

DOING BUSINESS IN THE UK

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LAYTONS ETL

Yarnwicke, 119 - 121 Cannon Street, London EC4N 5AT

+44 (0)20 7842 8000

www.laytons.com

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SECTION 1 - INTRODUCTION

DOING BUSINESS IN THE UK

English law underpins both national and international commerce and finance.

London is still considered the world's pre-eminent financial centre, and is one of the most attractive international cities for foreign investment. One of the reasons for this is the high regard that the international business community has for the principles of the English legal system and the fairness of the English Courts.

Following Brexit, the UK has consistently remained a popular destination for doing business and attracts high levels of foreign direct investment (FDI). According to Ernst & Young's 2024 annual European Attractiveness Survey, the UK has continued to outperform most of the other European destinations in terms of FDI – noting that the UK has bucked the trend of decline across Europe and continues to attract investment, particularly in areas where it has a comparative advantage such as the digital, financial services and business services sectors.

Some of the reasons that the UK has remained such a popular destination for business and investment include:

- its convenient location and time zone for global markets
- its competitive tax system
- the relative ease and speed of establishing a business in the UK
- the wide use of English law and English law frameworks in business throughout the world
- easy access to the UK's skilled and diverse workforce
- support from UK government which incentivises and promotes FDI

The UK is made up of three distinct legal jurisdictions, namely England & Wales, Scotland and Northern Ireland. This guide focuses on legal considerations in England & Wales so for ease of reference, when we refer to UK in this guide, the references relate to the legal position in England & Wales.

There are various important legal considerations for a business looking to set up operations in the UK and we will cover some of the key legal considerations in relation to:

- corporate law (regarding setting up business);
- competition law;
- employment and immigration law;
- intellectual property law and data protection; and
- real estate law.

Laytons ETL is a full-service commercial law firm headquartered in the city of London which services UK and International clients and is part of ETL Global, a multinational professional services network. Our lawyers regularly advise on the breadth of issues discussed in this guide.

If you have any questions on the matters discussed in this guide or if you need further guidance, please do get in touch with us. The contact details of our team are set out at the conclusion of the guide.

Disclaimer. This publication is provided by Laytons LLP (trading as Laytons ETL) for informational purposes only. The information contained in this publication should not be construed as legal advice. The content of this guide reflects the law in England and Wales as of 1 April and the law is subject to change.





SECTION 2 - KEY CORPORATE LEGAL CONSIDERATIONS

The main piece of legislation regulating companies in the UK is the Companies Act 2006 ("Companies Act"). It is key to understand the requirements of this legislation when setting up your business in the UK.

Typically, when companies enter the UK market, they look to set up either:

- a UK subsidiary; or
- a UK registered 'branch'.

But which option is preferable for your business? In our experience, a company would commonly prefer either of these options for the following reasons:

- UK subsidiary: When a company has decided to enter into the UK market for the long term, the preference is often to incorporate a separate local legal entity/ company as a subsidiary of the overseas business.
- UK registered branch: Often (but not always) when a company is looking to test a new market or does not wish to incur the costs associated with setting up a new legal entity, it is possible for foreign companies to look to trade in the UK without a subsidiary. This involves setting up and registering a UK place of business for the foreign company (a 'branch') so that effectively all the business is still directly done by the main foreign entity.

In this section, we set out a high-level overview of what is involved in setting up a UK subsidiary or a UK registered branch.





INCORPORATING A UK SUBSIDIARY

UK companies and their shareholders generally benefit from limited liability. This enables a subsidiary company to exist separately from its parent company and/or shareholders, generally protecting the parent company and its shareholders from the liabilities of the UK subsidiary.

The most common types of companies are:

- Private company limited by shares: This type of company has a share capital and the liability of each shareholder is limited to the amount, if any, unpaid on its shares. A private company cannot offer its shares for sale to the general public. The vast majority of new businesses or subsidiaries are incorporated as private companies.
- Private company limited by guarantee: Such company does not have a share capital and its members are guarantors rather than shareholders. The members' liability is limited to the amount of their guarantees (usually a nominal sum) only if the company is wound up. Private companies limited by guarantee are normally formed solely for nonprofit companies.
- Public limited company: A public company must have a minimum issued share capital of £50,000 (with at least 25% paid up in the company). The liability of members is limited to the nominal value of their shares. It may offer its shares or debentures for sale to the general public and may have its securities quoted on a stock exchange or other securities markets. Foreign parent companies rarely form a UK subsidiary as a public limited company.

SECTION 2.1 - INCORPORATING A UK SUBSIDIARY

In the UK, all limited companies are registered at Companies House, which is an executive agency of the Department for Business and Trade. Companies House deals with all matters relating to the incorporation and dissolution of companies and acts as a storage repository of all company information that is required to be delivered under the Companies Act to Companies House – noting that any information required to be delivered to Companies House is freely available to the public via the Companies House website.

Incorporating a company can often be completed in less than a day on the Companies House website provided that the company has the following information and details prepared and ready to be filed:

- (i) A suitable name available on Companies House;
- (ii) Details of at least one shareholder, including details of any persons with significant control (any shareholder who holds more than 25% of shares in the company, more than 25% of voting rights in the company or has the right to appoint or remove the majority of the board of directors);
- (iii) Details of at least one director who will manage the company on behalf of the shareholders (there is no requirement for shareholders and directors to be resident in the UK, but there are incoming legislation changes in the UK requiring directors to either directly provide verification information to Companies House or to be verified by an authorised party);
- (iv) A registered office address in the UK which must be an appropriate address where documents addressed to the company and delivered by hand or post would be expected to come to the attention of a person acting on the company's behalf, and where the delivery of documents is capable of being recorded by obtaining an acknowledgement of delivery;
- (v) A registered email address, which must be a suitable one to which emails sent to the company would be expected to come to the attention of a person acting on the company's behalf; and
- (vi) Articles of association, which govern how the company is operated (a company can use a standard set of articles known as 'Model Articles' or tailor their articles for specific purposes).

Once established, there are ongoing filing requirements for UK companies, and companies must also file the following documents at Companies House, which can be viewed by the public on the Companies House website:

- a yearly confirmation statement confirming certain information held by Companies House remains up to date and accurate;
- (ii) yearly company accounts detailing its performance during the previous financial year (types of accounts may vary depending on whether the company is dormant or trading, its turnover, balance sheet total and average number of employees);
- (iii) changes to any persons with significant control;
- (iv) changes to the board of directors;
- (v) confirmation that the company's intended future activities are lawful; and
- (vi) changes of registered office address.

For the purposes of this section of the guide, we have taken you through incorporating a subsidiary. However, we would note that instead of incorporating a company from scratch, you may consider other routes to enter the UK market, such as acquiring an existing UK business/company or entering into a joint venture agreement (a strategic collaboration typically for a specific project or business venture). These options could be a strategic preference for various reasons, i.e., an opportunity to enter an established market, acquiring an existing operational infrastructure with a proven track record or to benefit from cost synergies such as shared resources and the potential to diversify your product or service offerings.



ESTABLISHING A UK REGISTERED BRANCH

An overseas company can carry on its business in the UK by setting up and registering a branch at Companies House.

A branch conducts business on behalf of the foreign company and allows the foreign company to directly conduct business in the UK through local representatives.

A branch is not set up as a separate legal entity in the UK, meaning the overseas company would remain responsible for the UK establishment, and for all of its debts and liabilities of such establishment. Since the branch is not a separate legal entity all such liabilities would remain attributable to the foreign company. However, the branch would still give the foreign company a permanent base and taxable presence in the UK

A branch can be registered as a UK establishment on payment of a fee. English law will apply to a branch, including with respect to registration and disclosure requirements, employment, health and safety, real estate, consumer protection, environmental protection and tax matters.

While generally the Companies Act is still the main legislation that applies when setting up a branch in the UK, the Overseas Companies Regulations 2009 streamlined the registration and disclosure regime since 1 October 2009. When registering a UK establishment of an overseas company, the UK is treated as a single jurisdiction. In setting up a branch in the UK, a foreign company will require the following registrations:

- (i) Register the UK establishment of an overseas company with Companies House. This is a relatively straightforward process which requires you to file the following with Companies House:
 - Form OS IN01 (providing various details about the foreign company, its officers and other required information);
 - A certified copy of the foreign company's constitutional documents;
 - A copy of the latest set of audited accounts required to be published by the foreign company's local law; and
 - d) Payment of the registration fee (currently £71).

(ii) Comply with further requirements such as registering the branch with HMRC, the UK tax office, for various tax reasons, including but not limited to Valued Added Tax, PAYE/income tax for local employees and National Insurance Contributions.

These are the general registrations with UK regulatory bodies that will be required, but there are other various regulatory, reporting requirements and ongoing obligations for setting up your branch and doing business in the UK.

Some other important considerations when setting up your branch include:

- If there are changes to the information you submitted to Companies House then you must submit those updates to Companies House.
- If the law applying to the overseas company of your UK branch requires the publication of accounts which have been audited, a copy of these accounts must be delivered to Companies House within three months of their required date of public disclosure.
- If the law applying to the overseas company of your UK branch does not require publication of audited accounts, then within 13 months of the accounting reference date allocated by Companies House to such an overseas company, you must deliver accounts to Companies House that comply with UK company law (such accounts would relate to the wider corporate group and not just the UK branch).



COMPETITION LAW

Here are some key competition law considerations for foreign companies looking to enter the UK market through acquisition or investment.

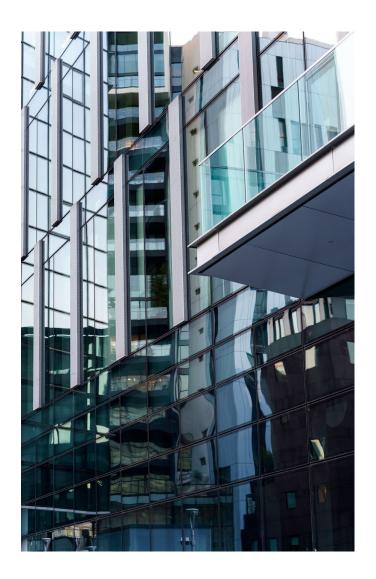
MERGER CONTROL CONSENTS

The main competition issue to be addressed on any acquisition or investment (by way of share purchase or the purchase of assets that comprise a business) is whether the transaction is caught by merger control legislation. The key questions include whether:

- The transaction falls under the jurisdiction of the UK's Competition and Markets Authority ("CMA"), or any other national or supranational competition regulator (such as the European Commission).
- Notification of the transaction to the relevant competition authorities is compulsory.
- Completion must be suspended until competition clearance is received.
- The transaction may or may not be expected to result in a significant reduction of competition in the relevant market(s).

UK merger control: The UK merger control regime is governed by the Enterprise Act 2002 ("Enterprise Act"). Where the Enterprise Act regime applies, a transaction that may result, or has resulted, in a relevant merger situation may be subject to a reference by the CMA. Following Brexit, UK and EU merger control rules may apply concurrently if the target of an acquisition or an investment has both UK and EU operations.

EU merger control: The EU Merger Regulation (Council Regulation 139/2004 (OJ 2004 L24/1)) ("EU Merger Regulation") applies where a transaction is a concentration with an EU dimension. Where a transaction is subject to the EU Merger Regulation, no other EU national merger control rules will apply (although this does not preclude the possible application of the merger control rules outside the EU). Transactions caught by the EU Merger Regulation must be notified to the European Commission, and the parties will not be able to put the transaction into effect until the Commission has approved it. This can have a significant impact on the transaction timetable.



NATIONAL SECURITY AND INVESTMENT ACT 2021

Separate from the UK merger control regime, the National Security and Investment Act 2021 ("NSI") provides for a comprehensive national security and inward investment vetting regime. This requires investors (both UK and foreign) which acquire shareholdings or voting rights above certain levels in UK companies or foreign companies which carry on business in the UK and active in 17 key sectors of the economy to notify the transaction to the Secretary of State for clearance. The new regime replaced the government's previous powers under the Enterprise Act to scrutinise mergers on the grounds of national security. The NSI regime is one of the more robust and demanding systems globally (including extra territorial effect) and involves significant financial and criminal sanctions for noncompliance. It is therefore important to seek early legal advice to assess whether the acquisition will fall within the NSI scope.

2.4

LISTING IN THE UK

The UK market is, and continues to be, a popular place for non-UK companies to list their securities, as it brings both a wide investor base whilst raising the company's profile. The UK offers a range of markets with differing levels of regulation and our team are in the best position to advise you on the most appropriate market for your business needs. While it is possible for non-UK companies to list directly on UK markets, some clients decide to incorporate a parent company in the UK (also known as a Topco) which will be incorporated with Articles of Association suitable for a UK Topco. This can in some cases expedite the process of listing and make conforming with the relevant listing rules and UK regulation easier. Our team are experienced in incorporating a wide range of companies in the UK as well as advising on the merits of the various listing options when listing on a UK public market.

STOCK EXCHANGE OPTIONS AND MARKET CHOICE

The market options available in the UK are AIM and the Main Market of the London Stock Exchange (LSE) and the Aquis Main Market and Aquis Growth Market of the Aquis Stock Exchange. Each market has its own eligibility criteria, listing requirements and corresponding regulatory oversight, and companies should consider which market is the most appropriate for their business given their size and other corporate characteristics.

LSE

AIM

This is a multilateral trading facility (MTF) operated by LSE (as a recognised investment exchange). AIM is the UK's leading junior market, meaning it is the premier market for smaller or less developed companies than those listed on the LSE Main Market and has a less stringent admission criteria than a Main Market listing.



Main Market

- This is a UK regulated market supervised by the UK's Financial Conduct Authority (FCA) which is aimed at larger blue-chip companies and offers different categories for listing companies. This was recently overhauled with three of the main new categories being:
 - Commercial Companies category: this category replaces the previous Premium Listing and Standard Listing segments and is the destination for larger companies. It also has more robust listing and regulatory requirements.
 - Secondary Listing category: this new category is aimed at dual listed overseas companies with a 'light touch' listing and regulatory approach.
 - Shell Companies category: as the name suggests, this category is aimed at cash shells companies/SPACs.

AQUIS STOCK EXCHANGE

Aquis Main Market

 This is a UK regulated market supervised by the UK's FCA in a similar manner to the LSE Main Market. Again, it has more robust listing and regulatory requirements and is primarily aimed at larger companies.

Aquis Growth Market

- This is a multilateral trading facility (MTF) that is instead supervised by Aquis (as a recognised investment exchange). As an MTF, it is subject to a lighter degree of regulation than Aquis Main Market. It is the only other UK MTF other than AIM both of which are designed to be accessible to early stage/growth companies. The Aquis Growth Market is further divided into two segments:
 - The Access Segment: this is designed in particular for younger growing companies to enable them to focus on growing their business, and has a 'light touch' listing and regulatory approach; and
 - The Apex Segment: this is is designed for more established companies, but it still generally deals with small and medium sized enterprise companies.

2.4 - LISTING IN THE UK

FACTORS TO CONSIDER

When determining which UK market to list on, there are many factors which can come into play and will affect your decision. These can include but are not limited to the importance of raising your company's profile, the level of liquidity, access to the largest institutional investors, the ability to successfully grow your business, the extent of the regulatory burden, and the costs involved. Depending on these and various other factors, you will need to consider which UK market is best suited to your particular needs.

HOW WE CAN HELP

Navigating the rules, regulations and requirements for listing on a UK market can be a difficult task, particularly for international companies that are not based in the UK. Our team has indepth knowledge and understanding of the listing process in the UK and the proven ability to tailor an approach to suit your company's specific needs. We will help to ensure that your listing in the UK is as smooth and successful as possible.

For more information on the listing process in the UK, please see the links to our AIM listing guide here and our Aquis listing guide here:

<u>Link to AIM Listing Guide</u>

Link to AQUIS Listing Guide







SECTION 3 - OTHER KEY LEGAL CONSIDERATIONS

We have set out above the key corporate legal considerations for setting up and doing business in the UK, there are various other legal considerations you need to consider when entering the UK market, as there are various legal frameworks and legislation that will affect doing business in the UK Chief among these, we have highlighted key legal considerations in relation to:

- (i) employment law and UK business immigration law;
- (ii) intellectual property;
- (iii) data protection; and
- (iv) real estate.

In our experience, these areas are often the key touchpoints for companies looking to set up and do business in the UK As such, we give below an overview of the key issues, legislation and legal considerations that relate to these areas of law.

If you have any questions on the matters discussed below or if you need further guidance, please see the key contacts at the end of this guide.



3.1 EMPLOYMENT LAW AND UK BUSINESS IMMIGRATION

3.1.1 - EMPLOYMENT LAW

When establishing a business in the UK, understanding the intricacies of UK employment law is crucial. Employment law in the UK is designed to promote fairness, inclusivity, and the well-being of employees while providing businesses with a clear framework to operate within. It is important to note that the UK is comprised of three distinct legal jurisdictions: England & Wales, Scotland and Northern Ireland. Each jurisdiction has unique elements of employment law, and while this guide focuses on England & Wales, employers operating across the UK must be mindful of these differences. It regulates the relationship between employers and their workforce, detailing obligations and the protections afforded to employees and workers. This section provides an overview of key areas, from employment contracts and classifications to the latest developments in statutory rights.

Employment relationships in the UK are governed by contract law, supported by a statutory framework rooted in both domestic legislation and, to a limited extent, European law. Employers must also recognise that procedural and legal differences exist between England & Wales, Scotland and Northern Ireland. For example, the processes for employment tribunals and statutory procedures can vary between jurisdictions, requiring tailored approaches to compliance. Although Brexit has allowed the UK to amend EU-derived laws, many core principles remain unchanged. Employers must provide a "Statement of Particulars of Employment" by the first day of employment, setting out the main terms and conditions, including job title, pay, hours, holiday entitlement and notice periods. Failure to provide this statement could lead to penalties and a loss of trust between employer and employee.

SECTION 3.1.1 - EMPLOYMENT LAW

EMPLOYMENT STATUS AND WORKER CLASSIFICATION

Determining the correct employment status of an individual is fundamental in ensuring compliance with UK employment law. Individuals working in the UK are classified as employees, workers, self-employed contractors or agency workers. The classification not only defines the nature of the working relationship, but also determines the rights and protections afforded to the individual.

Employees enjoy the most comprehensive statutory protections. These include rights to claim unfair dismissal, statutory redundancy pay, maternity and paternity leave and flexible working arrangements. In contrast to employees, workers are entitled to basic protections, such as the national minimum wage, paid holiday and protection from discrimination, but they are not eligible for unfair dismissal rights or statutory redundancy pay. Self-employed contractors, who often operate as sole traders or under limited company arrangements, are excluded from most employment protections but retain rights under general contract law.

Agency workers occupy a unique category. After completing 12 weeks in the same role with a single employer, they are entitled to the same basic pay and working conditions as permanent employees. Employers must be cautious when engaging agency workers, as misclassification could lead to disputes and legal claims.

Recent legal developments have also highlighted the complexities in worker classification, particularly in the gig economy. High-profile cases involving ride-hailing and delivery services have resulted in rulings that reclassify certain self-employed individuals as workers, granting them access to minimum wage and holiday pay. Businesses should periodically review contracts and working arrangements to ensure compliance with evolving legal standards.

CORE EMPLOYEE RIGHTS

UK law mandates that employees receive certain baseline rights to ensure fair treatment and promote job satisfaction. One of the most prominent rights is the entitlement to paid holiday, with full-time employees receiving 5.6 weeks (28 days) annually. Employers may include public holidays within this allocation, although this is not mandatory. Part-time employees are entitled to a pro-rata equivalent.

Working hours are regulated by the Working Time Regulations 1998, which cap the average working week at 48 hours. This average is calculated over a 17-week reference period, providing flexibility for seasonal industries. Employees may choose to opt out of the 48-hour limit, but this must be a voluntary decision documented in writing.

The National Minimum Wage (NMW) and National Living Wage (NLW) ensure fair compensation for all workers. From April 2025, the rates are as follows: workers aged 21 and over will receive £12.21 per hour, those aged 18 to 20 will receive £10.00, and apprentices will earn a minimum of £7.55 per hour. Employers who fail to meet these obligations face significant penalties, including fines of up to 200% of the unpaid wages.

Employers must also enrol eligible employees into a workplace pension scheme under the auto-enrolment rules. This ensures that employees have financial security upon retirement, with mandatory employer contributions currently set at 3% of qualifying earnings.

Statutory Sick Pay (SSP) provides employees with financial support during periods of illness. Eligible employees can receive £99.35 per week for up to 28 weeks. While many employers offer enhanced sick pay schemes, these must meet or exceed the statutory minimum.

SECTION 3.1.1 - EMPLOYMENT LAW

FAMILY-FRIENDLY RIGHTS

The UK has robust provisions to support employees with family responsibilities, promoting a healthy work-life balance. Maternity leave allows eligible employees to take up to 52 weeks off work, comprising 26 weeks of ordinary maternity leave and 26 weeks of additional maternity leave. Statutory maternity pay is available for 39 weeks, with the first six weeks paid at 90% of average weekly earnings, followed by £173.50 or 90% of average weekly earnings (whichever is lower) for the remaining period.

Fathers or partners are entitled to two weeks of statutory paternity leave, paid at the statutory rate. Shared Parental Leave (SPL) offers greater flexibility by allowing parents to share up to 50 weeks of leave and 37 weeks of statutory pay. This scheme enables parents to take leave simultaneously or in alternating blocks, supporting diverse family needs.

In addition, employees with at least one year of service are entitled to unpaid parental leave of up to 18 weeks per child, which can be taken any time before the child's 18th birthday. This leave is capped at four weeks per year unless otherwise agreed.

Proposed changes under the Employment Rights Bill may extend parental leave entitlements further. While these changes remain under consultation, businesses should monitor developments to prepare for potential adjustments to their policies.

TERMINATION OF EMPLOYMENT

The termination of employment is a sensitive area governed by detailed statutory requirements. Employees are entitled to statutory notice periods, which vary based on their length of service. For instance, employees with two to 12 years of service must receive one week's notice for each year worked, up to a maximum of 12 weeks.

Redundancy rights ensure fair treatment for employees whose roles are no longer required. Employees with two or more years of service are eligible for statutory redundancy pay, calculated as follows: half a week's pay for each year under age 22, one week's pay for each year aged 22 to 41, and one-and-a-half weeks' pay for each year over 41. Weekly pay is capped at £645, with a maximum total payment of £19,350.

Unfair dismissal claims can arise if an employer fails to follow due process or lacks a valid reason for termination. Currently, employees must have two years' service to bring a claim. However, the Employment Rights Bill proposes extending unfair dismissal protection to all employees from day one. Compensation for unfair dismissal includes a basic award and a compensatory award, with the latter capped at £115,115 as of 2024.

Employers must also handle resignations triggered by breaches of contract, known as constructive dismissals, with care. Claims in this area often stem from toxic workplace environments, bullying or significant changes to contractual terms.

DISCRIMINATION AND EQUALITY

The Equality Act 2010 protects employees and workers from discrimination across nine protected characteristics, including age, gender, disability, race and religion. These protections apply throughout the employment lifecycle, from recruitment and onboarding to termination and beyond.

Pay equity remains a critical focus, with businesses employing 250 or more staff required to publish annual gender pay gap reports. Failing to address pay disparities can damage a company's reputation and result in enforcement action by the Equality and Human Rights Commission.

Discrimination claims are not subject to a qualifying period of service and have no upper limit on compensation. Employers must ensure that workplace policies, training and leadership practices reflect their commitment to equality and inclusivity.

Navigating UK employment law requires attention to detail and a proactive approach to legislative changes. Our team of experienced employment lawyers is available to provide tailored advice to help businesses establish and manage their operations in compliance with the law.

This area of law is currently under detailed review by the UK Government and substantial changes are under active consideration. It is therefore important to keep right up-to-date since the law is likely to change at any time.

SECTION 3 - EMPLOYMENT LAW AND UK BUSINESS IMMIGRATION

3.1.2 - UK BUSINESS IMMIGRATION

To work in the UK after Brexit, non-British and non-Irish nationals need an appropriate visa. A number of different routes can be used to bring migrants to the UK for work purposes, and the most appropriate route will depend on the aims of both the employee and the employer.

We would recommend speaking to legal advisers as soon as possible, ideally between four and six months before the intended start date of the employee coming to the UK Whilst processing can be expedited in urgent situations, Home Office (the lead government department for immigration and passports, drugs policy, crime, fire, counterterrorism and police) processing times can vary significantly. It is also important to allow time to consider the best visa categories to suit your organisation/business and the prospective employee's needs, and to prepare required supporting documents and legal representations for the relevant applications to the Home Office (i.e., UK visa and immigration authority).

COMPANY'S SPONSOR LICENCE APPLICATION

The first step in bringing foreign nationals to the UK for work purposes is for the UK-based employing organisation to apply for a 'Sponsor Licence'. This is required for almost all visa categories, aside from the 'Innovator Founder' visa (see below). This licence is awarded to organisations by the Home Office and confers the ability to sponsor migrants to come to the UK to undertake specific identified roles.

This application is complicated and the organisation must demonstrate its capability to manage the responsibilities of sponsorship, as the Home Office describes sponsorship as a privilege and not a right. There are several different Sponsor Licence and corresponding visa categories, so it is highly recommended to consult with legal advisers to understand the best route for your organisation's circumstances.

The application process involves submitting an application form with details about the organisation, the licence category the application is for, and individuals within the organisation who will manage the licence if awarded. Supporting documentation (which will be case and category-specific) must be prepared, and after the application payment is made, the entire application will be submitted to the Home Office for consideration.

Once a Sponsor Licence has been awarded to an organisation, the organisation can identify a foreign national to undertake a specific role in the UK.

MIGRANT WORKER'S VISA APPLICATION

Before any visa application is submitted, a sponsoring organisation will have to decide on details about the job, including, among other things, job title, salary, job description and hours to be worked per week.

It is important to consult legal advisers at this point to ensure the job specifications are eligible for sponsorship. The Home Office has several rules on job eligibility, such as a minimum salary and skill level requirements.

Various routes can be used to bring employees to the UK and one must bear in mind that different visa routes may require different Sponsor Licences (see above). As demonstrated in the table below, the requirements for each category will vary slightly, and each category will have a different maximum stay in the UK and may or may not lead to permanent residence.

One of the main work-related visa categories that does not require sponsorship from an organisation with a Sponsor Licence in the UK is the 'Innovator Founder' visa.

3.1.2 - UK BUSINESS IMMIGRATION

MIGRANT WORKER'S VISA APPLICATION

SKILLED WORKER

A Skilled Worker visa is designed for people who have a specific job offer in the UK from a UK-based organisation that has a Sponsor Licence. The job must be an 'eligible' job on the Home Office's list of 'eligible occupations', and the job must meet the minimum salary requirements.

The applicant needs to show they can speak English to an adequate level. This can be evidenced in a few different ways, for example by taking a Home Office-approved English language test.

The visa can be granted for up to five years at a time, and there is no limit to the number of times an applicant can extend their visa.

After five years in the UK with a Skilled Worker visa, the applicant may be eligible to apply for permanent residence (known as Indefinite Leave to Remain) provided they meet the criteria in place at the time.

GLOBAL BUSINESS MOBILITY

(Senior or Specialist Worker)

The 'Senior or Specialist' subcategory of Global Business Mobility visas is designed for Senior or Specialist workers to undertake a job in the UK branch of their organisation. The applicant must be an existing employee of the organisation overseas. The job must be an 'eligible' job on the Home Office's list of Global Business Mobility 'eligible occupations'. 'Senior or Specialist' workers have a higher minimum salary threshold than Skilled Workers.

'Senior or Specialist' applicants do not need to evidence their English language ability.

This visa can be granted for up to five years at a time. The applicant may be able to extend their visa but there is a maximum total stay in the UK permitted in this category. This is either five years in any six-year period, or nine years in any 10-year period, depending on the level of the applicant's salary.

In this route, there is no option for 'Senior or Specialists' to apply for Indefinite Leave to Remain in the UK.

GLOBAL BUSINESS MOBILITY

(Graduate Trainee)

This category allows applicants to work for a UK branch of their non-UK employer as part of a graduate training programme for a managerial or specialist role. The applicant must have already worked for the non-UK employer for at least three months before they apply. Graduate Trainees have a slightly reduced minimum salary threshold compared to Skilled Workers.

The job must be an 'eligible' job on the Home Office's list of Global Business Mobility 'eligible occupations'.

There is no English language requirement for this category.

The visa will be granted for a maximum of 12 months.

This route does not lead to Indefinite Leave to Remain in the UK.

GLOBAL BUSINESS MOBILITY

(UK Expansion Worker)

The 'UK Expansion Worker' visa allows individuals to come to the UK to set up a branch of an overseas business that has not started trading yet in the UK The Expansion Worker must already be working for the business outside the UK as either a senior manager or a specialist employee for at least 12 months unless they come within one of the exceptions. The job must be on the list of Global Business Mobility 'eligible occupations' and meet the minimum salary threshold.

There is no English language requirement for this category.

The maximum period of time a migrant can spend in the UK as an Expansion Worker is two years. The idea is to then switch to a Skilled Worker visa after two years.

This route does not lead to Indefinite Leave to Remain in the UK.

3.1.2 - UK BUSINESS IMMIGRATION

MIGRANT WORKER'S VISA APPLICATION

for a Service Supplier visa if they have a contract to provide services for a UK company that is covered by a valid international trade agreement. The applicant must have worked for their employer overseas for at least 12 months, or if they are self-employed, they must have at least 12 months' professional experience. The contract must be covered by a valid international trade agreement. The job must meet the minimum salary threshold. If you do not have an eligible occupation code, you may still be able to apply for a Service Supplier visa if you have the relevant qualification and professional experience: You will normally need one of the following qualifications: **GLOBAL BUSINESS** a bachelor's degree or higher in any subject; or **MOBILITY** a technical qualification that's equivalent to a bachelor's degree. (Service Supplier) You will also need: three years' professional experience relevant to the service you provide if you are an overseas employee; or six years' professional experience if you are self-employed. There is no English language requirement for this category. A visa can be granted for up to 12 months. This will depend on the trade agreement the applicant is providing services under This route does not lead to Indefinite Leave to Remain in the UK. This category is designed for employees of a business outside the UK who are being transferred to the UK to undertake a job at a different organisation. The non-UK employer must have a high-value contract with the UK organisation. The employee must have worked for the non-UK employer for at least 12 months. The job must be on **GLOBAL BUSINESS** the list of Global Business Mobility 'eligible occupations' and meet the minimum salary threshold. **MOBILITY** There is no English language requirement for this category. (Secondment Worker) The total time that can be spent in the UK as a Secondment Worker is two years. This route does not lead to Indefinite Leave to Remain in the UK. The Innovator Founder visa is designed for individuals who want to set up and run an innovative business in the UK This must be different from anything else on the market and must be viable and scalable. The business or business idea must be approved by an 'endorsing body', which are Home Office-elected organisations that consider the proposal. **INNOVATOR** This category requires the applicant to meet a minimum English language requirement. **FOUNDER** The initial visa will be granted for three years, and the visa can then be extended for further three-year visas, subject to being re-endorsed each time. There is currently no limit on the number of times an applicant can

An employee of an overseas organisation or a self-employed professional person based outside the UK may apply

In all of these categories, if the main applicant has dependents (i.e., a durable partner whom they have been in a relationship akin to marriage with for at least two years, a civil partner, a spouse or dependant minor children), those dependants can apply to join the main applicant in the UK Each dependant must apply separately for their visa.

years in the UK if they meet the relevant requirements.

This route does lead to Indefinite Leave to Remain in the UK Applicants may be able to apply after their first three

extend their visa.

3.2

INTELLECTUAL PROPERTY (IP) LAW

(TRADE MARKS, DESIGNS, COPYRIGHTS, PATENTS, CONFIDENTIAL INFORMATION AND TRADE SECRETS)

IDENTIFYING RIGHTS

IP rights are varied, and any one product or business may have multiple rights associated with it. When setting up a UK business or simply expanding an existing one, conducting an IP audit is advisable to maximise the value of the intangible assets of the business and prevent any loss of IP rights by not taking the appropriate steps in a timely manner to protect them.

OBTAINING RIGHTS

IP rights can be divided between registered rights and unregistered rights. Generally, unregistered rights cost nothing to obtain but are typically much harder and much more costly to enforce and sometimes have a more limited duration, whereas registered rights are usually inexpensive to obtain and comparatively much easier to enforce.

REGISTERED RIGHTS

TRADE MARKS AND DESIGNS

Following Brexit, the UK now has a completely separate regime for protecting trade marks and designs rights although most of the substantive law is the same. For rights that we registered at the EUIPO before Brexit, comparable UK registrations were created automatically and are now independent of the original EU right and must be maintained separately from the EU right. For new marks and designs, rights must be sought before the UK IPO (directly or via WIPO) if protection is required. Typically, businesses will file applications to register their trade marks and brands in both the UK and the EU and in any other main markets of interest.

A UK address of services is required for all new rights filed with the UK IPO, or for existing UK IPO rights that are subject to a dispute. Before seeking to register, or simply use, a trade mark, it is recommended to conduct a clearance search of the UK register to identify any possible risks of opposition or infringement and take the necessary step to mitigate such risks, when possible.

The cost of a trade mark application varies according to the number of classes of goods and services that it is intended to cover.

Design rights are much more economical as they apply to all forms of goods or services, and multiple design filings can be made in one application, thus providing further economies of scale. However, similarly to patents, they must be different from the prior art and must not have been disclosed to the public before the application.

With both trade marks and designs, the extent of examination is limited to formalities and absolute grounds for refusal. An examiner cannot refuse an application on the basis of similar earlier rights on the register. Registration can be quick and inexpensive if there are no objections and no oppositions.

It should be noted that our Commercial and IP team can handle corresponding EUIPO rights, and we can offer a package deal if simultaneous EU and UK protection is required.

PATENTS

The European Patent Office is independent of the EUIPO and the European Union. Therefore, Brexit has not had an impact on patents in the UK Patent protection can be sought either nationally (directly or via the Patent Co-operation Treaty) or by way of a European patent. We work closely with several firms of patent attorneys to help guide you in the most appropriate manner.

OTHER REGISTERED RIGHTS

Other rights exist (e.g., supplementary protection certificates for certain classes of products; plant variety rights) but are rarer and sector specific. We can advise in detail on request.

UNREGISTERED RIGHTS

There are a variety of unregistered IP rights that may arise before or as a business commences operation in the UK For a newly established business, the principal rights that may be relevant are UK unregistered designs, unregistered design rights (they are two distinct rights), copyright and confidential information.

SECTION 3.2 - INTELLECTUAL PROPERTY (IP) LAW

TRADE SECRETS

They are usually categorised with IP rights, but there are legally defined and protected primarily through contracts.

That enables rights that would usually be considered to be IP but not be technically covered by any recognised category (e.g. a secret recipe) to be protected, with clear mechanism of reparation in case of a breach.

IP RELATED TAX BREAKS

In the UK, there is a "patent box" regime which can give businesses that have undertaken some relevant development in the UK a reduced effective rate of corporation tax of 10% on worldwide income attributable to relevant IP.

To qualify for the reduced rate, a company will need to own or hold an exclusive licence to qualifying IP rights (UK patents, European patents, patents granted under the law of specified EEA states, or specified patent-like rights (for example plant variety rights)).

If the IP qualifies for the reduced rate, there are specific types of activity that this reduced rate may apply to:

- The sale of patented products, products incorporating a patented product or bespoke spare parts for patented products;
- Licensing out the IP;
- Selling the IP;
- Infringement income or other compensation relating to
- Manufacture using, or provision of services using, a patented process.

In addition to the patent box, there is also a separate regime of research and development tax credits encouraging the creation and development of IP in the UK.

DUE DILIGENCE AND FREEDOM TO OPERATE

When acquiring an IP portfolio or a business that relies heavily on IP, it is important to ensure that the legal rights are adequate and in good order. IP due diligence should address not only what is being acquired, but also whether what is being acquired is useful and usable. It is not uncommon for IP to be acquired that is not relevant to the commercially important business, that is defective or that presents legal risks (typically conflicts with third parties) that prevent exercise of that IP.

Likewise, a new entrant may be prevented from operating by earlier third-party or even local regulation and prohibitions. Freedom-to-operate searches, aka conflict or clearance searches, may be expensive, but they are indispensable to assess the likelihood of conflict and plan any appropriate steps to mitigate such risk.



DATA PROTECTION

THE LAW

Since Brexit, the UK data protection regime is governed by:

- (a) the UK GDPR (which is the retained version of the EU GDPR) along with the Data Protection Act 2018 (collectively referred to as **UK GDPR**) which is the primary legislation governing collection and use (processing) of personal data; and
- (b) the Privacy and Electronic Communications (EC Directive) Regulations 2003 which governs the use of personal data for electronic communications such as e-marketing, cookies and similar technologies.

Personal data protected by the UK GDPR is defined as any information relating to an identified or identifiable natural person (a data subject).

As all businesses process personal data, whether it relates to their employees or their customers, it is therefore important for businesses to identify and understand their role with regard to that personal data i.e. whether the business is a **controller or processor** of the personal data in question; and then to comply with the legal requirements of that role.

DATA CONTROLLER VS DATA PROCESSOR

Data controller: a business will be considered a data controller where such business determines the purpose and means of processing personal data i.e. how personal data will be collected; and what for / why it will be used. The data controller will have primary responsibility to a data subject.

Data processor: a business will be considered a data processor where such business processes personal data on behalf of a data controller i.e. the data controller will provide instructions as to what and how personal data is to be used by the business (processor). A data processor's primary responsibility is to the data controller and its obligations under the UK GDPR are different to those of a data controller, albeit a data processor is also required to comply with the data protection principles (discussed below).

KEY PRINCIPLES OF THE UK GDPR

The UK GDPR lays down certain key principles that must be complied with when processing personal data, including:

- Lawfulness, fairness and transparency: personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject.
- Purpose limitation: personal data must only be collected for specified, explicit and legitimate purposes.
- Data minimisation: personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.
- Accuracy: personal data must be accurate and, where necessary, kept up to date.
- Storage limitation: personal data must not be kept in a form which permits data subjects to be identified for longer than is necessary for the purposes for which the data is processed.
- Integrity and confidentiality: personal data must be processed in a way that appropriately and adequately ensures the security of the information.
- Accountability: the data controller is responsible for, and must be able to demonstrate, compliance with the other data protection principles.



KEY CONSIDERATIONS FOR A UK BUSINESS

The key questions that all UK businesses will need to consider are:

- Is the company a data controller or a data processor?
- What personal data is collected and processed, and why?
- What is the nature of the business and services are vast amounts of personal data collected; does the business require certain types of sensitive data e.g. health data or higher risk data e.g. children's data?
- Does the company appoint any data processors e.g. third party service providers?
- For larger companies with subsidiaries / operating in several jurisdictions, is personal data being shared between companies?
- What technical and organisational measures are in place to ensure the security of personal data? Are these measures adequate and appropriate?
- Where is the personal data being stored?
- Does the company transfer any personal data outside the UK and / or the European Economic Area (EEA)?
- Does the company carry out any marketing activities?
- Does the company use automated technologies or artificial intelligence?
- Has the company registered with the information commissioner's office and paid any applicable fees?
- Does the business need to appoint a data protection officer?
- Does the company have the appropriate agreements, records and policies in place e.g. data processing agreements with processors, record of data processing activities, privacy policies for customers and staff, data retention policies, risk assessments etc?
- Has the company implemented processes to ensure compliance with data protection legislation and its policies?

For UK businesses, data protection legislation in other jurisdictions may also apply. For example, as the EU GDPR has extraterritorial effect, the EU GDPR may also apply to UK companies that are not established in the EU but are processing personal data where the processing is related to the offering of goods or services to data subjects in the EU, or the monitoring of their behaviour as far as their behaviour takes place within the EU.

THE IMPLICATIONS OF GETTING IT WRONG

As individuals become more aware and seek to have more control over their personal data, businesses also need to be more aware of their data protection practices. The implications of getting it wrong are twofold:

(1) At a business level:

- improper or outdated processes will result in higher administrative costs e.g. it will be more difficult and expensive to respond to a data subject access request (DSAR);
- not having in place or having inadequate documents and contracts with key stakeholders exposes the business to unwanted risks e.g. by allowing a processor or sub-processor to process data without a proper data protection agreement in place; and
- there is a higher risk of being exposed to data breaches and potential reputational damage where the business does not have a full overview of its own personal data-related practices;

(2) At a regulatory level:

- there is a higher risk of scrutiny from the regulator (ICO) or other industry specific authorities (e.g. in the IT sector) e.g. reporting of multiple data breaches may lead to an ICO audit of the company's personal data practices;
- there is a risk of incurring large fines. Under the UK GDPR, the ICO has the power to impose fines of up to 4% of the company's global turnover in the preceding financial year, or £17.5 million (whichever is greater) for the most serious violations or up to 2% of annual worldwide turnover of the preceding financial year or £8.75 million (whichever is greater) for infringement of other provisions such as administrative requirements.

3.4

REAL ESTATE

Any overseas entity looking to establish a presence in the UK is likely to require property – whether that be for office space, retail, warehouses, storage etc. The business may also need to provide appropriate residential accommodation for employees, directors or seniors who may be relocated to the UK

There are no restrictions on foreign nationals acquiring property in England. Property can be purchased or rented/leased by individuals or companies for their own use or as an investment, subject to certain tax rules.

PURCHASING PROPERTY

In the UK, you can purchase either freehold or leasehold property. When you purchase freehold property, you own the building and the land it stands on until you decide to sell it. When you purchase a leasehold property, you have a right to use the property for a specific number of years, ranging typically from 99 to 999 years, and for a specific purpose (as specified in the lease), but you will not own the land it stands on. The land is owned by the landlord (also known as the freeholder).

If you own a freehold property, you won't be required to pay ground rent, service charge or consent fees, however, you will be responsible for the maintenance of the building.

If you own a leasehold property, you are likely to be required to pay ground rent, insurance, service charge and management fees. You are also likely to need landlord's consent to make alterations to the property and to transfer your interest in the future.



LEASE

A commercial lease is a legally binding contract that grants a business tenant exclusive use of a property for a specified period of time. A lease is a formal agreement which outlines both party's rights and responsibilities during the term of the lease. The terms of a lease are fixed and cannot be changed unless both parties agree to a variation.

If you decided to take a lease of a commercial property, there are several factors you should consider:

- (1) The term of the lease how many years are you permitted to use the property? Are there any provisions for either party to break the lease early?
- (2) Rent what is the annual rent? Is the rent to be reviewed throughout the term? Does the rent include outgoings and rates, or are there additional costs you need to take into consideration such as service charge, rates, utilities and insurance?
- (3) Is it a new lease or are you being assigned an existing lease? If you are being assigned a lease, you will need to check how dilapidations are going to be dealt with.
- (4) Is the lease excluded from the security of tenure provisions under the Landlord and Tenant Act 1954, meaning you have no right to renew?
- (5) What dealings of the property are permitted?
 For example, assignment, underletting, sharing occupation etc.
- (6) Are you permitted to make any alterations to the property?
- (7) What is the extent of your repair obligations? Are they limited by a schedule of condition?
- (8) Forfeiture what are your protections against the landlord taking possession of the property?
- (9) Will the landlord require you to have a guarantor and/or pay a rent deposit?

You will also need to check that you have been granted all rights that you require, for example, adequate rights of access, parking, to use common parts, to affix a sign on the property etc.

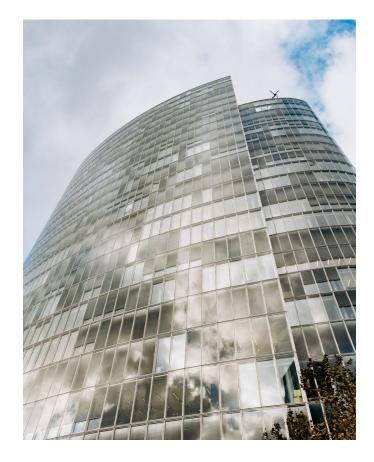
LICENCE

Compared to a lease, a licence is a more informal arrangement and is simply a personal, contractual permission that permits a tenant to use a property for a specified period of time. Unlike a lease, a licence does not grant exclusive possession of the property and can be terminated by the licensor at any time. Licences are often used for short-term or temporary arrangements, such as renting a parking space or using a commercial space for a pop-up shop.

A key difference is the legal rights and protections given to the tenant. Tenants under a lease typically have more rights, such as the right to renew the lease, the right to quiet enjoyment of the property and protection from sudden rent increases or eviction without cause. Occupiers under a licence have fewer rights and protections, as the agreement is more informal and can be terminated more easily by the licensor. Crucially, a licence provides no security of tenure, so the occupier will have no right to renew the licence once it expires.

It is important to note that it does not matter whether the parties label the agreement as a lease or a licence. If the characteristics of a lease are present, then this will likely be that the document will be deemed to be a lease, even if the document is called a licence. This is something landlords need to be aware of because the occupier could gain rights which the landlord was not intending to grant.





FINANCING

You may require funding in order to complete a purchase of a property, or you may want to charge a lease in order to gain funding.

We advise on security loan agreements, registration of charges, facility letters, priority and inter-creditor arrangements, guarantees, other asset finance agreements and all associated due diligence required by lenders including certificates of title.

Our team focuses on acquiring a deep understanding of the particular needs and objectives of our clients to deliver advice and outcomes that are tailored to those needs and objectives, and meet them swiftly and cost-effectively. The approach to technical problems is informed, insightful and proportionate, and we take pride in viewing problems from a fresh perspective to provide innovative solutions.

It is important to seek specialist legal advice when dealing with any of the above, as there are legal obligations/ responsibilities and financial implications. You need to ensure that the documents/agreement reflects your goals and protect your interests. If you would like advice regarding purchasing property, leases, licences, financing or any other commercial or residential property issues, please see the key contacts of our Real Estate team at the end of this guide.



OVERVIEW OF TAXATION IN THE UK



If you intend to do business in the UK you will an early stage need to consider the UK taxation system and legislation, the effect that will have on your ability to do business in the UK and what tax you will need register (and pay) to do business here. Broadly speaking, the main tax you need to be aware of is UK corporation tax which you will be subject to as a result of either:

- trading through a permanent UK registered branch; or
- trading through a UK subsidiary.

The tax position for a branch or a UK subsidiary is largely similar and there is no separate type of tax specifically for a branch which is also subject to corporation tax. If your UK subsidiary is a UK incorporated company or otherwise a foreign company managed and controlled from the UK, it will be a tax resident in the UK and subject to taxation in the UK.

In the current financial year, the rate of corporation tax is set at 25% (known as the "main rate") which applies to companies to with profits in excess of £250,000. Companies with profits between £50,000 and £250,000 are still required to pay tax at the main rate reduced by a marginal relief providing a gradual increase in the effective corporation tax rate. There is also a separate small profits rate of 19% which applies to companies with profits of £50,000 or less.

Whether you have decided to set up a branch or UK subsidiary your entity must register with HMRC within three months of commencing business. Further your branch or UK subsidiary must:

- account for corporation tax on the expiry of nine month from the end of the accounting period to which the tax relates;
- large companies have to make quarterly (on account) payments of corporation tax; and
- appoint accountants (or other service provides) to deal with its tax compliance needs.

UK SUBSIDIARY: SEPARATE LEGAL ENTITY

A UK subsidiary is a separate legal entity incorporated in the UK (usually as a private limited company). From a tax perspective:

- Corporation Tax: The subsidiary is subject to UK corporation tax on its worldwide profits, including both income and capital gains, unless those profits are attributable to a foreign permanent establishment and exempt under the UK's foreign branch exemption regime (if elected).
- Tax Rate: The current corporation tax rate is 25% for companies with profits over £250,000. A lower effective rate may apply to companies with smaller profits under the marginal relief regime.
- Transfer Pricing: Transactions between the UK subsidiary and its foreign parent or affiliates must be on arm's length terms. Transfer pricing documentation may be required.
- Dividends Paid: Dividends paid by a UK subsidiary to a foreign parent are not subject to UK withholding tax, regardless of the jurisdiction of the recipient, under the UK's domestic tax rules. However, the recipient may be taxed in its home country depending on local laws.
- Dividends Received: Most dividends received by the UK subsidiary from overseas group companies are exempt from UK corporation tax, provided certain conditions are met (e.g. the dividends fall within one of the several exemption categories under the UK's dividend exemption regime).
- Losses: Losses incurred by the UK subsidiary can generally only be used against its own UK profits (subject to group relief rules, where applicable), and not those of the foreign parent.

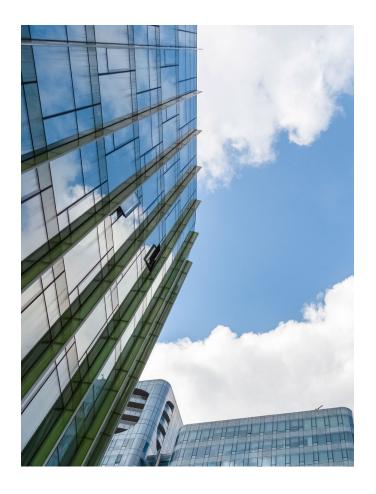
4.1 - OVERVIEW OF CORPORATIONS TAX IN THE UK



UK BRANCH: EXTENSION OF THE FOREIGN COMPANY

A UK branch is not a separate legal entity; rather, it is an extension of the foreign parent company operating in the UK. For tax purposes:

- Corporation Tax: A UK branch is subject to UK
 corporation tax only on the profits attributable to the
 UK permanent establishment. This typically includes
 UK trading income, property income, and gains on UKsitus assets used in the branch.
- Attribution of Profits: Profits must be allocated on an arm's length basis, taking into account the functions, assets, and risks of the UK branch. The attribution process can be complex and requires detailed functional and financial analysis.
- Dividends: Since a branch is not a separate legal entity, it cannot pay dividends to the foreign parent. Instead, profits are generally regarded as directly attributable to the parent company. This means there is no UK withholding tax in this context, but the parent may need to report the branch's profits in its home jurisdiction (potentially triggering tax there, subject to reliefs).
- Withholding Taxes: While dividends are not applicable, any interest or royalty payments made by the branch to the parent may be subject to UK withholding tax unless an exemption or treaty relief applies.
- Losses: Losses incurred by the UK branch may, in certain
 jurisdictions, be available to offset against profits of the
 foreign company, subject to the tax rules in the home
 country. However, UK rules do not permit such loss
 offset across jurisdictions.





VALUE ADDED TAX ("VAT")

Fiander Tovell

VAT is a UK sales/consumption tax that is generally charged on all supplies of goods and services made, or deemed to be made, by a business in the UK.

This follows the EU model, and there are five main categories of supply:

Standard rate 20%

Reduced rate 5%

Zero rate

Exempt from VAT

Outside of the scope of VAT

Supplies are standard rated unless there is a specific reason to treat them differently.

A VAT-registered business can claim back any VAT incurred on many business costs.

An entity must register if its UK sales liable to 5% or 20% VAT exceed a specified limit (£90,000 for 2024-25). This is normally measured by looking at a rolling total of sales in the previous 12 months, but if you have reason to believe you will exceed the limit in the next 30 days, then you are liable to register immediately.

The £90,000 limit is reduced to zero if you do not have a fixed establishment in the UK, meaning that you become liable to register as soon as you make your first sale.

VAT returns must be maintained digitally using software capable of submitting digital returns to HMRC. Returns are usually quarterly, but can be required monthly for larger businesses. Payment of VAT to HMRC is usually made at the same time as the return. There are financial penalties for failing to pay and/or register for VAT where you are required to do so.

The rules that determine whether your supplies are regarded as made in the UK are complex. The relevant factors include the nature of the goods or services, the location and type of customer, the origin and final destination and the physical presence of the goods or service provider. There are also some relieving provisions available that are designed to help ease the VAT compliance burden.

Broadly, sales are treated as being in the UK if they are:

- Goods, and the ownership of the goods changes while they are in the UK
- Services provided to a business located in the UK
- Services at an event taking place in the UK
- Electronically provided sales to a non-business customer resident in the UK

In addition, goods which are imported to the UK are liable for import VAT. This includes goods which are not for sale, such as equipment being used by one of your employees. The rules on this are complex and depend on the terms under which they are imported. It is recommended that specific advice be sought before moving any goods to the UK.



PAYROLL TAXES



If your branch or UK subsidiary employs individuals to work in the UK it will be required to make deductions from their salary under the pay as you earn system ("PAYE"). The amounts deducted must be reported to HMRC as payments are made to employees and paid to HMRC every month.

This also applies to employees sent to work in the UK by a non-UK employer. The employer is required to deduct income tax from all payments of salary and bonuses made to those individuals. There are some relaxations available for foreign nationals and temporary UK workers, but these need to be applied for in advance.

Deductions from employees pay include:

- Income Tax
- Social Security (known as National Insurance Contributions, or "NICs")
- Pension Contributions

As soon as your business (whether branch or UK subsidiary) employs an individual it should inform HMRC and establish a payroll system. There are various payroll services providers in the UK that this can be outsourced to.

Employee's NICs are charged at a main rate of 8% with 2% applying to earnings about a certain threshold. There are some reductions for certain employees (principally the young, the old and those leaving the military).

In addition to the employee's NICs, the employer must also make contributions (and is not permitted to recover them from the employee), which in effect are an additional cost for the employer. This is a flat rate of 15% of the employee's gross salary (except for the first £5,000 a year).

A small business is entitled to an annual "employment allowance" of £10,000 to reduce its liability for the employer's contribution.

Employers are required to maintain a pension scheme for employees, with minimum contributions of 8% of pay, of which the employer must pay at least 3%. Pensionable pay is, broadly, income which is taxed at the basic rate. An employee may opt out of the scheme, in which case no contributions are due by either the employee or the employer.



4.4 STAMP DUTY

In the UK, stamp duty is payable on any transfer of shares in a company and certain other securities (although shares traded on AIM of the London Stock Exchange are exempt from stamp duty). Stamp duty is paid at 0.5% of the price paid for the shares, subject to any applicable or available exemptions or relief.

Stamp duty land tax is payable on the acquisition of most types of UK real estate. This is charged by reference to the price paid for the real estate, including rent under a lease. It is a liability belonging to the party acquiring the real estate and it is charged at various rates that applied to slices of the price. In England, acquisitions of commercial real estate attract rates of up to 5%, and rents are charged at rates of up to 2% of the net present value (also subject to any applicable exemptions or relief).



Residential property is liable to higher rates of stamp duty land tax. If acquired by a company, the rate can be as high as 19%.

In addition, residential property owned by a company is liable to the Annual Tax on Enveloped Dwellings ('ATED'), which is a flat rate that depends on the value of the property. The annual liability ranges from £4,450 for a property worth £500,000, to £292,350 for a property worth more than £20 million.

CHOOSING THE RIGHT STRUCTURE

| CONSIDERATION | SUBSIDIARY | BRANCH |
|------------------------------|--|--|
| Legal status | Separate UK entity | Part of foreign company |
| Corporation tax | UK tax on worldwide profits | UK tax on UK- attributed profits only |
| Loss utilisation | UK-only, or via UK group relief | Potential for group relief abroad (if permitted) |
| Dividend payments | Dividends can be paid to parent tax-free in UK | Branch cannot pay dividends |
| Tax on dividends received | Exempt under UK rules (subject to conditions) | Profits received directly by parent, tax treatment depends on home country |
| Withholding tax | No WHT on dividends; interest/royalties may apply | No dividend WHT; WHT on interest/ royalties may apply |
| Compliance | More extensive filings | Simpler setup but parent accounts often disclosed |
| Commercial perception | Seen as more established | Perceived as temporary/less committed |

OTHER CONSIDERATIONS

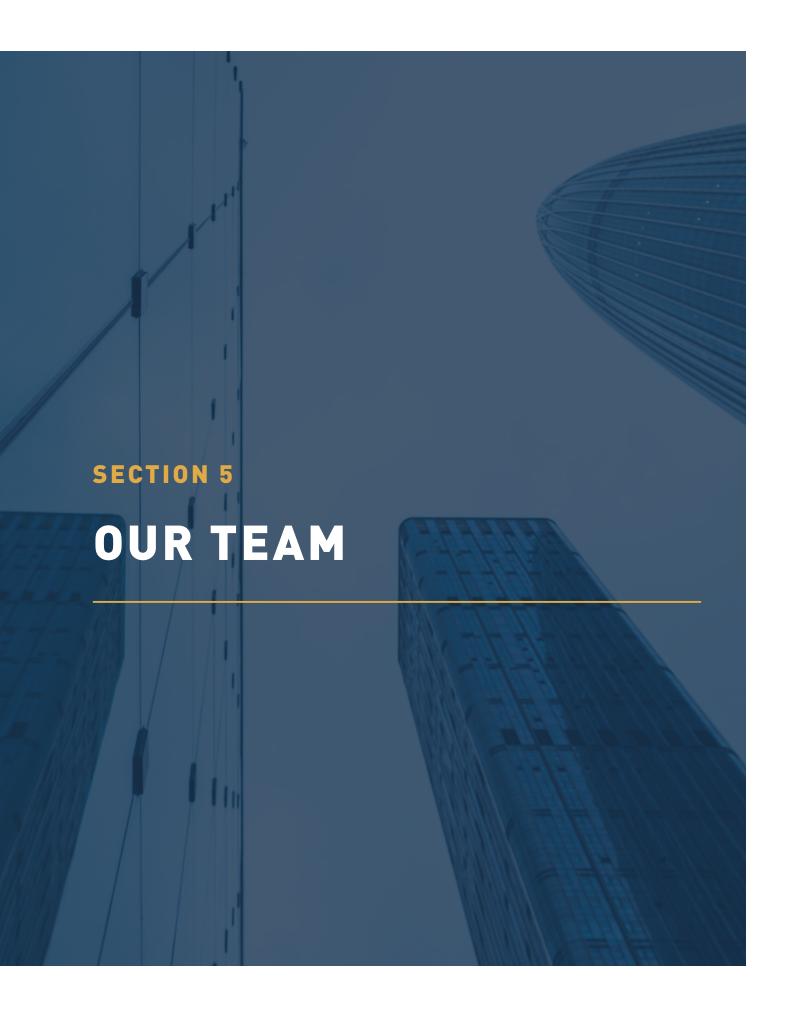
- Registration and Compliance: Both branches and subsidiaries must register with Companies House, though a subsidiary must go through a full incorporation process. A branch has lighter registration obligations but must still file financial statements, which can include the parent's consolidated accounts.
- Substance and Permanent Establishment Risk: Where
 a UK presence amounts to a permanent establishment,
 the foreign company may become liable to UK tax even
 without a formal branch structure. Care must be taken
 when placing personnel or negotiating contracts in the
 UK to manage this risk.

UK ANTI-ABUSE RULE ("GAAR")

Another important point to be aware of is that the UK has a GAAR. GAAR means that any arrangements set up to avoid taxation may be invalidated (even if previously considered lawful) if they are considered to be "abusive". The reason this rule was designed and enacted was to counteract what may have been previously considered lawful but "aggressive" tax planning being implemented in the UK Effectively this is another tool available to HMRC to help combat tax-avoidance in the UK.







ABOUT LAYTONS ETL

Founded in 1875, Laytons ETL is a full-service law firm providing integrated and practical advice to both UK and international clients. Investing time in building lasting relationships and a strong understanding of our clients' affairs, we have a value-led approach to the provision of legal services.

In 2021, Laytons ETL became part of the ETL GLOBAL group of professional services firms. In the UK, ETL GLOBAL is particularly active in the accountancy sector with Laytons ETL building upon its expansion into the UK legal services market. In 2023, ETL GLOBAL UK secured the 20th position in Accountancy Age's Top 50+50 Accountancy Firms. With an impressive 34% growth rate, ETL GLOBAL recorded the highest growth among the top 20 firms, showcasing the outstanding work of its members.



ETL GLOBAL

ETL GLOBAL is a multinational professional services group headquartered in Essen, Germany, specialising in tax, legal, auditing, and business consulting services. They have also acquired stakes in well-known accountancy practices that are active in the small-cap space.

Based on the decades of success with an integrated approach combining tax, legal, audit and accounting, ETL GLOBAL has meanwhile grown to more than a thousand tax and law professionals, accountants, auditors as well as business consultants.



ETL GLOBAL is a worldwide interdisciplinary group of professionals and the international business platform for ETL GLOBAL. This is where ETL GLOBAL partners share their knowledge, skills and expertise, supporting each other in close collaboration and, most importantly, jointly serving clients in their international business.

ETL GLOBAL's exceptional experience and history are a significant advantage of ETL GLOBAL that both clients and cooperation partners can benefit from. All growth and success have been based on committed partnerships and long-term relationships.



Laytons ETL provides comprehensive legal services and its lawyers regularly advise on the breadth of issues discussed in this guide. Further, we have in-depth knowledge of the UK market built through years of experience.

If you have any questions on the matters discussed within this guide or if you need further guidance, please contact us.

CORPORATE



Joan Yu Partner and Head of Corporate

- joan.yu@laytons.com
- **444** (0)20 7842 5416





Kathryn Beasley

- kathryn.beasley@laytons.com
- +44 (0)20 7842 8000



Christopher Sherliker Senior Corporate Counsel

- christopher.sherliker@laytons.com
- **+44 (0)20 7842 8015**



Coral Yu Senior Associate

- coral.yu@laytons.com
- +44 (0)20 7842 5416





Cameron Sutton

Associate

- cameron.sutton@laytons.com
- **444 (0)20 7842 5425**



EMPLOYMENT



Nicholas Lakeland Partner and Head of Employment

- nicholas.lakeland@laytons.com
- +44 (0)20 7842 8044





James McConkey

james.mcconkey@laytons.com

+44 (0)20 7842 8000



IMMIGRATION



Ben Xu Partner and Co-Head of Immigration

- ben.xu@laytons.com
- **444 (0)20 7842 8000**





Mairi Lubelska

Associate

- mairi.lubelska@laytons.com
- **444** (0)20 7842 8000



COMMERCIAL (IP & DATA PROTECTION)



Dimitri lesini

Partner & Head of Commercial

- dimitri.iesini@laytons.com
- +44 (0)20 7842 8081



Justin Bukspan **Director of Trade Marks**

- justin.bukspan@laytons.com
- **+44 (0)20 7842 8000**





Deeva Shah

- deeva.shah@laytons.com
- +44 (0)20 7842 8000



REAL ESTATE



David Lewis

Partner and Head of Real Estate

- david.lewis@laytons.com
- +44 (0)20 7842 8031





Scott Hilton Partner

- scott.hilton@laytons.com
- +44 (0)20 7842 5423





Adele Edwards

Associate

- adele.edwards@laytons.com
- +44 (0)20 7842 8000









Yarnwicke, 119 - 121 Cannon Street, London EC4N 5AT

+44 (0)20 7842 8000

www.laytons.com

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