CANADA TO UK

A GUIDE FOR CANADIAN COMPANIES SETTING UP A BUSINESS AND CANADIAN CITIZENS WORKING IN THE UK

SETTING UP A BUSINESS IN THE UK?
IT'S EASIER THAN ANYWHERE IN EUROPE

BRANCH OR SUBSIDIARY?
A LOOK AT THE ALTERNATIVES

WHAT ABOUT PERSONAL TAX?
WE REVIEW THE RULES

EXPRESS YOUR TALENT.
DEPEND ON OURS.

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WHY THE UK LEADS THE INVESTMENT TABLE FOR OVERSEAS COMPANIES

REGISTERING IS FAST, EASY AND INEXPENSIVE

Like every industrial country, the UK has formal rules of procedure and a long-established body of corporate law established over centuries. Unlike many countries, however, the UK is relatively free of red tape and bureaucracy.

The timescale required to register a new business and begin trading is shorter than anywhere else in Europe. This is one of the reasons why overseas corporations find the UK so attractive. Foreign investment in the UK is the greatest in Europe and the lead is growing.

On the following pages we summarise the requirements for Canadian companies trading here, and also review the personal tax rules affecting Canadian citizens.

If a Canadian company intends to operate from a fixed base in the UK, employing people here and entering into contracts in the UK, it will have a 'permanent establishment' in this country and therefore will be liable to UK tax. However, as we explain on page four, its tax circumstances will depend upon the way the business is constituted.

The company can either establish a branch operation in the UK or set up a subsidiary company here. From a UK tax perspective, the main difference between the two would be the way that the repatriation of profits would be treated, and the treatment of any losses for Canada tax purposes. However, there is a significant difference in relation to the public disclosure of the business's financial results.

The rules affecting individuals can be rather complex. However, there are a number of valuable concessions for foreign nationals and it is very important to take professional advice - ideally before arriving in the UK.

HW Fisher advises many Canadian companies and Canadian citizens who have taken up employment here. We would be happy to speak to you if you would like to learn more.

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THE TWO BASIC WAYS OF TRADING IN THE UK

An overseas business can operate either directly (as a branch, in other words) or by setting up a British subsidiary. The difference may seem technical but it can have a number of important consequences.

OPERATING DIRECTLY

If a Canadian company decides to trade here as a branch of its Canadian operation, it will still have a set place of business in the UK. This means that it will normally be required to register under the Companies Act 2006 - the major piece of UK legislation governing the operation of companies. The registration must take place within 30 days of establishing the operation.

Certain basic documentation will have to be produced at this point - principally the Bylaws of the corporation concerned, duly notarised within the jurisdiction of the State of incorporation.

In addition, the business will have to report changes in its constitution, officers and accounts.

The timing for the filing of accounts in the UK will depend upon the requirements of the law relating to the auditing and publication of accounts in the Canadian province or territory of incorporation.

Additionally it should be noted that the Canadian corporation's financial statements will need to be filed and available for public inspection. This is a significant difference compared to a subsidiary and often influences the decision as to whether to incorporate a subsidiary rather than trading through a branch.

CREATING A SUBSIDIARY

If a decision is taken to set up a UK subsidiary, the process, as noted earlier, is simple and cheap compared to other countries within Europe.

The UK Government has repeatedly declared its intention to make this country entrepreneur-friendly, and recent changes to corporate law are notable steps in that direction.

The most simple (and most popular) entity for business is the private company. It can be set up with a minimum share capital of £1 or $1 and offers the investor limited liability. There is a current requirement for a minimum of one director. There are no shareholding, residential or nationality restrictions.

The incorporation of a company is also simple. Our company secretarial department can deal with all the formalities quickly and at modest cost.

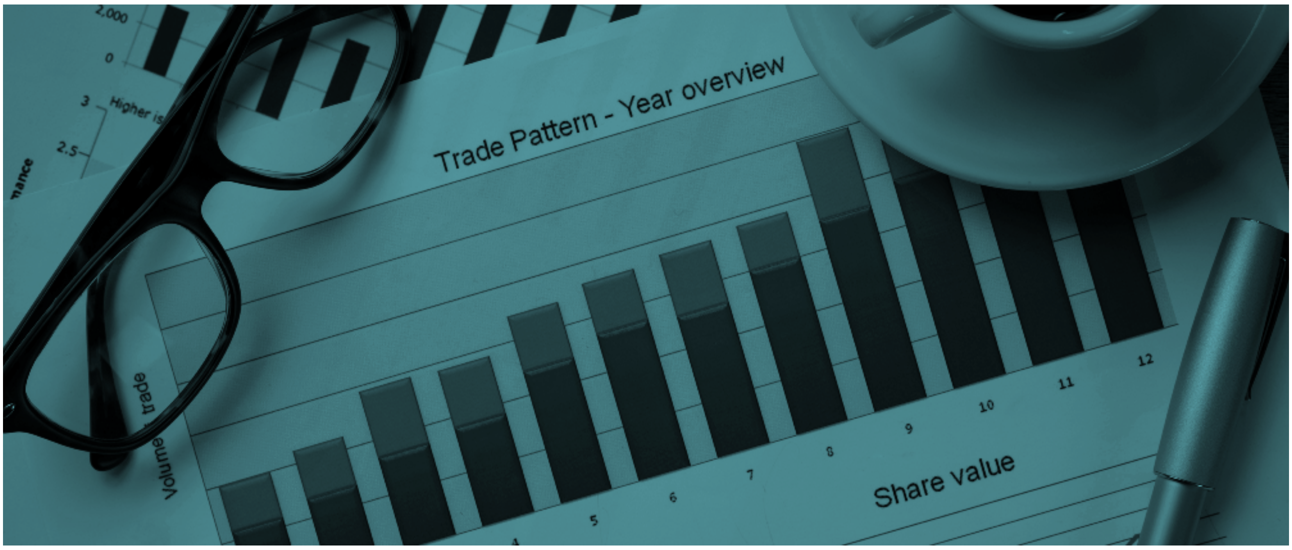
THE REQUIREMENTS

The annual obligations following incorporation are relatively straightforward. Companies must file a Confirmation Statement (which replaces the previous annual return) each year. This now includes details of 'Persons of Significant Control,' and produce accounts, which may need to be audited.

As well as these basic requirements, certain changes will have to be reported. These include, for example, changes to the capital structure as well as any charges on the company.

In addition to the private company, there are other vehicles through which businesses can be operated. Each has its pros and cons, and it will be necessary to take expert advice before making a decision.

Of course, UK company law, like the law of most countries, is not static but continually evolves in the light of changing circumstances. It is therefore very important to take nothing for granted, but to seek professional advice.



TAX AND THE DECISION TO SET UP A BRANCH OR A SUBSIDIARY

This decision is fundamental not only because it will define the structure of the company and have an impact upon its operating methods, but because there are significant tax implications.

THE BRANCH*

Any branch of an overseas company operating in the UK will be liable to tax on both income and capital profits made in the UK at the corporation tax rate calculated on an 'arm's length basis' - in other words, assessed in a manner that prevents companies operating internationally from artificially manipulating inter-company transactions in order to avoid tax.

Expenses in general relating to UK branch operations can be deducted, whether incurred by or recharged to the branch, or not. Interest charged by the parent to the branch will not be allowed unless the parent borrowed specifically for the purposes of the branch activities (although the terms of the Double Tax Treaty between the UK/Canada may provide scope for relief). Even if interest is potentially allowable it may be restricted by Transfer Pricing 'thin cap' rules or Corporate Interest Restriction rules which limits the amount which may be claimed. A further restriction can arise under the UK anti-hybrid rules and we recommend that professional advice is sought if it is proposed that the branch is funded by loans from the Canadian corporation.

One particularly attractive feature of UK tax law is that there will be no further withholding tax paid on repatriation of profits for a business trading as a branch.

However, it will be necessary to file the accounts of the parent organisation with the UK authority, as well as the names of its directors and the company secretary, together with the names of the branch representative in the UK. This is typically unattractive to privately owned Canadian corporations as the Canadian financial statement will be on public record in the UK. This can be managed by establishing a 'clean' Canadian subsidiary which will open the UK branch.

Losses made by the branch may be available to offset against Canadian profits, but it is important to take advice on this issue from professionals in Canada.

THE SUBSIDIARY

If a subsidiary is incorporated and managed in the UK, it will be UK resident for corporation tax. If it is incorporated in Canada and managed in the UK, then it could be dual resident in both countries.

A subsidiary will be liable to tax on worldwide income and capital profits at the corporation tax rate - again, calculated on an arm's length basis.

For companies with profits below £1.5m, corporation tax is due nine months after the end of the tax period. The profit level noted is reduced where the overseas company has associated companies, whether in the UK or elsewhere, such as Canada. The reason is that in this case, the profits are divided among the relevant businesses.

A tax period cannot exceed 12 months. If an accounting period exceeds one year then it is split into two tax periods, with tax due nine months after the end of each.

For companies with profits above £1.5m tax is generally payable in four equal quarterly instalments beginning six months and 14 days after the commencement of the profit period.

For companies with profits above £20m tax is generally payable in four equal quarterly instalments beginning two months and 14 days after the commencement of the profit period.

As the computation of the corporation tax liability is not due until 12 months after the end of the accounting period, payment is due before the actual computation is filed.

As with branches, the profit levels - including those for calculating if payment of tax by instalments is due - are reduced where the company has associated companies, whether in the UK or elsewhere.

No withholding tax is applied by the UK to dividend payments, so profit reparation is tax efficient.

Losses in the UK company can be carried back one year against all profits or carried forward against future profits provided they are made in the same trade.

For losses incurred on or after 1 April 2017, companies will be able to use carried forward losses against profits from other income streams or from other companies within a group. So this might encourage grouping of UK and foreign companies rather than common ownership in the future.

Regarding the quantum, there is a restriction of 50% of the amount of profit that can offset through losses carried forward. The restriction will only apply to profits in excess of £5m.

An area of potential complexity is loan funding from the Canadian parent corporation, particularly if the UK subsidiary is treated as a transparent entity for Canadian tax purposes.. The UK has introduced anti-hybrid rules which may deny a UK tax deduction for interest expense and this should be carefully reviewed before any debt funding is provided to the UK subsidiary.

CORPORATION TAX RATE

The UK corporation tax rate for company profits is currently 19% but is due to increase to 25% with effect from 1 April 2023.

You pay corporation tax at the rates that applied in your company's accounting period for corporation tax.

**Although we use the word 'branch' throughout this article, the tax term for this operation is a 'Permanent Establishment' (PE).*

CORPORATION TAX INCENTIVES - FURTHER REASONS TO INVEST IN THE UK

Aside from the ease of establishing a business presence in the UK, there are generous tax incentives available for innovative businesses, which can reduce the already low corporation tax rates further.

RESEARCH AND DEVELOPMENT ("R&D")

There are two regimes providing corporation tax relief for those companies that undertake qualifying R&D activities in the UK.

1. The Small and Medium-sized Enterprise ("SME") scheme applies to companies which have less than 500 employees and either turnover of less than €100m or a balance sheet total of less than €86m. These limits apply to the consolidated worldwide group results where the company is a member of a group.

   An SME is entitled to claim an enhanced corporation tax deduction equal to 230% of its qualifying expenditure on R&D. This can substantially reduce the company's taxable profits, making the cost of undertaking R&D work in the UK highly competitive.

   Additionally, where the enhanced corporation tax deduction results in the company incurring a tax loss, the company can elect to surrender the loss in exchange for a cash payment from HMRC. The cash payment is currently equal to 33.35p for every £1 actually spent by the company. It should be noted that this is a lower return than offsetting the losses against future taxable profits but does provide a cashflow advantage.

2. The Research and Development Expenditure Credit (RDEC) scheme applies to any company that does not qualify for the SME scheme.

   The RDEC tax credit, which will be taxable, will be a payable cash sum equal to 13% of the company's qualifying expenditure on R&D; this will result in a rate of post-tax relief of 10.53%.

   For profit making companies the credit discharges corporation tax liability that the company would have to pay. Companies with no corporation tax liability will benefit from the RDEC either through a cash payment or a reduction of tax or other duties due.

   Overall, the UK R&D tax relief schemes are highly generous and increase the attractiveness of the UK for inward investors.

PATENT BOX

The current UK Patent box regime was introduced in April 2013: companies can elect into the regime which will result in income directly attributable to the exploitation of patents being subject to a 10% corporation tax rate.

The relief applies to income derived from patents registered in the UK or Europe.

There are a number of conditions to be met such as requirements that the UK company either owns the patent or has an exclusive licence to exploit the patent, and has been actively involved in developing the patent.

There are restrictions based on the proportion of relevant UK R&D undertaken as a proportion of global R&D.

PERMANENT ESTABLISHMENT ("PE")

Overseas entities will only be taxable in the UK if they are trading in the UK rather than trading with the UK. If they have a PE in the UK they will be treated as trading in the UK and thus will be taxable on an appropriate share of profits made from such trading.

IN THE UK A PE IS PRESENT IF:

a. There is a fixed place of business here through which a business is wholly or partly carried on, or

b. an agent acting on behalf of the business has and habitually exercises, in the UK, authority to do business on behalf of the business (but see below).

FIXED PLACE OF BUSINESS PE

A fixed place of business permanent establishment can include:

a. a geographic place of business, possibly premises or a site, although it can, in certain circumstances, be machinery or equipment;

b. a place of business which is fixed, that is, have a certain degree of permanence, and the business must be carried on through this fixed place of business, normally by the personnel of the enterprise.

Examples given in UK legislation include:

a. a place of management

b. a branch

c. an office

d. a factory

e. a workshop

f. an installation or structure for the exploration of natural resources

g. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources

h. a building site or construction or installation project.

AGENCY PE

For UK tax purposes, a PE can also include:

"… an agent acting on behalf of the company where the agent has and habitually exercises here authority to do business on behalf of the company as long as that agent is not of independent status acting in the ordinary course of his business."

The OECD Model Treaty definition is drawn more narrowly because it requires the agent to exercise authority to enter into contracts.

However, a UK agent will not establish a PE where the agent is "of independent status acting in the ordinary course of his business".

Independent status is tested by reference to the arm's length legal, financial and commercial characteristics of the particular business relationship between the non-resident and the agent. The fact that an agent is a subsidiary company does not necessarily make it a dependent agent. However, a subsidiary company will constitute a domestic law agency PE of its parent company in the same way as any other agent of the parent company if independence cannot be demonstrated.

Matters relevant would include (but not necessarily be limited to) the number of unrelated principals that the agent acted for and the extent of the business activities customarily carried out by independent agents in the specific business sector concerned.

PREPARATORY OR AUXILIARY ACTIVITIES

There is no PE in the UK if the activities here, whether through a fixed place of business or an agent, in relation to the business as a whole, are preparatory or auxiliary in character and such activities are not part of a fragmented business operation. The UK legislation gives some examples of activities that are preparatory or auxiliary as follows:

a. The use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the company,

b. The maintenance of a stock of goods or merchandise belonging to the company for the purpose of storage, display or delivery

c. The maintenance of a stock of goods or merchandise belonging to the company for the purpose of processing by another person

d. Purchasing goods or merchandising, or collecting information, for the company.

The benchmarks to gauge the activities against are those of the trade as a whole entity. So, if the UK activities are no different to the essence of the whole trade, e.g. the UK personnel collect market research information and the non-resident company's main trade is also concerned with market research, then the activities in the UK would not be preparatory or auxiliary to the trade – it would be part of it and there could be a PE of the overseas parent in the UK.

One would also need to consider the terms of any relevant Treaty that may extend the activities that would be treated as preparatory or auxiliary in nature.

VALUE ADDED TAX (VAT)

BACKGROUND

VAT is a tax on consumers that is levied in the UK and all European Union (EU) countries. The current standard-rate of VAT in the UK has been 20% since 2011. VAT is chargeable on most supplies of goods and services in the UK. Although VAT is collected and paid over to the tax authorities (HM Revenue & Customs) by businesses, it should not be a cost to most businesses, although they need to be aware of how the UK VAT system should be operated. The UK's departure from the EU on 31 December 2020, has had a minor impact on supplies on services, but it has had a major impact on supplies of goods causing disruption and alteration to supply chains.

US BUSINESS MAKING SUPPLIES TO THE UK

a. Goods sold from Canada.

If the goods are sold from Canada and the UK customer takes title on importation of the goods into the UK, the UK customer will have to pay import Duty (if applicable) on the value of the goods. VAT is no longer paid at the point of import and is accounted for through the periodic VAT return; a significant cashflow advantage. There will be no VAT obligations for the Canadian company as the sale is deemed to have taken place outside of the UK.

b. Goods sold in the UK.

If the UK customer only takes title to the goods on their delivery to it after importation, then the Canadian company is the importer of the goods and must pay import Duty on the value of the goods (if applicable) and accounts for import VAT o its periodic VAT return. The sale to the UK customer is then deemed to take place in the UK and is therefore subject to UK VAT at 20%. Care must be taken on supplies into Northern Ireland to ensure compliance with the Northern Ireland Protocol element of the UK/EU withdrawal agreement.

Accordingly, the Canadian company would be obliged to register for VAT in the UK in order to:

i. Add UK VAT to the net value of its sales invoices to UK customers (this would not normally be an issue for business customers as they will normally be able to recover the VAT on their UK VAT Returns, but would be an issue for non-business customers who cannot recover VAT);

ii. Appoint a customs agent to make import entries, pay duty and ensure that import VAT can be account for on the periodic VAT return. Depending on the quantum of duty, a Duty Deferment Account might be advantageous; and

iii. Complete the UK VAT returns indicating the VAT added to UK sales and the VAT paid on UK imports, with the net difference either payable to, or receivable from, HMRC.

c. Since 1 January 2021, there has been a major change in the VAT treatment of goods sold B2C in the UK and in the EU from 1 July 2021. Consignments sent with

a value below £135/€150 require VAT to be collected at the point of sale and remitted via VAT registration to HMRC in the UK and to single taxation authority in the EU. Above £135/€150, local registration is required to effect an import followed by sale. That is more problematic with the EU than the UK due to multiple VAT rates. We have extensive experience in handling this for Canada based clients and view ourselves as the "gateway to Europe".

d. Services

Most business to business (B2B) services are treated as supplied where they are received by the recipient. In these circumstances, Canadian businesses supplying services from Canada to a UK business customer would not be obliged to register for UK VAT and the customer would account for any VAT at their end.

Other business to private customer (B2C) services are treated as supplied where the supplier belongs. In either case, there is no requirement for a Canadian company supplying these services to UK customers from Canada to register for VAT in the UK.

However, services relating directly to UK land or property, for example the services of architects, surveyors, engineers etc. are subject to UK VAT regardless of where the supplier or his customer are established.

It should also be noted that Canadian businesses providing electronically supplied or digital services (i.e. downloadable software) to private customers (B2C) in the UK have a liability to register for VAT in the UK. As there is no longer any minimum turnover threshold, those businesses would be required to register with immediate effect. This also applies where such B2C supplies are made to customers in EU member countries, so there would be a potential liability for a Canadian business to register for VAT in all EU member states in respect of its digital B2C services. Therefore, to ease the administrative burden on such businesses, the EU has set up the MOSS (Mini One-Stop Shop) Scheme. This allows a Canadian business to register for the VAT Moss Scheme in one EU member country only and account for EU VAT on its B2C electronically supplied or digital services using this Scheme, rather than having to register in 27 different EU member countries.

UK VAT REGISTRATION FORMATS

A Canadian company with no UK office or other business establishment may either:

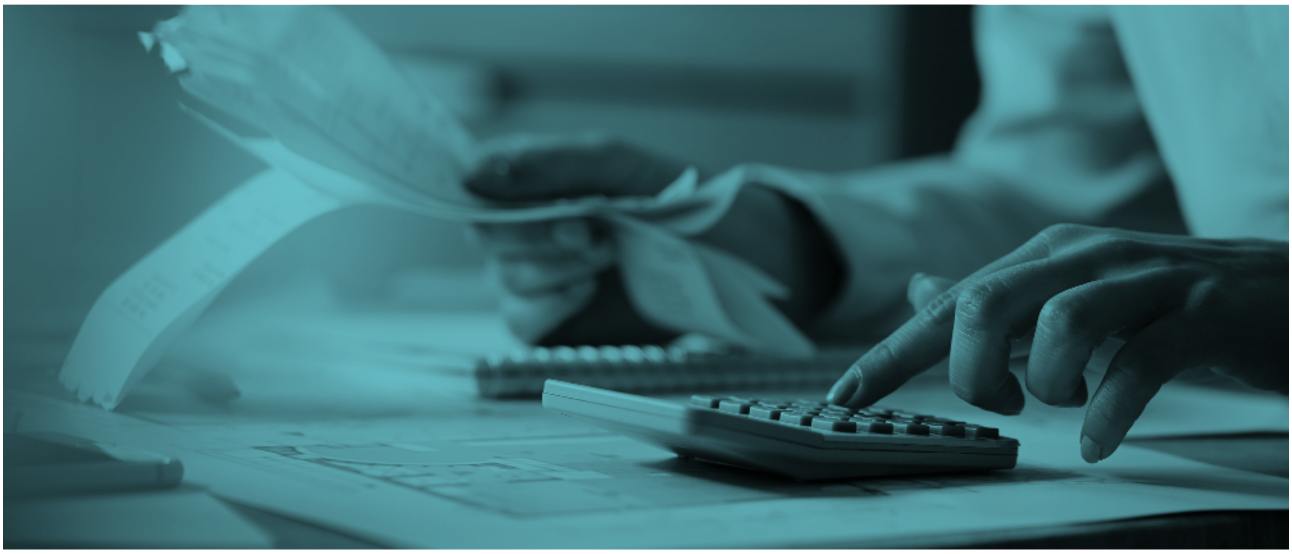
a. register as an overseas trader from its Canada office and have UK VAT returns sent directly to it at that address;

b. appoint a UK VAT agent to deal with its UK VAT affairs (an agent cannot sign the UK VAT Returns without authorisation and is not liable for any VAT debts of the principal); or

c. appoint a UK VAT Representative to deal with its UK VAT affairs. The VAT Representative can complete and sign UK VAT returns and is also liable for any VAT debts of the principal.

CANADIAN BUSINESSES INCURRING VAT ON BUSINESS TRIPS TO THE UK

It should be noted that a Canadian business incurring VAT on hotel accommodation and other expenses in the UK during business trips can make a claim to recover this VAT direct from the UK VAT authorities, even if there is no obligation for it to register for VAT in the UK. Claims can be submitted annually for the year to 30 June and must be submitted by 31 December of the same year. That deadline is rigidly enforced.



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PERSONAL TAX

The residence and domicile status of an individual will be important factors in determining their liability to UK taxation.

RESIDENCE

Although there are several different factors which determine whether someone is resident in the UK in a particular year, the number of days spent in the UK in the tax year is the primary factor. Individuals spending less than 16 days will be not resident while those spending greater than 183 days will always be resident. Between these two extremes residency depends on the number of days spent in the UK combined with other factors such as historic residency, available accommodation, where other family members reside and employment. Having a full time (as defined) occupation in a single state can determine an individual's residence status.

Ordinarily an individual is tax resident for an entire year, however in certain circumstances it is possible for a year to be 'split' into periods of residence and non-residence.

An individual who is resident in the UK may also be resident in another country. Where that country has a double tax agreement with the UK the individual might be treaty resident in one country or the other, the practical effect of which can be to treat certain income or gains as taxable in one country, not both.

There are special rules for individuals who return to the UK after a temporary period of non-residence. Broadly, certain income or gains arising during the period of non-residence may be taxable on their return to the UK. In order for a period of non-residence not to be treated as "temporary" the individual must be non-resident for at least 5 years.

DOMICILE

In general, a person is domiciled in the country which they consider to be their permanent homeland. Every individual will have a domicile of origin at birth, normally their father's domicile, and there is a general presumption against a change of domicile. As such, an individual who is not domiciled in the UK who comes to the UK with an intention to return to their home country and retains that intention, is unlikely to acquire a UK domicile.

Non-UK domiciled individuals may take advantage of The Remittance Basis of taxation.

THE REMITTANCE BASIS

Individuals who are not domiciled in the UK, can take advantage of the remittance basis of taxation for off-shore income and gains – but at a price.

Broadly, if the Remittance Basis is claimed, a UK resident but non-domiciled individual remains taxable on sources of income and gains that arise in the UK but not liable to UK tax on sources of foreign incomes and gains, to the extent that those sources are not remitted to the UK.

Capital gains and income realised before arrival in the UK held in the form of cash at that time can usually be remitted to the UK free of tax even after UK residence commences.

If unremitted overseas income and/or gains do not exceed £2,000, the remittance basis will apply automatically. Where unremitted income and gains exceed £2,000, the remittance basis can be claimed but the individual will forfeit their annual personal tax allowance and capital gains tax exemption.
Where a non-domiciled individual, such as a long term expatriate, has been resident in the UK in at least seven out of the previous nine tax years, then the remittance basis can be claimed but the individual will have to pay the "Remittance Basis Charge" (RBC) of £30,000 (increases to £60,000 once the individual has been in the UK for 12 out of the previous 14 tax years) for any year of claim in addition to losing the allowances mentioned above. The decision whether to claim the remittance basis can be made on a year by year basis.

Individuals who have either been resident in the UK for more than 15 of the last 20 years, or those who have a 'domicile of origin' in the UK will be deemed domicile and unable to access the remittance basis. Such individuals are taxed in the UK on their worldwide income and gains.

The rules regarding what constitutes a remittance are complex. Professional advice should be sought before bringing, or enjoying the benefit of, any non-UK funds in the UK. Timing is crucial when it comes to remitting funds here. Tax credit relief may be available in certain circumstances, in respect of remitted funds already subject to tax in another jurisdiction.

There may be different tax consequences depending on the nature and source of the remitted funds.

WHAT WILL COUNT AS EARNINGS IN THE UK?

The answer to this question may seem self-evident, but as always with tax matters, things are not necessarily as simple as they seem.

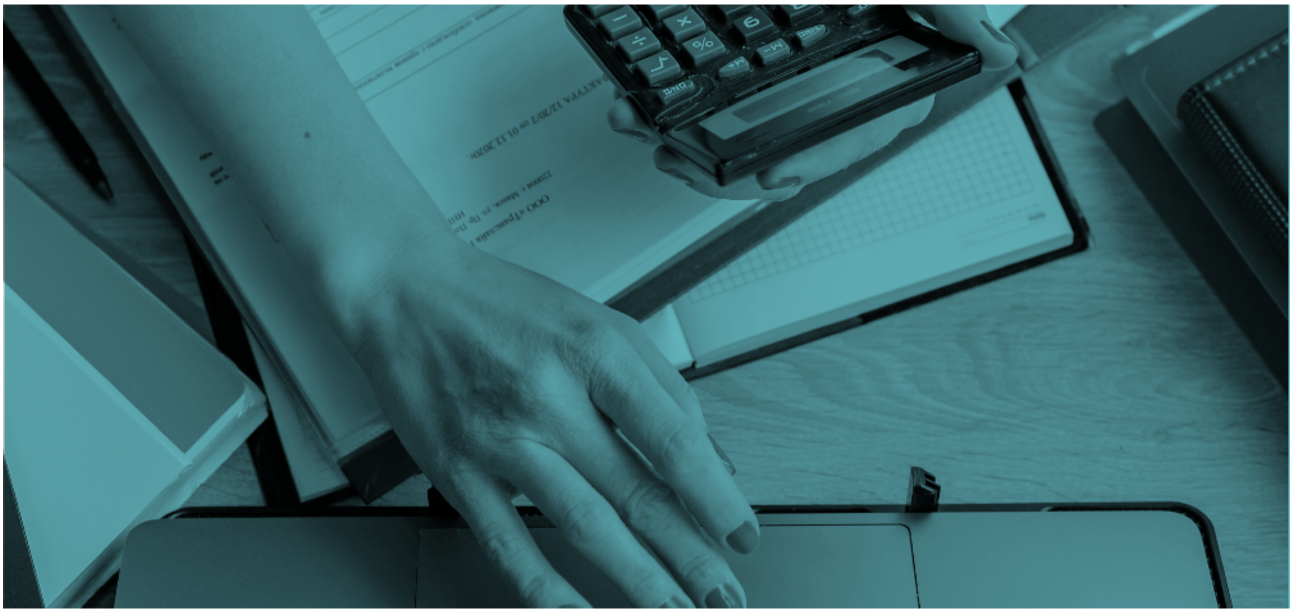
Naturally, taxable earnings include salaries, bonuses and commissions. But for tax purposes they can also include foreign-posting payments such as cost of living allowance, foreign service premium, foreign housing allowance, educational expense, benefits in kind, some reimbursed expenses and any tax reimbursement payments.

Generally, income earned at a time when an individual is not resident in the UK, but received after he has become a resident, is not subject to UK tax.

Conversely, income earned whilst an individual is resident, but received after ceasing to be a resident, is still subject to UK tax.

The exact dates of arrival in and departure from the UK can be very important.

The operation of a Double Taxation Treaty can mean that, in certain circumstances (short term business visitors, for example) income earned in respect of duties carried out in one State are taxable only in the other State.



THE DEDUCTIONS AND EXEMPTIONS THAT CAN REDUCE YOUR TAX BILL

Foreign nationals potentially qualify for a number of deductions and exemptions that can have a significant impact upon their tax liability. Below we summarise some of the more significant points.

NON-UK DUTIES (OVERSEAS WORKDAY RELIEF)

For a period from the date of arrival in the UK to the following 5 April and two subsequent tax years, earnings and certain share incentives relating to work performed overseas during that period are not subject to UK tax if not remitted to the UK. To take advantage of these rules, it is essential that some earnings from the employment are paid directly into a dedicated offshore account.

DETACHED DUTY RELIEF

Housing and certain cost of living expenses paid for or reimbursed to an employee who has been seconded to the UK for a period not exceeding two years may qualify for complete or partial exemption from UK tax.

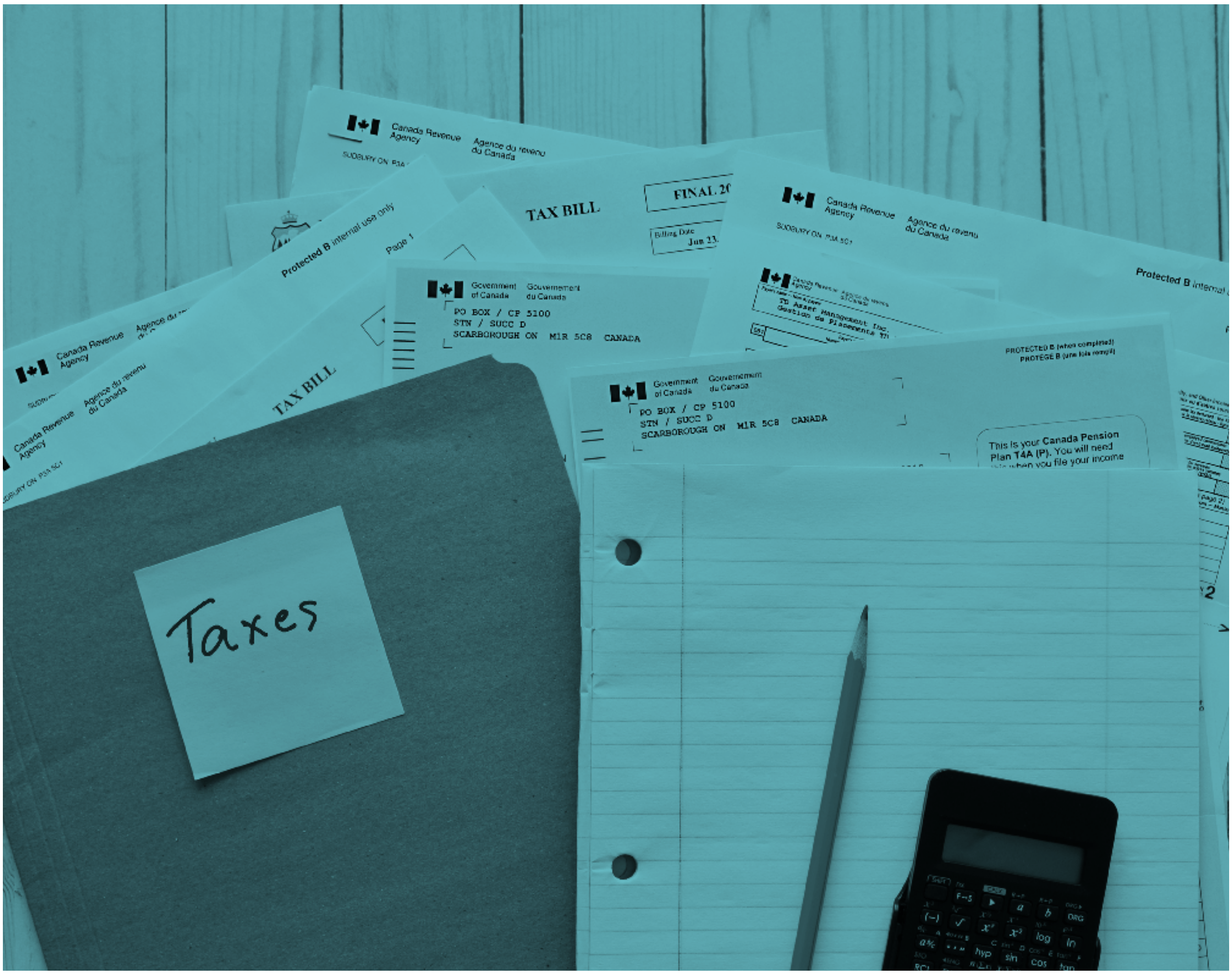
EXPENSES

Reimbursed expenses are taxable unless they qualify as allowable business expenses. Allowable expenses would normally include travel, provided the cost incurred for legitimate business reasons.

However, expenses incurred in travelling from the UK to the individual's home country and back which are met by the employer can be tax free for a period of up to five years. There are more limited exemptions for the cost of such travel for close family members.

SETTING UP A NEW HOME

Certain removal payments and benefits made to an employee who moves home for employment reasons (other than for a temporary purpose) are exempt from tax up to a limit of £8,000.



STRUCTURING BANK ACCOUNTS

Individuals wishing to use the remittance basis of taxation are advised to take care when structuring their banking arrangements in order to avoid unwittingly remitting income and/or gains to UK.

EARNINGS

In order to qualify for the Overseas Workday Relief it is recommended that the earnings are paid to a non-UK bank account that:

a. is solely in the name of the employee and;

b. comprises only of employment income from a single employment and;

c. the account must have a balance of less than £10 at the point the employment income is first paid into the account.

It is recommended that such account is set up prior to arrival in the UK. The employee will need to nominate this account in writing to the HMRC. Although not essential it is recommended that a new account is opened each tax year.

OTHER INCOME GAINS

Similarly, non-UK domiciled individuals coming to the UK with significant assets outside the UK may wish to structure their banking arrangements (ideally prior to arrival in the UK) in order to minimise potential exposure to UK tax on income and gains arising from those assets.

It is fairly standard practice to set up a "Capital Account" and a separate "Income Account". The Capital Account initially contains all the cash funds at the date of arrival in the UK. Remittances from this account can be made whilst resident in the UK without triggering a UK tax charge. Any income generated by the Capital Accounts is then credited directly to the Income Account. Remittances from this Income account WOULD trigger a UK tax charge.

It is also preferable to segregate the proceeds from any profits from the sale of assets in another separate account.

SHORT-TERM BUSINESS VISITORS

There are special rules for Short Term Business Visitors (STBV). The rules exclude employers from PAYE withholding procedures where the employment article of a double tax treaty exempts the employment income from UK taxation.

The STBV scheme requires the employer to put in place an internal reporting system in order to keep an accurate record of employees visiting the UK on business. The level of reporting to HMRC increases depending on the amount of days the employee spends in the UK. For employees who are in the UK for greater than 90 days, in addition to the reporting, the employer must also provide HMRC with evidence that the employee continues to be resident in the home state. Where the employee is in the UK for at least 151 days a specific application must be made to HMRC for their inclusion in the STBV arrangement. All information should be supplied to HMRC by 31 May following the tax year end.

When counting days for this purpose the general principle is that any day during which the person is present in the UK, however briefly, counts as a day of presence. (Note that a different method of "day counting" applies when considering an individual's tax residence status.)

If appropriate records are not kept, HMRC can insist that PAYE is operated on all employees regardless of the tax treaty provisions. This would result in each employee needing to file personal tax returns to apply the treaty exemption and recover the UK taxes.

SHARE INCENTIVES AND OPTIONS

Ordinarily share awards are treated as earned during the period between grant and vest. Generally the UK tax is restricted, using time apportionment, to the UK duties undertaken in this vesting period.

In certain circumstances it may be appropriate to consider the impact of the UK/Canada double tax treaty; which can treat the award as accruing on a grant to exercise basis.

Further apportionment may be available if the employee claims Overseas Workday Relief.

Different rules can apply for national insurance purposes subject to any relief under the UK/Canada reciprocal arrangement.

Where shares constitute readily convertible assets, as defined, Income Tax and where appropriate National Insurance needs to be accounted for under PAYE.

The legislation also affects so called carried interests. The regulations are particularly complex and are aimed principally at venture capitalists. Any foreign nationals contemplating working in the UK should be certain to take professional advice before they arrive here.

SOCIAL SECURITY

The UK has a reciprocal Social Security agreement with Canada.

This agreement ensures that a contributions liability does not arise in both countries on the same earnings. In particular an employee who is seconded to the UK for less than 5 years can usually remain in the home social security system.

This means that both employer and employee continue to pay contributions in Canada, which are generally lower than the equivalent UK contributions. Preferably a 'Certificate of Social Security Coverage' should be obtained prior to arrival in the UK.

TRUSTS

It is not uncommon for Canadian trusts can be used for tax and financial planning. Anyone coming to the UK with a trust should take advice prior to arrival to avoid accidentally creating a UK settlement.

Once resident in the UK advice should be taken prior to the formation of a trust to ensure they are structured correctly.

WHY PROFESSIONAL ADVICE IS ESSENTIAL IN ANY CASE

These articles cover some of the basic issues concerning registration and taxation of foreign companies operating in Britain and the tax rules of overseas citizens working here. While we have highlighted some of the most important matters, the regulations can be complex.

Value Added Tax (VAT), for example, can be perplexing for businesses that are based in non-VAT countries. Although it can be thought of as a form of sales tax, it is much more complicated than this suggests, and it is essential to take professional advice.

If you are thinking of setting up an operation in the UK, or if have already done so, we would be very pleased to meet.

As well as advising individuals and businesses on their tax affairs, we provide a wide range of additional services that could be of value to those moving to the UK.

We are able to assist with all the payroll services and other accounting requirements of an overseas employer with a UK base. Our services cover audit, company secretarial work, VAT and corporation tax compliance including transfer pricing issues.

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

We can undertake internal audit work for UK subsidiaries of Canadian companies – please ask for further information.

LEARNING MORE

HW Fisher is a leading provider of professional services in the UK, and one of the 30 largest accountancy practices in the country. Our company includes a number of associated businesses providing expert advice in areas such as property, litigation support, licensing and royalty issues and corporate finance.

We are members of the Leading Edge Alliance, a global association of significant, independent, accountancy firms with offices across the US and in other major markets.

For further information about our tax services for Canadian companies planning to operate in the UK or for Canadian citizens working here, or about any other aspect of our firm, please contact:

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Advisers to small businesses and start-ups including online accounting and back-office services

HW FISHER FORENSIC

Litigation support, forensic accounting, licensing, royalty auditing and contract compliance

HW Fisher LLP is registered to carry out audit work in the UK. Details of our audit registration can be viewed at www.auditregister.org.uk under reference C008695908.

A list of the names of the members of HW Fisher LLP is open to inspection at our offices.

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