Setting up a business in the UK

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HW Fisher & Company

CHARTERED ACCOUNTANTS

Overseas companies that establish a business in the UK are usually pleasantly surprised at the ease of the process. The UK is a pro-business environment and the administration and complexity involved in establishing a UK business is kept to a minimum, thereby ensuring that the UK continues to attract overseas investment.

There are a number of factors to consider and some pitfalls to avoid to ensure that the process is as straightforward as possible. These include the following matters.

1. **Choosing the legal status of the business.**

   The usual choice is between opening a new UK subsidiary company or creating an establishment of the overseas company through which to trade in the UK (commonly referred to as a "branch").

   In practice, most inward investors choose to operate through a UK subsidiary company rather than a branch. This is due to three main factors:

   - A UK subsidiary company is a separate legal entity to the overseas parent company and is generally viewed as having more substance than a branch. This can be important in terms of the perception of the business by its customers and suppliers.
   - A UK subsidiary company has limited liability and it can therefore be ring-fenced from the overseas parent and any other group companies.
   - A UK subsidiary prepares and files statutory financial statements which are available for public inspection at Companies House. The financial statements relate only to the business of the UK subsidiary. A branch of an overseas company does not prepare its own financial statements but must instead file a copy of the overseas company's financial statements at Companies House, which are available for public inspection. As a result, considerably more financial information about the overseas company becomes publically available in the event that a branch is chosen. It should also be noted that Companies House require the overseas financial statements to be in a specific format, including translation into English if they are prepared in a different language, and the requirements can result in a complex and onerous process having to be undertaken. For these reasons, a UK subsidiary is typically more attractive than a UK branch.

2. **Ensuring compliance with tax laws**

   It will be essential to register the UK business with HM Revenue & Customs (HMRC) for the appropriate taxes. These are likely to include:

   Corporation tax: both a subsidiary company and a branch of an overseas company will be liable to corporation tax on their profits. The entity must register with HMRC within 3 months of commencing trading and file annual corporation tax returns. The corporation tax return must be accompanied by a computation of the taxable profits or losses and the financial statements (those of the UK company for a subsidiary and those of the overseas company for a branch).

   VAT: a business operating in the UK which makes taxable supplies in excess of £77,000 per annum must register for VAT and complete regular (usually quarterly) VAT returns. It is also possible in many instances to register for VAT before the £77,000 threshold is reached which may allow the recovery of VAT incurred by the business at an earlier stage. There are severe penalties for failing to comply with VAT obligations.

   Payroll: when the business takes on employees, it will be necessary to operate a payroll which requires a registration with HMRC.

One of the common pitfalls is where the business engages “consultants”, assuming them to be self-employed and therefore not requiring a payroll. HMRC examines the status of “consultants” very carefully and it is not uncommon to find that HMRC considers a “consultant” to actually be an employee and may then pursue the business for failing to operate a payroll and deduct income tax and National Insurance Contributions (NIC).

3. Maximising tax reliefs.

There are a number of very generous tax reliefs available in the UK, some of which apply more typically to inward investors than to UK groups. One typical relief that is often overlooked applies when employees from the overseas parent company are seconded to the UK entity for a short period (up to 2 years). The seconded employee can be provided with certain benefits by the UK business which are not subject to UK tax whereas, for all other employees, they would represent a taxable benefit. For instance, the UK business could pay all of the rent on living accommodation relating to the seconded employee and this would not be taxable income for the employee. This can greatly reduce the costs of seconding an employee to the UK.

4. Funding the UK business.

This is generally only an issue for subsidiary companies as branches are not separate legal entities from the overseas company.

Typically, UK companies are funded by way of either equity (share capital) or debt (shareholder loans or external borrowings). There are anti-avoidance rules to prevent there being an uncommercial level of interest bearing debt compared to equity. It is therefore vital that professional advice is sought to determine the most appropriate method of funding the UK subsidiary.

It should also be noted that the UK company law does not formally recognise the concept of capital contributions and this can lead to difficulties with HMRC. A capital contribution remains possible, but great care is needed to ensure that it is not treated as a loan.

5. Repatriation of profits.

It is essential to consider from the outset how profits of the UK business will be repatriated to the overseas parent. The UK has an extensive network of double tax treaties which can reduce or avoid withholding tax, and the UK also benefits from EU laws such as the Parent-Subsidiary Directive. With careful structuring, profits can usually be repatriated with little or no withholding tax being applied. However, advance clearance is often needed from HMRC and this should therefore be considered at the earliest opportunity.

6. Attracting the best talent.

The UK has flexible employment laws and this provides a very fluid labour market. It is therefore important to understand the labour market and the expectations of employees if your UK business is to be able to attract the best talent.

This may include identifying the expected benefits in kind (such as private medical insurance), salary expectations and other incentives such as employee share schemes. There are various employee share schemes, some of which are tax advantageous, and these can be a major factor in attracting the best talent to join the UK business rather than a competitor. However, the share schemes can be complex and professional advice is essential.

In summary, the UK is a highly attractive business environment. A UK business can be established swiftly and at very competitive cost but obtaining the appropriate professional advice at an early stage is key to a successful entry into the UK.

HW Fisher & Company is a leading provider of professional services in the UK, and one of the 25 largest accountancy practices in the country. We have extensive experience of assisting overseas businesses to establish their UK operations, providing tax, accounting and commercial advice to help determine the best structure for the UK business. Our services extend to:

- assisting with the establishment of the UK business entity;
- operating the UK payroll;
- monthly accounting (against budget and group reporting);
- online accounting system with no upfront costs;
- human resources advice and administration;
- expatriate tax advice;
- ongoing tax and accounting compliance and advice;
- financial services such as general insurance, life insurance, pensions, private health insurance;
- help finding accommodation and office premises; and
- support with banking arrangements.

For companies with ambitious plans, we also provide expert corporate finance advice, and can assist with strategic planning, mergers and acquisitions, and stock market flotations.

If you are thinking of setting up an operation in the UK, or if you have already done so, please contact one of our Inward Investment team.

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