required for a listing must be presented on the basis to be applied in the company’s first annual financial statements as a listed company. In the majority of cases, this requires the restatement of a company’s historical financial information.

The flotation process

During the IPO process you will need to convince investment banks, advisers, investors and stock exchange regulators that your company has a coherent strategy with well-developed reasons for considering flotation. At an early stage, you should identify:

- those aspects of your company’s operations that will be attractive to investors, and
- the reasons why an offering will benefit the business.

<table>
<thead>
<tr>
<th>Pre-flotation</th>
<th>Flotation</th>
<th>Post-flotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Development of a coherent strategy</td>
<td>• Prospectus</td>
<td>• Establishing investor relations team to ensure timely and reliable information is provided to the market</td>
</tr>
<tr>
<td>• Choosing the right market to optimise the offer of securities</td>
<td>• Drafting of prospectus</td>
<td>• Complying with the Disclosure and Transparency rules (or AIM rules,) including requirements relating to dealings by directors and senior management and applicable corporate governance codes</td>
</tr>
<tr>
<td>• Understanding the composition of the historical financial track record</td>
<td>• Verification/validation of information</td>
<td>• Meeting the demands/requirements of the new board and committees</td>
</tr>
<tr>
<td>• Selection/alignment of ‘best practice’ accounting policies</td>
<td>• Historical financial information and future prospects</td>
<td>• Upgrading existing systems and processes and embedding key financial reporting procedures within the business</td>
</tr>
<tr>
<td>• Selection of an experienced board and management team</td>
<td>• Audit of historical financial track record</td>
<td>• Integrating acquired/merged businesses</td>
</tr>
<tr>
<td>• Understanding of the current and future financial prospects of the business</td>
<td>• Working capital review</td>
<td>• Management training and development</td>
</tr>
<tr>
<td>• Quality of management information and financial reporting systems and procedures</td>
<td>• Due diligence</td>
<td></td>
</tr>
<tr>
<td>• Review of Corporate Governance</td>
<td>• Business and financial due diligence</td>
<td></td>
</tr>
<tr>
<td>• Review of tax impact</td>
<td>• Legal due diligence</td>
<td></td>
</tr>
<tr>
<td>• Timetable management</td>
<td>• Corporate governance</td>
<td></td>
</tr>
</tbody>
</table>

After a prospectus has been approved by the FCA and publicly issued, the Prospectus Rules allow it to be used for up to 12 months in connection with an offering to the public.

The issuer’s latest audited accounts can be no more than nine months old at the time of admission. This limits the time a prospectus could remain ‘live’ in the UK to a maximum of nine months.
The key factors to consider

Key factors include:

- **Raising cash/long-term capital** – a successful flotation can generate substantial cash proceeds. The funds raised will enable your company to grow by reducing existing debt, increasing working and investment capital, providing funds for research and development, and allowing the diversification and expansion of its operations.

- **Marketability of shares** – a listing provides access to a market in which shares can be easily traded, enabling shareholders to convert their investment into cash.

- **Raising the profile/reputation of your company** – your company's profile will be raised both during and after the flotation process, resulting in press comment and analysis of your results, and higher profile for your management team. Your company's standing can be enhanced with the public, investors, customers, suppliers and your employees. Commercial benefits should arise from this publicity for your company and its products or services.

- **Raising shareholder value through demerger of a subsidiary** – the listing of a subsidiary entity forces the market to assess the value of that particular business in isolation from the rest of the group. This increased level of focus on a company can often result in a much higher value being placed on the business than when it was valued as part of the group.

- **Debt-free finance equity** – although initially expensive – represents debt-free financing. It does not need to be repaid, can increase your company's net worth and may permit additional borrowing on more favourable terms (because of an improved debt-to-equity ratio – ‘gearing’).

- **Market for further capital** – once you have successfully listed, raising additional capital through further share issues should be easier.

- **Realising your investment** – a successful flotation often provides substantial personal wealth creation opportunities for the company’s management, allowing them to realise a portion of their stake, whether at the time of IPO or a later date. It can also give family shareholders an attractive way to realise their investment in a family business.

- **Increased disclosure requirements** – your company will be subjected to close public scrutiny at the time of the flotation. As a listed company, you will have to comply with the significant additional regulatory and disclosure requirements contained in the relevant Prospectus Rules, Listing Rules or AIM Rules, Disclosure and Transparency Rules, Companies Act and related regulations and Accounting Standards.

- **Loss of control** – your existing shareholders will have their control diluted by any initial shares issued on flotation and by any subsequent issues. In day-to-day matters, management may in effect have reduced control. Decisions that may previously have been made by just one or two people will now need approval by an enlarged board of directors (including non-executive directors).

- **Greater focus on short-term performance** – investors will typically expect a good return on their investment in the form of dividends and/or capital growth. This may result in a greater emphasis on achieving short-term results rather than concentrating on overall long-term growth.

- **Share price volatility** – downward share price movements can have an adverse impact on your business. Customers, suppliers, bankers and investors can view a decrease in share price adversely and employees may be de-motivated, especially if they have an interest in the company, e.g. under company share plans. Managing the impact of volatility of your share price, especially for smaller capital companies, can be extremely difficult.

- **Ongoing costs and reporting** – there will be ongoing costs in respect of more detailed reporting regulations and further publicity. For example a listed company is required to produce half-yearly results in addition to annual financial statements.

- **Restrictions on share dealings** – despite the apparent attraction of an available market for shares, management may be unable to sell their shares freely because they are subject to strict rules concerning share dealing.
**What are the major challenges?**

Going public by flotation is a major challenge for all companies. Planning and good preparation are crucial. This is not simply a question of appointing advisers but about ensuring the company is fit to be listed on a public market.

A successful public offering or flotation can not only provide the funds to satisfy the plans of a company’s management team but also greatly enhance the company’s prestige. However, a flotation:

- represents a considerable challenge for any company; and
- may not be suitable for all companies.

Consequently, a flotation demands careful thought and planning before the detailed work begins. Issues that are highlighted at this early stage can then be tackled before the offering, saving both time and money. Some of the key issues are:

- **Track record**
  Potential investors will look at the historical record of your company’s business to make an assessment of how the business might develop. They will be most encouraged by a trend over several years of rising profits and cash inflows, with good reasons for any acquisitions and disposals. If the business does not have such a history, it may still be suitable for a public offering, but the choice of markets and the range of investors may be more limited. You should, therefore, think carefully about how you will explain any problems in your track record.

- **Management team**
  The investment community will also be interested in the reputation and experience of the senior management team. They will want to see a certain level of continuity of management. In addition, the management team must be able to survive the rigours of the offering process, while not neglecting the running of the business. Investors will also wish to see the management advised and supported by independent and experienced non-executive directors.

- **Financial prospects**
  The present financial position of your company should be satisfactory and its ability to keep pace with future working capital requirements should be understood. Shortfalls in working capital after the offering are likely to cause considerable adverse publicity, as well as operational problems. Any such future shortfalls can be avoided through a careful review of the business requirements and by considering the need for banking facilities before the offering.

- **Building the financial reporting system**
  Once the offering has occurred, your company is likely to be under much greater public scrutiny than before, with demands to produce more detailed information on a regular basis. This could strain your company’s present reporting systems. Weaknesses in the business reporting systems could cause public embarrassment as well as headaches for management.

- **Financial information**
  Potential investors will review your company’s accounting policies, contrasting them with other public companies in your company’s industry sector. A public offering provides an ideal opportunity to review accounting policies, to compare them with industry ‘best practice’ and to change them where necessary.

- **Tax aspects**
  It is important to understand the tax consequences both for your company and the current owners prior to an offering as there is the potential for these to be substantial.

- **Managing the timetable**
  Any public offering needs careful planning and will take up significant management time. Most sponsors will require that a due diligence review be completed before the public documentation is prepared. A strong team of advisers with sufficient knowledge and experience will help the process run smoothly; they should have your company’s best interests in mind and make its public offering a priority.

All these areas involve a significant amount of time and resource and need to be undertaken in addition to the day job of running the business itself. The challenge does not end once the flotation is complete. Once the company is in the public domain, it will need to fulfil its ongoing reporting requirements.
**Flotation timeline**

An illustrative timeline for the preparation period of an IPO is shown below. A timetable from initial decision to impact day of less than six months is a challenge and an expectation of between 6-12 months is more realistic. This is dependent on the complexity of the business, the sophistication of a company’s internal and external reporting and other factors around the general state of readiness. For Standard Listings, High Growth segment listing, listing of GDRs and AIM admissions, a shorter timetable may be possible.

**Indicative flotation timeline**

<table>
<thead>
<tr>
<th>Typically 4-6 months</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General</strong></td>
</tr>
<tr>
<td>Appointment of key advisers including Nomad</td>
</tr>
<tr>
<td>Develop equity story</td>
</tr>
<tr>
<td>Transaction and corporate structure, including tax structuring</td>
</tr>
<tr>
<td>Corporate governance</td>
</tr>
<tr>
<td><strong>Reporting accountants</strong></td>
</tr>
<tr>
<td>Business and financial due diligence (the ‘Long Form Report’)</td>
</tr>
<tr>
<td>Financial positions and prospects procedures report (FPP procedures Report)</td>
</tr>
<tr>
<td>Tax planning and employee incentives</td>
</tr>
<tr>
<td>Working capital report</td>
</tr>
<tr>
<td>Accountants’ opinion on financial information for three years (‘Short form’)</td>
</tr>
<tr>
<td><strong>Legal advisers</strong></td>
</tr>
<tr>
<td>Legal due diligence</td>
</tr>
<tr>
<td>Draft memo and articles of association updated</td>
</tr>
<tr>
<td>Draft legal documentation</td>
</tr>
<tr>
<td><strong>Regulation and documentation</strong></td>
</tr>
<tr>
<td>Confirmation of eligibility</td>
</tr>
<tr>
<td>Drafting prospectus/Admission document; regulator comment letters</td>
</tr>
<tr>
<td>UKLA vetting and approval of prospectus</td>
</tr>
<tr>
<td><strong>Marketing</strong></td>
</tr>
<tr>
<td>Low profile institutional marketing</td>
</tr>
<tr>
<td>Announcement of intention to float</td>
</tr>
<tr>
<td>High profile institutional marketing</td>
</tr>
<tr>
<td>Press release issued</td>
</tr>
<tr>
<td><strong>Other</strong></td>
</tr>
<tr>
<td>Expert’s report*</td>
</tr>
<tr>
<td>Fine tune pricing valuation model</td>
</tr>
<tr>
<td>Pricing</td>
</tr>
</tbody>
</table>

**Passporting**

An overseas issuer may seek to issue securities in a UK regulated market, using a prospectus that has been approved by another component authority. A ‘passport’ is intended to allow a prospectus, having been approved by one EEA competent authority, to be used for offers or listings in all other EEA countries, without further review or the imposition of further disclosure requirements by the relevant authority of that EEA country, thereby avoiding inherent delay and cost that such further proceedings cause. The Prospectus Directive has been implemented by all EEA member states, and therefore the requirements are consistent across these member states.

However, the UKLA will assess the issuer against the relevant eligibility requirements for the type of UK listing sought, e.g. for a premium listing, a super-equivalent standard for eligibility and continuing obligation is required. The UK Listing Authority (UKLA) will review the issuers proposed prospectus, and in such circumstances, issuers are encouraged to liaise early with the UKLA, and certainly ahead of approval from its home competent authority.
**What about FTSE Index inclusion?**

FTSE is an independent company, entirely owned by the London Stock Exchange. The FTSE indices are used extensively by investors worldwide. Under FTSE’s index calculation rules, companies are allocated to a single country determined by FTSE based on the company’s country of incorporation, where it is listed, where its shareholders reside and other factors.

For inclusion in the FTSE UK Index series, which include the FTSE 100, FTSE 250 and FTSE All Share indices, a UK company must have a Premium listing, have its primary listing in the UK, and have a minimum free float of 25%.

In addition, it should be noted for overseas issuers that the FTSE index eligibility criteria state that to be eligible for inclusion in the FTSE UK indices, a non-UK company must have a free float of not less than 50%.

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**What is a Sponsor?**

A company seeking a premium listing in the UK is required to appoint a Sponsor. A Sponsor is an advisory firm, typically an investment bank, which will advise the company on the application of the UK Listing Rules and provide key confirmations to the UKLA. These include confirmations on working capital, financial position and prospects procedures and compliance with the UKLA’s Listing Principles. To act as Sponsor, a firm must be accredited as such by the UKLA.

A company seeking admission to AIM is required to appoint a Nominated Adviser (Nomad) and a company seeking high growth admission is required to appoint a Key Adviser. The role of the Nomad and Key Adviser is similar to that of a Sponsor.

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**The reporting accountant**

As part of the IPO process, the reporting accountant will prepare a number of reports that either meet specific regulatory requirements, or assist the directors and Sponsor/Nomad/Key Adviser in meeting their obligations. The main reports prepared by the reporting accountant are:

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**Typical reports prepared by a Reporting Accountant**

<table>
<thead>
<tr>
<th>A long-form report</th>
<th>A detailed report to support the disclosure of historical financial information in the prospectus or admission document. The report is a private report covering a period of at least three years and is addressed to the company’s directors and the Sponsor or Nomad.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A working capital report</td>
<td>A detailed report on the company’s cash flow projections and the company’s ‘working capital’ statement included in the prospectus or admission document. For a Premium listing, a listing on AIM or admission on the high growth segment, the company must be able to make an unqualified working capital statement covering a minimum period of 12 months. The report is a private report addressed to the company’s directors and the Sponsor or Nomad or Key Adviser. A working capital statement is not required for a GDR listing, however the investment bank managing the IPO process may still request that the reporting accountants perform due diligence in this area.</td>
</tr>
<tr>
<td>A report on the company’s financial position and prospects procedures</td>
<td>This report describes the procedures that the company has in place to enable the board and senior management to make an ongoing assessment of the company’s financial position and prospects, and report required financial information to the market on a timely basis. The report is a private report addressed to the company’s directors and the Sponsor or Nomad or Key Adviser.</td>
</tr>
<tr>
<td>A report on the company’s historical financial information</td>
<td>A public report on the company’s historical financial record contained in the prospectus or admission document. While this can be achieved by audit opinions provided for each set of financial statements included, market practice is for an Accountant’s report to be issued on the entire financial track record. This forms part of the prospectus and is equivalent to an audit report, but provides greater flexibility as it does not need to be issued by the same firm that issued a previous audit opinion.</td>
</tr>
</tbody>
</table>
What is the UK Code on Corporate Governance?

The UK Corporate Governance Code sets out standards of good practice in relation to such issues as board composition and development, remuneration, accountability and audit, and relations with shareholders. All Premium listed companies are required to include a statement in their annual reports detailing how they apply the principles and comply with the provisions of the UK Corporate Governance Code. In addition, both Premium and Standard Listed companies are required to comply with the corporate governance requirements of the Disclosure and Transparency Rules which stem from the EU Company Reporting Directive. These require the inclusion of a statement on corporate governance in the Annual Report, which must refer to the corporate governance code that the company is subject to, or has voluntarily adopted, and if no code has been applied the practices applicable to the company under its national law. The rules also require that the company describe the main features of its internal control and risk management systems, in relation to financial reporting and consolidation.

Whilst the rules for AIM companies do not contain any specific disclosure requirements in relation to corporate governance procedures, best practice is to provide some level of disclosure – either with reference to the UK Corporate Governance Code or the Quoted Companies Alliance (QCA) Corporate Governance guidelines for AIM companies.

A summary of the main principles of the UK Corporate Governance Code

Leadership

- Every company should be headed by an effective board.
- The board should be of sufficient size that the requirements of the business can be met and should include an appropriate combination of executive and non-executive directors, in particular independent non-executive directors.
- The UK Corporate Governance Code requires three board committees – audit committee, remuneration committee and nomination committee.
- There should be a clear division of responsibilities at the head of the company.
- The chairman is responsible for leadership of the board and ensuring its effectiveness.
- The chairman should be independent on appointment and should not be the CEO of the same company.
- Non-executive directors should constructively challenge and help develop proposals on strategy.
- One independent non-executive director should be appointed as Senior Independent Director to provide a sounding board for the chairman and intermediary for the other directors.

Effectiveness

- The board and its committees should consist of directors with the appropriate balance of skills, experience, independence and knowledge of the company.
- There should be a formal, rigorous and transparent process for the appointment of new directors to the Board.
- All directors should be able to allocate sufficient time to the company.
- All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.
- The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.
- The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.
- All directors should be submitted for re-election at regular intervals.
- All directors of FTSE 350 companies should be subject to annual election by shareholders.

Other reports

If a company includes pro forma financial information in the prospectus or admission document, or makes a profit forecast to the market during the period of admission, an Accountant’s report on the compilation of this information must be included in the prospectus. While companies rarely choose to include a profit forecast, owing to the additional risk, cost and time involved, pro forma financial information is commonly used to illustrate the effect of the transaction.

The reporting accountant also provides a ‘comfort letter’ to the directors and Sponsor to assist with the verification of other financial information in the prospectus or admission document.
### A summary of the main principles of the UK Corporate Governance Code

#### Accountability
- The board should present a **fair, balanced and understandable** assessment of the company’s position and prospects.
- The board is responsible for determining the **nature and extent of the principal risks** it is willing to take, and for maintaining sound **risk management and internal control systems**.
- The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting, risk management and internal control principles and for maintaining an appropriate relationship with the company’s auditors.

#### Remuneration
- Executive directors’ **remuneration** should be designed to promote the long-term success of the company. Performance-related elements should be transparent, stretching and rigorously applied.
- There should be a **formal and transparent** procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors.
- The Listing Rules require the Board disclose detailed components of the executive directors’ remuneration in its report to shareholders.

#### Relations with shareholders
- There should be a **dialogue with shareholders** based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring a satisfactory dialogue takes place.
- Refer to earlier table for details on relationships with majority shareholders.
- The board should use general meetings to communicate with investors and to encourage their participation.

### Continuing obligations
The FCA Disclosure and Transparency Rules set out the continuing obligations for companies listed on the UKLA’s Official List. These include rules on:
- the disclosure and control of inside information;
- the disclosure of transactions by persons discharging managerial responsibilities;
- the periodic reporting requirements of listed companies;
- the notification of transactions by major shareholders (more than 3%);
- the process used for the dissemination of information to shareholders;
- corporate governance disclosures.

These rules and disclosure requirements are not covered in this publication; however a summary of the key periodic financial reporting requirements for UK listed companies is set out in the table above.

### What should be your areas of focus?
In our experience, some of the key areas for those considering flotation in London are:
- Planning and good preparation. For many companies there is a significant amount of work needed up front to get into shape for the flotation.
- Understanding the financial track record issues, such as complex financial histories, the need to transition to IFRS and sourcing additional disclosure information.
- The flotation process is time consuming for key executives, leaving less time for them to carry out their day jobs, thereby increasing the risk of business issues not being addressed or not enough time being dedicated to the flotation.
- A focus on project management. Many flotations take longer than initially envisaged. This is often due to issues uncovered during due diligence; changing market conditions; unrealistic timetables; and the complexity of preparing the historical financial track record.
Appendices
Appendix A – Checklist for purchase of a ‘new’ private limited company
To put a new company in a position to commence business, you will require the following information:

**Directors**

In respect of each new director of the company:
- full name (i.e. first names, surname and former name – if used for business purposes in the previous 20 years) or, in the case of a corporation, its corporate name;
- nationality;
- residential address (or, in the case of a corporation, its registered office or principal place of business). This address will not be made publically available;
- service address, such as the registered office address of the company;
- business occupation (if any); and
- date of birth.

Each director must sign a consent to act as a director or provide his or her electronic pin details.

**Secretary**

In respect of the new company secretary:
- full name including any former names used for business purposes in the previous 20 years;
- service address, such as the registered office address of the company.

There is no requirement to have a secretary. If a company chooses to appoint a secretary, that person must also sign a consent to act or provide his or her electronic pin details. The secretary is an administrative officer and does not have the same responsibilities or liabilities as a director.

**Registered office**

In respect of the proposed registered office:
- the full postal address.

The registered office determines the tax district that will deal with the company’s affairs. It must be in England, Wales, Scotland or Northern Ireland, depending on where the company is incorporated and may not be a PO Box address. PwC Legal can provide a registered office facility.

**Share capital**

The classes of shares to be created (for example ordinary or preference) and the rights attaching to those share classes, such as voting rights and rights to dividends, the amount to be paid up on each share including any premium and the nominal value.

**Shareholders**

In respect of each shareholder:
- an address (or in the case of a corporation, its registered office or principal place of business. In the case of an individual it does not need to be a residential address);
- the number of shares he or she will be allotted; and
- the amount guaranteed.

Each subscriber must sign a statement of compliance that the necessary requirements to form a company have been complied with or provide electronic pin details of the individual or of a director of a corporate shareholder.

Private and public companies need have only one shareholder.
The Persons with Significant Control Register

In respect of a person with significant control (PSC) or relevant legal entities (RLE), a register is to be created recording the details of any persons or relevant legal entities exercising significant control over the company (‘PSC Register’). Companies coming into existence after 26 June 2017 must also file a statement of initial significant control at Companies House.

Where a company is unable to identify either a person or relevant legal entity exercising significant control, they are still required to create a PSC register confirming that:

- The company has completed its investigations and has concluded that no person is registrable in its PSC register.
- The company knows or has reasonable cause to believe that there is a registrable PSC or registrable RLE, but that PSC or RLE has not yet been identified.
- The company has identified a registrable PSC, but the company has not yet confirmed that individual’s required particulars – this statement does not apply to RLEs, as their details do not have to be confirmed before entry in a PSC register.
- The company has either not yet started or has not yet completed taking reasonable steps to find out if anyone is a registrable PSC or registrable RLE. This statement may only be included if none of the three preceding statements applies.
- The company has identified a registrable PSC or registrable RLE and, in the case of a PSC, has confirmed that individual’s required particulars.

The requirement to create and keep a PSC Register now also applies to companies with voting shares admitted to trading on a prescribed market (i.e. AIM) and unregistered companies.

Name

The proposed name of the company (which are subject to certain restrictions, see earlier in the guide for further details).

Articles of Association

Whether any special provisions are required (e.g. special rights attached to different classes of shares or pre-emption rights on allotment or transfer of shares).

Auditors

The name and address of the firm that will be appointed.

Accounting Reference Date

The date to which the company’s annual accounts are to be prepared (this would generally be the same as the date to which the parent’s accounts are prepared).

Bankers

The name and branch of the bank that will act as banker to the company and instructions as to the proposed signing arrangements (e.g. names of signatories and how they will sign).
Appendix B – UK grant incentives
Continual investment in researching and developing existing and new technologies is a given in today’s world of rapid-paced technological change and almost all businesses manufacturing a product will invest to some degree in the technology underlying their product portfolio; however, research and development activity tends to go far beyond this as businesses address wider technological developments that can impact how products and services are delivered, including investing in the development of both front and back end systems, as well as evaluating and strategising against the risk of new disruptive technologies (think digital cameras and e-readers). On top of this, businesses are starting to appreciate the potential boost that can be obtained from investing in technology to unlock Big Data and obtain potentially powerful insights into how customers interact with their products and services.

There are a wide range of grants and incentives available across the UK to support and stimulate private sector investment. In addition, the UK Government will invest an additional £4.7 billion by 2020-21 in R&D funding.

These grants can cover capital investment, job creation/safeguarding, R&D, property development, training, energy and infrastructure investment. All grants are discretionary and negotiable and businesses looking to obtain grants should not make an irrevocable commitment to an investment project prior to receiving a grant offer letter. There is no automatic entitlement to grant funding.

**Incentives for R&D**

Governments around the world are aware that R&D operates in a competitive global marketplace and are increasingly introducing incentives to attract skills-based investment and boost economic recovery. The strong international reputation of the UK’s research and innovation base gives our country great influence on the global stage, however, emerging evidence from the ‘International Comparative Performance of the UK Research Base’ suggests that the UK’s global leading research position could be at risk. The UK’s strengths and capabilities can also be used to leverage foreign direct investment that looks to plug gaps in the UK supply chain and invest in complementary capabilities that also support the government manifesto commitment of achieving the OECD average for investments in R&D (2.4% of GDP within 10 years).

**UK incentives**

UK R&D incentives have recently been reformed in recognition of this, encouraging companies to undertake more R&D activities in the UK. The ‘large’ company R&D regime is currently changing to an 11% expenditure credit that is more akin to a grant than the historic ‘super’ tax deduction, giving the incentive more visibility and making it easier to evaluate the reduced cost of locating development in the UK compared to other territories.

There is also an UK R&D incentive available for small and medium-sized (‘SME’) businesses. These companies can claim a deduction of 230% of the qualifying spend on R&D, with loss-making companies able to turn qualifying expenditure into a cash payment giving a significant boost to such companies investing in new technologies. One of the key government objectives is to make the UK the technology centre of Europe. It is intended that creative sector relief will help support technological innovation and growth.

The UK Government also provides direct funding for R&D and typically spends an estimated £2.5 billion per annum on business support which includes grant funding through the Regional Growth Fund in England; Wales Economic Growth Fund and Repayable Business Finance in Wales; and the Regional Selective Assistance in Scotland. In addition the European Commission makes a significant contribution via grant to R&D, infrastructure and training through a range of European programmes. These grants generally need to be considered early on in the operational decision-making process but can be available if your business is expanding its operations, investing in new or innovative plant and machinery/processes, creating or safeguarding jobs or potentially downsizing.
Regional aid areas (2014-2020)

Assisted Areas are those areas where regional aid can be offered to undertakings, typically businesses, under European Commission state aid rules. In the UK the main examples of these schemes offering regional aid include:

- **Regional Growth Fund** – operates in England and supports projects and programmes that are using private sector investment to create economic growth and sustainable employment.
- **Regional Selective Assistance** – primary Scottish scheme under the Regional Aid Guidelines and is administered by Highlands and Islands Enterprise and Scottish Enterprise. Grants may be given in conjunction with support under other aid frameworks, for example R&D or skills and training.
- **Welsh Government Repayable Business Finance** – offers discretionary financial support to eligible businesses in key business sectors and certain strategically important projects outside these. It helps fund capital investment, job creation, research, development and innovation and certain eligible revenue projects throughout Wales.
- **Selective Financial Assistance** – Invest Northern Ireland provides support for investment in Northern Ireland by indigenous and foreign owned companies that creates, maintains or safeguards employment. The scheme aims to achieve higher levels of business growth, leading to long-term high quality employment.

The 2014-2020 UK Assisted Areas Map came into force on 1 July 2014. There is a maximum grant funding ceiling applied by the European Commission (the Regional Aid map) that varies dependent upon location. This varies from 10% to 45% of eligible costs for capital grants.

Innovate UK (Technology Strategy Board)

Following the Spending Review in autumn 2015, the Government announced its intention to publish a National Innovation Plan. Innovate UK’s new strategy for 2016 to 2020 is a key part of the National Innovation Plan and will be published alongside it.

Innovate UK’s principal objective is to stimulate R&D and innovation activity, encouraging businesses to develop innovative products, processes and services with future commercial potential.

It explains how it will find, support and grow innovative businesses this year to speed up economic growth. It also explains some changes in the way it works:

- a new sector grouping approach to its programmes;
- simplified funding competitions including a single ‘open’ programme for applications from any technology, sector or size of business;
- an enhanced role for the innovation networks.

Innovate UK aims to promote and improve the UK’s technology base. Its primary focus for the last five years has been to invest and drive innovation across the UK. Its new focus is, building on the innovation momentum, to accelerate sector growth. It has restructured into focusing on four sector groups. These are:

- emerging and enabling technologies;
- health and life sciences;
- infrastructure systems; and
- manufacturing and materials.

It also has an open programme that is not sector based.

Innovate UK also supports other grants such as:

- catalysts;
- collaborative research and development (CR&D);
- feasibility studies;
- Knowledge Transfer Partnerships (KTPs);
- launchpads; and
- Small Business Research Initiative (SBRI).
Appendix C
UK tax datacard 2018/19
(2017/18 details in brackets)
## Income tax

### Bands – main rates (a)

<table>
<thead>
<tr>
<th>2018/19</th>
<th>2017/18</th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>£1-34,500</td>
<td>(£1-£33,000)</td>
<td>20%</td>
<td>(20%)</td>
</tr>
<tr>
<td>£34,501-150,000</td>
<td>(£33,501-£150,000)</td>
<td>40%</td>
<td>(40%)</td>
</tr>
<tr>
<td>Over £150,000</td>
<td>(over £150,000)</td>
<td>45%</td>
<td>(45%)</td>
</tr>
</tbody>
</table>

The first £2,000 (£5,000) of dividends is taxed at 0% (0%), and this amount is taken into account in determining the income tax band. Dividends above £2,000 (£5,000) are taxed at 7.5% (7.5%), 32.5% (32.5%) or 38.1% (38.1%) as the top slice of total income.

The personal savings allowance exempts interest income of £1,000 (£1,000) for basic rate taxpayers (20%) and £500 (£500) for higher rate taxpayers (40%). The allowance does not apply to additional rate taxpayers (45%).

In addition to the personal savings allowance, other non-dividend savings income (typically bank and building society interest) is taxed at 0% (0%) up to £5,000 (£5,000). This 0% rate is not available if income from other sources, including dividends, exceeds £5,000 (£5,000).

There are special rules for trusts, and also for individuals with income assessable on the remittance basis.

An additional tax charge applies to clawback child benefit where one income in a household exceeds £50,000, with full clawback by £60,000.

(a) For income tax in Scotland, there is a difference in the 40% band (£31,500 for 2017/18), otherwise these rates and allowances apply equally.

### Personal allowances

<table>
<thead>
<tr>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance (a)</td>
<td>£11,850</td>
</tr>
<tr>
<td>Income limit for personal allowance (b)</td>
<td>£100,000</td>
</tr>
<tr>
<td>Blind person’s allowance</td>
<td>£2,390</td>
</tr>
<tr>
<td>Married couple’s allowance (c)</td>
<td>£8,695</td>
</tr>
<tr>
<td>Marriage allowance (d)</td>
<td>£1,185</td>
</tr>
<tr>
<td>Trading income allowance (e)</td>
<td>£1,000</td>
</tr>
<tr>
<td>Property income allowance (f)</td>
<td>£1,000</td>
</tr>
</tbody>
</table>

a. The personal allowance applies to all individuals.
b. The personal allowance is reduced by £1 for each £2 by which income exceeds £100,000, irrespective of age or date of birth.
c. Relief is limited to 10%, and extends to civil partnerships. At least one spouse/partner must have been born before 6 April 1935. The allowance is reduced where income exceeds £28,900 (£28,000), subject to an absolute minimum of £3,360 (£3,260).
d. A non taxpayer can transfer up to £1,185 (£1,150) of the personal allowance to a spouse or civil partner who is a basic rate taxpayer. Relief is given at 20%.
e. The trading income allowance applies to certain miscellaneous income from providing assets or services in the course of a trade.
f. Trading or property income (before expenses) within these allowances is exempt. Individuals with gross trading or property income above the allowance can choose between deducting £1,000 or actual allowable expenditure.

### Cap on income tax reliefs

Certain income tax reliefs are capped at the greater of £50,000 or 25% of income. This excludes charitable donations.

### Company cars – annual benefits

The annual benefit is a percentage of list price, with the percentage dependent on the level of CO2 emissions.

The benefit is 13% (9%) for emissions of 0–50g/km, and 16% (13%) for 51–75g/km. For emissions of 76–94g/km, the rate is 19% (17%) and increases by 1% at 95g/km, and then for each additional full 5g/km up to a maximum charge of 37% for emissions of 180g/km (190g/km) or more. Emission levels are rounded down to the nearest multiple of five.

List price includes certain accessories, but is reduced for capital contributions of up to £5,000.

There is a diesel supplement of 4% (3%), subject to the maximum charge of 37%.

The taxable benefit for significant private use of vans is £3,350 (£3,230).

Where fuel is provided for private use in a company car, the taxable benefit percentage is applied to £23,400 (£22,600).

The benefit for fuel provided for a van with significant private use is £633 (£610).
**Pensions**

<table>
<thead>
<tr>
<th></th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lifetime allowance (a)</td>
<td>£1,030,000</td>
<td>(£1,000,000)</td>
</tr>
<tr>
<td>Equivalent to defined benefit pension</td>
<td>£51,500</td>
<td>(£50,000)</td>
</tr>
<tr>
<td>Maximum contribution annual allowance (b)</td>
<td>£40,000</td>
<td>(£40,000)</td>
</tr>
<tr>
<td>Tax on excess</td>
<td>Marginal rate</td>
<td>(marginal rate)</td>
</tr>
<tr>
<td>Normal minimum pension age</td>
<td>55</td>
<td>(55)</td>
</tr>
</tbody>
</table>

- Special rules apply to individuals with benefits exceeding the lifetime allowance, or any previous protected amount. Excess over this amount may be subject to a 25% charge plus income tax on balances drawn, or 55% for lump sum benefits.
- There is a reduction in the annual allowance by £1 for every £2 of adjusted income in excess of £150,000, up to a limit of £210,000.

An income tax exemption and NICs disregard covers the first £500 worth of pension advice provided to an employee in a tax year.

**Inheritance tax**

<table>
<thead>
<tr>
<th></th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £325,000 (£325,000) ('nil rate band') (a)</td>
<td>0%</td>
<td>(0%)</td>
</tr>
<tr>
<td>Over £325,000 (£325,000) (frozen to 2020/21)</td>
<td>40%</td>
<td>(40%)</td>
</tr>
</tbody>
</table>

An additional nil rate band of £125,000 (£100,000) is available when a main residence is passed on death to a direct descendant. If the net value of the estate exceeds £2m, this additional nil rate band will be reduced by £1 for each £2 by which the net value exceeds that amount.

A surviving spouse or civil partner may claim the unused proportion of an earlier deceased spouse’s, or civil partner’s, nil rate band and additional nil rate band, up to the current nil rate band/additional nil rate band.

A reduced rate of 36% (36%) applies when 10% or more of a net estate is left to charity.

Reduced charges apply on lifetime gifts within seven years of death.

**Capital gains tax**

<table>
<thead>
<tr>
<th></th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic rate taxpayers (a)</td>
<td>10%</td>
<td>(10%)</td>
</tr>
<tr>
<td>Trustees and 40%/45% (40%/45%) taxpayers (a)</td>
<td>20%</td>
<td>(20%)</td>
</tr>
<tr>
<td>Annual exempt amount – individuals</td>
<td>£11,700</td>
<td>(£11,300)</td>
</tr>
<tr>
<td>Annual exempt amount – trusts</td>
<td>£5,850</td>
<td>(£5,650)</td>
</tr>
<tr>
<td>Entrepreneurs’ relief lifetime limit</td>
<td>£10m</td>
<td>(£10m)</td>
</tr>
<tr>
<td>Entrepreneurs’ relief rate</td>
<td>10%</td>
<td>(10%)</td>
</tr>
</tbody>
</table>

- Gains on residential properties not qualifying for principal private residence relief, and on carried interest, are taxed at 18% and 28% respectively.

**Tax-efficient investments**

<table>
<thead>
<tr>
<th></th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>ISA limit (a)</td>
<td>£20,000</td>
<td>(£20,000)</td>
</tr>
<tr>
<td>Junior ISA limit (b)</td>
<td>£4,260</td>
<td>(£4,128)</td>
</tr>
</tbody>
</table>

- Investment can be in cash, shares, or peer to peer lending platforms.
- Investment can only be in cash or shares.

**Help to Buy ISA:** for first time buyers. Maximum deposits of £200 per month, plus an initial deposit of up to £1,000.

**Venture Capital Trusts (VCTs):** income tax relief at up to 30% on investment up to £200,000, with capital gains tax reliefs.

**Enterprise Investment Scheme (EIS):** income tax relief at up to 30% on qualifying share subscriptions up to £1m (£2m if the excess over £1m is invested in knowledge-intensive companies), with capital gains tax reliefs.

**Seed Enterprise Investment Scheme (SEIS):** income tax relief of 50% on qualifying share subscriptions up to £100,000, with capital gains tax reliefs.

**Social Investment Tax Relief (SITR):** income tax relief of 30% on investment up to £1m (£1m) with capital gains tax reliefs.

**Lifetime ISAs:** available to adults under the age of 40, who can contribute up to £4,000 per year. Contributions made before the age of 50 qualify for a 25% bonus from the Government. Funds from Lifetime ISAs can be used to buy a first home at any time from 12 months after the account opening, or can be withdrawn from age 60.
**Air passenger duty**

Rates per passenger from 1 April 2018 (a) (b)

<table>
<thead>
<tr>
<th>Band A (0-2,000 miles from London)</th>
<th>Lowest class of travel</th>
<th>Other classes of travel</th>
<th>Higher rate (c)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£13 (£13)</td>
<td>£26 (£26)</td>
<td>£78 (£78)</td>
</tr>
<tr>
<td>Band B (over 2,000 miles from London)</td>
<td>£78 (£75)</td>
<td>£156 (£146)</td>
<td>£468 (£450)</td>
</tr>
</tbody>
</table>

a. Flights from airports in the Scottish Highlands and Islands, and long haul flights from airports in Northern Ireland are exempt.

b. Air passenger duty is not charged for the lowest class of travel for children aged 16 and under at time of flight.

c. Aircraft over 20 tonnes and seating fewer than 19 passengers.

**Capital allowances**

<table>
<thead>
<tr>
<th>Expenditure on:</th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plant and machinery (a)</td>
<td>18%</td>
<td>(18%)</td>
</tr>
<tr>
<td>Plant and machinery in certain designated assisted areas</td>
<td>100%</td>
<td>(100%)</td>
</tr>
<tr>
<td>Motor cars – CO2 emissions;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>≤50g/km (≤75g/km) (a)</td>
<td>100%</td>
<td>(100%)</td>
</tr>
<tr>
<td>50-110g/km (75-130g/km) (a)</td>
<td>18%</td>
<td>(18%)</td>
</tr>
<tr>
<td>&gt;110g/km (&gt;130g/km) (a)</td>
<td>8%</td>
<td>(8%)</td>
</tr>
<tr>
<td>New and unused zero emission goods vehicles</td>
<td>100%</td>
<td>(100%)</td>
</tr>
<tr>
<td>Long life assets/integral features in buildings (a)</td>
<td>8%</td>
<td>(8%)</td>
</tr>
<tr>
<td>Patent rights and know-how (a) (b)</td>
<td>25%</td>
<td>(25%)</td>
</tr>
<tr>
<td>Mines, oil wells, mineral rights (a) (c)</td>
<td>25%</td>
<td>(25%)</td>
</tr>
<tr>
<td>Research and development</td>
<td>100%</td>
<td>(100%)</td>
</tr>
<tr>
<td>Energy-saving and water efficient plant and machinery</td>
<td>100%</td>
<td>(100%)</td>
</tr>
</tbody>
</table>

A 100% annual investment allowance is given on the first £200,000 per annum of capital expenditure per group of companies or related entities, on plant and machinery including long life assets and integral features, but excluding cars.

a. These allowances are given on a reducing balance basis.

b. Tax relief for expenditure on certain intangibles is given by accounting write downs (and not capital allowances).

c. Acquisition of mineral deposits and rights qualify for 10% p.a.

**Corporation tax**

<table>
<thead>
<tr>
<th>Financial year (from 1 April)</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main rate</td>
<td>19%</td>
<td>(19%)</td>
</tr>
<tr>
<td>Surcharge on bank profits</td>
<td>8%</td>
<td>(8%)</td>
</tr>
<tr>
<td>Loss annual allowance per group</td>
<td>£5m</td>
<td>(£5m)</td>
</tr>
<tr>
<td>Restriction of losses (% of profits above allowance)</td>
<td>50%</td>
<td>(50%)</td>
</tr>
</tbody>
</table>

**Diverted profits tax**

Companies with diverted profits pay diverted profits tax at 25% (25%) on such profits.
National insurance contributions

Class 1 employees:

<table>
<thead>
<tr>
<th>Weekly earnings</th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £162 (£157)</td>
<td>Nil</td>
<td>(Nil)</td>
</tr>
<tr>
<td>£162.01-£892 (£157.01-£866)</td>
<td>12%</td>
<td>(12%)</td>
</tr>
<tr>
<td>Over £892 (over £866)</td>
<td>2%</td>
<td>(2%)</td>
</tr>
</tbody>
</table>

Class 1 employers (a) (b):

<table>
<thead>
<tr>
<th>Weekly earnings</th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £162 (£157)</td>
<td>Nil</td>
<td>(Nil)</td>
</tr>
<tr>
<td>Over £162 (Over £157)</td>
<td>13.8%</td>
<td>(13.8%)</td>
</tr>
</tbody>
</table>

a. Most businesses and charities can claim a reduction of up to £3,000 (£3,000) of their employers’ contributions (‘NIC employment allowance’).

b. No employers’ contributions are payable in respect of weekly earnings up to £892 (£866) paid to employees under 21 and apprentices under 25.

Other:

Class 1A (employers only): 13.8% (13.8%) on the amounts of taxable benefits.

Class 1B (employers only): 13.8% (13.8%) in respect of amounts in a PAYE settlement agreement and the income tax thereon.

Class 2 (flat rate for self-employed): £2.95 (£2.85) per week on profits above £6,025 (£6,025).

Class 3 (voluntary): £14.65 (£14.25) per week.

Class 4 (self-employed): 9% (9%) of profits between £8,424 (£8,164) and £46,350 (£45,000) per annum and 2% (2%) on profits above £46,350 (£45,000).

Apprenticeship levy

A 0.5%(0.5%) annual levy will be payable by employers, charged on payroll costs in excess of £3m (£3m).

Patent box and research & development tax credits

<table>
<thead>
<tr>
<th>Financial year (from 1 April)</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patent box – effective corporation tax rate</td>
<td>10%</td>
<td>(10%)</td>
</tr>
<tr>
<td>R&amp;D tax credit for SMEs</td>
<td>130%</td>
<td>(130%)</td>
</tr>
<tr>
<td>R&amp;D expenditure credit – minimum rate</td>
<td>12%</td>
<td>(11%)</td>
</tr>
</tbody>
</table>

(a) 12% from 1 January 2018

Value added tax

Registration threshold: taxable supplies at the end of any month exceed £85,000 (£85,000) either in the past 12 months or the next 30 days.

<table>
<thead>
<tr>
<th>Taxable Supplies</th>
<th>Standard rate</th>
<th>Lower rate</th>
<th>Zero rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £162 (£157)</td>
<td>Nil</td>
<td>(Nil)</td>
<td>20%</td>
</tr>
<tr>
<td>£162.01-£892 (£157.01-£866)</td>
<td>12%</td>
<td>(12%)</td>
<td>5%</td>
</tr>
<tr>
<td>Over £892 (over £866)</td>
<td>2%</td>
<td>(2%)</td>
<td>0%</td>
</tr>
</tbody>
</table>

Insurance premium tax

<table>
<thead>
<tr>
<th>Taxable Supplies</th>
<th>Standard rate</th>
<th>Higher rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Higher rate</td>
<td>12%</td>
<td></td>
</tr>
</tbody>
</table>

Annual tax on enveloped dwellings

An annual tax on enveloped dwellings is payable by a company (or similar entity) owning a residential property with a value more than £500,000 (£500,000) on 1 April 2017 (or date of acquisition, if later). Tax is charged in bands, from a minimum of £3,600 (£3,500) to a maximum of £226,950 (£220,350).
### Stamp duties and property transaction taxes

#### Stamp duty land tax (a)

**Non-residential land and buildings – rates applied cumulatively**

<table>
<thead>
<tr>
<th></th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0–£150,000</td>
<td>0%</td>
<td>(0%)</td>
</tr>
<tr>
<td>£150,001–£250,000</td>
<td>2%</td>
<td>(2%)</td>
</tr>
<tr>
<td>Over £250,000</td>
<td>5%</td>
<td>(5%)</td>
</tr>
</tbody>
</table>

#### Residential land and buildings (b) (c)(d) – rates applied cumulatively

<table>
<thead>
<tr>
<th></th>
<th>2018/19</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0–£125,000</td>
<td>0%</td>
<td>(0%)</td>
</tr>
<tr>
<td>£125,001–£250,000</td>
<td>2%</td>
<td>(2%)</td>
</tr>
<tr>
<td>£250,001–£925,000</td>
<td>5%</td>
<td>(5%)</td>
</tr>
<tr>
<td>£925,001–£1,500,000</td>
<td>10%</td>
<td>(10%)</td>
</tr>
<tr>
<td>Over £1,500,000</td>
<td>12%</td>
<td>(12%)</td>
</tr>
</tbody>
</table>

a. All figures are calculated inclusive of any VAT. For leases, the rate is based on the discounted rental values.

b. Where residential property over £500,000 is purchased by a company (or similar entity) a 15% rate applies.

c. A 3% surcharge applies to all second and additional residential properties on transactions of £40,000 or more.

d. From 22 November 2017 first time buyers paying £300,000 or less for a residential property will pay no stamp duty land tax. For purchases between £300,000 and £500,000 stamp duty land tax will be payable at 5% on the excess over £300,000.

#### Scotland: Land and buildings transaction tax

Land and buildings transaction tax applies in Scotland instead of stamp duty land tax, with different rates and bands.

#### Wales: Land transaction tax

From 1 April 2018 land transaction tax will replace stamp duty land tax in Wales, with different rates and bands.

#### Other stamp duty 2018/19

- **Stamp duty – shares and securities**: 0.5%
- **Stamp duty reserve tax**: 0.5%/1.5%

Stamp duty, and stamp duty reserve tax, is not charged on recognised growth markets, including AIM and ISDX.
Appendix D – Pathfinder
Facilitating global growth
What is the PwC Pathfinder?

PwC’s Pathfinder service has been designed to facilitate international movement of business, whether that be an entrepreneur establishing business in a new territory or a corporate group expanding cross-border. We understand that international movement can be time consuming and complex so we have put together a network of specialists across 157 countries around the world who can advise on a wide range of issues which can impact on your initial structuring decisions and provide the practical advice needed, freeing up your time to get on with business as normal.

How does the service work?

We will provide you with a dedicated specialist who will act as your single point of contact for all matters related to the project. The experience of our specialists allows you to focus on business with the confidence that the wider complex details of your international movement are being addressed.

We will begin by providing an overview of the steps required to establish your foreign operations, prioritised so that it is clear what are immediate actions and what are longer term considerations. We also include a timeline to be clear as to when each action should be completed and will link you in with specialists for each step along the way, as necessary.

International movement requires a holistic approach – it is not just a question of ‘should I set up a branch or a company’. It is important that the practical aspects and long-term implications are addressed as you enter a country so that your plans run smoothly and the stakeholders’ positions are protected. Other considerations will differ depending on the particular situation but can include immigration, finding suitable real estate, establishing bank accounts, agreeing suitable remuneration packages, adhering to local taxation requirements, setting up a payroll etc. PwC’s Pathfinder professionals are experienced in managing these concerns.

Over the page we have presented an international movement roadmap which will take you through some of the major considerations and will assist you in focusing your plans.

What are some of the initial considerations?

Our Pathfinder service can include the following:

- Advice regarding immigration.
- Structuring your entry into a country.
- Formation of any corporate vehicles required.
- Assistance with any entry tax requirements.
- Advice on, and assistance with, local tax registration requirements with regard to corporate income tax, VAT/GST, payroll etc.
- Managing the registrations as necessary.
- Broader practical assistance with matters such as opening a local bank account, obtaining necessary insurances etc.

What are some of the longer term considerations?

 Longer term we can assist with (or provide introductions to local service providers for):

- Ongoing tax compliance services, be that personal tax returns, corporate income tax returns, VAT returns, payroll processing, bookkeeping etc.
- Advice on relevant grants and incentives.
- Annual legal compliance matters.
- Financial reporting and audit requirements.
- Advice on customary local employment packages and expatriate tax issues.
- Advice on stakeholder issues and potential exit strategy.
**Working out what’s important to your business plan**

You may be considering international movement for a number of reasons. It could be to establish a business abroad, exporting goods or services, organic growth into a new country, the acquisition of a business overseas or a customer’s need for local support. In any international scenario there are factors you need to address. You must make sure you have dealt with all local formalities and are operating in a fully compliant manner. Use this chart to prompt the questions you need to ask when thinking about international movement.

<table>
<thead>
<tr>
<th>What are your short-term objectives?</th>
<th>Where does the new business fit into your existing structure?</th>
<th>What are your long-term objectives?</th>
<th>What type of legal presence do you require?</th>
<th>How do you establish the entity?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exploring opportunities in new territories.</td>
<td>What activities will it carry out or continue?</td>
<td>What is the future of this business?</td>
<td>Types of presence may include representative office, branch, company partnership.</td>
<td>Legal registration requirements, minimum share capital etc.</td>
</tr>
<tr>
<td>Enhancing the competitiveness of the business.</td>
<td>How many people will it employ and what authority will they have?</td>
<td>How will stakeholders extract value (e.g. long term hold, new investors, trade sale etc.).</td>
<td>Each type of presence will have different legal and tax implications and different disclosure requirements for the business and its owners.</td>
<td>Role and responsibilities of shareholders, directors and company officers.</td>
</tr>
<tr>
<td>Buying a new business.</td>
<td>Where is your intellectual property located?</td>
<td>Is a listing/exit planned?</td>
<td>Local regulations may require or prohibit foreign parents owning certain vehicles.</td>
<td>Trading name?</td>
</tr>
<tr>
<td>Entering into a joint venture.</td>
<td>How will it be funded?</td>
<td></td>
<td></td>
<td>Meeting quorum, any changes required to memorandum or constitution document?</td>
</tr>
</tbody>
</table>

What do the profit projections look like?
### What else should you be aware of at set up?

6. Registration for corporate income tax, payroll tax and VAT/GST.

6. Other legal registrations e.g. environmental; data protection; local trading.


6. Reliefs and incentives e.g. patent box, R&D tax relief.

6. Recruitment, work permits, immigration.

6. Property and real estate.

### How do you reward employees?

7. Advice on remuneration, employment terms and benchmarking.

7. Employment contracts.

7. Payroll function.

7. Structure of equity investment (incl share schemes).

### What tax issues arise now that I am operating in multiple countries?


8. Customers and import duty planning.

8. Transfer pricing – Making sure you have the right policy and adequate documentation.

8. Withholding tax requirements, claiming treaty relief and claiming double tax relief.

8. International reporting requirements (e.g. CbCR, PSC etc.).

### What operational matters do I need to consider going forward?

9. Cash management and treasury function.

9. Preparation of management accounts and annual reporting.


9. Audit requirements.

### How can PwC Pathfinder help me?

10. We have specialists who can help you with all areas shown on this chart.

10. We will provide a dedicated point of contact for all of your queries.

10. We will provide you with an easy-to-understand menu of services and a fixed fee.
PwC contacts
<table>
<thead>
<tr>
<th>General enquires and Pathfinder</th>
<th>Family business in the UK</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mike Curran</strong></td>
<td><strong>Sian Steele</strong></td>
</tr>
<tr>
<td>Email: <a href="mailto:mike.curran@pwc.com">mike.curran@pwc.com</a></td>
<td>Email: <a href="mailto:sian.steele@pwc.com">sian.steele@pwc.com</a></td>
</tr>
<tr>
<td>Mobile: +44 (0)7718 581101</td>
<td>Mobile: +44 (0) 7720 071927</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Matt Timmons</strong></td>
<td><strong>Diane Hay</strong></td>
</tr>
<tr>
<td>Email: <a href="mailto:matthew.j.timmons@pwc.com">matthew.j.timmons@pwc.com</a></td>
<td>Email: <a href="mailto:diane.hay@pwc.com">diane.hay@pwc.com</a></td>
</tr>
<tr>
<td>Mobile: +44 (0)7764 958130</td>
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<tr>
<td><strong>External and Government Relations, Tax</strong></td>
<td><strong>What type of legal presence do I require and How do I establish the entity</strong></td>
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<tr>
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<td><strong>Corporate Affairs</strong></td>
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<td>Transfer Pricing</td>
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<thead>
<tr>
<th>EIS</th>
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<tr>
<th>VAT</th>
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<thead>
<tr>
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<th>Accounting</th>
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<tr>
<th>Payroll Taxes</th>
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<th>Employment contracts</th>
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<th>Employee Benefits</th>
<th>Data Protection</th>
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