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Setting up in the UK: Branch or Subsidiary

Are you an international business thinking about setting up in the UK and unsure as to what is the most appropriate structure for your organisation, whether it be a Branch or a Subsidiary?

Subsidiary or Branch

The UK offers a great environment for all overseas businesses and is considered as one of the easiest places to set up and run a business. Nonetheless, if you plan to expand and set up one, you might consider all the options available to run a successful business. It is important to note that when operating in the UK, regardless of whether as a branch or a subsidiary, companies will have to pay taxes. Check out our guide on UK taxes to find out more about the different taxes you need to be aware of in the UK.

Subsidiary

A subsidiary company is incorporated in the UK as a separate legal entity and therefore is responsible for its own actions and its finances are also separate from the parent company's affairs. The liability of the parent company is limited to the amount of the paid-up shares.

For further details about these two types of entities, together with a comparison between both and other business structure, read on through the rest of this guide.

Branch

A branch is an extension of the parent company which is required to be registered as having a UK establishment with Companies House. This means that the clients business dealings will be handled directly with the UK branch rather than the overseas company. The overseas parent company has full responsibility for the operation, debts and liabilities of the UK branch.



The aim of this guide is to discuss the following key points:



the purpose of having a presence in the UK



a comparison between a branch and a subsidiary



which structure should you consider to meet your particular business needs

The purpose of having a presence in the UK



"The UK has always been an attractive place to invest in especially for companies wanting to expand or grow their business at a global level and the UK Government has repeatedly declared that 'Britain is open for business' and is keen to attract vibrant companies from around the world. Therefore, the UK represents a lucrative market for overseas companies which offers excellent opportunities for growth."

- Kevin Rutter, CEO -



A thriving economy: The UK is one of the world's largest economies, with a large number of consumers with disposable income.



An international outlook: Britain is a highly cosmopolitan country with consumers eager to try products and services from overseas.



Attractive tax: Corporation tax is currently 19% making it one of the cheapest tax regimes in the world.



A gateway to the world: As a major economy with plenty of international connections, the UK market is often seen as a gateway to the world.

Comparison between a branch and a subsidiary

Subsidiary

A subsidiary company incorporated in the UK may be seen as more tax advantaged. As a separate legal entity, a UK registered company provides more credibility with banks, service providers and partners. This means the subsidiary is responsible for its own actions and its finances are separate from the parent company's affairs, hence the liability of the parent company is limited to the amount of the paid-up shares, which could be as low as £1.00. This differs in other neighbouring European Countries where the requirements are much more rigorous and costly.

Additional benefits of a limited company include:



The business can retain profits



You can protect your brand



You can claim back expenses

The subsidiary must comply with various filing requirements under The Companies Act 2006 namely annual reporting and filing requirements at Companies House and with HM Revenue and Customs.

What is a branch?

If an overseas company is carrying on business in the UK, it does not automatically mean that it must register with Companies House. However, the best approach is to have some form of legal presence in the UK:

An overseas company needs to register when it has some degree of physical presence in the UK, such as a place of business. It is important to note that the documents to register a branch/UK Establishment with Companies House must be filed within one month of the opening of the UK establishment.

A branch can sell directly to the market, promote the brand and

conduct business in its own name. However, as it is not a separate legal entity, the parent company remains fully liable for its activities. Unlike a subsidiary, a branch is an extension of the parent company operating under the laws of another jurisdiction.

A potential issue that branches could face is that UK companies can be reluctant to enter into contractual agreements with them due to the fact that they are often subject to foreign law. Therefore, many will view this as a risk, that they are not willing to take.

Although there is no requirement to prepare branch accounts under

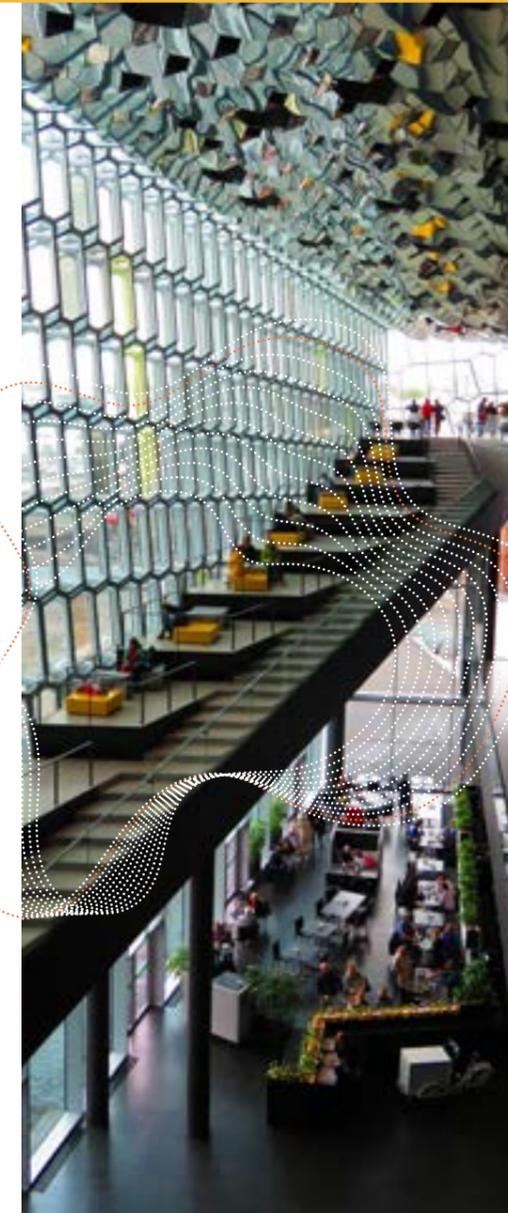
the Companies Act, most overseas companies are required to file annual accounts at Companies House where they are operating through a UK Establishment. Both EEA and non-EEA companies who are required under their local law to prepare their accounts must submit a copy of these accounts duly certified and translated into English (if required) to Companies House. The accounts must be filed within 3 months of the due date in the country of origin.

In the event that there is a local requirement to prepare but not file accounts, the accounts do not need to be filed at Companies House.

Which structure is right for us?

There is no right or wrong answer to this question and the route chosen will depend on practical factors (separate legal entity, visas, bank accounts etc) and commercial factors (general ease of interaction with other UK limited companies, scale of planned

operations etc. Both forms of entities have their own advantages and disadvantages in terms of simplicity, tax, and liabilities. The table below highlights the main differences between both types of entities (see the next page).



UK Subsidiary (Private Company Limited by Shares "Ltd")

UK Branch of an Overseas Company

	UK Subsidiary (Private Company Limited by Shares "Ltd")	UK Branch of an Overseas Company
Legal entity	<ul style="list-style-type: none"> Is a separate legal entity. 	<ul style="list-style-type: none"> Not a separate legal entity. Simply an extension of the overseas company.
Incorporation	<ul style="list-style-type: none"> Incorporation documentation can be submitted electronically. Incorporating the company requires at least one named director, a UK registered office address and shareholder(s) information. As part of the incorporation, the company must submit: <ol style="list-style-type: none"> Memorandum of Association; and Articles of Association (unless Model Articles are adopted in their entirety) Additional information if the application includes a sensitive word or expression (require approval by the Secretary of State) 	<ul style="list-style-type: none"> It must register the particulars of the overseas company and the UK branch with Companies House. Paper submission which takes longer to process. Must provide certain information including: <ol style="list-style-type: none"> Personal details for all of the directors. Details about the company its name, address, legal structure and accounting obligations. Description of the activities your branch is undertaking. Copies of Constitutional Documents.
Filing and reporting	<ul style="list-style-type: none"> Required to file: <ol style="list-style-type: none"> Annual Report and Financial Statements with Companies House for public inspection. Such Financial Statements may require a UK Audit. Confirmation Statement; and Report any changes in the Officers, Persons with Significant Controls (PSCs) details and registered office address within 14 days. 	<ul style="list-style-type: none"> Must file the Annual Report and Financial Statements duly certified in English of the overseas company to Companies House. A UK audit is not required.
Corporation tax	<ul style="list-style-type: none"> Subject to UK corporation tax on worldwide profits. 	<ul style="list-style-type: none"> Subject to UK corporation tax on the activities carried out in the UK branch.
Profits	<ul style="list-style-type: none"> Profits are not subject to tax in the hands of an overseas parent company until distributed by way of dividend. Certain reliefs should be available to the parent company for UK tax suffered on the profits out of which the dividends are paid. 	<ul style="list-style-type: none"> The worldwide profits of the overseas company (including the UK branch profits) are subject to tax in the hands of the overseas company. Certain reliefs may be available to the overseas company for UK tax suffered on the branches profits

UK Subsidiary
(Private Company Limited
by Shares "Ltd")

UK Branch of an
Overseas Company

Other forms of trading structures:



	UK Subsidiary (Private Company Limited by Shares "Ltd")	UK Branch of an Overseas Company
Tax deduction	<ul style="list-style-type: none"> Deductions against UK taxable profits should be available for arm's length interest and royalty payments made by the subsidiary to an overseas parent company. 	<ul style="list-style-type: none"> Interest and royalty payments made by the branch to the overseas company would be non-deductible against the UK taxable profits of the branch.
Losses	<ul style="list-style-type: none"> Tax losses can be carried forward and set against future profits of the company or be offset against taxable profits of other UK companies within the same group. 	<ul style="list-style-type: none"> Subject to local tax law, branch losses could be offset against the profits of the overseas company, but this may affect loss relief available in the UK.
VAT	<ul style="list-style-type: none"> All goods and services supplied may be subject to UK VAT, subject to the registration limit or voluntary registration, including supplies between the subsidiary and parent company. 	<ul style="list-style-type: none"> Goods and services supplied between branch and parent are ignored for UK VAT purposes. UK VAT may apply to external sales subject to the registration limit or voluntary registration.
Stamp Duty	<ul style="list-style-type: none"> UK stamp duty may arise on the transfer of shares in the UK subsidiary. Stamp duty or stamp duty land tax may arise on the sale of individual company assets. 	<ul style="list-style-type: none"> No UK stamp duty is payable on the contribution of capital to a UK branch. Stamp duty or stamp duty land tax may arise on the sale of individual branch assets.
Transfer Pricing Rules	<ul style="list-style-type: none"> Transfer pricing rules will apply to all transactions between related parties unless the group is classified as small or medium size. 	<ul style="list-style-type: none"> Transfer pricing rules will apply to all transactions between related parties. Profits are attributable to the branch as if it were a separate company.
Exiting	<ul style="list-style-type: none"> In the subsidiary, no UK capital gains tax should arise by overseas company disposing of the shares. 	<ul style="list-style-type: none"> As a branch does not have a separate legal personality it cannot be disposed of. Instead, exit would be achieved by disposing of each of the individual branch assets. UK capital gains tax may arise on the disposal of such assets.
Closure	<ul style="list-style-type: none"> Closure requires a formal winding up procedure or striking off or the appointment of a liquidator. Closure takes a minimum of three months, due to the notice period required and associated filings, provided there are no objections to the strike off. 	<ul style="list-style-type: none"> Closure is automatic on the cessation of trade. Must notify the Registrar of Companies if it closes a registered UK establishment. Once notice is given the overseas company is no longer obliged to deliver documents to Companies House in respect of that establishment. Failure to notify the Registrar is an offence, punishable by a fine.

There are other trading structures that businesses could consider in addition to the above namely:

- Limited Partnership (LP)
- Limited Liability partnership (LLP)
- Private Limited Company by Guarantee

Each structure has its own specific advantages and disadvantages which are summarised in the table to the right.

Advantages	Disadvantages
Trading Structure Limited Partnership (LP)	
<ul style="list-style-type: none"> No statutory upper limit on the number of partners in an LP but at least one general partner and one limited partner. No need for an LP to adopt constitutional documents. Partners are not required to enter into a formal agreement to regulate the conduct of the business, although in practice most LPs will do so. Not required to file annual accounts or any form of annual return or confirmation statement with Companies House. 	<ul style="list-style-type: none"> No separate legal personality: it cannot own assets in its own right, nor can it grant security over them. General partners have unlimited liability for the LP's debts and obligations and the other partner can be limited partner i.e., their liability is limited to their agreed contribution to the LP. Management of an LP's business and assets is undertaken by its general partner(s) exclusively. Must register with Companies House. Must disclose the identity of the LP's general and limited partners and the amount and type of the capital contribution of each limited partner.
Trading Structure Limited Liability Partnership (LLP)	
<ul style="list-style-type: none"> Separate legal personality from that of its owners. Hold its own assets and grant charges over them. It can enter into contracts in its own right and can sue and be sued in relation to those contracts. No statutory upper limit on the number of members in an LLP but the minimum should be two Members which must be Designated Members. It has no share capital and no obligation for Members to make capital contribution. LLP is liable for its own debts. No need for an LLP to adopt constitutional documents. No requirement for Members to enter into formal agreement to run the business. 	<ul style="list-style-type: none"> The members of the LLP have financial exposure but to the extent of their capital investment. Statutory procedure must be followed to incorporate an LLP. Subject to ongoing filing and disclosure obligations. Must file an annual Confirmation Statement and Annual Report and Financial Statements with Companies House. Fees are payable to Companies House in relation to the incorporation of an LLP and ongoing filings.
Trading Structure Private company limited by Guarantee	
<ul style="list-style-type: none"> Formed with no share capital. No liability for Members to contribute while company is a going concern. The Registrar of Companies may agree to dispense with the word "Limited" if certain requirements are met. 	<ul style="list-style-type: none"> Members' contributions become due if the company is wound up and a contribution is needed to enable it to pay off its debts.

Key elements to consider

In general, setting up a Branch is seen as less ongoing administration, whilst establishing a subsidiary is viewed as a longer term and more secure option that adds credibility and commercial respectability of the business. However, each business is different and the best option for you may depend on how you wish to operate in the UK.



How committed are you to this expansion?

If you are testing the waters to see if there is a viable market, opening a branch may be the way to do it. If you have longer term plans and want to bring on employees, a subsidiary would be a better option.



How sensitive is your information?

If you open a branch, you will have to submit the Annual Report and Financial Statements of your parent company to Companies House. If you are unwilling to disclose sensitive information overseas, then a subsidiary might be a better option.



How much business do you expect to do?

If you expect to be managing high trading volumes early on, the permanence of a subsidiary might sound right for your business.

Summary

Whether you choose to operate as a subsidiary or a branch, there are a number of other issues that need to be taken into account.

In summary, setting up a subsidiary remains a favourable option by most. It comes with limited liability, gives you a greater presence in the country and can be easier to run.

The real attraction of a branch is that it is potentially easier to close down if the business does not meet its perceived objectives.



Insurance

You will be required to obtain Employers' Liability Insurance to cover any accidents suffered by employees. If you have the public onsite, you will also need to obtain Public Liability Insurance.



Bank accounts

Your branch or subsidiary will need a UK Bank account. Speak to your current banking provider as they may be able to provide services in the UK or have a partnership with a UK bank.



Recruiting

You can recruit someone directly in the UK via the parent company but there may be restrictions on the work they can undertake. Having a legal entity in the UK will make the business more attractive to potential talents.



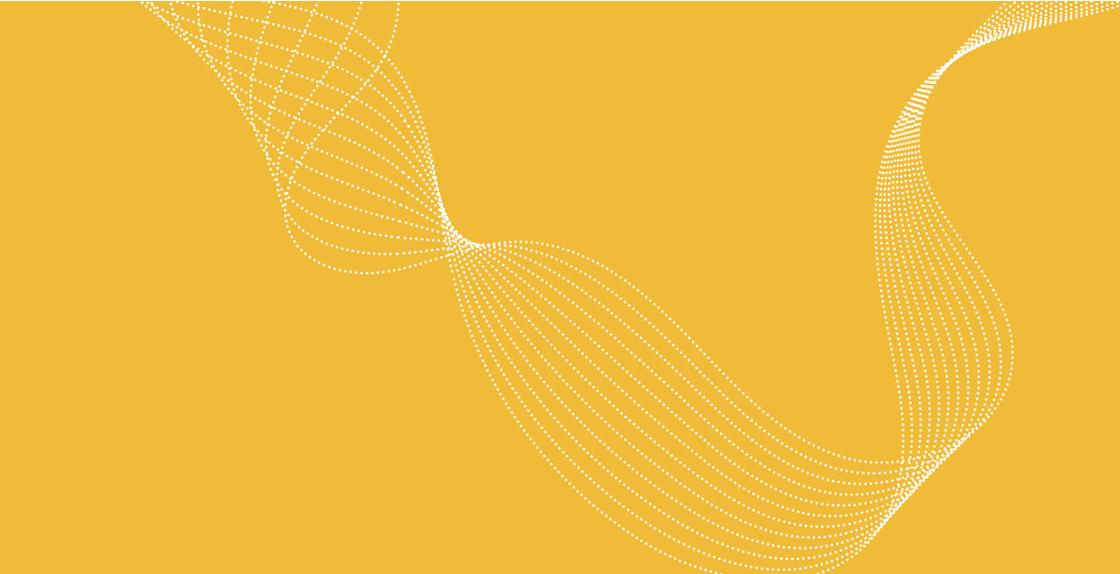
Moving employees from overseas into the UK

Employees are governed by the laws of the country they work in, even if they are employed by your company. Therefore, it is recommended to draw up a separate legal contract while they are in the country. If you are sending employees over to the UK, you will have to comply with all immigration requirements/ holding the correct Sponsorship Licence e.g. Skilled Worker or ICT.



Costs

Each option will have different costs associated with it, depending on your situation. In many cases operating as a subsidiary may be more expensive because of the start-up and running costs than operating as a branch. However, all costs may vary from case to case.



How can we help

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Although the UK is one of the best places to do business in the world, complying with all the legal requirements can be a considerable burden to many businesses. Therefore, it is highly advisable to seek expert advice.

This is what we do here at Goodwille. We work closely with companies from around the world helping them enter and expand into the UK. Our expert team are here to assist and take care of all the set up process of your business in the UK from Corporate Governance, Accounting, Human Resources to Payroll and we will ensure all your compliance and reporting obligations are met.

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Disclaimer: This guide is correct at the time of publishing. You should seek legal advice specific to your situation. Please contact us if you have any questions about the information set out above.