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UK Holding Companies

Why the UK is tax ahead of its European neighbours

One of the most exciting developments to occur recently on the international stage has occurred in the UK, with a new ruling affecting International Holding Companies (IHCs). UK Holding Companies have become popular in recent years, largely because they are able to pay dividends to non-UK resident shareholders free of any withholding tax. However there have been disadvantages too. The principal drawback has been that profits on disposals of subsidiaries could be subject to UK corporation tax, but a few years ago that changed.



Legislation announced in 2002 freed capital gains made by UK companies with substantial shareholdings in other companies from corporation tax. The result is that the UK at last has a competitive IHC regime that stands comparison with the likes of Belgium and Denmark.

The key effect of the legislation is to enable UK registered companies – together with foreign registered companies resident for tax purposes in the UK – to avoid the current 30% rate of corporation tax previously chargeable when disposing of their investments in other companies. The requirements to qualify are as follows:

- The shares sold must be a 'substantial shareholding' which is not less than 10% of the investee company's ordinary share capital.
- The shares must have been held for at least a 12 month period.
- The investing company must either be itself a trading company or a member of a group of trading companies.

- The company whose shares are being sold must be a trading company.

This represents an exciting opportunity to use the UK as a holding company location for international groups. In the right circumstances it is possible for profits to flow to the non-resident shareholders free of UK tax on dividends and now crucially on capital gains too.

The new regime presents exciting new opportunities for our clients and at Stanley Davis we are fully resourced to help you create company structures to accommodate your clients' corporate objectives.

For more information about the UK IHC regime please speak to our international tax consultant Emilio Scintu on 44 (0)20 7554 2223 or to your Account Manager.

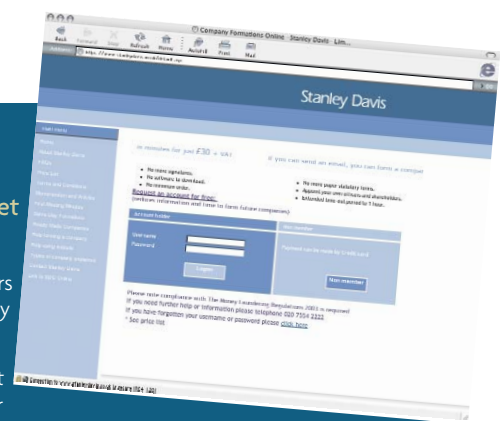
e-formations

Stanley Davis continues to increase its market share in forming companies electronically.

Clients can receive their formation within 24 hours (subject to Companies House systems) delivered directly to their PC.

Choose your own name, check it out for free, submit your request and within hours you will have your company.

All Stanley Davis companies are incorporated using a comprehensive set of Memorandum and Articles of Association, reflecting current legislation and suitable for



Contact us Additional support services are also available at similar competitive rates. Contact Lynda Spencer on **020 7554 2300**



Inside Stanley Davis

Inside Stanley Davis there thrives a large and industrious corporate compliance team headed by David Kaye (below left) busy with the company secretarial management of companies UK and worldwide.

Fully equipped with the latest secretarial software the team is able to effectively look after more than 5000 UK companies with the day-to-day Companies Act compliance. The department is composed of qualified lawyers and chartered secretaries as well as those with general experience within the field. In addition to the basic compliance of companies the team assists Directors with the procedural guidance necessary to ensure that they are aware of the mandatory compliance and to prevent companies for which they act falling foul of their obligations under governing legislation.

In addition to UK companies Stanley Davis is forming and managing companies offshore. Regular visits are made particularly to Luxembourg, Lugano, Geneva and Madrid to maintain relationships with clients and to keep abreast of their changing requirements.



This year welcomed a new arrival to the team as Emilio Scintu (right) joined as Tax Adviser on International Affairs. Emilio is an experienced tax consultant in the international field having earned his stripes with organisations such as Burberry Group plc working as the European Accountant, Vodafone Group plc as their Group Tax Advisor and Intrust. An international



tax consultant by definition Emilio knows the tax market well and is able to advise on and help achieve the best tax structures for clients. Fluent Italian speaker Emilio is a truly cross border player. His expertise added to the already formidable bank of company secretarial support within Stanley Davis offers clients a complete secretarial and management support service.

Tricks of the Trade

A recent review of the property marketplace by the Office of Fair Trading published in September this year exposes the restrictive practices of local authorities and obliges change.

For every purchase of a property a local authority search is required. This search provides details as to the planning history of the property, charges affecting the property, confirmation as to whether the highway on which the property fronts is maintained by the local authority and other information useful to the purchaser in determining whether or not to proceed with the purchase.

As a result of local authorities being inconsistent in the time taken to provide the reports, and the cost attached to the reports, search agencies have taken advantage of legislation to personally attend and inspect the records at the local authorities and to provide the reports in a consistent turnaround period and at a lower charge than the local authorities. Today, approximately 40% of all local authority searches carried out are personal searches.

The increase in searches provided by search agencies has encouraged the local authorities to be prescriptive with the information they provide and the times within which they provide it.

As a result of complaints from agents and with the imminent introduction of Home Information Packs in 2007 the Office of Fair Trading was encouraged to

carry out a study of the property market place. Its conclusions are scathing of the local authorities and recommend drastic change. In brief, changes proposed are that:

- By 2007 all local authorities must make available all their unrefined information, that is the information which they use to provide the local authority search, to all who ask for it.
- Local authorities must make available their unrefined information on terms that do not advantage themselves over search agencies.
- Central Government sets a uniform price across local authorities for the provision of this information. This would remove scope for overcharging by local authorities.
- Exclusivity which exists between local authorities and the National Land Information Service (NLIS) be removed and objectives set to enable new electronic connections to be established. Currently over half of the local authorities provide their information at a discount to NLIS channels.
- Additional channel licences be explored.



The changes proposed in the OFT review are to be welcomed. The review recommends these changes be made certainly by the time Home Information Packs are produced.

Stanley Davis carries out personal local searches as well as a range of other searches often required including environmental, mining, utilities, telecommunications and more.

Contact sue.yew@stanleydavis.co.uk for details

Know your sensitive names

For many, forming a company is a formality and the name is insignificant. A readymade company may be selected which will already have gone through the checking procedure before incorporation. For others the name is to reflect the ethos, activity, longevity and presence of the company and in these cases time is taken to make the perfect choice.

In any event forming a company comes with name restrictions. To avoid disappointment it is important to be aware of these.

The Registrar of Companies has power under S26 Companies Act 1985 to forbid to register any company with the same name as a company already on the index of company names. The only exception is where the name may already be listed as a Limited Liability Partnership, in which case, incorporating with the same name will be permitted.

S28 Companies Act gives power to existing companies to object to new names appearing on the index which are similar to them. This power must be exercised within one year of the arrival of the new name on the index. The Registrar of Companies can no longer use the location and activities of the companies as criteria for differentiation as access to the internet gives global cover and the replacement of the detailed objects clause for the 'general trading company' means it is impossible to ascertain the key activities of the company from the registration information. Consideration by the Registrar can therefore only be given to the name itself. Registering with a name close to that of an existing name is therefore dangerous. Aside from the fact that the Registrar may direct that the new company change its name due to it being too similar to another already on the index, the existing company could sue for 'passing off' which could result in even greater expense and negative publicity.

S28 offers further opportunity to companies to object within a five year period of a name appearing on the index where they believe that the name was obtained under false pretences.

S32 Companies Act gives the Secretary of State and by default the Registrar of Companies the power to direct a company to change its name where a company name is so misleading in respect of its activities as to cause 'harm to the public'.

In addition to these generic restrictions there are other restrictions.

A series of controlled words is held by the Registrar and may not be used without some form of qualification or approval from the associated governing body. Words such as 'International' require confirmation that the company does indeed trade abroad. The words 'Dental surgeon' may only be used if the General Dental Council approves. Words suggesting a governmental connection must receive approval from the appropriate body before the Registrar will consider adding the company name to the index.

Words which attempt to mislead or are defamatory may not be permitted.

For those companies which trade abroad it is useful also to check out the translation of the company name in the countries with which they trade. There have been high profile cases where names have not translated well and resulted in poor sales e.g. Swedish sweets with the name 'Skum', French cocoa pops with the name 'plopsies' etc.

The following is a list of some of the controlled words to look out for.

Contact us Should you require help with your formation contact Lynda Spencer on: lynda.spencer@stanleydavis.co.uk

sensitive names:

Abortion • Anzac • Apothecary • Architect • Association • Assurance • Assurer • Authority • Bank • Benevolent • British Building Society • Chamber of Commerce • Chamber of Industry • Chamber of Trade • Charitable • Charity • Charter • Chartered • Chemist • Chemistry • Chiropodist • Contact • Lens • Co-operative • Council • Credit Union • Dental • Dental Practitioner • Dental Surgeon • Dentist • Dentistry • Deposit • Dietician • Dispensing Optician • District Nurse • Drug • Druggist • Duke • England • English • Enrolled Optician • European • Federation • Foundation • Friendly Society • Fund • Geneva Cross • Great Britain • Group • Health Centre • Health Service • Health Visitor • His/Her Majesty • Holding(s) • Industrial & Provident • Institute • Institution • Institute of Laryngology • Institute of Otolaryngology • Institute of Urology • Institute of Othopaedics • Insurance • Insurer • International • Ireland • Irish • King • Medical Laboratory Technician • Midwife • Midwifery • National • Nurse • Nursing • Occupational Therapist • Olympiad • Olympiads • Olympian • Olympians • Olympic • Olympics • Optician • Optometrist • Orthoptist • Patent • Patentee • Patent Office • Patent Agent • Pharmaceutical • Pharmacist • Pharmacy • Physiotherapist • Police • Polytechnic • Post Office • Pregnancy • Prince • Queen • Radiographer • Re-Assurance Broker • Red Cross • Red Crescent • Red Lion and Sun • Register; Registered • Re-Insurance Broker • Registered Optician • Remedial Gymnast • Royal • Royale • Royalty • Scotland • Scottish • Sheffield • Society • Special School • Stock Exchange • Termination • Trade Union • Training and Enterprise Council • Trust • United Kingdom • University • Vet • Veterinary • Veterinary Surgeon • Wales • Welsh • Windsor •

Company Secretarial Teasers

Q. A guarantee company is set up for a specific purpose now satisfied. Can the company be wound up and its assets invested into a new share company?

A. It will be necessary to consider the articles of association which would usually state that the company on a winding up must invest any distribution in a company with similar objects to its own. There may also be other restrictions including restrictions within members' agreements.

Q. An LLP has two members. Can one member be sole director of the limited company which is also the second member?

A. It is not illegal however it may raise suspicion and the courts may seek to pierce the veil of incorporation.

Q. On the death of a member does the executor automatically become a member of the company?

A. Not without confirmation through the probate procedure.

Q. Can a limited company have the same name as an LLP?

A. Only where the LLP is incorporated first.

Q. Can a company set up in Scotland change its registered office to an English address?

A. A Scottish company must have a registered office in Scotland. It may also have trading addresses in other countries.

Q. Are any extensions available to the accounting period without changing the accounting reference date, to avoid late filing penalties?

A. S244 Companies Act can be used to extend the filing period by three months subject to the company having international interests.

Q. Can a resolution already distributed to members be changed at the meeting?

A. Only if the change is a minor one.

Q. Can application to restore a UK company to the Register of Companies be made at any time after dissolution?

A. Applications made under S653 Companies Act 1985 must be made within 20 years. Applications made under S651 Companies Act 1985 must be made within two years unless a personal injury or wrongful death claim in which case there is no limitation.

Contact shital.mehta@stanleydavis.co.uk if you need help with any company secretarial issues

LLP v Ltd. Co.

The Limited Liability Partnership (LLP) became a reality in the UK in 2001 and today there are approximately 16,000 registered. Its introduction made it possible for many businesses to buy into the prize of limited liability but without the need to register as a limited company.

Effectively, the LLP is a half way house between sole practitioner or partnership and the limited company. It offers an element of flexibility with no requirement for any formal constitution, is transparent for tax purposes with no corporate taxation applying and with limited liability for its members. It introduces however an element of accountability in terms of some filing requirements, including the accounts.

Whilst no formal constitution is mandatory without some sort of agreement between members, decisions may bring into effect the default provisions set out in the LLP Act 2000.

The following is a brief comparison between the LLP and the Limited Company which may be helpful when deciding which corporate entity to select:

	Ltd. Co.	LLP
Regulations Liability	Companies Act 1985: Limited to the amounts unpaid on shares.	LLP Act 2000: Limited to the amount of capital agreed to be contributed in the event of winding up.
Constitution	Memorandum and Articles of Association govern the powers to act and form the rules of the company and must be filed at Companies House.	Agreement between members recommended but not mandatory and no requirement to file at Companies House.
Status	Has a separate legal personality. Can own land, sue and be sued in its own name.	As the Ltd. Co.
Capital	Minimum share capital is 1p (plc £50,000). One share must be in issue (private co). Shares can be divided into different classes and different denominations with varying rights.	No regulations on capital. Capital not divided into shares.
Profits	Payments are made by salary and dividends from distributable reserves.	Members may draw on their profits within the terms of their agreement.
Taking out Capital	Not generally permitted although may be able to purchase or redeem company's own shares.	Depends on agreement.
Management	Private company requires only one Director. PLC requires a minimum of two Directors. Directors can be corporate and resident outside the UK.	At least two members are required. Members can be corporate and resident outside the UK.
Secretary	A company secretary is required and must be qualified pursuant to S286 Companies Act for a plc.	No secretary needed but two members must be designated as the members responsible for the company secretarial function.
Members	Companies limited by shares or guarantee require only one member. Plc and unlimited companies require two.	Two members required.
Decisions	The Companies Act specifies majorities required for many resolutions.	The LLP Act sets out some majorities otherwise unanimous consent is required unless the agreement specifies otherwise.
Meetings	The Companies Act requires an AGM, although a private company can elect not to hold one.	No regulations on meetings.
Investment	Outside investors may contribute share capital (and take an equity stake without becoming a director) or loans.	Outside investors can only contribute loan capital. Only members can take an equity stake.
Borrowings	Debentures and fixed and floating charges.	As the Ltd. Co.
Written resolutions	Members may pass resolutions by means of written resolutions.	Depends on the agreement.
Disclosure	Accounts, annual return, notice of change of Director/secretary/R/O Mortgages, changes of name, resolutions.	Same as Ltd. Co. save for the agreement. Reference to director and secretary are replaced with member and designated member
Auditors	Auditors required only where the turnover threshold is reached – currently £5.6m.	Same as Ltd. Co.
Taxation	Corporation tax applies.	Members taxed as individuals. No corporate taxation.
Capital gains	On company and the members.	On members (and LLP if insolvency).
NICs	Class 1 for Directors and employees.	Class 2 and 4
Registration as Charity.	Possible for a company limited by guarantee.	No

If you are considering registering a business and need advice as to which vehicle to use, contact andrew.davis@stanleydavis.co.uk

