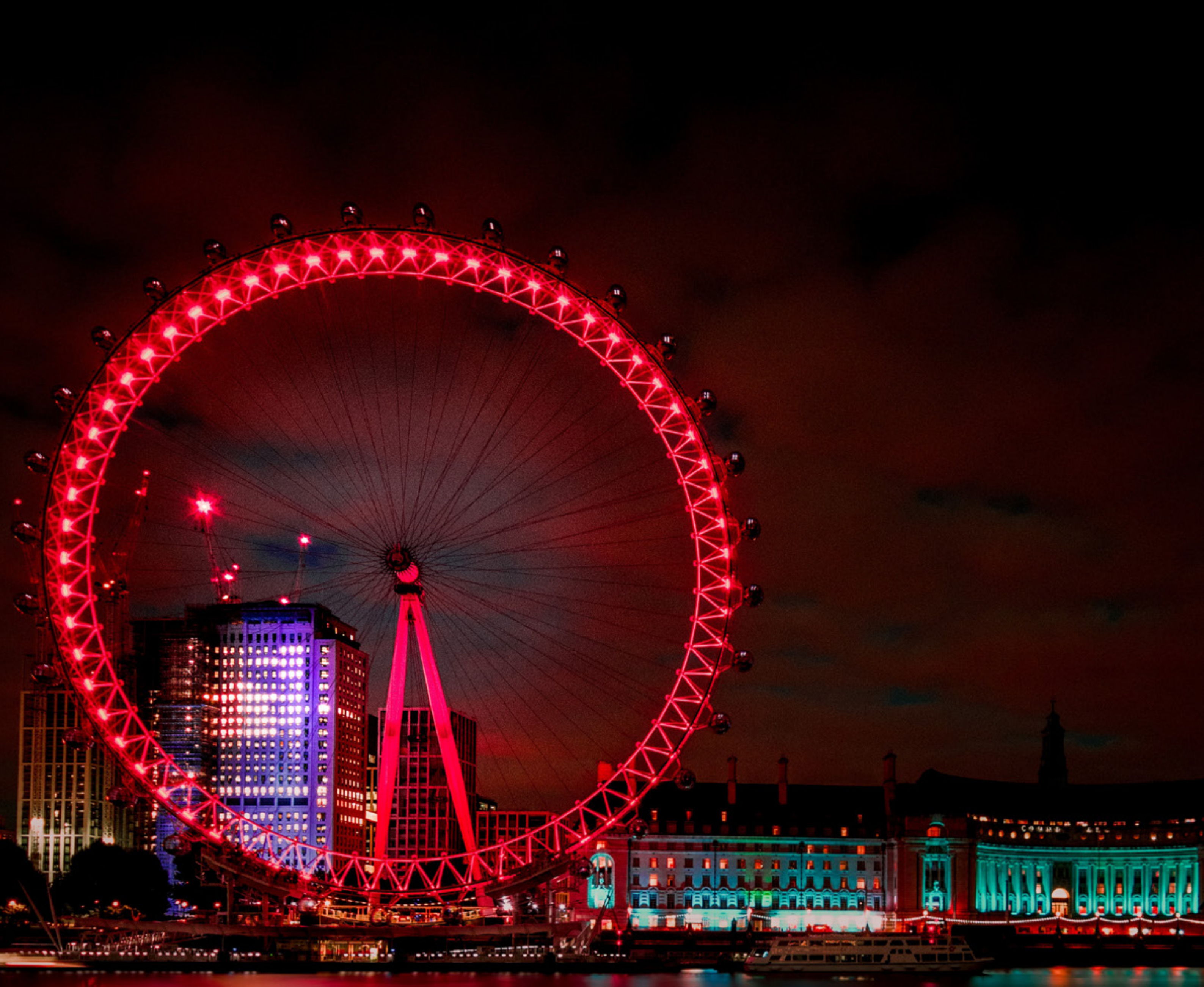

LAYTONS LLP

Bringing your Business to the UK

2019

LAYTONS LLP

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Bring your Business to the UK

This Guide is intended to give a general outline of some of the legal aspects of doing business in the UK. The Guide outlines the different business mediums available to a foreign corporation or firm wishing to set up in the UK, how they are created and the practical and legal matters which need to be considered.

This Guide is based on the law in England and Wales as at 1 October 2019. Readers should note that the law (including tax rates and laws) in Scotland and Wales may differ from that in England and Northern Ireland.

Overseas companies setting up business in or trading with the UK, i.e., England and Wales, Scotland and Northern Ireland, should be aware that these three regions comprise different legal jurisdictions and, whilst the laws relating to company incorporation and employment law in each
of the jurisdictions are broadly similar, differences nevertheless do arise both in substantive and procedural law. The Isle of Man and the Channel Islands, while associated with the UK for Defence and Foreign Policy matters, are separate jurisdictions and each has its own legal system.
This Guide has been written specifically to deal with the legal position in
England and Wales.

The sources of law in England and Wales are firstly statute law and secondly common law (being the decisions of the courts throughout the country that create laws 'common' to the jurisdiction).

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Choosing the right business structure

An overseas company proposing to set up business in the UK may do so by:

a. registering a UK establishment
b. appointing an agent
c. appointing a distributor
d. setting up a branch
e. incorporating a subsidiary company
f. setting up a partnership
g. setting up a limited liability partnership
h. entering into a joint venture
i. setting up a European Economic Interest Grouping (EEIG)

Choosing the right business structure

A representative office is an office of the overseas company with activities which are preparatory or auxiliary to the activities of the overseas company. For example, the liaison, collection of information, public relations, distribution of information. Such activities do not constitute the carrying on of a trade and the overseas business will not be liable to UK corporation tax or income tax.

However, the appointment of a sales representative who will conclude contracts on behalf of the overseas company is likely to go beyond the scope of a representative office, and may result in the principal being subject to UK corporation or income tax.

Registration is required where the overseas company is a limited company and the representative office is a "place of business" in the UK as it is a permanent location in the UK from which activities are conducted habitually or with some degree of regularity.

The overseas company must:

a. within one month deliver a return to the Registrar of Companies, including particulars of the overseas company and particulars of the UK establishment
b. make a statement as to how they will comply with accounting requirements
c. file certain documents with the return. For example, a certified copy of the overseas company's constitution and copies of the latest accounting documents.

There is a continuing obligation on the overseas company to register any changes to the overseas company's constitution, particulars of overseas company, particulars of the UK establishment or the way it complies with accounting requirements with Companies House.

UK representative office | Tax issues

Under UK domestic law, the profits derived from trading in the UK are generally taxable whereas those derived from trading with the UK are generally not. The UK authorities will look at factors such as where the sales contracts are made, where the trading operations are conducted and where the management and business decisions are made.

An overseas company wishing to establish a representative office and to thereby avoid a UK tax charge on its activities should restrict its activities in the UK to that of trading with the UK, for example, advertising, collecting and distributing information, and introducing potential customers to the overseas company. A tight control should be kept over these activities to ensure that the representative office does not at any time engage in activities which may give rise to a UK tax charge.

However, special rules apply to property development and property trading under which the projects are likely to be subject to UK tax whether or not the activity is carried on through a permanent establishment in the UK.

Agency

An overseas company that chooses to appoint an agent will avoid the regulatory burden of registering a representative office or incorporating a company. In addition, an overseas company is unlikely to face tax liabilities. However, if the agent concludes or has the authority to conclude contracts with customers in the UK on its behalf without the overseas company's prior approval, or, if the prior approval of the overseas company is a mere formality to the conclusion of the contract, then this may mean the agent will be treated as a branch or permanent establishment and its trading activities will be taxable in the UK.

There are no statutory requirements or formalities relating to setting up an agency in the UK. However, either the principal or the agent may request the other to set out in writing the terms of the agency. Indeed, it is sensible to prepare and sign a detailed agency agreement to try to avoid disputes arising between the parties during the course of the agency relationship and on its termination. There are certain provisions that cannot be excluded from agency agreements.

These include the obligations to remunerate the agent, to advise him of sums owing to him and to pay the agent a sum in compensation for his loss of future benefit on termination other than for breach.

Agency | Tax issues

Where the agent has no authority to conclude contracts with UK customers on behalf of the overseas company without prior approval, profits derived from the agency are not liable to UK corporation or income tax.

Otherwise, the overseas company will be liable to UK corporation tax on the trading profits arising from the agency in the UK and on any income from property held for that agency. It will also be taxed on gains arising from the disposal of assets situated in the UK and relating to the trade.

Distributor

As an alternative to appointing an independent agent, an overseas company may instead appoint a local distributor to sell its products. The basic difference between an agent and a distributor is that the agent normally finds customers for the overseas company and any actual sale is conducted directly between the overseas company and the customer (even though the contract may have been negotiated and signed by the agent on behalf of the overseas company). However, a distributor usually purchases the products from the overseas company and then re-sells them on to the customers, so that the contract is between the customers and the distributor and there is no direct relationship between the overseas company and the end customer.

There is no particular formality. The relationship is primarily governed by contract between the overseas company and the distributor.

Distributor | Tax issues

Since profit derived from a distributorship would be regarded as resulting from trading with the UK (i.e. profits arising from sales to the distributor), rather than trading in the UK, such profits are generally not subject to UK taxation.

Branch

The overseas company's activities in the UK may need to go beyond those typical of a representative office. If so, it may consider setting up a branch in the UK.

A branch is categorised as an "establishment" and requires registration under European law, contained in the Eleventh Company Law Directive.

The overseas company must:

- within one month deliver a return to the Registrar of Companies, including particulars of the overseas company and particulars of the UK establishment;
- make a statement as to how they will comply with accounting requirements; and
- file certain documents with the return; for example, a certified copy of the overseas company's constitution and copies of the latest accounting documents.

There is a continuing obligation on the overseas company to register any changes to the overseas company's constitution, particulars of overseas company, particulars of the UK establishment or the way it complies with accounting requirements with Companies House.

Although a branch would normally occupy business premises, regular use of residential property for business purposes may also constitute a branch. A branch does not have any separate legal identity from the overseas company, but it is subject to certain statutory requirements.

Branch | Tax issues

The overseas company will be liable to UK corporation tax on the trading profits arising from the branch or (more correctly) permanent establishment ("PE") in the UK and on any income from property held for it. It will also be taxed on gains arising from the disposal of assets situated in the UK, and relating to the trade.

It may be possible for an overseas company trading in the UK through a PE to transfer the assets of the PE to another company within its group, which is either resident in the UK or which is not resident but which will use the assets for the purpose of a UK trade carried on by the transferee company, on the basis that there will be no gain (and therefore no charge to UK corporation tax) and no loss.

Unpaid tax may be collected from present and former group companies and from present and former controlling directors.

UK subsidiary company

The overseas company may wish to incorporate a UK subsidiary company with its registered office in the UK. This company would probably be limited by shares, although its liability could be limited by guarantee (such companies are called limited companies) or indeed unlimited.

The two principal types of UK limited liability companies are: the Public Limited Company, or 'PLC', and the Private Limited Company, or 'Ltd'. Since private limited companies are far more frequently used, this Guide will refer to such companies throughout.

Unlike in many other European countries, there is no minimum share capital required for a UK private limited company although it is, of course, necessary to ensure that the company will have sufficient capital to carry out its activities.

Incorporating a company in the UK is probably easier and involves fewer formalities than in almost all other European countries.

Under the Companies Act 2006, the UK subsidiary must have at least one member (or shareholder) and one director who is a natural person. Private companies are not required to have a secretary (i.e. the officer of the company responsible for the corporate administration), but may choose to have one. Laytons is able to provide 'shelf' companies and both registered office facilities and company secretarial services.

UK subsidiary company | Tax issues

A UK resident company will generally be chargeable to UK corporation tax upon its world-wide profits, including both income and capital gains. (This is to be contrasted with the taxation position of a branch or agency, which is taxed solely on the profits attributable to its activities in the UK).

The rate of corporation tax is currently 19% but, for periods commencing on or after 1 April 2020, will reduce to 17%. (For more details on general corporate tax issues and corporate tax incentives see the separate summary of UK business taxation below).

Losses sustained in a trade carried on within the UK can be relieved in a number of ways, see the section headed "UK corporation tax" below.

It should be noted that, subject to exceptions, it is not possible to reduce profits liable to UK taxation by 'transfer pricing' arrangements under which the UK operation charges prices which are lower than arm's length to foreign affiliates or is charged prices which are greater than arm's length by foreign affiliates.

Partnership

A partnership is the relationship which subsists between persons carrying on a business in common with a view of profit. The partners within a partnership share the responsibilities of decision making and profit and loss of the business and have a duty of good faith to each other. The partners are personally liable for all the losses of the business, even if the losses are incurred by the actions of other partners. Such liabilities are also unlimited. For these reasons, it is not common for overseas companies to set up in the UK using a partnership.

There are no formalities relating to setting up a partnership which may arise orally, by written conduct or even by conduct, provided that the definition of partnership under the Partnership Act 1890 applies. However, a written partnership agreement is invaluable as evidence of the relationship and which can also set out clearly the terms of the agreement between different partners.

Partnerships | Tax issues

Each partner is liable for the tax arising from his own share of the profit of the partnership.

Limited Liability Partnership ("LLP")

LLPs were introduced in April 2001 and are often thought of as a hybrid between partnerships and limited companies. Like limited companies, an LLP has its own legal personality. Thus, the members' personal assets are separate from the business assets of the LLP. Similar to limited companies, members of an LLP have limited liability up to the amount of their capital in the LLP (subject to certain exceptions).There is also no maximum number of members an LLP can have.

An LLP is incorporated by registration with Companies House and must have at least two members. Members of an LLP can be individuals or companies and do not have to be resident in the UK. It is not necessary to have a written members' agreement, as the law will automatically apply certain basic terms governing the rights and obligations of the members. However, these terms are likely to be too brief to be sufficient and it is most advisable to have a written members' agreement.

LLP | Tax issues

Generally, the LLP itself is not liable to income tax or corporation tax but each member of the LLP is liable to taxation on his (or, in the case of corporate members, its) share of the profits.

Joint venture

As well as partnership and limited partnership, starting a business by collaboration with other parties can also take the form of a joint venture. Usually, a joint venture is structured using a limited company (see information under UK subsidiary company above).

A European Economic Interest Grouping (“EEIG”)

If the overseas company wishes to co-operate with its UK subsidiary or with another entirely separate UK company or unincorporated business it may consider setting up an EEIG. This vehicle for setting up joint ventures in the European Economic Area (“EEA”) was introduced by a European Union (“EU”) regulation in July 1989. In order to set up an EEIG, there must be at least two members from different EEA states. Those members may be EEA companies, EEA firms or co-operatives, individuals carrying on business in the EEA, or bodies carrying on economic activity in the EEA.

An EEIG constitutes a legal entity in its own right and consequently can enter into contracts, own property, sue and be sued, and be wound up if necessary. The permitted objects of an EEIG are extremely wide; it can be used for almost any purpose that is ancillary to the business and activities of its members. An EEIG resembles in some ways a company, in that it is a legal entity, it has members (who are rather like shareholders) and managers (who resemble directors). However, it also has certain features of a partnership in that the members are jointly and severally liable, and it enjoys a less formal management structure.

Financing of a branch or subsidiary

In general, a UK company that is a party as a debtor or a creditor to a loan will be subject to the loan relationship rules in the Corporation Tax Act 2009.There are obviously different implications of financing for both branches and subsidiaries.

Borrowing by a subsidiary

The corporate debt rules will apply to borrowings by a subsidiary so that relief should normally be available for interest costs, although a number of special rules may apply where the borrowing is from a non-resident parent. In particular, certain payments of interest by a UK subsidiary to its overseas parent can be treated as a distribution, with the interest not being deductible by the subsidiary for tax purposes.

Borrowing by a branch of the company

The branch cannot be regarded as an entity separate from the company that established it and therefore finance provided out of shareholders' funds will not give rise to any tax relief. However, a borrowing by the company for the purposes of the branch is equally a borrowing by the branch, so relief may be available for interest paid thereon.

Relief may be available not only for interest costs but also for discount, the cost of redeeming debt in excess of its issue price and incidental costs of obtaining finance. In addition, relief is no longer dependent on the nature of the borrowing or the identity of the lender.

The legislation contains a number of anti-avoidance provisions that could be relevant in the context of borrowings by non-resident companies.

Converting branches to subsidiaries & vice versa

Branch to subsidiary

If the non-resident company were to set up a PE in the UK and then decided that the trade being carried on through that PE in the UK would be better conducted by a subsidiary, this would be possible. Conversion of the PE into a subsidiary normally involves the transfer of the PE's trade to a subsidiary resident in the UK. In such circumstances relief from corporation tax on the assets transferred to the subsidiary is available if certain conditions are met.

Subsidiary to branch

Conversely, the transfer by a UK resident subsidiary of an overseas company to a PE of that company of assets used for the subsidiary's trade (and which will continue to be used for carrying on a UK trade by the PE) may similarly attract relief from corporation tax, provided that certain conditions are met. The transfer of other types of assets (e.g. an investment property not used for either company's trade) can give rise to a corporation tax liability.

Subsidiary or branch?

Formation & administration issues

The branch is not often used in the UK and generally it is preferable to set up a limited liability subsidiary company which would possess its own legal personality, but this depends on the detailed circumstances of the company. Generally, it is a lot more effort to set up and administer a branch than a subsidiary company. The non-resident company would of course be liable in respect of all contracts properly made by a branch.

The substantive commercial & tax issues

The real questions are commercial and tax ones, which cannot always be answered from just a UK perspective. Local tax legislation applicable to the non-UK resident company must be considered, as well as any relevant double tax agreement. It may also be necessary to address the issue of how it is proposed to finance the UK operation. The biggest practical questions are:

- Will the UK operation make a loss in the first few years of operation and is it required that such loss be offset in the year of creation against taxable profits in the home country in the same year?
- If this is the case, then there may be some sense in setting up a UK branch and operating it until the UK operation has become profitable, depending on how the branch is to be financed and the extent of the financing costs and the availability of tax relief on these borrowings. The use of a branch may enable starting up costs, including capital expenditure, and
- initial trading losses to be set against other profits for the purposes of taxation in the parent's country of residence
- Once the operation has reached maturity and is operating profitably, will a branch or subsidiary be taxed at a lower effective rate?
- In this case, a subsidiary incorporated and resident in the UK may be entitled to the benefit of the UK's wide network of double taxation agreements - this may be very important as profits remitted from a subsidiary may bear tax at a lower effective rate than those remitted by a branch.

Checklist & conclusion

The structure adopted by an overseas company wishing to set up business in the UK will depend upon its commercial and practical objectives, and also the way in which it wishes its activities in the UK to be taxed. The following questions should be considered when choosing the structure:

- What activities are to be carried out in the UK? Is actual trade to be carried out, or merely promotion, advertising, and the provision of information?
- Do you wish to incur the expense of complying with the statutory and formal requirements of setting up and running a company, including filing accounts and annual returns, etc?
- What particular commercial considerations are to be taken account of?

The answers to these questions will normally govern the most appropriate way for an overseas company to set up business in the UK.

Summary of UK business taxation

Overview of taxation in the UK: Bringing an overseas business to the UK

Type of business structure	Description of business structure	UK taxation
Representative Office	The business trades with UK rather than in the UK. For example, business activities consisting of advertising, collecting and distributing information and introducing potential customers to the overseas company. Sales contracts, trading operations, management and business decisions NOT made in the UK.	Provided that trading is conducted with the UK, rather than in the UK generally, not liable to UK corporation tax or income tax (see below).
Agency	Independent agent does not and has no authority to conclude contracts without PRIOR approval of the overseas business.	Not liable to UK corporation tax or income tax. However, if overseas company approval is a mere formality then the agency is deemed to be a permanent establishment subject to UK taxation.
Distributor	Distributor purchases products from overseas company and re-sells them to customers. The contract is between customers and distributor. There is no direct relationship between the overseas company and the end customer.	Not liable to UK corporation tax or income tax.
Permanent establishment (including branch)	The overseas company incorporates a subsidiary in the UK.	UK corporation tax is chargeable on the profits attributable to the UK permanent establishment and on any gains arising from the disposal of UK assets relating to the trade or permanent establishment.
UK subsidiary	Two or more persons carry on a trade or business in partnership and sharing income, capital and losses in agreed ratios.	Chargeable to UK corporation tax on worldwide profits of the UK subsidiary, including income and capital gains.
Partnership	Two or more persons carry on a trade or business in partnership and sharing income, capital and losses in agreed ratios.	The profits of a partnership are assessed to tax on the partnership shares as the individual partner 's income. Refer to taxation of individuals below.
UK limited liability partnership	A UK corporate body having two or more members which carries on a business.	The profits of the limited liability partnership are generally assessed to tax in the same way as if the members were in partnership (see above).

Tax on corporations

UK corporation tax

The rate of corporation tax charged on the taxable profits of a company is currently 19%. The corporation tax rate will reduce to 17% for the year starting 1 April 2020.

The taxable profits of a company are its trading profits from which allowable deductions (e.g. qualifying trade expenses) are made. Various corporation tax allowances, exemptions and reliefs are available to companies.

The rate of corporation tax which applies is fixed for each financial year, which runs from 1 April to 31 March.

Corporation tax is due for 'Accounting Periods' which are normally 12 months long. Accounting Periods can, in some circumstances, be shorter than 12 months but never longer. Under the corporation tax self-assessment regime, companies are required to:

- compute their own tax liability; and
- pay their corporation tax without prior assessment by HM Revenue and Customs ("HMRC"). Companies (other than 'large' companies - see below) must pay tax no later than nine months and one day after the end of the accounting period (the normal due date).

Payment of corporation tax: 'Large' companies must pay most of their tax earlier than this date, by Quarterly Instalment Payments ("QIPs"). 'Large' companies are those with annual profits of more than £1.5million (divided by the total number of associated companies). These companies must pay their tax bill by QIPs based on anticipated current year liabilities.

There are special rules for companies during the transitional period: when they become large, they do not need to pay by QIPs in the first period of becoming large (unless their profits exceed £10 million). If the company, or one of the companies in a UK group of companies, has to pay its tax by QIPs, the group can also enter into a Group Payment Arrangement with HM Revenue and Customs. This arrangement allows the group to manage any uncertainty over how much tax individual companies owe, as compared to what the group owes. Companies in the group will still have to estimate the correct amount of tax for the group as a whole, but need not worry about the precise division between the group companies. This arrangement also means that the group can minimise any interest on tax underpaid by the group as a whole.

Companies are liable to penalties if they do not deliver a corporation tax return by the statutory filing date, normally 12 months after the end of the accounting period. If the payment of corporation tax is later than the due date, penalties and interest are generally triggered.

Dividends received

The UK legislation on the tax treatment of dividends received by a UK company is complex. Generally, dividends received from a UK resident subsidiary or from a subsidiary resident in most (but not all countries) with which the UK has a comprehensive Double Tax Agreement are exempt from UK corporation tax. However, dividends received from a subsidiary which is not resident in such a country may be subject to corporation tax.

Dividends paid

Dividends paid by a UK company to a shareholder, including a non UK resident shareholder, are generally not subject to UK withholding tax.

Relief for interest paid

Interest incurred for the purposes of a company's trade is generally allowable, subject to restriction where the interest incurs exceeds the relevant limit. The limit is computed on an aggregated group basis and the interest deductible is limited to the higher of:

a. £2 million,
b. a fixed ratio of 30% of tax – EBITDA
c. a group ratio (allowing up to 100% of tax on EBITDA). These limits apply in respect of each Accounting Period and interest disallowed in one period can be carried forward for relief in later periods (but with the restriction for interest relief applying in respect of each later period).

Losses

The UK has recently reformed its rules for relief for losses for corporation tax. Broadly, with effect from 1 April 2017:

Losses can be utilised against any profits, including profits of any group company; subject as follows:

a. Losses carried forward at 1 April 2017 are "streamed" and are generally only allowable against profits of the same trade as that in which the loss was incurred and cannot be relieved against profits of another group company;
b. Losses brought forward can only be utilised against 50% of profits if and to the extent that the losses exceed £5 million.

Substantial shareholdings exemption

Gains realized by UK companies on the sale or disposal of shares in trading companies in which the parent holds a "substantial shareholding" (broadly, at least a 10% interest) are, subject to relevant conditions, generally exempt from corporation tax. Conversely, losses realised on the sale or disposal of such shareholdings are generally not allowable for utilisation against profits for corporation tax.

Other direct and indirect taxes

Other direct and indirect taxes which may be relevant to a business operating in the UK include:

- **National insurance contributions**
  These are social security contributions. Employers pay 13.8% of each employee's salary that falls above a certain threshold.
- **Stamp duty land tax**
  Stamp duty land tax ("SDLT") is charged on transactions involving the acquisition of land in England or Northern Ireland. The tax is due 14 days after the effective date of the transaction, which is generally the date that the buyer acquires the land interest.

Please note different rates apply in Scotland where Land and Building Transaction Tax is payable and in Wales where Land Transaction Tax is payable.

The SDLT rates depend on whether the property is residential or non-residential ("mixed use" property is generally charged at non-residential rates) and are as follows:

Purchase Price	Residential rate without surcharge: from 04/12/14	Residential rate with surcharge: from 01/04/16	Non-residential or "mixed use" rate: from 16/03/16
Up to £125,000	0%	3%	
Over £125,000 and up to £250,000	2%	5%	
Over £125,000 and up to £250,000			0%
Over £125,000 and up to £250,000			2%
Over £250,000			5%
Over £250,000 and up to £925,000	5%	8%	
Over £925,000 and up to £1.5m	10%	13%	
Over £1.5m	12%	15%	

* Assumes that "higher rate" (15%) for purchases by NNPs does not apply

Generally:

a. the surcharged rates will apply on purchases of residential property unless the purchaser is an individual who, at the time of completion, does not own any other residential property (including a property outside the UK);
b. company acquiring a property which comprises or includes a dwelling will be liable to SDLT at the rate of 15% on the whole of the purchase price (or, if the property is mixed use, 15% of the purchase price attributable to dwellings) unless a relief applies, e.g. where the property is being acquired solely for a commercial property development trade or for letting at market rent to persons unconnected with the company. Where such a relief applies, SDLT at the rates in the above table will be chargeable.

SDLT on leases will be based on the net present value ("NPV") of all the rental payments due over the term of the lease, i.e. the value of the annual rent you pay, and the purchase price of the lease, i.e. the lease premium. For the lease premium, the rates from above can be used depending on whether it

is residential or not. For the NPV of a non-residential/mixed property, there is no need to pay SDLT on the rent if the NPV is less than £150,000 but the rate is 1% for the portion from £150,001 to £5 million and 2% from the portion above £5 million. For the NPV of a residential property, SDLT of 1% will need to be paid if the NPV exceeds £125,000 unless an existing/assigned lease is acquired.

Annual Tax on Enveloped Dwellings ("ATED")

Corporate owners of residential property worth over £500,000 are liable to an annual charge to ATED, unless a relief applies. The ATED charged is based on the valuation band in which the property value falls as follows:

Property value	Annual Charge in 2019/20
£500,000 to £1m	£3,650
£1m to £2m	£7,400
£2m to £5m	£24,800
£5m to £10m	£57,900
£10m to £20m	£116,180
£20m+	£232,350

The ATED is intended to apply only to situations in which an individual occupies a property but does not own it in his own name, instead holding the property through a company. It is not intended to apply to situations where, for example, a property is let to an unconnected third party on a commercial basis. The various reliefs available from the ATED reflect this intention, and can apply to reduce the total ATED liability to zero. Relief from ATED must be claimed by filing a return.

Corporation tax on sale of UK property

Companies, whether UK resident or not, are generally liable to UK corporation tax on disposals, including sales, of UK property held as a capital asset (e.g. properties held for investment). Certain deductions, including the cost of acquiring the property are generally permitted in computing the taxable gain. A corporation tax charge may also arise where a company (whether UK resident or not) disposes of shares in a "property rich" subsidiary.

Stamp duty

Stamp duty is generally limited to the transfer of shares and other marketable securities and interests in a partnership that holds stock and marketable securities as partnership property where it is necessary to document or register the transaction. The amount of duty is 0.5% of the amount of the chargeable consideration with the amount payable rounded up to the nearest £5. However, where the consideration is certified to be £1,000 or less, the transfer is exempt from stamp duty.

Stamp duty reserve tax ("SDRT")

This is a tax on the sale of shares and certain other securities in UK companies. The standard rate is 0.5% but increases to 1.5% where shares are transferred to or issued in depositaries (such as American Depositary Receipts) or into a clearance system. As with stamp duty, SDRT is not chargeable on transactions in eligible securities on London Stock Exchange's AIM and High Growth Segment. It is possible for a document effecting a sale of shares or securities to give rise to both a stamp duty and an SDRT charge, but in such cases payment of the stamp duty will generally cancel the SDRT liability.

Import duties

Most goods arriving in the UK from outside the EU are liable for some or all of the following taxes:

- Customs Duty (General Goods);
- Excise Duty (Tobacco, Alcohol, Fuel etc.)
- Import VAT (General Goods)

In addition, some goods may be liable to an additional import duty known as Anti-Dumping Duty which is imposed by the EU on products from outside the EU, supplied at prices substantially lower than normal commercial rates.

Value added tax ("VAT")

VAT is a general turnover tax which applies to most supplies of goods and services made in the UK by a taxable person (i.e. one who is registered, or ought to be registered, for VAT), to most imports of goods into the UK from outside the EU, and to the acquisition of goods from other member states of the EU. Imports of goods from outside the EU may also be subject to customs duties.

VAT is chargeable on supplies of goods or services in the UK and the rate of VAT chargeable depends on the category of the supply. The standard rate of VAT is currently 20% but there are reduced rates of 5% (which applies, for example, to supplies of domestic fuel and power) and 0% (which applies, for example, to supplies of food or new dwellings). Certain supplies are not taxable, and are thus exempt, for example supplies of finance or insurance.

There is a difference between the import of goods from outside the EU and the acquisition of goods from other EU member states. Generally, where goods are imported into the UK from outside the EU VAT is due on importation. Where goods are acquired in the UK from another member state of the EU, the acquirer must account for VAT through its quarterly or monthly VAT return.

The rules are complex but, generally, VAT incurred by a taxable person who is making only taxable supplies should be fully recoverable.

Anyone carrying on a business in the UK with a taxable turnover which exceeds the registration limit (currently £85,000 during the previous 12 months) is required to register; failure to do so can result in significant penalties. However, this threshold does not apply where the person making the supply does not have a business establishment or fixed place of business in the UK. Such persons are required to register if they make taxable supplies in the UK of any value.

A registration requirement may also be triggered, for businesses not otherwise registrable in the UK, by "distance selling" activities involving UK non-VAT registered customers. The most obvious example of this kind of activity is mail order (including sales through a website). Where distance sales to

UK customers in a given year exceed the relevant threshold (currently £70,000), or where distance selling of excise goods (e.g. alcohol and tobacco) occurs to any extent at all, the seller is obliged to register in the UK and to account for UK VAT on such sales, as well as on other taxable supplies it makes in the UK.

Standard VAT accounting requires businesses to record the VAT on every sale and purchase they make. To ease this burden for small businesses, a business may elect for the Flat Rate VAT Scheme, where a business's VAT payment is calculated as a percentage of total VAT-inclusive turnover. To be eligible, the business must predict that its total VAT-inclusive supplies made in the financial year will not exceed £150,000 in value. However, it should be noted that in some circumstances, use of the scheme may result in a higher VAT bill.

Business rates

This is a levy charged on the occupier or, if there is no occupier, the owner of commercial property.

Tax on individuals

Criteria

An individual's liability to direct UK taxes (income tax, capital gains tax and inheritance tax) is based on two criteria: residence and domicile

A brief summary of residence for UK tax purposes is set out below. The UK law on residence was overhauled with effect from 6 April 2013. There is now a statutory test for residence, replacing the old common law test. The new statutory residence test will allow individuals to determine with much greater certainty than previously whether they will be UK resident.

Residence

Under the statutory residence test, an individual is UK resident in a given tax year if he meets either the "Automatic Residence Test" or the "Sufficient Ties Test".

The Automatic Residence Test is met if any of the "Automatic UK Tests" are met and none of the "Automatic Overseas Tests" are met. Examples of the Automatic UK Tests are where the individual spends at least 183 days in the UK per year; or where the individual works in the UK full-time. Examples of the

Automatic Overseas Tests are where the individual has been resident for at least one of the last three years and spends fewer than 16 days in the UK this year (and does not die this year); or where the individual works overseas full-time.

If and only if the individual meets none of the Automatic UK Tests and none of the Automatic Overseas Tests, the Sufficient Ties Test may be used to establish the individual's residence status. Satisfaction of the Sufficient Ties Test depends on the number of days the individual spends in the UK during the tax year, the number of "ties" he has with the UK, and whether he is leaving the UK after having been previously resident or arriving in the UK:

"Leavers"	
Days spent in the UK in the tax year	Ties sufficient to meet the test
16 to 45	At least 4
46 to 90	At least 3
91 to 120	At least 2
More than 120	At least 1

"Arrivers"	
Days spent in the UK in the tax year	Ties sufficient to meet the test
46 to 90	At least 4
91 to 120	At least 3
More than 120	At least 2

Examples of ties to the UK include having a spouse, civil partner or minor child who is a UK resident; or working in the UK for at least 40 days per year.

Domicile

An individual is domiciled in the country of his permanent home. The concept of domicile is distinct from nationality and residence. In general terms, an individual has a domicile of origin which is derived from the domicile of his father. However, an individual is free to change his domicile when he is aged 16 years or older. To do so, the individual must prove that he has an intention to change his domicile and to live in another country. HMRC will consider factors such as selling the permanent home in the former country of domicile and purchasing and actually residing in the new (chosen) domicile to be cogent evidence of acquiring a new domicile.

Remittance Basis Claim

Broadly, taxation on "the remittance basis" means that the foreign income and foreign capital gains of an individual who is resident but not domiciled in the UK are only taxable in the UK to the extent that they are brought into or enjoyed in the UK, or deemed to be so.

All such individuals must normally claim the remittance basis (it is not available automatically). Individuals who do so normally lose their entitlement to personal allowances and the annual capital gains tax exemption. A non-domiciled individual who has been resident in the UK in at least 12 of the 14 tax years immediately preceding the current tax year must pay a £60,000 charge to claim the remittance basis in the current tax year. This charge is reduced to £30,000 for non-domiciled individuals who have been resident in the UK for 7 of the 9 previous tax years.

From April 2017, non-domiciled individuals will be deemed UK-domiciled for tax purposes if they were born in the UK with a UK domicile of origin, or if they have been UK resident for 15 of the past 20 years.

Income tax

Individuals are subject to UK income tax on different sources and types of income as follows:

Types of income

a. Earned income which includes earnings from employment, pensions and income from a trade, profession or vocation.
b. Unearned income, including investment income, dividends, interest on savings accounts, and any other income which is not earned income.

Tax on individuals | UK Income Tax

Is the individual resident in the UK?

Yes

Is the individual (actually or deemed) domiciled in the UK?

Yes

UK income tax on worldwide income as it arises

No

Remittance basis claimed?*

No

UK income tax on worldwide income as it arises

Yes

Has the individual been non-UK resident for three consecutive tax years, and is the current tax year within three years of this spell of non-residence?

No

UK income tax on:

- Earnings from a UK employer as they arise, even if duties performed outside the UK
- Earnings from a non-UK employer for duties performed outside the UK that are remitted to the UK
- Overseas source investments income remitted

Yes

UK income tax on:

- Earnings from a UK employer for duties performed in the UK only
- Earnings from from duties performed outside the UK that are remitted (whether or not the employer is UK resident)
- UK source investment income arising
- Overseas source investment income arising

No

UK income tax on:

- Employment income attributable to duties performed in the UK
- UK source investment income only, except that non-business rental income is subject to income tax to the extent tax is deducted at source

*The remittance basis charge must be paid for, if applicable (see above).

Income tax rates and taxable bands*

Income tax rates	2019/20
Basic rate: 20%	£0 - £37,500
Higher rate: 40%	£37,500- £150,000
Additional rate: 45%	Over £150,001
* Individuals resident in Scotland or Wales are subject to different rates of income tax.	

Note that each individual has a "personal allowance" of income which is not taxed. This is currently set at £12,500. The above income tax bands are in respect of any income exceeding the personal allowance.

Capital gains tax

UK capital gains tax may be applicable to gains made on disposal (including sale) of assets.

Residence, ordinary residence and domicile

Individuals who are resident and domiciled in the UK will also be subject to UK capital gains tax on their UK and overseas gains on the disposal of assets situated anywhere in the world. However, UK resident individuals who are not (actually or deemed) UK domiciled who claim the remittance basis will be subject to UK capital gains tax on overseas gains only to the extent that they are remitted to the UK in a year of residence. Furthermore, no capital gains tax liability is triggered on the remittance of overseas gains in any tax year prior to when an individual becomes UK tax resident.

Before 6 April 2015, individuals who are not resident in the UK were not generally liable to UK capital gains tax on gains or disposals of UK properties unless for example, the non-resident used that property in carrying on a business in the UK through a branch or agency. However, with effect from 6 April 2015, a new capital gains tax rule has been introduced so that a non-resident individual selling a UK residential property may now have to pay UK capital gains tax on any gains they make on disposals made after 5 April 2015. The UK capital gains tax regime has been extended with effect from 6 April 2019 to apply to disposals of non- residential (as well as residential) property in the UK and also to disposals of shares in "property rich", entities (e.g. sales of property special purpose vehicles).

Note that there are special rules which apply to individuals who were resident for four of the last seven tax years. The rules make them subject to the UK capital gains tax regime if they resume UK residence within 5 years after their departure from the UK.

Charge to capital gains tax

For capital gains tax purposes disposals include selling, exchanging, transferring or gifting. There are certain exempt assets (e.g. private motor cars, personal items sold for £6,000 or less, main residential home) which are not chargeable and each individual has an annual exemption such that the first £12,500 (2019-20) of gains is not taxable. However, the annual exemption is normally lost if a non-domiciled individual claims the remittance basis. The current lifetime limit for 'Entrepreneurs' Relief' is £10 million of qualifying gains, which are charged at an effective rate of 10%. The relief only applies to a material disposal by an individual of qualifying business assets.

For individuals the rate of tax on chargeable gains arising is currently 20% (28% on residential property gains) for higher and additional rate taxpayers, and 10% (18% on residential property gains) for basic rate taxpayers.

Inheritance tax

Subject to availability of reliefs and exemptions, a UK domiciled individual is subject to UK inheritance tax chargeable on worldwide assets at death and on most lifetime gifts made in the seven years prior to death.

A non-UK domiciled individual is chargeable to UK inheritance tax in respect to assets situated in the UK (including most lifetime gifts made in the seven years prior to death).

Individuals are treated as deemed UK domiciled for inheritance tax (as well as for income tax and capital gains tax - see above) if they have been resident in the UK for 15 of the last 20 years or if they are resident in the UK and were born in the UK with UK dominical of origin.

Additionally, with effect from 5 April 2017 inheritance tax is charged on UK residential property when it is held indirectly by a non- domiciled individual through an offshore company or trust.

The first £325,000 of transfers (death or lifetime) is chargeable at nil percent. A surviving spouse or civil partner may claim the unused proportion of a deceased spouse's or civil partner's nil rate band up to the current nil rate band. Certain lifetime gifts trigger inheritance tax at 20% at the time of the gift. The rate of inheritance tax on death is, in general, 40%.

Citizens of an EEA member state

Citizens of a European Economic Area member state (the countries of the European Union plus Norway, Iceland and Liechtenstein) have free movement within the EEA, and may live and work in the UK without and special permission. From 1st January 2014, citizens of Romania and Bulgaria have been able to live and work in the UK without restriction. This means that individuals from those countries can work as employees, self- employed or as business persons full-time or part-time for any length of time in any member state without needing to comply with immigration controls.

Immigration controls for non EEA citizens

The UK Visas and Immigration branch of the Home Office (UKVI) manages UK's immigration and considers applications from individuals who want to work in the UK, decides applications from people who want to become British citizens and processes applications from employers wishing to register as sponsors (employers) of non-EEA workers.

A radical overhaul of the immigration system commenced in 2008 which is still in the process of being implemented in stages. It introduced a new "points-based system" and amalgamates over 80 immigration categories into a five-tier system. The five tiers include:

- **Tier 1:** workers with exceptional talent, entrepreneurs and investors
- **Tier 2:** skilled workers, including Intra Company Transfers
- **Tier 3:** low-skilled workers
- **Tier 4:** students
- **Tier 5:** temporary or exchange workers

Under the current system, migrants must pass a points-based assessment before they can get permission to enter or remain in the UK. Each of the system's five tiers has different points requirements and points are awarded to reflect the migrant's ability, experience, English language ability, age and chosen industry.

Migrants in any Tier, except Tier 1, must be sponsored. Employers who want to sponsor a migrant must apply to UKVI for a sponsor licence.

Business visitor

A "business visitor " is special category of UK immigration permission. It can be used by those who are not citizens of an EEA member state (or Switzerland) and who intend to visit the UK for periods of up to six months in any year to transact business.

A business visitor can only carry out "permitted activities" during their stay. These include attending meetings and conferences, arranging deals or negotiating or signing contracts, and conducting site visits, but employment in this category is not permitted.

Sole representative – opening a branch or subsidiary in the UK bringing in Intra Company Transfer workers and other non-EEA workers

An individual who is establishing a commercial presence for an overseas company in the UK in the form of a registered branch or a wholly-owned subsidiary may be able to enter as their sole representative, provided that he is an experienced worker in the overseas business. He will be expected to work full-time for one company and may not do business of his own or represent any other company's interests. An initial period of three years will normally be granted, with the option to extend this for up to another two years. He is then able to apply for settlement in the UK.

This is the category of entry which can be used for an experienced employee of an overseas business to enter the UK to open a UK branch or subsidiary of the overseas business. He can apply on behalf of the UK branch or subsidiary for a UKVI sponsor licence to bring in and employ other employees of the overseas business ("Intra Company Transfers") and to employ other non-EEA workers under Tier 2. Overseas workers in all categories, other than Intra Company Transfers, need to establish their English language skill either by being a national of a country where the majority language is English, passing a degree in a course taught in English or passing an English language test.

Partners and families

Where a foreign national also wishes to bring his partner and children to the UK to stay during the period of his employment, entry clearance (a type of visa) must usually be obtained from the Visa Application Centre at the British Consulate overseas. Once they are here legally (other than as visitors) they have access to our National Health care and to state education.

Indefinite leave to remain

Most tiers (with the exception of Intra Company Transfers) allow an individual who spends a continuous period of five years in the UK to apply for indefinite leave to remain in the UK. Applicants need to pass an English citizenship course called a "Life in the UK" test.

British citizenship

A foreign national who has held indefinite leave to remain in the UK for at least the last 12 months may apply to naturalise as a British citizen. One of the principal requirements is that, during the previous five years, the individual has not spent more than 450 days outside the UK and not more than 90 days in the last 12 months. In addition, the individual must demonstrate sufficient knowledge of the English language, pass a "Life in the UK" test (if they obtained indefinite leave before April 2007) and show an intention to make the UK their home.

Employment law

Employees in the UK benefit from a range of statutory employment rights, the primary ones being:

- **protection from discrimination** | it is unlawful to discriminate against an employee on the grounds of a "protected characteristic". Therefore, an employee cannot be treated less favourably because of reasons relating to: age, sex, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, or sexual orientation

- **protection from "unfair dismissal"** | once an employee has attained two years' continuous service he/she will attain the right not to be unfairly dismissed. To dismiss an employee who has attained this right, an employer must have a "fair" reason and follow a "fair" process. If an employee is unfairly dismissed, the employer will be liable for a basic award (calculated by reference to age and length of service) and a compensatory award for financial loss of up to one year's salary or £78,335 (whichever is less)

- **"whistle-blower" rights** | these laws provide protection to employees who "blow the whistle" regarding their employer's potential wrong doing. Essentially, they state that an employee cannot be subject to a detriment or dismissed by reason of disclosing any potential wrongdoing

- **"TUPE" protection** | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as "TUPE") provide protection to employees involved in business transfers or outsourcing arrangements. Protection extends to both the employees' employment and terms and conditions of employment

There are also statutory minimum levels of annual leave, notice, pay and detailed rules regarding working time. Whilst it is open for the parties to be more generous should they wish, the following minimums must be observed:

- **annual leave** | 5.6 weeks (or 28 days) per year
- **notice** | where an employee has been employed for one month but less than two years, the entitlement is one week. Thereafter it is one week for every complete year of service up to a maximum of 12 weeks
- **minimum wage** | for employees aged 21 and over the rate is presently £6.50 per hour (lesser rates apply to younger workers/apprentices)
- **working time** | the standard weekly limit on "working time" is 48 hours, but employees can opt out of this should they wish.

Employment documentation

It is important to have proper contractual documentation for employees as:

- there is a legal obligation to provide employees with a written statement of terms of employment within two months of them commencing employment (s.1 Employment Rights Act 1996)
- a well drafted contract allows employers to protect their confidential information, intellectual property and other legitimate business interests
- it is a key document in clearly defining an employee's duties/rights
- it serves as a valuable framework in managing the employment relationship.

It is also advisable to have a non-contractual Employee Handbook setting out policies and procedures on matters such as disciplinary and grievances, anti-corruption, equal opportunities, sickness absence etc.

Protecting "legitimate business interests" is often done by including restrictive covenants in the employment contract. These are restrictions that apply post-termination and stop departing employees from attempting to poach clients, employees, and/or suppliers for a certain period.

Such restrictions are only enforceable to the extent that they constitute a proportionate means of protecting a legitimate business interest. So a blanket ban on working for a competitor is unlikely to be enforceable. However, a time-limited restriction against approaching key clients with whom the departing employee had dealings with on behalf of the employer is likely to be enforceable.

Grants and incentives for foreign, UK based firms

Grants

Grants are available for a variety of projects but there are different schemes for specific purposes. However, grants are usually not available for use as working capital. All grants have specific terms and conditions that must be followed, failing which may cause the grant to be withdrawn and to be returned.

Criteria

There are 4 main criteria that a business will have to meet to be eligible for a grant:

- **Location** | depending on the criteria of the scheme, the business may have to be located within a specified part of a local district or region to be eligible for assistance.

- **Size** | almost all grants have a limit on the number of employees a business can have in order for it to qualify for assistance. Most grants are limited to small or medium-sized enterprises, typically those with fewer than 250 employees.

- **Industry** | many grants target specific sectors that are in need of assistance, e.g. manufacturing or service industries. It is important to note that not every type of business will be eligible for every grant available in its area, and it is common for retail businesses to be ineligible for financial assistance of this nature.

- **Purpose** | grants are often awarded for a specific purpose such as increasing employment or developing export markets. Grant bodies prefer to see specific targets and results – often compatible with their own objectives.

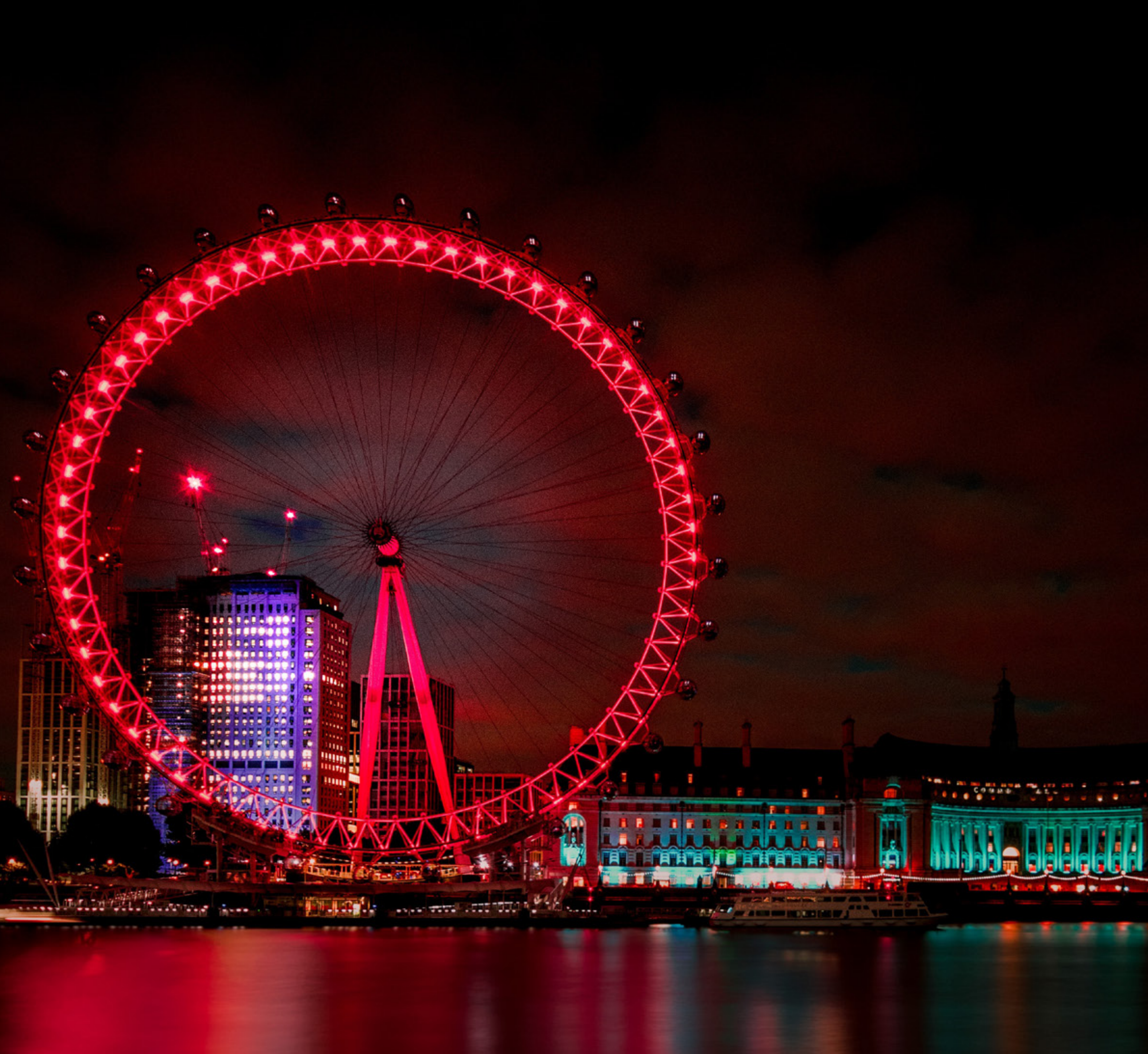
Local, national and European grants

Different grants are available at different levels for example:

- **Local/Regional Level** | grants may be available from organisations such as:
  a. Business Link
  b. Local Authority or County Council
  c. Enterprise Agencies
  d. Government Office for the Region ("GOR")
  e. Regional Development Agency ("RDA")
  f. Chamber of Commerce
  g. Learning and Skills Council ("LSC")

- **National Level** | grants are available from various Government departments and agencies such as:
  a. Department of Trade and Industry
  b. The Countryside Agency
  c. Trade Partners UK
  d. Department for environment, Food and Rural Affairs ("DEFRA")
  e. Department of Energy and Climate Change ("DECC")

- **European Level** | grants are not usually available directly to business but are provided to local or region bodies



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