Doing business in the United Kingdom

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Contents

1. Introduction

2. Business Entities

3. Finance

6. Real Estate

7. Litigation

8. Financial Reporting and Audit

9. Tax

10. Useful Contacts

Doing business in the United Kingdom

Introduction

The United Kingdom has left the European Union, but maintains active trade with it, and now has opportunities for enhanced trade with the rest of the World. The UK is very much open for business and all four nations within the UK present a welcoming opportunity for businesses to start up and to thrive.

This guide has been prepared for the assistance of those interested in doing business in the United Kingdom and includes legislation in force at June 2023. It does not cover the subject exhaustively but is intended to answer some of the important, broad questions that may arise and should not be relied upon without taking legal advice on your specific circumstances which we will be pleased to provide. When specific problems occur in practise, it will often be necessary to refer to the laws and regulations of the United Kingdom and to obtain appropriate accounting and legal advice.

The United Kingdom means England, Wales, Scotland, and Northern Ireland. Whilst broadly speaking the law relating to England and Wales is the same, Northern Ireland and Scotland are different territories or "jurisdictions". Northern Ireland and Scotland have their own Courts and in many respects procedures are significantly different from those applying in England and Wales.

Frequently, Acts of Parliament apply differently to Northern Ireland and Scotland from those that apply to England and Wales. Scotland has its own parliament able to make its own laws in certain areas and in Wales, the Welsh Assembly has some limited law making powers.

This guide is based only on the law so far as it relates to England and Wales, and Scotland; where law or procedures are different in Scotland, this is highlighted in the text.

The law on tax, companies, employment and immigration are the same throughout the UK; however the law on real estate, litigation, criminal law, contract, trusts, wills and probate are different in Scotland to the law of England and Wales.

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Business entities

The following are the most common forms of entity used to conduct business in the United Kingdom. Other forms of entity may be used for more specialised purposes; such as for charitable or not-for-profit activities or for open-ended investment funds.

Private company limited by shares

This is by far the most common form of business entity in the UK, due to its flexibility and ease of incorporation. It is the default form of company incorporated under the Companies Act 2006, and as such there are no special requirements as to minimum share capital, maximum number of shareholders, restrictions on transfers of shares or participation by UK nationals. A private company may be formed by one natural person, of any nationality, who can be the sole Director and the sole shareholder, holding just one share of minimal nominal value. A private limited company is distinguished by its name ending with the word "Limited" (which may be abbreviated to "Ltd"). The liability of its members (the shareholders) is limited to the amount payable on the shares they have agreed to take.

A UK limited company must have a registered office in the UK, and must choose whether this is in England & Wales, Wales, Scotland or Northern Ireland. It is only possible to change this between England & Wales and Wales. Welsh companies can have a name ending with "Cyfyngedig" (abbreviated to "Cyf") instead of "Limited" and may file documents and forms in Welsh. Wherever the registered office is situated, the company may carry on its business activities in any part of, or wholly outside, the UK. . The Registrar of Companies for England and Wales is in Cardiff, and the Registrar of Companies for Scotland is in Edinburgh.

Companies used to be formed by acquiring a ready-made "off the shelf" company from a registration agent, but nowadays they are usually incorporated electronically via the agent. No paper documents or signatures are required, and incorporation takes place either the same day or next day (depending on the time of day instructions are submitted). The constitutional documents are the Memorandum and Articles of Association. The former just consists of the agreement by the subscriber(s) to form a company, and the latter is usually based on the statutory default form, known as the "Model Articles", but is often customised for particular requirements - especially if the company is a joint venture or has minority shareholders. There is no requirement to state the company's intended business activity or objects in the Articles or to have an authorised maximum share capital.

No capital or stamp duty is payable on the issue of share capital by a UK company. Stamp duty is payable at the rate of 0.5% on the consideration paid on a transfer of shares.

Companies are required to file a Confirmation Statement (which may be filed online) and accounts every year. For financial years starting on or after 1 January 2016, to qualify for total accounts audit exemption, a company must have any two of an annual turnover of £10.2 million or less, net assets of £5.1 million or less and not more than 50 employees. Accounts for all companies must be filed within 9 months of the year end, or financial penalties will be incurred. This information is available on the public record at Companies House, and copies can be obtained for modest fees.

A private company is prohibited by law from offering its shares to the public.

Public company limited by shares

The requirements and procedures for forming a public company limited by shares are the same as described above for a private company limited by shares except:

- The company's name must end with "Public Limited Company" or "PLC" (or "Cwmni Cyfyngedig Cyhoeddus" or "CCC" for a Welsh public company);
- A public company may be incorporated with the authorised minimum share capital of £50,000, of which at least 25% must be paid up;
- A minimum of two Directors and two Shareholders are required and a suitably-qualified Company Secretary must be appointed;
- Annual General Meetings must be held;
- Accounts must be filed within 6 months of the year end, and the penalties for late filing are higher; and
- It may offer its shares to the public. Note that a Prospectus may be required and that where it is not, an offer of shares to the public will be a financial promotion, requiring the approval of an authorised person under the Financial Services and Markets Act 2000 unless it can be brought within various exemptions.

In addition to the above there are a number of other tighter rules and restrictions applying only to PLCs. A private company is therefore generally preferred, except where it is intended the shares will be admitted for trading on a regulated market, such as the London Stock Exchange, AIM or Aquis.

Limited Liability Partnership

Despite the name, a Limited Liability Partnership (or "LLP") is a corporate entity registered at Companies House like a private company, and is subject to many of the same requirements (in particular filing confirmation statements and accounts). Although intended primarily as a hybrid entity for incorporating professional firms, LLPs are not restricted to any type of business and so provide an alternative option that combines the advantages of separate legal personality and limited liability with the tax transparency of a partnership.

LLPs can be useful for joint ventures or incorporated partnerships, but have no share capital as such or statutory default form of constitution. This necessitates the drafting of a custom constitutional document in the form of a Limited Liability Partnership Agreement, which can contain profit sharing and succession arrangements similar to share capital, but this additional complexity means that the private limited company remains the preferred form for most businesses.

Scottish LLPs are registered at Companies House in Edinburgh.

English and Welsh LLPs are registered at Companies House in Cardiff.

Partnership

A partnership, under UK law, is defined as the relationship that exists between "two or more persons carrying on business in common with a view to profit". In practice, most partnerships are between individuals but a partnership may exist between individuals and companies and indeed between companies alone.

An English or Welsh partnership does not have a legal personality separate from that of its partners (in contrast to a Scottish partnership, which does have separate legal personality). In the legal sense, the partnership does not enter into contracts in its own name, but in the names of its partners. Similarly, for legal purposes, the assets of the partnership usually belong jointly to the persons making up the partnership and (subject to the comments below regarding limited partnerships) each partner is jointly and severally liable for the debts of the partnership.

Partnership arrangements are often formalised by way of a written partnership agreement. Where such an agreement is not in place, the partnership is governed by the provisions of the Partnership Act 1890. It is usual for a partnership to prepare accounts showing the results of the partnership business. Partnerships are not obliged to file these accounts with Companies House. They may submit them with their tax returns, but the accounts do not appear on the public record.

It is also possible to establish what is known as a limited partnership. A limited partnership is comprised of at least one general partner (who has unlimited liability) and one or more limited partners. Limited partners are liable for partnership obligations only to the extent of the cash and property they contribute. Where no written partnership agreement is in existence, limited partnerships are governed by the Limited Partnerships Act 1907. If the general partner is a limited company, the limited partnership is obliged to file its accounts for public record with the Registrar of Companies. Limited partnerships have been little used, except in structuring investment funds, and the LLP is now the more favoured option for a partnership-type entity with limited liability.

A partnership is not required to register its business name.

Sole trader

An individual setting up business as a sole proprietor is the simplest business form. This option is only available where the business has only one owner, as if there are two or more it will be a partnership. Like a partnership, there is unlimited personal liability for the business's debts and no requirements for registration or filing of accounts. It is commonly used for very small businesses or start-ups, which may be incorporated if the business grows.

Overseas company

There are no restrictions on foreign-registered entities doing business in the UK. However, if they establish a branch or place of business in any part of the UK, they are required to register as an overseas company with Companies House and to file certain information and annual accounts in a similar fashion to a UK-registered company. They will be liable to UK corporation tax on their UK business, and obliged to make tax returns just like any other entity doing business in the U K.

Overseas entity

From 31 January 2023 there is a separate requirement for an overseas entity that holds an interest in real property in the UK to register details of itself and its beneficial owners at Companies House. Without such a registration, an overseas entity will be unable to register its acquisition or disposal of the property with HM Land Registry, and failure to register is a criminal offence.

Registered overseas entities must file an annual update statement, or their registration will be suspended. The update statement is filed online and there is a fee of £120.

Finance

This section applies to the whole of the UK

The London Capital Markets

Since the Financial Services and Markets Acts 2000, companies are no longer "listed on the London Stock Exchange". They now have a "London Listing"- and may be traded on a number of platforms which include the London Stock Exchange, Aquis (the old PLUS Markets), among others. While it is often the case that a company is referred to as having a 'London Listing', this may be referring to a company with a listing on the Official List or to a company that has its shares quoted on an Exchange-regulated market such as AIM or Aquis.

The Official List

The term 'listing' should refer to a listing on the Official List rather than a quotation on an Exchange-regulated market and since 6th April 2010, a company which lists its securities on the Official List will have either a Premium or a Standard Listing for each listed security. The Premium Listing follows more stringent super-equivalent standards while the Standard Listing follows EU minimum standards. Interestingly, the Standard Listing will now make an admission to the Official List a more economical alternative than admission to the AIM.

Exchange Regulated Markets

There are several other markets in the UK which provide access to capital and it is possible for companies to move between markets as their circumstances change, provided they meet the relevant eligibility criteria and the company's shareholders agree. As an alternative to obtaining a listing, companies can access capital through these other markets. Companies that are admitted to trading on Exchange-regulated markets are said to be 'quoted'. Their securities are not 'listed' and so do not need to comply with the Listing Regime's requirements but will need to comply with the individual market's own Rule books.

What is often not realised is that each of these markets has the same individual market-maker making the market in the shares, and thus liquidity and depth of trading in shares are unaffected by which market is chosen. More important for liquidity is the size of the company, the news flow and the depth and spread of shareholders.

There are a number of benefits in being listed but being on any market brings with it direct costs (audit, non-executive directors, shareholder communication, etc.) and indirect costs in terms of the time of senior executives taken up. You should consider carefully whether it is the right route for your company with the alternatives of venture capital and business angels also available, albeit with different equity structures and costs.

The Role of Tax Incentives

UK tax payers are able to invest tax efficiently in one or other of two ways - through Venture Capital Trusts and through the Enterprise Investment Scheme. VCTs are listed vehicles which invest as an entity while the EIS scheme allows investors to make their own individual investment decisions, should they wish. EIS qualifying companies (which excludes property, finance and the professions among others) are required to have a place of business in the UK and to be the parent company of a trading group to allow UK investors to obtain tax relief. Whatever the intentions of the UK Revenue, this EU requirement expands the horizon of UK

investors very significantly and will make EU businesses (subject to achieving the necessary qualifications) much more attractive to UK investors than hitherto. Changes to SIPPS and ISA rules make junior quoted companies eligible and are now exempt for UK Stamp Duty Reserve Tax.

The Junior Markets

The smaller markets in the UK are AIM and Aquis alongside Frankfurt and Munich in Europe. Frankfurt is currently proving attractive to certain US stocks, principally due to cost and the continuation of the settlement system from NASDAQ, which means that American investors often remain unaware of the move. Also US companies with a $500m market capitalisation would gain more attention from a listing on AIM for example and more likely to receive research coverage. However, it does not carry the cachet of "Listed in London". We are seeing an improvement in sentiment for early stage (and riskier) high growth companies following generally increased activity in the FTSE; the total number of companies listed on AIM as at early 2023 was 821.

The Unquoted Markets/Platforms

AIM

The Alternative Investment Market was launched by the London Stock Exchange in 1995 to provide smaller companies with access to new funds for expansion and to create a market where shares can be traded.

AIM is a market for smaller companies from any sector and any country and has more than 3000 companies quoted from 26 different countries, raising a combined total of £60 billion.

AIM has become hugely successful over the last five years and now has more companies listed than the main London Stock Exchange. For smaller companies looking to raise in excess of £2m in one fundraising, it has become the natural default choice of market; however, the cost of joining can be prohibitive for smaller and start up companies.

Costs of joining AIM

The applicant must pay the AIM fees. As at November 2020, an admission fee of between £12,115 and £135,000 (depending on the company's initial market capitalisation) together with an annual fee of between £9,300 and £110,000 based on the level of market capitalisation pro-rata is payable. Companies looking to list on AIM require an AIM Nominated Adviser (Nomad), as well as the services of law and accountancy firms conversant with the rules and regulations of AIM. Additionally, the services of a broker and PR or Investor Relations company may well be required. The likely total cost of attaining an AIM listing will probably exceed £350,000 and at least twice that if a fund raising is involved.

Aquis Exchange (formerly ISDX or PLUS)

This is a London based Recognised Stock and Investment Exchange. It is a member of the £2.72B listed ICAP Group. It offers a three tier market solution

Aquis Exchange was formerly known as NEX, ISDX, Plus Markets and Ofex. It has several market makers offering competing prices on the quoted companies committing their own capital to the market, playing a key role in providing price information and liquidity.

Costs of joining Aquis Exchange

Whilst there is a minimum admission fee of between £5,000 and £55,500 depending on the market capitalisation of the company and an annual fee of £6,500 payable, companies looking to be quoted will need to have a Aquis Markets Nominated Adviser.

Real Estate

Introduction

Real Estate may be defined loosely as any interest in land and/or any interest in the buildings erected on land. The national laws and local byelaws and regulations that apply to real estate in England are also fully applicable in Wales; Scotland has its own unique system of laws applying to real estate - see the relevant text for Scottish aspects of Real Estate in this section.

The most common methods of holding interests in land are in the form of Freehold (which in Scotland is called heritable ownership) or Leasehold. There are no restrictions on foreign individuals or businesses owning Freehold or Leasehold property in England and Wales or in Scotland. A non-resident individual can hold UK real estate personally or through a UK or offshore company. If he holds the property through an offshore company and he is non-domiciled, his shares in the offshore company are exempt from Inheritance Tax. The company will pay Income or Corporation Tax on any rental income but at the basic rate only.

Throughout the UK, there is a generally landlord-friendly regime for leases of commercial (business) premises, and is thus a fertile property investment environment not only for UK investors, but also for the very large number of institutional and private investors from outside the UK.

Register of Overseas Entities – UK wide

The Register of Overseas Entities forms part of the UK Government's strategy to combat economic crime. Overseas entities that already own UK land or property acquired by them on or after 1st January 1999 for properties in England or Wales, or 8th December 2014 for properties in Scotland, and they have to declare who are their beneficial owners or managing officers. There are sanctions imposed on those who do not comply, including restrictions on buying, selling, transferring, leasing or charging their land or property in the UK.

Overseas entities have to be registered before they can buy, lease, or take an assignment of a lease, irrespective of when they acquired the property in question..

An "overseas entity" as a legal entity, being a body corporate, partnership or other entity that is a legal person under the law by which it is governed by the law of a country or territory outside the United Kingdom. The UK does NOT include Isle of Man, Jersey, or Guernsey, and so the requirements do apply to these territories.

Overseas entities must declare their beneficial owner if that beneficial owner:

- is a legal entity governed by the law of a country or territory outside the UK or
- provides trust services (acts as a trustee of a trust, or a similar legal arrangement); and if the provision of trust services is regulated in that country or territory by a supervisory authority

Any new purchasers need to register with Companies House before applying to register the deed in the Land Register of Scotland.

Criminal penalties

Overseas entities that fail to register commit a criminal offence, and directors and partners of the entity can be prosecuted too.

Once registered, failing to update the register on time is also a criminal offence (PDF), punishable by a daily fine of up to £2,500. It is also a criminal offence to deliver false or deceptive information to Companies House

Overseas entities must take reasonable steps to identify their “registrable beneficial owners” and obtain the categories of information about them that are specified in the Act. For example, where a registrable beneficial owner is an individual, the required information will include the name, date of birth and nationality of that individual and their usual residential address. Not all information will be made publicly available.

More information and assistance can be obtained from Kidd Rapinet regarding properties in England & Wales, and from Mitchells Roberton regarding properties in Scotland.

Commercial Real Estate

Commercial real estate is generally referred to simply as "commercial property" throughout the UK. A commercial lease, which can be for any number of years is commonly known as a business lease; nd commercial property includes any real estate that is used for a business purpose e.g. shops, offices, hotels, pubs and all industrial premises.

Farmlands or properties used for agricultural purposes are subject to their own specialized law.

As mentioned below, an Energy Performance Certificate is now required on the occasion of any sale or lease of commercial property.

Business rates levied by the local authority are payable annually in respect of all commercial properties, but business rates are usually an allowable deduction when calculating profits for Corporation Tax purposes.

Residential Real Estate

Residential real estate is commonly referred to as "residential property" throughout the UK. Most houses in England tend to be owned with freehold title while the vast majority of flats, maisonettes and apartments are leasehold, with the leasehold owner sometimes also holding a share in the management company which in many cases, owns the freehold interest in the block of apartments and the land on which the building sits. Leasehold owners usually have to pay an annual service or maintenance charge to their management company, to cover e.g. buildings insurance and the repair and maintenance of the building. In Scotland, most houses, flats and other residential property is owned outright, as opposed to being leased, but there are some areas of Scotland where old long leases granted in the 18th and 19th centuries of up to 999 years apply for residential property. Since 1974, the maximum period of a residential lease has been reduced to only 20 years.

Local or council tax is also payable by all landowners or occupiers of residential property. The rate or amount of tax varies between different local authorities.

Every homeowner in the United Kingdom is required to obtain an Energy Performance Certificate ("EPC") before marketing a property for sale or letting. The EPC contains information about the energy efficiency of the building & its environmental impact. An EPC is now required under European and national law for all commercial and residential property sales and leases.

Land Registration - all properties

All land transactions in England & Wales are now recorded at the national Land Registry. The aim is to provide a complete electronic record of title, securities and rights associated with every piece of land. Traditional paper title deeds and other documents of title such as Land Certificates are no longer required. The Official Copy of the Land Register (now in electronic form) now comprises the definitive record in relation to the ownership of registered land. Although registration is now compulsory when there has been any dealing with land, there remains a significant amount of land in certain (mainly rural) parts of the country that has not yet been registered. Transactions relating to unregistered land are often more complex as further enquiries must be made and on completion of a purchase or other transaction, title to the land must be registered.

In Scotland, leases that last longer than 20 years and all conveyances of real estate were recorded in the Register of Sasines from the late 17th century; this was a register of deeds. Land registration was introduced in 1979, and is a map-based register of title. All of Scotland is now operational for land registration, but some properties have not yet had a transaction, such as a sale, or a lease that lasts for longer than 20 years or a refinance, that induces registration in the Land Register of Scotland. Title Sheets (formerly called Land Certificates) contain a guarantee from the UK Government as to the validity of title, unless Government indemnity is specifically excluded in respect of any matter. In some cases, defective title insurance cover may be available to provide comfort by way of insurance in respect of such difficulties.

The feudal system was abolished in 2004. Outright ownership is usually conveyed, although ownership of minerals under the property is often reserved to a third party.

Leases - Scotland

Occasionally, land and buildings are not actually owned outright, but are held under old leases of up to 999 years, with very few landlord and tenant obligations. Leases of residential property granted since the early 1970's can only be granted for a maximum of 20 years' duration. Since 2000 it has not been competent to grant a lease of non-residential property for longer than 175 years

Business Leases

Leases of commercial premises in England are called "Business Leases" while in Scotland they are more commonly referred to as "Commercial Leases". Although there is a large amount of statutory protection for business tenants in England, there is in Scotland, only very limited statutory protection (in respect of forfeiture), and in particular there is no automatic right of renewal, (although there are qualified and limited rights of renewal for shop premises). As a general rule parties are free to include whatever terms they agree in a Business Lease. The terms will depend on the state of the property market at the relevant time and the bargaining power of the landlord and tenant. Business Leases tend to be complex documents and in Scotland there are several implied obligations and rules that are automatically included in

leases, and these are often contracted out of or diluted; it is essential to take legal advice before taking a new lease or a transfer of an existing lease.

Right to Renew a Business / Commercial Lease

Most tenants of business premises in England and Wales have a legal and automatic right to renew their business leases when they expire, although there are some exceptions e.g. where the landlord wants to occupy the property himself or he wishes to redevelop the property. This "security of tenure" as it is called protects the tenant's position even when their lease comes to an end. However, it is possible and common for landlords to exclude this statutory security. To do so effectively it is necessary for the landlord and tenant to comply with some very technical requirements.

In Scotland, the Lease will specify the termination date; unless either party gives (in the case of leases of 4 months or longer duration) more than 40 days (or if specified, a longer period) prior written notice to the other before termination (longer periods apply where the property leased is larger than 2 acres) requiring the tenant to vacate, or informing the landlord of the tenant's intention to vacate, then the Lease is deemed to continue for up to one year at a time at the current rent on the basis of “silent agreement” of the parties. If notice is given by the tenant and he fails to vacate on the due date then he is deemed to have abandoned his intention to remove and is committed to continuing the lease for a further year, and so on.

However for shops in Scotland, the tenant can apply within 21 days to the Sheriff Court for renewal on such terms and for a period of up to one year as the Court considers reasonable. Any renewal is deemed to be a new lease, and the tenant is entitled to further renewals, as previous applications are disregarded. A shop is defined in Section 74(1) of the Shops Act 1950 as any premises where any retail trade or business is carried on; this includes hairdresser, sale of refreshment or alcohol, lending books or periodicals when carried on for profit, and retail sales by auction. The character of the business itself (as opposed to the character of the area occupied) is of importance in determining whether the premises are a shop.

Stamp Duty Land Tax (excluding Scotland)

This specific land tax is a tax that, with one or two exceptions, applies to all land

transactions in the UK. The tax rate depends on whether the property is residential or

commercial

For a commercial property it is a percentage payable depending on the value of the

transaction and is payable on the whole of the purchase price and may be summarised

as follows:

Rate	Commercial Property
Zero	£0-£150,000
1%	£150,001 -£250,000
5%	£250,001 - £500,000

For residential properties the rates vary from band to band in accordance with the following scale so that the amounts due for each band are added together to arrive at the total payable:

Rate	Residential Property
Zero	£0-£125,000
2%	£125,001 -£250,000
5%	£250,001 - £925,000
10%	£925,001 - £1,500,000
12%	£1,500,001 and over

Additional Dwelling Supplement

If the purchaser of a residential property in the UK already owns a residential property anywhere in the world, there is an additional dwelling supplement payable, which is **3%** of the total price if the property is in England or Wales, or **6%** if it is in Scotland. There is a refund payable to the client if the already owned residential property is disposed of within a set time period. Note that if parties are married, and only one of them owns an existing residential property and the non-owning spouse buys the new property, then the ADS is still payable, as the tax authorities view the married couple as a single entity.

Note:

It should be carefully noted that certain companies and other non-natural entities may have to pay 15% stamp duty on residential property purchased for more than £500,000. Residential properties owned wholly or partly by a company or other non-natural body (whether offshore or onshore) may also be subject to Annual Tax on Enveloped Dwellings (ATED). This applies to properties valued at £500,000 or over. There are some exemptions and reliefs e.g. for investment properties let to unconnected persons. It is the responsibility of the taxpayer to carry out regular revaluations and to advise HMRC if a property falls into ATED. Properties subject to ATED are also potentially subject to Capital Gains Tax even for a non-resident owner.

If the purchaser already owns another residential property anywhere in the World, an extra amount is payable at 3% of the price.

The method of calculation of stamp duty is complex for leases and is based on the rent payable over the term of the lease, in conjunction with any premium paid for the lease.

LAND & BUILDINGS TRANSACTION TAX - SCOTLAND

Land & Buildings Transaction Tax is payable in respect of all purchases and the grant of leases assignments and sub-leases etc of land and/or buildings in Scotland. The information above about companies and other non-natural entities buying residential property, and the ATED will continue to apply.

Purchase of commercial property:

0% on the part of the price between £0 and £150,000

1% for the part of the price between £150,001 and £250,000 and

5% for the part of the price above £250,000

Leases of commercial property:

These are assessed on net present value (total rent payable), and the calculator on the Revenue Scotland web-site should be used – basically the rates are as follows:

0% - on the first £150,000

1% on the part between £150,001 and £2 Million

2% on the part that is above £2 Million

Residential property:

0% on the part of the price between £0 and £145,000

2% on the part of the price between £145,001 and £250,000

5% on the part of the price between £250,001 and £325,000

10% on the part of the price between £325,001 and £750,000

12% on the part of the price above £750,000

Additional Dwelling Supplement

If the purchaser of a residential property in Scotland already owns a residential property anywhere in the world, there is an additional dwelling supplement payable of 8**%** of the total rice if the property being purchased is in Scotland. There is a refund payable to the client if the already owned residential property is disposed of within a set time period. Note that if parties are married, and only one of them owns an existing residential property and the non-owning spouse buys the new property, then the ADS is still payable, as the tax authorities view the married couple as a single entity.

VAT

Valued Added Tax at the current rate of 20% is payable on commercial property transactions but only where the landlord or one of the other parties has elected to waive what is otherwise an exemption from VAT for commercial real estate. If the exemption has been waived, VAT will be payable on the price whether on the sale of a building or on the grant of a lease at a premium, unless both parties are registered for VAT and the transaction can be shown to be a TOGC (transfer of a going concern). In the case of a "VAT building" VAT will also be payable on the rent. VAT is an extremely complex area when it involves commercial real estate and professional advice must be sought before entering into a contract. VAT is never payable in the case of residential property.

Planning

There are detailed and complicated planning rules in England and Wales relating to the use of all land as well as to the buildings that are built on any land. Permitted uses are divided into a number of classes and these govern the type of business or residential use that is permitted. There is a separate planning regime in Scotland. It is vital to check that any property that you use for your business has the appropriate planning permission.

Throughout the UK, local authorities are responsible for granting planning consents in their area and for determining the local policies (called the "local plan") although these are based on national policies and guidance. Local authorities are also responsible for the making and implementation of what are called Building Regulations - these are rules which govern the more practical aspects of planning law e.g. construction requirements for any building or alterations to existing buildings.

Recent changes in planning laws have made it much easier to convert and change the use of former offices and certain shops into residential units, in some cases without the need for planning consent.

Environment

There are detailed environmental control laws requiring consents for various potentially polluting emissions. The general principle is that it is the current occupier of the land that is responsible for all clean up costs where there has been any historic pollution. Such costs can be very expensive indeed. Proper environmental reports, warranties and searches are therefore essential, particularly where it is established that the property was formerly used for a potentially contaminative use e.g. as a petrol station.

In Scotland, the Scottish Environmental Protection Agency ("SEPA") is responsible for monitoring and enforcing environmental laws. Scotland has some laws in common with the remainder of the UK, but in addition has certain laws and regulations that apply only in Scotland.

Disability Discrimination

The Disability Discrimination Act 1995 requires that all service providers make reasonable adjustments to their premises to allow access by disabled people. More stringent requirements apply to new buildings. These obligations are on the occupier of premises rather than the landlord.

Litigation

England & Wales

The Courts of England and Wales place a particular emphasis on the pragmatic expeditious and cost effective resolution of any Court business presented to them.

This pragmatic approach is founded upon the double-barrelled:-

(a) recourse to the systems of Common Law (a body of written case law reports of prior judicial decisions going back over several hundred years, which are then applied to a subsequent case involving the same or similar facts; this is known as the Law of Precedent), and

(b) Statute Law (involving the application and sometimes interpretation or construction of Acts of Parliament in addition to European Law).

These benefits have been bolstered by recent watersheds in English law obliging the Court to case manage. The emphasis today is upon clear and full obedience to all Court Orders and Directions. Default or delay will be met with punitive and other draconian sanctions. There is now little scope for agreed variations in the timetable. Dates need to be kept. Adjournments are not readily permitted.

The recent obligation to produce costs and budgets means that any client can be made aware and well in advance of their likely financial outlay overall.

There is an increasing emphasis upon resolution outside of the Courts through the use of Alternative Dispute Resolution (with a particular emphasis upon mediation or arbitration).

Judges throughout the U K must of necessity have practiced for a number of years in private practice prior to elevation to the Bench.

Jurisdiction and structure

Civil actions commenced within England and Wales are dealt with either by the High Court or the County Court.

Claims with a monetary value of more than £50,000 may automatically be commenced within the High Court.

Claims with a monetary value of between £25,000 and £50,000 may be commenced within the County Court or if the matter is of sufficient complexity or contains an issue of law of sufficient public interest, may be commenced within the High Court.

Claims with a monetary value of below £25,000 must of necessity be commenced within the County Court within one of the three tracks set out below.

The small claims track

For claims of a monetary value of £5,000 or below or in the case of personal injury claims, with a value of £3,000 or below.

Small claims track hearings are relatively informal affairs and costs orders are rarely made in favour of the successful party.

Fast track claims

A claim will be assigned to the fast track if the duration of the final trial is estimated to take 1 day or less, the value of the monies in dispute is £16,000 or less and expert evidence is not required. Costs orders may be made in favour of a successful party, in the absolute discretion of the Court. However costs awards for the trial itself are limited to £750.

Multi-track claims

A claim will be assigned to the Multi-track where the matter is of weight and complexity: where the duration of the final hearing is estimated to be in excess of 1 day; ordinarily where expert evidence may be necessary or where the amounts in dispute are in excess of £16,000.

Costs are always in the absolute discretion of the Court but are usually awarded in favour of the successful party.

Multi-track claims must of necessity be heard before a Circuit Judge rather than a District Judge who will hear small claims track and fast track disputes.

Costs

Costs awards usually follow the event, meaning that a successful person will normally enjoy a contribution towards their costs. Costs awards may be made on either the standard or the indemnity basis.

As a general rule-of-thumb a costs award is usually made upon the standard basis. This normally provides a broader return of between 60% - 65% of any successful party's legal fees. There is never full recovery.

Costs awards on an indemnity basis are rarely made: the Court would only be persuaded so to do if a party's conduct has been adjudged wholly unreasonable or their claims found to have been quite devoid of a merit. If a party is fortunate in obtaining an indemnity award of costs they might expect to recover broadly 85% of their outlay.

The High Court - is divided into the following divisions:

The Queen's Bench Divisionundertakes Common Law disputes, including but not limited to, breach of contract and personal injury claims.

The Commercial Court is under the jurisdiction of the Queen's Bench Division.

The Chancery Division: undertakes claims involving equitable rights and breach of trusts. The Company Court is under the jurisdiction of the Chancery Division.

The Family Division:deals with high net worth individuals ancillary relief claims and Children Act claims of sufficient complexity or public interest.

Appeals process

There is a right of appeal from a County Court to the High Court and from the High Court to the Court of Appeal. An Appeal may be made from the Court of Appeal to the Supreme Court. The Supreme Court is subject to the jurisdiction of the Court of Justice of the European Communities pursuant to Article 177 of the Treaty of Rome 1957.

Insolvency proceedings

Proceedings may be taken within the High Court for either personal or corporate insolvency.

Personal Insolvency

A private individual may be rendered personally insolvent, or bankrupt, if served with a Statutory Demand for an uncontestable debt or through failure to satisfy a Court Order (which falls due for payment in full within 14 days of such an Order being made) if the sums demanded within the Statutory Demand remain unsatisfied for a period of 21 days. A Bankruptcy Petition can then be presented by a Petitioning Creditor to the High Court in Bankruptcy. If an Order for Bankruptcy is made the bankruptcy will be registered within a Public Register of personal insolvency.

It is possible for a person to prevent a Petition for Bankruptcy being presented to the Court by way of injunctive relief if there is a credible contention that the monies claimed are neither due nor owing.

Corporate Insolvency

A company will be adjudged insolvent if it is unable to pay its debts as and when such debts fall due. Again, a company can be served with a Statutory Demand requiring payment of an uncontestable sum or settlement or a Court Order (after 14 days has expired from the date of the Court Order) requiring settlement of the sums demanded within 21 days from service of the Statutory Demand. If after the expiry of the statutory period of 21 days the sums demanded remain unsatisfied a Petition to wind-up the company may be issued out of the High Court. It is a requirement that the Winding-Up Petition is advertised within the London Gazette within a statutory prescribed period prior to the Winding-Up Petition being heard by the High Court. A remedy is available to the debtor company to seek an injunction to prevent either the issuing of a Winding-Up Petition or the publication of the Winding-Up Petition within the London Gazette. Ordinarily the publication of a Winding-Up Petition within the London Gazette will trigger the crystallisation of a floating charge and/or repayment of secured monies under the standard terms of most commercial legal charges extended to corporate bodies.

Enforcement

In addition to enforcing judgment or contractual disputes by way of personal or corporate insolvency, as described above, the following means of enforcement are open to private individuals and corporate bodies who have obtained a successful judgment against a Defendant within the jurisdiction of the Courts of England and Wales:

(a) a Charging Order against registered land owned by the Judgment Debtor;

(b) a Garnishee Order against a bank account in the name of a Judgment Debtor;

(c) a Writ of Fi Fa against assets owned by a Judgment Debtor.

Scotland

The Scottish legal system is separate to that of England and Wales, having its own court system and legal profession. Scots law shares many statutory provisions with the Law of England and Wales, but Scots civil law remains substantially based on Scots common law rather than statute and Scots civil law contains elements that have origins in Roman Law rather than English Common Law traditions. The Scottish court system uses different terminology, for instance the principal law officer is the Lord Advocate.

Jurisdiction and Structure

The Court of Session is the supreme civil court in Scotland, subject to appeal to the Supreme Court in London (sitting as a Scottish Court), with most civil jurisdiction being dealt with in the sheriff courts.

Generally speaking there are three types of procedure in the Sheriff Court depending on the value of the claim you are presenting. Claims for a monetary value of £5,000 or over are known as Ordinary Actions; claims for a monetary value of between £3,000-5,000 are known as Summary Cause actions; and claims of a monetary value of £3,000 or less are known as Small Claims actions.

The procedure for Small Claims and Summary Cause are extremely similar and proceed under a simple procedure to a Hearing at a relatively early date. These cases often proceed through the courts without the need to instruct a solicitor. In the case of Ordinary Actions, the defender has 21 days after the service of the Writ to answer, and it may then proceed at more length to either or both of a legal Debate or an evidential Proof to resolve the case.

The Court of Session is the supreme civil court in Scotland and is situated at Parliament House in Edinburgh. It sits in both an appeal capacity and also as a civil court of first instance. It has a wide jurisdiction at first instance with very little restriction by way of subject matter or value. The principal judge is called the Lord President. Administrative functions are mainly dealt with by the General, Petition and Inner House and Extracts Departments.

Costs

As in England and Wales, costs awards usually follow success. In Scotland, as a general rule-of-thumb, a costs award made in favour of a successful party on a standard basis will provide that party with a return of between 1/2- 2/3rds of their legal fees. Costs awards on an indemnity basis are rare.

Appeal process

The Court of Session sits as a court of first instance as well as a court of appeal. The Court of Session is headed by the Lord President, assisted by the Lord Justice Clerk. The court is divided into an Outer House, in which a single Judge hears cases at first instance, and an Inner House, which is an appeal court and in which three Judges will normally sit. The Inner House is divided into the First, Second and Extra Divisions, all of equal authority. The Lord President presides over the First Division; the Lord Justice Clerk presides over the Second Division; and a senior Judge will preside over any Extra Division. The Divisions hear cases on appeal from the Outer House, the Sheriff Courts and certain tribunals and other bodies. Decisions of this court can be further appealed to the Supreme Court.

Insolvency Proceedings

Scottish Bankruptcy legislation applies to individuals, partnerships and other unincorporated organisations such as trusts. However limited companies and other organisations registered at Companies House are subject to separate Insolvency legislation.

Personal Insolvency

In Scotland sequestration is the legal term used to describe personal bankruptcy. The Accountant in Bankruptcy is responsible for administering and supervising the process of personal Bankruptcy and recording Corporate Insolvencies in Scotland.

Bankruptcy is awarded either, following a debtor's application to the Accountant in Bankruptcy or, alternatively, following a petition to the sheriff court by a creditor (or, in certain circumstances, by the trustee in a trust deed).

The debtor must be 'apparently insolvent' whether they are making themselves bankrupt or being sequestrated by someone else. Common forms of "apparent insolvency" include when an individual is served with an uncontested Statutory Demand for Payment within 21 days, which then remains unpaid; or failure to satisfy a Court Order, which falls due for payment in full within 14 days of a formal demand for payment being made.

As of the 1st of April 2008, sequestration orders usually remain in place for one year. This change was made to bring sequestration in line with bankruptcy legislation in England and Wales, although sequestration orders can be extended under certain circumstances.

Corporate insolvency

Generally speaking the law in Scotland is the same as that in England and Wales in the area of corporate insolvency. However the Accountant in Bankruptcy develops policy for certain aspects of corporate insolvency and is responsible for receiving and recording information on liquidations and receiverships of Scottish businesses, held in the Register of Insolvencies.

The Register of Insolvencies contains details of liquidations and receiverships of Scottish businesses which are wound up by either the sheriff court or the Court of Session. These Courts have jurisdiction to wind up limited companies registered in Scotland and unregistered companies with a principal place of business in Scotland.

The reserved elements remain the responsibility of the UK Government and are dealt with by the Insolvency Service. Reserved elements include Company voluntary arrangements, Administration, legal effects of liquidation and the Regulation of insolvency practitioners

Enforcement

As an alternative to sequestration or corporate insolvency, other means of enforcement are also available in Scotland. Diligence is the Scottish term for methods of enforcing the repayment of debts through legal processes. There are a number of possible diligences that can be executed in Scotland including:

- Arrestment - an action by a creditor to arrest or freeze funds or goods belonging to a debtor in the hands of a third party;

- Earnings Arrestment in the hands of a debtor's employer;

- Attachment - prevents a debtor moving attached articles from the place at which they were attached;

- Landlord's Hypothec - under Scots common law, landlords have a right of security over certain moveable property situated on land or in buildings that they have let, although this is now of limited effect, other than in insolvency situations; and

- Inhibition - a personal diligence which prevents a debtor dealing with their heritable property.

The law of diligence is under review in many respects, and further changes to diligence may arise over the coming years.

Financial reporting and audit

This section applies to the whole of the UK

Financial statements must be prepared in accordance with UK GAAP

These financial statements must be in the format set out in the Companies Acts

UK incorporated companies are required to have their financial accounts audited by a registered auditor where turnover is over £10.2M or gross assets are over £5.1M.

Companies with subsidiaries may be required to prepare group accounts

A foreign company trading through a branch in the UK must register certain details with the Registrar of Companies.

Accounting standards

UK Generally Accepted Accounting Principles (GAAP) take the form of Financial Reporting Standards (FRS). There are certain differences between these principles and International or US Generally Accepted Accounting Principles (GAAP).

UK GAAP is governed by guidelines issued by the Accounting Standards Board as promulgated by the Institute of Chartered Accountants in England and Wales. Listed companies must adopt International Financial Reporting Standards (IFRS) under EU directives.

There has been a significant amount of work carried out to align FRS with IFRS (the Convergence project) and several UK standards have been amended to mirror IFRS principles.

Domestic corporations

Filing/publication requirements

UK companies are required to keep proper financial records. The directors are also required to prepare accounts on a periodical basis, which give a true and fair view of the state of affairs and results of the company for its financial period, a copy of which must be filed with the Registrar of Companies. An abridged form of financial statements can be filed by small or medium sized companies (as defined in company legislation).

Audit requirements

UK incorporated companies are required to have their financial statements audited by a registered auditor, subject to the exemptions listed below. The audit includes an examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies

are appropriate to the company's circumstances, consistently applied and adequately disclosed. If the auditor is satisfied with the above, a formal (unqualified) audit report will be issued.

Certain companies are exempt from having their financial statements audited. To qualify for the exemption the company must have:

- turnover less than £10.2M;
- gross assets of less than £5.1M;

This exemption does not apply to banks and financial institutions; insurance companies; and certain financial intermediaries.

This is an exemption from an audit only. It does not obviate the need to prepare financial statements. In the year concerned the annual return and accounts must be filed at Companies House within the time limit specified in the Companies Acts.

Branches of foreign companies

Filing/publication requirements

A foreign company trading through a branch in the UK must register certain details with the Registrar of Companies, including:

names, addresses and nationalities of directors; name and address of the company secretary

a certified copy of its Charter, Statutes of Memorandum and Articles of Association and its number and place of registration;

address and activities of the branch;

names and addresses of person(s) in the State authorised to accept notice on behalf of the company;

names and addresses of person(s) in the State authorised by the company to ensure

compliance with the regulations; and copy of the financial statements of the company.

Audit requirements - Branches of foreign companies operating in UK are not required to have accounts audited independent of the group accounts to which they relate.

U.K. TAX

This section applies to the whole of the UK

Summary

Despite significant tax changes over the last few years, the UK still remains a favourable destination both to live and do business. Capital gains tax remains at 10%/20% (18/28% in respect of land) depending on other gross income with Entrepreneurs Relief reducing this still further in certain circumstances. With careful tax planning companies and individuals can still profit from UK's long term stability and position as one of the leading financial centres.

Companies

Companies that are tax resident in UK are liable to pay UK corporation tax on total profits arising. Companies not tax resident in the UK are only liable to corporation tax profits on profits generated by UK branch or agency.

The standard rate of corporation tax throughout te UK is 25% but lower rates (minimum 19%) applies for companies with lower profits

Value Added Tax (generally) 20%

Stamp Duty - on share transactions

The Stamp Duty on the transfer of shares in a company is at a rate of 0.5%

High Value UK Residences held by Companies

Annual Tax on Enveloped Dwellings (ATED)

The "annual charge" is imposed from 1st April 2013 on a company, a partnership having one or more companies among its members or a collective investment scheme which owns a UK dwelling with a "taxable value" exceeding £500,000 on a "valuation day".

Income Tax

Income Tax is payable by individuals and is charged on an annual basis, the tax year running from 6th April to 5th April. There are different rates payable in Scotland.

Non-UK domiciles

A number of changes are to be made from 6 April 2017.

- for individuals who are non-UK domiciled but who have been resident for 15 of the previous 20 tax years or

- where an individual was born in the UK with a UK domicile of origin and resumes UK residence having obtained a domicile of choice elsewhere.

Such individuals will be classed as 'deemed' UK domiciles for income tax, CGT and IHT purposes. For income tax and CGT, a deemed UK domicile will be assessable on worldwide arising income and gains. They will not be able to access the remittance basis. For IHT, a deemed UK domicile is chargeable on worldwide assets rather than only on UK assets.

Legislation will allow a non-UK domiciled individual who has been taxed on the remittance basis to transfer amounts between overseas mixed fund bank accounts without being subject to the offshore transfer rules. This will allow the different elements within the accounts to be separated, thereby allowing clean capital to be remitted to the UK in priority to income and gains.

The draft legislation also provides that the market value of an asset at 5 April 2017 will be able to be used as the acquisition cost for CGT purposes when computing the gain or loss on its disposal where the asset was situated outside the UK between 16 March 2016 and 5 April 2017. This will apply to any individual who becomes a deemed UK domicile in April 2017, other than one who is born in the UK with a UK domicile of origin.

Non-UK domiciles who set up an overseas resident trust before becoming a deemed UK domicile will generally not be taxed on any income and gains retained in that trust and the trust remains non chargeable property for IHT purposes. However, there are a number of changes which modify the tax treatment on the occurrence of certain events for settlor interested overseas asset trusts.

UK residential property

Changes are also proposed for UK residential property. Currently all residential property in the UK is within the charge to IHT if owned by a UK or non-UK domiciled individual. It

is proposed that all residential properties in the UK will be within the charge to IHT where they are held within an overseas structure. This charge will apply whether the overseas structure is held by an individual or trust.

Business Investment Relief

The government will change the rules for the Business Investment Relief scheme from April 2017 to make it easier for non-UK domiciled individuals, who are taxed on the remittance basis, to bring offshore money into the UK for the purpose of investing in UK businesses. The government will continue to consider further improvements to the rules for the scheme to attract more capital investment in UK businesses by non-UK domiciled individuals.

These notes are intended for guidance only. Professional advice should always be obtained.

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Useful Web sites	
Mitchells Roberton, Solicitors, Scotland Companies House	www.mitchells-roberton.co.uk www.companies-house.gov.uk
BIS	www.bis.gov.uk
Health & Safety Executive	www.hse.gov.uk
Information Commissioner	www.ico.gov.uk
Intellectual Property Office	www.ipo.gov.uk
Land Registry (England & Wales) Land Register of Scotland	www.landregistry.gov.uk www.ros.gov.uk
Office of Fair Trading	www.oft.gov.uk
Stamp Duties Revenue Scotland Scottish Government Scottish Parliament	www.hmrc.gov.uk www.revenue.scot www.scotland.gov.uk www.scottish.parliament.uk