

united kingdom

STRINGER SAUL

Stringer Saul

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Stringer Saul was founded in 1977. The firm currently has 26 fee earners. For the last 16 years Stringer Saul has primarily acted for high tech, "IP rich" clients particularly in the pharmaceutical and biotech sector and natural resources companies - from data mining to mineral extraction! However, we recognize that such clients need far more than just advice in their specialist areas and thus we have built up other key practice disciplines around the needs of our clients. Consequently, we offer a broad-based commercial law capability, together with highly specialist legal and commercial expertise in certain industry sectors (see below).

Practice Areas

The principal practice areas of the firm are as follows:

- Corporate Finance
- Company Law
- Intellectual Property
- Information Technology including e-commerce
- Employment
- Commercial Law
- Commercial Property
- Commercial Litigation and ADR
- Tax

Industry Sectors

Our particular industry specialties are:

- Pharmaceuticals and Biotechnology
- Natural Resources
- Publishing
- Retailing

We have very strong reputations in these fields as evidenced by our listings in the Legal 500 for work in the Alternative Investment Market ("AIM"), IP: Patent Litigation, Pharmaceuticals & Biotechnology and Publishing.

The Culture of Stringer Saul

The key points that make up Stringer Saul's unique culture are:

- Collaboration between partners in working for and developing clients
- Establishment of long term and broadly based client relationships
- A healthy work/life balance
- Team working
- Friendly and co-operative atmosphere

LEGAL SECTORS

Corporate Finance and Company Law

Our corporate finance work covers all types of financing and corporate transactions including admissions to AIM and the Official List, OFEX transactions, public and private equity fundraisings, business sales and purchases, company mergers reconstructions and schemes of arrangement corporate governance and regulatory advice, Financial Services and Markets Act compliance, investment agreements, joint ventures and other equity participations, management buy outs and buy-ins, public and private company acquisitions and disposals, debt and equity financings, secured bank lending, capital reductions and share buy-ins and royalty stream acquisition funding. As can be seen from the list of representative transactions on pages 9-11 many of our corporate finance matters are for clients in the pharmaceutical and biotechnology, publishing and mining and natural resources sectors.

In 2003, June Paddock, Head of the Corporate Department, saw her book on the topical issue of Directors' Remuneration published by Tolley Practical Guides.

Intellectual Property

Stringer Saul has built its practice around IP-rich clients and advises on both contentious and non-contentious IP matters across the whole range of intellectual property rights (patents, copyright, trade marks, design rights, confidential information, passing-off and domain names).

Stringer Saul also offers its brand clearance, registration, management and enforcement service under the brand.

Information Technology Including E-Commerce

We have in-depth knowledge and experience of IT work including software licensing and support and maintenance agreements, bespoke software development agreements, agreements with ISPs, advice regarding linking and deep linking, DRM, web site compliance including an audit facility, privacy

policies and terms of use, Data Protection (audit, registration and compliance) and distance selling.

Employment

Almost every one of our clients employs a workforce and we have therefore developed a full service employment department to assist on all employment law related matters. Work undertaken includes service contracts, policies, handbooks, consultancy agreements, compliance audits, reorganizations and redundancies, disciplinary matters, maternity/paternity leave, whistle blowing, Data Protection, race/sex/disability discrimination, dismissals and exit strategies for both employer and employee, employment benefit and share incentive schemes, litigation in the High Court, County Court and Employment Tribunal, taxation issues, TUPE/contracting out issues, restrictive covenant issues.

General Commercial

In addition to the specialist advice we provide to particular industries, Stringer Saul also provides advice on general commercial matters and complex commercial transactions including purchase and installation of complicated equipment, the establishment of LLPs, the preparation of agreements (such as LLP members' agreements and/or agreements for commercial agents, distribution and the leasing of equipment), advertising codes, sales of goods, consumer credit, and money transfer licenses.

Competition Law

Competition law has a significant impact on a number of agreements we prepare, particularly those for our clients in the pharmaceutical industry. We therefore provide day-to-day advice on the impact of competition law on vertical and horizontal agreements, pricing policies, misuses of dominant positions in the market, mergers and acquisitions and joint ventures. We also advise on the competition law implications of merger proposals and handle any necessary discussions with the OFT and deal with investigations under the Competition Act and the Enterprise Act.

Commercial Property

Stringer Saul acts for investors, traders, developers, and founders in both the commercial and residential property sectors. We also act for a wide variety of occupiers of both residential and commercial property with particular strength in the retail, leisure and pharmaceutical sectors. The property group has experience in all the areas expected of a modern, commercial property practice including: acquisitions and disposals of all kinds, ranging from large, mixed investment portfolios to single units; taking and granting leases; management of leasehold investments; freehold and leasehold conveyancing; site assembly; development agreements; planning; funding agreements; property requirements in corporate funding; secured lending; estate conveyancing and property disputes. The group works closely with the firm's tax partner on all aspects of property tax planning.

Commercial Litigation and ADR

Stringer Saul offers a comprehensive dispute resolution service and is experienced in international and domestic arbitration, high court litigation, mediation, expert determination, mini trial and adjudication procedures as well as mediation. Members of the team have acted for companies based in over 25 countries around the world, including a number of global corporations. Specialist areas of expertise include breach of contract, negligence, intellectual property, construction, property, defamation, banking, pensions claims, insolvency and other Companies Court applications. Cases handled include judicial review, a claim before the European Court, the Privy Council and various specialist tribunals.

Tax

Stringer Saul is fortunate to have as one of its partners a highly regarded tax expert. His reputation is such that many of his clients are themselves tax advisers and his expertise is rare in that it extends to an in depth knowledge of all the principal taxes. We are thus able to offer valuable strategic planning advice for our larger commercial and corporate transactions, advice to high net worth individuals and assistance in the resolution of tax disputes. Recent

matters include the structuring of the offshore interests of a UK property company and its shareholders in a US\$350m acquisition of a number of UK properties; advising the foreign branch of a bank on the VAT aspects of its UK operations; advice on a stamp duty savings scheme for the purchase of a hotel; the establishment of share option schemes for a number of companies; advice on double tax treaties for a number of UK domiciled and non-domiciled individuals and their investments; advice on all tax aspects of employment and on tax investigations.

International Co-Ordination

We have many good contacts with overseas lawyers and are used to working on international projects and coordinating advice from overseas jurisdictions. Languages in which our partners and qualified staff are fluent or have a good working knowledge include French, Portuguese, Russian, German, Hebrew and Greek.

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Framework

UK corporate law is based on both common law and statute. The principal legislation relevant to companies is the Companies Act 1985. There are a number of other statutes to be considered depending on the activity the company wishes to follow. Although the provisions are similar in the constituent parts of the UK (England and Wales, Scotland and Northern Ireland), there are some differences and what follows applies specifically to England and Wales.

Types of Business Structure

The first question to be considered by anyone wishing to establish a business operation in the UK is the type of structure to be used.

Although the corporate structure is the one which is most widely used, there are a variety of other structures available to overseas investors including setting up a branch or place of business of an overseas company, a partnership or joint venture or a limited liability partnership.

Overseas companies can register as a branch or as a place of business. A branch is part of an overseas limited company organized to conduct business through local representatives in the UK. A place of business is for companies who cannot register as a branch, they are not limited companies or their activities in the UK are not sufficient to define it as a branch (for example if the activity is simply a representative office).

Types of Companies

There are different types of corporate structure, which can be used under UK law. The most common structure used is a private company limited by shares. Companies can be either public, which means that they can offer their shares for public subscription or private, which means that they are not allowed to offer

their shares to the public. A private company bears the suffix “Limited” or “Ltd” and a public company bears the suffix “PLC”. Other types of corporate structure can be established such as companies limited by guarantee or unlimited companies, but these are not common for trading entities.

Public companies are generally subject to stricter regulations, both under the Companies Act 1985 and, if they are quoted, the regulations and codes of practice applicable to the relevant trading market.

The formation of a company in the UK is easy and a corporate vehicle structured to the relevant needs can be obtained very quickly with a “same day” service being generally available. There are no requirements for local shareholders or directors and no minimum capital rules apply. Certain documents, for example the memorandum and articles of association, which form the company’s constitution, must be filed with the Registrar of Companies to form a company.

The memorandum of association sets out information on the company’s name, objects, share capital and whether the liability of the members is limited or unlimited. The articles of association contain the regulations relating to the internal management of the company covering matters such as the holding of meetings of directors and shareholders, transfer of shares and changes to share capital, appointment and removal of directors and the powers of directors. There is a standard form of articles of association, known as Table A, which many UK private companies follow to some extent.

No government or other permission is required to establish a company, although there is some regulation of the use of business and trading names. Once registered, the name of a company can be changed by special resolution (75% majority) of the shareholders but care must be taken to check that the desired name is available for use by the company.

Liability of Shareholders

Every private company must have at least one shareholder and every public company must have at least two shareholders. There are no rules relating to residency of shareholders.

In the case of both private and public companies, the liability of the shareholders or members is generally limited to the amount unpaid on the shares held by them. The company and its shareholders are regarded for company law purposes as separate legal persons.

Share Capital

AUTHORIZED SHARE CAPITAL

A company must state its authorized share capital in its memorandum or articles of association. This provides the maximum number of shares which the company can issue. Changes to the authorized share capital can be made by an ordinary (50% majority) resolution of the shareholders.

ISSUED SHARE CAPITAL

The shares which are allotted and issued to shareholders will determine the company’s issued share capital. In order to allot and issue shares, the company’s directors must be authorized, in the articles of association or by shareholder resolution, to issue the relevant shares and also specifically authorized to issue shares where the directors wish to issue shares for cash otherwise than in proportion to existing shareholdings.

Shares must be issued for not less than their nominal value, although shares can be issued as partly paid and the directors can call up the unpaid amount at any time.

Minimum Shareholdings

PRIVATE COMPANIES

There are no minimum requirements for the authorized and issued share capital for private limited companies and the most typical formation is for a company to have an authorized share capital of at least £100 divided into shares of £1. However, it is possible to establish companies with shares of different denominations and in currencies other than sterling.

PUBLIC COMPANIES

Before a public company can carry on business, it must have a minimum share capital of £50,000 of which 25% of the shares must be paid up.

Share Capital Rights

The rights and restrictions attaching to the shares are set out in the company's articles of association. Most companies issue only one class of shares, known as ordinary shares. The rights and restrictions can be changed only by shareholder resolution (75% majority) and, where appropriate, a resolution of the holders of any affected class of shares. Preferred or preference shares would be expected to carry rights (eg to receive dividends, return on capital, etc) ahead of the ordinary shareholders and deferred shares would be expected to carry rights behind those of the ordinary shareholders. In the case of a quoted public company, it would be usual for the shares to be freely transferable and this would be expected to be a requirement of the UK markets. However, this is without prejudice to agreements restricting transfer, eg by way of a lock-up or to comply with the requirements of overseas securities laws.

Shares in UK companies are generally in registered form, although there is an electronic system known as CREST through which shares in quoted companies can generally be traded without paper documentation. When shares are issued or transferred, details of the shareholder are registered in the company's statutory books and a share certificate issued.

Shareholder Meetings

Most powers needed to run the company are vested in the directors by the articles of association, although it is possible to include specific provisions in the articles of association or in a shareholders' agreement requiring shareholder approval in relation to specified matters.

The Companies Act 1985 includes a number of matters which require shareholder approval. In the case of a company with few shareholders or which is a wholly-owned subsidiary, shareholder approval can be obtained by written resolution, or otherwise by the shareholders in a general meeting.

Shareholder meetings require a prior period of notice to shareholders of not less than 14 days in the case of an ordinary resolution (50% majority) and 21 days in the case of a special resolution (75% majority) or an annual general meeting. Where not less than 95% of the shareholders agree, however, these requirements can be dispensed with and the meeting (other than an annual general meeting) held on short notice. In the case of an annual general meeting, all the shareholders must agree to it being held on short notice.

Matters reserved to the shareholders by statute include authorizations in relation to share capital issues, certain categories of related party transactions, amendments to the company's objects clause (ie the corporate purpose) and articles of association and the decision to liquidate the company. If a company wishes to reduce its share capital then it must be authorized to do so by its articles of association and a specific procedure must be followed, designed to protect creditors, which requires shareholder approval as well as the sanction of the court.

A general meeting of shareholders, known as the annual general meeting, must be held each year at which it is usual to present the accounts, appoint auditors, deal with dividends and elect any directors who have been appointed since the last annual meeting.

Directors and Officers

APPOINTMENT AND REMOVAL

A company may, if its articles of association permit, have only one director. If this is the case then the company secretary must be someone else. Where there is more than one director, then a person who is a director may also be the secretary.

The rights to appoint directors will be contained in the company's articles of association. Any person proposing to act must sign a form of consent and provide specified information to the Registrar of Companies. It is usual for the shareholders to have the right to appoint directors and for the directors to be able to fill any vacancy on the board subject to the right of shareholders to confirm

the appointment at the next annual general meeting. Similarly, the articles of association would set out the circumstances in which a director can be removed from office and there is also a statutory right, subject to compliance with certain procedures, for shareholders, by simple majority, to remove any director from office regardless of any agreement to the contrary in place with the director.

It should be noted that the office of director is quite separate as a matter of English law from the director's position (in the case of executive directors) as an employee and accordingly, the removal from office of a director is without prejudice to the director's rights under his or her contract of employment.

DIRECTORS' DUTIES

Directors have fiduciary duties to act in the best interests of the company and its shareholders and with reasonable care, not to act for any improper purpose nor for their personal gain. The rules relating to these matters have evolved over a number of years and a statutory code setting out these duties is currently being proposed. The articles of association normally make provision for directors not to be allowed to participate in decisions relating to any matter in which they have an interest and there is a statutory requirement to declare all interests to the company. In addition, certain types of contract between the company and its directors must be approved in advance by shareholders.

There are a number of statutory requirements and restrictions placed on the powers of directors, which may need to be considered in the light of the proposed activity.

It should also be noted that in certain circumstances, directors may become liable to creditors in an insolvent liquidation and that directors will be personally liable for the information about the company contained in any prospectus issued for the purposes of a fund-raising.

Subject to the rules relating to conflict of interest, there is no general legal requirement for independent directors nor for a supervisory board. However, quoted companies will be expected to comply with best practice in relation to corporate governance, which includes the requirement for independent directors.

Similarly, there are no specific rules on the level of directors' remuneration in private companies and it will usually be a matter for negotiation. In some circumstances, such as payments proposed to be made to a director for loss of office, shareholder approval will be required. In the case of fully listed (quoted) companies, shareholders must approve on an advisory basis, a remuneration report, which sets out all payments and other benefits made to directors.

SECRETARY

In addition to directors, the company must appoint a company secretary who has an administrative function and who should be familiar with filing and other requirements of the Registrar of Companies. Accordingly, it would be usual for the secretary to be based in the UK.

Annual Return

Companies must complete an annual return each year, which gives details of their share capital, shareholders, charges, registered office, directors and secretary.

Registered Office

A company needs to file details of its registered office in England and Wales with the Registrar of Companies and any official notifications will be sent to that address. The full name of the company must appear at its registered office and business premises. Any change to the registered office can be made by simple board resolution and must be notified to the Registrar of Companies.

Company's Notepaper

All business stationery must show the company's full name and number and registered office. The names of the directors need not be included, but if the name of any director appears then so must the names of all the other directors.

Accounts and Auditors

Subject to exemptions for small companies, every company must appoint a firm of auditors to audit and report on its accounts for each financial period. Companies are also required to file accounts and a directors' report with the Registrar of Companies, and these documents must comply with the requirements of the Companies Act 1985 and show a true and fair view of the financial position of the company.

The Companies Act 1985 lays down detailed rules as to the form and content of accounts and time limits for their delivery to the Registrar of Companies.

Other Filings

Companies must also notify the Registrar of Companies whenever there is a change of share capital, directors and officers and whenever the company creates a charge over any part of its assets. In the case of a charge, the required information must be filed within 21 days of its creation otherwise it will be void against a creditor or liquidator.

Statutory Books

Every UK company must maintain a statutory register giving details of its shareholders, directors, secretary, any issues and transfers of shares as well as charge-holders. There should also be a minute book containing minutes of all meetings of directors and shareholders.

Methods of Raising Finance

The appropriate method of raising finance will depend on the nature, size and stature of the company. Funds can be raised by way of private equity, a stock exchange listing or loan finance, and within these broad categories there are a number of variations.

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Corporate Residence

A company is regarded as tax resident in the UK if it is incorporated in the UK or if its central control and management is exercised in the UK. A company incorporated in the UK can also be treated as not resident in the UK under an applicable double tax treaty. It is possible for a company to be dually resident.

Rates of Corporation Tax

Corporation tax is chargeable on a company's worldwide income and chargeable gains. The rates for the financial year ended 31 March 2005 are as follows:

Band of Taxable Profit	%
£0-£10,000	0
£10,001-£50,000	23.75
£50,001-£300,000	19
£300,001-£1,500,000	32.75
over £1,500,000	30

Non-Resident Companies

Companies that are not resident in the UK are only assessable to corporation tax if they carry on a trade in the UK through a permanent establishment in the UK and on all profits wherever arising which are attributable to that permanent establishment. The profits attributable to the permanent establishment are trading income, income from property held by the establishment and chargeable gains. The profits for corporation tax purposes are then determined as if the establishment were a distinct and separate enterprise, dealing wholly

independently with the non-resident company and assuming that it has the same credit rating as the non-resident company, and that its equity and loan capital are reasonable in the context of its independence.

Transfer Pricing

Transfer pricing rules apply to both international and domestic transactions. The basic rule may apply for transactions if an actual provision has been made or imposed between any two affected persons and one of them was directly or indirectly participating in the management, control or capital of the other or a third person was participating in the management, control or capital of both the affected persons. The basic rule requires the actual provision to be compared to an arm's length provision (which would have been made between independent enterprises) and, if the actual provision confers a potential UK tax advantage on one or both the affected persons, an adjustment (to bring the profits up to what they would have been if the arms' length provisions had applied) is to be made to the taxable profits of the advantaged persons.

Controlled Foreign Companies

There are controlled foreign companies rules which apply to non-UK resident companies controlled by UK residents and be subject to a tax charge which is less than 75% of the corresponding tax charge in the UK. The rules are aimed at "money-box" companies, "dividend trap" companies etc. There are a number of defenses to an assessment one of which is an acceptable distribution policy which in essence is remitting 90% of the income to the UK.

Group Taxation

In groups of companies where subsidiaries are owned as to 75% of the ordinary share capital beneficially together with 75% entitlement to income and assets it is possible to surrender current year trading losses and other amounts eligible for group relief to a profit making company within the same group. In many cases a payment for group relief is made by the claimant company to the surrendering company as consideration for the surrender. Consortium group relief is also available where a company is owned by a consortium where three

quarters or more of the ordinary share capital is beneficially owned between them by companies of which none owns beneficially less than 5% of that capital. Both companies must be UK tax resident or non-resident companies carrying on a trade through a permanent establishment.

Tax Depreciation (Capital Allowances)

Writing down allowances of 25% on a reducing balance basis are available on plant and machinery and 6% on a reducing balance for long life plant and machinery. For small and medium businesses an allowance of 50% and 40% respectively are available. Industrial buildings, hotels and agricultural holdings and intangible assets for companies are written down on a 4% straight line basis. Research and development allowances are currently 100% as are enterprise zone buildings, certain energy saving technologies, water efficient technology and the renovation/conversion of flats over shops.

Inter-company Domestic Dividends

Corporation tax is not normally chargeable on dividends and other distributions of a company resident in the UK, nor are such dividends or distributions taken into account in computing income for corporation tax.

Substantial Shareholding Exemption

Capital gains arising from disposals of trading companies in which a trading company has at least a 10% shareholding held for at least one year are in certain circumstances free of corporation tax.

Tax Incentives

Tax incentives are available for investment in unquoted trading companies providing income tax relief and capital gains tax relief, and for reliefs in economically disadvantaged areas and for small and medium sized businesses.

Corporation Tax Administration

Corporation Tax is generally payable nine months after the end of the accounting period but some companies are required to pay quarterly instalments in the 7th, 10th, 13th and 16th months after the commencement of the accounting period.

Double Tax Treaties

The UK has a large number of double tax treaties a list of which is provided. Relief from double taxation can be by way of treaty, by unilateral relief or by deduction.

OTHER TAXES

Stamp Taxes

There are currently three stamp tax regimes in the UK as follows. Stamp duty land tax is a transfer tax charged on transfers of all UK land transactions of whatever nature (subject to exemptions) regardless of the residence of the parties. For transfers of freeholds the rate of duty is 4% for transactions in excess of £500,000 with reduced rates for transfers below this threshold. Leases are generally chargeable at 1% of the net present value of the rentals under the lease where the net present value exceeds £60,000 in the case of residential property and £150,000 in the case of non-residential. Stamp duty reserve tax is a transfer tax charged on agreements to transfer UK shares and securities and on foreign shares and securities which retain a register of shareholders in the UK. The rate of charge is generally 1/2% of the consideration. Stamp duty is payable on the transfer of UK shares and securities at the rate of 1/2% and cancels any stamp duty reserve tax which may be payable. Stamp duty is not chargeable on transfers of other assets. There is no capital duty in the UK.

Value-Added Tax

Value-added tax (VAT) is a tax charged on the supply of goods and services provided for consideration in the UK. The qualifying level of turn-over is £58,000 for the year beginning 1 April 2004. VAT is also charged on the importation of goods from non-EU countries into the UK, receipt of some international services in the UK, and acquisition in the UK of goods from other EU Member States. There are three rates of VAT in the UK; 0% in general applies to various foodstuffs, public transport, exports and sales of newly built private residences; 5% applies to some qualifying uses of fuel and power; whilst 17.5% is the standard rate. Insurance, education, finance and health services are all exempt from VAT, as is land although it is possible to elect to charge VAT on supplies of land to recover any input VAT.

National Insurance Contributions

Employer's national insurance contributions are payable at the rate of 12.8% on earnings in excess of £91 per week. Employees national insurance is payable at the rate of 11% for earnings between £91 and £610 per week and at 1% thereafter. For higher paid employees therefore their highest rate of tax is 41% being 40% income tax and 1% employees national insurance.

INDIVIDUAL TAX

Residence and Domicile

An individual's liability to tax in the UK is determined by his residence, ordinary residence and domicile status. The terms "resident", "ordinarily resident" and "domiciled" are not defined in UK legislation and so it is necessary to rely on case law and the practice of the Inland Revenue. The following is the broad position. An individual is treated as being resident in the UK for any fiscal year (6th April in one year to 5th April in the next year) if he is present in the UK for 183 or more days; or he visits the UK regularly and after four years his visits average 91 days or more; or he comes to the UK with the intention of making regular visits; or his home has been abroad and he intends to come to live in the

UK permanently, or to remain in the UK for three years or more. Ordinary Residence is roughly equivalent to habitual residence, and an individual is treated as being ordinarily resident in the UK from the date of arrival, if it is clear that he intends to remain in the UK for three years or more; or from the beginning of the tax year in which a decision is made to remain in the UK for three years or more; or from the beginning of the fifth year, if he visits the UK regularly, and after four years his visits average 91 days or more. Unlike residence, it is not possible to have more than one domicile at any one time, and it is not the same as nationality. Essentially, it is the place where an individual has his permanent home, and has the strongest cultural, economic and family links, and where he ultimately intends to reside. Domicile can have a very significant effect on UK tax liabilities, as it enables resident, but non-UK domiciled individuals, to legally avoid UK tax on income and capital gains arising overseas if they are not remitted to the UK. In addition, subject to the special residence rules, non-UK domiciled individuals are not chargeable to inheritance tax on non-UK situated assets. UK domiciled individuals are however assessable on their worldwide income.

Individual Tax Rates

Band of Taxable Income	%
£1-£2,020	10
£2,021-£31,400	22 ⁽¹⁾
over £31,400	40 ⁽²⁾

¹Dividends are taxed at 10%. Other savings income is taxed at 20%

²Dividends are taxed at 32.5%

There are a number of tax allowances available which are dependent on marital status, age, and for the blind.

Inheritance Tax

Inheritance tax is due on death and on certain lifetime gifts. It is charged at the rate of 40% on transfers in excess of £263,000. Inter spouse transfers are free

of tax provided either both are domiciled or non-domiciled in the UK for inheritance tax purposes. Where the transferee spouse is non-domiciled but the transferor spouse is domiciled there is an exemption limit of £55,000. Certain lifetime transfers are tax free if the donor lives seven years.

Capital Gains Tax

This tax is charged on the disposals and deemed disposals of assets and can apply to individuals, trusts and companies. There are exemptions of £8,200 for individuals ie personal representatives, and £4,100 for trusts. The rates of tax for individuals vary between 10% and 40% dependent on the level of income and for personal representatives and trusts 40%. Tapering relief is available on business and non business assets dependent on the number of years the asset has been held. Business assets held for two years are charged at 25% of the gain accruing, ie for a higher rate tax payer 10% (being 25% of 40%) and for non business assets a much reduced relief is obtained after three years.

DOUBLE TAX TREATIES

Treaty and Non Treaty Withholding Taxes

The rates in the table below reflect the lower of the treaty rate and the rate under domestic tax law. The table is for general guidance only.

PAYMENTS BY UK COMPANIES OF			
	Dividends (a)	Interest %	Royalties %
Non treaty countries	-	20	22
Treaty countries			
Antigua and Barbuda	-	20 (s)	0
Argentina	-	0/12 (i)	3/5/10/15 (j)
Australia	-	10	10
Austria	-	0	0/10 (o)
Azerbaijan (c)	-	10	5/10 (b)
Bangladesh	-	0/7.5/10 (q)	10

Barbados	-	15	0
Belarus (c)	-	0	0
Belgium	*	15	0
Belize	-	20 (s)	0
Bolivia	-	15	15
Botswana	-	0/15 (r)	15
Brunei	-	20 (s)	0
Bulgaria	-	0	0
Canada	-	10	0/10 (b)
China, PR	-	0/10 (r)	7/10 (b)
Croatia (d)	-	10	10
Cyprus	-	10	0
Czech Republic (e)	-	0	0
Denmark	-	0	0
Egypt	-	0/15 (r)	15
Estonia (c)	-	10	5/10 (b)
Falkland Islands	-	0	0
Fiji	-	10	0/15 (r)
Finland	-	0	0
France	-	0	0
Gambia	-	0/15 (r)	12.5
Germany	-	0	0
Ghana	-	12.5	12.5
Greece	-	0	0
Grenada	-	20 (s)	0
Guernsey	-	20 (s)	22 (s)
Guyana	-	15	10
Hungary	-	0	0
Iceland, Rep of	-	0	0
India	-	0/15 (p)	10/15 (t)
Indonesia	-	0/15 (p)	10
Ireland	-	0	0
Isle of Man	-	20 (s)	22 (s)
Israel	-	15	0
Italy	*	10	8
Ivory Coast	-	15	10

Jamaica	-	0/12.5 (r)	10
Japan	-	10	10
Jersey	-	20 (s)	22 (s)
Kazakhstan (c)	-	0/20 (r)	10
Kenya	-	0/15 (r)	15
Kiribati	-	20 (s)	0
Korea, Rep of	-	0/10 (r)	2/10 (f)
Kuwait	-	0	10
Latvia (c)	-	0/10 (p)	5/10 (g)
Lesotho	-	10	10
Lithuania	-	10	5/10
Luxembourg	*	0	5
Macedonia (d)	-	10	10
Malawi	-	0/25 (u)	0/25 (u)
Malaysia	-	10	8
Malta	-	10	10
Mauritius	-	0/20 (p)	15
Mexico	-	15	10
Mongolia	-	0/7/10 (n)	5
Montserrat	-	20 (s)	0
Morocco	-	10	10
Myanmar (Burma)	-	20	0
Namibia	-	20 (s)	0/5 (b)
Netherlands	*	0	0
New Zealand	-	0/10 (r)	10
Nigeria	-	12.5	12.5
Norway	-	0	0
Oman	-	0	0
Pakistan	-	15	12.5
Papua New Guinea	-	10	10
Philippines	-	0/10/15 (m)	15/22 (l)
Poland	-	0	10
Portugal	-	10	5
Romania	-	10	10/15 (b)
Russian Federation (c)	-	0	0
St Kitts and Nevis	-	20 (s)	0

Sierra Leone	-	20 (s)	0
Singapore	-	10	10
Slovak Republic (e)	-	0	0
Solomon Islands	-	20 (s)	0
Slovenia (d)	-	10	10
South Africa	-	10	0
Spain	-	12	10
Sri Lanka	-	0/10 (k)	0/10
Sudan	-	15	10
Swaziland	-	20 (s)	0
Sweden	*	0	0
Switzerland	*	0	0
Thailand	-	0/20 (p)	5/15 (b)
Trinidad and Tobago	-	0/10 (r)	0/10 (b)
Tunisia	-	10/12 (k)	15
Turkey	-	15	10
Tuvalu	-	20 (s)	0
Uganda	-	20 (s)	15
Ukraine (c)	-	0	0
USSR (c)	-	0	0
United States	*	0	0
Uzbekistan (c)	-	5	5
Venezuela	-	0/5 (p)	5/7 (h)
Vietnam	-	10	10
Yugoslavia, Fed Rep of (d)	-	10	10
Zambia	-	0/10 (q)	10

Notes

(a) A foreign shareholder may claim payment of part or all the tax credit that would have been available to a UK individual if provided for in a relevant double tax treaty. However, after 5 April 1999 in practice there are no longer tax credit refunds due under the dividend article of most tax treaties concluded by the UK. This is because of changes under UK domestic law. There may however be a small "half credit" refund due to companies in countries marked with *, provided they control 10% or more of the share capital of a UK company.

(b) The lower rate applies to copyright royalties.

(c) The USSR treaty applies to all of the republics of the former USSR other than Azerbaijan, Belarus, Estonia, Kazakhstan, Latvia, the Russian Federation, Ukraine, and Uzbekistan, which have concluded separate tax treaties with the UK. The USSR treaty ceased to apply in April 2002 to Armenia, Georgia (talks expected to be completed in 2005) and Kyrgyzstan, but applies still to Tajikistan and Turkmenistan.

(d) The treaty with the former Yugoslavia now applies, from a UK point of view, to the independent states that previously comprised Yugoslavia. A new convention for Macedonia was discussed in July 2004.

(e) The treaty with former Czechoslovakia applies to both the Czech Republic and the Slovak Republic.

(f) 2% - payments for the use of, or right to use, industrial, commercial or scientific equipment. 10% - other royalties.

(g) 5% - payments for the use of industrial, commercial or scientific equipment. 10% - other royalties.

(h) 5% - royalties for patents, trademarks or processes as well as royalties for know-how concerning industrial, commercial or scientific experience. 7% - royalties for copyrights of literary, artistic or scientific works.

(i) The standard rate of withholding tax on interest is 12%. However, interest is exempted from withholding tax in certain specified circumstances, including where the state is the payer of interest or where a loan is insured or guaranteed by a state or on certain preferential loans or in connection with arrangements involving industrial, commercial or scientific equipment.

(j) 3% - royalties for the right to use news, trademarks, designs, or the right to use industrial or scientific equipment. 5% - royalties for copyrights of artistic works. 10% - royalties for patents. 15% - other royalties.

(k) The lower rate applies to interest paid to banks and other financial institutions.

(l) The lower rate applies where the paying enterprise is registered with the Philippines Board of Investments and engaged in preferred areas of activity.

(m) The rate is nil interest paid to certain government bodies. The 10% rate applies to interest on listed bonds.

(n) The rate is nil on interest on loans insured by the government; 7% on bank loan interest.

(o) The higher rate applies if paid to a company controlling more than half of the voting power of the paying company.

(p) The rate is nil on interest on loans made, guaranteed or insured by certain government bodies, and on interest paid to banks and other financial institutions.

(q) The rate is nil on interest paid to certain government bodies and 7.5% on interest paid to banks and other financial institutions.

(r) The rate is nil on interest on loans made, guaranteed or insured by certain governments' bodies.

(s) The domestic rate; there is no reduction under the treaty.

(t) The lower rate applies to royalties for industrial, commercial or scientific equipment.

(u) The rate is 25% if paid by a company controlling more than 50% of the voting power of the paying company.

Additionally, Algeria, Brazil, Cameroon, Ethiopia, Iran, Jordan, Lebanon, Saudi Arabia, and Zaire have signed tax treaties with the UK dealing with international traffic, shipping and air transport. As these treaties do not have articles covering dividends, interest or royalties, payments made to them are subject to withholding tax at the non treaty countries' rates.

united kingdom | foreign investment

Foreign investment is much encouraged in the UK and there are very few provisions which distinguish between UK and overseas investors.

Registration with Government, Authorities and Permits

There are no requirements for overseas investors in the UK to register with the Government or obtain any authorization for the making of any investments nor are there any restrictions on the foreign ownership of UK-incorporated companies. There are no exchange controls on investment into or out of the UK or the inward or outward movement of funds from the UK.

Specific authorizations may be required to carry on certain types of business in the UK, but there is no difference in the application of these rules to UK and overseas investors.

Transfer of Dividends, Interest and Royalties Abroad

There are no restrictions in the UK on the transfer of dividends, interest and royalties abroad, but withholding taxes are sometimes applicable and consent may have to be obtained to make such payments gross.

Repatriation Procedures and Restrictions

There are no repatriation restrictions or procedures in the UK.

Foreign Personnel (Permits, etc)

To work in the UK, nationals of other European Economic Area (EEA) countries need not obtain work permits, and must be allowed access to employment on equal terms with British nationals, except for government jobs. An EEA national

who accepts employment automatically receives a residence permit issued by the Home Office.

Non-EEA nationals must have a work permit issued by the Department for Education and Employment. The prospective employer must obtain it for a named overseas worker and for a specific job. Permits are available for an initial 12 months and can then be renewed for up to three more years. Companies wishing to employ foreign workers are advised to apply for permits in advance. The proposed salary must not be below the rate prevailing in the UK, and there must be no EEA resident available to fill the post. Employers recruiting for jobs on a list of 'shortage occupations' maintained and regularly reviewed by the Home Office, are not required to advertise in the UK before recruiting abroad.

There is also a scheme (Highly Skilled Migrant program - "HSMP") which enables highly qualified individuals to come to the UK for work without having a prior offer of employment. These applications are made by the individual, not the employer.

Investors wishing to set up in business in the UK can, in addition to HSMP applications, make an application to enter the UK as a 'business person' or under 'the investor category' provided they are able to meet the various eligibility and investment requirements. Furthermore, a senior employee of a company based outside the EEA which does not have a UK subsidiary can apply to act as a sole representative (someone who will establish a wholly owned subsidiary or register a branch in the UK for an overseas parent company).

Grants

It should also be noted that there are a number of grants available, particularly in relation to certain regions of the UK and in certain sectors of business activity.

united kingdom | **labor law**

Framework

Employment law in the UK is based on both common law and statute. Although the employment law regime is not as onerous for employers as in many other European countries, in recent years there has been a significant increase in employment regulation, much of it to implement EU Directives.

Employment Contracts

An employer is required to provide an employee with a written statement of specified employment particulars within two months of the start of their employment. This includes details of the disciplinary, dismissal and grievance procedures that apply to his employment. Any changes to the statement must be notified within one month of the date of the change.

Cost of Dismissal and Wrongful Dismissal

There are two issues to consider when dismissing an employee: contractual rights and statutory rights.

CONTRACTUAL RIGHTS

If an employee's contract of employment is terminated in breach of that contract, the employee may be entitled to claim damages for wrongful dismissal or breach of contract. The amount of damages claimed will be the sum that would put the employee in the position he would have been in had the contract been terminated correctly. Usually, this is the amount of salary and benefits to which the employee would have been entitled during the notice period or until the end of any fixed term contract. This entitlement to damages is subject to the employee's duty to mitigate the losses he suffers by finding alternative employment.

STATUTORY RIGHTS

Statute provides for minimum periods of notice which are one week's notice for each complete year of service by the employee up to a maximum of 12 weeks' notice for 12 years of employment. However, usually the contract provides for a period of notice which can be more generous (but not less generous) than the statutory minimum.

Claims for breach of contract may be brought either in the High Court or the County Court or, for claims limited to £25,000 in an Employment Tribunal. It is significant to note that for claims in the Employment Tribunal, each party bears their own costs so costs are not awarded against the unsuccessful party save in exceptional circumstances. This is different from the position in the civil court where costs usually follow the event and may be awarded against the unsuccessful party.

Unfair Dismissal

For employees who have one year's continuous employment with the employer, it is open for such employees to bring a claim for unfair dismissal which claim would be brought in the employment tribunal. It should be noted that certain unfair dismissal claims (for example, dismissal by reason of pregnancy, for whistleblowing, for exercising a statutory right or for trade union membership) do not require a qualifying period of employment to be able to bring a claim.

In order to avoid claims for unfair dismissal, an employer should ensure that employees are only dismissed for a "fair" reason, following a "fair" procedure. The five potentially "fair" reasons for dismissing an employee are conduct, capability (ie competence or on health grounds), redundancy, statutory bar or "some other substantial reason justifying the dismissal of an employee holding the position held by that employee". The procedures to be followed in relation to each category of potentially fair reason for dismissal are slightly different but they all involve consultation with the employee before the dismissal. The Tribunal will also consider whether the employer has acted reasonably in all the circumstances in treating the reason for the dismissal as a sufficient reason for dismissing the employee.

Since October 2004 there are statutory minimum discipline, dismissal and grievance procedures to be followed when dismissing employees. An employer's failure to follow these procedures will result in a finding of automatically unfair dismissal and can result in an increase in the compensation to be awarded to the employee by between 10% and 50%. Even where the statutory minimum procedures are followed, the dismissal can still be unfair unless the employer has followed guidelines set down by ACAS and behaved fairly and reasonably in all circumstances.

If an employee is successful in bringing an unfair dismissal claim, an employment tribunal can order reinstatement, re-engagement or compensation. Compensation is the most common award and comprises the following elements:

- A basic award which is calculated in the same way as a statutory redundancy payment;
- A compensatory award which will be assessed on the basis of the losses suffered by the employee. The maximum award is currently £56,800 (this figure is reviewed annually on 1 February).

Employment Contracts for Directors

The employment contracts for directors are commonly referred to as service agreements and should be approved by the board of directors of the company before they are entered into. They usually contain more onerous provisions specifying the director's duties to the company as well as protection for the company's confidential information, "garden" leave, intellectual property rights, restrictions on activities during employment and possibly post termination restrictive covenants. It is also common for directors to have longer notice periods than other employees. A service agreement usually provides for the director to resign his office on termination of the employment. There is no special regime for employment of directors. However, there are requirements in the Companies Act which limit the period of a director's service contract to less than five years without the prior written consent of the shareholders of the company. There are also special provisions regarding notice and remuneration which apply to directors of UK quoted companies.

Employees' Representatives and Union Representation

COLLECTIVE CONSULTATION WITH EMPLOYEE REPRESENTATIVES

In a situation where 20 or more employees are being dismissed by reason of redundancy within a 90 day period, or where a transfer of a business (or part thereof) is proposed, employers have a statutory duty to carry out collective consultation and to inform (with specified information) and consult with the affected employees either through a trade union (if that is appropriate) or through their own elected representatives. The penalty for non-compliance with this obligation is up to three months' actual pay for each affected employee if an affected employee or his representative brings a successful claim for a protective award in an employment tribunal.

EUROPEAN WORKS COUNCILS

The Information and Consultation Directive is due to take effect in the UK from 5 April 2005. Initially it will only apply to employers with more than 150 staff but it will be extended to cover business with more than 100 staff from 2007 and 50 or more staff from 2008. The Directive will require employers to inform and consult their workforce on an ongoing basis about measures which are proposed which may affect employment prospects and decisions which are likely to lead to substantial changes in the organization such as redundancies or transfers of the business. An employer will have an obligation to enter into negotiations for the establishment of a European Works Council if it receives a valid request from specified proportions of employees.

UNION REPRESENTATION

Almost one in three workers in the UK belongs to a trade union. A trade union is an organization which consists wholly or mainly of workers of one or more description. A trade union's main aim is to reach agreements with employers over the contractual terms under which workers will work.

An employee who is a member of a trade union has rights which include the following in relation to his employer: to be accompanied to a

grievance/disciplinary hearing by a trade union official; not to be refused employment, dismissed or subjected to any detriment by reason of his trade union membership or activities and the right to paid time off work to take part in trade union activities; where a trade union is recognized for collective bargaining purposes, the employer has a duty to consult on training for workers within the bargaining unit.

COLLECTIVE BARGAINING AGREEMENTS

A collective agreement is an agreement or arrangement made by or on behalf of a union and an employer which relates to matters such as terms and conditions of work, termination/suspension of employment, disciplinary matters or allocation of work. In large sectors of industry in the UK, levels of pay and other principal terms are agreed in a collective agreement.

Where a union has been recognized, it can negotiate pay and other terms on behalf of a group (or groups) of workers. This will result in a collective agreement being formed.

The provisions of a collective agreement will be legally enforceable provided the agreement is in writing, and expressly states that the parties intend the agreement to constitute a legally binding agreement between the employer and the union. To be enforceable between the worker and the employer, the collective agreement must be incorporated into the worker's individual terms and conditions of employment. Such provisions will be enforceable between the employer and the worker even if the collective agreement is not legally binding as between the employer and the union.

There are statutory rights in the UK for trade unions to be recognized by employers for collective bargaining purposes, provided various conditions are satisfied. The regime seeks to promote voluntary recognition wherever possible. The recognition procedures are complex and were introduced in the Employment Rights Act 1999. The recognition machinery is contained in The Trade Union and Labor Relations Consolidation Act 2002.

Wages and Other Types of Compensation

The National Minimum Wage Act 1998 specifies a minimum wage for employees over 18. Currently, the rates are as follows:

- For employees over school age but under 18 - £3.00 per hour
- For employees aged 18-21 - £4.10 per hour
- For employees over 22 - £4.85 per hour

These rates are reviewed annually on 1 October.

The requirement to work overtime and additional payment (if any) for overtime worked is something which is usually dealt with by the employee's contract of employment.

Stakeholder Pensions

Employers who have more than five employees and do not operate a qualifying pension scheme, are required under Section 3 of the Welfare Reform and Pensions Act 1999 to designate a stakeholder pension scheme and offer their employees the opportunity to contribute to such a scheme. The obligation is simply to identify a scheme and collect any contributions the employees wish to make and pay them into the scheme. There is no obligation for the employer to contribute to a pension scheme for his employees. Failure to comply with this obligation can render the employer liable to civil penalties.

Insurance Benefits

It is common in the UK for employers to provide their employees with insurance benefits. Probably the most common is private medical insurance. Other benefits which are often provided are life insurance, travel insurance, permanent health insurance and critical illness insurance. Whether or not an employer provides these to employees is a matter for the contract. Where such benefits are provided, the contract should be carefully drafted to ensure that the employer reserves all necessary rights and does not put himself in a position where he is contractually obliged to provide a benefit for which he is not insured.

Employment Regulations

The following is a brief summary of some of the main statutory provisions which employers must be aware of when employing employees in the UK:

WORKING TIME

The Working Time Regulations 1998 impose a limit on employee's working time of an average of 48 hours a week averaged over a 17 week reference period. Individual employees can choose to work longer than this by signing an opt out agreement with their employer. There are also requirements for minimum rest breaks and daily and weekly rest periods. There are special provisions for night work.

HOLIDAY

Employees are entitled to 20 days' paid holiday each year including bank and public holidays under the Working Time Regulations 1998. Employers are free to agree a more generous contractual entitlement and in the UK it is common for bank and public holidays to be given in addition to the minimum 20 days' paid holiday entitlement.

SICK PAY

There is a statutory entitlement to sick pay for up to 28 weeks under the Social Security Contributions and Benefits Act 1992. The current statutory sick pay rate is £66.15 per week. The first three days of any sickness are "waiting days" when no sick pay will be payable. It is open to employers in the UK to agree a more generous contractual sick pay arrangement and it is common practice to do so.

REDUNDANCY

If an employee with two or more years' continuous employment is dismissed by reason of redundancy, he is entitled to receive a statutory redundancy payment from his employer. The amount of the redundancy payment is calculated by reference to the employee's age, length of service and weekly pay (subject to maximum of £280 per week). The maximum redundancy payment is currently £8,400.

DISCRIMINATION

Currently under English law, discrimination on the grounds of sex, race, disability, sexual orientation and religion or belief is unlawful. The Government is proposing to introduce legislation prohibiting discrimination on the grounds of age by December 2006. Compensation for workers who successfully bring discrimination claims against their employers is potentially unlimited and can include a claim for injury to feelings.

PROTECTION FOR PART-TIME AND FIXED TERM EMPLOYEES

It is unlawful for an employer to subject to a detriment or treat part-time or fixed term workers less favorably than full time staff unless such treatment can be objectively justified. A worker whose fixed term contract is successively renewed will be considered a permanent employee after 4 years of continuous employment.

DATA PROTECTION

Employers have a duty to notify their staff as to the personal and sensitive personal data they hold, tell them how it will be processed, obtain their consent to such processing. Such data must be kept securely. Data must be processed in accordance with the provisions of the Data Protection Act 1988 and the various Data Protection Codes issued by the Information Commissioner. Failure to comply carries civil penalties. Workers have the right to request copies of personal data held in relation to them by the employer.

MATERNITY RIGHTS

Maternity leave: all female employees are entitled to 26 weeks' maternity leave regardless of their length of service. Employees with 26 weeks' employment or more are entitled to an additional 26 weeks' maternity leave.

Maternity pay: employees on maternity leave who meet the eligibility requirements are entitled to statutory maternity pay which is pay of up to 90% of the employee's salary for the first six weeks of maternity leave and a maximum

of £102.80 per week for the next 20 weeks. A high percentage of this payment is recoverable by the employer out of his National Insurance contributions.

PATERNITY RIGHTS

Employees with more than 26 weeks' employment may take up to 2 weeks' paternity leave. Employees who take this leave are entitled to all benefits except pay but they are entitled to statutory paternity pay which is currently £102.80 per week.

ADOPTION RIGHTS

The adoption regime provides the same leave and pay rights and requires the same qualification provisions as the maternity provisions. In a situation where there is a joint adoption, one partner is entitled to statutory adoption pay whilst the other has paternity leave entitlements.

PARENTAL LEAVE

Employees with one year's employment can take up to 13 weeks' unpaid leave for each child up to the child's fifth birthday. This right transfers with the employee when he/she changes employer. Statute provides a scheme which allows parental leave to be taken in blocks of one week or more although no more than four weeks in any year. However, employers can agree arrangements that are more generous and in particular which permit leave to be taken in blocks of less than one week.

THE RIGHT TO REQUEST FLEXIBLE WORKING

Workers with children aged up to 6 (or 18 if they are disabled) have the right to request flexible working arrangements from their employer. The employer has an obligation to consider the request and give a reason for any refusal. A refusal to consider a request for flexible working arrangements from a female worker with childcare responsibilities may amount to indirect sex discrimination if it cannot be justified on objective grounds.

TIME OFF TO CARE FOR DEPENDENTS

Employees may take a reasonable amount of unpaid time off to deal with family emergencies.

Health and Safety

An employer is under a common law duty to have regard to the safety of his employees. The employer must provide a safe place of work and safe access thereto, he should take reasonable care that employees are not subjected to unnecessary risks of injury, provide safe systems of work, safe equipment and materials and competent fellow employees. An employer can also be liable at common law for accidents caused by acts of his employees where the employees were acting in the course of their employment. In addition to these common law duties, statutory obligations have been imposed under the Health and Safety at Work Act 1974. The Occupiers' Liability Act 1984 imposes duties on an employer for both his employees and visitors to the premises. Breach of such obligations can result in criminal as well as civil liability.

Contracting and Outsourcing of Work or Services

The transfer of undertakings (Protection of Employment) Regulations 1981 ("TUPE") which implements the EU Acquired Rights Directive protects employees' rights in the event of a transfer of a business or part of a business in which they are working. The TUPE regulations can apply to the transfer of employees under outsourcing arrangements but they do not apply to situations where the shares of a company are sold.

TUPE imposes a duty on the vendor of a business to inform and consult with employee representatives before the transfer takes place. There are potentially significant penalties for failure to adhere to these obligations.

The main effect of the TUPE regulations is that in the event of a transfer of a business as a going concern, the employment rights and obligations of the employees of the business or the part of the business being transferred will be automatically transferred to the new owner of the business who will automatically assume those rights and obligations instead of the vendor.

Any pre or post transfer dismissal in connection with the transfer will be automatically unfair unless it is for an economic, technical or organizational reason which entails changes in the workforce. TUPE also makes it very difficult to change the existing terms and conditions of employment of transferring employees.

Unfortunately, it is not open to contracting parties to agree that the TUPE regulations will not apply. As the obligations which result from a TUPE transfer can be significant, particularly for the purchaser, it is common for business and asset sale agreements in the UK to contain indemnities and other provisions whereby the parties agree the way in which costs and liabilities will be borne.

Social Security

The UK operates a pay as you earn ("PAYE") tax deduction system which must be operated by all employers. There are currently three rates of tax: starting (10%), basic (22%) and higher (40%). These percentages are applied to a portion of an employee's taxable income subdivided into three bands. The PAYE system requires the maintenance of pay and tax records for virtually all employees. Tax deducted by the employer under PAYE must be paid to the Inland Revenue within specified time limits. Employers are required to use certain forms to record pay and tax information and these must be retained for three complete tax years.

In addition employers must deduct National Insurance contributions. There are six different classes of National Insurance contributions. Generally employers must deduct National Insurance contributions on the earnings of the employee - known as employees' National Insurance contributions. In addition, employers must pay National Insurance contributions at 12.8% of the employee's earnings as employer's National Insurance contributions. Again employers have duties to keep records and account to the Inland Revenue within specified time limits.

Benefits provided to employees are also taxable and subject to the deduction of National Insurance contributions. Special rules apply for company cars.

united kingdom | real estate

Types of Ownership

For the purposes of this section, the UK means England, Wales and Northern Ireland but excludes Scotland. Scotland has a different system of land ownership.

A few words about terminology may help. Both the words "land" and "property" mean real estate. The word "premises" may also be used. This has the same meaning as "land" and "property" but is most correctly used to describe land or property included in a lease.

There are three types of ownership in the UK. They are called freehold, leasehold and commonhold.

Freehold is absolute, unlimited ownership. The owner of a freehold has no landlord and can do whatever he likes with his property subject to the general law of the land and subject to any restrictions placed on the property by the owner or any former owner.

Freehold ownership is most common for residential houses, large estates and investment property.

Leasehold ownership is where land is held by one person (called the tenant) from another person (called the landlord) for a limited period of time on the terms of an agreement (called a lease). Most business premises in the UK are occupied under leases. Residential flats (apartments) are also mostly occupied under leases. A tenant under a lease will pay a rent to the landlord. The lease will last for a limited amount of time. The lease document itself will contain rights and obligations both for the landlord and the tenant and numerous restrictions on what the tenant can and cannot do with the property. Modern commercial leases are long, complex documents which require legal advice.

The third form of ownership is commonhold which has been introduced recently. This new system of ownership was designed primarily for blocks of residential flats and other developments with lots of units. At the time of publication, the use of this new system of ownership is very rare.

Land Registry

There is a computerized register of land in the UK maintained by a government agency called the Land Registry. The register is computerized and accessible via the internet. The register is maintained by a number of district land registries located throughout the country. At the moment, not all land in the country is registered but the government is committed to making it so. The government is also committed to introducing within the next three to five years a system whereby land can be transferred electronically.

All registered land has its own "title number" and plan which identifies the land in question. The entries which appear on the register against a particular title number are guaranteed by the state as accurate. There are certain rights and obligations (called overriding interests) which are not noted on the register of title. In theory, such rights and obligations should be apparent by a proper inspection of the land in question or making enquires of the current owner/occupier.

Land which is not registered at the Land Registry is increasingly rare particularly in urban areas.

Transfer

Generally, land can only be transferred by deed. A deed is a document usually prepared by a lawyer which is signed and witnessed and brought into effect in a particular way. This process does not require a notary. In order for a transfer of registered land to be effective, it must be completed by registration at the Land Registry. This cannot be done unless the relevant tax has been paid on the documents. The relevant tax is Stamp Duty Land Tax which is explained below.

Mortgages and Charges

If money is borrowed to assist with the purchase of land in the UK, the lender will invariably take a mortgage or a charge over the land in question. The expressions "mortgage" and "charge" mean the same thing. A commercial mortgage will normally involve two key documents. The first is a loan agreement which can be in the form of a formal agreement or a letter (sometimes called an offer letter or a facility letter). The second document is the mortgage itself which creates the security over the land and is registered at the Land Registry. The mortgage usually incorporates the loan agreement.

The lender who takes a mortgage is called a mortgagee or chargee. The mortgagee's main rights are as follows:-

- to be repaid the loan plus interest and costs.
- if the borrower defaults, to take possession of the mortgaged property and to sell it to repay his loan. It is not always necessary for a mortgagee to obtain a court order before taking possession or selling the mortgaged property.
- to appoint a receiver to manage and if necessary sell the property.
- to prevent a sale of the property if he is not repaid.

In practice, the mortgage or charge is now the only recognized formal, fixed security taken over land in the UK. Businesses may also be asked to provide floating charges in favor of institutional lenders. These charge all the assets of the business but only restrict dealings with those assets if the borrower is in default.

Restrictions on Acquisition

There are no restrictions on foreign ownership of UK property. In practice, it should not be possible to acquire property in the UK or to borrow money on the security of property in the UK without complying with the identification requirements of the money laundering regulations.

Legal Protection for Buyers and Sellers

In general, the law gives no special protection to buyers or sellers of UK property. Those involved in property transactions will invariably use a solicitor to represent their interests. It is the job of the buyer's solicitor to ensure that the property being bought is free from undisclosed restrictions or obligations and that it is validly transferred at the correct price.

Restrictions on Development

UK law prohibits the development of land without planning permission. Development includes changing the use of land or carrying out building, mining or engineering operations on land. A planning permission is a permission given by the planning department of the relevant local authority. The local authority is allowed eight weeks in which to reach a decision on any planning application.

Some types of minor development are permitted without planning permission. For example, minor works and changes of use where the new use is similar to the old use. However, this area is very tightly controlled and professional advice is advisable.

The law also requires that anybody carrying out building works must comply with building regulations and generally obtain a building regulation consent. That is a formal consent from the District Surveyor (a local government officer) who will consider the plans and specifications of any building works before giving consent and inspect the progress of the works at key moments.

All local authorities prepare plans for how they want different parts of their areas to be used and developed. Those plans are available to the public. They will set out areas or zones where the local authority wishes to encourage particular uses (eg shopping, residential or industrial) and discourage other uses. The local government will consider any application for planning permission in the light of these plans so that, for example, applications for industrial development in residential areas will not succeed.

Leases

A lease is the most common way of holding commercial property in the UK. The length of leases will vary depending upon the circumstances and requirements of the parties. There is however a standard which is called an institutional lease. Such a lease would be granted by a major financial institution such as an insurance company, investment trust or property company. Institutions tend to look for longer leases, eg 15 years or more (though terms of 10 years and even 5 years are available). The rent will be subject to review most commonly at 5 yearly intervals. Rent reviews in the UK are almost invariably on an upwards only basis. This means that the terms of the lease guarantee to the landlord that either the rent will go up in line with market rents or it will remain the same even if the market rent has fallen below the existing rent level.

An institutional lease will also be a “clear” lease. This means that the rent the landlord receives will be clear of any deductions to cover the cost of, for example, repairs and maintenance of the building, the supply of services to the building and the cost of insuring the building. All these expenses will be payable by the tenant or (in a building containing a number of tenants), by all the tenants together. These extra payments on top of rent are generally called a “service charge”.

In addition to rent and service charge, there are local taxes to be paid to the local authority which are called business rates. These can be as much as the rent again.

The lease will impose obligations and restrictions on the tenant. The obligation which is most significant from a financial point of view is the obligation to repair, decorate and if necessary re-build or pay towards the cost of rebuilding. In an office block for example the tenant will be responsible for maintaining, repairing and decorating his own property. He will also be responsible through the service charge to contribute towards the cost of repairing and maintaining the building of which his offices form part including all services to the building (eg lifts, air-conditioning and heating plant and systems and so on). It is often the case that these expenses are not capped and if the building and its services are old, the tenant can face very significant extra costs through the service charge.

Some of the other important provisions in a typical commercial lease are as follows:

- restrictions on use
- restrictions on alterations to the property
- restrictions on disposing of the property
- VAT is often payable on the rent of commercial property

Any lease granted for more than 7 years must be registered at the Land Registry.

Tenants of property used for business purposes will normally have statutory rights to remain in the property when the lease comes to an end. They will have to negotiate a new lease and pay a commercial rent but the landlord cannot insist that they vacate unless special circumstances apply. It is also quite common for the statutory rights to be excluded by agreement between the parties.

Stamp Duty Land Tax

Stamp Duty Land Tax (“SDLT”) is a tax payable to the government on land transactions. Any sale of freehold or leasehold land or the grant of a lease at a rent gives rise to SDLT. The tax is payable by the buyer or the tenant. Tax is payable on a sliding scale up to a maximum of 4% of the either capital amount paid by the buyer or the capitalized value of the rent.

VAT

Value added tax is generally not payable on residential land. In some circumstances it is payable on the purchase price of commercial land and it is also often payable on rent and charged to tenants.

Setting Up in Business in the UK

The choices for a business setting up in the UK are:

SERVICED OFFICE

These are usually small offices where office services are supplied as part of the package. The extent of services varies between providers but normally they will include furniture, use of equipment (such as photocopies and fax machines), telephones and telephone answering, conference facilities and secretarial services. The commitment is short term and the cost is relatively high.

SHORT TERM LICENSE

This is similar to a lease but very short term (i.e. 6 months to a year). It would generally give the new business the space only. The tenant would have to supply furniture, equipment and personnel. There would be no security when the license comes to an end.

LEASE

The minimum commitment would be three to five years. Shorter periods are sometimes available from tenants who themselves have surplus space (i.e. by taking an underlease). Landlords will wish to be satisfied above all that the incoming tenant is able to pay the rent and fulfill the tenant's obligations in the lease. They will want to see accounts and references that demonstrate this. They may also require a guarantor or a rental deposit of between six months and two years rent.

BUY A FREEHOLD

This would involve a major capital commitment which is likely to be inappropriate for smaller businesses.