A NEW ECONOMY
PUBLICATION

BUSINESS IN THE UK
A ROUTE MAP

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chapter 10

CEASING TO HAVE A PRESENCE IN THE UK

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An investor may cease to have a business presence in the UK in a variety of ways. This may take the form of a sale, winding-up or migration.

DISPOSAL OF A BUSINESS OR SUBSIDIARY

The disposal of a UK business will involve various legal, commercial and tax issues.

LEGAL AND COMMERCIAL CONSIDERATIONS

Legal agreements drafted to cover the sale of a business can be very complicated, and typically include provisions for indemnifying the purchaser should any unforeseen liabilities arise. It is therefore vitally important, when selling a business in the UK, that specialist legal, accounting and taxation advice is obtained.

TAX CONSIDERATIONS

Any capital profit on the disposal of a UK business will only be taxable in the UK in the hands of the seller if the seller is a UK resident, or has a UK establishment. If this is not the case, the seller will only need to consider their own domestic tax laws in relation to the sale.

A UK resident seller may suffer UK tax on the capital profit arising on the sale of shares in a company. Where the business is unincorporated, capital profits can arise on assets such as land and buildings, goodwill, intellectual property, or equipment if sold for more than cost.

Where the seller is a UK resident company, it may be exempt from tax on gains arising on the sale of shares in a trading company where it has held at least 10% of the share capital of the other company for a minimum of 12 months in any of the prior six years (see Chapter 4). Where the owner is an individual, they may qualify for a number of tax reliefs depending on the circumstances.

WINDING-UP, OR STRIKING A COMPANY OFF THE REGISTER AT COMPANIES HOUSE

A business could cease to have a presence in the UK because the owners decide to close it down by a process of winding-up (also known as 'liquidation'); or because the company has become inactive and the owners wish to cancel its registration at Companies House. If an overseas company closes a UK registered establishment, it is only required to file a 'Notice of closure of a UK establishment of an overseas company' (form OS DS01) at Companies House.

UK workers have various employment protections so statutory redundancy payments will need to be made and other termination of employments costs will arise when a UK business ceases trading.

TAX CONSIDERATIONS

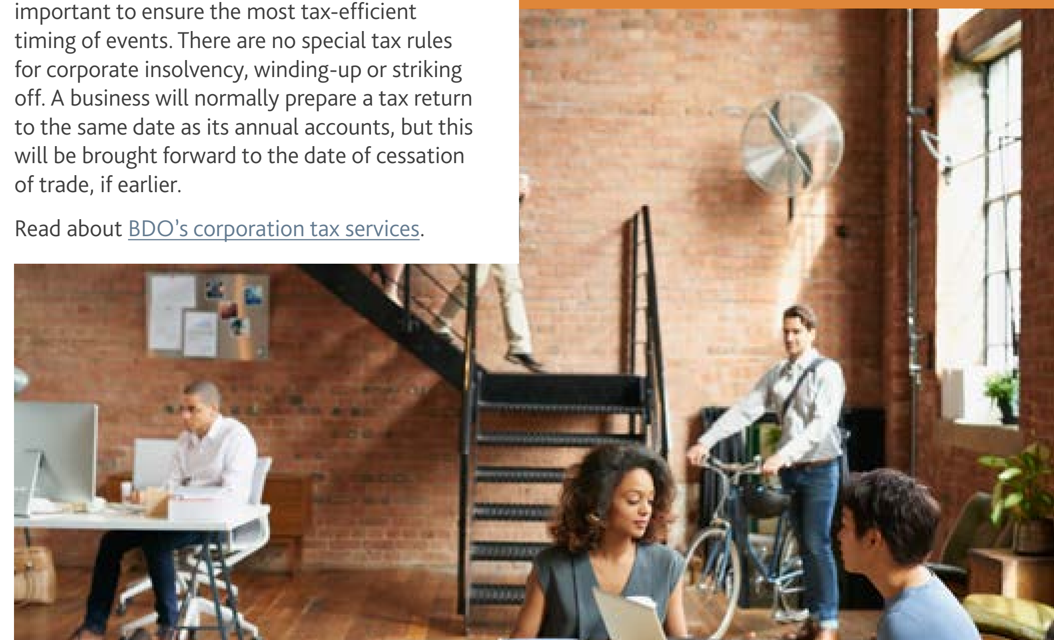
When a company goes into liquidation, it is still required to pay tax and to continue to file a tax return (although the administrative responsibility for this will fall on the company's liquidator rather than the company). One of the main tax planning considerations will be maximising the use of any available trading losses.

These losses cannot be carried forward beyond the cessation of trading and, therefore, it is important to ensure the most tax-efficient timing of events. There are no special tax rules for corporate insolvency, winding-up or striking off. A business will normally prepare a tax return to the same date as its annual accounts, but this will be brought forward to the date of cessation of trade, if earlier.

Read about BDO's corporation tax services.

WHAT – happens if the business shuts down because it is making losses?

Loss making businesses can opt to carry losses back to the previous year to set against profits in that year and possibly get a tax refund. There is an extension to this rule for any trading losses incurred in the last 12 months of trading, such losses can be carried back and offset against the profits of the previous three years.



CEASING TO HAVE A PRESENCE IN THE UK

LEGAL CONSIDERATIONS

Sometimes the words 'insolvency' and 'winding-up' are used inter-changeably, although a company can be wound up by its shareholders at any time without it actually being insolvent. If the company is insolvent, a professional insolvency practitioner must be appointed to realise the company's assets for the benefit of its creditors. Only when the creditors have been paid in full will the company's owners be entitled to any remaining assets.

Where the company has not yet gone into liquidation, but the directors ought to know that the company has no reasonable prospect of avoiding the situation, the directors will be personally (and jointly and severally) responsible for additional liabilities of the company - unless they can show that they took every reasonable precaution to minimise the potential loss to the company's creditors.

The liquidation and winding-up process can be expensive. Therefore, where possible, many businesses prefer to close down their operations by striking the company off the register at Companies House. However, the striking-off process is less conclusive than winding-up since, on the application of any interested party, the courts can restore the company to life on the register within a period of 20 years, in order to deal with claims for repayment by former creditors of the company.

COMPANY MIGRATION

It is possible for a company to become non-resident for UK tax purposes. This could happen to a UK incorporated company as a result of having its place of effective management in another treaty jurisdiction outside the UK. Most of the UK's tax treaty tie-breaker clauses deem the tax residence of a company to be in the country of effective management. In recent UK tax treaties, the tie-breaker is settled by the Mutual Agreement Procedure (MAP) rather than the effective management test. A MAP tie-breaker has also been included as part of the OECD's Multilateral instrument (MLI) which is now relevant for those territories which have both adopted this part of the MLI matching provisions.

Likewise, a non-UK incorporated company, either needs to ensure that its central management and control is no longer exercised in the UK so that it is not treated as UK resident under UK domestic tax rules, or it needs to become non-resident under tax treaty.

For tax purposes, in each case there is a deemed disposal at market value of certain types of chargeable non-UK assets held by the company (principally land, buildings and goodwill) at the time of migration. It is possible to postpone the charge on deemed gain arising in respect of non-UK assets in certain circumstances. No exit charges apply in respect of assets that remain in use for the purposes of a trade carried on by the company through a permanent UK establishment after the company has ceased to be UK resident.

An eligible company may apply for an exit charge payment plan if it ceases to be resident in the UK and becomes resident in another EEA state. On ceasing UK residence, the company must carry on a business in an EEA state and not be treated as resident in a non-EEA territory for the purposes of any double tax arrangements. The UK voted to leave the EU in June 2016. It remains to be seen what impact Brexit will have on UK tax law.

Before a company migrates, it must inform HMRC of its intention, and provide a statement of its tax liabilities and how it proposes to settle them. A company will be liable to penalties for non–compliance with this requirement.

Read about BDO's international tax services.

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