PKF

Tax Talk

October 2020

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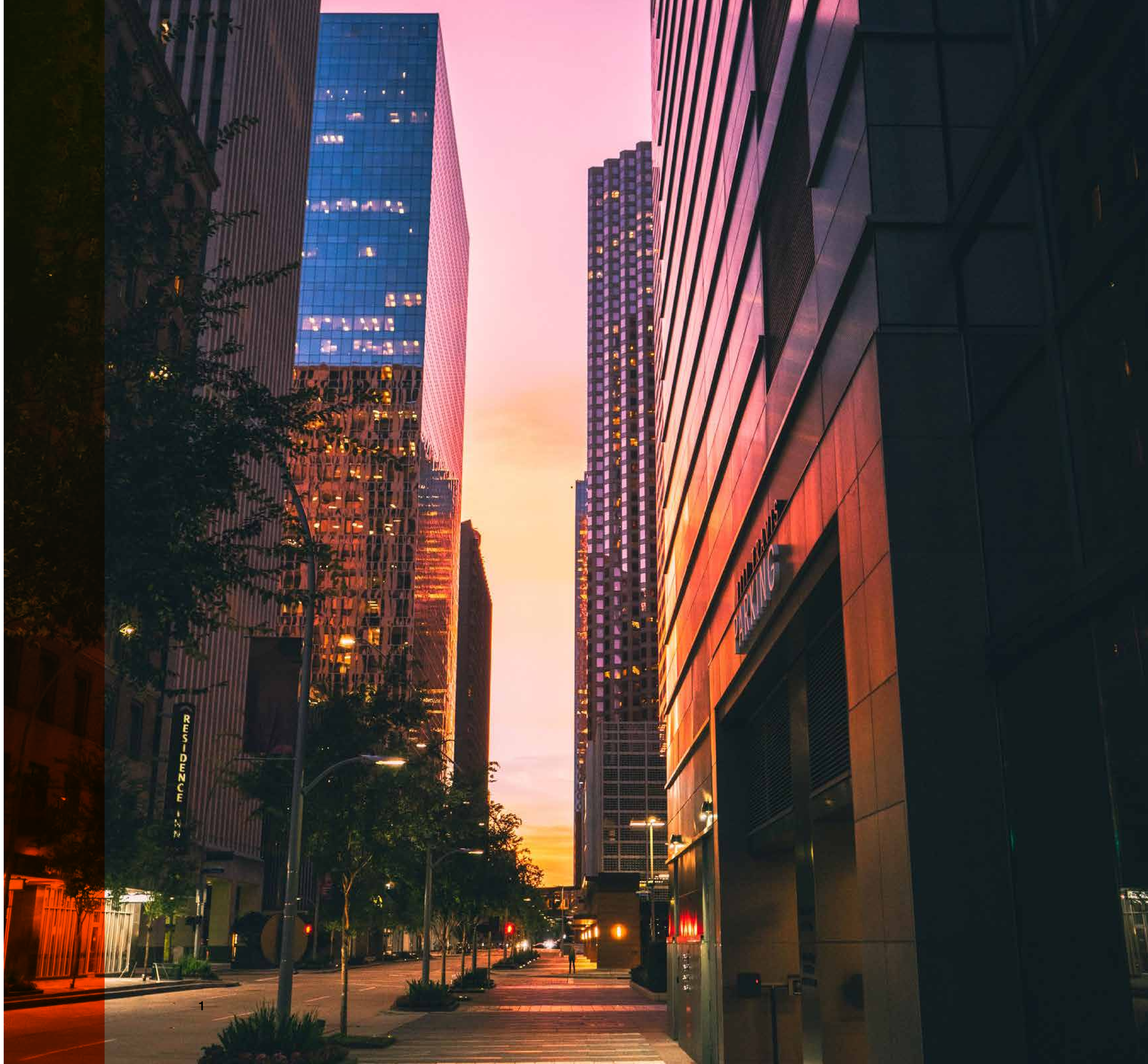
OCTOBER CONTENTS



SOCIAL SECURITY FOR MOBILE EMPLOYEES AFTER BREXIT

As the UK will no longer be part of the EU community after 31 December, social security agreements with EU countries will be subject to new provisions. Here's what you need to know.

Social security often gets overlooked when companies move people to work in other countries. It is either assumed to follow the tax position or just completely forgotten about. But social security is independent of tax and has different rules and regulations.

When employees move within Europe or the EEA for a fixed period of time under a secondment agreement (usually two years), a Certificate A1, PDA (Portable Document A1) or E101 can be applied for.

The certificate provides evidence that EU social security coordination rules have been considered and that home country social security contributions will be due.

Brexit brings us new challenges. HMRC has released guidance for UK employers sending or receiving workers to or from the EU, the EEA or Switzerland from 1 January 2021 .

The UK outbound rules

For employees starting work in the EU, EEA or Switzerland **before 1 January 2021** the current rules will continue to apply after 31 December 2020. This is regardless of whether a future relationship agreement between the UK and the EU on social security coordination is agreed or not, per the provisions in the Withdrawal Agreement.

Current certificates will have an end date and UK social security should be paid until the certificate expires.

Employers and individuals should continue to apply to HMRC for PDA1s and E101s, as normal, for employees who are to start working **after 31 December 2020** in a situation involving the UK and one or more of the EEA countries and Switzerland.

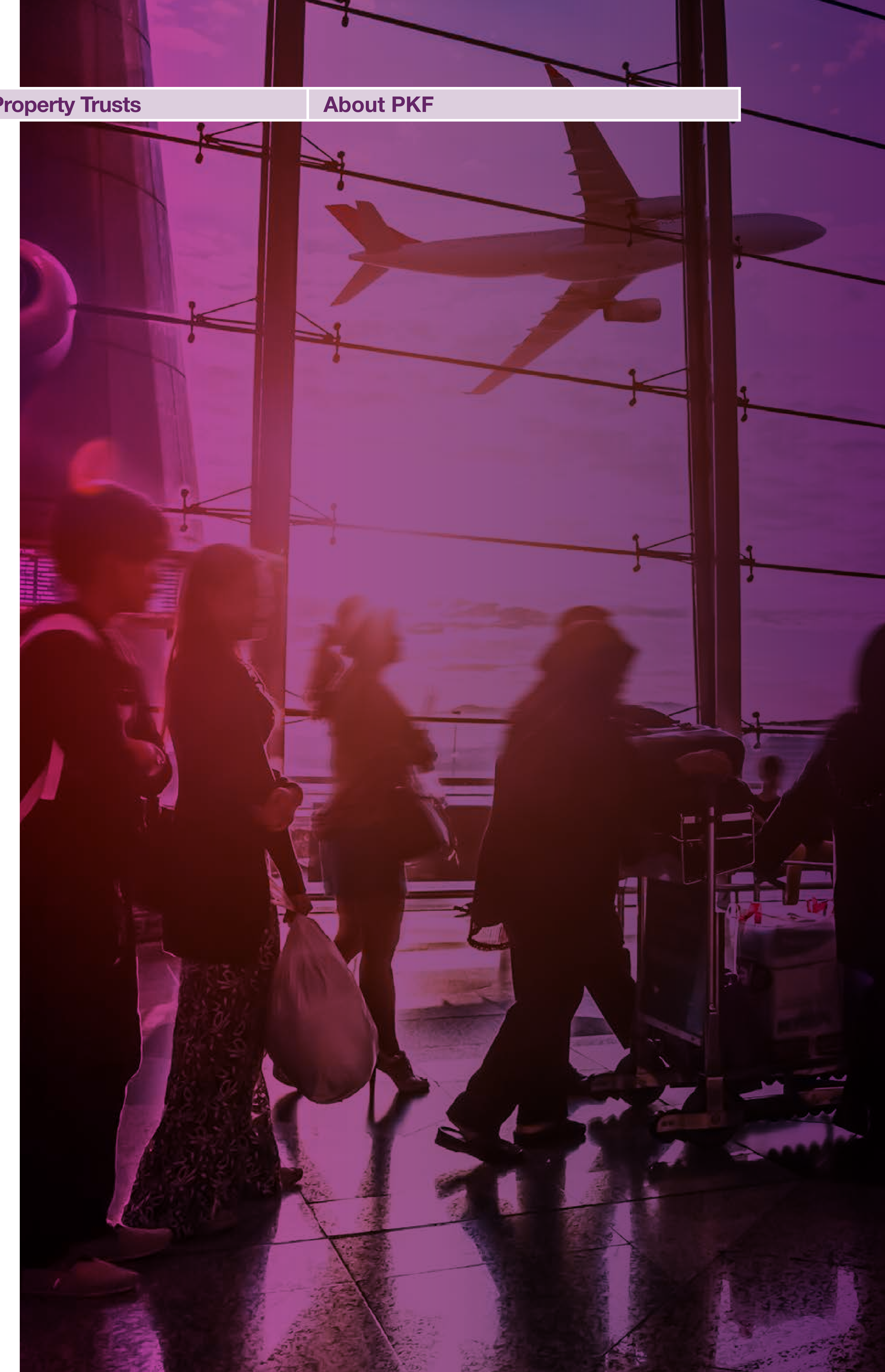
HMRC will issue further guidance as negotiations progress.

The UK inbound rules

If you employ a person from the EU, EEA or Switzerland **before 1 January 2021** and they have a PDA1 showing they are subject to an EEA country or Swiss legislation, UK National Insurance need not be paid for the period stated on the PDA1, even if it ends after 31 December 2020, so long as their situation remains unchanged.

If an individual has a PDA1 showing they are subject to UK legislation, both employer and employee will have to pay UK National Insurance.

For employees from the EU, EEA or Switzerland starting work in the UK **after 31 December 2020**, the situation is slightly different. If they do not have a PDA1 and they work in two or more of any of the UK, EU, EEA countries or Switzerland, an application should be made to the social security institution of the country where they normally reside.



SOCIAL SECURITY FOR MOBILE EMPLOYEES – BREXIT

Agreement with the Republic of Ireland

The UK has reached a reciprocal social security agreement with Ireland so that social security coordination continues after 31 December 2020 on the same terms that are currently in place for UK-Irish National moves.

What about immigration rules?

After 31 December 2020, employees should check the immigration rules for the country in which they will be working. Although Part Two of the Withdrawal Agreement protects social security coordination rights for certain UK and EU citizens, it doesn't protect the right to work in countries in which they are not resident - unless they are a UK national with rights as a frontier worker by 31 December 2020. Simply put, a frontier worker is someone who lives in one country but travels to work in another on a regular basis.

If an employee is an EU, EEA or Swiss national and they haven't applied for settled or pre-settled status, they should consider registering with the EU Settlement Scheme by 30 June 2021.

Will there be further changes?

The Government has been clear that there will be changes to future social security coordination arrangements for those individuals not in the scope of the Withdrawal Agreement and related agreements with EEA EFTA countries and Switzerland. The Government continues to work with the EU to establish practical, reciprocal provisions on social security coordination which include preventing having to pay social security in two countries at once.

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SHOULD BUSINESSES PREPARE FOR A BUDGET TAX SHOCK?

The Sunday Times front page on 30 August terrified the business world. It claimed Rishi Sunak was planning major tax rises for his November Budget. Though now postponed to next year, could the Budget still present a real challenge? Business Tax Partner, Chris Riley, reports.

That headline, 'Rishi Sunak plans triple tax raid on the wealthy', produced the most dramatic client reaction to a tax news story that we have ever seen. The subject still comes up on many client calls. These are the UK tax rises rumoured to be planned:

- Increase in the rate of Corporation Tax from 19% to 24% from 1 April 2021
- A 'simplification' of Inheritance Tax, generally assumed to mean an increase
- Alignment of Capital Gains Tax (CGT) with Income Tax rates.

The expected CGT change has been the most significant concern, so it is where I'm focussing my thoughts.

Blunt tools at the wrong time?

Taken together, without the wider context of a Budget speech, these proposals were projected to raise over £20bn a year in additional taxation to help fund the increased debt from the Coronavirus pandemic.

Since they relate to tax generally believed to apply only to the wealthy (though there is much debate as to who really bears the burden of Corporation Tax), the Government could argue that the cost of the pandemic would be borne by those who have lost out the least .

What's more, the 2019 Conservative manifesto may have forced the Government's arm, with promises not to increase the most significant revenue-raising taxes of Income Tax, National Insurance and VAT. Many would argue this was a manifesto for a different time. But raising these taxes during an economic shock, particularly for lower earners, would likely hinder any recovery.

Although the planned November Budget was postponed to next year because of the health crisis and expected economic impacts over the winter, it's likely all these options remain on the table.

SHOULD BUSINESSES PREPARE FOR A BUDGET TAX SHOCK CONT

Should I sell my business now?

This is the number one question clients have asked me since the article was published. In the past, tax increases have been signposted well in advance. This encouraged taxpayers to maximise gains and income before the rate rise.

But this practice changed last March when, although we knew that Entrepreneurs' Relief would be reviewed, significant changes were made with no notice at all, with some having retrospective effect. That's why a sudden shock change in March 2021 cannot be ruled out.

But tax is only one factor in determining the value you receive when selling your business. If you sell today, will the market value of that sale be depressed by the current economic difficulties? Also, are you denying yourself income from profits that would otherwise arise in the period between sale and the date you originally planned to sell?

Although the coming months may be a good time to sell your business, beware doing so purely to achieve a lower rate of tax on disposal. And if you do decide to sell, consider the transaction (and the alternatives) holistically, so that any potential tax savings more than offset potential lost opportunity costs. Bear in mind, too, that tax rates may not increase, or at least not immediately.

Should I restructure my business ownership?

Another question from those owning businesses, who do not plan to sell in the near term, is whether you can change the ownership structures to lock in gains today, or move assets offshore to prevent further increases in value being subject to higher rates of UK tax.

There is much anti-avoidance legislation that will tackle artificial transactions or movement of assets to a low tax jurisdiction, where there is no wider commercial purpose than to avoid tax now or in the future. If you're advised to enter this kind of structure, we strongly recommend seeking independent professional advice. Always ask yourself whether the proposal sounds too good to be true.

But if genuine succession planning is your priority, this may be the right time to consider ownership options, particularly regarding longer term estate planning and handing the business to the next generation. My colleague Shaharan Deen will contribute a piece on this next month.

What about employee incentive schemes?

My final thought concerns employee share incentives. As well as their genuine commercial purpose to incentivise staff, they also benefit from CGT on disposal, giving a lower rate of tax on exit. Several business owners have suggested that if the CGT rate converges with that of Income Tax, why bother?

In my experience, share-holding employees see tax benefits as secondary to the potential to participate in the growth of the company - even though economically the outcome may be the same.

Depressed values and cash flow concerns may mean that now is absolutely the right time to consider incentivising key staff through share-based payment structures. And one would hope that in any higher CGT world approved tax advantaged share schemes, like the Enterprise Management Incentive scheme and others, would be altered so they remain relevant in the future.

I've grown rather tired of saying that we live in uncertain times, but there's no denying that we do. And tax risks may be on the horizon. But taking action (or not) purely based on rumoured tax changes, without considering all possible impacts, is potentially the greatest risk of all.

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HMRC OFFERS GREATER FLEXIBILITY FOR TAX

It's the tax return season again. To ease the Covid-19 economic burden, HMRC has announced a higher payment plan threshold. Find out if you qualify.

For customers feeling the widespread financial squeeze caused by the Coronavirus pandemic, help is available for paying tax liabilities provided they meet certain criteria. HMRC announced revisions to its Time To Pay scheme, with an increase to the threshold to £30,000 for Self Assessment customers. The new arrangements have applied since 1 October.

Under the updated system, individuals with Self Assessment liabilities of up to £30,000 can apply online for additional support to help spread the cost of their tax bill into monthly payments without the need to call HMRC. The payment will be taken via monthly direct debit.

Previously, the threshold for making this arrangement online was £10,000.

What are the criteria?

The following requirements must be met to benefit from the new scheme:

- individuals must have no:
- outstanding tax returns
- other tax debts
- other HMRC payment plans set up
- the debt must be between £32 and £30,000
- the payment plan must be set up no later than 60 days after the payment due date

The deadline to complete Self Assessment tax returns for 2019/20 is 31 January 2021. This is also the payment deadline for the 2019/20 UK tax return liability. HMRC estimates around 95% of Self Assessment customers who are due to make payments in January 2021 could qualify to implement a Time To Pay arrangement using the self-serve facility online, without needing to speak to an HMRC adviser.

What if my bill is higher than £30,000?

Individuals who have tax return liabilities of over £30,000, or need longer than 12 months to settle their tax liabilities should contact HMRC Self Assessment Payment Helpline on 0300 200 3822.

Interest will be applied to any outstanding balance from 1 February 2021. Currently, HMRC's late payment interest rate is 2.60% annually.

Further information about the Time To Pay arrangements can be found on HMRC website at https://www.gov.uk/pay-self-assessment-tax-bill/pay-in-instalments. But beware: everyone should be alert to scams claiming to be from HMRC offering to help pay any tax owed.

For more information, please contact

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EXCLUDED PROPERTY TRUSTS: HOW TO USE THEM FOR TAX ADVANTAGE

Excluded property trusts have long been a route to inheritance tax (IHT) protection for those who are not UK-domiciled or deemed domiciled. Since 6 April 2017, you may also benefit from new protections against income tax and capital gains tax (CGT).

What is an excluded property trust? Foreign assets (those situated outside the UK) are excluded from UK IHT if they are held in a settlement made by someone who was not domiciled or deemed domiciled in the UK when the assets were settled. If you are neither UK-domiciled nor deemed domiciled, you may be able to create such a trust. But it will not help those who were born in the UK with a UK domicile of origin.

If set up properly, excluded property status can be achieved even if the settlor is a potential beneficiary of the trust. And the status is retained even if the settlor later becomes domiciled or deemed domiciled in the UK.

Although it's possible to qualify for IHT benefits if the trust is UK resident, it works better for income tax and CGT if it is non-UK resident. Our guidance below is based on that assumption.

What about UK situs assets?

Most UK assets do not qualify for excluded property status, but it's sometimes possible to overcome this by enveloping them in an underlying foreign company. UK residential property is an important exception, and value attributable to this will remain liable to IHT even if enveloped.

Income tax protection

The UK has anti-avoidance rules that tax the settlor on income arising in trusts they have created but retained a benefit from. Rules effective from April 2017 now give the majority of settlors protection from income tax in relation to income retained in the trust unless the trust is 'tainted' (for example, by adding to it after the settlor is deemed domiciled in the UK).

Protection does not extend to all types of income and will be lost if the settlor becomes domiciled in the UK under general law (as opposed to merely deemed domiciled).

While the trust income remains protected, a settlor will generally be taxed only on UK income they receive from the trust and on the trust's foreign income they receive and remit to the UK. The trustees may be liable for tax on UK income but not on foreign income.

CGT protection

Offshore trusts are not subject to UK CGT other than on direct or indirect interests in UK residential property. But anti-avoidance provisions do seek to tax UK resident settlors or beneficiaries on the gains of the trust.

Provided the settlor was not domiciled or deemed domiciled in the UK when the settlement was created, they will not be taxed on gains arising in the trust. But they will, instead, be taxed in the same way as other beneficiaries.

Capital gains of the trust are attributed to beneficiaries to the extent that they receive capital payments or benefits from the trust. Remittance basis users will only pay tax on the attributed gains if and when they are remitted to the UK.

EXCLUDED PROPERTY TRUSTS: HOW TO USE THEM FOR TAX ADVANTAGE CONT

Benefits in a nutshell

IHT protection can be obtained in relation to foreign assets even if the settlor later becomes UK-domiciled or deemed domiciled. By enveloping within a foreign company, the protection can extend to most UK assets, but not UK residential property.

Income tax protection is available for foreign income that is retained in the trust so long as the settlor either remains non-UK-domiciled or becomes deemed UK-domiciled. CGT protection is available on the same basis.

Using a foreign trust to shelter income will make a difference to decisions about claiming remittance basis particularly where the 'remittance basis charge' may apply, since this income will no longer feature.

Don't miss the small print

Income tax and CGT protections will not apply to a settlor who acquires a UK domicile of choice under general law.

Complex anti-avoidance provisions apply to the remittance basis, to prevent remittance by circular means. For example, benefits passed to close family or to others that are then passed back to the settlor or his close family.

The protections only apply from 6 April 2017, so income received earlier is taxed on a different basis. Segregation of pre- and post-2017 income will help to identify the income pools to which the different rules apply.

If you'd like us to review your current offshore trust structures or are considering setting up a new structure, please speak to your usual PKF contact.

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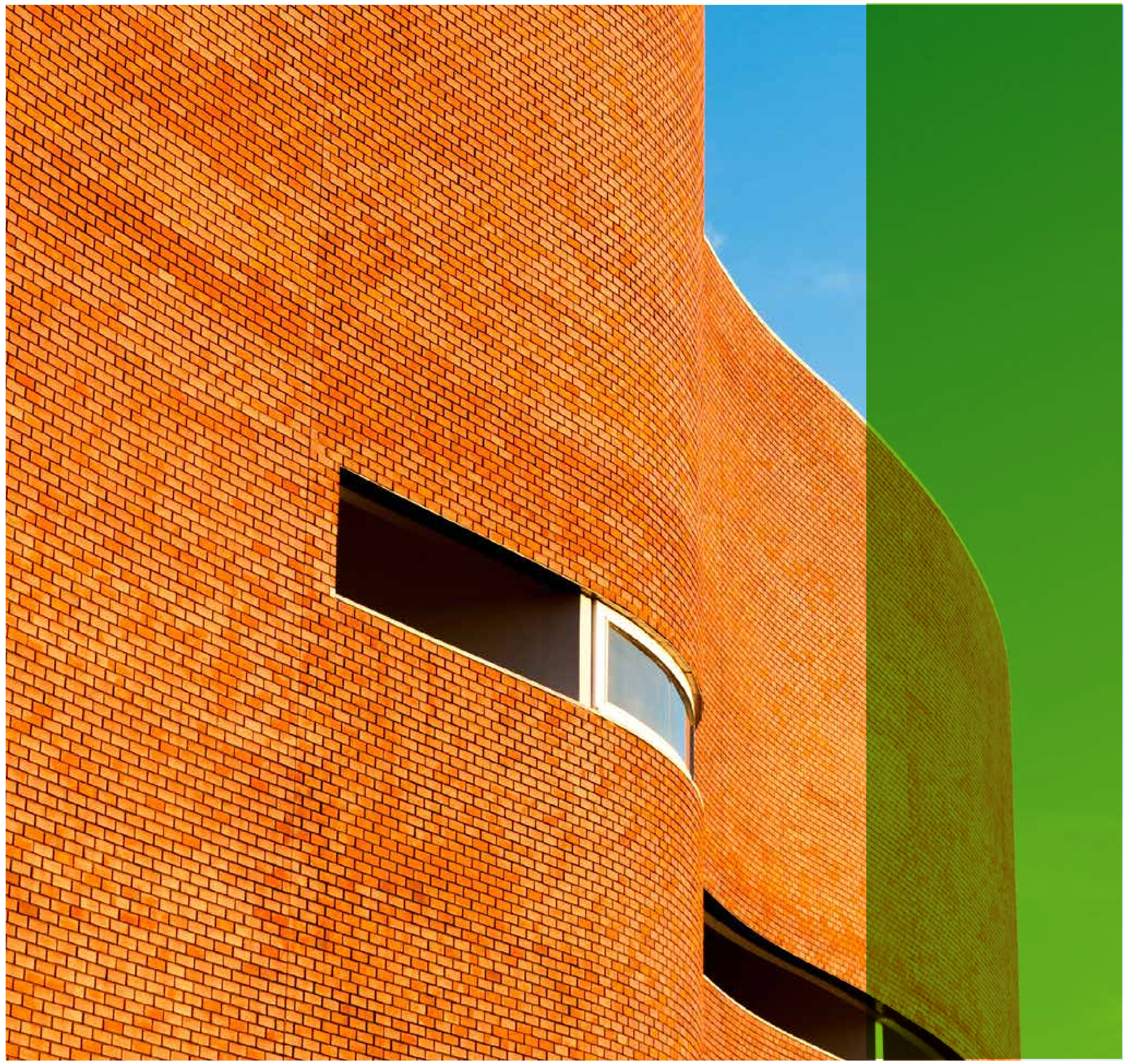
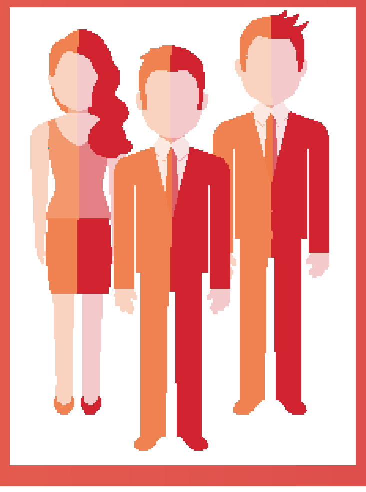
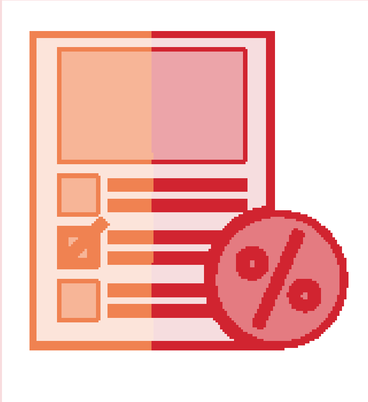


ABOUT PKF



PKF Littlejohn is a fast-growing firm of accountants and business advisers based in London's Canary Wharf.



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 complex clients with challenging issues in fast-moving and highly technical areas.

Our aim is to understand people, the organisations they run, and what matters to them, so we can simplify complexity and help them achieve their ambitions.

We have three important principles that make a big difference in our business, and they also have a significant impact on our clients' organisations. They are really simple:

1. People matter; making a difference for the people we work with and the people we work for is our priority
2. We're relentlessly curious, because we want to know each client's organisation as well as they do, even better if we can
3. And we're good at getting things done.

We are the London office of PKF UK & Ireland, currently the 10th largest network in the UK with a combined fee income of over £140m.

OUR TAX SERVICES

> 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."

Cost-effective tax compliance, expert assistance for complex matters.

It's a corporate juggling act: how to keep up with ever-changing tax regulations, while minimising the amount you pay, running your business and handling your tax affairs efficiently.

PKF Littlejohn can provide bespoke advice in all areas of taxation helping our clients receive the specialist knowledge they need to make informed decisions. Our team has the expertise and capacity to take on all challenges, national and international.

WE OFFER THE FOLLOWING SPECIALIST TAX SERVICES:

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All issues concerning VAT in the UK, Europe and across the world

International tax services
Expert tax advice on your operations around the world, with access to tax expertise in around 125 countries through PKF International, our global network of independent accounting firms.

Tax compliance
The best way to minimise your tax liabilities and avoid penalties or fines is to hand your tax affairs over to professionals. Our processes are designed to ensure your return is completed on time and correctly

Customs duty
Assistance with trading across national boundaries in Europe

Global Mobility
Our Global Mobility team, together with the global network of PKF International, supports expatriate and internationally mobile individuals in over 150 countries

HMRC enquiries
Not only will we help you minimise the risk of an enquiry by HM Revenue & Customs, but should one be raised you can rely on our wealth of experience in resolving disputes and negotiating favourable settlements

Employee incentives
Encourage the best people to join you and stay with you

Tax planning
In our view, paying the right amount of tax means paying the minimum the law requires of you. We will help you achieve this with tailored strategies that suit your personal and business circumstances

Estate planning and trusts
We can provide sound advice on how to make the best possible use of tax-saving vehicles, ensuring that your family is properly provided for

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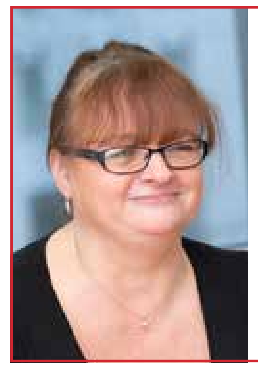

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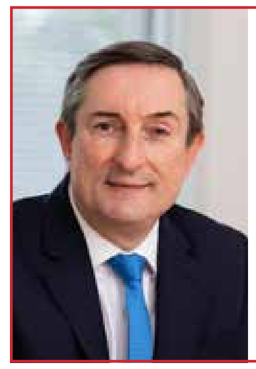

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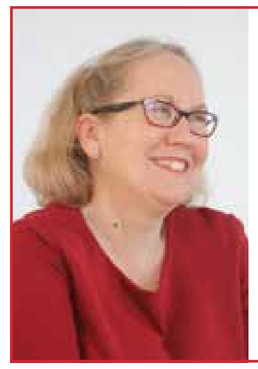

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