

# **Wellington Shield**

**UK Companies**  
**- A Short Introduction -**

# UK Companies

## - a Short Introduction -

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## Introduction

The UK offers an excellent corporate and taxation environment for clients in many situations. The UK offers a user friendly regulatory regime and low corporate tax rates which makes the UK cost effective onshore jurisdictions in the world. The benefits of using UK based tax planning structures are considerable, as the UK is not considered to be a tax haven. This short introduction summarises the benefits of UK companies in three general situations;

**UK Holding Companies:** The UK offers outstanding benefits as a headquarters location for international business groups.

**UK Agency Companies:** A UK company acting as an undisclosed agent for an offshore principal provides a highly beneficial onshore / offshore tax structure.

**UK Limited Liability Partnerships:** Ideal structure that can be used by any type of business operating for profit.

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## Background – why the UK?

Since the beginnings of the 1980's successive British governments have introduced legislation aimed at supporting the competitive position of domestic business. In practice this has resulted in the development of a user-friendly fiscal and regulatory environment for companies in comparison with most European neighbours. Sophisticated International

corporate planners and fiduciary professionals are using UK companies in increasing numbers as important component part of international tax planning structures. Wellington Shield and its partners specialise in establishing and supporting such structures on behalf of non-UK professionals and their clients.

## Legal Basis

UK companies can either be incorporated under the laws of England and Wales, [Companies Act 1985], or the laws of Scotland, [Companies Act 1985] and the Limited Liability Partnership Act 2000.

In both cases, the companies 'Objects' or purpose is set down in its memorandum of association or partnership agreement and the rules that

govern the conduct of the company or partnership are laid out within the Articles or set down in the partnership agreement. The Registrar of Companies maintains details of the company information by central database. Publicly available information includes details of company officers, registered office address, register of charges, share capital details and copies of annual financial statements.

## Taxation

UK companies are taxed by the Inland Revenue department of the British Government. Smaller companies with profits of less than £1,500,000 pay taxes annually those above the thresholds are required to make quarterly instalments. Corporation tax rates for companies range from 0% for smaller companies to approximately 30% for larger companies. VAT is payable in the UK at

a rate of 17.5%. UK companies making taxable supplies within the UK must register for VAT if their turnover exceeds £56,000, below that level registration is optional. Most UK incorporated holding companies do not register for VAT.

## Practical Considerations;

**Privacy Issues** Although UK companies must provide details of shareholders to the Registrar of Companies the use of nominee shareholders is common and no disclosure of beneficial ownership is required under UK company law. However FRS 8 does require the auditor to disclose the ultimate controlling party in the accounts. If the ultimate controlling party is unknown to the accountants then they may make a statement to that effect.

**Ease of Use:** UK Companies are generally more flexible and less costly than their continental counterparts. For example; Use of Company Seals are optional in the UK, Share transfers, power of attorneys, formation documents do not need to be executed by notarial deed and increases in share capital, changes in corporate arrangements are filed directly with the Registrar of Companies.

**Capital Duty and Capitalisation Rules;** There is no capital duty payable on the issue of shares in the UK. The UK has no thin capitalisation rules with respect to capital structure.

**Audit and accountancy.** All UK companies must file a copy of their accounts with the Registrar of companies.

An exemption from audit can apply if the following conditions are met in the financial year in question:

1. the company qualifies as a small company (see later note) and
2. its turnover does not exceed £1 million and
3. its balance sheet assets (before deduction of liabilities) is not more than £1.4 million.

A company qualifies as small if any 2 of the following conditions are met in the current and preceding year:

- a. Turnover not more than £2.8 million
- b. Balance sheet assets not more than £1.4 million
- c. Not more than 50 employees

BUT a company does not qualify irrespective of size if at any time during the year it was:

1. a public company
2. permissible under part 4 of the Financial Service Act to carry on regulated activities  
or
3. part of an ineligible group

## 1. THE UK HOLDING COMPANY REGIME

The holding company regime, began with the introduction of the "IHC" in 1995 and was subsequently improved in 1997 and 2002. There is no withholding tax on dividend payments made by UK companies thus UK companies can be employed for "routing" profits from other jurisdictions to an offshore holding structure. Additionally, a full

UK tax credit is applied for foreign tax already paid on dividend receipts. This often results in little or no UK tax liability. Thus, if a dividend is received from a jurisdiction with a corporate tax rate higher than the UK, it can be paid to another jurisdiction without further UK taxation.

### Double Tax relief example (Sweden) - Pro Forma Calculation:-

	£'000
Dividend declared by Swedish Subsidiary	100
Less taxation (Sweden)	(28)
Dividend received by UK Holding co.	72
Add: Any Withholding Tax Paid	-
Add: Foreign (Swedish) tax	<u>28</u>
Taxable Income	<u>100</u>
Tax at 30%	30
Double tax relief	<u>28</u>
<b>Mainstream UK Corporation Tax Payable</b>	<b><u>2</u></b>

### Taxation of Capital Gains

2002 saw the introduction of substantial shareholder regulations which greatly enhanced the UK holding company regime. The rules allow exempt UK trading companies or groups (the investor) disposing of a substantial shareholding in another 'trading' company or groups (the investee) from UK Capital Gains Tax. The profits can then be paid onwards without further taxation to the shareholders. [Even if the shareholders are offshore in a non treaty jurisdiction].

Although the regime is very attractive care must be taken to ensure that the investment qualifies for the exemption as the regulations require details technical conditions to be fulfilled . A brief summary of the regulations follows;

**Minimum Interest;** The investor company must own a substantial shareholding in the underlying investment undertaking (the investee) which is defined as an interest of 10% or more in the issued share capital of the investee company.

**Qualification Period;** The investor company must have owned the shares in the investee for the qualifying period of 12 months or more.

**Passive Income;** The exemption only applies to the disposal of substantial shareholdings in businesses that are trading businesses and not to passive investment companies.

**Trading Companies and Groups only;** the exemption applies to trading companies and groups only. The investor company must be a trading company or a member of a trading group for the 12 months prior to the sale of the investee and also immediately following the disposal.

**Anti-avoidance;** There are anti tax-avoidance rules that need to be considered if the capital gain results mainly from untaxed accrued profits in the investee company or if arrangements are in existence purely to qualify for exemption under the new rules from capital gains tax.

## Summary of Key Points

- The lack of UK withholding taxes on outward dividend payments makes the UK an excellent choice for a dividend routing companies.
- The UK enjoys the broadest network of double tax treaties in the world.
- With careful planning, the recently introduced substantial shareholders regime offers the opportunity for tax efficient treatment of capital gains for qualifying companies.
- UK companies are relatively inexpensive to operate and manage.
- Common law system means that UK companies are flexible to administer.

## 2. UK AGENCY COMPANIES

One tool frequently used by governments for the reduction of tax leakage is the imposition of penalties on payments made to designated 'Offshore' jurisdictions. These penalties impose real obstacles to the movement of commercial assets offshore.

One solution is the use of a UK private company with non UK directors, acting as agent for the offshore principal. This is sometimes known as a UK company acting in a fiduciary capacity. This structure can be effective in many situations where the ultimate business is not connected with the United Kingdom.

### The Rationale

A UK resident<sup>1</sup> company (UK Agency Ltd) agrees to act as an undisclosed agent for an offshore company (Offshore Principal Ltd). The two companies enter into a contract on this basis.

In this way, Offshore Principal Ltd can assume the character of a UK company without the associated tax liability. Contracts should be signed by non UK based officers of UK Agency Ltd as this will reduce the chance of income being categorised as UK Source income. Correspondence and invoices can be issued on UK Agency Ltd note paper and its bank account is held in the name of UK Agency Ltd.

By trading through UK Agency Ltd, Offshore Principal Ltd avoids the appearance of being offshore and therefore any associated penalties.

### Liability to UK Tax

UK tax legislation determines that non resident persons or companies are only liable to UK taxation on their UK source income.

Therefore, UK Agency Ltd will have no UK tax liability in respect of the business activities of Offshore Principal Ltd as long as it does not earn UK source income.

### Transfer Pricing Issues

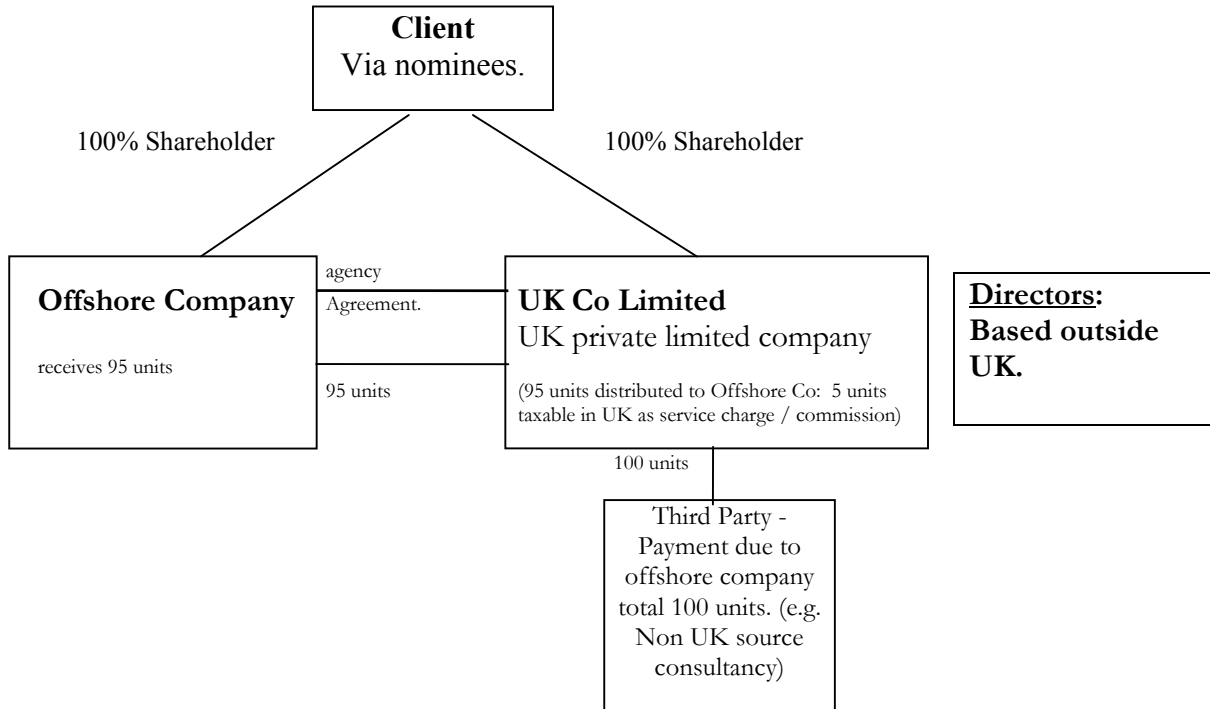
If the principal and the Agency companies are under common control the UK Inland Revenue has powers to direct the level of fees of the Agency company where its services are not provided at fair market value (TA 1988 s770); it is therefore important that an arms length commission is charged by the UK company for the provision of its Agency services. This fee is liable to UK corporation tax. A fee of 5%-8% of the total turnover should be sufficient to satisfy this condition.

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<sup>1</sup> The concept of the UK 'non-resident' company was abolished by the 1988 UK Finance Act therefore *all* UK incorporated companies are resident in the UK for tax purposes

## The Agency/Principal Structure

The structure is as follows:



Wellington Shield operates an in-house UK Agency company that provides this service to clients on an ad-hoc basis.

### **3. UK LIMITED LIABILITY PARTNERSHIPS**

The enactment of Limited Liability Partnerships Act 2000 has created a new type of business entity, the Limited Liability Partnership. The Limited Liability Partnership ("LLP") was introduced into the law in the United Kingdom on 6 April 2001. The LLP itself is a separate legal entity from its members and is an alternative corporate vehicle that gives the benefits of limited liability, but allows its members the flexibility of organising their internal structure as a traditional partnership. The LLP provides for an additional business vehicle in addition to companies, traditional partnerships and sole traders.

#### **Taxation**

The LLP is tax transparent provided it carries on trade with a view to profit and is not simply an investment vehicle. The LLP is not taxed on its income or capital gains at all. Instead the members are taxed on their shares of the LLP profits and gains. Income or gains of the LLP are therefore treated for UK tax purposes as the income or gains of the members in the proportions specified in the members' agreement.

Non UK resident members of a UK LLP who are in receipt of capital gains or non-UK source income are outside the UK tax net. With appropriate planning the profits of the LLP will not be subject to UK taxation. Thus, a non taxable structure can be created by having non UK individuals or companies as the members of the LLP. The members can be from a zero tax base such as the Turks and Caicos Islands.

#### **Uses of LLPs**

UK LLPs can provide an ideal structure for numerous businesses. They may be used by any type of business operating for profit. They may be suitable for use as a joint venture vehicle or as an alternative to a limited company, particularly for small businesses.

- Joint Ventures – LLPs could be very suited for use as joint venture vehicles. LLPs are tax transparent and so the joint venture partners would not suffer a double tax charge on extracting profits from the LLP. In addition there is great freedom to draft the LLP agreement as the joint venture parties wish.
- Entrepreneurial businesses – Up to now most small entrepreneurial businesses are incorporated as limited companies to protect the shareholders from unlimited liability. However, the constraints of company law often proves difficult for small businesses to operate within. An LLP might be more suitable as the members are free to agree what they wish in the LLP agreement in terms of internal management.

## Advantages

- A UK LLP is tax transparent. The LLP itself is not subject to the tax on its profits, but instead members are taxed directly on their individual share of the profits. The LLP may be more tax efficient than a limited company. This is because ordinarily a limited company is taxed on its income and capital gains and the company's shareholders are taxed on distributions from the company to them, giving rise to potential double-taxation.
- There is no personal liability on a member of a UK LLP for the contracts or debts of the LLP. There is also no joint liability for the negligence of any other member. Members have limited liability up to the amount of their capital they invest in the LLP.
- A UK LLP has organisational flexibility. There is no Memorandum and Articles of Association as there is with limited companies, restricting what the LLP may do. The rules relating to the LLP Agreement that governs the relationship between the members leaves them free to determine their relationship within the LLP. This is in contrast to the limited company in which the relationship between the directors and shareholders is strictly defined and governed by the Companies Act 1985 and the Memorandum of Association.
- The Agreement between the members of a UK LLP remains private and does not have to be filed at Companies House. This contrasts to the Articles of Association of limited companies, which must be filed at Companies House.
- The transfer of a business from a partnership to a UK LLP is exempt from stamp duty provided the partners in the partnership and the members of the LLP are the same
- A UK LLP is able to continue in existence independent of changes in membership, as it is a separate entity owned by the members.
- Members of a UK LLP have limited liability up to the amount of their capital they invest in the LLP.
- A UK LLP must disclose in its accounts the ultimate controlling party. If however there is no ultimate controlling party there is no requirement to disclose such identity.
- The UK LLP has a minimal registration fee of £95.00. Companies House provides a certificate of incorporation for the LLP.
- There is no requirement for a UK LLP to have a UK partner.

## Characteristics of a UK LLP

<b>MEMBERS</b>	<p>It must have at least two members. These may reside anywhere in the world and may be corporate bodies registered in the UK or elsewhere.</p> <p>Members are the equivalent of shareholders in a limited company. The details of the incorporating members appear on the public file, but in our suggested structure the members would be TCI companies so anonymity would be retained. Details of changes in members' details have to be filed at Companies House.</p>
<b>MANAGEMENT</b>	<p>The business is controlled by the designated members and members. Designated members have a similar responsibility to a director / secretary of a limited company.</p>
<b>REQUIREMENTS AT INCORPORATION</b>	<p>An incorporation document stating the following information must be filed:</p> <ul style="list-style-type: none"> <li>- the name of the LLP</li> <li>- the address of the registered office</li> <li>- the names and address of the members (if individuals their dates of birth need to be confirmed)</li> <li>- The designated members</li> </ul> <p>A compliance statement signed by a solicitor or first member confirming that the LLP is being established to carry on lawful business with a view to profit</p>
<b>CAPITAL REQUIREMENT</b>	<p>There is no minimum capital requirement for the formation of a UK LLP.</p>
<b>ANNUAL REPORTING</b>	<p>A UK LLP must prepare and file true and fair accounts. It is exempt from audit if it has less than 50 employees, a turnover less than £1m and gross assets not more than £1.4 m. It must also file an annual return giving details of the membership and where the registered office is located.</p>
<b>DISCLOSURE REQUIREMENTS</b>	<p>A UK LLP must disclose in its accounts who the ultimate controlling party is. If however there is no ultimate controlling party there is no requirement to disclose such identity.</p>
<b>RESTRICTION ON NAME</b>	<p>The name must end with the words "Limited Liability Partnership" or "LLP".</p>
<b>LOCAL REQUIREMENTS</b>	<p>A UK LLP must maintain a registered office, which must be located in the United Kingdom. We would generally provide this service as part of the domiciliary service fee.</p>

## Cost.

Best results are achieved by tailoring the design and implementation of the UK Company to the client's specific circumstances. The cost of establishing and running such a UK Company naturally depends upon a number of issues including the complexity of the issues involved and the level of specific tailoring required.

In general the set up fees are likely to range between £750 and £1,000 with typical annual running cost of £2,500 to £3,500.

For further information on any of the above mentioned structures, please contact

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[www.wellingtonshield.com](http://www.wellingtonshield.com)

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