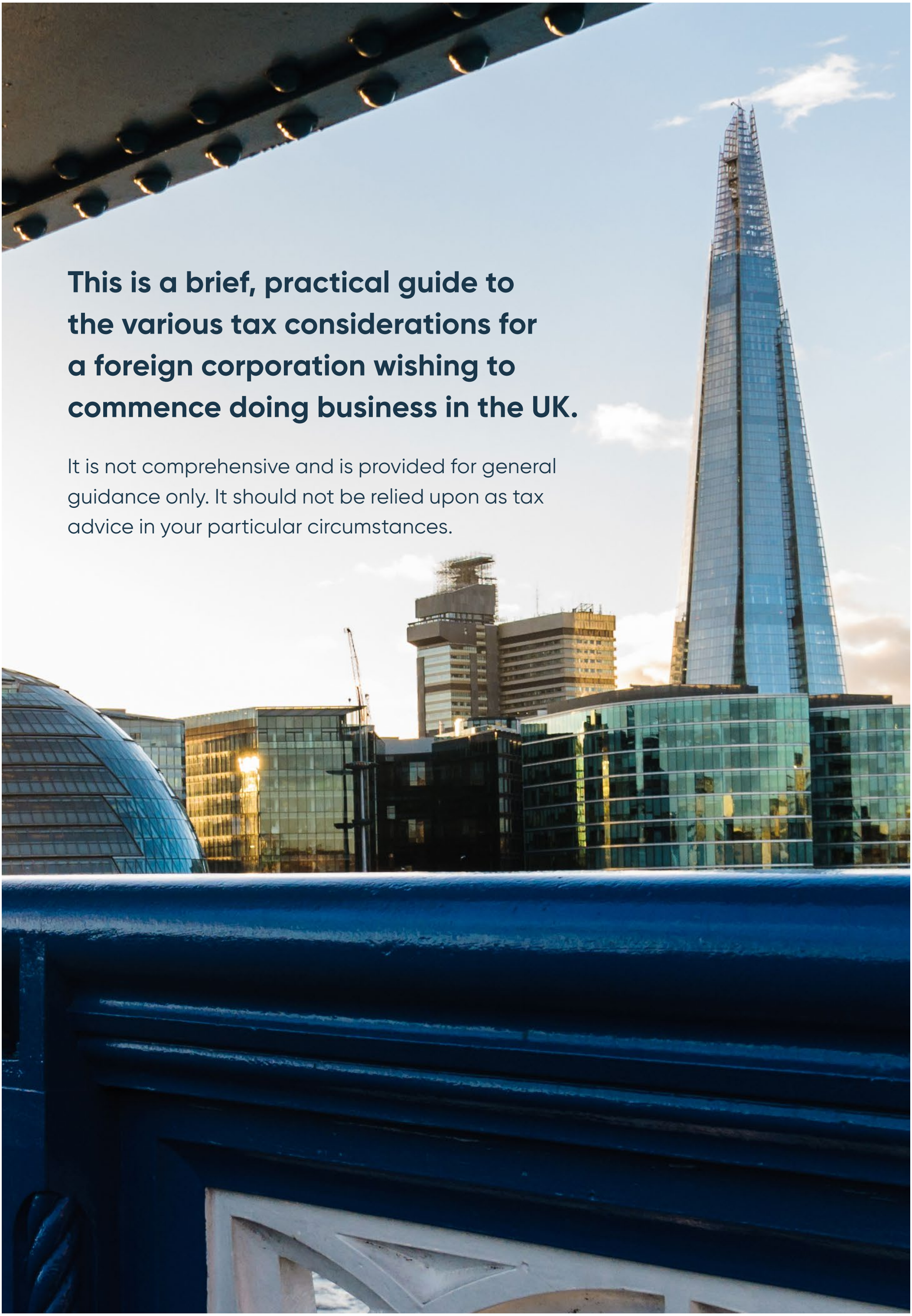
# Doing Business in the UK
# Tax Implications

TaylorWessing



**This is a brief, practical guide to the various tax considerations for a foreign corporation wishing to commence doing business in the UK.**

It is not comprehensive and is provided for general guidance only. It should not be relied upon as tax advice in your particular circumstances.

# UK corporation tax

## A UK resident subsidiary will be taxable on its worldwide profits and gains on the disposal of assets held by it.

The UK subsidiary will be resident in the UK if it is:

- incorporated in the UK; or
- centrally managed and controlled in the UK and, to the extent that a double tax treaty applies, typically where its place of effective management is in the UK.

The starting point for calculating taxable profits of a trade carried on in the UK by a UK resident subsidiary is the profit disclosed in the UK subsidiary's accounts. A UK corporation will be subject to UK corporation tax which is currently charged at the main rate of 25% on profits over £250,000.

A Small Profits Rate of 19% applies to businesses with profits of £50,000 or less. Businesses with profits between £50,000 and £250,000 are taxed at the main rate but may claim marginal relief.

Since 2024, the UK has imposed a 15% minimum effective tax rate on the accounting profits of the largest groups. UK-parented groups with revenues in excess of €750m are liable to pay 'multinational top-up tax' if the effective rate of tax in any of the territories in which they operate falls below 15%. The UK subsidiaries of foreign-parented are potentially liable to a domestic top-up tax, which operates in a similar manner on UK domestic profits.

Companies that can benefit from the UK's Patent Box can reduce their corporation tax on qualifying IP profits to an effective rate of 10%.

**UK corporation tax continued**

The UK has a ‘Diverted Profits Tax’ which applies a penal rate of 31% tax to profits artificially shifted out of the UK.

The UK imposes a 2% ‘Digital Services Tax’ (‘DST’) on the revenues of search engines, social media services and online marketplaces which derive value from UK users. It is intended that the DST will be withdrawn once new global rules for taxing the digital economy are implemented.

It should be noted that under the UK’s transfer pricing rules, if a UK resident company fails to negotiate an arm’s length price in transactions with its foreign parent (or other non-UK group companies), the UK tax authorities can seek to assess the UK company to corporation tax on the resulting reduction in taxable profits unless the UK company is part of a small enterprise (i.e. an enterprise with fewer than 50 staff and annual turnover not exceeding €10m or balance sheet assets not exceeding €10m).

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# UK company established as a holding company

**If any UK subsidiary is to be established for the purposes of operating as a holding company for further expansion into European territories, it should be noted that the UK operates a controlled foreign company ('CFC') regime.**

Under this regime, profits of foreign subsidiaries in lower tax territories could be attributed to the UK parent company.

Any dividends received by a UK company from a foreign subsidiary would generally be exempt from taxation in the hands of a UK company. It should be possible to elect for profits of a foreign branch of a UK company to be treated as exempt from UK taxation.

In addition, any gain arising on a disposal of shares in subsidiaries held by a UK company for a period of at least 12 months could be exempt from UK corporation tax under the UK's substantial shareholdings regime. In general terms, this regime requires that the subsidiary being sold is 'trading'.

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**Graham Samuel-Gibbon ... is a brilliant tax expert, focusing on the relevant issues, providing solutions, and communicating well.**

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# Financing the UK subsidiary

## The issues involved in the consideration of the financing of the UK subsidiary will often be tax driven.

Of particular importance is the availability of tax relief for interest due from the UK subsidiary in relation to the financing and UK withholding taxes on the payment of interest by the UK subsidiary.

Interest paid on borrowings by a UK subsidiary to its foreign parent would generally be allowable on an accruals basis as a deduction in calculating the UK subsidiary's taxable profits.

However, tax relief for interest can be restricted depending on whether:

- the UK's corporate interest restriction rules apply. Broadly, these rules restrict a group's deductible net tax interest expense to 30% of its taxable earnings before interest, tax, depreciation and amortisation ('EBITDA'), subject to an optional group ratio rule, which may permit greater deductions in some cases. All groups will be able to deduct up to £2m of net interest expense per annum before the restrictions apply;

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**James Ross ... is an excellent tax lawyer in terms of both his knowledge and his commitment to service**

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- the loan could effectively be treated as a form of equity (such that the interest on the loan is treated as a 'distribution');
- transfer pricing and thin capitalisation rules apply to disallow interest on related party borrowings where the borrowing does not reflect arm's length terms, based on the debt capacity of the UK subsidiary itself; and
- certain other anti-avoidance rules apply, for example where the loan has been entered into for unallowable purposes or where either the interest on the loan is also eligible for tax relief in another territory or the interest on the loan would not be taxable for the lender (pursuant to certain anti-hybrid rules).

UK withholding tax would be applicable to any interest paid by a UK corporate borrower to a foreign company, although this could be reduced from 20% under an appropriate double tax treaty or if the loan is a quoted Eurobond listed on a recognised stock exchange.

Formalities will need to be complied with in seeking treaty clearance to reduce any interest withholding taxes.

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# Repatriation of profits from the UK company

**The payment of dividends by a UK subsidiary to a foreign parent does not attract any UK withholding taxes under UK domestic law.**

However, the payment of royalties by a UK subsidiary to a foreign parent would ordinarily give rise to withholding taxes of 20%, although these could be eliminated under an appropriate double tax treaty.

Where the foreign parent ultimately wishes to sell the UK subsidiary, the UK would generally not subject the foreign parent to UK taxation on the sale of its shares in the UK subsidiary.

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# Other tax issues

## The other issues which should be considered when establishing a subsidiary in the UK are:

- the requirement for the UK company to register for value added tax ('VAT') in the UK. VAT is a sales tax and the current standard rate is 20%. The UK company will become liable to be registered for UK VAT if its turnover of taxable supplies for the previous 12 months is more than £90,000 or if there are reasonable grounds for believing that the taxable supplies of the business may exceed £90,000 in the next 30 days alone. Moreover, even if the UK company does not meet these registration thresholds, it can voluntarily register for UK VAT (which would assist it with recovering VAT on supplies made to the UK company);
- the ability to obtain tax allowances (including tax depreciation) available to the UK company on the acquisition of certain assets such as plant and machinery in the UK;
- the requirement that any purchaser (regardless of tax residence) pay stamp duty land tax ('SDLT') on the purchase or transfer of property or land in the UK where the amount paid is above a certain threshold. SDLT would be applicable on a transfer of UK property unless the property is exempt or a relief applies; and
- the requirement that on a sale of shares in the UK company, the purchaser of the shares will need to pay stamp duty on the transfer. Stamp duty is charged at 0.5% of the total chargeable consideration. If shares are transferred via a paperless system (such as CREST) then stamp duty reserve tax (SDRT, also at 0.5%) is applicable.

# The team

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