

International Business Review

Establishing a business in the UK The best corporate structure

The location search is over. The UK is chosen, perhaps as a gateway to Europe. Interesting choices still lie ahead and one of the first will be selection of the most suitable entity with which to operate in the UK. We set out below some general information on some of the options.

Setting the scene

The fact that an overseas company is carrying on business in the UK does not mean that it automatically has to register with the UK Registrar of Companies. However, as soon as it establishes some sort of place of business in Great Britain it will be required to register at Companies House, within one month of establishment. It will then have to file certain documents with the Registrar, who will put them on public record at Companies House. It will be required to register under the "establishment" regime.

A UK establishment may not be liable to corporation tax in the UK if the overseas company's UK activities are not sufficient to constitute a corporate tax presence, referred to as a permanent establishment (PE), in the UK. Such activities might include computer processing, warehousing or simply a representative office. Broadly speaking, it will be liable to corporation tax if the UK employees undertake a sales and marketing function or are in a position to sign contracts.

Alternatively, the overseas company could set up a UK subsidiary to trade in Great Britain. We deal with these options below.

An establishment

Public filings at Companies House

The overseas company will have to file certain details at Companies House, including its address, type of business and

the names and addresses of all persons in the UK authorised to accept notices served on the company.

The registration form should be accompanied by a certified copy of the instrument defining the constitution of the company, including certified translation where applicable.

If the overseas company is required under the law of its own country, to "prepare, have audited and disclose" its accounts, then it must file the most recent set with Companies House upon registration.

The overseas company is also required to file its own accounts each year (with certified translation as necessary), the contents of which are set out in UK regulations. These accounts, as with other documents filed with Companies House, are available for public inspection. If the overseas company that has registered the establishment in the UK is required to have its accounts audited in its home territory, then it is these accounts (translated and certified as necessary) which are required to be filed with Companies House in the UK.

Corporation tax

If the UK establishment has limited/ancillary activities as described overleaf it will not be treated as a PE for tax purposes, and so will not be liable to corporation tax in the UK.

However, more substantive activities (even undertaken from an employee's home) could result in it being deemed to have a PE and therefore be subject to UK tax. As this can be a grey area, advice should always be taken.

A taxable establishment of an overseas company is taxable as a PE for UK corporation tax purposes, as if it were a limited company. It will only qualify for the 20% tax rate if the profits of the company as a whole (not just those of the UK establishment) fall within the specified profit limits.

Losses incurred by a UK establishment of an overseas company can (subject to that country's legislation) be surrendered against profits of the overseas company, as well as being carried back and forward in the UK.

Limited liability

The establishment does not have limited liability, as it is not a separate legal entity from the overseas company.

Limited company

Formation requirements

Upon formation, a company is required to have a registered office address in the UK, a minimum of one officer, a director and a minimum issued share capital of one subscriber share, typically £1. The position of an officer may be filled by a company. Further officers may be appointed as required and there is no requirement for any to be UK resident.

Limited liability

A limited company has limited liability - it is a separate legal entity from the parent, which has no direct responsibility for the debts and liabilities of the subsidiary.

Public filings at Companies House

A private limited UK company is required to file its own directors' report and accounts (these may or may not need to be audited, see below) within nine months of the end of a twelve month accounting period.

Corporation tax

A UK company is, in general terms, usually taxed at between 20-26% on its taxable profits. The corporation tax rate from 1 April 2011 is between 20-26%, and the higher rate will continue to reduce by 1% each year until the full rate reaches 23% from 1 April 2014). If a company makes losses, these can be carried forward indefinitely or carried back for one year. These losses can also be surrendered to other companies in any qualifying domestic group.

Audit

For financial years commencing on or after 6 April 2008, a UK company is generally required to have its statutory accounts audited if its turnover (or worldwide group turnover, if a subsidiary of an overseas company) is more than £6.5 million, or if its individual or group's total balance sheet assets exceed £3.26 million.

So now what?

There is no universal argument for preferring one entity to the other. Each case must be considered in its own right, although the decision usually comes down to what is most tax efficient for the business, and is most commercially acceptable.

A limited company is generally better understood than an establishment. It is likely that a purchaser, bank or landlord for example, will want to know that your business will be around in the UK in the long-term. They may well do a company search (at Companies House) to establish how solid the UK operation is. A well capitalised UK limited company can show this.

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