Tax Talk

Simplifying the complexities of Tax

August 2021

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Tax Talk: August

When size matters – 'large group' issues for UK 'small' companies

If you're the Financial Controller of a small UK company that happens to be part of a much bigger international group, it's easy to think of your business as operating on its own for Corporation Tax purposes. However, Shona Barker explains why you still have to look at the bigger picture.

Corporation Tax payments

If your UK company is taxpaying, you need to count the number of related 51% group companies carefully at the start of the accounting period. You can ignore wholly dormant companies and most non-trading holding companies, but you have to include international group members. Typically, this is what trips people up, especially where private equity or a complicated group structure is involved.

If your UK company has taxable profits of more than £1.5 million divided by the number of related 51% group companies plus one, then it might have to pay tax in instalments. However, there is a de minimis exemption of £10,000 of Corporation Tax to pay, and if it's the first period that the company has potentially fallen within this regime, it gets a free pass until the following year. Remember, these limits are all scaled up or down if you don't have a standard 12-month accounting period. What's more, a second and further acceleration of Corporation Tax payments will also apply when profits exceed £20 million divided by the number of group entities, so this requires constant monitoring.

It can be a shock to go from paying tax nine months and one day after the end of the accounting period to making payments before you've closed out management financials for the year. However, the good news is, interest payable on late advance payments is always lower than the interest outstanding at that nine-month and one day point. In addition, as interest on underpaid or late paid Corporation Tax is deductible for Corporation Tax purposes, you will get tax relief for it.

Country by Country Reporting (CbCR)

UK companies in large groups are subject to CbCR requirements even if they have minimal operations in the UK. If the international group to which your company belongs has a consolidated group turnover of at least €750 million, the company will be caught by the rules.

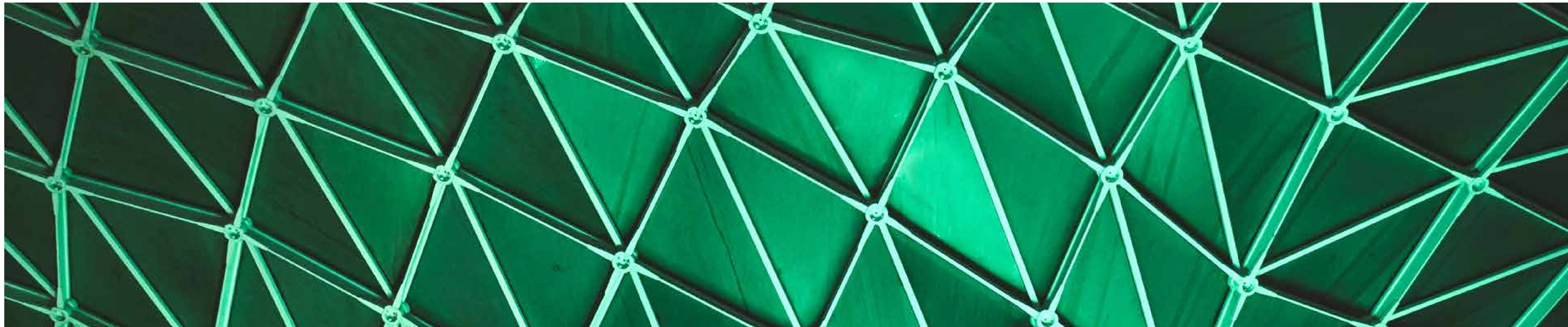
In most cases, the ultimate parent entity needs to make the filing, so it's probably another colleague in the group responsible for dealing with it. However, if the parent happens to be in a tax jurisdiction where CbCR is not mandatory, the task could be your responsibility. Worth asking internally!

Tax Strategy

If CbCR catches your company (even if another company in the group is dealing with the reporting), you may need to publish a UK Tax Strategy. Furthermore, if no upstream companies have published one, then your UK company will need to.

You will need to publish the Tax Strategy online in an easily accessible format. It must cover the group's attitude and approach towards UK taxation.

Depending on what your company does, a really long or short strategy might make sense, but it must accurately represent the position. There is no one size fits all approach for this piece of legislation!



When size matters – 'large group' issues for UK 'small' companies

Transfer Pricing

If the group has at least 250 employees on consolidation and either an annual turnover of more than €50 million or an annual balance sheet of more than €43 million (or indeed both), you need to consider Transfer Pricing in respect of all group transactions. The rules only become mandatory in all cases when the group is deemed to be large by these measures, but when you're part of a medium-sized group, HMRC can tell you to apply the rules. In addition, where a company has transactions with group entities in jurisdictions with which the UK doesn't have a tax treaty (typically, but not always, tax havens), these transactions are always within the scope of Transfer Pricing rules, regardless of group size.

Transfer Pricing aims to ensure all transactions are undertaken on an arm's length basis. So, if you have lots of recharges between group companies (e.g. if another group company handles the HR function for the entire group), this could be particularly relevant.

Research and Development (R&D)

If your company is doing something innovative, you might be able to claim R&D tax relief on the costs incurred in trying to achieve an advancement in science or technology (even if it fails). A critical difference between the SME and large company R&D schemes is the availability of relief for subcontracted costs. If most of your spending is on consultancy rather than direct labour, it's essential to understand at an early stage whether your company is considered large or not.

The relevant cut off is less than 500 staff and either consolidated turnover of less than €100 million or a consolidated balance sheet total of less than €86 million.

If you're not sure if any of these rules apply to your company, or if you've suddenly realised that your company is bigger than you thought, please get in touch with Shona Barker or your usual PKF contact.

Shona Barker
Senior Manager

+44 (0)20 7516 2477
sbarker@pkf-l.com

The G20 sign off on a minimum global Corporation Tax rate of 15%

The measure aims to deter multinationals from shifting their profits internationally to benefit from lower tax rates. However, although it's been reported as a simple headline, what does it mean in practice? Mimi Chan explains.

Earlier this month, the Organisation for Economic Co-operation and Development (OECD) announced that 132 countries, representing more than 90% of global gross domestic product (GDP), have agreed to back plans for a global minimum Corporation Tax rate of 15%. These countries include Bermuda, the Cayman Islands and the British Virgin Islands, all traditionally thought of as tax havens.

The Two-Pillar approach

It's planned to implement the changes via a two-pillar approach. Pillar One will affect only the very largest multinational businesses and aims to reallocate profits (and taxing rights) from the jurisdiction in which they are reported to those jurisdictions where they actually operate and have customers. Pillar Two looks at the minimum global Corporation Tax rate paid by the group overall to address distortions arising from shifting profits to low tax jurisdictions purely to secure that lower rate.

Pillar One

Increasingly, income from intangibles such as software and royalties on intellectual property patents and drug patents has allowed companies to pay lower taxes away from their traditional home countries.

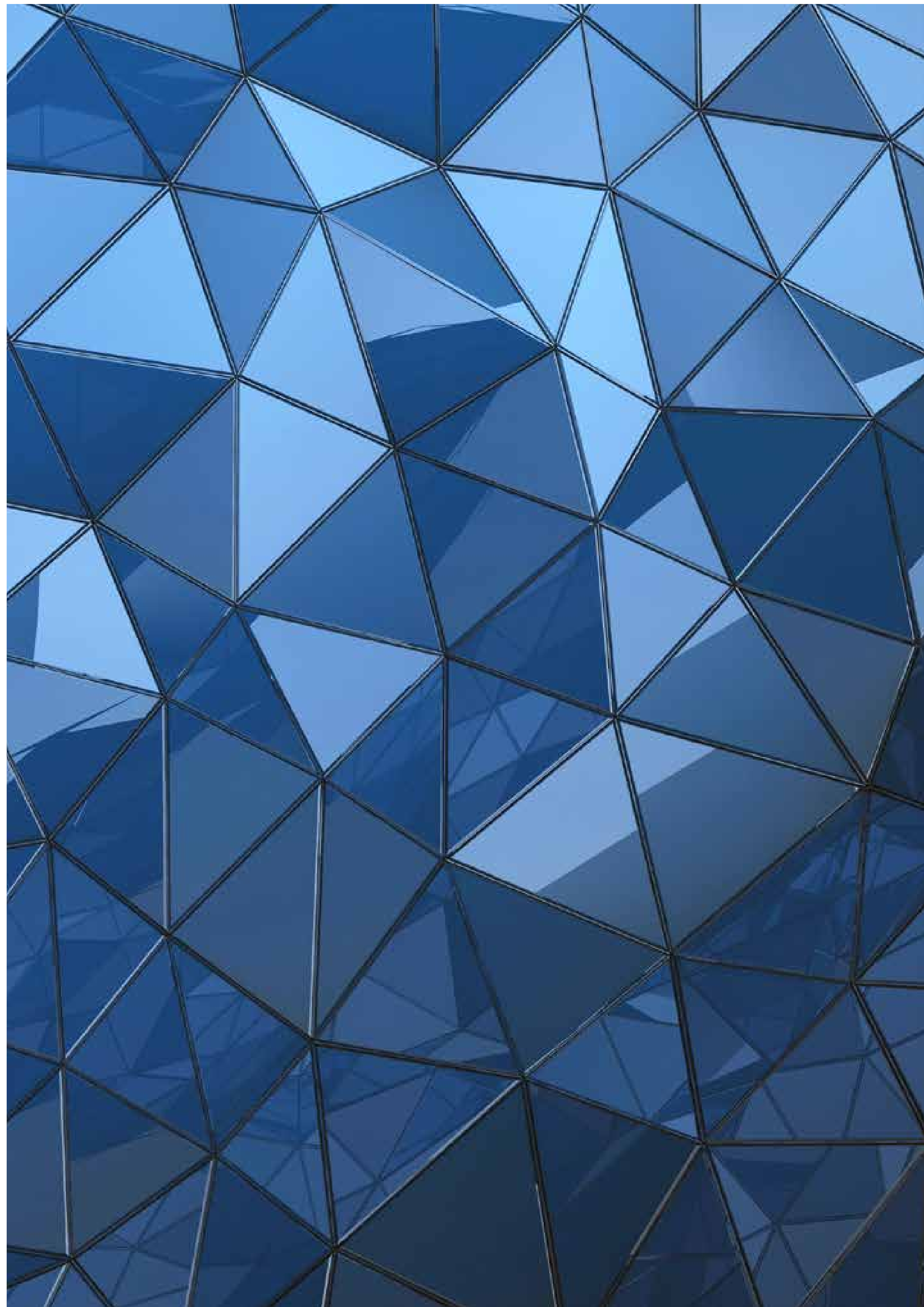
Pillar One is directed at the top 100 companies globally which have worldwide turnover exceeding €20 billion (a lower threshold will be considered after a review) and a pre-tax profit margin above 10%. Above this threshold, between 20% to 30% of profits will be taxed in the countries where the company operates and earns its profits. An additional amount (primarily based on existing Transfer Pricing principles) will standardise the earnings considered to be from marketing and distribution activities.

This solution allows a move away from traditional tax legislation where profits of a foreign company are only taxed in another country where the foreign company has a physical presence. Instead, it looks at customer and market locations to address the challenges of taxing operators in the digital economy.

Pillar Two

Pillar Two is the new minimum Corporation Tax rate of 15% and applies to groups with turnover above €750 million. Under this regime, if companies pay lower taxes in one country, the tax authority in the parent company's jurisdiction will impose a top-up tax to achieve a global tax rate on those profits of 15%.

This will apply on a country by country basis, so a higher tax rate of, say, 25% in Country A cannot be averaged out against a lower tax rate in Country B of 12% to give a 15% effective global tax rate.



The G20 sign off on a minimum global Corporation Tax rate of 15%

Likely effects

The OECD and national governments still have many obstacles in introducing legislation and getting new rules defined before their introduction. However, the plan is to agree a full framework at the next meeting of the G20 in October 2021. Unsurprisingly, OECD members such as Ireland, Estonia, Cyprus and Hungary that already have a low Corporation Tax rate or other incentives to attract inward investment aren't fully signed up.

If things go according to plan, it will be interesting to see how global Corporate Tax rates develop. A jurisdiction offering incentives to multinational subsidiaries will see these incentives neutralised by the Parent Jurisdiction applying a Pillar Two levy. Therefore, a possible outcome may be for those jurisdictions with lower tax rates or other Corporate Tax incentives to increase their tax rates to the global minimum and secure that tax revenue for themselves. It's notable, however, that these changes affect only Corporation Tax rates, so there may be a shift to other forms of tax-based incentives, such as employment taxes by jurisdictions to attract new inward investment.

More specifically, many tax regimes will likely change to remove duplication that these rules would otherwise create. As a result of Pillar One, the EU Commission has already announced that the proposed Digital Services Levy has been put on hold. Similarly, UK tax measures that tackle diversion of profits such as the Digital Services Tax and Diverted Profits Tax will probably be superseded or, at the very least, refined to accommodate these new rules.

Mimi Chan
Director

+44 (0)20 7516 2264
mchan@pkf-l.com

Simplifying cross-border transactions with the EU

Following the success of the VAT Mini One Stop Shop (MOSS) scheme, the European Commission has decided to further simplify EU VAT obligations for businesses engaged in cross-border transactions. Irfaan Abdool Wabh explains how the changes affect your business.

MOSS was designed to make VAT simpler by removing the need for suppliers of business-to-consumer (B2C) broadcasting, telecommunication and electronically supplied (BTE) services to register for VAT in every EU member state where their customers belonged. Instead, they could register for the MOSS scheme and submit a single MOSS return to report the VAT due in the EU member state where their customer belonged. The MOSS scheme was subdivided between the Union scheme designed for EU-established businesses and the Non-Union scheme designed for businesses based outside the EU.

With effect from 1 July 2021, the scope of the existing MOSS scheme has been expanded. The once narrow MOSS scheme has been renamed to the OSS scheme and now include the following additional supplies:

- Intra-EU distance sales of goods
- Certain domestic supplies of goods carried out by deemed suppliers (electronic interface)
- For EU-established suppliers – all supplies of B2C services taking place in the EU member state in which the supplier isn't established
- For non-EU-established suppliers – all B2C services with premises in an EU member state

Furthermore, the OSS has brought an end to the long-standing and member state-specific intra-EU distance selling thresholds. A new EU-wide threshold of €10,000 now applies to intra-EU distance sales and BTE services. Interestingly, this EU-wide threshold doesn't apply to the other additional OSS supplies, such as:

- Supplies of BTE services made by a supplier not established in the EU
- Intra-EU distance sales of goods made by a supplier not established in the EU
- Supplies of services other than BTE services

Generally, suppliers established within the EU will be permitted to use the Union OSS scheme, whereas suppliers without an EU establishment will be required to use the Non-Union OSS scheme.

An exception exists for intra-EU distance sales of goods whereby a non-EU-based supplier can utilise the Union OSS scheme – presumably as the goods will be located in the EU at the time of sale. However, as noted above, the EU-wide distance selling threshold will not apply, and a requirement to register will exist from the first sale. This maintains the historic EU position following cases such as Schmelz (C-97/09), which determined that only established businesses could benefit from domestic thresholds.

It is also important to note that a fiscal representative may be required to utilise the OSS scheme. However, this will depend on the local requirements in the EU member state of identification.

Simplifying cross-border transactions with the EU

Online marketplaces

Special provisions have been introduced whereby a business facilitating supplies through the use of an online electronic interface is deemed for VAT purposes to have received and supplied the goods itself. These are known as the ‘deemed supplier provisions’.

How we can help

The new rules have been designed to simplify the administrative VAT burden on suppliers with cross-border B2C supply chains and to encourage compliant behaviour through applying a consistent treatment across the EU, e.g. there will no longer be differences in distance selling thresholds between EU member states. Furthermore, they also place an increased compliance burden on electronic interfaces, which facilitate the sale of goods by requiring them to act as if they were the actual supplier of the goods. This will have implications for both the underlying supplier and the electronic interface itself.

Irfaan Abdool Wabh
Manager

+44 (0)20 7031 5386
iabdoolwabh@pkf-l.com

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

£150 million annual fee income

2,030 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

PKF Littlejohn LLP,
15 Westferry Circus,
Canary Wharf,
London E14 4HD

Tel: +44 (0)20 7516 2200
www.pkf-l.com