

Your potential, our expertise

Indo-UK Patrika

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Welcome to our summer 2019 edition of Indo-UK Patrika, an informative newsletter keeping you up to date on recent changes and topics of interest in the UK-India business corridor.

Whether you are a prospective or existing investor from India investing in the UK or the other way around, you will find something of interest in this newsletter.

In this edition, we explore six key topical tips that Indian inward investors should not overlook when setting up or doing business in the UK. We get an update on immigration from our friends at Pennington Manches and we talk about the tax treatment of visa costs being met by UK employers. Finally, our property team discusses whether non-UK resident owners of UK property have a holding structure fit for purpose.

Kingston Smith joins Moore Stephens International Limited Network

We are delighted to announce that on 1 May Kingston Smith joined the Moore Stephens International network.

MSIL is one of the world's major accounting and consulting networks covering over 600 locations in 112 countries. This move will help us enhance our ability to meet the needs of clients with international interests and aspirations.



Topical tips for Indian companies investing in the UK

At Kingston Smith, our experience and research indicate that inward-investing companies are still missing out on some of the valuable tax benefits while also overlooking certain compliance obligations, when operating their business in the UK. Below are six significant points that are regularly ignored or inadvertently missed by inward investors.

1. Share options and similar equity incentives

The taxation and online reporting of share options and awards, such as restricted stock units (RSUs), is complex and often misunderstood. Since the changes in 2015, every option granted to employees who have a period of working in the UK during the vesting period will potentially give rise to tax, national insurance and reporting obligations.

2. UK pensions

Inward investing businesses often fail to understand what “ordinarily working in the UK” means for the purposes of the auto-enrolment pension rules. They can end up failing to automatically enrol their employees or enrolling employees and making contributions unnecessarily.

3. Overseas directors

Some inward-investing companies tend to appoint only non-UK based individuals as directors of the UK subsidiary. This is permitted under UK company law but can cause problems where claims are

made under UK tax treaties because the UK company, if managed and controlled abroad, may not be treated as UK resident for treaty purposes. This means the company won't be able to rely on the benefits of the UK tax treaty network. Issues can also arise if the UK subsidiary is viewed as being tax resident in India.

4. Apprenticeship levy

This levy is payable by all UK employers and is equal to 0.5% of the payroll costs with an exemption of £15,000 for each employer towards the levy. The levy is not payable on salaries that are eligible for national insurance exemptions. Once paid, the levy can be used to reduce training costs.

5. Compliance reporting

The UK has introduced a number of regimes where information must be published on your website. These can include slavery and human trafficking statement and publication of your tax strategy. Subsidiaries of very large multinational groups also need to comply with their

country-by-country reporting requirements. Failure to understand your obligations and report in accordance with the law can lead to penalties and negative PR.

6. General Data Protection Regulation (GDPR)

If you are looking to do business in the UK, it is important you are aware of the GDPR which came into effect on 25 May 2018. It now means any organisation that does business with EU citizens must comply with the GDPR's stringent data protection rules. It affects how organisations communicate with their audiences, how they process personal data and who they share it with. It will operate alongside the existing law called Privacy and Electronic Communications Regulations (PECR), which governs how organisations handle, specifically, their electronic communications.

If you need guidance on any of these topics, please feel free to contact us. We are happy to help.

New Start-up and innovator visas welcome entrepreneurs to the UK

By Pat Sani,
Pennington Manches



The UK government has launched two new visa routes for entrepreneurs. These routes, which opened to applications on 29 March 2019, are aimed at those looking to set up business in the UK.

The Start-up visa

This category is for those seeking to establish a business in the UK for the first time. Applicants will have an innovative, viable and scalable business idea which is supported by an endorsing body. The Start-up visa is an expanded version of the tier 1 graduate entrepreneur visa, which allowed universities to endorse international students.

A list of the endorsing bodies can be found [here](#).

The endorsing body assesses each application against the UK start-up visa requirements. These include:

Innovation

The applicant has a genuine original business plan that meets new or existing market needs and/or creates a competitive advantage.

Viability

The applicant has, or is actively developing, the necessary skills, knowledge, experience and market awareness to successfully run the business.

Scalability

There is evidence of structured planning and of potential for job creation and growth into national markets.

First-time entrepreneur

Whereby the individual confirms that they have not previously established a business in the UK, unless applying to switch from the tier 1 (graduate entrepreneur) category.

In addition to obtaining an endorsement, an applicant will need to meet the minimum English language requirements before applying for the Start-up visa.

Under the Start-up visa category;

- a visa will be granted for two years
- those applying can bring family members
- applicants will be required to maintain regular contact with their endorsing body at 6, 12 and 24 month intervals
- those with an endorsement can take employment whilst working on their business idea.



The innovator visa

This category is for more experienced entrepreneurs seeking to establish a business in the UK. Applicants will have an innovative, viable and scalable business idea which is supported by an endorsing body.

A list of the endorsing bodies can be found [here](#);

For those applying under this route for the first time and have not previously held a Start-up visa with the same business idea, they will need to apply to be endorsed under the 'new business criteria'

The endorsing body will assess each application against the following criteria;

Innovation

The applicant has a genuine, original business plan that meets new or existing market needs and/or creates a competitive advantage.

Viability

The applicant has the necessary skills, knowledge, experience and

market awareness to successfully run the business.

Scalability

There is evidence of structured planning and of potential for job creation and growth into national and international markets.

Working on business ventures

The endorsing body will need to be reasonably satisfied that the applicant will spend their entire working time in the UK on developing business ventures.

Investment funds

The endorsing body will need to confirm that at least £50,000 funds are available to either invest or have been invested.

The rules differ for those who have for example held a start-up visa and looking to move on to the Innovator visa using the same business idea.

In addition to obtaining an endorsement, an applicant will need to meet the minimum English language requirements before applying for the Innovator visa.

Under the Innovator visa category:

- a visa will be granted for three years
- those applying can bring family members
- applicants will be required to maintain regular contact with their endorsing body at 6, 12 and 24 month intervals
- those with an endorsement can only work on their own business idea
- applicants may qualify for settlement after three years.

The immigration team at Penningtons Manches has an excellent track record of working with start-ups as well as established entrepreneurs. The introduction of these two new visa routes will go a long way to ensuring that the UK remains a world-leading destination for pioneering entrepreneurs and innovators.

Tax treatment of visa costs being met by UK employers

By Tim Stovold, Kingston Smith



Visa costs for Indian nationals coming to work in the UK

Under current rules people outside of the European Economic Area (EEA) or Switzerland who wish to come to the UK to take up employment need to apply for a visa.

Where a non-UK individual comes to the UK to take up employment and an employer covers the cost for the initial visa application, there will be no liability to income tax and national insurance contributions (NICs). This is because the visa application costs are considered to be business travel-related and

therefore covered as a deduction under the “provision of travel facilities” rules.

Visa costs for prospective and existing employees inside the UK

However, payments by employers towards the costs of a visa will be liable for income tax and NICs when the employee is already working in the UK. HMRC’s view is that these costs cannot be regarded as “provision of travel facilities”. They also do not meet the general rule for deduction of expenses because such costs are not incurred “in the performance of the duties of the employment”

as they merely put an employee in a position to eventually perform those duties.

The above appears to be a change to their previously held position that the cost of renewing a visa would not give rise to a taxable benefit on the employee.

Where you either pay direct or reimburse the employee for the cost of renewing their visa and this is not processed through the payroll or reported on a form P11D, this is likely to give rise to tax charge.

Employers do have the option to include the cost in a PAYE Settlement Agreement meaning that the employer would be paying the tax due on their employee’s behalf.



Non-UK resident owners of UK property – is your holding structure fit for purpose?

By Mark Fielden, Kingston Smith

Capital gains tax – April 2019

From April 2019, capital gains made by non-UK resident entities and individuals disposing of all types of UK property will be subject to UK tax. The exemptions currently applicable to all commercial property and widely held residential property will no longer apply.

As it would otherwise be easy after April 2019 for non-UK residents to avoid a UK tax liability by selling interests in property-rich vehicles as opposed to the property directly, the disposal of interests in vehicles that derive at least 75% of their value from UK land will also be subject to UK tax.

For property assets coming within the charge to tax for the first time, there will be a rebasing of the asset to its April 2019 value. This means that only the gain that has accrued from this date will be subject to UK tax.

Special rules have been introduced to protect the position of exempt investors. This includes pension funds, which have traditionally invested in UK property via offshore property funds structured to be

transparent for income and exempt for capital gains.

These rules take the form of two elections available to collective investment vehicles – the transparency election, which treats the fund vehicle as a partnership, and the exemption election, which exempts gains from tax. Complex qualifying criteria apply to each; however, the aim is to ensure that the removal of the capital gains exemption and the extension of the regime to interests (i.e. shares and/or units) in property-rich entities, does not affect pension scheme returns, or create a double charge to tax for other fund investors.

Corporation tax – April 2020

From April 2020, all non-UK resident property companies will come fully within the scope of UK corporation tax on all UK property income, as well as gains. As a result, corporation tax rules not previously relevant under the Non Resident Landlord income tax regime will come into play. The most significant of these is the corporate interest restriction which operates to potentially give

rise to a disallowance of loan interest, depending on the amount of interest, taxable profits and, where relevant, the consolidated group position.

What to do next

These changes harmonise the tax treatment for non-UK resident and UK-resident investors in UK property and provide a strong argument to review historic offshore structures holding UK property. As well as tax implications, it may be the case that cost savings can be achieved by bringing offshore holding structures ‘onshore’ if there are otherwise no commercial reasons for remaining non-UK resident.

We are currently helping clients reduce costs post-April 2019 by simplifying their property holding structures. Please contact us to discuss your UK property holding structure, explore the elections available for existing investment structures or understand the implications for your property business more generally.

India Group

Our firm's close relationship with India started over two decades ago, when we began advising one of India's leading commercial enterprises doing business in the UK. Building on that success, our India Group today advises and assists many Indian businesses on their international operations, such as compliance services and advising on international business structures, taxation issues and corporate finance matters.

Updates:

Our India Group members have visited some key locations across India over the last few months. Tim Stovold and Ian Mathews spoke at a series of Doing Business in the UK events in Mumbai, Delhi and Bangalore. Tim also joined a panel at the FutureTech Festival in Delhi on intellectual property to discuss how the UK supports businesses in their IP development and helps them overcome common challenges. Parveen Chadda visited Delhi and Chennai and we have further strengthened our India Group by the addition of two international business development experts based in Delhi. We are pleased to welcome Bharat Rampal and Kishore Achary to the team.



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