INVESTORS' GUIDE TO THE UNITED KINGDOM

Mazars Edition 2015/16

UK Trade
& Investment

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Edited by
Jonathan Reuvid

WATSON FARLEY
&
WILLIAMS

Legend Business Ltd,
175-185 Gray's Inn Road, London WC1X 8UE
info@legend-paperbooks.co.uk | www.legendpress.co.uk

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FOREWORD

Toby Stanbrook
Head of Accounting & Outsourcing, Mazars LLP

Welcome to Mazars' Investors' Guide to the United Kingdom, produced in conjunction with UK Trade and Investment as part of their larger, general guide to UK investment.

It can often seem self-evident that the UK is a great place to do business, such as with the UK's recent ranking as the world's sixth most powerful economy, by the Centre for Economics and Business Research. The UK is also the top destination in Europe for Foreign Direct Investment (FDI), and globally only falls second to the United States. However, it is the specific circumstances and factors of Britain's economy, including the regulatory environment, skilled labour, supportive culture and diverse, cross-sector opportunities that keep foreign investors voting with their finances. From infrastructure projects, to retail prospects, or research and development collaborations creating disruptive new technologies, there are a vast range of opportunities in the UK for global businesses to make their mark.

The benefits of investment in the United Kingdom are many fold. With an affluent and educated population, we have one of the world's leading markets in our own right, with additional access to the markets in Europe and the 500 million extra consumers they bring. The UK has a highly stable economy, and a long history of fairness and rule-of-law, allowing companies to have the confidence that they can compete on a level playing field. The workforce too is highly skilled, and with a robust national infrastructure and logistics base, the core needs of thriving businesses are all provided for.

Mazars is uniquely positioned to help companies invest and expand into the UK, and capitalise on these opportunities. Mazars is the only international audit, tax and

advisory firm to be fully integrated, meaning unlike our competitors we operate across international borders as one firm, united in supporting your company's success. As a potential inward investor into the UK we have extensive experience assisting our clients, choosing the right structure for your market entry and undertaking the necessary registrations, helping with tax structuring and immigration issues. Once up and running we make sure your team get paid and that the financial aspects of your business are running smoothly, leaving you to concentrate on growing the business in line with your objectives. As a top ten firm we can support the needs of your business as it develops both in the UK and beyond. With the information presented here, we hope you will be empowered to make the decision to become one of the many UK investment success stories.

ABOUT MAZARS

Mazars is an international, integrated and independent organisation, specialising in audit, accountancy, tax, legal and advisory services. As of 1st January 2016, Mazars operates throughout the 77 countries that make up its integrated partnership. We draw on the expertise of 17,000 professionals to assist major international groups, SMEs, private investors and public bodies at every stage of their development. In the UK, Mazars has over 1500 partners and staff serving clients from 19 offices, and is ranked as the ninth largest firm nationally.

CONTACT US

Toby Stanbrook
Head of Accounting & Outsourcing, London & South region
+ 44 (0)20 8661 4120
Toby.Stanbrook@mazars.co.uk

David Birch
Accounting & Outsourcing, Central region
+ 44 (0)190 825 7110
David.Birch@mazars.co.uk

Margaret Laidlaw
Accounting & Outsourcing, North region
+ 44 (0)131 313 7932
Margaret.Laidlaw@mazars.co.uk

Details and figures in this guide are accurate as of January 2016.

1. COMPANY FORMATION – METHODS AND LEGAL IMPLICATIONS

Mark Jackson, Mazars

INTRODUCTION

The UK has an open and transparent system for setting up companies. No permission is required to set up a business, although some industries, such as financial services, may require specific authorisation before they can commence trading. This chapter looks at the options available to investors wishing to set up a new enterprise in the UK or expand an existing one.

COMPANY TYPES

In the UK, there are four main types of company that can be separated into two categories:

Unlimited Liability
The owners of organisations having unlimited liability are personally liable for all the debts that the business may incur. Should the enterprise fail, the owners may have to liquidate some (or all) of their personal assets in order to pay the enterprise's outstanding debts. Examples of such businesses are sole traders, unlimited companies and partnerships.

Limited Liability
The owners of these types of business are only liable for the amount that they originally invested in the company. Should the business fail, investors in the failed company will only lose the original value of their investment or the amount they agreed to contribute, as set out below.

In the UK there are three main types of Limited Liability Company:

1. A private company limited by shares – the liability of members is limited to the amount unpaid on shares they hold.
2. A private company limited by guarantee – members are only liable for the amount they agreed to contribute to the company's assets should the company be wound up.
3. A public limited company – these companies are permitted to sell shares to the general public, and their liability is limited to the amount unpaid on shares they hold.

FORMING A COMPANY

The majority of businesses setting up in the UK register as limited companies and are therefore subject to the Companies Act 2006. This Act sets out the rules governing the setting up and day-to-day running of companies.

To set up a company in the UK, you can use a company formation agent, arrange for your professional adviser (solicitor or accountant) to form the company, or you can incorporate a company yourself by using the web incorporation services operated by Companies House.

Companies House is the government agency responsible for incorporating, dissolving and registering companies, and making company information available to the public.

Eligibility for Company Directorship

Any company setting up in the UK must have formally appointed officers. The number of officers depends on the type of company that is being set up:

- A private company must have at least one director and may have a company secretary. The company's sole director cannot also be the company secretary.
- A public company must have at least two directors and the company secretary must hold a formal qualification.

Procedure to Incorporate a Company

To register a private or public limited company, the following documents must be sent to Companies House:

- A Memorandum of Association
- Articles of Association
- Form IN01

The Memorandum of Association is a document that sets out the company's name and the address of its registered office (which must be a valid UK address).

The Articles of Association set out the standard rules and procedures that state how the company runs its internal affairs. A company can adopt the model articles in their entirety as prescribed by the Companies Act 2006.

Form IN01 provides details of the first director(s) and company secretary (if appointed), the address of the company's registered office, a statement of the issued share capital on incorporation and the names and addresses of the subscribers (first shareholders). The directors must also include personal details such as their address, date of birth, occupation, nationality and country of residence.

CAPITAL FOR PRIVATE AND PUBLIC LIMITED COMPANIES

When first registering, the first members of the company must each agree to take at least one share and their names must also be included on the memorandum. Shares have a par value, which can be of any amount. The value of the shares held by the shareholders (number of shares multiplied by their par value) is the company's 'Issued Share Capital'.

The amount of share capital required differs depending on the type of company you are setting up and the requirements of the business. A private limited company has no maximum or minimum authorised or issued share capital required in order to commence trading, save that it must have at least one share in issue unless the regularity requirements of its particular industry require a specific minimum. The rules for public limited companies are more complex.

Capital for Public Limited Companies

For a public limited company to trade, the requirement is that it must have at least £50,000 or Euro equivalent of issued share capital, of which 25% must have been paid up and the whole of any premiums (that is the amount investors are asked to pay for the shares less the par value) on these shares. As with private companies a company operating in a particular industry may be required to have a significantly higher issued share capital.

Once the share capital has been paid the company will need to send the relevant information to the Registrar of Companies, who will then issue a 'Certificate to commence business and borrow'. Without this certificate the company cannot trade or carry on business.

MANAGEMENT OF COMPANY

A private limited company must have at least one director, and a public limited company must have at least two directors. In both types of company, the directors are responsible for the day-to-day running of the business, and are personally responsible for any decisions made. The main responsibilities include:

- Producing the annual accounts and making sure that a copy of these is sent to Companies House (a legal requirement for both public and private limited companies);
- Making sure any other information required by Companies House is sent there (for instance, notification of a change in address of the company's registered office or a change in the identity of the directors of the company).

Some of these responsibilities are required by law and, as such, any breach by the directors is a criminal offence for which the penalties can be severe (prosecution, fines, and/or imprisonment).

OTHER FORMS OF COMPANY

Sole Traders

Sole traders are businesses set up by individuals. They are typically small and usually financed by the individual. They are unlimited liability businesses, so the owner is responsible for meeting all the debts of the business. Sole traders are not required to publish annual accounts, although they must keep financial records for tax purposes.

Partnership

Regarded as a step up from a sole trader, this is where a group of two or more individuals set up a business together. Partnerships are regulated by the Partnership Act 1890 (as amended). Normally, a partnership agreement is drawn up before trading commences and this agreement usually contains information on the names of the partners of the business, how profits and/or liabilities will be shared, how the partnership will be run, and the procedures for dissolving the partnership.

As with a sole trader, partnerships have unlimited liability, with the partners jointly and severally liable for all debts, that is, if one or more of the partners is unable to meet these debts, then the remaining partners will become liable for them. A partnership in England and Wales does not have a separate identity from its partners, as a company has from its members. Partnerships are not required to publish their annual accounts, although they must keep financial records for tax purposes.

Limited Partnership

It is still possible to register a limited partnership under the Limited Partnership Act 1907, although they have been superseded in the main by the Limited Liability Partnership (see below). Limited partnerships are very similar to partnerships with these exceptions:

- There are two types of partner: general partners, who are liable for all the businesses debts, and limited partners, who have limited liability up to the amount of money they have invested as capital in the business. Limited partners cannot take back any money invested in the business during the partnership's lifetime, nor can they have a management role in the business.
- By law, limited partnerships must be registered at Companies House by sending a form signed by all partners giving the name of the business, what the business does, and details of all the money invested by the limited partners.

Limited Liability Partnership (LLP)

The Limited Liability Partnerships Act 2000 created a new business vehicle, the Limited Liability Partnership (LLP) which combines the organisational flexibility and tax status of a partnership with limited liability for its members.

Members of limited liability partnerships benefit from limited liability because the partnership, rather than its members, is liable to third parties. However where the members of an LLP are professional people, a negligent member's own personal assets may still be at risk because under general law, a professional person owes a duty of care to his or her client. While the government originally intended to restrict the use of LLPs to members of regulated professions, the LLP Act makes LLPs available to two or more persons carrying on any trade or profession. In view of this, as the LLP combines the tax/NIC (National Insurance Contributions) advantages of partnerships with incorporation and limited liability, it may well become a popular vehicle for small businesses.

LLP profits are taxed as if the business were carried on by partners in partnership, rather than by a body corporate. There are no special tax treatments, or reliefs, available to LLPs or members of LLPs beyond the treatments or reliefs available to partners and partnerships.

The European Public Limited-Liability Company

The European Public Limited-Liability Company or 'Societas Europaea' (SE) is available to businesses operating in more than one member state. It has been possible to set up this type of legal entity in the UK since October 2004.

The purpose of the SE is to make it easier for businesses to structure and carry out cross-border activities within the EU. In practice, however, they are probably of more

value for presentational purposes, although the ability to change the domicile of an SE by an administrative procedure can prove to be useful in certain circumstances.

The SE European Public Limited – Liability Company

An SE may be created on registration in any one of the Member States of the European Economic Area (EEA). Member States are required to treat an SE as if it is a public limited company formed in accordance with the law of the Member State in which it has its registered office. UK national laws that apply to public limited companies also apply, in many respects, to SEs registered in the UK.

Overseas Companies Carrying on Business in the UK

Some companies might still want to do business in the UK without registering a company in the United Kingdom. This can be done by setting up a branch.

A branch is part of an overseas limited company that employs local representatives in the UK to carry out its trading activities. To register a branch with Companies House, the company must complete a OSIN01 Form (this lists details such as the company's name and directors, and details of the branch being set up), the most recent set of audited company accounts, and a certified copy of their constitutional documents (both these must be in the home language of the company). If these are not in English, then a certified translation made in the country where the company was incorporated must also be submitted. A non-UK company can establish one or more branches and must register each one separately, but it is only necessary to file the constitutional documents once.

Overseas companies may also wish to set up a joint venture with a UK firm, usually through a partnership or a limited company.

2. FINANCIAL REPORTING AND ACCOUNTING: AN OVERVIEW

Stephen Brown, Mazars

INTRODUCTION

All limited and unlimited companies in the UK, regardless of whether they are trading or not, are required to keep accounting records throughout the period. This chapter sets out the key financial reporting and accounting requirements for companies trading or investing in the UK.

GENERAL PRINCIPLES

Where formal accounts are required, in particular for limited companies, these must include for accounting periods commencing after 1 January 2015:

- An Income Statement;
- A Statement of Financial Position signed by the director;
- A Directors' Report signed by a director or the company secretary;
- A Strategic Report signed by a director (if applicable);
- Notes to the accounts; and
- Statement of Cashflows (if applicable);
- Consolidated Financial Statements (if applicable);
- An Auditor's Report signed by the auditor (if required).

In general, all private and public limited companies are required to send a full copy of their accounts to Companies House every year.

Once received, all accounts filed and held at Companies House are available to the general public on request. For this reason the option to file abbreviated accounts is attractive to some small companies.

Small companies are entitled to certain disclosure exemptions in relation to the accounts they must send their shareholders, and can, in addition, file abbreviated accounts with the Registrar of Companies. Medium-sized companies can also send abbreviated accounts to the Registrar but the reduction in disclosure in these accounts is negligible. In both instances they must, however, provide a full set of accounts for their shareholders. For both small and medium-sized companies, the production of abbreviated accounts is entirely voluntary.

A company/group filing small company abbreviated financial statements does not need to file a Directors' Report, Income Statement and can include fewer notes to the financial statements.

For a company to qualify as small, at least two of the following conditions must be met:

- Turnover must be less than £6.5 million;
- Gross assets must be less than £3.26 million; and
- Average number of employees must be less than 50.

A company filing medium abbreviated financial statements has a limited option to reduce disclosure but does need to include a Directors' Report, an Income Statement and notes to the financial statements.

For a company/group to qualify as medium-sized, again, at least two of the conditions below must be met:

- Turnover must be less than £25.9 million;
- Gross assets less than £12.9 million; and
- Average number of employees less than 250.

The time normally allowed for companies to deliver their accounts to Companies House is:

- 9 months from the ARD (Accounting Reference Date) for a private limited company.
- 6 months from the ARD for a public limited company.

The ARD is the period-end date to which all accounts are prepared and normally covers a period of 12 months, although this can be extended to a maximum of 18 months. Filing of financial statements for a first year entity must be within 21 months of incorporation. Late delivery of accounts to Companies House will result in a late filing penalty, which is, technically, a criminal offence for which Directors can be prosecuted.

ACCOUNTING

Regulations regarding the presentation of the primary financial statements in the UK are found in several sources such as UK company law and UK and international accounting standards. Note that subsidiaries of overseas firms incorporated outside the UK are subject to the normal UK accounting practices. Branches or places of business of overseas firms have special registration procedures.

Accounting Principles

All accounts in the UK are prepared in accordance with two fundamental accounting concepts:

- Going concern – the accounts are prepared as if the company will be trading in the foreseeable future (at least 12 months from the date of signing the financial statements).
- Accruals basis – income and expenditure should relate to the period in which it occurred, not the period in which it was received/paid.

Whichever accounting policy is selected, they must be transparent and reflect industry and sector norms.

Financial Reporting

Until recently, Financial Reporting Standards were developed solely by the Accounting Standards Board (“ASB”). These standards, in conjunction with the requirements of UK companies legislation (principally the UK Companies Acts), helped make up what is known as UK GAAP, which gives guidance to companies and auditors on how UK accounts should be prepared to give a ‘true and fair’ view of the company’s financial position.

However, due to increasing globalisation in the world economy, it became necessary to produce a set of International Financial Reporting Standards (“IFRS”) so that potential investors can compare firms on a global scale.

EU firms with securities that are publicly traded on a regulated stock exchange are required to apply EU-adopted IFRS when producing consolidated accounts. In the UK, this means any company listed on any of the markets of the London Stock Exchange. Individual subsidiary companies are not yet required to prepare financial statements under IFRS.

At present, only the types of company detailed above are required to adopt IFRS. However, even companies not required to do so can choose to adopt these new standards. A company that chooses to use IFRS to produce its accounts for one financial period cannot change back to UK standards in the following years. There are limited exceptions to this, such as if the company becomes a subsidiary of a group that

uses UK standards as opposed to IFRS, in which case the company can revert back to using UK standards.

UK companies were required to adopt a new financial reporting framework for accounting periods beginning on or after 1 January 2015 when the extant FRSs, SSAPs and UTIFs were withdrawn from UK GAAP.

The new framework has been updated to achieve greater convergence with international standards and is split into three tiers (based on public accountability and size) for financial reporting purposes.

Listed and AIM companies must use IFRS in their group accounts - AIM companies because the listing rules require it and full listed companies because regulations require that all companies listed on an EU regulated market use IFRS, as adopted in the EU, in their group accounts.

Other entities that are not required to use IFRS had the following choices:

- IFRS – any entity, except a charitable one, can adopt IFRS if they wish.
- FRS 101 – ('IFRS' with reduced disclosures) - this is only available to subsidiaries of parent companies who have adopted IFRS, and it allows the subsidiaries to adopt IFRS but with reduced disclosures;
- FRS 102 – the standard that has replaced UK GAAP;
- FRS103 – Insurance contracts is a fourth standard added to the framework which is relevant to entities that are applying FRS102 that have insurance contracts; and
- FRS105 – the financial reporting standard applicable to micro entities.

FRS103 should be applied by an entity that applies FRS102 and issues insurance contracts and/or holds reinsurance contracts. This FRS should also be applied to financial instruments (other than insurance contracts) that it issues with a discretionary participation feature.

"Small" companies/groups as defined by the Companies Act have previously had the option to use the FRSSE, for accounting periods beginning on or after 1 January 2015 FRSSE (effective 2015) has replaced FRSSE (effective April 2008).

The amendments to FRSSE primarily reflect that FRS 102 is replacing existing SSAPs and FRSs from January 2015. The key differences between FRSSE (effective April 2008) and FRSSE (effective 2015) are as follows:

- An annual assessment is required of whether there are any indications of impairment of any assets.
- If unable to make a reliable estimate of the life of goodwill or intangible assets the maximum life shall not exceed five years (changed from 20 years).
- The definitions regarding related party transactions and key management personnel have been aligned with FRS 102.

- The exemption for disclosure of intra-group related party transactions where any subsidiary party to the transaction is 100% owned by the group has been included.

FRSSE (effective 2015) will be withdrawn from 1 January 2016 at which point companies/groups that are "small" but not "micro" (meaning they cannot apply FRS 105) may use FRS102 for smaller companies.

FRS102 for smaller companies (which is an amendment to FRS102 by way of a new section 1A for small entities) requires entities to apply the full recognition and measurement principles contained in FRS102, but retain presentation and disclosure requirements that are appropriate to a small company.

Companies that meet the "micro" criteria have the choice of applying FRS105 for micro entities. For a company to qualify as micro-sized, at least two of the conditions below must be met:

- Turnover must be less than £632,000;
- Net assets less than £316,000;
- Average number of employees less than 10.

For a company to be eligible to apply FRS105 it can not meet any of the following criteria:

- Companies excluded from the small companies regime;
- Financial institutions including credit, insurance and banking institutions;
- Charities;
- Small parent companies who choose to prepare consolidated financial statements;
- Companies that are included in consolidated financial statements; and
- Public companies.

FRS105 is effective for accounting periods commencing on or after 1 January 2016 which means that there will a one year period where "micro" companies that have previously applied FRSSE (UK GAAP applicable to smaller entities) will have to adopt FRSSE (effective 2015) or FRS102 for smaller companies before FRS105 becomes effective.

FRS105 requires only two primary statements and the information contained on these primary statements will be condensed. Amongst other simplifications assets can not be measured at fair value or at revaluation under FRS105.

As before FRS105 and FRS102 for smaller companies are not mandatory and a company could instead use full FRS 102 or indeed IFRS if it so desired.

Other entities that are not "small" or "micro" and are not required to use IFRS end up with various choices, depending on their situation.Charitable companies are expected to use FRS 102 and a new Charities SORP (SORP 2015) was issued to update the changes to UK GAAP in line with the adoption of FRS 102 for accounting periods commencing on or after 1 January 2015.

AUDIT

Audits must be carried out by someone authorised to provide an audit, by:

- Being a member of a Recognised Supervisory Body ("RSB"); and
- Having the necessary qualifications/eligibility of that RSB to be an auditor.

An RSB can be a professional body such as the Institute of Chartered Accountants for England and Wales. UK companies are required to be audited unless they are designated as 'small' in size (and can satisfy 2 out of the three criteria), or are dormant. This 'small' exemption is subject to a number of detailed conditions which must be met in order for it to apply.

If a UK small company is part of a group of companies (UK or worldwide), the group in its entirety must meet the definition of 'small', otherwise the small UK company will be subject to an audit regardless of its individual size.

There are circumstances where a parent company can guarantee the liabilities of a UK trading subsidiary and this can allow it to take advantage of an exemption from audit regardless of its size.

If a group of companies (UK or worldwide) contains a listed entity with its shares traded on a recognised stock exchange anywhere in the world, then any UK company which is part of that group will require an audit regardless of its own individual size.

Note here that exemption from the audit requirement does not exclude the company from having an audit if it so wishes.

Auditors are normally appointed in the following ways:

- They are appointed by a newly formed company, or by an existing company that requires a new auditor.
- They are reappointed by a company for which they are already existing auditors.
- They are ordered to be auditors of a firm by the Secretary of State.

This last case occurs when a company requiring an audit fails to agree to appoint an auditor.

The company's auditors are appointed/reappointed each year by either majority vote of the shareholders, or for a private company the provisions of deemed re-appointment of an existing auditor may apply. Directors have the authority to fill

a vacancy that arose during the year but this will need to be later confirmed by the shareholders before the new auditor may continue in office for subsequent financial years.

Upon appointment, the auditor should send the company an engagement letter confirming their appointment as auditors, and setting out other items relating to the audit, such as the work they will carry out, confirmation of their independence and payment of audit fees. The auditor should also seek professional clearance from the previous auditors before accepting any audit appointment.

An auditor ceases to audit a company in the following ways:

- They resign from the post of auditor of the company.
- They are removed by the company.

If an auditor resigns they must provide a written notice to the company and a statement of circumstances to the Registrar of Companies and anyone else entitled to copies of the company accounts.

If the members of a company wish to remove the existing auditor, the auditor has the right to have written circularisation to all members and the right to be seen and heard at the company's general meeting at which their removal is proposed.

3. FINANCIAL COMPLIANCE AND AN OUTSOURCED SOLUTION

James Smalley, Mazars

INTRODUCTION

After setting up a company in the UK there are various statutory and fiscal returns that need to be completed as the company develops. Typically, an overseas company will engage an accounting and outsourcing firm to provide these services, By engaging an external provider to provide this compliance it can release a company's senior management team from often time consuming and burdensome fiscal compliance, allowing them to focus on the activities that really matter to the growth and success of the business and giving them peace of mind that the company is being looked after and penalties are not being incurred.

TYPICAL FINANCIAL COMPLIANCE REQUIREMENTS

After a company has been formed, typically it will have the following compliance requirements:

Initial set up
- Company formation
- Registration of taxes (Corporation tax, VAT)
- Set up of PAYE payroll
- Set up of pension scheme under Auto-enrolment

Common on-going requirements may include
- VAT returns to prepare and submit (typically quarterly)
- Corporation tax returns

- Statutory accounts
- RTI monthly reporting of payroll
- Auto-enrolment pension administration
- P11D and P11D(b) benefit returns
- National statistics return
- ECSL or Intrastat returns for European trade
- Maintaining suitable accounting and statutory records

WHY OUTSOURCE FINANCIAL FUNCTIONS?

The above compliance requirements can be delivered by the company but there is often not the breadth of technical knowledge to deliver them within an organisation. These compliance areas are often looked after by a third party provider from whom the following benefits can be derived.

Compliance
When someone creates a company in the UK and becomes a director there are a number of responsibilities that the individual takes on. There are both civil and criminal penalties if these rules are not complied with. One responsibility is to maintain proper accounting records and outsourcing the financial function can help in ensuring local legislation is met. This is a key benefit to outsourcing the finance function and can give the security and peace of mind that the business is compliant.

Risk Management
Every business investment carries a certain amount of risk. Markets, competition, government regulations, financial conditions and technologies can all change quickly. An external outsourcing provider is responsible for keeping abreast of regulatory changes and ensuring that the business is up-to-date and fully compliant. This is particularly relevant for inward investment organisations where the parent company and the management of the organization operate outside of the UK and are therefore less exposed to or aware of regulatory changes. The result of non-compliance can be hefty penalties and fines.

Local Knowledge
Using an external provider with local knowledge and experience ensures the investor is aware of the country-specific taxes and concessions that may be available to them. This is an area where a proactive provider may be able to save the business both time and money.

Staffing and Recruitment
It can be expensive to recruit a new resource and getting the right resource to cover all requirements can be difficult when a business is in its early stages. There tends not be enough work for a full-time financial controller and issues can arise which need a greater level of skill than a regular book-keeper can provide. Recruiting and training staff can also take time which can be avoided with the use of a suitably experienced outsourcing provider.

Additional Resource
If staff are recruited there may be busy times of the month or year when extra support may be needed. This could be to meet deadlines, provide cover for a member of accounting staff on long term leave, assist with accounting reconciliations or incomplete records, or to enable post acquisition accounting alignment. In these situations an external outsourcing provider can be flexible in the level of resourcing provided, both in terms of skills and manpower, enabling the business to cope with the peaks and troughs in its workflow. This can provide greater continuity in the staff engaged and ensure that knowledge is not lost.

Variable Costs
Outsourcing converts fixed costs into variable costs. In the early stages of a new business venture when the pace of growth is uncertain, outsourcing can help management control costs by managing them flexibly.

Legal Redress
An external supplier will provide services in line with a legally binding contract which has financial penalties and legal redress. This gives the business a level of accountability and assurance which does not exist when services are provided by an internal team. However consideration should be given to the size and reputation of the firm delivering the service and its ability to resolve any issues that might arise.

Focus on the Core Business
Productivity can be increased as an external provider can take on volume transactions or labour-intensive procedures and carry them out quickly and efficiently using tried and tested processes. This allows the company's management team and staff to focus on the core functions of the business where they add most value. An increase in productivity can directly influence the bottom line.

Technical Expertise and Core Skills
Using an external provider can give you access to a larger pool of talent and technical knowledge. This may manifest itself in the production of consolidated reporting or the consistent reliability of monthly reporting deadlines being met. It also means that

you have a quick route to deal with business critical matters such as resolution of tax queries or the settlement of payments on a local basis.

Payroll

The key area to any business is the people who drive it forward. With international business and personnel being transferred across borders there can be both visa issues and tax issues for the individual and the company. Outsourcing the payroll, expatriate tax advice and immigration support to one provider means that employees are looked after when overseas and local legislation is complied with. This means that they are paid on time and local tax issues are dealt with.

WHICH FUNCTIONS CAN BE OUTSOURCED?

When a company outsources the financial and accounting compliance additional non-core areas of the business are often considered as well. This is often to take advantage of the third party providers' intellectual capital and the technical knowledge they have of system implementation and to deal with other non-core administrative areas:

Management Accounting & Reporting

- Management accounts production
- KPI reporting
- Consolidation packs

Legal & administration

- Company secretarial services
- Fiduciary services

Interim accounting solutions

- Provision of manpower
- Accounting support
- Emergency accounting

High volume business processes

- General ledger
- Accounts receivable
- Accounts payable
- Payroll
- Fixed assets

Non-financial solutions

- *HR*
- Procurement
- Insurance claims
- IT Support

4. BUSINESS TAXATION AND PLANNING

Andrew Ross, Mazars

INTRODUCTION

This chapter is divided into the following parts:

- The key forms in which an overseas company could set up in the UK with a view to carrying on business.
- The basis of taxation in the UK, summarising the key taxes an investor needs to be aware of.
- Setting out the basis of calculation of taxable profits, noting the key rules on tax deductibility of expenditure and certain important tax reliefs and anti-avoidance provisions.

VEHICLES FOR DOING BUSINESS IN THE UK

There are several different vehicles that could be used when doing business in the UK, each with their own legal and commercial peculiarities. When considering the most suitable form of vehicle to use, investors would be recommended to consider such factors in addition to taking account of the differing tax treatment of each.

Representative Office

It is important to distinguish between "trading in" and "trading with" the UK. An overseas person will not be subject to UK tax on profits simply because they are transacting with UK entities, even if the goods are delivered to UK locations or services are carried out within the UK.

This can be the case even if the overseas investor has set up an office within the UK, although this will depend on the nature of the activities carried out by that office.

If, however, those activities cross a certain line, this could result in the creation of a taxable branch or permanent establishment.

In this context, it should be noted that in 2013 the OECD commenced a project referred to as "BEPS" – Base Erosion and Profit Shifting. The objective of this project is to review the current rules on allocation of taxable profits between territories, including the extent to which profits are allocated to locations which differ from where the actual business activity takes place. The UK Government supports the introduction of BEPS and it is likely that UK tax law will be amended once agreed proposals have been issued by the OECD. This will be particularly relevant to overseas companies intending to set up operations in the UK via a representative office or branch/"permanent establishment".

In addition, for profits arising on or after 1 April 2015, the diverted profit tax ("DPT") applies, under which a 25% tax is charged on profits relating to UK activities of multinational enterprises which are diverted (avoiding the UK tax net) using "contrived" arrangements. One example of this might be where a non-UK resident company operates in the UK in such a way that whilst it earns (significant) profits from the UK, its operations are structured in such a way as to avoid the creation of a taxable permanent establishment (on which, see below).

Branch / "Permanent Establishment"

The UK branch (referred to for tax purposes as a "permanent establishment" or "PE") of a foreign company will be subject to tax in the UK on profits that are attributable to the branch. UK domestic legislation gives a definition of a PE which is broadly similar to that contained in many double tax treaties. Typically, a foreign company will have a UK PE if:

- it has a fixed place of business in the UK through which the business of the company is wholly or partly carried on; and/or
- an agent acting on behalf of the company has and habitually exercises in the UK authority to do business on behalf of the company (except where that agent is of independent status acting in the ordinary course of his business).

There are exceptions to this where, for example, the fixed place of business is for the storage of goods or purely for purchasing or information-gathering functions. In such a situation, the foreign company may not have a UK taxable presence.

Subsidiary

A UK incorporated subsidiary will be subject to UK tax on all of its trading profits, wherever those profits are earned (subject to the possibility of claiming an exemption from UK tax for profits within overseas branches).

A non-UK incorporated company can also be treated as UK tax resident (and so taxable in the UK on its worldwide profits) if its "central management and control" is located in the UK. Therefore care needs to be taken where a non-UK company is operating in the UK to ensure that the company as a whole does not become UK tax resident.

Branch v Subsidiary

From a UK tax point of view, there is generally little difference in the basis of taxation between a branch and a subsidiary. UK corporation tax is charged at the same rates on branch or subsidiary profits and no withholding tax is charged on the remittance of funds by a branch to its head office or on dividends paid by a subsidiary to its parent company.

Therefore, a decision on the most appropriate form will generally need to be based on commercial & legal factors and the non-UK tax implications.

One potential tax advantage of using a UK branch (particularly in start-up ventures) is that tax losses of the branch may (depending on the law of the relevant overseas country) be available to offset non-UK profits arising in the same foreign company. At the same time, those tax losses can also be carried forward to shelter future profits of the branch from UK tax (although the flip-side of this is that there may be less double tax relief to shelter those same future profits from tax in the overseas country).

Joint Ventures

Where an investor wishes to enter into a UK joint venture-type arrangement with a 3rd party, the parties will likewise need to agree on the form of the joint venture, for example:

- Contractual joint venture: Each party (through its own legal entity) enters into a contract with a view to carrying out a business transaction or a project.
- Partnership: This is a more formal legal structure involving the carrying on of a business in common with a view to profit. Each party (again through its own legal entity) will enter into a formal partnership agreement. The basis for sharing profits will be set out in this partnership agreement.
- Company: A company is set up to carry out the joint venture business, with the joint venture parties owning shares in that company. The relationship between the joint venture parties may also be governed by a shareholders' agreement.

Again, commercial and legal considerations must be taken into account in determining the most appropriate vehicle. The tax treatment of each will also vary.

BASIS OF TAXATION

The main taxes payable in the UK may be summarised as follows.

Tax on Company Profits

Corporation tax is payable on the taxable profits (both income and capital) of a UK subsidiary or the UK branch of an overseas company. The rate of corporation tax is the same for both a branch and subsidiary.

Tax is calculated based on the profits of an "accounting period", which will normally coincide with the period for which the company prepares its financial statements.

Historically, there were two rates of corporation tax - the main rate and the "small profits rate", although these rates have now converged, resulting in a single rate of 20%.

The current and proposed future rates of corporation tax are:

Profits arising in year from 1 April to 31 March:	2015/16	2016/17
Main rate of corporation tax	20%	20%
Small profits rate of corporation tax	n/a*	n/a

** Effective 1 April 2015 the small profits rate (20%) was unified with the main rate (previously 21%), such that there is now only one rate of corporation tax.*

In the 2015 Summer Budget, it was announced that the main corporation tax rate would reduce to 19% for the years starting 1 April 2017, 2018 and 2019 and to 18% for the year starting 1 April 2020.

In charging corporation tax on companies with year ends other than 31 March, a proportionate part of profits for an accounting period is taxed at each of the applicable rates. For example, the main rate of tax on taxable profits of a company with a 31 December 2015 year end is 20.25%.

In the past, rates of corporation tax were impacted by the number of associated companies. Post 1 April 2015, the number of associated companies only really impacts on whether a company is required to pay its corporation tax liability by quarterly instalment payments ("QIPs"). A company must make QIPs during the accounting period where it is 'large,' i.e. its profits exceed £1.5m (divided by the number of associated companies) and it was either large in the previous accounting period or its current period profits exceed £10m (again, divided by the number of associated companies). From 1 April 2015, an associated company arises where one company is a 51% subsidiary of another, or both companies are 51% subsidiaries of a third.

Pursuant changes announced in the 2015 Summer Budget, the precise timing of payments under QIPs will depend on the profitability of the company.

From 1 April 2013 a new "Patent Box" regime was introduced, giving reduced corporation tax rates which ultimately result (from 1 April 2017) in a 10% corporation tax rate for "patent derived profits" (including royalties) for both new and existing patents.

The current patent box regime will be closed to new entrants from June 2016 following which companies with IP which already qualified (patents which are already registered) may continue to apply the reduced 10% tax rate until June 2021. At present there is no indication as to whether a replacement regime will be introduced.

For "large" companies (as defined above) the corporation tax liability for an accounting period is due and payable quarterly, the first instalment being six months and 14 days after the beginning of the period (and hence estimates of the forecast tax for a particular year will need to be made for at least the first two quarterly payments). For companies not within the quarterly payment obligation, tax is due in a single payment, nine months after the end of the company's accounting period. Interest is payable to/receivable from HMRC on any under/over and late/early payment of tax.

Tax on individuals

Individuals are liable to income tax on trading profits, employment income, interest, dividends and other income and are subject to capital gains tax on chargeable gains. The rates for the tax year commencing 6 April 2015 are:

Taxable income (£)	Tax rate on income	Effective tax rate on UK/overseas dividends	Tax rate on capital gains*
up to 31,785	20%	Nil	18%
31,786 - 150,000	40%	25%	28%
over 150,000	45%	30.6%	28%

** A reduced rate of 10% is payable on the first £10m of gains made in a taxpayer's lifetime, on the disposal of qualifying business assets ("Entrepreneurs' relief").*

Based on announcements in the 2015 Summer Budget, from April 2016, only the first £5,000 of dividend income will be tax-free for basic rate tax payers. Above this level, a basic rate tax payer will pay tax at 7.5% and a higher rate tax payer will be subject to tax at 32.5%. Over £150,000 of income, dividends will be subject to 38.1% income tax.

An individual who is trading in partnership is assessed to income tax on their share of the tax-adjusted trading profits for the accounting period of the partnership ending in the tax year. The basis of calculation of taxable trading profits is broadly the same as for a company.

The rules for the calculation of individuals' capital gains differ from the rules for companies in that "indexation allowance" (an allowance for inflation) is not available to individuals, whilst there are other reliefs available to individuals that are not available to companies (e.g. Entrepreneurs' relief).

Interest income is taxable when received. In most cases, UK interest is paid to individuals net of basic rate income tax. The gross income is taxable, with credit given against the tax liability in the tax year for the tax deducted. Where the tax liability is less than the tax deducted, the excess withholding tax is repayable.

Income tax on trading and other income that is not subject to PAYE (see below) is due in two instalments – on 31 January within the relevant tax year and 31 July following the end of the tax year.

Payroll Taxes/National Insurance Contributions

An employer is obliged to make deductions from pay for employee income tax and employee national insurance contributions (NIC), using the "pay as you earn" (PAYE) system.

Employer NIC is an additional cost payable by the employer based on each employee's wages plus benefits in kind. The rates of employer NIC vary depending on whether the employer offers a final salary pension scheme and has contracted out of the state earnings related pension scheme. The rates for the year commencing 6 April 2015 are:

Weekly earnings	Monthly earnings	Contracted in	Contracted out
Up to £156	Up to £676	Nil	Nil
£157 to £815	£677 to £3,532	13.8%	10.4%
Excess over £815	Excess over £3,532	13.8%	13.8%

The employer has to make monthly remittances to HMRC (by mandatory electronic funds transfer) of the amounts they deduct for employee income tax and NIC, along with the employer NIC. All employers are required by law to report to HMRC on a real-time information basis ("RTI"). This means that the employer files a RTI notification to HMRC via the Government Gateway every time an employee is paid. The RTI return is filed either in advance of or along with the remittance to HMRC. This is viewed as the most significant change to PAYE since its introduction in 1944.

VAT

All businesses investing or trading in the UK must register for UK VAT if they have a "business establishment" or usual place of residence in the UK. This test differs from the corporation tax tests of residence and it is therefore possible for an overseas investor to be required to register for UK VAT even though it may not have a branch that is liable to corporation tax.

VAT registered businesses are generally required to file VAT returns quarterly by way of electronic returns and therefore any VAT payable will usually be payable by not later than one month and seven days after the end of the relevant quarter. However, VAT-registered businesses with an annual VAT liability in excess of £2.3 million must make interim payments at the end of the second and third months of each VAT quarter as payments on account of the quarterly VAT liability. A balancing payment for the quarter is then made with the VAT return.

Stamp Duty Land Tax ("SDLT")

SDLT is payable on the acquisition of any interest in land situated in the UK regardless of whether the acquirer is an individual, a partnership or a company or whether the acquirer is UK or non-UK resident.

The most common rate of SDLT when a capital sum is paid to acquire non-residential land or an interest in such land (whether the acquisition is ownership of the land or on the grant or assignment of a lease) is 4%. Lower rates of SDLT apply if the purchase consideration is less than £500,000. Different rates of SDLT may apply to the acquisition of residential land. There are exceptions for intra-group transfers. Care must be taken, in particular, where residential land which was valued at more than £2 million on 1 April 2012 is to be acquired by a company (or other collective investment vehicle) since an Annual Tax on Enveloped Dwellings may also be payable. This £2m threshold is reduced to £1m for returns relating to 2015/16 and £0.5m post 1 April 2016.

On grant of a non-residential lease, in addition to the SDLT on any premium, the tenant is liable to pay SDLT at 1% of the net present value of the total rent payable under the lease, less a deduction of £150,000.

Stamp Duty

Stamp duty, at 0.5%, is payable by the person acquiring shares or convertible loan notes of a UK registered company. There are exceptions for intra-group transfers. No duty is payable on the transfer of ownership of other assets, for example loan notes, goodwill or trade debtors. There is no duty on the issue of shares or convertible loan notes.

Withholding Taxes

The UK does not impose withholding tax on dividends.

A 20% withholding tax is generally imposed on interest payments made by

1. A company,
2. By or on behalf of a partnership of which a company is a member,
3. By a person to another person whose usual place of abode is outside the UK.

However, the rate may be reduced under an applicable double tax treaty or the EU Interest and Royalty Directive, provided that certain conditions & formalities are complied with prior to the payment of the interest.

There is no withholding from payments of interest by a UK company to UK companies or to UK branches of overseas companies (which will include, in particular, UK branches of overseas banks), or on payments of interest on certain quoted loan stock. Where securities are issued at a discount, no withholding is applied on the discount element.

For royalties, a 20% income tax withholding applies, subject to lower rates in the relevant applicable double tax treaty or under the EU Interest and Royalty Directive.

Rent paid to a non-UK resident person is subject to a 20% withholding deduction, unless the landlord has met the requirements of HMRC's "non-resident landlords' scheme".

Under the construction industry scheme, there may be a withholding requirement on payments made by contractors to sub-contractors in relation to building projects.

No withholding tax is applied on service fees, technical fees or management charges.

DETERMINATION OF TAXABLE PROFITS OF A BRANCH/ SUBSIDIARY

The rules for the calculation of the taxable profits of both a branch and subsidiary are essentially the same. The key issue for a branch is the extent to which profits of the relevant overseas legal entity should be allocated to the head office or the UK branch.

Taxable Trading Profits

The taxable result from trading is based on the profits for the year, as shown in the company's financial statements (provided the financial statements are prepared in accordance with IFRS or UK GAAP).

Costs that are not deductible for tax purposes include entertainment expenditure, fines and penalties, expenditure of a capital nature and non-specific provisions. Depreciation, amortisation and gains/losses from the disposal of fixed tangible assets are not allowed or taxed. For tax depreciation, there is a statutory relief for certain

classes of assets (see capital allowances, below).

Until the 2015 Summer Budget, tax relief was available on the cost of the acquisition of intangible fixed assets (for example goodwill) if acquired after 31 March 2002 from a non-connected person. The amount that was tax deductible was the charge in the profit and loss account or, if an irrevocable election was made, a 4% p.a. straight line writing down allowance. Based on the proposals announced in the 2015 Summer Budget, from 8 July 2015 onwards tax relief will no longer be given for purchased goodwill and certain customer related intangibles acquired as part of the acquisition of a business.

Remuneration paid to employees is deductible on an accruals basis providing payment to the employee is no later than nine months after the year end. Remuneration paid more than nine months after the year end is tax deductible in the period when payment is made. Tax relief for payments made by the employer into a pension scheme is generally given when the payment is made (rather than on an accruals basis), although relief may be spread where there is a large increase (> £500,000) in the level of contributions from one period to the next.

Capital Allowances

Capital Allowances is the UK term for the statutory code for deducting the cost of capital expenditure from trading profits. The main class of asset that is eligible for capital allowances is plant and machinery. This includes plant within a building or structure (e.g. electrical, heating, water and air conditioning systems, lifts, escalators, sanitary ware). No allowances are given for the cost of buildings.

Eligible expenditure on plant and machinery qualifies for tax relief at one of two rates. Certain specified expenditure can obtain allowances at a rate of 8% per annum and all others at 18% per annum. For both, allowances are calculated on a reducing balance basis.

Assets in the 8% expenditure category include:

- Those with an expected life when new of more than 25 years
- Some plant within buildings
- Cars with emissions of more than 130 g/km (from 1 April 2013) of CO_2.

For expenditure incurred in the period 1 April 2014 to 31 December 2015, up to £500,000 of a company's annual expenditure on eligible assets, other than cars or assets for leasing out, is subject to 100% tax relief in the year of purchase. This is known as the "annual investment allowance". From 1 January 2016, the amount of the annual investment allowances will reduce to £200,000 per year. When the company is a member of a group only one annual investment allowance is given to the whole group.

Full relief is also available in the year in which it is incurred (100% tax allowances) for:

- Environmentally beneficial or energy saving plant (which includes cars with CO_2 emissions of no more than 75 g/km (from 1 April 2015);
- Plant for research & development activities;
- Expenditure of up to €20 million (Euro) on renovating empty commercial buildings until 11 April 2017.

On disposal of plant, the net sale proceeds, up to a maximum of cost, are deducted from the accumulated net pool of qualifying expenditure.

Interest and Finance Income and expense

In general, interest is taxed or relieved in accordance with the treatment in the company's financial statements.

Tax relief for finance expenses in "large" (as defined) corporate groups may be restricted due to the "worldwide debt cap". This restriction is considered after making any transfer pricing (thin capitalisation) adjustments (on which, see below). Broadly speaking, the intention of the worldwide debt cap is that the tax deductible finance expense relieved against a group's UK profits should be no greater than the external finance expense in the consolidated results of the group. However this regime will not apply if the UK net debt is less than 75% of the group's consolidated gross debt. This is a complex area on which further advice should be sought.

Dividends Received

The UK has a comprehensive dividends received exemption which applies to dividends a UK-resident company receives from UK or non-UK companies. Various conditions must be met, although there is no minimum holding period or minimum ownership percentage.

Sale of Capital Assets

The taxable gain on the disposal of a capital asset is calculated as net proceeds received less the acquisition cost and costs incurred on improvements. "Indexation allowance" (an allowance for inflation) may also be given to disposals by companies. Gains on certain assets can also be deferred by reinvesting the proceeds in certain replacement assets ("rollover relief").

The UK has a form of participation exemption, which can exempt from tax the gain or loss on the disposal by a company of shares in a trading company or trading sub-group - the exemption is called the Substantial Shareholdings Exemption (SSE). SSE, along with the dividends received exemption, are core features that make the UK an attractive location for holding companies.

The SSE rules contain several detailed requirements and therefore professional guidance should be sought as to whether it applies, not least because a group's non-trading activities do not necessarily need to be substantial for the group not to be regarded as a "trading group" and hence not qualify for the relief. An advance clearance application can be made to HMRC where there is uncertainty as to whether SSE applies to a particular disposal.

Transfers of capital assets (including intangibles) between UK members of a group takes place on a tax neutral basis regardless of the value of the asset or the price paid (see chapter 3.3). However, if the transferee subsequently leaves the group still holding the asset within six years of the transfer, this can create a "de-grouping" tax charge based on a deemed disposal (and re-acquisition) of the asset at its market value at the date of the intra-group transfer. Depending on the circumstances, this de-grouping charge may be taxable either in the transferee company that leaves the group or in the company selling the shares in the transferee.

Reliefs may apply to the transfer of a trading business to a company (a business incorporation) and to corporate acquisitions effected by a share-for-share exchange.

Losses

A company may claim to set a trading loss against all of its taxable profits within the same accounting period, and against the profits of the immediate preceding period, providing the company was carrying on the same trade in the previous period. Alternatively, or in addition, it may transfer some or all of a trading tax loss to other UK members of a 75% group, for use against the other companies' profits within the same accounting period only. This is known as "group relief".

A trading loss not applied to the current or previous accounting period and which has not been surrendered via group relief is carried forward and used against profits of the same trade arising in later periods, without time limit.

Tax relief for a non-trading company's finance expense in excess of the company's profits for an accounting period may be claimed against financial profits of the previous year. Alternatively, this expense can pass to another UK group member for use against that member's profits, in the same accounting period under the "group relief" provisions. Any unrelieved finance expense is carried forward, without time limit, to be used against future non-trading profits of the company.

Capital losses are set against chargeable (capital) gains of the company for the same period, with any excess being carried forward, without time limit, for use against net chargeable gains of subsequent periods.

There are several anti-avoidance provisions which may deny the carry forward of all types of tax losses when a group purchases a company with existing tax losses, and the main reason for the acquisition is to access these tax losses.

Research and Development Tax reliefs

Enhanced tax relief is available to companies which conduct R&D for the purposes of resolving scientific or technological uncertainty with a view to achieving an advancement in science or technology, or an appreciable improvement in existing technology.

There are two schemes of relief. One for small and medium sized companies (SME's), including so-called "larger SME's", and one for large companies.

For these purposes, an SME is broadly a company with less than 500 employees and not more than either €100m turnover or balance sheet total of €86m, taking into account certain linked and partner enterprises (e.g. group companies). An SME may claim an enhanced tax deduction of 230% of its qualifying R&D spend. If the SME is loss making, it may instead trade in losses for a cash rebate of 14.5% of the enhanced tax deduction (i.e. just over 33p in the £ of the actual qualifying spend), based on the rate applicable from 1 April 2015, thereby creating an additional source of cash-flow for the company.

Large companies may claim a tax deduction of 130% of their qualifying spend and do not currently have the cash-back option. However, for accounting periods commencing on or after 1 April 2013 a "Research and Development Expenditure Credit" (RDEC) credit scheme has been introduced. Under this scheme, in a large company's financial statements, the RDEC credit will be recognised as a reduction in R&D expenditure in the Profit and Loss Account. For tax purposes, the RDEC credit will be treated as a taxable receipt of the trade. For large companies with no corporation tax liability, or with a CT liability less than their RDEC credit, the key advantage of this new scheme is that such companies can claim an immediate benefit from their R&D claim through a payable credit of 11% of qualifying R&D expenditure. RDEC will operate as an alternative to the super-deduction scheme until April 2016 when only the RDEC scheme will be available.

A UK R&D tax relief claim must be made via the company's tax return and must be made within 24 months of the accounting year end of a company.

Transfer Pricing on Debt

The UK has transfer pricing rules, which substitute arm's length amounts to transactions with connected persons. These are broadly aligned to the OECD transfer pricing guidelines. The transfer pricing rules apply to both the interest rate (such that interest at a rate in excess of market value would not be deductible) and the amount of the borrowing (i.e. thin capitalisation, whereby a tax deduction will not be given for the whole of the interest on the element of debt in excess of that which would have been loaned by a 3rd party acting at arm's length).

Exemptions from transfer pricing rules or reduced documentation requirements apply to small and medium sized enterprises although in some circumstances, HMRC can issue a direction for medium sized companies to comply with transfer pricing legislation.

There are no safehavens with regard to debt:equity ratios or interest cover ratios (e.g. EBIT:interest or EBITDA:interest). Each has to be negotiated separately with HMRC. In order to be non-discriminatory with regard to the EU, the transfer pricing rules apply to all connected party transactions, including those between UK enterprises.

The transfer pricing rules can also apply to the provision of finance by lenders who do not control (or even have no shareholding in) the borrower where those lenders are "acting together" with other persons who between them have control over the borrowing company.

ACQUISITION OF A BUSINESS: ASSETS V SHARES

Asset Acquisitions

An asset (business) purchase could be effected using a UK company or a UK branch of the overseas company. As discussed in Chapter 3.2, a UK branch of an overseas company and a UK company are subject to UK tax on profits in broadly the same way. Therefore, an overseas investor wishing to purchase a business in the form of an asset purchase will need to take into account commercial, legal and non-UK tax factors in deciding a preferred route.

One of the key non-tax advantages of an asset purchase is that any liabilities or exposures within the selling company do not automatically transfer across to the purchaser.

Share Acquisitions

A company is a separate legal entity and, as such, when an investor acquires a company it is acquiring all of that company's history and liabilities. Therefore, any unknown or contingent liabilities (as well as those which the purchaser is aware of) will effectively be inherited by the purchaser. For this reason, a purchaser will normally seek to obtain from the vendor an indemnity against such liabilities, whether or not they had crystallised as at the date of the sale (together with warranties over the company's tax position).

One of the first questions an investor will need to address is the vehicle to be used to make the acquisition, i.e. should the acquisition be made:

- directly by the overseas investor;
- by an intermediate holding company set up in the UK; or
- by an intermediate holding company set up in a 3rd territory.

Each investor will have its own particular fact pattern that may influence the choice and, as such, specific advice should be taken. But examples of factors that could, from a tax point of view, influence a purchaser towards one or other of these acquisition vehicles include:

- Where overseas tax rates are higher than UK rates, there could be an advantage to making the acquisition using the overseas investing company in order to benefit from any financing tax deductions in that territory.
- But where the overseas investor does not have sufficient profits to offset financing costs, a UK debt-financed acquisition vehicle may be preferable.
- If the investor wishes to create a sub-group to facilitate the cross-border expansion of the target business, it may be appropriate to set up an intermediate holding company (either in the UK or elsewhere).
- Whether the overseas territory has a favourable tax regime for the holding of shareholdings and how any local "controlled foreign company" rules may affect this.

Asset v Share Purchase

When acquiring shares in a company, the existing tax profile of the target company will remain and so the purchaser effectively inherits this.

From a buyer's point of view, the potential tax advantages of buying assets or shares include:

Assets

- Ability to obtain tax relief for the goodwill element of the deal price. (However, pursuant to announcements made in the 2015 Summer Budget, such tax relief will no longer be available for acquisitions on or after 8 July 2015.)
- Can claim capital allowances for plant & machinery and other qualifying fixed assets based on the consideration allocated under the Business Purchase Agreement rather than on the existing tax value of those assets within the target company (assuming the former is higher).
- Avoids 0.5% stamp duty (although stamp duty land tax would be payable if land is being acquired).

Shares

- Existing tax losses transfer across (but subject to anti-avoidance legislation aimed at preventing the acquisition of companies solely or mainly to enable the purchaser to benefit from these tax losses).
- If the current tax value of fixed assets is greater than the purchase price allocated to those assets, a share acquisition avoids a reduction in the amount on which capital allowances can be claimed.
- Avoids stamp duty land tax, which could be significant if there is valuable non-residential land within the target business (although there will be a 0.5% stamp duty charge on the consideration paid for the shares).
- Greater flexibility to enable the vendors to reduce or defer tax where the vendors

are to retain a direct or indirect stake in the target business (e.g. by exchanging shares in the target company for new shares in the purchaser).

There will often be a conflict between the interests of the sellers and the buyers and it is important that a buyer appreciates this when negotiating a transaction. Buyers typically prefer to purchase assets in order to benefit from the advantages listed above. By contrast, sellers will often prefer to sell shares because:

- Individual sellers may be able to benefit from Entrepreneurs' relief, such that they only pay tax on the resulting capital gain at 10%.
- A corporate seller may be able to claim an exemption from tax on any gain (taking advantage of the "substantial shareholdings" exemption).
- An assets sale could give rise to a double tax charge on the seller – a first tax charge crystallising within the company making the disposal and a second tax charge on the shareholder when extracting the net proceeds from the company.

See below for exit considerations that a buyer will also need to take into account when investing.

ACQUISITION OF A BUSINESS: FINANCING

The funding for an acquisition could be sourced in a number of different ways – e.g. existing cash resources within the investor, 3rd party borrowings, equity injection by the ultimate shareholder(s) – and this will need to be taken into account when determining the optimal financing structure from a tax point of view.

Likewise, a review will need to be carried out of the tax regimes of both the overseas territory and the UK in determining the optimal place for locating interest deductions if the funding is to be effected through loan finance.

Questions that may need to be considered include:

- *Is the acquisition to be made by the overseas investor directly or by a UK acquisition vehicle?* Clearly, if the investor is to make the acquisition directly, any external funding will need to be taken out by the investor (even if the assets of the target business are used as security, which has been possible over recent years following the relaxation of the "financial assistance" rules).
- *What capacity do the investor and the target company each have to utilise interest deductions against forecast taxable profits?* No benefit will accrue from deducting interest in a territory in which there are insufficient taxable profits against which those deductions can be offset.
- *Is the corporate tax rate in the investor's home territory higher or lower than*

the UK rate? The preference may be to locate borrowings (and hence interest deductions) in the territory with the higher tax rate.
- *What restrictions apply to the deductibility of interest in the UK and the overseas territory?* In relation to the UK, for example, transfer pricing/thin capitalisation considerations and the "worldwide debt cap" will need to be taken into account even if all or some of the finance is being provided by a 3rd party (see Chapter 3.2 for more detail).
- *Will the borrower be required to withhold tax on payment of interest?* 3rd party lenders will often include a gross-up clause such that any withholding tax will effectively be a cost to the borrower rather than a lender. Therefore the borrowing may need to be structured in such a form or location that avoids or minimises any withholding taxes.

Consideration will also need to be given to how interest payments are to be financed. Where the acquisition is funded out of existing cash resources provided by the investor, this may be less of an issue. But where 3rd party lenders are involved, the investor will need to have a clear plan on how payments of interest are to be funded. A UK company can remit cash to an overseas parent free of UK tax, whether by way of dividend or an upstream loan (although such a loan should itself be interest-bearing in order to meet transfer pricing rules), but the parent will need to consider the taxation of such receipts under its local tax regime. In this regard, it should not be assumed that an upstream loan would be tax-free to the investor, as some tax regimes can treat such loans as deemed dividends.

REPATRIATION OF PROFITS

No withholding taxes are charged on a repatriation of profits. This applies to dividends paid by a UK company, irrespective of the identity of the shareholders, as well as to repatriation of branch profits to head office.

As well as the use of dividends, groups should also consider the extent to which other charges should be levied on the UK business – for example, royalties, service fees and management charges. Provided that such charges relate to the UK business and are calculated on an arm's length basis (in compliance with transfer pricing legislation), those charges can be deducted against UK taxable profits. The withholding tax position on such payments is covered in Chapter 3.2.

TAX GROUPS

Where an investor has an existing UK business, there will be advantages to structuring the acquisition so as to create a UK tax group. The main advantages are:

- Current period UK trading profits of one company can be sheltered from tax by using trading losses of another UK group company arising in the same accounting period. This is known as "group relief".
- Capital assets can be transferred between UK members of the tax group without crystallising a tax charge. This would enable the tax-neutral combination of two UK businesses, if commercially desirable.
- Capital gains arising in one company can effectively be offset against brought forward non-trading losses (including capital losses, expenses of management and non-trading loan relationship debits) of another company in the UK group.

Where investors are part of a consortium, it is also possible in certain scenarios to use some of the current period tax losses arising in the consortium-owned company to shelter taxable profits arising in one of the consortium members (or vice versa).

The definitions of "group relief" groups and capital gains groups differ and so care must be taken where companies are not 100% owned, since in some situations not all of the above benefits of tax grouping will be available.

"Group relief" group : Comprises companies in which a shareholding of at least 75% is held directly or indirectly by the parent company (provided that the shareholder is also entitled to at least 75% of profits available for distribution and assets on a winding up). Non UK resident companies can be taken into account when tracing 75% ownership. In Figure 3.3.1, tax losses can be surrendered between UK 1 (owned 80% directly) and UK 3 (owned 81% indirectly). However, UK 2 is owned only 72% by Overseas Co. and therefore UK 2 cannot surrender losses to UK 3 (or vice versa).

Figure 4.1 – Example of how "group relief" may be applied according to levels of ownership

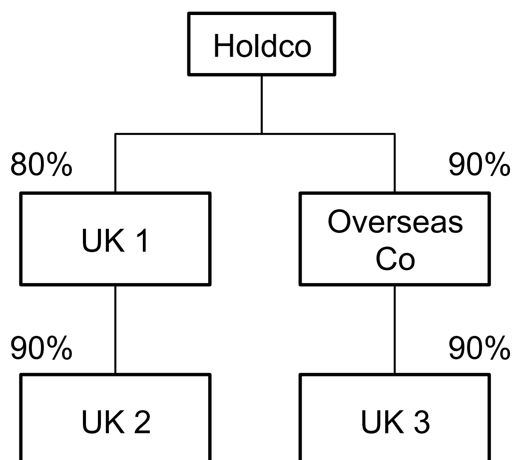

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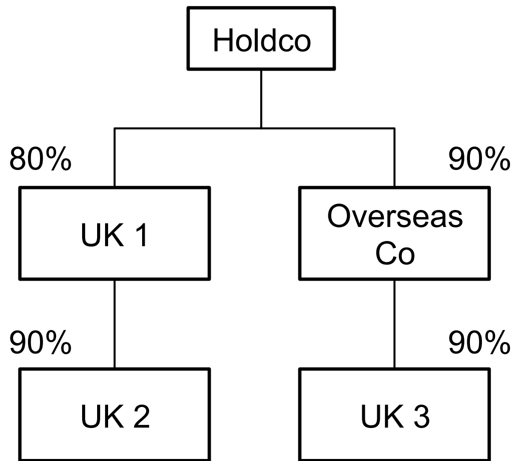
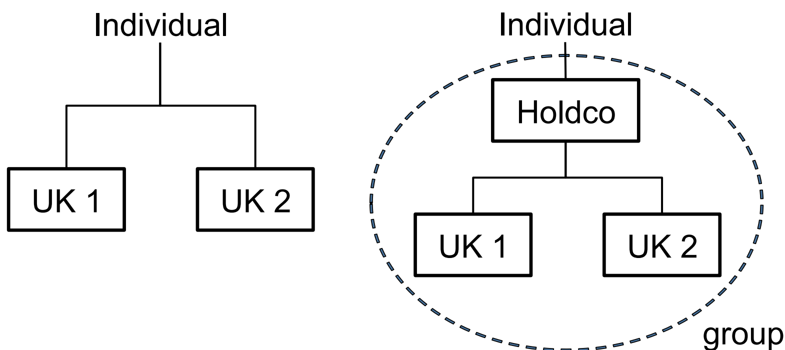
Figure 4.2 – Example of how "group relief" may be applied according to levels of ownership



Capital gains group : This comprises companies which are held at least 75% by their immediate parent and which are indirectly held more than 50% by the top company in the group (provided also that the top group company is also entitled to more than 50% of profits available for distribution and assets on a winding up). Thus, in the above diagram UK 1, UK 2 and UK 3 are all part of the same capital gains group.

A tax group cannot be formed unless there is a common corporate parent company. Therefore, if an individual investor directly owns a number of UK companies, that investor will need to interpose a common holding company (which need not be a UK company) in order to create a tax group as in Figure 4.2:

Figure 4.3 – Creating a tax group



Even where there is no tax group in place, i.e. the individual holds both companies directly, the relationship between the two UK companies is such that they may still be regarded as associated or connected with each other for certain UK tax purposes. Hence:

- Transfer pricing rules can still apply to transactions or dealings between the two companies, to ensure that they are taxed on an arm's length basis.
- Transfers of assets must be for an arm's length consideration, failing which HMRC can substitute an arm's length value for the actual consideration.
- In determining the corporation tax rate payable by each company and, particularly, whether the small profits rate or marginal relief is available, both companies must be taken into account in calculating the number of "associated companies".

EXIT CONSIDERATIONS

When structuring an acquisition, an investor should also be mindful of the likelihood of a future exit, what form that exit might take and the tax implications of such an exit event.

Business Held via a UK Branch of an Overseas Company

- The disposal would need to be effected via an asset sale (assuming that a sale of the overseas company would not be feasible).
- This will trigger a UK tax liability, with any gains on the sale of chargeable assets being taxed at the prevailing corporation tax rate. Overseas tax may also be payable (subject to double tax relief for UK tax paid, depending on the tax regime in the overseas territory).
- The branch could be packaged up into a new UK company, with the overseas investor selling that new company. This is a more complex area and could give rise to both UK tax charges in the new company and overseas tax charges in the overseas company.

Business Held within a UK Company

- Gives the flexibility to sell via a sale of assets or sale of shares.
- A sale of shares would generally not give rise to a UK tax liability within the target company (although a "de-grouping charge" could arise if the UK company holds assets that were transferred into it from another UK group company within the preceding six years). If the overseas parent company benefits from a "participation exemption" regime, this could enable a sale of the business, by

way of a sale of shares, free of both UK and overseas tax.
- A sale of assets would generally be less tax effective, since a UK tax charge would arise in the UK company on any gains and an overseas tax charge could arise on a subsequent remittance of the disposal proceeds by the UK company.

EMPLOYEE INCENTIVISATION

Where an investor wishes to incentivise or recruit/retain key employees by means of the issuing of shares in the target business, there are a number of different share plans that can assist in achieving this objective in a tax efficient way. Ultimately, the most appropriate plan will be dependent on commercial requirements and the characteristics of the investors (e.g. UK v overseas; company v individual).

The area of share options and employee incentivisation is a complex one on which specialist advice should be sought.

INVESTOR TAX RELIEFS

There are also incentives aimed at encouraging UK resident individuals to invest in smaller, higher-risk trading companies, by offering tax reliefs for the purchase of new shares in such companies. So far as direct investment in companies is concerned, the main schemes are as follows.

Enterprise Investment Scheme (EIS) – Under EIS, an investor can claim income tax relief (i.e. a reduction in their income tax liability) of up to 30% of the amount invested (up to a maximum investment of £1,000,000 in a single tax year). The investor can also use the amount invested to defer other capital gains (whether or not on shares), with the deferred gain crystallising when the EIS shares are disposed of. In addition, disposals of EIS shares after three years may be free from capital gains tax. EIS is aimed at smaller, unquoted companies and enables such companies to raise up to £5m in any 12 month period.

Seed EIS (SEIS) – An individual subscribing for shares that qualify for SEIS can claim income tax relief of up to 50% of the amount invested (up to a maximum annual investment of £100,000). In addition, disposals of SEIS shares after three years may be free from capital gains tax. There is also a relief equal to 50% of capital gains tax payable on gains realised from the disposal of other assets, where the gains are reinvested in SEIS shares within the same tax year. This relief is also subject to the same £100,000 annual investment limit. SEIS is targeted at companies whose trade is less than two years old and whose assets (pre-subscription) do not exceed £200,000.

5. UK TAXATION FOR FOREIGN NATIONALS

Paul Barham, Mazars

This chapter gives a brief overview of the UK tax considerations for a foreign national coming to the UK to work. By necessity, it only highlights the areas to consider and gives some indication of the current law. Advice should be sought in all respects, preferably before coming to the UK.

BASIS OF TAXATION

There are two concepts which need to be understood with regard to taxation in the UK. These are:

1. Residence
2. Domicile

Residence

Up until 5 April 2013, the question of residence in the UK was always a matter of case law and interpretation by the UK tax authorities, being broadly the number of days a person spends in the UK and their connections to the UK.

A new statutory residence test has been introduced from 6 April 2013. The legislation contains three parts detailing rules which will result in conclusive non residence, conclusive residence and a list of 'connecting factors' which will determine residence for the individuals who do not fall within the conclusive tests.

The tests are looked at in a certain order and only if a test is not satisfied do you move on to the next test.

The new rules are extensive and exhaustive but generally if a person comes here to work full time they will be resident in the UK for tax purposes. Although the tests are meant to give certainty, HMRC have issued substantial interpretation and guidance

which indicates they are not necessarily as straightforward as they first look. There are also anti avoidance rules to ensure that the rules are not used in a way that the UK Government did not intend.

"Overseas workday relief" is available if certain conditions are satisfied. It only applies to non UK domiciled individuals (see below) and will, in limited circumstances give the "remittance basis" to foreign employment duties.

Domicile

Domicile is a concept of general law; not a tax law and it is determined in a different way to residence. It is only relevant to taxation in the UK if a person is not domiciled in the UK.

There are three types of domicile relevant to Income Tax ("IT") and Capital Gains Tax ("CGT"). These are:

- *Domicile of origin:* An individual will normally acquire a domicile of origin from their father at birth. An individual's domicile of origin need not be the country in which the individual was born. This is determined by the relevant parent's domicile at the child's birth.
- *Domicile of choice*: An individual has the legal capacity to acquire a new domicile at the age of 16. Whilst it is possible to acquire a domicile of choice, this means much more than simple residence and a person must settle in another country permanently and sever ties with the country of origin. It is extremely difficult to acquire a domicile of choice.
- *Domicile of dependence:* A child under 16 cannot have a domicile of choice. Whilst under 16 their domicile will follow that of the person on whom the individual is legally dependent.

In the 2015 Summer Budget, it was announced that changes would be made to the taxation of non-UK domiciled individuals who have been UK tax resident for more than 15 years and for non-UK domiciled individuals who own UK residential property.

Under these measures due to apply from April 2017:

- Non-UK domiciled individuals who have been tax resident in the UK for 15 out of the last 20 tax years will be treated as UK domiciled for all UK tax purposes.
- An individual with a UK domicile of origin who has established a domicile of choice elsewhere will be treated as UK domiciled for all tax purposes as soon as he becomes tax resident.
- All UK residential property held by a non-UK domiciled individual, whether directly or indirectly, including UK residential property held by offshore

companies, offshore trusts and non-UK partnerships will be subject to UK inheritance tax.

UK Taxation

In general, individuals resident in the UK will be liable on all their worldwide income and gains, known as the "arising basis" of taxation. This means that they will pay UK tax on all of their income as it arises and on their gains as they are realised, wherever that income and those gains arise in the world.

Whilst an individual is non-domiciled he can choose whether to use the "remittance basis" of taxation which is discussed later in this chapter.

Personal Allowances

In general, individuals resident in the UK are entitled to an income tax personal allowance. This is set at £10,600 for the 2015/16 tax year and is the amount of income each individual can receive before they are liable to tax. For individuals with income over this amount, tax is only charged on income in excess of £10,600.

However, a personal allowance will not be available in certain circumstances, and so the individual will be chargeable to tax on all of their income. The allowances are withdrawn either where the income is in excess of £100,000 (and it is withdrawn gradually), or where the remittance basis is being claimed under certain circumstances.

There is also a CGT annual allowance available to reduce chargeable gains, which is currently set at £11,100 for the 2015/16 tax year.

UK Tax Rates

Most forms of income are chargeable to tax at the following rates for the 2015/16 tax year:

£0 - £10,600	0%*
£10,601 - £42,385	20%*
£42,386 - £150,000	40%*
£150,000 +	45%

* If the personal allowances are still available.

CGT for individuals is currently 18% if their marginal rate of income tax is 20% or below and 28% if their marginal rate of income tax is 40% or above.

Access to the Remittance Basis

Where an individual is resident in the UK, but not domiciled in the UK, they will have a choice whether to use the arising basis of taxation and therefore be taxed on their worldwide income or gains as they arise or to use the remittance basis of taxation.

If a claim for the remittance basis is made then the individual will only be liable to tax on income and gains arising in the UK and any overseas income and gains "remitted" (i.e. brought to or used to benefit the individual) in the UK.

Where an individual has been in the UK for less than 7 years, he can claim the remittance basis without paying for the privilege, however this will result in the loss of his personal allowance and CGT allowance.

Long term residents in the UK (broadly resident seven out of nine years) must pay a £30,000 remittance basis charge (RBC). Furthermore, where an individual has been in the UK for 12 out of the last 14 years, this RBC is increased to £60,000 per annum. From 6 April 2015, a higher charge of £90,000 per annum applies to individuals who have been UK resident for 17 out of the last 20 years. From April 2017, the remittance basis of taxation will no longer be available to individuals who have been resident in the UK for 15 out of the last 20 tax years.

This is a particular area which needs specialist advice and would require a whole book to cover the rules, planning and anti avoidance in sufficient detail.

ON ARRIVAL

There are no specific tax forms which need to be completed on arrival in the UK, other than to register with HMRC as necessary. There are likely to be two registrations, one to obtain a National Insurance number and one to register with HMRC for tax purposes. Both of these are discussed briefly below.

National Insurance Contributions

Both employers and employees, including self-employed people, make compulsory National Insurance Contributions (NIC) to HMRC in order to pay for a number of social benefits including the state pension and jobseeker's allowance. Men over the age of 65 and women over the age of 60 are exempt from making these contributions, although the age limit for women is in the process of rising from 60 to 65 to equalise with men. For employees, their employers will calculate their NIC and deduct this from their gross pay using PAYE; self-employed persons must work out their contributions themselves.

All UK residents over the age of 16 must have a National Insurance number if they wish to work in the UK and have their contributions credited to their "account".

So, before working in the UK, an individual will need to obtain a National Insurance number. This can be obtained by contacting HMRC and arranging for either an 'Evidence of Identity' interview or agreeing to submit a postal application in limited circumstances.

If an employee is being sent to the UK by his employer, the position in respect of social security will vary depending on the country from which the employee is being sent. It may be possible for the employee to continue paying social security in their

home country or it may even be compulsory. Either way, agreement will need to be obtained from the tax authorities to ensure the appropriate compliance requirements are met.

In some circumstances, a 52 week NIC holiday may be appropriate, where the employee continues to pay social security in their home country for the first 52 weeks and then commences paying NIC in the UK.

National Insurance rates for 2015/16 are 12% for employees up to the higher rate of income tax and 2% thereafter, and for employers they are 13.8%. There is a small exemption broadly equivalent to the personal allowance.

UK Tax Return Requirements

The UK tax year runs from the 6 April one year to 5 April of the next. The UK operates a "self assessment" system meaning that the responsibility to ensure the correct amount of tax is paid rests with the individual taxpayer. A UK tax return is likely to be required where the following circumstances apply:

- the individual is the director of a company in the UK; or
- he chooses to make a claim for the remittance basis; or
- he has income which is subject to tax (or a further tax liability) in the UK.

If an individual needs to be within the self assessment system he needs to complete form SA1 (obtainable from HMRC) to be registered.

HMRC does not generally assist an individual in the preparation of his tax return but they can ask questions and challenge certain items on the return. In general they are able to do this for up to a year after the return has been filed, though in certain cases this can be extended for up to 6 years.

HMRC may request that a return is prepared, but if they do not request a return, the individual is responsible for notifying HMRC that he is required to prepare a return for a particular tax year.

Completed tax returns need to be filed with HMRC by 31 October following the tax year end where the individual files a paper tax return. In most cases tax returns should be filed online as this provides a much more efficient service from HMRC and in addition, this extends the filing deadline to 31 January following the end of the tax year.

If the tax return is filed late, an automatic penalty of £100 will be charged which may be increased if the delay in filing is extended beyond 3 months.

Any additional tax liability will need to be paid to HMRC by 31 January following the end of the tax year. Provided the return has been processed by this time the taxpayer should receive a reminder from HMRC, providing details of how to pay and a payslip to use when making the payment.

If the individual's return has not been processed by this time, he is still liable to pay his tax by 31 January.

If the tax is paid late, interest will be charged from the day after the due date. In addition, if the tax has not been paid within a month of the due date, a surcharge of 5% of the outstanding balance will be levied. Further charges may be raised if the tax liability remains unpaid after this date.

For an individual coming to the UK, the date of arrival and some brief details on the individual intentions should be disclosed in the annual income tax return for the tax year of arrival.

OTHER TAXES

Capital Gains Tax

Mention has been made earlier of CGT with regard to the annual allowance and the tax rates at which it is charged. CGT is broadly charged on any gain made on holding an investment, such as shares or property.

There are several valuable exemptions, the most important one being an exemption for an individual's main residence. In addition, there are certain tax breaks which are available to encourage investment. One of those is Entrepreneurs' Relief, described below.

Entrepreneurs' Relief

Entrepreneurs' Relief (ER) is available for "qualifying business disposals". The effect is to reduce the rate of Capital Gains Tax from 18% or 28% to 10%, for total lifetime gains of £10 million.

A claim for ER can be made more than once, but the total cumulative gains cannot exceed £10 million. If this is the case, any gains over this limit will be subject to the higher rates of CGT.

A "qualifying business disposal" includes a disposal of shares in a trading company, or the holding company of a trading group.

ER is normally available provided that, for a period of 12 months ending with the date of the sale, the individual holds at least 5% of the ordinary share capital; can exercise at least 5% of the voting rights and is an officer or employee of the company or of one or more of the companies which are members of the trading group.

Compliance with the rules should be checked carefully.

Business Investment Relief

This relief is aimed at UK resident non domiciled individuals and has been introduced to encourage inward investment. Subject to certain conditions, overseas income and gains can be remitted into the UK for investment into eligible trading companies, without triggering a tax charge on those funds being remitted to the UK. There is no

limit to the investment and although there are some anti avoidance provisions, the rules appear to be relatively generous.

This relief is relatively new and advice should be taken to ensure any remitted funds qualify before investment.

Inheritance Tax

The charge to Inheritance Tax ("IHT") is based on where the asset is situated and the domicile of the person concerned; the place of residence is irrelevant.

Deemed Domicile

Currently, the concept of deemed domicile only applies for IHT purposes, and is essentially an anti-avoidance provision. In the 2015 Summer Budget it was announced that the concept of deemed domicile will be extended to all taxes from April 2017 where an individual is resident in the UK for 15 of the last 20 tax years

At present, if an individual comes to the UK he will be deemed domiciled in the UK once he has been resident in the UK for 17 out of 20 years. Certain Double Taxation Treaties may override these rules and should be checked carefully.

Basis of Taxation

IHT is an integrated lifetime transfer and estates tax, and is a tax on capital transfers of value by an individual on certain lifetime gifts which are taxed immediately, lifetime gifts where the donor dies within seven years from the date of the gift and the chargeable estate upon the individual's death.

Each individual is entitled to a nil rate band ("NRB") (currently £325,000 for 2015/16). Only transfers of value exceeding this band are liable to IHT. Any unused NRB can now be shared by spouses/civil partners on second death. The NRB is not an annual exemption. It is a seven year cumulative band which takes into account the previous seven years' chargeable transfers when determining whether a transfer has exceeded the NRB.

IHT is currently charged at rates of: 20% for lifetime transfers and 40% on death.

There are three types of lifetime gift: exempt transfers, potentially exempt transfers and chargeable lifetime transfers.

Upon death an individual is deemed to have made a transfer of value equal to the whole of their chargeable estate, which is the total value of all their capital assets less any amounts owing at the date of death.

Examples of the most common exempt transfers are transfers between spouses and civil partners, gifts to UK registered charities, the annual exemption – (the first £3,000 of gifts made each tax year) – and small gifts up to £250 de minimis. There are other valuable exemptions available.

The most common chargeable lifetime transfers (CLTs) are gifts to trusts. Most gifts to trusts (except charitable trusts or trusts for the disabled) are CLTs.

Potentially exempt transfers are all lifetime gifts between individuals. During the donor's lifetime the transfers are treated as exempt from IHT and if the donor survives seven years from the date of the gift the transfer is completely exempt.

If the donor dies within seven years of the date of the gift the transfer becomes chargeable, although the amount chargeable depends on how many years have passed between the date of the gift and the date of death.

It was announced in the 2015 Summer Budget that a main residence NRB will be phased in from 2017/18. By 2020/21 this should be worth £175,000. The main residence NRB will effectively be transferable between spouses so on the death of the second spouse a family home worth £1million could be passed on to their descendants without incurring an IHT charge. This relief will be withdrawn gradually where the net value of the estate exceeds £2million. Advice will need to be taken to ensure that the appropriate amount of relief is claimed.

OTHER CONSIDERATIONS

Remuneration Packages

Any benefits provided to an employee, either in the UK or in their home country, will need to be considered when calculating the UK tax position and some of the more popular benefits are mentioned briefly below.

It is also possible to use share schemes and incentives to remunerate in a tax efficient manner and these are discussed elsewhere in the book.

Common Benefits

If accommodation is provided rent free or at a subsidised rate, the relevant benefit of that will be chargeable to both tax and NI. If the value of the property provided is in excess of £75,000, the tax benefit is particularly high and there are ways of minimising the tax liabilities.

If the employer helps with the move to the UK, there are some valuable reliefs worth up to £8,000 but it is important that advice and planning is undertaken before the move takes place.

If an employee is sent to the UK on a temporary secondment for less than 24 months it may be possible to claim tax relief in respect of the expenses in attending the "temporary workplace" in the UK. These expenses would include, but not restricted to accommodation costs, utilities, ordinary commuting to the temporary workplace and subsistence. This relief may extend to cover travel between the UK and their home country.

The taxable benefit of a car is generally calculated on its CO2 emissions and the list price before discounts. This has led to a move towards more fuel efficient cars and

can make a difference to the overall taxable benefit.

Double Taxation

It is always worthwhile to remember that there is a guiding principle that no one should suffer double taxation on the same income, gains or assets in more than one country. However, how this relief is given depends on the country of origin and any double taxation treaty which may be in force with the UK.

Taxation could be due in both countries, the country of origin only, or the country where the source is "arising". This changes depending on the type of income or gains and whether there is an old treaty, a new treaty or even no treaty at all.

Once again, if at all possible, the interaction between the countries should be checked before the foreign national arrives in the UK.

6. PENSIONS IN THE UK

Matthew Beaman, Mazars

This chapter gives a brief overview of the UK pension's regime for both corporations and individuals. Pensions law is subject to regular change, especially over recent years, and this section is merely a high level guide to the current position. Independent advice should be sought in all respects especially in relation to employer responsibilities or the recently introduced individual "pension freedoms."

SOCIAL SECURITY

Like many countries the UK pensions system is based on three tiers:

1. Compulsory membership (UK resident) of a low level state provision, maintained on an unfunded pay as you go basis (Basic State Pension);
2. A small top-up based loosely on earnings during the working life, excluding the self-employed (GRB, SERPS and S2P); and
3. Private provision (both employer sponsored and individual).

The UK social security system as it stands today is based on the Social Security Contributions and Benefits Act 1992 and Social Security Administration Act 1992, as amended by the Social Security Act 1998, the National Insurance Contributions Act 2002 and the National Insurance Contributions and Statutory Payments Act 2004. A dual social insurance and social assistance scheme, as far as pensions are concerned, only provides a very basic level of income at retirement based on the individuals contribution record through their working life as paid by both the employer and employee (both compulsory for UK residents.) It is underpinned by a means tested 'pension credit' system to guarantee a minimum level of income.

Assuming full entitlement the current flat rate basic state pension (BSP) is £115.95 per week for a single person or £185.45 per couple per week. There is also possibly

a smaller additional element from two earnings related pensions SERPS (as was) and now S2P again dependent upon national insurance record.

The Pensions Act 2014 made provisions for a new single flat rate state pension to replace (but still recognise) previous elements. This is expected to be implemented from 2016.

State retirement age is currently in transition and will be equalised at 65 for both men and women by November 2018. The retirement age is then set to continue to rise to 67 between 2026 and 2028. Continued rises are expected and a mechanism has been established to review the state pension age every five years.

PRIVATE PROVISION

Until recently there was no requirement for an employer to offer any kind of employer sponsored workplace scheme. Previous attempts to encourage saving included the Stakeholder legislation, but as no employer contribution was required, these were met with little enthusiasm from workers.

The key benefits of UK private provision are the tax relief on contributions (within limits), the fact that the fund(s) can be drawn upon from age 55 even whilst still working if required and that up to 25% of the fund can be taken free of tax as a cash sum.

Since 1st October 2012 that has all changed with 'Auto-Enrolment' as legislated for in the 2008 Pensions Act.

AUTO-ENROLMENT

Transitioning through to 2018, auto-enrolment began with the largest companies and works down in size (based on employee numbers). From a given date "staging date" set by the Department of Work and Pensions (DWP), ALL employers will be required to auto-enrol any qualifying employees into a nominated pension scheme, at least every 3 years. There are a broad ranging and significant set of statutory fines for non-compliance and breaches, and The Pensions Regulator has already demonstrated its ability to enforce these on employers where they deem necessary.

This date is determined by the number of employees on the employer's largest PAYE schedule as was at 1st April 2012. This date could be amended however following any company acquisitions or mergers that have occurred since April 2012. Staging dates cannot be put back, although employers can postpone auto-enrolling employees by up to 3 months. Employees can opt-out but must be re-enrolled every 3 years.

Employers must nominate an appropriate scheme or category to be used for auto-enrolment as a "QWPS" - a qualifying workplace pension scheme. This may be an existing company arrangement, providing it meets certain qualifying criteria or another scheme such as "NEST2 (National Employment Savings Trust) which is available

to employers to auto-enrol their employees. Any Scheme used for auto-enrolment however must meet certain standards as confirmed by the Pensions Regulator including the following:

- All member charges are transparent and represent value for money (there are charge caps.);
- Contributions must meet the required minimums (explained in the next section);
- Employees must be auto-enrolled without having to give their consent (no application form);
- There must be an appropriate Scheme default investment fund (employers responsibility to select);
- All employees must receive relevant Scheme information before being auto-enrolled.

Employee Categories
Employers are required to regularly assess their workers (usually via payroll records) to determine how they must be treated under the regulations. The automatic enrolment regulations define 3 different types of worker based on their *total qualifying earnings* as follows:

Earnings/Age	**16 - 21**	**22 - (SPA)**	**SPA - 75**
Under threshold (£5,824 in 2015/16)	Entitled Worker		
Between threshold and trigger (£5,824 - £10,000 in 2015/16)	Non – Eligible Jobholder		
Over trigger (£10,000 in 2015/16)	Non - Eligible	Eligible Jobholder	Non - Eligible

This categorisation then in turn determines the employer duties as follows:

Type of worker	Employer Duty
Eligible Jobholder	Must be automatically enrolled in a qualifying scheme and employer must make minimum contributions for these workers as long as they remain in the scheme.
Non-eligible jobholder	Must be offered the opportunity to opt into an automatic enrolment scheme and employer must make minimum contributions as long as they remain active.
Entitled worker	Must be offered a pension scheme for them to make contributions if they wish. There is no obligation on the Company to contribute.

Contributions

From October 2018, employers will be required to contribute at least 3% of defined employee earnings for all those to be enrolled in the pension scheme.

Employees must be assessed on their total qualifying earnings but contributions can be paid on a chosen definition of earnings, e.g. total pay, qualifying band earnings (£5,824-£42,385) or basic / pensionable pay. Contributions can also be phased from staging date to October 2018, to help employers meet the additional costs they will face on auto-enrolment.

Communications, Records and Registration

Employers have a responsibility to provide employees with communications surrounding their entitlements and options at various stages. There is also the requirement to register the workplace scheme and complete and declaration of compliance within 5 months of staging. As with real-time PAYE there is the requirement to keep records such as any opt-out requests and the data sent to the pension provider.

TYPES OF OCCUPATIONAL SUPPLEMENTARY PLANS

Since the 6th April 2006 when the Finance Act 2004 came into force a single set of conditions now applies to all types of pension plan whether occupational or personal, contract or trust based. Legacy benefit limits based on length of service and/or earnings have been replaced by a lifetime allowance (LTA) which is effectively a total benefit cap and an annual allowance which is a contribution limit. Breaching these limits triggers punitive tax liabilities.

Types of scheme effectively fall under two categories trust based and contract based.

Trust Based Plans

1. Defined Benefit – Promises to provide a retirement income as a percentage of final salary (or averaged salary over the last few years prior to retirement). Entitlement is earned by years of service providing a fraction of final salary per year of service. So, for example, 40 years salary might equate to 40 x 1/60th i.e. 2/3rds final salary. Outside of the public sector (civil service, teachers etc.) these schemes are increasingly rare, however many companies and scheme trustees still have liabilities and scheme management responsibilities to bear which can be increasingly costly with low interest rates and increasing life expectancy.
2. Career Average – career average, is a lower cost scheme to the employer as it looks at earnings over the employee's entire service rather than just earnings prior to retirement.
3. Defined Contribution – Historically trust based, this plan largely moves risk from the employer to the employee as the employer contribution is fixed and the outcome is largely fund dependent. Again with the introduction of auto-enrolment, and due to the responsibilities on trustees, many of these schemes have now closed and converted to non trust based defined contribution.

Contract Based Plans

1. Stakeholder – The Welfare and Pensions Reform Act 1999 required most employers (unless they already had an occupational scheme or less than 5 employees) to offer access to a Stakeholder scheme. No contributions were required from the employer however. In reality therefore these schemes did not really take off, but they did help drive pension charges down in the market in general. Now, with the introduction of auto-enrolment, Stakeholder schemes are generally either being amended to comply with the updated regulations or replaced with a new scheme.
2. Group Personal Pensions – Each member has a personal contract under a group 'umbrella' usually to improve charges and for ease of employer administration. The pot is accrued from the combination of employee and employer contributions and the fund can be used at retirement in various ways to provide income (which may include capital sums).

There are also potentially "SSAS's" (small self-administered scheme) and "SIPP's" (self-invested personal pension) being contributed to through company payrolls, particularly in relation to senior management or directors, as they often allow more individual investment control and asset types. Other than to be aware of their existence, their detail is outside the scope of this chapter.

PENSIONS FREEDOMS

The recent changes (effective on pensions to which individuals become entitled on or from 6 April 2015) have been the subject of much press coverage. Initially announced in the 2014 Budget, the Taxation of Pensions Bill was introduced to Parliament in October 2014. Ultimately the aim was to allow individuals to access their money purchase pension savings as they wish during retirement, subject to their marginal rate of tax.

Income options therefore now include one or a combination of the following;

1. An Annuity – several types but generally they an insurance contract which provides a guaranteed income in exchange for an agreed capital sum. With low interest rates and increasing longevity income levels have dropped significantly in recent years. Along with the loss of capital on death annuities are seeing a decline in popularity. Types of annuity include lifetime, with profits and flexi/fixed term.
2. Flexi Access Drawdown ("FAD") – allows the choice of income from the fund without reference to any rates or limits other than the size of the fund. Up to 25% of the fund can usually be taken as a tax free lump sum, and the remainder is subject to income tax at the individual's marginal rate.
3. Uncrystallised Funds Pension Lump Sum ("UFLPS") – an alternative option to FAD allows withdrawals directly from the pension funds flexibly. 25% of any amount taken is tax free cash and the rest is taxed income. It is important to note that once any funds are taken using the UFPLS option, a reduced money purchase annual allowance applies. This restricts any further tax relievable money purchase contributions to £10,000 per annum with no carry forward available.
4. Phased retirement – either using annuities or drawdown.

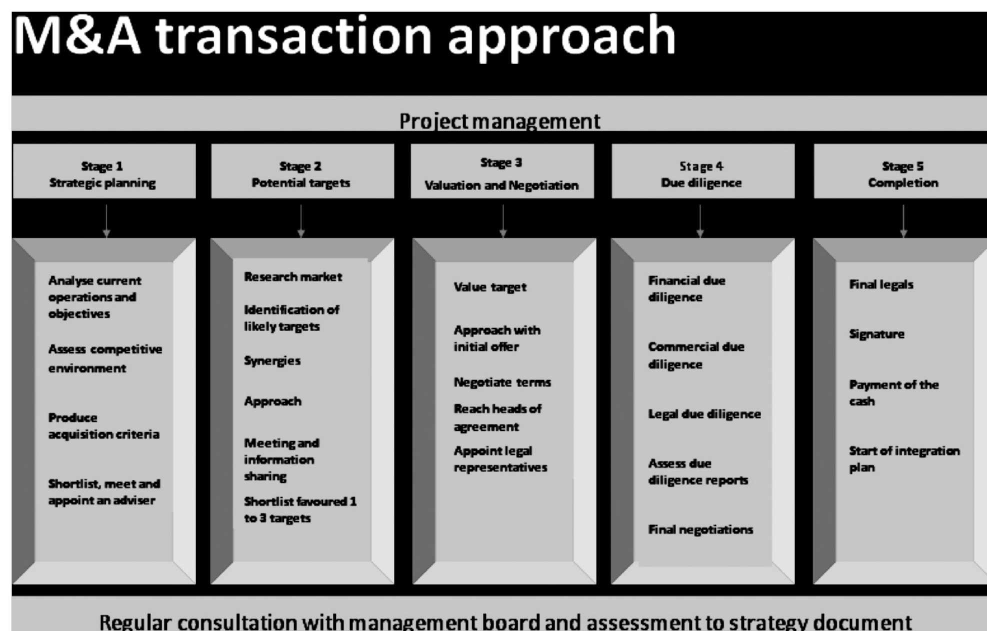
7. MERGER AND ACQUISITION TRANSACTION PROCESSES

Adrian Alexander, Mazars

The terminology used in a merger/acquisition transaction has been covered in the previous sections by the lawyers and this provides a platform for us to focus on the transaction processes involved in merging with, or, more likely, acquiring another entity.

The following graphic (Figure 7.1) provides details of the stages in an acquisition process. We go into further detail about these processes in the following sections.

Figure 7.1



WHERE TO START

The essential starting point for a transaction, or indeed series of transactions, is to develop and document a strategy. This will help to drive the acquisition process towards pre-determined objectives and minimise the risks involved in acquiring companies. The strategy document should:

- Analyse your company's current operations and assess what the aims of the shareholders, management and other stakeholders are and what they are seeking to achieve.
- Consider the current and future competitive environment, the threat of new entrants and the impact acquisitions would have on this dynamic. This may be more challenging when analysing markets to which the company has no exposure, and formal market research should be considered to formulate a view.
- Thoughtfully consider the alternatives – acquisitions should be compared to a 'cold start' and the investment required under all the different options.
- Detail the desired characteristics of the target company, the funds available for transactions and the time scales involved.
- Provide consideration for the management time required for integration and the costs/cost savings that would be possible. This is particularly important in cross-border transactions.
- Budget for the legal, regulatory and accounting costs of a successful acquisition search process.

To ensure that an acquisition achieves long-term objectives and manages to meet or exceed shareholder expectations it is essential that this planning is carried out before a search process is undertaken. Similarly, if an unexpected acquisition opportunity arises, this should be compared back to the strategy document.

FINDING THE TARGETS

Once a strategy document has been written the process of defining the search criteria for prospective targets is considerably easier.

Depending on the results of the analysis undertaken into the market place, the targets could be easily identified from competitors. Alternatively, vertical integration opportunities may lead to subsequent cost savings or securing of necessary resources. A diversification strategy may be adopted if the market place is saturated and alternative revenue streams are required.

Whilst it would be relatively straightforward to identify targets that operate in a company's market place, in a lot of cases it is normal that a corporate finance agent/broker would be engaged to undertake the search process. This enables the management

of the company to continue driving the operations and organic growth strategy forward and not to become distracted with another project. Similarly, when targets are being sourced from a diversified market place or vertical integration an advisor's breadth of connections and research capability can prove invaluable. However, the support and extensive network of contacts held by a corporate finance agent/broker shouldn't be underestimated when looking for a strategic acquisition in a foreign market, especially if considering a new international market for the first time..

These criteria used for a search process are typically a mix of financial and non-financial indicators. The acquirer may be looking to achieve critical mass which would require turnover, head count, office locations or operations in key sectors. Alternatively they may be looking at adding value to their bottom line; so synergistic savings and strong profitability would be important. The strategy document would help to guide the advisor on these criteria, whilst an awareness of "left-field" opportunities would help to supplement the target shortlist.

THE ROLE OF THE ADVISOR

The advisor would be tasked with planning and executing the search and approach process within an agreed timescale and to a set of criteria which has been agreed with the company. The advisor would keep the key individuals at the company informed of progress and provide the benefit of their experience with respect to communications, negotiations and routes to targets.

There are a number of different sources which the advisor would use to identify potential targets including public companies' accounts, trade press, corporate finance websites, specialist market research providers and, increasingly, social media sites. The company would benefit by working with a UK advisor who understands the local laws, practices and forums available for corporate financiers.

The advisor would then feed his findings and thoughts back to the company, highlighting the potential targets and rating their suitability as high, medium and low for their consideration. The ranking would be dependent upon the fit with the company's acquisition criteria.

The advisor would also be able to help with preparing internal board reports that may be needed to inform the key decision makers.

EXPRESSING AN INTEREST AND OPENING DIALOGUE

Once the targets have been identified the company, usually through their advisor, would open dialogue with the target to understand their interest in a transaction. This can be done anonymously to protect the market from knowing that a particular company is acquisitive, or it can be done openly to demonstrate their strength and growth intentions. The approach is likely to differ depending on market sector and the

competitiveness of the market place.

The expression of interest is typically made through a letter (or in the modern day an email) addressed to the main shareholder at their home/personal address. The advisor will use their experience and any connections to try to obtain a warm introduction, which has a greater chance of generating a conversation, and will always agree the targets' names with their client before communicating.

The expression of interest letter may also need to include details of the acquiring company, especially if they do not have a strong brand name in the UK marketplace.

Once communication commences it is important that the company is briefed by their advisor on the process that is being undertaken, just in case any direct responses are directed to the company. It is typical for all communications to go through the advisor which ensures that the acquiring company is insulated from any difficult responses and that a professional and considered approach is given to the process.

It is this professional approach that adds credibility and distinguishes genuine acquirers from those canvassing the market for competitor information.

CONFIDENTIALITY AND INITIAL INFORMATION SHARING

The area of confidentiality, especially amongst competitors, is often a major sticking point in progressing discussions.

The purchaser will often be asked, at a very early stage in the process, to sign a Non Disclosure Agreement ("NDA") before discussions progress and certainly before the sharing of information. The NDA needs to be carefully checked to ensure that the details contained within it, with respect to time limits, the scope of information which is deemed confidential and, the "reasonable endeavours required maintaining confidentiality" are not onerous.

Once an NDA has been agreed the target will then be able to provide the purchaser any information not within the public domain which they have requested. The target may not be willing to divulge all information before a deal is agreed, especially if they are a competitor, but it is important at this stage of the transaction process that the company is able to develop a better understanding of their target. Typical initial information requested includes:

- Top 10 customers by turnover
- A breakdown of turnover by department/service line/product line
- Detailed profit and loss account for the last 3 years
- Latest management accounts and forecasts for the next one to three years
- Information on the client contracts, length, rate of churn etc
- Brief information on key employees and management structure
- Diagram and details of the corporate structure and ownership percentages of any subsidiaries
- Pension commitments

- Any claims or law suits which are pending
- Any unusual or one-off expenditure
- Details of any financial implications that would be triggered by a change of ownership

Whilst financial and operational questions typically form the bulk of the information requests, it is important at meetings with the target to understand their operational culture and how an acquisition would be received by key employees. The integration process should remain firmly in management's and the advisor's thoughts when they are assessing the culture of the two companies.

VALUATION AND NEGOTIATION

Where an advisor is in place they would project manage the transaction and handle the collection of information and analysis of this information to assist with a valuation for the target (if you choose to continue the process once the further information is provided).

The process of valuation is as much an art as it is a science. An understanding of the market sector which the target operates in, and knowledge of past deal multiples is essential whilst understanding possible cost savings, an interrogation of the validity of forecasts and the likelihood of customer retention will all affect the valuation. Valuing a business is only part of the requirement with the structuring of the deal through the use of 'earn-outs' (additional consideration conditional on future results of the company) and deferred consideration (consideration that is outstanding at completion but not conditional on future events) essential tools to help mitigate the risk of the transaction.

When grasping cross-border transactions an understanding of the local market place and local valuation techniques, compared to an acquirer's own country, is vital to pricing an opportunity correctly. This valuation should then be compared to the potential time and financial cost of setting up a new operation in the UK as opposed to acquiring.

Once the company has valued the target, the negotiation process will commence. Typically, the purchaser will provide instructions to the advisor but leave them to handle the communications. By staying removed from the process the purchaser is able to maintain a positive relationship with the target and ensure they are not viewed as the "bad guy" through the negotiation stages.

The level of negotiation required and timescale can be affected by a number of factors, although one of the key drivers would be if the target identified is an "on-market" (listed for sale with an advisor or in trade publications) or "off-market" opportunity. On-market opportunities are easier to identify as they would be professionally marketed and they are more likely to conclude a transaction as the

owners were pro-actively looking to exit. However, they are likely to be subject to multiple expressions of interest which creates competition and potentially drives a higher price being paid for the target. Those which are "off-market" opportunities should not be seen as highly unlikely to complete since companies are much more open to such approaches then they have ever been before.

HEADS OF AGREEMENT

The heads of agreement is a document which outlines the broad terms of the transaction. The main part of the document is not legally binding, but intended to cover:

- The consideration proposed for the transaction and the structure of the payments
- The approach which the purchaser will take to due diligence
- Restrictive covenants by which the purchaser will want any departing shareholders to abide
- The documentation required to finalise the deal
- A brief approach to the warranties and indemnities which will be required

There are often a number of legally binding requirements and these are with respect to:

- Confidentiality and deal announcement protocols
- A commitment to a deal timetable and deadline as well as an exclusivity period
- Who pays what costs
- Which international territories law will govern the transaction. In the UK, it is accepted practice for deals to be under English law irrespective of the jurisdiction of the acquiring company.

The heads of agreement document is normally signed by both parties before detailed due diligence is undertaken and provides the basis for legal teams to create the share and purchase agreement.

It is important to keep this document simple but as complete as possible to provide a clear starting point for the drafting of the legal documents and avoid confusion and the need for too much further negotiations as the deal progresses.

DUE DILIGENCE

The objective of due diligence is to investigate the target company, develop a level of comfort with the target's existing financial and commercial position and to validate, as much as possible, its forecast performance.

Purchasers typically select an accountancy firm to undertake the financial due diligence on their behalf. There are some standard areas which are investigated.

The scope and scale of work is agreed with the purchaser before the engagement commences.

The due diligence will not only assess the financial statements but also delve deeper into the targets' accounting and operational systems; for example assessing the stock value and its saleability, supplier and customer contracts (length, terms and break clauses), fixed assets, accounting policies and contingent liabilities.

The scope of the due diligence which the accountants and the lawyers (under separate engagements) will perform needs to be wide enough to provide confidence that the target being acquired is free from material errors and risks but not so wide as to place undue financial costs on the transaction. A balance between the deal size and depth of due diligence is something which needs to be found.

Commercial due diligence is often performed in-house and will be undertaken either formally or informally when assessing the target prior to making an offer. Once the heads of agreement have been reached, and especially in instances of larger deal sizes, further commercial due diligence may be undertaken which could involve specialist market research consultants, property and environmental consultants or an in-house project team. Other areas that are also often considered include looking into the target management team's and other key employees' personal history.

REACHING COMPLETION

When purchasing a target who has maintained excellent management information, clear employment contracts, has a good stock control process and up to date property, fixed asset, environmental and data protection policies the transition between due diligence and completion can be relatively simple.

In most M&A transactions however there will be issues found in either financial, commercial or legal due diligence that were not highlighted in the information memorandum or disclosed during subsequent meetings. The nature and size of these findings will have a varying impact on the transaction, from a warranty/indemnity being included (see previous chapter for further details) through to a re-negotiation of the price or deal structure, and in the most extreme case, collapse of the deal.

It is in situations like these that the advisor really proves his worth, often using any findings from due diligence as leverage to achieve a more competitive price or structuring the deal or legal wording in such a way that mitigates the risk to the purchaser.

The use of a good corporate lawyer with experience of completing transactions in the UK market place but also cross-border experience is also essential to ensure that the wording of the share and purchase agreement is favourable.

POST COMPLETION

Once the company has agreed the contracts, developed the necessary level of comfort with the target's financial, commercial and legal positions it will then be in a position to sign the share and purchase agreement and complete the transaction.

Whilst the due diligence and legal process is underway the purchaser's board or leadership team will be working on a post deal integration plan to include aspects of human resources, operations, financial, legal and other commercial requirements. This integration plan would be more detailed for an overseas acquisition as further research and consideration would need to be given to future accounting standards (recent introduction of FRS102), the reporting currency adopted and local human resources considerations including, in the UK, minimum wage and TUPE arrangements (Transfer of undertakings, protection of employment regulations 2014).

The key factor in the success of any transaction is integration; whilst on paper a target may look like the perfect bolt-on to existing operations and have numerous synergies the deal is only successful once these have been realised. Successfully managing the newly acquired company from another country will be fundamental to achieving this result. So, once the deal is complete the real work must begin.

8. COMPLYING WITH THE UK'S MONEY LAUNDERING REGULATIONS

Kim Hurst, Mazars

The UK's Money Laundering Regulations came into force in December 2007, replacing and updating the existing regulations; their purpose is to protect the UK financial system. Any business covered by the regulations must implement controls to prevent it being used by criminals or terrorists for money laundering activities. Failure to comply with the law could have serious consequences.

WHICH BUSINESSES ARE COVERED BY MONEY LAUNDERING REGULATIONS?

Regulations apply to a number of business sectors, including:

- Most UK financial and credit businesses such as banks, currency exchange offices, cheque cashers or money transmitters;
- Independent legal professionals;
- Accountants, tax advisers, auditors and insolvency practitioners;
- Estate agents;
- Casinos;
- 'High Value Dealers' - businesses that accept cash payments for goods worth 15,000 Euros or more either in a single transaction or in installments;
- Trust or Company Service Providers.

If your business falls into one of these business sectors there is a requirement for it to be monitored by a supervisory authority. It may be the case that your business is already monitored, for example by a professional body, such as the Law Society, or

by the Financial Conduct Authority, but if it is not you will probably need to register with the UK Revenue & Customs (HMRC).

To register with HMRC under Money Laundering Regulations you must complete an application form (MLR100) to register each place where you carry on business activities that require supervision. There is a fee for registering each business premises and a subsequent annual renewal fee.

If your business is a Money Service Business or a Trust or Company Service Provider, you are also required to apply for the 'fit and proper' test (form MLR101) in addition to registering with HMRC. The 'fit and proper' test must be taken by all those people who are involved in the running of the business.

CRIMINAL OFFENCES UNDER THE ANTI-MONEY LAUNDERING LEGISLATION

Money Laundering is the term used for a number of offences involving the proceeds of crime or terrorist funds. It includes possessing, or in any way dealing with, or concealing, the proceeds of any crime. It also involves similar activities in relation to terrorist funds, which include funds that are likely to be used for terrorism, as well as the proceeds of terrorism.

Someone is engaged in Money Laundering if they:

- Conceal, disguise, convert, transfer or remove (from the United Kingdom) criminal property;
- Enter into or become concerned in an arrangement which they know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person;
- Acquire, use or have possession of criminal property.

Criminal Property is very widely defined, but, in summary, property is Criminal Property if it:

- Constitutes a person's benefit in whole or in part (including pecuniary and proprietary benefit) from criminal conduct; or
- Represents such a benefit directly or indirectly, in whole or in part; and
- The alleged offender knows or suspects that it constitutes or represents such a benefit.

Criminal Conduct is conduct that constitutes an offence in any part of the United Kingdom or would constitute an offence in any part of the United Kingdom, if it occurred there (subject to the exemptions listed below). This includes tax offences committed abroad if the action would have been an offence were it to have taken place

in the United Kingdom. There is no need for there to be any consequential effect on the United Kingdom's tax system.

However, no offence is committed in any of the following circumstances:

- Where the persons involved did not know or suspect that they were dealing with the proceeds of crime;
- Where the act is committed by someone carrying out a law enforcement or judicial function;
- Where the conduct giving rise to the criminal property was reasonably believed to have taken place outside the UK, and the conduct was in fact lawful under the criminal law of the place where it occurred, and the maximum sentence if the conduct had occurred in the UK would have been less than 12 months (except in the case of an act which would be an offence under the Gaming Act 1968, the Lotteries and Amusements Act 1976 or under sections 23 or 25 of the Financial Services and Markets Act 2000, which will fall within the exemption even if the relevant sentence would be in excess of 12 months).

It is a general rule that an element of intent is required before many criminal offences can be committed. For example, theft can only be committed where the offender is dishonest and has intent to deprive permanently. In some cases, where the monetary proceeds of a suspected theft or tax fraud are small, it may be that the perpetrators were acting in error or in the mistaken impression that they had permission to act as they did.

It is also important to note that for indirect tax, section 167(3) Customs & Excise Management Act 1979 provides that a wide range of innocent/accidental errors are criminal offences (although they are in practice generally dealt with under the civil penalty regime).

For the avoidance of doubt, Criminal Property includes (but is by no means limited to):

- The proceeds of tax (direct or indirect) evasion including the under declaring of income and the over claiming of expenses.
- A benefit obtained through bribery and corruption (including both the receipt of a bribe and the profits earned from a contract obtained through bribery or the promise of a bribe).
- Benefits obtained through the operation of a cartel.
- Benefits (in the form of saved costs) arising from a failure to comply with a regulatory requirement, where that failure is a criminal offence, e.g. a breach of health and safety regulations.

- Property, even of minimal value, acquired by theft (including, for example, not telling a customer that they have erroneously paid twice or an overdrawn director's current account in a relevant company).

The following can constitute a criminal offence:

- Providing assistance to a money launderer to obtain, conceal, retain or invest funds if you knew, or in some cases, if you should have known that the funds were the proceeds of serious criminal conduct. Making a report precludes a charge of assisting a money launderer.
- Tipping off a person, or any third party, in connection with an investigation into money laundering. This could include, for example, informing someone of your money laundering suspicions.
- Failing to report a suspicion of money laundering if the suspicion was acquired in the course of your employment (or, as the case may be, your profession). It is a criminal offence not to comply with the Regulations and a criminal offence may also be committed by anyone who has consented to or connived at non-compliance with the Regulations, including where such non-compliance is attributable to their neglect.

There are thousands of criminal offences in the United Kingdom that, if committed, are likely to result in a person benefiting from an offence and thereby having Criminal Property. The key point to note is that Proceeds of Crime Act (POCA) introduced an 'all crime' reporting regime. That is, Money Laundering offences can relate to the proceeds of any criminal activity not just, for example, drug trafficking.

In addition to the offences under the POCA, there is also an obligation for businesses to report belief or suspicion of the proceeds from, or finance likely to be used for, terrorism, or its laundering, based on information which came to them in the course of its business or employment.

MONEY LAUNDERING CONTROLS AND PROCEDURES

Businesses covered by the Money Laundering Regulations must put controls in place to prevent them being used by criminals or terrorists for money laundering purposes. The controls include:

- Assessing the risk of the business being used by criminals to launder money
- Appointing a 'nominated officer'
- Implementing a procedure to check the identity of customers and 'beneficial owners' of corporate bodies and partnerships and keeping all relevant documents

- Ensuring employees are aware of money laundering regulations.

The 'nominated officer' must be a person in the business; they cannot be an external consultant. As it is an important role, it must be undertaken by a person who:

- Has access to all customer records and documentation;
- Can make the decision, without reference to others, whether or not to report suspicious activities;
- Can be trusted with the responsibility.

If you are a sole trader in a regulated business with no employees, you must act as the 'nominated officer' yourself.

The duties of the 'nominated officer' include:

- being the first point of contact for reports of suspicious activity from any employee in the business;
- considering all information and assessing whether evidence of money laundering or terrorist financing exists;
- reporting any suspicious activities or transactions to the National Crime Agency (NCA);
- requesting permission from NCA to continue with any transactions that they have reported, and ensure that no transactions are continued illegally.

All employees, particularly those in customer-facing positions, must receive regular training to ensure that they are aware of the money laundering laws, understand how the business' procedures affect them and appreciate the penalties of non-compliance. They should also be able to recognise suspicious activity and know what to do about it.

WHAT ARE THE PENALTIES FOR NOT COMPLYING WITH THE MONEY LAUNDERING REGULATIONS?

If you do not comply with Money Laundering Regulations there are various measures that can be taken, from warning letters to criminal prosecution. Although criminal prosecution is a last resort, the penalty may be harsh; depending on the severity of the offence, the courts can impose penalties ranging from unlimited fines to lengthy imprisonment, or both.

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