# Tax Talk

Simplifying the complexities of Tax

International edition

**October 2021**

pkf-l.com

# Tax Talk: October


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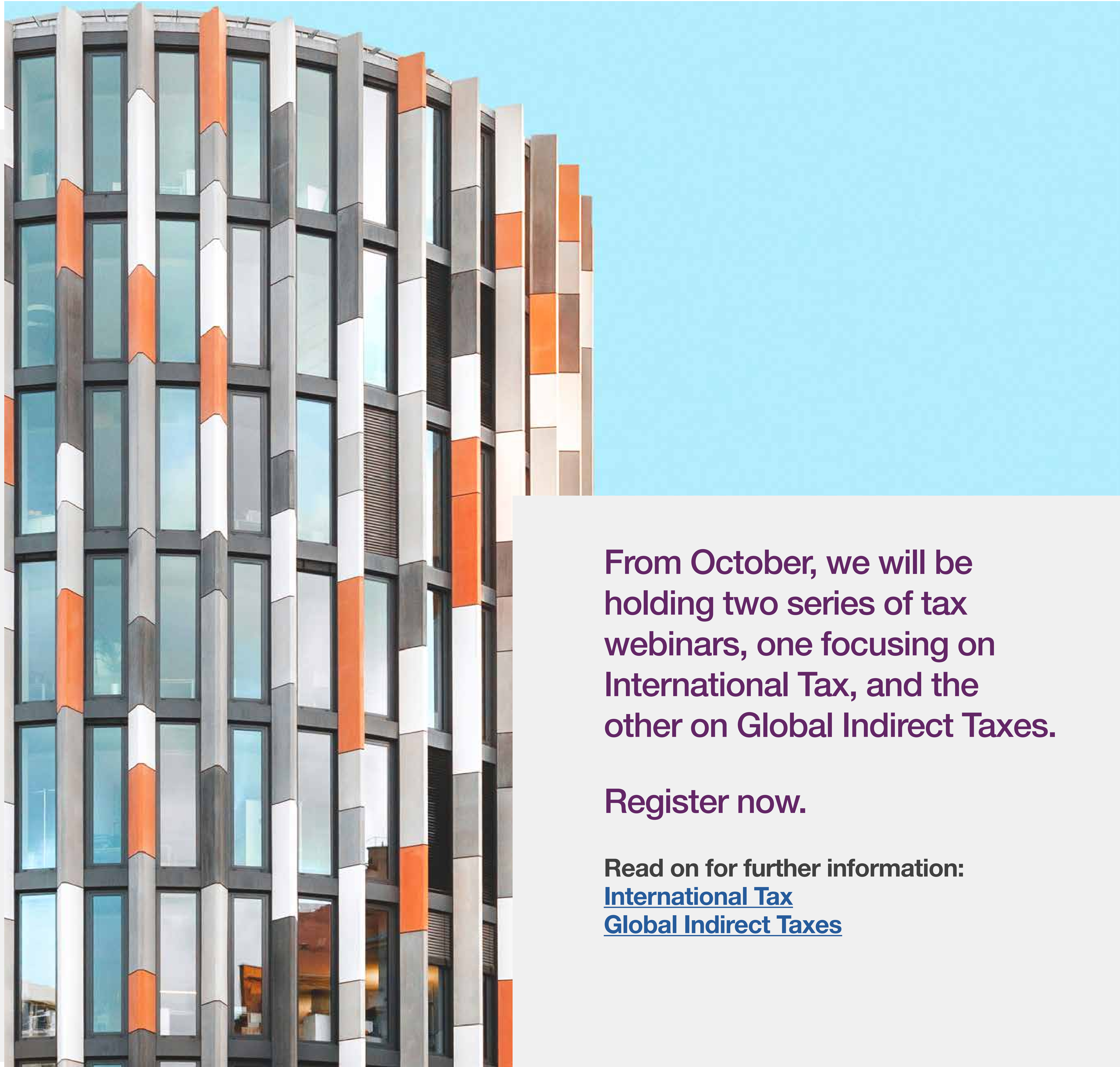
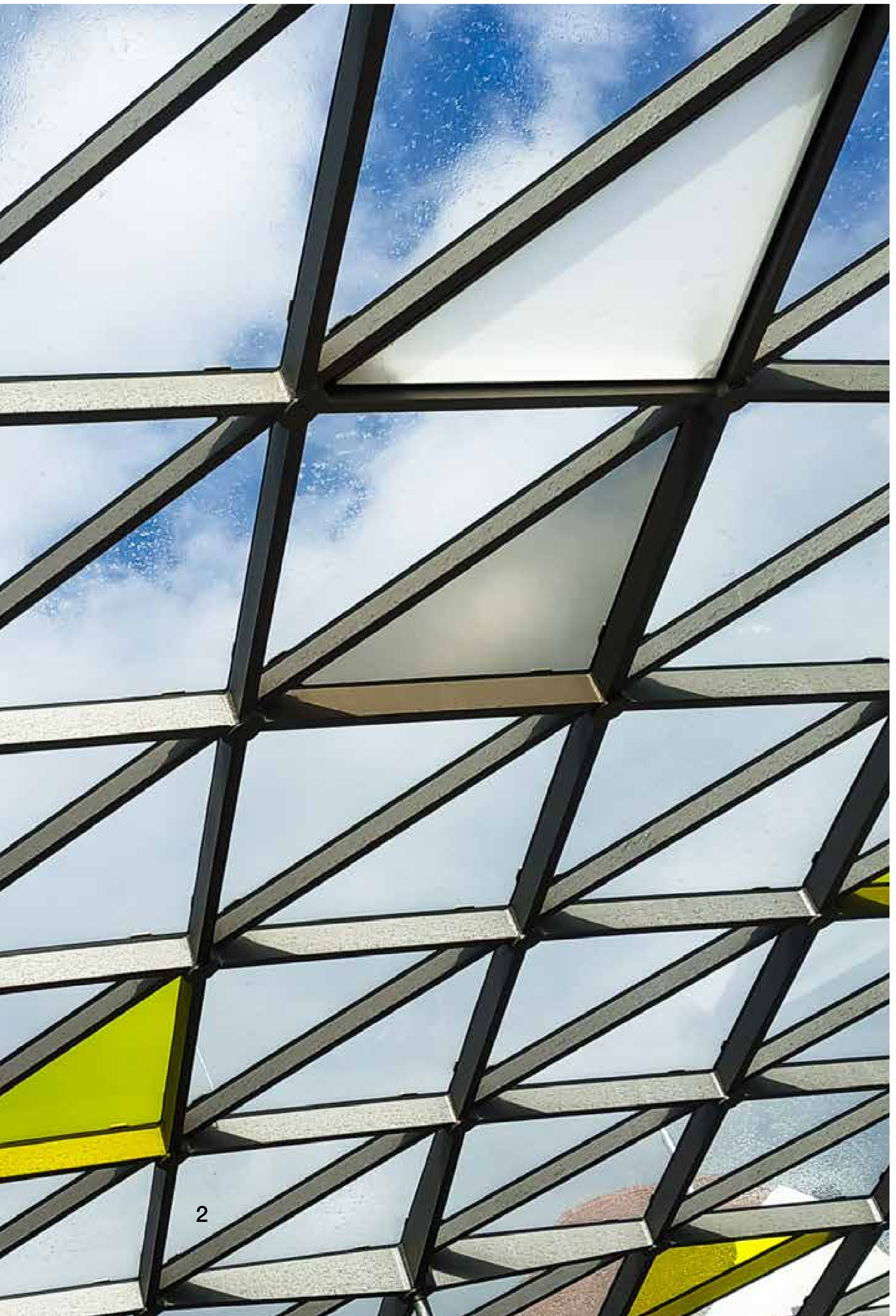


From October, we will be holding two series of tax webinars, one focusing on International Tax, and the other on Global Indirect Taxes.

Register now.

**Read on for further information:**
International Tax
Global Indirect Taxes

# Trading with the EU made easier



## There have been several accounting changes since Brexit, many of which have affected cross-border VAT. How can postponed import VAT accounting (PIVA) help?

PIVA was introduced from 1 January 2021 to enable businesses that import goods into the UK (whether from the EU or not) to account for and recover import VAT on their VAT returns. Previously, they had to pay the VAT at the border and recover it at a later date. PIVA is not compulsory and only applies where the consignment value exceeds £135. It offers substantial cash flow benefits to businesses that opt to use it.

### What has changed?

Before 31 December 2020, businesses that purchased goods from EU member states could treat this as an intra-community acquisition. If they met certain conditions, the dispatch of goods within the EU was zero-rated for VAT. The EU customer acquiring the goods would both account for the acquisition VAT and also recover the corresponding amount as input tax through its VAT return, if it was fully taxable.

Following the end of the Brexit transitional period, movements of goods between the UK and the EU are now considered ‘imports’ and ‘exports’. This means import VAT is due on goods coming into the UK from the EU and customs declarations are submitted both when the goods leave the EU, and when they arrive in the UK.

Under the EU–UK Trade and Cooperation Agreement, most goods that originate in the EU are not subject to customs duty, but the requirements for this are strict, so businesses could face unexpected costs when importing into the UK if the conditions are not met.

### Incoterms: the details matter

This change makes the incoterms agreed with customers even more important. They determine which party is responsible for accounting for the import VAT and customs duty, and dealing with insurance, documentation and customs declarations.

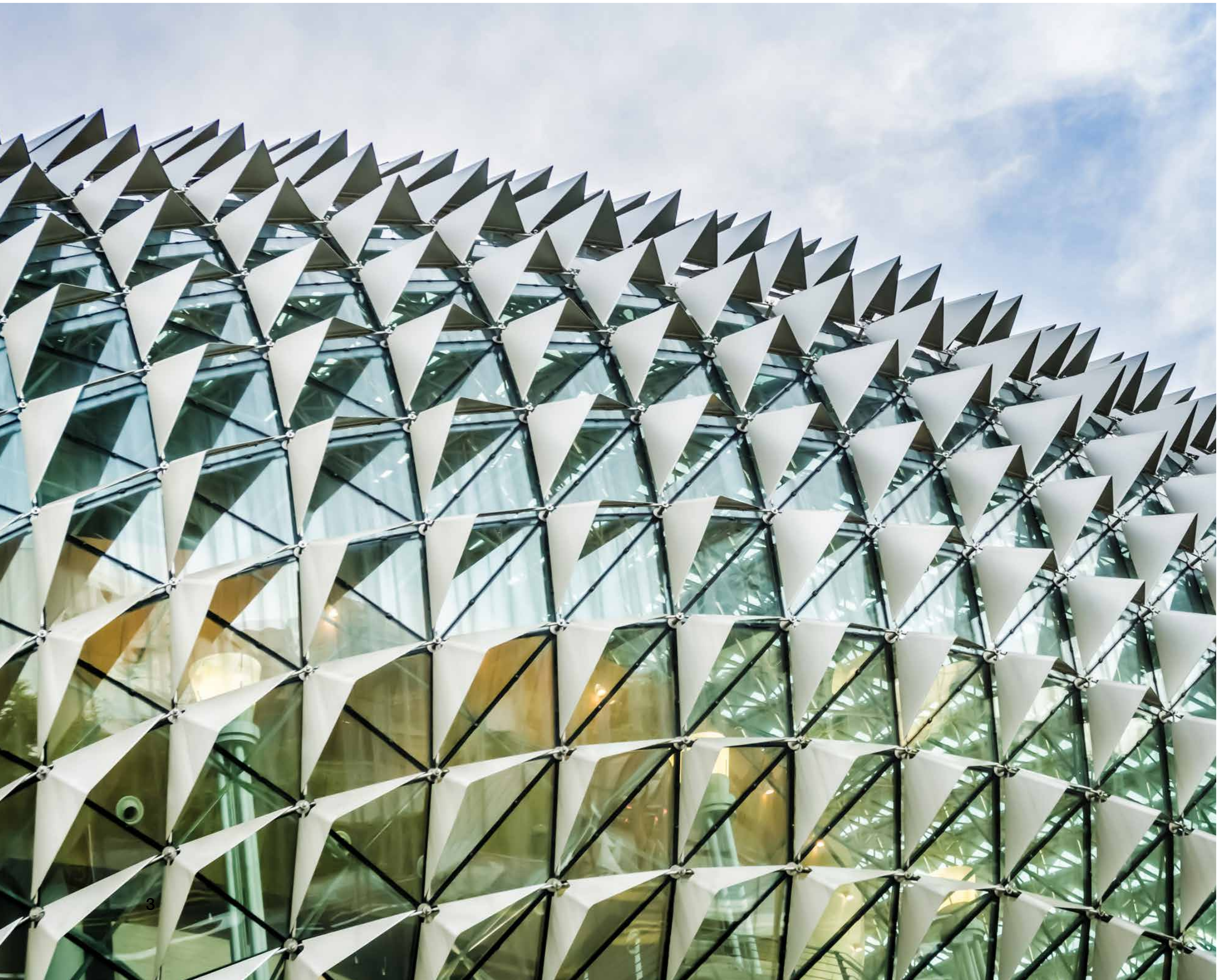
Most businesses opt to use the incoterm ‘delivered duty paid’ (DDP). This requires the seller to arrange carriage and transport of the goods to the named place, pay the import VAT and customs duty, and submit the customs declarations. So the seller acts as the importer of record. This may mean the seller has to register for VAT in the customer’s country. There are other incoterms available, like ‘delivered at place’ (DAP), where the customer has to pay the import VAT and customs duty, and deal with the import documentation. But here, the customer may not appreciate the additional costs. So it’s vital for both parties trading between the UK and EU to agree their incoterms and fully understand the tax obligations this creates from the outset.

### How does PIVA work?

With PIVA, businesses can defer the payment at the border, and just account for the import VAT on their VAT return in Box 1. They can also recover this in Box 4 of the same return. If the business is fully taxable, this creates a nil effect. The total value of the imports, excluding VAT, is declared in Box 7.

A downloadable monthly statement from HMRC summarises the import VAT ‘postponed’ each month. Businesses must keep the statements

# Trading with the EU made easier



with their VAT records as evidence for import VAT recovery, and this should be reconciled with their import VAT records.

Businesses that opt to take advantage of the cash flow benefits PIVA offers must tell their customs agent that they plan to use PIVA. The customs agent will need to insert 'G' as the method of payment in Box 47e (if using the CHIEF system) of the customs declaration. If using the Customs Declaration Service (CDS), the VAT registration number of the business must be entered at the header level in data element 3/40.

## What are the options?

As PIVA is not compulsory, businesses can still choose to pay the import VAT at the border and recover it at a later date (via their VAT return). For this they need a monthly C79 certificate from HMRC.

Those that opt to delay their customs declaration must use PIVA and will need to estimate the import VAT due based on the date of import. Once the delayed declaration is submitted and the true import VAT value appears on the monthly statement, the estimate can be adjusted in the next VAT return.

## How we can help

If your business is involved in imports but has not yet switched to PIVA, you should consider doing so as soon as possible. Our indirect tax team can guide you through the sign-up process and make sure you are fully compliant. Our global network can also help if an EU VAT registration is needed.

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**Register now** for our webinar - 'Indirect taxes issues of global trading' on 25 January 2022. Join Luigi Lungarella as he presents three case studies to explore these issues and more. For futher information, see our tax webinar series.

# R&D across borders: don't miss out

Shona Barker looks at the international aspects of R&D and explains how different group arrangements can still bring you within the scope of the generous UK R&D tax relief regime.

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When a group gets big enough, you can bet at least one member is up to something interesting. The trick is working out whether that constitutes R&D for tax purposes, whether the group structure allows you to make a claim and, if so, where you can make that claim.

After HMRC review their findings from the recent consultations on R&D, the rules may change slightly. But for now, there are two R&D schemes available in the UK - one for SMEs, the other for large companies.

An SME has less than 500 staff and either turnover under €100 million or a balance sheet total under €86 million. Knowing which scheme applies is essential. An SME claim can be worth up to £43.70 per £100 spent, whereas a large claim is only worth up to £10.53 per £100 spent. Certain costs can only be relieved under one scheme.

The relief only applies to companies and, when considering your company size, you have to look at the wider group position. Broadly, if there is a minimum 25% holding in company capital or voting rights, you will have to aggregate at least the relevant percentage of that company's financials and headcount. On the other hand, if there is control (over 50%), you must add all the numbers together, so there is no apportionment.

## Let's consider the different group scenarios:

### *1. UK company subcontracts R&D to an overseas group company*

As long as the UK company remains in control of the project, it can make an R&D claim even if most people carrying out the R&D activities work for an overseas entity. But remember that large companies can only bring subcontracted costs into an R&D claim in very limited circumstances.

If your UK company is claiming under the large scheme, you'll need to ensure that the overseas individuals are Externally Provided Workers (EPWs). This means they are more akin to agency staff than third parties. Some groups have a specific company that operates as a staff controller so, in this case, it will be possible. As always, the details matter.

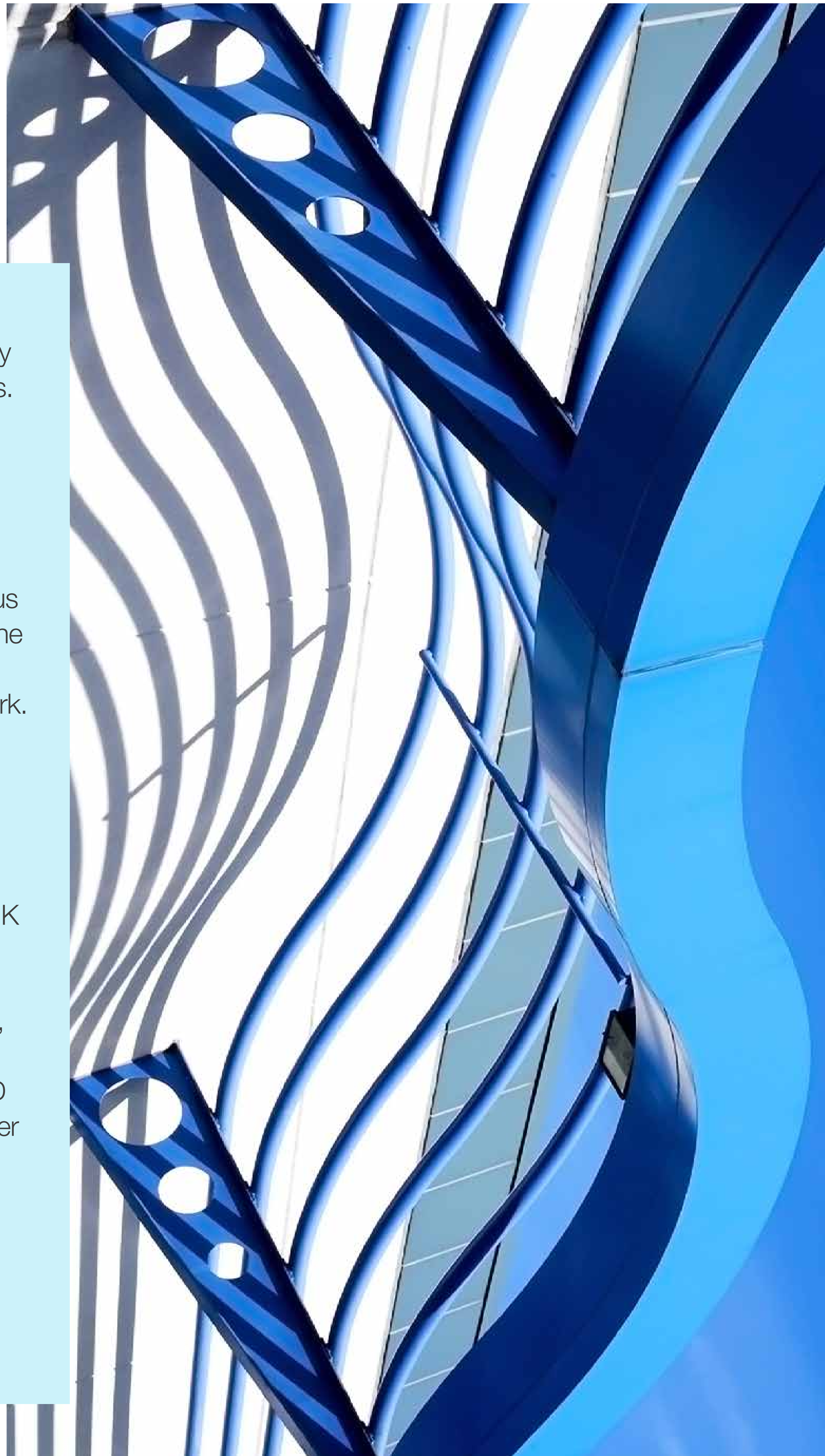
Under both schemes, where the expenditure is eligible to be included in a claim but would usually be restricted by 65%, you may choose to claim either the payment made by the UK company or the actual cost of the overseas company, whichever is lower.

From 1 April 2020, there is a PAYE/NIC cap for SME claims. If you have many other staff in the UK doing non-R&D activities, it shouldn't affect the claim. But if your UK payroll bill is low, your claim will be capped at 300% of the combined PAYE and NIC bill, together with an extra £20,000 de minimis.

### *2. Overseas branch of UK company undertakes R&D*

If you have an overseas branch, it will normally have to register as a Permanent Establishment, file an overseas tax return and pay taxes in that foreign country. However, unless you elect to exempt branch profits from the company's UK tax return, the branch profit / loss will be part of your UK

# R&D across borders: don't miss out



company's tax return and therefore you can still make an R&D claim.

***3. UK company carrying out R&D has overseas subsidiaries***

Group size matters. The thresholds do not just cover UK companies; you must consider overseas companies too. For most corporation tax purposes, you only look at companies with at least a 51% connection. Beware, therefore, not to forget about investments that are too small to consolidate or that don't file in the UK.

Having an overseas connection won't stop you making an R&D claim, but it could push your company from SME into large scheme territory.

***4. Partnership with UK corporate members carries out R&D***

Individuals trading in business together cannot access R&D tax relief. But there's a little-known rule for companies that are members of partnerships. In some circumstances, the partnership can make an R&D claim and allocate the extra deduction to its corporate members.

HMRC's generosity does not extend to allowing corporate members to claim a payable tax credit. So, whilst it's a neat trick to have up your sleeve, it's not the most efficient way to structure R&D within a group. It's always better to have a company undertake the R&D activity - if you can.

***5. Foreign parent remunerates UK company***

Suppose a UK company is carrying out R&D and an overseas parent makes a payment to the UK. In that case, HMRC could potentially view the UK company as having its R&D subsidised. This could block R&D relief.

Where there is a group recharge, the cost-plus model for transfer pricing is not recommended, especially for SMEs. Instead, the group should consider a profit split. Another option is a hybrid model where recharges are at cost but the UK receives a reduced royalty on the eventual use of the intellectual property.

If the work is too far advanced for a rethink of transfer pricing and the UK company is effectively a subcontractor, it could claim R&D as a large company (even if only an SME). In addition to the reduced relief rate, the UK company will most likely be unable to claim relief for its own subcontractors.

***6. UK company undertakes R&D jointly with foreign group entities***

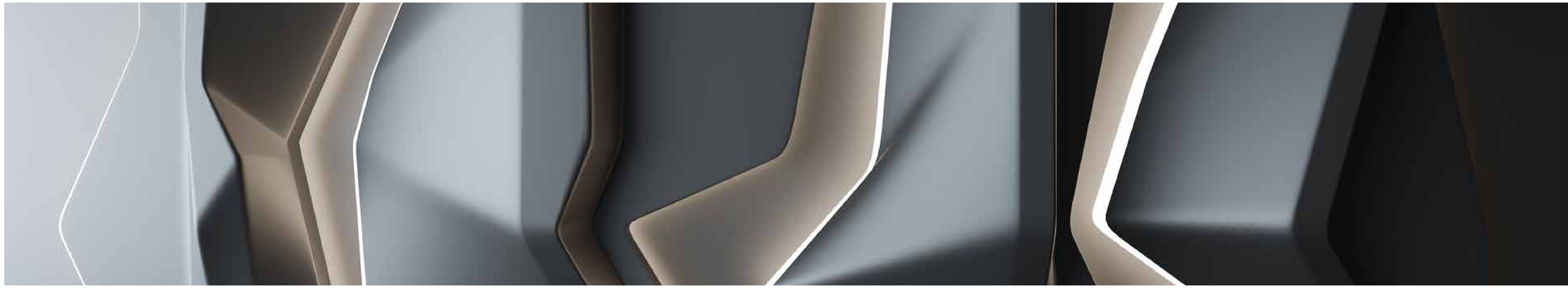
In many cases, one group company will be responsible for the R&D work, and it will be obvious where you should make a claim. But more than one company can incur its own costs, and more than one company can jointly benefit from the R&D work.

Where collaborative R&D takes place, each company can legitimately explore a separate R&D claim in its own country. So, in the UK, if another group company were to claim for R&D on its own costs in its own country, this would not stop the UK company from claiming R&D on its own costs.

If you think your group might be undertaking R&D, it's worth talking to an expert when you're still in time to make a claim. We can advise on your R&D situation in the UK and connect you with a member firm in any country where you think a group company might have a foreign claim.

# Why tax matters when you expand abroad

Many organisations extend their business overseas into new markets, either to diversify their customer base, increase revenue potential or gain competitive advantage. But what are the tax implications?



If your business is considering growth into new territories, there are a number of direct tax issues you should consider carefully and plan for. Although tax rules and regulations vary locally by country, here are the general principles that remain the same.

## Will you trigger a tax presence?

This is a key question. It is possible to undertake some business in a country without creating a tax presence or Permanent Establishment (PE). And if this is the case you may not need to register for corporate income tax.

First, you must determine if a PE exists under the domestic law of the relevant jurisdiction. If it does, the provisions of any Double Tax Agreement (DTA) between that jurisdiction and the UK need to be considered, as this may provide otherwise and overrides the domestic legislation. The default tests for a PE are

i) is there a fixed place of business, for example a place of management, office, factory? and/or

ii) can an agent habitually exercise authority to do business on behalf of the business i.e. to negotiate or conclude contracts?

HMRC takes the view that a company which makes sales through a website does not have a PE in the UK, even if the server on which the website is hosted is located in the UK. Other countries may have different approaches.

If a PE is created, you'll have to determine how to best structure your business operations in that territory. There are a number of issues to consider including taxation, costs, limited liability, ease of exit and local regulatory and reporting requirements. The two structure options are a local branch or a subsidiary.

## Branch or subsidiary?

If you form a branch, the profits or losses made in the foreign entity form part of the taxable profits of the UK company. Where losses are made, the UK company can utilise the losses made in reaching its chargeable profits.

Conversely, where a branch is profit-making, the profits form part of the total chargeable profits of the UK business when calculating the amount of tax payable. In this scenario, the UK business can elect for the profits of a foreign PE to be exempted from UK corporation tax. However, there are restrictions on availability of this relief should you have benefitted from using losses previously.

A subsidiary is however treated as a distinct legal entity, separate from the UK company. It therefore pays tax on its own profits independently of the parent company. If the tax rate in the overseas jurisdiction is lower than the UK, this may be a preferable route.

Since a branch is an extension of the existing company, its funding is more straightforward, with

# Why tax matters when you expand abroad

no requirements to decide how to provide capital for use in the business.

For a subsidiary it is more complicated, and can be either through debt or equity. You may need a certain level of equity to comply with local requirements. But remember that equity is tied up and is usually only repaid when the subsidiary is sold. A loan is easier to repay, but may result in withholding tax considerations where interest is paid.

## The importance of subsidiary location

When a payment is made cross-border, the entity making that payment may need to apply withholding taxes. This can be in respect of payments of interest, dividends, royalties and certain types of services - depending on the territory involved.

The terms of any DTA between the payer and the recipient may mean withholding tax can be reduced or even eliminated. When withholding tax is applied, it impacts on cash flow where tax relief is possible, or absolute leakage in other scenarios.

What's more, all connected party transactions must be compliant with local transfer pricing obligations. This may require inter-company agreements and bench marking to establish the arm's length rate and support the commercial position.

Of course there are many other tax considerations. These include payroll and indirect taxes such as VAT, which should not be overlooked. And local statutory reporting deadlines, and legal requirements as to how a company is formed and operated will be different from those in the UK.

## Take advice

As the requirements vary by jurisdiction, you should always seek specialist local advice. The PKF International Network has representation in over 150 countries around the world, so if you are considering expanding your business overseas, it is very likely that we can connect you with someone who can help.

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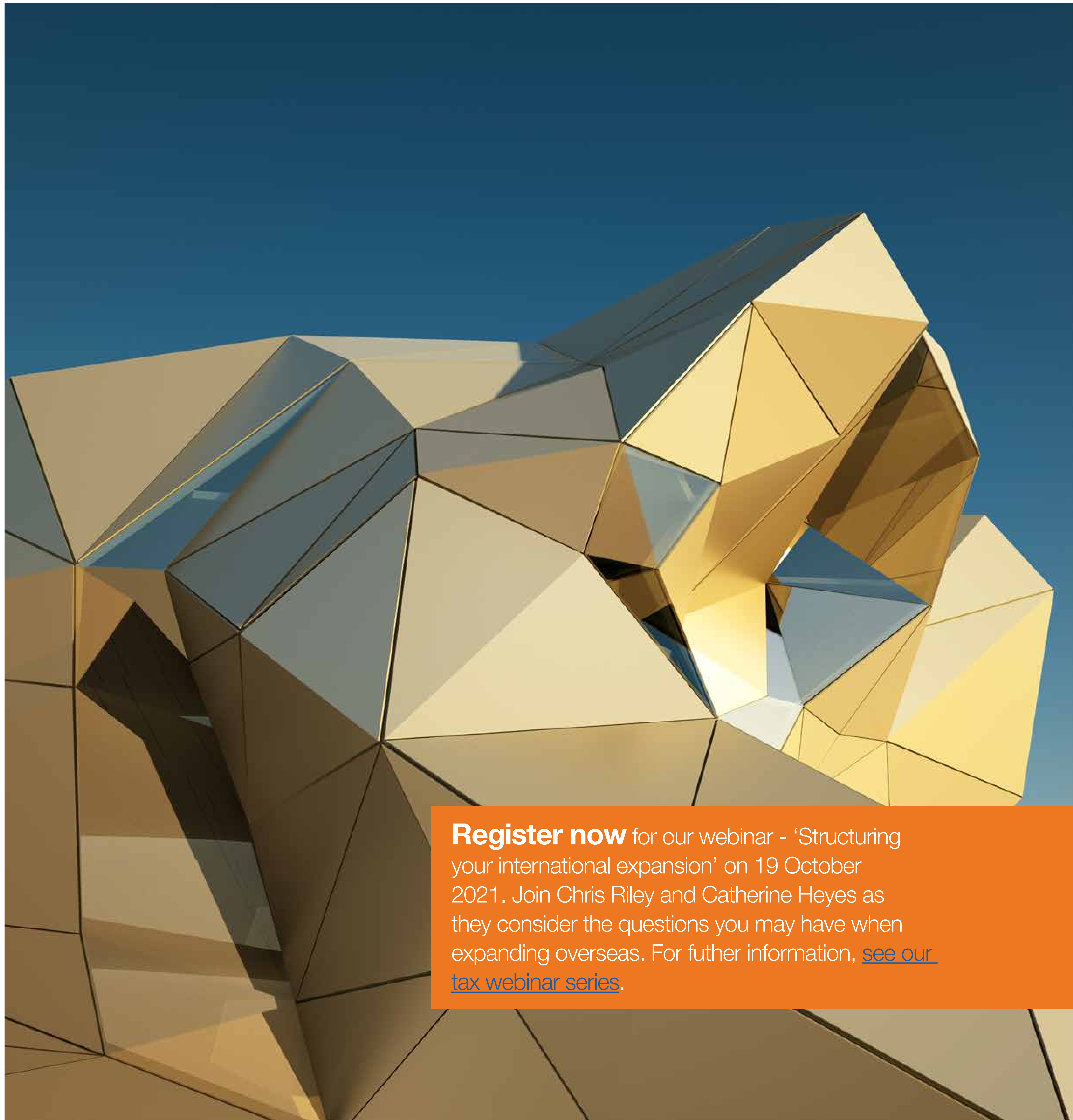

**Register now** for our webinar - 'Structuring your international expansion' on 19 October 2021. Join Chris Riley and Catherine Heyes as they consider the questions you may have when expanding overseas. For futher information, see our tax webinar series.

# UK payroll treatment for internationally mobile employees

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Over the years, HMRC has introduced special payroll arrangements for cross-border workers that aim to simplify reporting and avoid double withholding. Here's a summary.should be aware of.

UK domestic regulations require the employer to report employment earnings details to HMRC every time they pay an employee, on or before the day of the payment.

For employers with internationally mobile employees, payroll reporting in 'real time' often creates challenges. This is because there may not be sufficient time to gather all the travel and compensation data before the usual deadline. In many cases, there are payroll withholding requirements in both the home and host counties, which can lead to double withholding.

## National Insurance (NIC)-only payroll

For non-resident assignees working overseas, their UK tax liability will normally cease. However, their employment income may continue to be subject to UK NICs for a certain period if they remain employed in the UK.

Individuals can apply to HMRC for an NT tax code, which will stop UK PAYE income tax withholding.

After the NT code is applied, only Class 1 National Insurance (both employer and employee) will be withheld via the payroll.

It's important to remember that employers cannot apply for a tax code change on behalf of their employees. HMRC will only accept tax code applications from individuals or their tax agents.

## Section 690

Internationally mobile employees are only taxable on income related to their UK duties in the following cases:

i) if they are UK resident, non UK-domiciled, claiming the remittance basis of taxation and entitled to overseas workday relief (assuming foreign income is not remitted to the UK)

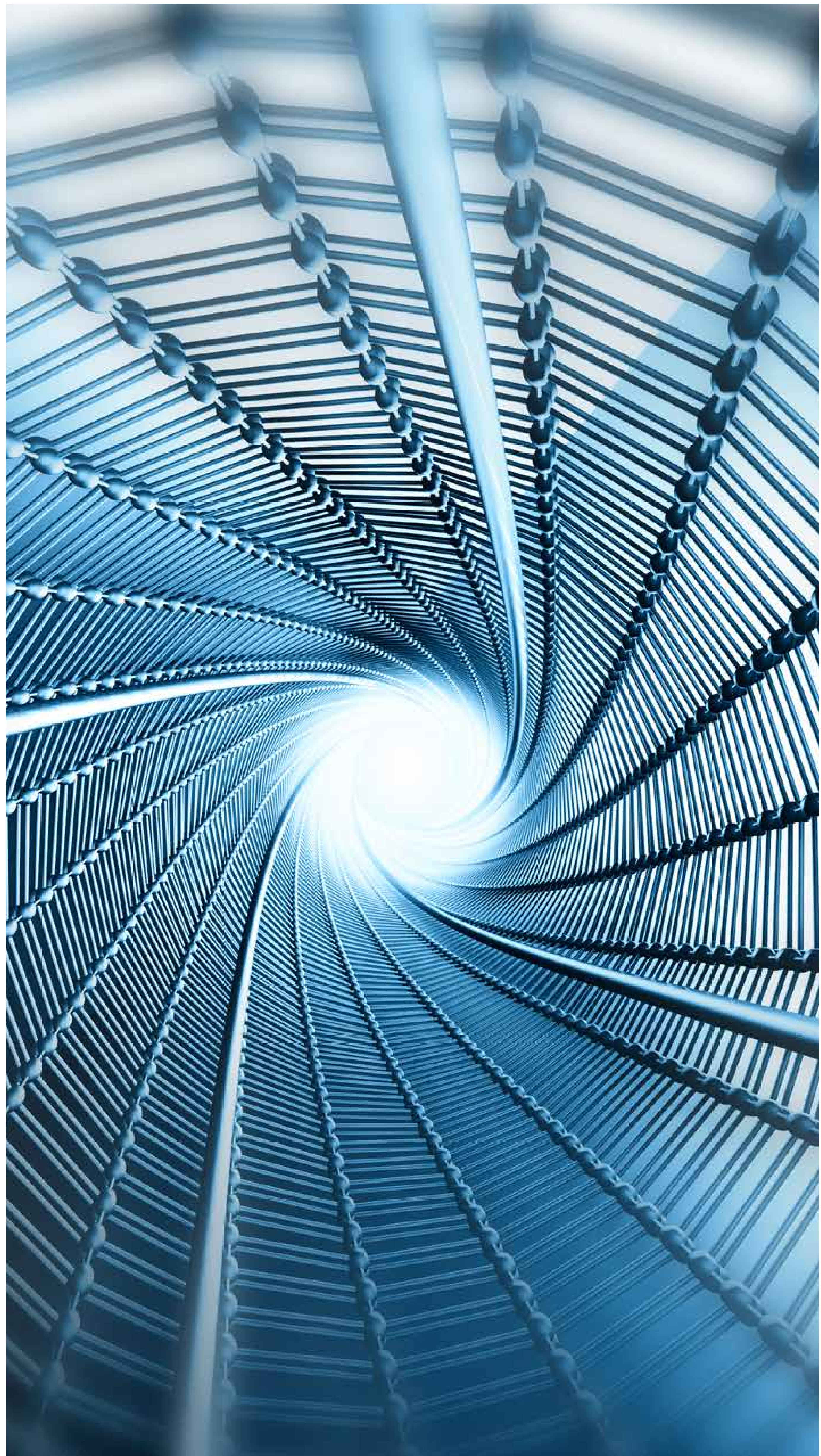
ii) if they are not resident in the UK.

iii) if they are resident but 'treaty non-resident' in the UK, based on the terms of the tax treaty.

The default payroll treatment is to report 100% of employment earnings through the UK payroll and then claim tax relief and the subsequent refund via the tax return. It is much better from a cash flow perspective to apply for a Section 690 direction. This allows employers to report only the income related to UK duties in the first place, rather than having to wait until after the year end to claim refunds on the tax return. Once the Section 690 application is approved, UK PAYE is restricted based on the estimated percentage of UK duties. The actual UK taxable income is reconciled via the tax return.

## Appendix 5

If foreign earnings are not exempt in the UK, UK PAYE is applicable on full earnings.



# UK payroll treatment for internationally mobile employees

The Appendix 5 arrangement applies to employers who are required to withhold foreign tax as well as UK PAYE. It gives provisional relief for double taxation to employees who must pay both UK tax and foreign tax from the same payment of earnings. Under the arrangement, UK PAYE is calculated in the usual way and then reduced taking into account the estimated foreign tax credit. Again, actual taxable income and liabilities are reconciled via the tax return.

## Appendix 6 (or 'the modified payroll')

Where employees working in the UK receive earnings covered by a tax equalisation agreement, the employer can apply for a modified payroll and pay HMRC the estimated PAYE in equal monthly instalments. Under the tax equalisation agreement, individuals are subject to a hypothetical tax usually based on their home country income and tax rates and the employer is responsible for actual taxes in both countries.

Since the employer is taking on a liability for the individual, UK tax payable is treated as additional taxable income which must be reported via PAYE. This is usually done by grossing up the earnings after deduction of hypothetical tax at UK prevailing rates.

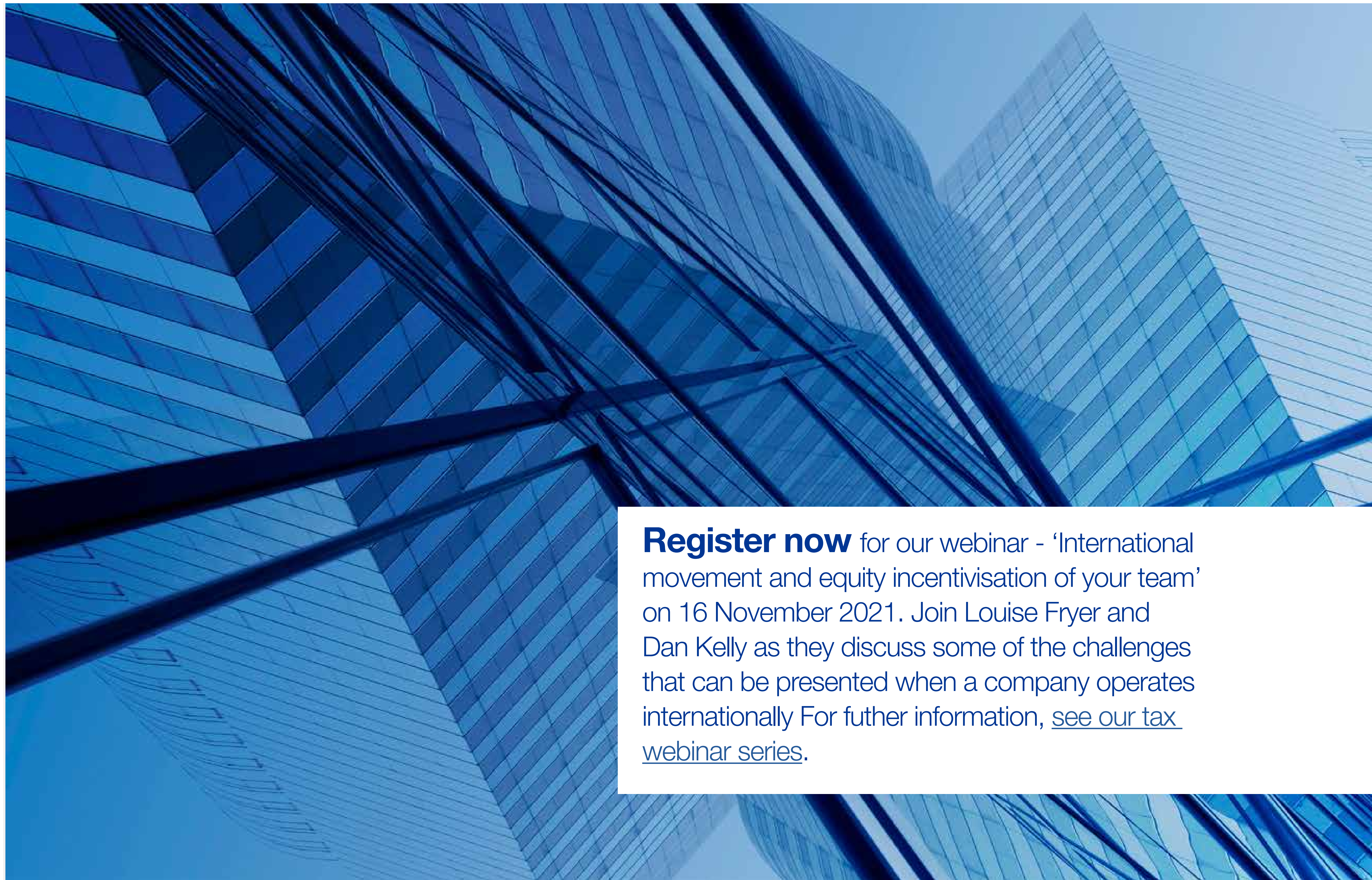
Adjustments to the estimated income may be required during the tax year. This could be following a salary increase or a change in benefits. At the end of the tax year, usually on the March payroll, actual year-to-date income is reconciled through the payroll.

Under the Appendix 6 agreement, a UK tax return must be completed to determine the actual gross-up of net taxable earnings. The employer is responsible for making sure that individuals complete their tax return.

## What is Appendix 8?

Employers apply to HMRC for an Appendix 8 agreement to report employees from non-treaty countries working temporarily for a UK entity, provided they are present in the UK for fewer than 60 days each per tax year. Under the agreement, employers can settle the taxes due in a single payment at year end, instead of including the visitors on the payroll every time they visit the UK.

The Appendix 8 agreement allows for PAYE to be paid and reported annually. Non-cash benefits are also reported on the Appendix 8 payroll. Unlike other special payroll arrangements, a tax return is not required unless individuals have other UK income or gains to report.



**Register now** for our webinar - 'International movement and equity incentivisation of your team' on 16 November 2021. Join Louise Fryer and Dan Kelly as they discuss some of the challenges that can be presented when a company operates internationally For futher information, see our tax webinar series.

# International tax webinar series

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

**Structuring your international expansion**
19 October 2021

**International movement and equity incentivisation of your team**
16 November 2021

**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.

Register

### 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.

Register

### 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 starting on 6 October.

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 - 6th October 2021 - Global Indirect Tax Update
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

**£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

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