PKF

Tax Talk

Simplifying the complexities of Tax

December 2021

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We will be holding two series of tax webinars, one focusing on International Tax, and the other on Global Indirect Taxes.

Register now.

Read on for further information:
[International Tax]
[Global Indirect Taxes]

Large business compliance: what you need to know

The need for transparency and accountability has led to new compliance and notification measures for large companies and groups. Mimi Chan summarises the key areas and upcoming proposals.

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UK-specific measures:

Senior Accounting Officer regulations

Affected businesses may need to appoint a Senior Accounting Officer (SAO) who is ultimately responsible for creating and maintaining the company's tax accounting arrangements. The rules apply to any company (or combination of UK group companies) with a turnover above £200 million and/ or gross assets above £2 billion in the preceding financial year.

Every year the company must tell HMRC who their SAO is. The SAO must then certify to HMRC that the company had appropriate tax accounting arrangements throughout the financial year or, if not, identify the issues arising. The deadline coincides with the company's accounts filing due date. If the SAO certificate covers a group with both PLCs and limited companies, the earlier deadline applies.

Tax Strategy publication

Qualifying large UK businesses must publish their tax strategy online each year. This is usually included in the CSR documentation on the company's website.

The rules generally apply to any companies in the SAO regime, CbCR regime (see below), or both. The tax strategy must explain the following:

- The entity's approach to corporate governance and risk management concerning UK taxation
- The company's attitude to tax planning
- The risk level the entity is prepared to accept for UK taxation matters
- The entity's approach to dealings with HMRC

Once the company has published its first tax strategy, it must update its strategy annually, before the end of each financial year. The annual strategy must be published online and be freely accessible by the general public.

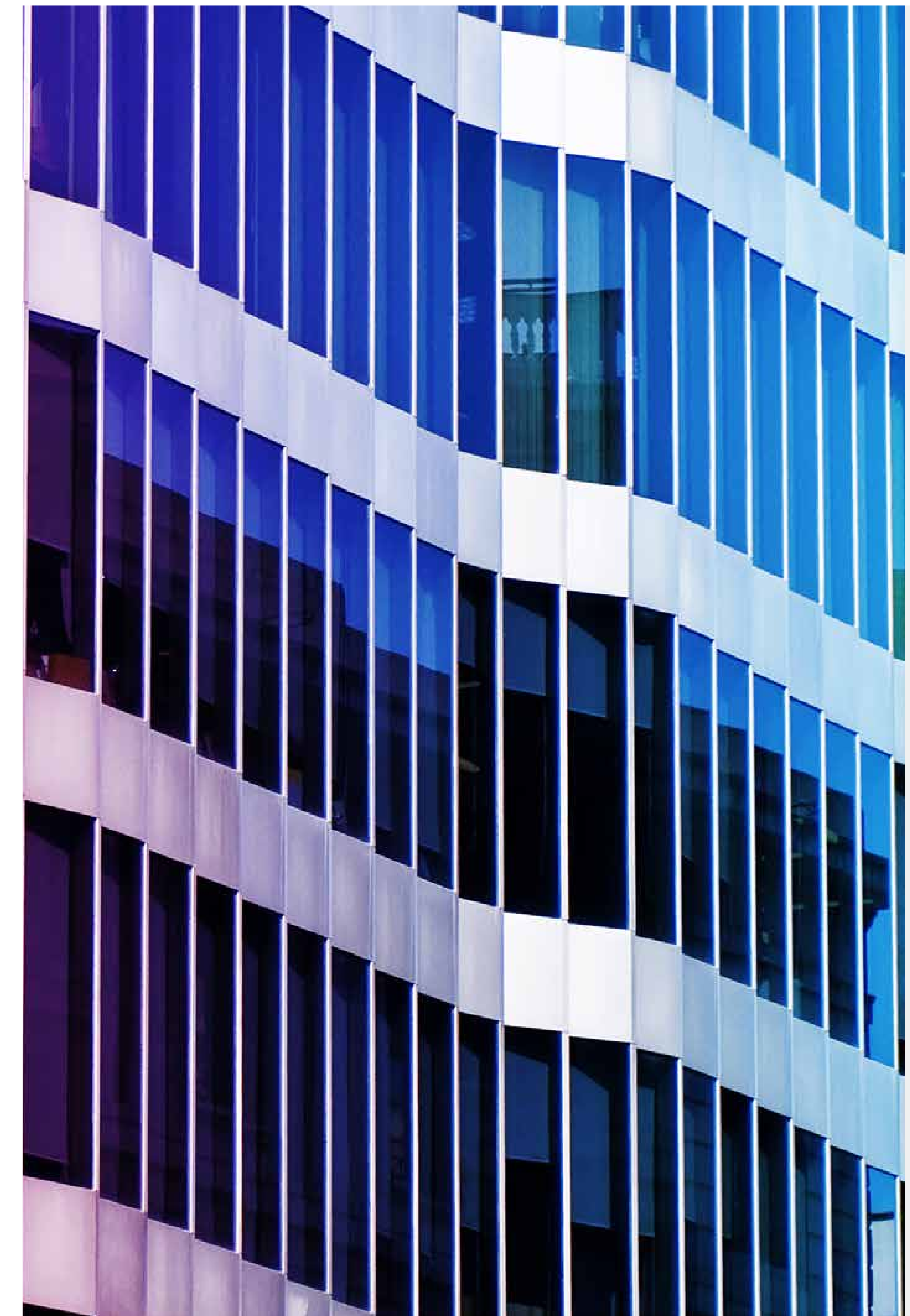
Global considerations:

Country by Country Reporting (CbCR)

Under the OECD Base Erosion and Profit Shifting (BEPS) initiative, large multinationals with a UK presence (those with a consolidated group turnover of €750 million for the preceding year) must file a CbCR. In most cases, the ultimate parent entity must file the report in its own tax jurisdiction. However, if all upstream group entities are resident in countries that do not have CbCR requirements, the top UK entity must file a report with HMRC.

The CbCR is an annual return showing key elements of the financial statements for each tax jurisdiction where business is carried out.

If a UK company is responsible for filing the CbCR, it must file it with HMRC within 12 months of the end of the accounting period. Where UK companies are within the CbCR regime, but this is filed in another jurisdiction by a parent undertaking, HMRC should be notified by a representative member of the UK group, noting all the UK entities captured in that report.



Large business compliance: what you need to know

Master File and Local File

The OECD BEPS initiative also introduced standardised Transfer Pricing documentation. The Master File contains high-level information about global business operations and the group's Transfer Pricing policy. The Local File provides more information on the local entity's inter-company activities.

Groups with fewer than 250 staff, and either annual revenue of under €50 million or a balance sheet total of under €43 million, are considered SMEs for Transfer Pricing purposes. Groups that do not meet these criteria will be subject to full UK transfer pricing legislation.

At the moment, there are no Master File and Local File UK filing requirements. However, HMRC can request Transfer Pricing documentation with just 30 days' notice. HMRC has recommended transfer pricing documentation conforms to the OECD 2017 Guidelines for Master and Local File requirements.

In early 2021, HMRC consulted on three areas of Transfer Pricing documentation requirements. Its aim was to provide greater certainty for UK businesses, provide HMRC with better quality data, and align UK Transfer Pricing requirements with comparable tax administrations overseas and the recommendations of the OECD BEPS Action 13 final report.

The key measures that were considered were:

1. Implementation of Master File and Local File filing requirements, as recommended in the BEPS Action 13 final report.
2. An Evidence Log, containing key reports and legal agreements (among others) to support the Local File data. This aims to reduce enquiry times by providing HMRC with more and better quality data at an earlier stage.
3. An International Dealings Schedule (IDS). The IDS is already required in some jurisdictions, and usually includes financial dealings, restructuring, and Transfer Pricing methodologies.

We await the Government's response to the consultation. But we are moving towards an increased focus on Transfer Pricing documentation, so groups should consider reviewing their record-keeping and decide whether they need to make improvements.

Uncertain tax positions

For returns (Corporation Tax, VAT, and Income Tax which covers amounts collected through PAYE) due on or after 1 April 2022, large UK groups should consider the notification of uncertain tax positions. The definition of large UK groups/companies is the same as for the SAO regime.

An uncertain tax position is where a business believes that HMRC may disagree with its interpretation of the legislation, case law, or guidance. Reporting is required where the tax advantage to the company is more than £5 million. This legislation is expected to be enacted in Finance Act 2022.

How we can help

Where businesses do not comply with these requirements or inadvertently make inaccurate disclosures, they may incur significant financial penalties and reputational damage. If you are unsure of whether your business is fully compliant with all the regulations and you would like to discuss further, please get in touch with Mimi Chan or your usual PKF contact.

Corporate Criminal Offence and umbrella companies

HMRC has reminded us that the use of umbrella employment companies for tax avoidance in relation to temporary workers may constitute a Corporate Criminal Offence. Here is the wider picture.

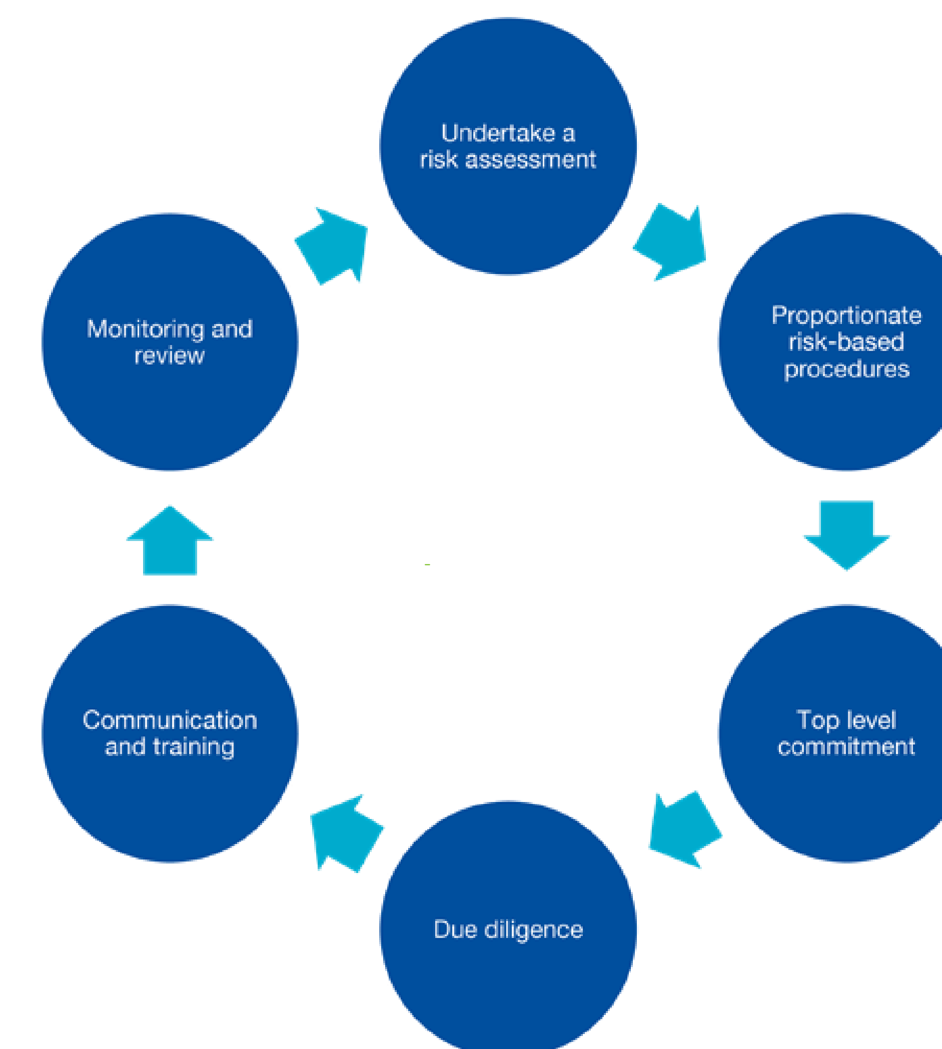
The Government's approach to combatting corruption, money laundering and tax evasion was given a boost by the Criminal Finance Act 2017, which introduced two Corporate Criminal Offences (CCOs).

Both concern a company's failure to prevent the facilitation of tax evasion - the first in the UK and the second in a foreign country. The offences apply to all entities, regardless of size, and carry the risk of criminal prosecution and unlimited fines. Companies operating in regulated industries will also suffer from additional regulatory scrutiny and reputational damage.

Financial industry risks

For insurance brokers and intermediaries, this means that where an act of criminal tax evasion takes place under UK law, and an associated person of the broker facilitates that tax evasion while performing services for or on behalf of the broker, the broker will be guilty unless it can prove the statutory defence. Please note that a conviction is not required.

HMRC's guidance to the statutory defence covers six principles:



The guidance is very clear that any risk assessment carried out must focus on tax and be specific to the company's business. The larger the group, the size of its global footprint and the range of associated persons, the greater the potential exposure. Brokers re-badging Anti-Money Laundering (AML) and Know Your Customer (KYC) procedures will not have a statutory defence unless all tax risks are considered and evaluated.

Umbrella company malpractice

In light of the above, it's worth considering the impact of HMRC's recent reminder in October's Employment Bulletin about temporary workers and the use of umbrella employment companies. Recruitment agencies may outsource their HR and payroll to an umbrella company which employs the temporary workers and many of these umbrella companies are tax compliant. However, some umbrella companies claim to offer tax avoidance / disguised remuneration schemes without any legitimacy. These schemes try to avoid the need to deduct income tax and national insurance contributions which would usually be due under PAYE. Others simply fail to operate PAYE and National Insurance properly committing payroll fraud and/or company fraud.

Corporate criminal offence and umbrella companies

Why risk reviews matter

HMRC's guidance reinforces a company's responsibility to understand how its workers are engaged and paid. Where workers are employed through an umbrella company, it leaves itself and its workers vulnerable to lengthy tax compliance checks, tax liabilities and penalties - as well as considerable reputational damage.

This is not just a payroll or employment matter. It is a CCO one too. Failure to review the risk and take the necessary steps to reduce that risk could leave the company unable to claim the benefit of the statutory defence when challenged by HMRC.

This misuse of umbrella employment companies is just another example of how critical the risk review and proportionate risk-based procedures under the CCO process are. They are key to making sure a company has a defensible position in the fight against facilitating tax evasion.

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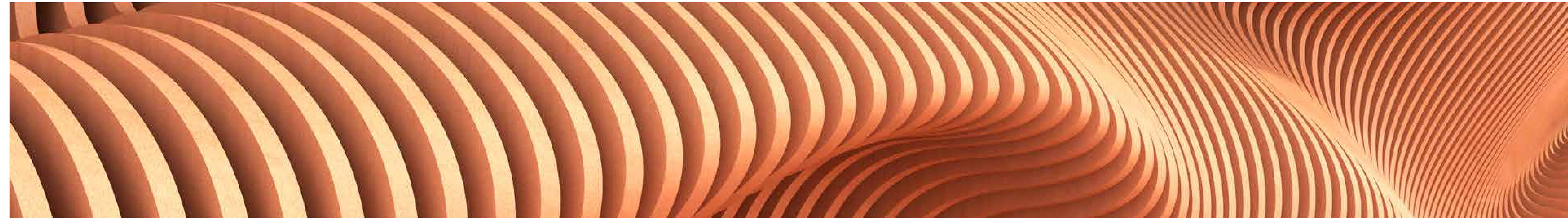
So you have a share scheme – what next?

Setting up a share scheme can be an excellent idea for a young business. But what do you do once you have one? Shona Barker discusses the next steps.

If you're a growing business looking to hang onto employees who are helping you become the next big thing, it's likely that you already have, or have considered, a share incentive scheme of some form. The most common type is an Enterprise Management Incentive (EMI) scheme. An EMI is a tax-efficient share option scheme with generous eligibility thresholds that allow you to give your best employees the chance to buy shares later, rather than giving away equity now. But once the share scheme is all set up - what do you do with it?

Annual reporting

If you have a share scheme of any kind, you will have to do annual reporting by 6 July following the end of the tax year. It's a commonly overlooked requirement, but can result in significant penalties if you miss the deadline. If someone helped you set up the share scheme, they are probably on standby to help you with the annual filing requirements. But don't assume!



Giving away more options

If you have an EMI, you must tell HMRC about any new grant of options within 92 days, or your employees won't get the tax breaks you've promised them. So make sure you notify HMRC promptly or, if you have an advisor, communicate with them. Don't leave it to the end of the year to casually mention you granted loads of options six months ago.

Thankfully, the in-year notification requirement does not apply to other types of options.

Levelling up

If you have a Company Share Option Plan (CSOP) in place, this won't stop you from also setting up an EMI. CSOPs are pretty restrictive, so you might later choose to set up an EMI if the size limits allow.

It's important not to double count. For example, you can give an employee share options with a Market Value of up to £250,000 under an EMI. But if the employee already has options of £30,000 under a CSOP, this maximum is reduced to £220,000.

Remember, you can go over the thresholds. But awards over that threshold will be unapproved share options that don't have the same excellent tax perks.

What to do about new employees?

New people are often the trickiest consideration from a commercial perspective. If they didn't get in on day one, what is the fairest way of treating them?

1. Share options in the existing plan

Ultimately, this will dilute equity for the existing people hoping to acquire shares in the future. But EMI option holders may not care, as the usual 5% minimum shareholding for Business Asset Disposal Relief (BADR) does not apply to shares acquired under an EMI. BADR is the special relief that reduces Capital Gains Tax (CGT) to only 10%. Other option holders may have a different view, though they might have been less likely to qualify for BADR in the first place.

You have no choice but to offer CSOP options at Market Value. But if you gave your longest standing employees EMIs at a hefty discount - or even at an exercise price of £nil - you could consider offering the new people a lower discount.

2. Growth shares

If your company is expanding, and an EMI is no longer available to you, you could consider

So you have a share scheme – what next?

bringing growth shares into the mix for new senior executives. Growth shares are a bespoke class of ordinary shares that only benefit from value growth over a defined threshold that is higher than the current company value. So they're lower in value than 'normal' ordinary shares, as they don't benefit from the current inherent value.

But growth shares carry an increased risk for the employee. That's because they have some value and the employee must purchase them up front (or pay tax on any discount received). And there's no guarantee they'll rise in value so they may never provide a return.

You can design highly customised terms ('hurdles') that the executive must hit to benefit from the shares. Although the new person will have equity straight away, they'll have to properly commit to the business to get anything out of it. And this can help maintain a sense of fairness for employees who have been around since the start.

3. Unapproved share options

Although growth shares can be beneficial, they are complex to adopt. Particularly for more junior employees, the cost and complexity up front may outweigh potential benefits.

Although little beats an EMI, unapproved share options will still let you bring people into the business at a future date or, more likely, allow them to participate on an exit.

But employees exercising unapproved options will be taxed on all the growth as employment income and pay Income Tax - and probably National Insurance, too, if they are only exercised when the business is sold. It may not be tax-efficient, but given a choice between unapproved share options and nothing, hardly anyone would plump for nothing.

With unapproved share options, as you're not receiving any taxation benefits, at least you can write pretty much any term you like. There's a lot of flexibility.

4. Bonus

If you can't get the maths to work, you could consider an old-fashioned cash bonus. Equity, or the promise of equity, can significantly increase employee retention. But there's nothing to stop you providing bonuses against measurable targets that grow the value of the business - or on the occurrence of a specific event (for example, a sale).

Remember, one of the key taxation benefits is access to lower CGT rates (compared to Income Tax) on a share disposal, compared to a bonus. But as you'll have seen in the press, there are continued suggestions that the rate of CGT may increase. And, if so, the gap in tax efficiency between cash and share plans would reduce.

What's best for my business?

Now, that's the killer question. The honest answer is: it depends. So if you're trying to decide how best to remunerate your key employees, consider what matters to your business, your incoming employees and your existing employees, and speak to Shona Barker or your usual PKF Littlejohn contact.

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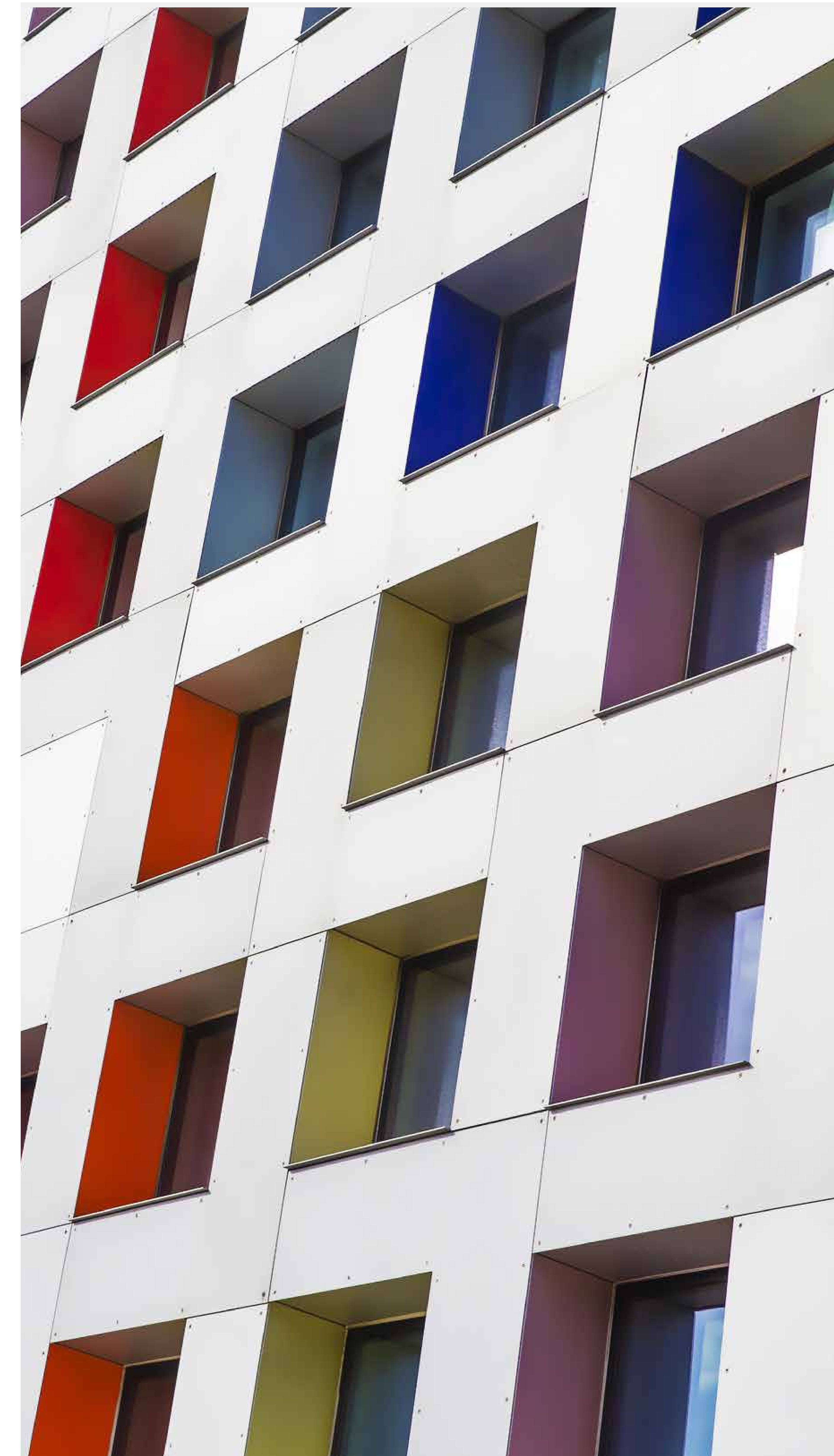


International tax webinar series

We're delighted to invite you to register for a free series of International Tax webinars.

Indirect taxes issues of global trading
25 January 2022

Structuring your international expansion
19 October 2021

Are you thinking of expanding overseas? Have you thought about if you need to form an entity or a branch? If you do where is the best place for it to sit within your group or do you even need one? How will you finance the operation and how will you repatriate funds back to the parent? Join Corporate Tax Partners **Chris Riley** and **Catherine Heyes** as they consider these questions and more.

Watch on demand

International movement and equity incentivisation of your team
16 November 2021

As the world opens up again, join Global Mobility Director **Louise Fryer** and Employment Tax Senior Manager **Dan Kelly** as they discuss some of the challenges that can be presented when a company operates internationally including making sure you have a robust global mobility policy in place, are meeting employer "in country" reporting and payroll obligations and, of course, the tax and social security implications for the individual.

Watch on demand

Indirect taxes issues of global trading
25 January 2022

The movement of goods and services cross border can create indirect tax issues in many countries, which can include the location of your customer. There is an increased focus on businesses that trade online and even for more traditional sectors such as manufacturing, indirect taxes can be complicated especially post Brexit. Join VAT Director **Luigi Lungarella** as he presents three case studies to explore these issues and more.

Register

Global Indirect Taxes Webinars

We are delighted to invite you to register for a free series of Global Indirect Taxes webinars

The series will help you and your organisation navigate the significant changes that have been made to indirect taxes globally and provide an overview of technical and commercial considerations across all key jurisdictions.

Our webinars will also cover e-commerce, cross-border services, the concept of an establishment from a VAT and direct tax perspective, and customs duties. Attendees will be provided with real-world examples of how to minimise cross-border indirect tax issues.

Each event will be led by VAT Director, Luigi Lungarella who will be joined by indirect tax experts from across the PKF International global network, including the USA, Russia and the EU.

Join us for our series of Global Indirect Taxes Webinars:

Session 1 - Global Indirect Tax Update - Watch on demand
Session 2 - 1st December 2021 - eCommerce – Goods and Market places
Session 3 - 2nd February 2022 - Cross-border services – navigating local requirements
Session 4 - 6th April 2022 - The servitization of the economy and the importance of establishments
Session 5 - 8th June 2022 - Cross-border goods – The hidden costs and challenges of Customs

About PKF
Simplifying complexity for our clients

PKF is one of the UK's largest and most successful accountancy brands.

We provide a full range of audit, accountancy, tax and advisory services, and are experts at simplifying complexity – we're particularly well-known for working with large, high-profile businesses with challenging issues in fast-moving and highly technical areas.

We are also an active member of PKF International, a global network of legally independent accounting firms that gives us an on the ground presence in 150 countries around the world.

PKF in the UK

8th largest Audit practice in the UK in the latest Accountancy Daily rankings

£165 million annual fee income

2,050 UK partners and staff

6th ranked auditor of listed companies in the UK

Our tax services
At a glance

"By bringing together the extensive expertise and experience of our tax specialists we can provide a fully rounded service that offers excellent value for money."

We offer comprehensive tax compliance and advisory services to a range of clients, both in the UK and globally, helping them find their way in the increasingly complex world of tax.

We find practical solutions that we use to our clients' advantage. Our team of experts supports individuals, and businesses ranging from start-ups and SMEs to large international groups, both listed and privately owned.

Where understanding of our clients' sector makes the difference, our experts invest their in-depth industry expertise to provide invaluable support and insights.

We offer the following specialist tax services:

Corporate and business taxes

Our Business Tax team will ensure that you are both tax compliant and efficient.

We provide specialist corporate and business tax advice on both a local and international level, which includes senior accounting officer and large business compliance, transaction services, due diligence, R&D tax relief, employer solutions and global mobility. We also support both the personal and business affairs of partnerships and LLPs.

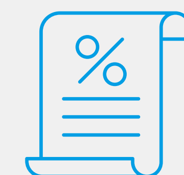
Read more

Personal tax and wealth management

Our team will guide you through the complex world of taxes, helping you meet all filing requirements and identifying risks and opportunities to help mitigate tax liabilities.

We advise individuals, the self-employed, partners, trustees and executors with their UK and international tax affairs. Our services include all aspects of tax, including Self Assessment, Capital Gains Tax, Inheritance Tax, property (both residential and commercial), trusts, family wealth and estate planning, residence and domicile issues.

Read more



VAT and Indirect taxes

Our indirect tax team will support you in meeting your VAT compliance objectives and advise you on any VAT issues that your business faces.

We can ensure that your VAT risk is assessed and managed, and that your VAT recovery is optimised. We can also provide advice and compliance services on other indirect taxes, such as Insurance Premium Tax, Customs duty, and Air Passenger Duty.

Read more

Tax disputes

HMRC is increasing the number and scope of tax investigations into both individuals and businesses, covering all aspects of potential underpayments of tax, including offshore investments, personal and corporate Self Assessment Tax Returns, PAYE and NIC compliance and VAT.

If an issue arises, our trusted advisors will match the right specialists with your needs to provide you the necessary support – whether for a routine HMRC enquiry or a more complex investigation.

Read more

This document is prepared as a general guide. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the author or publisher.

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