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Corporate Tax

Comparative Guide

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Corporate Tax Comparative Guide

UK

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1. Basic Framework

1.1 Is there a single regime or is the regime multi-level (eg, federal, state, city)?

There is a single, UK-wide corporation tax regime.

1.2 What taxes (and rates) apply to corporate entities which are tax resident in your jurisdiction?

For the financial year 2019–20, the main rate of UK corporation tax is set at 19%. According to current legislation, this rate should fall to 17% in 2020–21. A 'surcharge' applies to certain banking entities (see question 2.7).

Where taxable profits are attributed to the exploitation of patents (including where the profits arise from the sale of a product that includes a patent and from patent royalties), a tax rate of 10% may be applicable (see question 2.5).

1.3 Is taxation based on revenue, profits, specific trade income, deemed profits or some other tax base?

Corporation tax is generally charged on a company's taxable profit for an accounting period, being the sum of its income profits and chargeable gains less certain deductible payments.

1.4 Is there a different treatment based on the nature of the taxable income (eg, gains on assets as opposed to trading income or dividend income)?

Corporation tax is charged on both income profits and chargeable gains, although different rules apply to the computation of each, including the available deductions, and exemptions are available to certain classes of income such as dividends earned as investment income. Income profits are calculated by aggregating profits arising from various activities, including trading, property-related activities and loan relationships.
UK tax legislation provides for different calculation methodologies for the various forms of income, with specific reliefs and exemptions applicable to each subset. Companies are liable to corporation tax on any chargeable gain arising upon the disposal of capital assets.

1.5 Is the regime a worldwide or territorial regime, or a mixture?

Companies resident in the United Kingdom are generally subject to corporation tax on their worldwide profits, but in practice, the widespread availability of participation exemptions and reliefs in respect of non-UK source profits means that the system can be territorial in application for significant parts of a company's income and gains. For example, companies may elect for profits and chargeable gains attributable to permanent establishments outside the UK to be exempt from corporation tax.

Companies that are not resident in the United Kingdom but that carry on a trade within the United Kingdom through a permanent establishment are liable to corporation tax on profits attributable to that UK permanent establishment, irrespective of where they arise. The United Kingdom has recently introduced legislation designed to implement the Base Erosion and Profit Shifting recommendation that companies should not be able to avoid creating a UK permanent establishment by fragmenting their operations in order to rely on specific activity exemptions.

For further discussion of the corporation tax liability of non-resident corporate entities, please see question 4.1.

1.6 Can losses be utilised and/or carried forward for tax purposes, and must these all be intra-jurisdiction (ie, foreign losses cannot be utilised domestically and vice versa)?

Losses may be utilised for tax purposes, but different rules apply depending on the nature of the activity that gave rise to the loss (eg, trading losses, loan relationship non-trading deficits and capital losses).

Generally, trading losses may be offset by a company against profits of the same accounting period, howsoever arising (including from capital gains). These losses may also be carried back into an accounting period that falls within the 12-month period prior to that in which the trading loss arose. To the extent not already offset or surrendered to another group company (see below), trading losses may be carried forward indefinitely and offset provided that certain conditions are satisfied.

In a given tax year, only 50% of a company or group of companies' total profits above £5 million may be relieved using carried-forward losses.

Trading losses, as well as certain non-trading losses, may be surrendered to other companies within a group. Group relief is not available for capital losses. Losses arising to a group company that is resident or operating through a permanent establishment in the European Economic Area may be surrendered to UK group companies in very limited circumstances.

Capital losses may be offset by a company against its total chargeable gains in the same accounting period, or carried forward and used in the earliest subsequent accounting period when chargeable gains arise.

1.7 Is there a concept of beneficial ownership of taxable income or is it only the named or legal owner of the income that is taxed?

Yes – the United Kingdom recognises a separation of beneficial and legal ownership in certain circumstances.

1.8 Do the rates change depending on the income or balance-sheet size of the tax payer?

No – the main rate of 19% corporation tax is chargeable regardless of a company's revenue, profit or balance sheet.

Companies that make profits from oil extraction or oil rights are subject to a higher main rate of 30% where their profits in an accounting period exceed £1.5 million. A marginal rate applies to profits between £300,000 and £1.5 million.

1.9 Are the entities other than companies subject to corporate taxes (eg, partner ships or trusts)?

UK partnerships (including limited partnerships and limited liability partnerships) are transparent for tax purposes. Whether foreign partnerships or their members will be subject to tax on UK-related income will depend on whether the relevant entity has characteristics corresponding more closely to transparent or opaque UK entities.

2. Special regimes

2.1 What special regimes exist (eg, for fund entities, enterprise zones, free trade zones, investment in particular sectors such as oil and gas or other natural resources, shipping, insurance, securitisation, real estate or intellectual property)?

The United Kingdom has special corporation tax rates or regimes for each of the following sectors:

- oil and gas;
- life insurance;
- shipping; and
- banking.

The Irish tax code also contains a number of specific reliefs and incentives for companies involved in shipping, financial services, property development, forestry, farming and mining businesses.

2.2 Is relief available for corporate reorganisations or intra-group transfers of companies and other assets? Please include details of any participation regime.

The United Kingdom's participation exemption (the substantial shareholding exemption) provides a wide-ranging exemption from chargeable gains arising on the disposal of shares which broadly applies where:

- the company owned 10% or more of the ordinary share capital of the subsidiary company throughout a continuous 12-month period in the six years prior to the disposal; and

- the subsidiary company is a trading company or the holding company of a trading group.

Special provision is made to allow companies to take advantage of the exemption in the case of hive-downs or other pre-sale reorganisations.

Reliefs are available that should ensure that assets may be transferred within a UK group of companies without any tax charge (direct, indirect or transfer) arising, subject to degrouping charges in the event that the transferee leaves the group within six years of the transfer.

More complicated reconstructions (including joint venture entries and demergers) can also generally be structured to be tax neutral.

2.3 Can a taxpayer elect for alternative taxation regimes (eg, different ways to calculate the taxable base, such as revenue-based versus profits based or cash basis versus accounts basis)?

No.

2.4 What are the rules for taxing corporates with different functional or reporting currency from that of the jurisdiction in which they are a resident?

Generally, a company's profits and gains should be calculated in sterling for corporation tax purposes. However, a company may elect to have a different functional currency for corporation tax purposes.

2.5 How are intangibles taxed?

For corporation tax purposes, the United Kingdom's intangible fixed assets regime covering the taxation of intangibles broadly follows the Generally Accepted Accounting Principles accounting treatment.

The United Kingdom has a 'patent box' regime, which applies a lower rate (10%) of corporation tax to income that is attributable to patents. This regime was substantially amended in 2016 to comply with international agreements on Base Erosion and Profit Shifting, introducing a stronger link between research and development expenditure incurred by a UK taxpayer and the benefits available under the regime.

In April 2019 the United Kingdom introduced a UK income tax charge (20%) on amounts received in low tax jurisdictions in respect of intangible property, to the extent that such amounts arise in respect of the sale of goods or services in the United Kingdom.

2.6 Are corporate-level deductions available for contributions to pensions?

Employers can claim relief on contributions made to employee pension schemes, provided that the contributions are made wholly and exclusively for the purposes of an employer's trade. This relief generally applies in the year that the contribution is made.

2.7 Are taxpayers from different sectors (eg, banking) subject to different or additional taxes or surtaxes?

Certain building societies and banking companies operating in the United Kingdom (as well as UK-based subsidiaries or branches of global groups) are charged an additional surcharge of 8% on profits, subject to an annual allowance of £25 million per group (or per company for non-group companies). A further 'bank levy' applies to the balance sheets of these entities (and groups containing such entities), chargeable at 0.08% of the value of long-term chargeable equity and liabilities and 0.16% of the value of short-term chargeable liabilities.

Companies involved in the exploration for, and production of, oil and gas in the United Kingdom and on the UK Continental Shelf are subject to ring fence corporation tax (RCFT) and a supplementary charge. Profits from these activities are calculated using the same methodology as that used for other corporate activities, but are 'ring fenced' from other activities to prevent a company using losses from other activities to reduce profits subject to RCFT. The main rate of RCFT is set at the higher rate of 30%, and the supplementary charge applies to ring fence profits (with any deductions for financing costs added back) at a rate of 10%.

Companies operating qualifying ships that are strategically and commercially managed in the United Kingdom can elect to apply tonnage tax in place of corporation tax. Tonnage tax is an alternative method of calculating corporation tax profits by reference to the net tonnage of in-scope ships.

2.8 Are there other surtaxes (eg, solidarity surtax, education tax, corporate net wealth tax, remittance tax)?

No, but see question 2.7 for reference to special bank taxes.

2.9 Are there any deemed deductions against corporate tax for equity?

No.

3. Investment in capital assets

3.1 How is investment in capital asses treated – does tax treatment follow the accounts (eg, depreciation) or are there specific rules about the write-off for tax purposes of investment in capital asses?

The UK capital allowances regime is intended to allow companies to offset the cost of investing in capital assets against taxable income, with allowances generally calculated using a 'write down' methodology. The capital allowances regime, including certain annual investment allowances, frequently differs from accounting treatment. Assets are grouped into three types for these purposes and are written down at rates of either 18% or 8%.

3.2 Are there research and development credits or other tax incentives for investment?

To encourage investment in research and development (R&D), reliefs from corporation tax are available on both revenue and capital expenditure. For revenue expenditure, R&D tax credits are available to all companies subject to corporation tax, with different rules applicable to large companies and small and medium-sized enterprises (SMEs). For capital expenditure, capital allowances are available (see question 3.1).

R&D tax credits are available to SMEs at a current rate of 230%, with the total relief that may be claimed for expenditure on a particular project capped at €7.5 million. If an SME is loss-making and meets certain conditions, it may surrender part or all of its loss to Her Majesty's Revenue & Customs in return for a cash payment of between 11% and 14.5% of the loss.

Larger companies (and SMEs, to the extent that they have expenditure that does not qualify for the specific SME relief) may take advantage of a form of R&D tax credit known as R&D expenditure credit. A credit equal to 12% of qualifying R&D expenditure can be brought into account as a receipt of trade, either decreasing losses or increasing profits. Once the credit is brought into account, the company may use it to reduce any liability to corporation tax in the current period before offsetting any remaining credit against tax liabilities in other periods or surrendering it to a group company (subject to certain limitations).

3.3 Are inventories subject to special tax or valuation rules?

The treatment of inventories for tax purposes follows the general rule that the correct way of computing trading profits for tax purposes is to bring opening stock and closing stock into the computation at the lower of cost and net realisable value.

3.4 Are derivatives subject to any specific tax rules?

The United Kingdom has specific derivative contracts legislation for the purposes of corporation tax, which broadly applies to any futures, options and contracts for difference. The aim of the legislation is to ensure that derivative transactions are taxed according to their accounting treatment, in a way that results in an economically realistic outcome. While the detail of the regime is highly technical, it essentially taxes derivative transactions within its scope as income unless the derivative is within certain classes of property derivative or embedded derivative (eg, an embedded put option).

4. Cross-border treatment

4.1 On what basis are non-resident corporate entities subject to tax in your jurisdiction?

Profits attributable to a non-resident corporate's UK permanent establishment are chargeable to UK corporation tax, wherever they arise.

Certain classes of income payable to non-UK companies may be subject to UK withholding tax at a rate of 20%, subject to a wide range of exemptions and relief across the United Kingdom's broad tax treaty network.

Currently, non-UK resident companies are subject to corporation tax on profits arising from property trading and development in the United Kingdom and on gains arising from the disposal of interests in all UK real estate, whether those interests are held directly or indirectly through a property-rich entity (one that derives 75% or more of its gross asset value from UK real estate), if certain ownership tests are met. They are currently subject to income tax on investment (eg, rental) income from UK real estate, but that will change to corporation tax liability in 2020.

The UK diverted profits tax (see question 5.3) applies a 25% rate of tax on profits deemed to be attributable to a non-resident's 'avoided UK permanent establishment' under the particular regime.

See question 2.5 for further discussion of the United Kingdom's new offshore intangible charge.

4.2 What withholding or excise taxes apply to payments by corporate taxpayers to non-residents?

Subject to the application of double tax treaties or other exemptions, the United Kingdom levies withholding tax on payments of royalty or interest income to non-residents. There is no UK withholding whatsoever on dividend payments to non-residents.

Double taxation treaties may provide for a lower applicable rate of withholding, and useful exceptions to the withholding obligation include an exception for interest paid in respect of interest-bearing securities admitted to trading on a multilateral trading facility within the European Economic Area (the Eurobond exception).

4.3 Do double or multilateral tax treaties override domestic tax treatments?

Yes. Such treaties are generally incorporated into domestic law and supersede the underlying domestic rules. However, a claim is often required in order for relief to be effective.

The United Kingdom's approach is considered to be in line with Organisation for Economic Co-operation and Development guidance on double tax treaty practice, as the United Kingdom generally denies treaty benefits only where the UK tax authority considers that a tax avoidance motive is present.

The United Kingdom has signed and ratified the Multilateral Instrument (MLI), which amends its existing taxation treaties in line with Base Erosion and Profit Shifting Action 15 to the extent that the other contracting nation has also ratified the MLI.

4.4 In the absence of treaties is there unilateral relief or credits for foreign taxes?

Unilateral relief (in forms including deductions and credits) will usually be available for foreign taxes corresponding to UK taxes on both income and chargeable gains. Broadly, the relief system operates to reduce UK corporation tax due on a source of income by the lower of the UK corporation tax due on that sum and the foreign tax incurred on it.

4.5 Do inbound corporate entities obtain a step-up in asset basis for tax purposes?

This will depend on the structuring of the in-bound migration, but a number of reorganisation structures could produce this effect.

4.6 Are there exit taxes (for disposed-of assets or companies changing residence)?

Yes. An exit tax may arise on the transfer of tax residence of a corporate entity, the transfer of assets out of the jurisdiction and the cessation of a trade carried out in the United Kingdom through a permanent establishment.

Generally, the effect of the UK regime is that a deemed disposal and reacquisition of the assets occurs at market value, giving rise to corporation tax on any latent gains in the assets. The effects of the deemed exit charge can be mitigated if the migration is to another EEA state, as the tax due may be paid in instalments.

The United Kingdom's participation regime (see question 2.2) provides a principal means of mitigating this charge for holding companies.

5. Anti-avoidance

5.1 Are there anti-avoidance rules applicable to corporate taxpayers – if so, are these case law (jurisprudence) or statutory or both?

The United Kingdom's primary source of anti-avoidance rules has derived from case law, but increasingly new tax statutes include wide-ranging anti-avoidance provisions.

5.2 Please set out the main "general purpose" anti-avoidance rules or regimes, based on either statute or cases.

The United Kingdom has a general anti-abuse rule, which allows Her Majesty's Revenue and Customs (HMRC) to counter abusive arrangements where it is reasonable, in all the circumstances, to conclude that the obtaining of a tax advantage was (one of) the main purpose(s) of the arrangements. Arrangements are abusive if they cannot reasonably be regarded, in all the circumstances, as a reasonable course of action in relation to the tax provision at issue.

A number of the United Kingdom's specific corporate tax regimes, such as that applying to loan relationships, contain anti-avoidance provisions that disapply deductions and reliefs where arrangements are entered into with the main purpose of obtaining the deduction or relief in question.

5.3 Please set out the major anti-avoidance tax rules, eg controlled foreign companies, transfer pricing (including thin capitalisation), anti-hybrid rules, limitations on losses or interest deductions?

The United Kingdom has various anti-avoidance rules, including:

- controlled foreign company rules;

- diverted profits tax, which applies a tax rate of 25% to diverted profits relating to activity in the United Kingdom, with the aim of taxing entities that are considered to have created tax advantages by using arrangements that lack economic substance or to have exploited gaps in the legislation applicable to permanent establishments in the United Kingdom;

- an interest barrier regime that limits the deductibility of interest above a de minimis threshold of £2 million to a default ratio of 30% of a group's earnings before interest, tax, depreciation and amortisation taxable in the United Kingdom, subject to a cap to ensure that the group's net UK interest expense does not exceed its worldwide net external interest expense. Various elections may be made by a group to maximise the level of available deductions;

- anti-hybrid rules that seek to counteract the effect of mismatches that involve double deductions for the same expense or deductions for an expense without any corresponding taxable receipt. The rules target mismatches arising from arrangements involving hybrid instruments, hybrid entities and dual-resident entities;

- limitations on the use of losses (see question 1.6); and
- a transfer pricing regime (see question 5.5), which is also used to challenge thin capitalisation arrangements.

5.4 Is there a ruling process available for specific corporate tax issues or desired domestic or cross-border tax treatments?

Taxpayers and their advisers can apply to HMRC for statutory clearances on the tax treatment of certain specified transactions. HMRC also allows taxpayers to ask for non-statutory clearances in areas where tax legislation does not provide for a statutory clearance application.

HMRC will provide non-statutory clearances only where it considers that there is genuine uncertainty in the application of the legislation. Generally, taxpayers can rely on both statutory and non-statutory clearances,
provided that the transaction is actually carried out as described in the application and the taxpayer has given full and comprehensive disclosure in its description of the issue.

5.5 Is there a transfer pricing regime?

Yes. Where applicable, the UK system requires companies to include transfer pricing adjustments as part of their self-assessment returns, with penalties for non-compliance.

5.6 Are there statutory limitation periods?

If a compliant tax return including full disclosure of all relevant tax issues is filed by a corporate taxpayer, HMRC may only issue a notice of enquiry into the return within 12 months of the filing.

HMRC is entitled to open a 'discovery assessment' after the end of the standard 12-month limitation period if it discovers that additional tax is due from a taxpayer and either:

- that tax loss resulted from careless or deliberate action by the taxpayer (six-year limitation); or
- a tax inspector could not have reasonably been expected to be aware of the facts giving rise to the loss of tax at the end of the default 12-month enquiry period (four-year limitation).

6. Compliance

6.1 What are the deadlines for filing company tax returns and paying the relevant tax?

A company must file its tax return in respect of an accounting period within 12 months of the end of that period.

If a company has taxable profits of £1.5 million or less in an accounting period, the deadline to pay any corporation tax due is nine months and one day after the end of that period. A company with taxable profits in excess of £1.5 million is required to estimate its profits for an accounting period and pay corporation tax in four quarterly instalments (assuming that the accounting period in question lasts for 12 months).

6.2 What penalties exist for non-compliance, at corporate and executive level?

The United Kingdom has extensive powers to penalise corporates and executives for failure to comply with tax legislation. For corporation tax purposes, penalties generally arise depending on the severity of the alleged conduct underlying the non-compliance and may be tax geared to incentivise compliance in more valuable cases. In certain cases, executives who bring about a deliberate inaccuracy in a company's returns may be held jointly liable for any penalties with the company.

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6.4 Is there a regime for reporting information at an international or other supra-national level, eg Country-By-Country reporting?

The United Kingdom has implemented the country-by-country reporting template published by the Organisation for Economic Co-operation and Development in response to Action 13 of the Base Erosion and Profit Shifting Action Plan. The regime requires UK multinationals and UK sub-groups of multinationals to provide jurisdictional breakdowns of their operations and taxes paid.

The United Kingdom is a signatory to the Multilateral Competent Authority Agreement for the automatic exchange of country-by-country reports, and therefore exchanges reports received by it with other countries around the world.

The United Kingdom is implementing the EU directive regarding the disclosure of potential tax avoidance arrangements (known as DAC6). Although the impact of Brexit on the continuing application of this measure is unclear, the United Kingdom has passed enabling legislation to allow it to make regulations to implement DAC6 regardless of its potential withdrawal from the European Union.

7. Consolidation

7.1 Is tax consolidation permitted, either on a tax liability or payment basis or both?

Outside of value added tax, the United Kingdom does not permit tax consolidation on a liability basis. However, it allows companies within a group to surrender losses to each other through its group relief regime (see question 1.6).

With regard to consolidation on a payment basis, companies within a group can enter into a group payment arrangement with Her Majesty's Revenue and Customs (HMRC) (respectively, a 'payment group' and a 'group payment arrangement') in respect of the payment of corporation tax by the payment group. While a payment group nominates one company to make payments to HMRC, each payment group company remains individually liable for the timely payment of the amount of tax it owes.

8. Indirect Taxes

7. What indirect taxes (eg, goods or service taxes, consumption taxes, broadcasting taxes, value added taxes, excise taxes) could a corporate taxpayer be exposed to?

Value added tax (VAT) is the primary indirect tax in the United Kingdom, which is chargeable on all supplies of goods and services within the United Kingdom, provided that the supply is not zero rated or exempt, as well as on acquisitions in the United Kingdom of goods from other EU member states and on the import of goods from outside the European Union. UK VAT legislation partly derives from EU law and the impact that Brexit will have on the UK rules is not yet clear.

The UK levies stamp duty land tax (SDLT) on the acquisition of certain UK real estate.

8. Are there transfer or other taxes due in relation to the transfer of interests in corporate entities?

The United Kingdom generally levies stamp duty or SDRT on transfers or agreements to transfer stock or marketable securities. No such charge arises on capital issuances.

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