8. Taxation

8.1 Overview of UK taxation

The UK corporation tax rate at a maximum of 28%, recently decreased from 30%, is one of the lowest of the major economies in Europe. Value Added Tax (VAT) at 17.5% (temporarily reduced to 15% in 2009) is also at the lower end of the European scale and a wider range of transactions are not chargeable to VAT than is the case in most other European countries.

There are no local income taxes in the UK. The only local taxation on businesses is a property-based levy known as the “business rate”.

8.2 Personal tax

Introduction

The residence status and domicile of an individual will affect the extent to which his/her income is taxable in the UK. Certain tax breaks are available to temporary residents and to individuals who retain their long-term permanent home or “domicile” outside the UK.

Unlike most other countries in the world, the UK tax year runs from 6 April until the following 5 April. Each individual, regardless of his/her marital status, is chargeable to tax on his/her own income, except that the income of a child under 18 may be treated as the income of the parents.

1. Will I be regarded as resident, ordinarily resident and domiciled? What are the differences?

Residence

There is no statutory definition of residence for tax purposes, and the expression takes its ordinary meaning. If you come to the UK for an extended period, you may become UK resident for tax purposes. It is important to realise that under UK law, you may be resident in the UK even if you are also resident in another country, and if you are just visiting the UK regularly rather than establishing your home here.

Your taxation position also depends on whether or not you are “ordinarily resident” in the UK. Again, there is no statutory definition. It is taken as meaning residence as part of an individual’s regular, habitual mode of life at a particular place, despite absences. HMRC guidance tends to conclude that an individual is ordinarily resident if he intends to reside for three years or more at a particular place, or acquires living accommodation on that basis. More recently, more emphasis has been placed on the individual’s “lifestyle” in the UK. For example, have you purchased property in the UK, have your family accompanied you on your trip to the UK, how do your ties and connections compare to those outside of the UK?

Coming to live in the UK

(a) For less than two years

If you come to live in the UK for a period expected to be less than two years, do not acquire a property (see below) and your "lifestyle" in the UK sufficiently demonstrates you do not plan to be in the UK for a longer period, you are likely to be taxed as resident but not ordinarily resident for the entire year if you spend 183 days or more in the UK in that year. If you spend less than 183 days, you will be taxed as non-resident. Under recent tax changes, in counting the days spent in the UK, days of arrival are only counted if you remain in the UK at midnight (unless you are in airline transit). Days of departure can be ignored.

(b) For between two and three years

If you come to live in the UK for between two and three years, you do not buy a house or lease one for three years or more and your "lifestyle" in the UK sufficiently demonstrates you do not plan to be in the UK for a longer period, you will be taxed as resident but not ordinarily resident from the day you arrive until the day you leave. Living in the UK presupposes that your base or home is here and that you spend on average at least 91 days per annum in the UK over four tax years.

(c) For three years or more (or you come to live here and buy a house or rent for three years or more)

You are resident and ordinarily resident from the date of arrival to the date of departure. If you originally came for less than three years, but you subsequently decide to stay for longer than that, HMRC practice treats you as resident and ordinarily resident from the beginning of the tax year in which your intention changes. If you have no fixed intention you are likely to be taxed as resident and ordinarily resident from the beginning of the tax year in which the third anniversary of your arrival falls. If you originally intended to stay for three years but subsequently left within three years you may be treated as retrospectively resident but not ordinarily resident in the UK.

Visiting the UK (but not coming to live here)

(a) For less than 183 days in the tax year (visits are not part of regular visits extending into other years)

You will not be resident if you spend less than 183 days in the UK in the tax year. In counting the days spent in the UK, days of arrival are only counted if you remain in the UK at midnight (unless you are in airline transit). Days of departure can be ignored. Similarly, you can ignore days where you arrive and leave the UK on the same day. If you are someone who comes to the UK on a regular basis and have a settled lifestyle pattern connecting you to the UK, you are likely to be resident here.

(b) Regular visits for less than 91 days average or more over four or more tax years

Generally, you will be taxed as resident and ordinarily resident throughout the tax year if you have spent 91 days or more on average in the UK over the previous four tax years and visits continue in the fifth year. If you come to the UK with the intention of making average visits in excess of 91 days over four years, or that becomes your intention, you are resident from the beginning of the tax year of arrival or in which that becomes your intention. In counting the days spent in the UK, days of arrival are only counted if you remain in the UK at midnight (unless you are in transit). Days of departure can be ignored.

Lifestyle in the UK

It is important to note that going forward, your intentions on arrival into the UK will have less bearing on your residency position in the UK. A recent tribunal case casts doubt on recently updated HM Revenue & Customs guidance, creating both opportunities and risks for assignees. For assignees to be accepted as not ordinarily resident without risk of challenge it is no longer enough to have an unsupported intention of remaining for no more than 2-3 years on arrival. A more careful assessment is required of whether you are habitually and normally resident in the UK and this will be considered on a case by case basis.

Domicile

Your domicile is the country where you have your permanent home to which you ultimately intend to return. It is the country with which you have the closest personal, family, social and economic ties, the country where would choose to live if work, business or other circumstances did not require you to live elsewhere for the time being, and the country in which you have realistic plans to settle permanently in the future, e.g. on retirement. You can only have one domicile at any given time.

Domicile is distinct from nationality, citizenship and residence. If you are domiciled outside the UK and come to the UK for some defined purpose – for example on assignment – you will normally remain domiciled outside the UK if you will leave the UK. You will only become UK domiciled if you intend to live here indefinitely and do not intend to return to your previous country of domicile.

Deemed domicile for IHT

Deemed domicile is a concept which only applies for inheritance tax (IHT) purposes. If you have been resident in the UK in 17 out of 20 tax years you will be deemed to be domiciled in the UK for IHT purposes, even though you might be accepted as being non-UK domiciled for other taxes.

In calculating the number of tax years for this purpose, a part year of residence counts as a year.

Significance of residence, ordinary residence and domicile

(a) Resident, ordinarily resident but not domiciled in the UK

If you are resident, ordinarily resident but not domiciled in the UK, your worldwide earnings are taxable on receipt, unless the earnings are “chargeable overseas earnings” and you claim the remittance basis. These are earnings for duties performed wholly outside the UK from an employer who is not resident in the UK. Such earnings are only taxable to the extent that they are paid or received in the UK (provided you claim the remittance basis). Otherwise they are taxed in the same way as your UK earnings.

(b) Resident but not ordinarily resident in the UK

If you are not ordinarily resident in the UK and you received UK-based earnings, that is, earnings in respect of duties carried out in the UK, the full amount of those earnings will be taxed in the UK. Should you decide to claim the remittance basis, earnings received for duties performed outside the UK are taxed only to the extent that they are paid or received in the UK, even where you do not have a separate employment contract for non-UK duties. Therefore if your employment income involves both UK and non-UK duties, the total earnings must be split into UK-based and foreign earnings. The split is generally based on the number of days worked in the UK and abroad over the tax year.

It is recommended that employment income is paid into a non-UK bank account that is registered in your sole name and denominated in sterling. To avoid difficulties in identifying which income has been remitted, no other income or gains should be paid into this account.

2. If I travel outside the UK for a number of days each year, do I still need to pay UK income taxes on all my earnings in that year?

If you are not domiciled in the UK claiming the remittance basis in the UK, and are employed by a non-resident employer, payment for duties carried out outside the UK will not be taxable here, unless remitted to the UK, if either:

- you are not ordinarily resident in the UK; or
- you have a separate employment exclusively for non-UK duties.

3. What should I do before I leave India for the UK?

The following points should be considered before you come to the UK as it is easier to set up appropriate structures whilst you are still non UK resident. The extent to which it is necessary to create offshore structures will depend upon the nature of your assets, how long you intend to remain in the UK and your need to remit funds to the UK whilst you are here:

- It is important to set up bank accounts to hold income that arises after you become UK resident and the proceeds of disposals of capital assets made after you become UK resident. As a minimum, you should open a separate bank account outside the UK to receive income on any non-UK investments you own, as this income will not be taxable in the UK unless it is remitted here. This assumes you will claim the remittance basis of taxation. Similarly, a separate bank account should be opened outside the UK to receive the proceeds of any non-UK investments you sell, as gains on these investments will also not be taxed here if not remitted (where the remittance basis is claimed).
- Owing to the complexity of the remittance rules, it is helpful to have a separate non-UK employment income account, if you are resident but not ordinarily resident and perform employment duties abroad.
- In general, income and gains arising before you become UK resident are not taxable in the UK even if you remit them to the UK.
- There is no rebasing of the value of your assets for capital gains tax purposes when you become UK resident. You should consider triggering gains on any assets standing at a gain in the tax year before you come to the UK.
- Non-UK resident trusts can provide valuable capital gains tax and inheritance tax protection for non-UK domiciled settlers and beneficiaries. They are most effective if they can be created before the start of the tax year in which you arrive in the UK.

To comply with immigration rules, you should obtain a UK work permit and immigration permission (e.g. entry clearance) prior to your arrival, as you are not allowed to be employed here without a permit. Please refer to the Immigration Section for further details.

You should also consider the following questions regarding your UK income tax position:

- Will I be resident in the UK? If so, will I be ordinarily resident?

- What is my intention and how "settled" am I in the UK? If you are planning to buy a house or rent for three or more years, have you considered the residence implications?

This all needs to be considered in the light of any tax liabilities that might be triggered in your current country of residence.

These are complex areas and careful implementation is required to ensure that any planning undertaken will be effective. You are recommended to seek appropriate professional advice before you come to the UK so as to structure your affairs to minimise your UK tax burdens.

4. What procedures do I need to follow after I arrive in the UK?

You or your employer will be asked to notify HM Revenue & Customs (HMRC) of your arrival, and you should complete the arrival document, Form P86 (except for the questions on domicile). You will also be required to complete Form P46 Expat to ensure you are correctly set up for self assessment purposes in the UK. Your employer will receive a penalty if this document is not completed. This should be submitted to HMRC as soon as possible.

Your spouse's tax affairs are separate from your own and so they may be asked to complete a similar form in his/her own right (although usually the UK tax authorities do not require spouses who have no income of their own to file a return). Where your spouse has independent income or gains liable to UK tax, they are under an obligation to file tax returns to HMRC.

You should register with HMRC and obtain a National Insurance Number. If you are employed by a non-resident company and are not regarded as ordinarily resident in the UK, you may be exempt from paying the UK National Insurance contributions for the first 52 weeks of your stay in the UK. In this case, your employer will also be exempt from paying employer's contributions.

5. How do I pay UK income tax?

Employees and directors normally pay most of their income tax and social security liabilities by deduction at source from their salaries. This way of paying tax is called Pay As You Earn, usually shortened to PAYE. Your employer must calculate tax and national insurance contributions according to instructions received from the UK tax authorities and deduct them from your salaries. (If you have no UK employer, you may find this role falls on the person you work for in the UK.) The PAYE employer must then account for these amounts to HMRC each month. There are penalties for employers who fail to operate PAYE correctly.

It may be administratively worthwhile for your employer to adopt a Modified PAYE/NIC system. This offers a relaxation from some of the normal PAYE/NIC rules for expatriate employees paid on a net of tax basis (i.e. the employer bears the tax by gross-up). Recognising the complexity of expatriate remuneration packages and the difficulty of collecting information about remuneration delivered outside the UK, codes are dispensed with and PAYE/NIC is operated on an estimated basis. Any under or overpayments are dealt with through the employee's tax return. The application and arrangement for the Modified PAYE/NIC system can be complicated and require appropriate professional support.

6. What is the time schedule for the filing of tax returns following my arrival in the UK?
If you decide to fill in a paper tax return this needs to be filed with HMRC by 31 October following the end of the tax year. If you decide to register and file electronically/online the filing deadline is 31 January following the end of the tax year, this is also the deadline for paying any balance of tax due.

There are penalties if the tax return is not filed on time and interest is charged on tax paid late. There is a further tax-geared penalty if the tax due is not paid within 28 days following the payment deadline.

7. I will receive a bonus and family allowance for members of my family living in India. Do I need to pay income tax in the UK on such earnings?
If you are resident and ordinarily resident in the UK you are taxed on your worldwide income (unless you have a separate overseas employment) and this includes payments made in India. Regardless of your tax residence, payments made in relation to the duties carried out in the UK are generally taxable in the UK. They include bonus payments, allowances and any other payments whether remitted to the UK or not. Bonuses are normally taxable on receipt if they are paid wholly or partly for the performance of duties in the UK. However, tax planning is possible depending on its nature and the timing of its payment.

8. I may be required to make certain mandatory payments in India during my stay in the UK (e.g. contributions to government sponsored mandatory pension plan, contributions to National Health Service). Can I claim relief for such mandatory payments on my UK income tax returns?
Providing certain conditions are met, income tax deductions may be given to a migrant employee for personal contributions to an overseas pension plan which meets UK tax qualification rules. This is known as Migrant Member Relief (MMR).

To be qualified for MMR, the following requirements should be met:

- the pension scheme must be a qualifying overseas pension scheme (one registered with HMRC as meeting certain regulatory and tax conditions, and which is also open to local residents in India);

- the employee must meet personal eligibility conditions (The employee must be non-UK resident when they first contribute to the scheme and be UK resident during the contribution period. They must also have received tax relief on contributions to the scheme at some point in the 10 years prior to becoming UK resident.); and

- employer & employee must agree they are claiming relief (there must be agreement, evidenced in writing that both the employer and the employee intend to claim migrant member relief).

Alternatively, a deduction may be claimed on the same basis under the UK's double tax treaty with India. The difference is that a treaty deduction is available for contributions paid to any Indian pension scheme, provided such contributions are or would be tax deductible in India. There is no need for the Indian scheme to register in the UK as a qualifying scheme.

No relief is allowed for Social Security contributions.

Where deductions are due, the amount qualifying for full relief at the marginal rate is restricted. Higher rate tax relief will be tapered away for those with taxable incomes between £150,000 and £180,000 from 6 April 2011 so that for those with incomes above £180,000 contributions will only benefit basic rate tax relief. This is relevant for contributions made by or on behalf of individuals to UK registered pension schemes and to qualifying overseas pension schemes. To prevent individuals accelerating their contributions prior to 6 April 2011, relief at the marginal rate is limited for contributions paid by high earners after 22 April 2009. Someone earning £150,000 or more may not receive relief on contributions of more than £20,000 unless they have regularly paid at a higher level in the past.

9. Are fringe benefits (benefits in kind) taxable?

Benefits in kind such as accommodation, company cars and fuel, home leave, medical expenses and interest-free or low interest loans are liable to UK taxation. However, the taxable benefits on accommodation, company motor cars and home leave are calculated in accordance with rules and scales laid down in the tax legislation.

Accommodation

Accommodation provided by an employer will normally give rise to a taxable benefit. If the employer rents the accommodation, the taxable benefit is based on the rent paid. If the employer owns the property, the taxable benefit arising on the accommodation consists of two elements:

- a nominal rental value for the property; and
- if the cost of the property is more than £75,000, the excess over £75,000 is multiplied by the HMRC official rate of interest. The cost includes the cost of improvements.

If the employer also provides furniture there is a further taxable benefit. This is 20% of the value of the furniture when new.

Cars and fuel

If employee is provided with a company car and fuel that are available for your private use, you are taxed on the separate benefits arising from the car and fuel. The car benefit is a percentage of the list price of the car when new and depends on the carbon dioxide emission rating of the car. The percentage range is from 15% to 35%. The benefit of the fuel is calculated as the same percentage of £16,900 (2009/10).

Home Leave
Employers can pay or reimburse travel costs between the employees' home country and the UK tax-free for up to five years if the employees are not domiciled in the UK. For the employees, there is no limit on the number of trips that can be paid or reimbursed tax free during this five-year period. For spouses and minor children, there is a limit of two tax-free trips a year for each person. There is a further condition for tax-free trips by spouses and children: they must be preceded or followed by a continuous period of at least 60 days where the employees spend at least two thirds of working time in the UK.

Relocation expenses
Up to £8,000 of reimbursed qualifying relocation expenses are exempt from UK tax when you take up your assignment. A further £8,000 of expenses and benefits may be received tax-free when you return home. However, any relocation cash allowance paid by your employer is taxable, and subject to PAYE deduction as an ordinary cash payment. Most types of relocation expenditure qualify for the £8,000 exemption. Exceptions include long-term storage costs in India, the cost of temporary accommodation for your family on arrival and, unless you give up your property in India, the cost of any duplicate items (such as kitchenware or electrical appliances) which you have to purchase in the UK.

Ordinary business travel
Deductions are allowed for business travel expenses, including hotel and subsistence expenses, which represent the extra costs of working away from your normal place of work. They will normally be deductible or non-taxable.

10. How is my investment income being taxed while I am on assignment in the UK?

UK investment income
UK source investment income, which includes dividends and interest, is taxable in the UK regardless of your residence position.

UK banks and building societies will normally deduct tax at 20% from the interest credited to accounts with them. If you have no other UK taxable income, a repayment may be due, since liability on income up to £2,440 is only at 10%.

UK dividends attract a non-refundable tax credit of 10%. If you are liable at the higher rate of tax, which is 32.5% on dividends (until 2010/11), the 10% tax credit reduces the tax payable. This means that if you are a higher rate payer, you pay tax equal to 25% of the net dividend paid to you.

Foreign investment income
If you do not claim the remittance basis and therefore pay tax on your worldwide income, your foreign savings and investment income are taxed on a similar basis to UK savings and investment income.

If you are non-UK domiciled and you claim the remittance basis of taxation (see below), you are taxed on foreign investment income only to the extent that the income is remitted to the UK. The applicable higher rate for dividend income is 40% (not 32.5%), but the 10% tax credit is still available.

Please note individuals who claim the remittance basis of taxation are not entitled to claim a personal allowance or the annual capital gains exemption. However, this general rule does not apply to individuals with less than £2,000 of foreign income or gains, who can continue to use the remittance basis without losing their personal allowance, provided they have been UK resident for less than seven of the previous nine tax years.

11. How do I claim the remittance basis?

Individuals who are not domiciled in the UK can claim the remittance basis of taxation, which means they only pay income tax and capital gains tax on foreign income and gains if they are remitted to the UK. Individuals must decide whether or not to elect the remittance basis when they file their personal tax return. If the remittance basis is not claimed, the individual will be taxed on all their worldwide income and gains on an arising basis.

If the unremitted foreign income and gains for the tax year totals less than £2,000 (gross income and chargeable gains, as calculated for UK tax purposes) the individual will automatically be entitled to the remittance basis (although they don't have to claim it if they don't want to). This means they keep their personal allowance and annual capital gains exemption whilst claiming the remittance basis.

If foreign income and gains for the tax year are £2,000 or more, by electing the remittance basis individuals will lose their personal allowance and capital gains tax exemption.

The £30,000 charge

From 6 April 2008, individuals who elect the remittance basis of taxation will be required to pay £30,000 per annum once they have been resident in the UK for more than seven years. The count will be seven years in the past nine, so going abroad for a year and then returning does not interrupt a seven year residence period.

12. What constitutes a remittance to the UK? If I do not bring cash into the UK does that mean I have not made a remittance?

The rules for identifying a remittance of foreign income or gains have been significantly tightened. For example, from 6 April 2008 it will no longer be possible to remit investment income tax-free where the source ceased in the previous tax year. Nor will it be possible to make a tax-free remittance by remitting in a later year when the remittance basis is not claimed.

The general rule is that a remittance includes anything that would be recognised as a constructive receipt of funds or a credit in the UK. It therefore includes the physical carrying of or transfer of cash to the UK, cash machine withdrawals, use of foreign credit cards, payments made abroad for services received in the UK etc. It is necessary to keep a close track on funds being brought into the UK to ensure that remittances are made as tax efficiently as possible. The rules also now include remittances made by other parties ('relevant persons'), of foreign income or gains that derive from you, e.g. of foreign income you gift to them. "Relevant persons" include your spouse/live in partner/civil partner/child or grandchild under 18. Investments made in the UK by a private company in which you are a significant shareholder, or by a foreign trust of which you are a beneficiary, may also be caught. You can therefore no longer gift items to a relevant person to then be remitted to the UK.

Remittances are not limited to remittances of money. You make a remittance if you use your foreign income to purchase goods abroad and bring them to the UK (unless they are watches, clothes, jewellery or shoes for your personal use, or any other item costing not more than £1,000). You also make a remittance if you use your income abroad to purchase a service received in the UK, including a travel service. If you bring foreign currency to the UK and make an exchange gain when you sell it for sterling, the gain is charged to capital gains tax at 18%.

Before you come to the UK you will need to decide how much money you need to have available here to meet your UK living costs. It is therefore important to consider at this stage what funds you will need in the UK, what transfers will trigger UK tax liability on remittance and how to arrange your financial affairs to maximise funds available in the UK. It is important that each source is kept separate so that a choice can be made as to which funds are being remitted. If types of income and gains have been mixed, there is a prescribed order of remittance from those funds. We also recommend keeping sole accounts rather than mixes for the purposes of identifying remittances.

Since the rules in this area became more complicated, we recommend you take professional advice from our offices before you make arrangement of your overseas earnings.

13. I have a large share portfolio in the UK and abroad. Will I pay tax in the UK if I sell my shares?

If you are a resident in the UK, you will be liable to Capital Gains Tax (CGT) on gains arising when you dispose of assets situated in the UK. CGT is charged at 18%.

If you remain non-domiciled in the UK, gains on disposal of assets situated outside the UK will be taxable on the remittance basis if an election is made under the self-assessment system. Please also note that if you do claim this basis of taxation, you will forfeit your annual Capital Gains exemption (£10,100 in 2009/10) for any year in which you claim the remittance basis where unremitted foreign income and gains are in excess of £2,000.

Disposing of an asset means selling, exchanging or transferring it, or giving it away, or realising a capital sum from it. Some transactions are exempt from CGT, e.g. transfer of an asset to your spouse; disposing of private motor vehicles; disposing of household goods and personal effects up to a value of £6,000 per item; disposing of a private home which has been treated as your only or main residence throughout the time you have owned it.

14. What is inheritance tax and when do I have to pay it?

Inheritance tax (IHT) is charged on an individual’s estate on death, or on certain gifts made during lifetime. It is charged on assets situated in the UK, regardless of the individual’s residence and domicile position.

The current position is that you will only be liable to IHT on any UK assets which you hold personally on death, if the total value of these exceeds the nil rate band (£325,000 per person for 2009/10). The nil rate band is reduced by any gifts or transfers into trust made in the seven years preceding death.

As a general rule, assets are located in the UK if they are physically present in the UK.

Whilst you remain non-domiciled in the UK for IHT purposes, you will not be liable to UK IHT on offshore assets. These include any assets (including UK assets) held by offshore companies which you own or assets situated outside the UK owned by trusts.

If you become deemed domiciled in the UK, you will be liable to IHT on your worldwide assets. Should you decide to remain in the UK for a relatively long period, you should consider structuring your assets to minimise your exposure to UK inheritance tax prior to you becoming deemed domicile in the UK.

Individuals who have already become UK deemed domiciled, but who are domiciled in India or Pakistan under the general law there, can benefit from Estate Tax Treaties when determining IHT on death.
IHT planning requires careful structuring in view of the individual's specific circumstances, and you should contact your tax advisor for further information.

15. What are the tax implications of purchasing a property in the UK?

In practice, the necessity to fund the accommodation and living expenses drives the requirement of many individuals to remit income from non-UK investments.

If you need to remit significant funds to the UK, e.g. to purchase a property, you should aim to remit income or gains realised before you became resident. These will not be taxable on remittance.

Please note that if you purchase a UK property after your arrival in the UK, HMRC will treat you as ordinarily resident for UK tax purposes for the beginning of that tax year, even if your intention is to stay less than three years in the UK. This is because the purchase of living accommodation is characteristic of being habitually and normally resident in the UK.

IHT implications of purchasing the property

You will be liable to UK inheritance tax and all assets situated in the UK. This would obviously include a family home in the UK.

There are a number of strategies you can consider to reduce this charge.

CGT implications of purchasing the property

There will also be a potential charge to capital gains tax for you on its subsequent sale as the UK property is a UK situs asset.

However, providing you have lived in the property during your period of ownership, you will be entitled to claim principal private residence relief to reduce/exempt this gain.

16. If the parent company in India seconds a trainee to the UK for one year, do they need to pay income tax in the UK?

This will depend upon the level of income received, whether he/she is regarded as an established employee of the business, and the timing of his/her assignment to the UK. The higher the payments and the longer the trainee has been with the business, the more likely the payments will be taxable and subject to PAYE.

In addition, there may be complicated PAYE issues regarding Short Term Business Visitors (STBV) to the UK. If a STBV agreement can be reached with the HMRC, they may not require PAYE to be withheld on those eligible individuals. However, as the issues surrounding STBV can be complicated, appropriate professional support should be sought.

17. Please provide details of the calculation of income tax in the UK and tax free personal allowance

Personal allowance

Each individual who is UK resident or EU national is entitled to a personal allowance, which forms a tax-free element in the calculation of their tax liabilities. For the 2009/2010 tax year, the personal allowance is set at £6,475.

During the recent Budget report it was announced that from April 2010 certain people will face a reduction or loss of their personal allowance. The personal allowance will be phased out for those earning over £100,000. The allowance will be reduced by £1 for every £2 above the threshold, with complete phase out occurring when income reaches £112,950.

A personal allowance is not given to individuals who claim the remittance basis and have unremitted foreign income exceeding £2,000.

Rates of tax

The rates of tax on income (other than the starting rate for savings income, and for dividends) are for the year to 5 April 2010:.For the year 2009/2010 tax year there is a 10% starting rate for saving income

Rate %	Band
20	£0 – £37,400
40	£37,401+

only, with a limit of £2,440. If an individual's taxable non-saving income is above this limit then the 10% starting rate for savings will not apply. Dividends are taxable in the UK at 32.5% tax rate or at 10% if the individuals' total taxable income is less than £37,400.

During the Budget report it was announced that from April 2010 a new 50% tax rate will be introduced

for those earnings more than £150,000. The corresponding rate for their dividend income will be 42.5%. Trust income will be taxed at 50%.

18. What is an 'offshore trust' and what are the tax implications for me or my family of having one?

Offshore trusts can be beneficial for both family wealth planning and tax efficiency. A trust is a legal concept within UK law which allows the legal ownership of assets to be transferred, whilst still allowing an individual to retain beneficial ownership of the asset. This allows trustees to act on behalf of the beneficial owners and manage the trust assets for the beneficial owners i.e. the 'beneficiaries'.

It is possible for a non-UK domiciled individual to create a trust outside the UK which offers certain tax benefits under current UK legislation whilst still allowing access to the trust assets at the discretion of the trustees. This is a privileged position specific to non-UK domiciled individuals who are beneficiaries of trusts created by non-UK domicilliaries. These income and capital gains tax advantages are only enjoyed by those who claim the remittance basis.

The remittance basis of taxation can be claimed by beneficiaries to avoid UK tax on offshore income and gains, provided these are not received in or remitted to the UK. Under the greatly extended definition of remittance care needs to be taken by settlors, trustees and beneficiaries that the trust does not invest its funds or make distributions in such a way as to trigger UK tax charges.

8.3 Investing in the UK

I may want to make some large investments in the UK, what should I be considering?

In general, investors in the UK who do not become resident in the UK need to consider income tax and inheritance tax consequences as capital gains tax only applies to UK residents.

1. Income Tax

Non-residents should apply to have interest paid gross. At the end of the tax year they would choose to be taxed as follows:

(a) Election for the 'Excluded Income Basis' – there will be no UK tax payable on interest and dividend income however the personal allowance will be lost (Citizens of India should qualify to receive the allowance). If tax is paid at source on interest it cannot be reclaimed or may not be available to offset against the year end liability hence the recommendation that a claim for gross payment is made by Form R185; or

(b) No election - income tax will be payable on all income arising in the UK and the personal allowance is available.

Whether the election is suitable needs to be assessed on a case-by-case and year-on-year basis.

2. Inheritance tax

If you are not UK domiciled, inheritance tax applies to UK situs assets but not non UK assets. The value of the UK estate above the nil-rate band (£325,000 for the 2009/10 tax year) is subject to UK IHT of 40%. The value taxable is reduced by loans secured against the UK property. Certain investments of non- UK residents will be exempted from UK tax, such as: shares held in companies qualifying for Business Property Relief (BPR), other assets qualifying for BPR or Agricultural Property Relief, bank accounts with non sterling funds, and government bonds.

In addition, opportunities exist to mitigate UK inheritance tax by making investments in UK situs assets through a non UK company. Trust and company structures are common but care needs to be taken in their structure and set-up. This is best discussed at the earliest opportunity and we recommend you seek appropriate professional advice before you invest in the UK so as to structure your affairs to minimise your UK tax burdens.

8.4 National Insurance

1. What is National Insurance?

The UK social security levy is called national insurance and it is additional to income tax. The major part of employee contributions is determined as a percentage of earnings, up to a fixed limit. The rates at which contributions are payable normally depend on the level of the earnings and whether the employer has contracted out of the state second pension (S2P). But a small percentage is calculated on unlimited earnings.

Employers also contribute, but without an earnings limit. The PAYE system normally collects the contributions, together with income tax.

National insurance contributions are payable on gross earnings and certain payments in kind. Employer contributions are payable on most benefits in kind.

2. What benefits do the company and the employee receive from National Insurance (maternity grants, statutory sick pay etc.)?

The employer receives no direct benefit from the National Insurance scheme.

Medical treatment under the National Health Service is free (although a standard prescription charge is made in certain circumstances). The entitlement to access to the National Health Service is not dependent on NIC contributions but is available to all individuals settled in the UK who register with a doctor.

Health authorities generally charge overseas visitors (persons not ordinarily resident) for health care services except for:

- basic emergency services, treatment of prescribed diseases and casualty treatment which is provided without charge unless and until the person is admitted as an in-patient; and
- overseas visitors who obtain coverage under EU regulations, a reciprocal health agreement, by reason of previous UK residence, or presence for employment or self-employment.

Paying national insurance contributions counts towards entitlement to a UK state retirement pension. Currently, to qualify for the minimum pension, men must have made contributions for at least 11 years and women for 10 years. However, some basic state pension may become payable under social security treaty provisions.

There is a separate and additional state second pension. Benefits can be obtained if the employee contributed to National Insurance Contributions for a minimum period of as little as one year. It is possible to "contract-out" of the state second pension by substituting a private pension facility.

3. How much are the contributions by the company and by the employee?

National Insurance Contributions are payable on gross earnings and certain payments in kind. Employer contributions are payable on most benefits in kind.

For 2009/10 tax year, earnings up to £110 per week are exempt from contributions. Employees contributions on earnings in excess of £110 and above per week are 11% on earnings up to a limit of £844 per week. Employees pay 1% on earnings in excess of £844 per week. The employers contributions are on earnings in excess of £110 a week without upper limit and are charged at 12.8% (lower rates apply up to £844 per week for employees who "contract out" of the state pension scheme). Employers also pay 12.8% on the provision of most non-cash benefits in kind (but there is no employee contribution).

During the recent Budget report it was announced that from April 2011 both employees' and employers' national insurance will increase by 0.5%.

4. When I arrive in the UK, what should I do about National Insurance? Can my accountants act as agents for such procedures?

After arrival in the UK, you will need to register with the Department for Work and Pensions for a National Insurance number if you are not paying contributions in another state under a social security treaty and are staying for more than 52 weeks. You should visit the Department's office, taking your passport and other documents, such as work permit application, with you. The visit can be time-consuming and Deloitte may be able to help by arranging a meeting with an official from the Department at our offices.

5. When should I start contributing and how should I pay?

If you have been sent to the UK temporarily by your host employer, contributions are not normally payable during the first 52 weeks of the assignment, either by you or by your PAYE employer. Contributions start on the first Sunday after the 52 weeks following the date of your arrival in the UK and not the date you actually start working here, which may be later provided you are not coming permanently to the UK. The contributions are normally paid through the PAYE system each month to the HM Revenue & Customs.

6. During the first 52 weeks, am I entitled to free treatment under the National Health Service although I do not contribute?
Although you may be exempt from National Insurance Contributions for the first 52 weeks after arrival in the UK, you will be entitled to free treatment under the National Health Service from the date of your arrival. This also applies to your spouse and children who accompany you on UK assignment.

7. If I and my wife have a child who accompanies us to the UK, can we obtain child benefits?
You are unlikely to be able to claim child benefit.

Child benefit is payable to an adult (usually the mother) who is responsible for a child living in the UK. Children must be under 16 years old, or under the age of 19 if they are in full-time education.

If you are permanently settled and ordinarily resident in the UK, you do not have to pay any UK social security contributions to qualify for the benefit. However, the position is different for foreigners temporarily resident in the UK. If immigration controls apply to you, for example as a work permit holder, you cannot claim child benefit.

8.5 Tax consequences in India

It is essential to take advice on the tax implications in India before you leave and/or invest in the UK. Below are some of the main considerations that you need to be aware of relating to ongoing compliance requirements in India, and your ongoing exposure to Indian tax.

In accordance with the Indian Income Tax Act, 1961 (ITA), an individual's tax residence status is established by the level of physical presence in India. An individual is considered to be Indian tax resident if they satisfy either of the following two conditions:

i. the individual is present in India for 182 days or more during the tax year; or

ii. the individual is present in India for 60 days or more during the tax year and 365 days or more within the previous four tax years preceding the tax year (note that if an Indian citizen leaves India for the purposes of employment or as a crew member of an Indian ship then the threshold of 182 days is applicable as opposed to 60 days).

India, in a similar fashion to the UK, also has the concept of "ordinary residence". You may be considered as Resident and Ordinarily Resident in India, if you satisfy both of the following conditions:

(a) you are resident for two or more tax years out of the ten previous tax years; and

(b) your level of physical presence in India exceeds 729 days during the seven previous years preceding that tax year.

Therefore, your Indian tax residence can be broken when you leave India for employment overseas in the tax year if your stay in India is less than 182 days in the tax year. As such you would be regarded as a Non-Resident Indian.

For Indian nationals in the UK, there are potential Indian tax issues stemming from UK investments including bank interest, dividends and capital gains.

The exposure to Indian tax on the above is dependent on your Indian tax residence position:

Resident and Ordinarily Resident (ROR)

If you are ROR in India, you are subject to Indian tax on your worldwide income and gains. Clearly this will give rise to double taxation if the funds are also subject to UK tax under UK domestic tax law. In such cases, this double taxation may be alleviated by claiming foreign tax credits. A foreign tax credit may be claimed in India for UK tax paid on income gains on which the UK has the primary taxing right.

Resident and Not Ordinarily Resident (RNOR)

If you are RNOR in India, income from any source that is received, accrues or arises in India, or is deemed to be received or to accrue or arise in India is taxable in India. Generally investment income and gains arising in the UK (or indeed anywhere outside India) are not taxable in India. Therefore in this case as the only funds taxable in India are income and gains on which India would have the primary taxing right, the issue of alleviating double taxation in India through the use of foreign tax credits would not arise.

Non-Resident (NR)

If you are NR having income other than business income or a profession in India, the exposure to Indian tax is the same as for someone who is RNOR.

If Indian tax is due, advanced tax instalments are required to be made on an estimated basis. The estimated payments need to be made by 15 September, 15 December and 15 March of every tax year. In the absence of these advanced payments, simple interest at 1% per month is payable on the shortfall.

The ITA does not provide any exemption on specified income arising in the UK; therefore any Indian tax due would be charged at the regular progressive rates. For the 2009/10 tax year (i.e. the year ending 31 March 2010), the rates are as follows:

Up to INR 150,000	Nil
From INR 150,001 to INR 300,000	10%
From INR 300,001 to INR 500,000	20%
Above INR 500,001	30%

(Note that for women the nil band increases to INR 180,000)

In addition to the tax as calculated above, a surcharge of 10% is levied on the tax if the Gross Total Income (GTI) exceeds INR 1 million. Further, a 3% Education Cess and Higher-Education Cess is charged on the total amount of the tax and the surcharge, irrespective of GTI. This results in a marginal tax rate of 33.99% based on tax, the surcharge and Cess.

In a similar fashion to the old taper relief rules in the UK, Indian tax on capital gains reduces if assets are held for a certain length of time. If an asset is held for more than 36 months (12 months in the case of shares/units), then it is considered as a long term capital asset and the applicable tax rate is 20% (plus surcharge and Education Cess as applicable). In addition, an inflation benefit is provided to Indian residents when calculating long term capital gains. All other gains would be deemed short term capital assets and taxed at the marginal rate applicable to other income. However, long term capital gains arising on the sale of listed shares recognised on the stock exchange on which Security Transaction Tax is paid is exempt and tax at 15% is payable if gains are considered short term.

If you remain tax resident in India whilst in the UK, you will have the same filing and reporting obligations in India as before you came to the UK. If you break Indian tax residence, your only ongoing Indian tax compliance requirement is to file an Indian Income Tax Return if you have income taxable in India, or wish to claim a refund of tax. In addition, you will be liable to pay the advanced tax detailed above if the Indian tax payable (after giving tax credit of withholding tax already done) is more than INR 5,000.

8.6 Corporate tax

Indian companies setting up or acquiring subsidiary companies in the UK or establishing a UK branch will be taxed in essentially the same way. The main corporate tax rate is 28% which applies when annual profits exceed £1,500,000. Companies with low profits may, however, enjoy more favourable rates. Companies with annual profits below £300,000 are taxed at 21%, and marginal relief applies in respect of profits up to £1,500,000. If the company is associated with other companies (wherever resident), the thresholds are reduced proportionately by the number of associates.

Recently the terminology used in UK domestic tax legislation has been altered. “Branches” are now referred to as “permanent establishments”, this term being used widely in double tax treaties. The lower rates of corporate tax are strictly not available to a permanent establishment of a foreign company. However, where an Indian company establishes a UK permanent establishment, HMRC may allow it to enjoy these lower rates on the basis of the non discrimination article in the double tax treaty.

For ‘large’ companies (broadly those with taxable profits of at least £1,500,000, although not in the first period of reaching that figure unless profits are greater than £10,000,000) corporation tax will be payable in four instalments, with the first due six months and 13 days after the beginning of the accounting year and the other three instalments payable at three monthly intervals thereafter. Where the quarterly instalment regime does not apply, corporation tax is payable in one sum, which is not due until nine months and one day after the end of the accounting period.

A new company setting up in the UK does not have to register for corporation tax, but must provide certain information to HM Revenue and Customs within three months of the company starting its first accounting period or for an overseas company within three months of the commencement of trading in the UK. The information required is general information about the company, the company's operations and period of account. Each year companies are obliged to file their corporate tax return within one year following the end of the accounting period.

1. How does the charging of corporation tax differ in respect of the following entities?

- Representative office.
- Permanent establishment.
- Subsidiary.

Representative office

Provided the office is a pure representative office and does not take part in the negotiation or concluding of revenue generating contracts, then generally no liability to corporation tax will arise. However, there may be a liability to income tax on certain income derived from the UK (e.g. rents from UK property and some types of interest).

Care must be taken to ensure the activities of a representative office constitute a permanent establishment.

Permanent establishment

If the permanent establishment trades in the UK, it is liable to corporation tax in the same way as a resident company, but only on profits from the permanent establishment. If the permanent establishment only provides services to its head office and other group companies, it may be taxed on a profit equivalent to a percentage of its expenses. Only profit directly attributable to the UK is chargeable to tax.

Subsidiary

A UK subsidiary is liable to UK corporation tax on its worldwide profits.

2. What distinguishes a UK resident company from a non-resident company for corporation tax purposes?

A company is resident in the UK if it is either incorporated in the UK or its central management and control is located in the UK. Central management and control is usually deemed to lie with the board of directors. Consequently, a company will be resident in the UK if the board of directors controls the business of the company from the UK. There are certain exceptions for companies, which are also resident in another country with which the UK has a double taxation treaty.

3. Can a part of the head office's administration expenses be allocated to a UK permanent establishment and be deductible for tax purposes?
A part of the head office expenses may be allocated to the UK permanent establishment for tax purposes provided they are related to the business of the permanent establishment conducted in the UK.

4. Will the fact that a newly-established permanent establishment may not make a profit in the first five years cause any corporation tax problems?
In principle, the fact that a newly established permanent establishment may not make any profit for the first five years will not cause any corporation tax problems. However, should the reason for its incurring losses be that, for example, in dealing with an associated company the prices it is being charged for goods are too high or the recompense it is receiving from work performed is too low, then problems will result. In such cases, HMRC will insist on using arm's length prices to calculate the branch's profit or loss (see below).

5. When a permanent establishment is reorganised into a subsidiary a few years after establishment are there any tax implications (e.g. in respect of loss carry forward, VAT, capital gains etc.)?
Usually losses carried forward can be transferred to the subsidiary and no VAT arises on the transfer. Tax on capital gains can normally be deferred. However, certain aspects such as closing stock and inventory values need to be considered.

6. What procedures do a permanent establishment or a subsidiary have to comply with in their first year of trading?
The procedures for permanent establishments and subsidiaries are similar. The most important are as follows:

- Registration for VAT purposes. If registration is necessary, it should be done as soon as possible and preferably before trading commences in order to maximise the recoverability of VAT suffered on costs incurred prior to commencing business.

- A Pay As You Earn (PAYE) scheme should be opened with HMRC for income tax and National Insurance contributions to be deducted from salary payments made to staff where applicable.

- A form CT41G for corporation tax purposes is normally issued by HMRC and requires general details of the company to be provided.

- VAT returns usually have to be made quarterly, though if requested, a company that is in a net repayment position for VAT may be allowed to make monthly returns as an aid to cash flow.

- If expenditure will be incurred for construction, alterations or repairs and the expenditure is substantial, advice will be required on the need to deduct income tax from payments to the contractor and how to account for that tax to HMRC under the Construction Industry Tax Deduction Scheme.

7. What is the rate of corporation tax and what does it apply to?

Corporation tax is charged on the profits of a permanent establishment or subsidiary as adjusted for tax purposes. Generally, to arrive at the tax adjusted profit you start with the accounting profit and add back disallowable expenditure and depreciation. Then deductions are made for capital allowances (tax depreciation) and certain other items. This yields a tax adjusted trading profit which, with the addition of other income, gives the total tax adjusted profit.

The current rate of corporation tax is 28%.

If however the annual taxable profits of the company, which has no associated companies, is less than £1,500,000, lower rates will apply to its income. Companies with annuals profits below £300,000 are taxed at 21%, and marginal relief applies in respect of annual profits up to £1,500,000. Where the company has associated companies, in the UK or elsewhere, the above limits will be divided by the total number of active companies in the group.

Generally, the lower rates of corporation tax do not apply to permanent establishments, but the non-discrimination clause contained in some double tax treaties may allow a claim for the lower rate to be made. However, in determining the rate to be applied, the total worldwide profits of the company must be taken into account, not just those of the permanent establishment (non-UK profits are not actually taxed).

Capital gains are taxed at the same rate as other income.

8. How are capital gains on UK assets treated for tax?

Representative office

No tax is payable because the asset is owned by a non-resident body (the head office) which is not carrying on a trade in the UK.

Permanent establishment

The gain is subject to corporation tax, after allowing a deduction for the effect of inflation.

Subsidiary

The gain is subject to corporation tax, after allowing a deduction for the effect of inflation.

9. Give examples of non-deductible expenditure for tax purposes

Examples of non-deductible expenditure are:

- Accounting depreciation of assets (instead tax depreciation is available on certain assets under the UK's capital allowance system).

- General bad debt provisions.

- Legal expenses in respect of capital items.

- Entertaining expenditure, unless exclusively relating to the company's own staff.

- Expenditure not incurred 'wholly and exclusively' for the purposes of the trade.

10. Are there any restrictions on the carry forward of tax losses?

Generally, tax losses arising from trading activity can be carried forward indefinitely to be set against future profits of the same trade. Tax losses may also be offset against other taxable profits of the company for the same year and carried back against any profits of the previous year.

Restrictions on the carry forward of losses may apply if the ownership of a company changes. Broadly, this would occur if there is also a major change in the nature or conduct of the company's trade or business within three years before or after the date of change of ownership. Factors which may indicate a major change in value or conduct of a trade include changes in the product sold, major suppliers, major customers or manufacturing process.

11. Are there any inter-company pricing rules in the UK such that more profit could be imputed to a permanent establishment or a subsidiary than is reported in its accounts?

The UK has transfer pricing legislation that requires trading and financial transactions between affiliated entities to be conducted according to the arm's length standard. This means that the terms and pricing of such transactions undertaken in the course of conducting business (such as the sale and purchase of goods and services) and in the provision of finance (both borrowing and lending) should be the same as if the transactions had been between completely independent parties. It is also a requirement that appropriate documentation supporting these prices is in place. These rules also apply between a UK permanent establishment and its Indian head office despite the fact they are one single legal entity.

The UK transfer pricing provisions mean that companies are required to apply the arm's length standard when making their corporate tax self-assessment tax returns. In practice this means that companies must consider whether the terms of their transactions are in accordance with the arm's length principle. If they are not, an adjustment to taxable profit may be required.

12. As a permanent establishment is only taxable on its UK source income, what actually constitutes UK source income?

A distinction is drawn between trading with the UK and trading in the UK. A branch is only taxable on profits arising from trading within the UK. Generally, it will be obvious whether or not a permanent establishment is trading in the UK, but in borderline cases, the place where revenue producing contracts are concluded may be the determining factor. If they are concluded in the UK, then this will probably indicate a UK source.

13. Are there tax credits to encourage research and development in the UK?

All UK companies are entitled to research and development tax credits on qualifying expenditure.

Spending by small and medium sized companies attracts a tax deduction of 175% of the qualifying R&D expenditure incurred (on costs incurred after 1 August 2008, 150% on costs incurred prior to 1 August 2008). There is a special relief for small and medium sized companies who are not paying corporation tax which makes it possible to surrender the tax credit to obtain an immediate cash refund of up to 24.5% of the qualifying expenditure subject to a limit of their PAYE and national insurance liabilities for the period.

For large companies, R&D tax credit takes the form of a non-repayable super-deduction equal to 130% of the qualifying expenditure incurred (on costs incurred after 1 August 2008, 125% on costs incurred prior to 1 August 2008).

14. What sort of issues need to be considered when acquiring an existing UK company?

Tax considerations associated with mergers and acquisitions activity are set out in detail in section 6.3.3.

15. UK-India Double Tax Treaty

The UK-India Double Tax Treaty acts to reduce certain UK domestic rates of withholding tax (WHT), notably for interest and royalty payments as shown below.

	UK/India Treaty WHT Rate (%)	UK Non Treaty WHT Rate (%)
Dividends	0	0
Interest	10/15*	0/20
Royalties	10/15**	20

* The rate is 10% if interest is paid to a bank/financial institution and 15% in all other cases.

** The 10% rate applies to royalties for the use of industrial, commercial or scientific equipment and the 15% rate applies in all other cases.

16. Foreign dividends received by UK companies

The 2009 Budget introduced reforms to the legislation in respect of the taxation of foreign dividends received by UK companies. Any foreign dividends received on ordinary shares will be exempt from UK corporation tax. The exemption will be available to UK companies of al sizes. At the time of going to print this is very new legislation and as such the final guidance is still to be issued surrounding the exact details of the foreign dividends exemption.

8.7 Value Added Tax

1. What is Value Added Tax?

Value Added Tax (VAT) is a tax charged on the value of supplies of goods and services made in the UK in the course or furtherance of business.

Supplies of goods and services are either:

- taxable (subject to VAT at either the standard rate of 15% with effect from 1 December 2008 until 31 December 2009 then reverting back to 17.5% on 1 January 2010 , the reduced rate of 5% or the zero-rate – 0%;)

- exempt of VAT; or

- outside the scope of VAT (e.g. salaries).

VAT is also levied on the importation of goods and certain services received in the UK.

Examples of the types of supplies which fall into each category are as follows:

- The standard rate (15%) – applies to most goods and services. Any supply which is not specifically included in one of the other categories is standard rated.

- The reduced rate (5%) – applies to fuel and power used in the home and by charities and also to some conversions of buildings for residential use,

- The zero rate (0%) – applies to some food (not restaurant meals), books, construction of new domestic residential property, transport, drugs and medicines, clothing and footwear for young children and certain protective clothing.

- Exempt supplies include certain property transactions, insurance, postal services, matters relating to finance (for example, the transfer of securities), education, health services and certain trade union and professional activities.

Each supplier must account for VAT on the value of his taxable supplies (output tax) but generally may claim back VAT paid on purchase made wholly for business use (input tax). In this way, the ultimate non-business consumer usually bears the full amount of the tax.

2. How does VAT work?

VAT registered businesses submit “VAT returns”, usually quarterly, to HM Revenue & Customs (HMRC), which is the government department responsible for the collection and administration of VAT. These returns show details of VAT charged on supplies made to customers and the recoverable VAT suffered on business purchases and expenses. The VAT return and the net amount due to HMRC must be submitted and paid within one month of the end of the quarter. If VAT suffered exceeds that collected on sales, the balance will be repaid by HMRC.

3. Who must register for VAT?

Any person or business whose taxable supplies exceed the registration threshold (currently £67,000) in any 12 month period must register for VAT. If at any time a business expects the value of its taxable supplies to exceed £67,000 in the next 30 days alone, it must also register for VAT. No distinction arises because the person making the supplies is resident or incorporated abroad.

If a business is making taxable supplies but has not exceeded the registration threshold it can register voluntarily. Also, where it is known that taxable supplies will be made at some future time, it is possible to apply to be registered as an 'intending trader' although no supplies are yet being made. This enables the business to recover VAT on purchases made wholly for business use.

4. Can representative offices register and claim back VAT paid?

A representative office may register if its head office makes supplies outside the UK, which would be taxable if they had been made in the UK. In certain circumstances, not all of the VAT suffered by the representative office may be recovered. This depends on the nature of the supplies by the head office.

5. What kind of accounts and records must be kept for VAT purposes?

Each business is expected to maintain adequate records of its taxable and exempt sales and purchases, to substantiate its VAT liability. HMRC periodically check VAT returns for accuracy.

VAT records, accounts, and supporting documents must be preserved for at least six years. Records may be maintained on computers provided HMRC give their approval and the records are secure and can be easily accessed by HMRC when required.

Each business must maintain a "VAT account" to record the company's entries for VAT on sales and purchases, along with any adjustments. This account will form the basis of the VAT returns.

6. Are there any expenses on which a company cannot recover the VAT?

VAT on purchases can only be recovered if the purchase was made wholly for business purposes.

VAT on certain purchases is specifically blocked from being recovered, even where used wholly for business purposes, The most common examples are purchases of motor cars, and entertaining costs (except for entertaining staff). Where motor cars are leased, 50% of the VAT on the leasing charge is normally recoverable. Entertaining expenses include (amongst others) accommodation and meals, drinks, visits to the theatre and nightclubs, hunting, shooting, fishing, yachting and golf.

VAT also cannot be recovered on purchases which are used by the business to make exempt supplies.

7. What are the differences between zero-rated and exempt supplies?

No VAT is charged on either zero-rated or exempt supplies. However the distinction between zero-rated supplies and exempt supplies is of crucial importance.

Zero-rated supplies are taxable supplies and even if the entire outputs of a business are zero-rated; it may register for VAT and recover all its input tax (unless specifically blocked). On the other hand, if a business makes only exempt supplies it cannot register and no recovery of input tax is possible. If a business makes some exempt supplies and some taxable supplies it is "partially exempt". See below.

8. When may a business make a full recovery of input tax incurred?

If all of the supplies a business makes are taxable, unless the VAT is specifically blocked from recovery (see 6 above), the company can usually recover all of the VAT on its costs.

9. What if a business makes some exempt supplies and some taxable supplies?

If a business makes some taxable and some exempt supplies it cannot recover input tax on the proportion of its costs relating to exempt supplies (subject to de minimis limits) and this input tax becomes an expense. It is often recovered by a higher price being charged to customers.

Different methods of calculating the VAT attributable to taxable supplies may be used provided the method is fair and reasonable and has been agreed with HMRC.

Where a business's input tax relating to exempt supplies falls within a set de minimis limit, the business can recover all of its VAT as if it only made taxable supplies.

10. Can a business recover VAT paid in other European countries?

The EU member states have agreed to refund VAT paid by traders of one EU country in another EU country provided that certain requirements are satisfied. In addition, some member states have extended this system of refunds to businesses established outside the EU. Each member state has introduced its own detailed regulations, which have to be complied with.

In general a UK business, including a branch of an overseas business, may recover VAT suffered in another EU country provided the business is not established in that country or does not supply goods or services there and uses these goods or services for business purposes. Tax will not be recoverable if the type of expense is blocked under the local VAT system, as, for example, entertaining is in the UK.

11. Can businesses recover VAT paid before registration?

VAT incurred on supplies received prior to the date of VAT registration can be recovered once the business is registered for VAT subject to the following conditions. Goods purchased, imported or acquired in the three years prior to registration must still be in the ownership of the business at the registration date. In the case of services, relief is only available when the services were supplied in the six months before registration and all of the benefit of those services has not been used up.

8.8 Customs duties

The UK, along with all other European Union (EU) member states, is a signatory to the General Agreement on Tariffs and Trade (GATT) (now the World Trade Organisation). Imports and exports of all EU member states are classified under the Harmonised Commodity Description and Coding System, now in use virtually worldwide, and the valuation of goods for customs duty purposes is based on the GATT Valuation Code.

Import and export regulations for all EU member states are determined by the EU Commission. The EU's trading policies in general encourage less-developed nations to participate in international trade through such agreements as the Generalised System of Preferences (GSP) and Economic Partnership Agreements (EPAs) with African, Caribbean, and Pacific States. The EU also has free trade agreements regarding industrial and some agricultural goods with members of the European Free Trade Association (EFTA) and other countries in the Mediterranean and Central and Eastern European regions. While encouraging trade in these ways, the EU Commission, in accordance with the Antidumping Code, can impose countervailing or antidumping duties on foreign manufactured goods considered to cause injury to indigenous EU industry.

Imports

The government department responsible for administering import duties and indirect taxes is Her Majesty's Revenue and Customs (HMRC). Only the trade with countries outside the EU is referred to as an import or as an export. All imports into the UK must be declared to HMRC electronically, using the format of the single administrative document SAD, which is used throughout the EU. Electronic declarations from the importer's own premises are possible subject to obtaining HMRC authorisation.

There are no customs formalities on the movement of duty unpaid goods within the European Union. However companies with annual acquisitions or disposals from other EU member states of over £260,000 have to submit returns to HMRC for statistical purposes.

Licensing

Import licences may be required for the import of specified goods manufactured outside the EU. Additional controls may be applied to livestock and agricultural products under the EU's Common Agricultural Policy, as well as to military equipment and drugs. In some cases, the EU limits the total volume of imports of the goods in question with a centrally administered quota regime. Licenses for surveillance purposes may be required for imports of goods considered sensitive. In addition, there are some restrictions on imports for health and safety reasons.

Duty rates

Customs duties have been abolished for all intra-EU trade in goods in free circulation (meaning that either the goods originated in the EU or duty was paid on importation into the EU). Despite this, imports from all sources remain subject to national taxes, including excise duty where applicable and value added tax (VAT).

For imports from outside the EU, duties are levied at the EU's common customs tariff rates. Duty rates range in these cases from nil to 25%. Sample rates are shown in Table 6.6

Table 6.6. Sample of approximate EU import duty rates

Product	Rate (%)
Electrical products	Nil – 14
Textiles and garments	Nil – 13
Machinery	Nil – 5
Computers and related products	Nil
Raw materials	Various
Agricultural products	Nil to 24

Reduced (or in many cases zero) duty is charged on imports originating in the countries with which the EU has entered into trade agreements (see above). For example, the GSP scheme provides for duty ranging between 0% and heavily reduced rates, depending on the product sector. The EFTA, ACP, Central & Eastern European, and Mediterranean agreements provide for duty at 0% on most industrial goods imported into the EU and, generally, reduced rates of duty within a quota system on agricultural goods.

Duty reliefs

Procedures exist which can provide relief from duty, or delay payment of duty or allow reduced rates to be applied. Examples would be where goods are imported for process or repair within the EC and re-exported, or where goods have been re-imported following processing or repair outside the EC. There are also a number of other duty reliefs available.

Methods of payment

With the agreement of HMRC, an importer may defer payment of import duty and VAT until the fifteenth day of the month following the physical importation. In such a case, the importer must normally provide a bank or similar guarantee sufficient to cover all deferred charges in any calendar month. Under normal VAT rules most importers are able to recover import VAT payments on the subsequent VAT return.

Excise duties

Excise duties are charged on a limited range of goods, irrespective of their origin, including hydrocarbon oils, alcohol and tobacco products. Excise duties are charged according to volume, weight or quantity.

Exports
All exports to non-EU countries from the UK must be reported to HMRC by means of export declarations. An export declaration may be submitted electronically at the time of shipment or, at a later date, by adopting, with the approval of HMRC, one of several simplified clearance procedures

Licensing
All exporters must comply with export licensing requirements, which are strictly applied by HMRC. In practice, most goods are covered by open general export licenses, although sensitive goods, such as highly technical equipment and goods for military purposes, are rigidly controlled. Moreover, trade with particular countries is banned from time to time, and the evasion of export licensing requirements is a serious offence.

Where required by the country of import, certificates of origin in the UK showing UK origin are prepared by the exporters concerned and are attested by approved local Chambers of Commerce.

Trade agents
There is no specific law governing trade agency contracts in the UK. Agency agreements signed in the country are normally subject to UK law and practice. They usually provide individually for such matters as commission rates and termination procedures, including the signatories' rights and duties.

Authorised Economic Operator (AEO)
In response to international terrorist threats and the desire to increase the security of EU borders, the EU has introduced a number of security measures, the cornerstone of which is AEO, an accreditation awarded to EU legal entities importing into and/or exporting out of the EU. These companies must demonstrate, amongst other things, strong customs compliance and robust safety and security procedures. Many trading blocs throughout the world are either already operating similar schemes or are looking at doing so and thus it is envisaged that EU traders with AEO accreditation will be able to enjoy the benefits of these other schemes and vice-versa, through mutual recognition agreements between the EU and other trading blocs.

How can Deloitte help?
Taxation
Deloitte can assist Indian companies with all areas of taxation. Careful advance planning in conjunction with Deloitte tax specialists can minimise UK tax burdens and, accordingly, maximise the return from their UK investment.

International Trade Group
Deloitte has a dedicated team of specialists, in the International Trade Group who can help you maximise opportunities, minimise costs and resolve problems with VAT and customs and excise related taxes.