



Setting up in the UK

A guide for international
firms wishing to establish
a UK presence



2%

INCREASE ON PRIOR YEAR
OF TOTAL FDI PROJECTS
INTO THE UK

107,898

NEW JOBS CREATED

557

FDI PROJECTS INTO UK CAME
FROM THE US

418

SOFTWARE AND COMPUTER
SERVICES FDI PROJECTS

1108

OF FDI PROJECTS WERE IN
LONDON AND SOUTH EAST
ENGLAND

Source: DIT inward investment results 2016-2017

Welcome to our guide, intended for international firms thinking about setting up in the UK. Although the UK remains one of the easiest countries in which to run a business, it is always helpful to have a local advisor experienced in UK legislation, taxation and with a tried and tested network of contacts to smooth your entry.



At DRG Chartered Accountants we have over 50 years of experience in helping businesses grow, many of which are overseas businesses either already established or in the process of setting up in the UK. Our clients are based throughout the world including many from Europe the USA, the Middle East and Asia Pacific and operate across a wide variety of sectors.

We do hope you find this guide helpful. If you are thinking about establishing a presence in the UK and we can help you in any way, please do get in touch. We would be delighted to hear from you.

Oliver Burton

Partner

DRG Chartered Accountants

What makes the UK so attractive to foreign investors?

Well-developed infrastructure

The UK has a sophisticated infrastructure with good links with other countries in the EU and the rest of the world. London alone has five airports with good rail and road links to other parts of the UK.

Highly educated workforce

The UK can boast some of the best Universities In the world - with Oxford, Cambridge and Imperial being ranked in the top ten, contributing to a highly educated and motivated workforce.

Top ten manufacturer

The UK enjoys the position as one of the world's leading manufacturers with particular strengths in life sciences, ICT and the creative sector.

Digital expertise

The government is committed to growing the digital sector. Centres of excellence such as the Thames Valley (nicknamed the UK Silicon Valley) and Tech City are just two examples of UK specialist tech hubs.

Planning your UK operation

Before setting up in the UK, it is helpful to establish your business's long-term objectives. Initially, you might wish to test the waters via a representative/agency type relationship to see whether there is adequate demand for your product or service.

Questions you should be asking yourself are:

- Is the level of demand large and profitable enough to merit establishing more permanent presence in the UK?
- Does your firm have the resources and infrastructure to support UK entry?
- What is the best way of servicing this demand?
- Who are your main competitors in the UK?
- What are the barriers to entry?

If you wish to, or having met certain requirements are required to, have a more formal presence in the UK the next step is to either register your overseas company as having a presence in the UK (typically referred to as registering a branch) or to incorporate some form of limited company.

This guide outlines the two different types of possible UK entity, with the key advantages and disadvantages of each. We do strongly recommend that you seek professional advice early, as the rules are complex and do depend on the nature and operation of your business.

Permanent Establishment (branch)

A branch is not a separate legal entity, it an extension of the parent company conducting business on its behalf in the UK. The parent company and its directors are responsible and liable for the branch.

The fact that an overseas company is carrying on business in the UK does not automatically mean that it has to register a branch with Companies House. Registration of an overseas company is only required when it has some degree of physical presence in the UK, such as an office through which it carries on business. Registration is not required if there is no physical presence in the UK. For example, an independent agent who conducts business on behalf of the company is not a UK establishment of an overseas company. In general, an agent or distributor equates to doing business with the UK, not doing business in the UK and is often used as the initial route to the UK market.

To set up a branch you are required to file an OS IN01 with UK Companies House accompanied by various statutory and constitutional documents relating to the parent company. On an annual basis a copy of the company's accounts, if available, needs to be filed at UK Companies House or if these are not available accounts must be filed in accordance with Company law.

A branch is taxed on any profits which arise in that country but can benefit from double tax relief on worldwide profits or losses of the parent.

Online retailers, ecommerce and cloud businesses

With respect to ecommerce businesses, HMRC considers that a company which makes sales through their website does not have a permanent establishment even if the server on which is hosted is located in the UK. However the OECD specifies that the location of the server can determine whether there is a permanent establishment.

Cloud based businesses, ISP providers, data warehousing etc. are treated differently from internet retailers. If these businesses have servers in the UK, they are viewed to have a permanent establishment in the UK.

Reporting requirements of a permanent establishment

- Companies House registration
- Registration with HMRC (Corporation tax, VAT, PAYE and NIC) plus annual reporting requirements
- Filing the financial statements of overseas company at Companies House each year

Subsidiary (UK Limited Company)

Typically, a subsidiary is an incorporated body (a company) and is a separate legal entity from the overseas parent company. It will be subject to UK corporation tax on its worldwide profits.

How do you set up a UK company?

The process of setting one up is relatively straightforward and can be done very quickly. It must be registered with Companies House and then with the UK tax authority, HM Revenue and Customs, for corporation tax, VAT and income tax and national insurance (or state pension) as appropriate.

Statutory filing requirements

A UK Company must file its financial statements with Companies House annually. It also has to submit corporation tax returns each year and income tax and VAT returns periodically.

Transactions between the parent and subsidiary

As the companies are closely related, transactions between them will be subject to the arm's length principle. The difficulty is in finding wholly comparable transactions between unconnected parties.

Winding up the subsidiary

Should you wish to wind up your subsidiary, you will need to follow a formal procedure which might include striking off, putting your company into administration and the appointment of a liquidator, if the company is in debt and cannot pay for the money it owes.

Reporting requirements of a subsidiary

- Subsidiary is required to file its own accounts with Companies House each year
- No cross border consolidation of accounts required
- An annual audit might be required, if turnover exceeds £6.5 million, the balance sheet is in excess of £3.26 million or if subsidiary employees more than 50 people
- Subsidiary must adhere to usual HMRC reporting requirements

Branch or subsidiary?

Arguably, there is little difference between setting up a branch and setting up a subsidiary: both require Companies House registration, and similar registration with HMRC for direct tax, VAT and PAYE/NIC as appropriate.

A branch is easier to wind up, if the experiment proves unsuccessful, as it is automatically closed when the trade of the branch ceases. In contrast, closing a subsidiary requires a formal procedure (winding-up, striking off, or the appointment of a liquidator).

An overseas parent may prefer the relative anonymity of a subsidiary: a branch is required to file the financial statements of the overseas parent at Companies House. Where the parent company is not already required to prepare and disclose financial statements, then it will have to prepare accounts for submission to Companies House. In contrast, a UK subsidiary is only required to file its own financial statements

The parent company's position could also influence the decision. For example, regulatory requirements may dictate that a permanent establishment is used. Alternatively, certain financial activities may require a minimum level of capital, which is easier to maintain where the legal entity is taken into account instead of having to adequately capitalise both the parent company and the subsidiary individually.

The parent company's tax position also needs to be considered. For example, it may be preferable to have a subsidiary in the UK where the UK operations will need to be funded by loans from the parent company, a UK branch cannot generally have a tax deduction for interest paid to the parent (where it is, effectively, internal interest) whereas a UK subsidiary will generally have a UK tax deduction for that interest.

Tax considerations

There are a number of distinct differences between a branch and a subsidiary in the UK; the key difference from a tax perspective is that a UK branch will be subject to UK corporation tax on the profits of the parent company which are attributable to that branch. A UK subsidiary is subject to UK corporation tax on its worldwide profits.

This is because a UK subsidiary is a separate legal entity to the parent company, whereas a branch has no separate legal existence to the parent company.

As part of this, any start-up losses of the branch should be available to the overseas parent to set against home profits (depending on the tax regime in the parent's jurisdiction); this can make it very attractive to begin operations in the UK through a branch, as this can enable loss relief for start-up costs to be obtained much sooner than if a UK subsidiary is used, where the start-up losses will need to be carried forwards against future profits in the UK.

A branch can be incorporated, when the UK venture has been established, without any UK tax costs using the reliefs for transfer of a trade. The tax consequences in the parent company jurisdiction need to be considered to determine the tax costs, if any, there.

Seek professional guidance early

The rules are complex and their application does depend on context and the nature of your business. Care should be taken by overseas companies with operations in the UK, either directly, or through an agent, to ensure that those UK operations do not amount to a permanent establishment unless and until that is intended by the parent company. We strongly advise you to seek professional guidance before making any decisions.

How I can unintentionally become a permanent establishment?

Beware, however you may acquire a UK permanent establishment without intending to do so by either establishing a fixed place of business or where an agent habitually exercises authority to do business on behalf of the overseas company.

Online retailers and ecommerce businesses

Interestingly, HMRC and OECD treat ecommerce businesses differently. HMRC considers that a company which makes sales though their website does not have a permanent establishment even if the server on which is hosted is located in the UK. Whilst on the other hand, the OECD specifies that the location of the server can determine whether there is a permanent establishment.



How DRG Chartered Accountants can help

DRG Chartered Accountants and DRG Outsourced Finance can provide a full range of accountancy services to help you set up and run your UK entity.

Advise you on the best business structure and help you establish either a:

- Branch
- Subsidiary

Provide support and advice to help you set up your UK operation

- Opening bank accounts
- Selecting professional advisors
- Building your UK team
- Immigration
- Local employees
- Insurance
- Use of local contractors

Advice on HRMC and statutory requirements

- Audit requirement for UK businesses
- Annual Statutory Returns
- Corporate tax
- VAT
- Personal tax
- Expatriate tax

Running your UK operation

- Payroll services
- Monthly management accounts
- VAT returns
- Statutory reporting and compliance
- Reporting to parent company, as required

If you would like to find out more about setting up a UK operation, please do get in touch by calling 01628 760000

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