Oury Clark Quick Guides:

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Choosing a Legal Entity

General: I21

There are various ways to trade in the UK and the most common types are:

UK limited company

A limited liability company structure owned by shareholders and run by its directors.

Pros:

- Quick and inexpensive to set up.
- Robust limited liability protecting directors and shareholders.
- Well recognised and understood.
- No need for directors or shareholders to be UK resident.
- No minimum share capital, and only one director required.
- UK Corporation Tax at 19%.
- Access to generous UK R&D incentives.
- Compatible with EIS and SEIS.
- Management and ownership can be separate.
- Can be used for an Innovator visa, Skilled Worker or ICT visa and a Representative of Overseas Business visa.

Cons:

- Tax losses stay in the UK.
- An audit may be required based on the size of the worldwide group.
- Information on directors publicly available.
- Requirements to publicly disclose all persons of significant influence.
- You must file accounts which will be publicly available.
- There are statutory requirements for the content and presentation of the accounts. You will probably need the assistance of an accountant to prepare these, thus increasing costs.
- Benefit in kind legislations and dividend declaration can be cumbersome.

Limited liability partnership

A partnership but the liability of the members is limited.

Pros:

- Easy to set up.
- Transparent for tax which means the money flows through it and profits are charged on the member (partner) at the relevant rate to them under Corporation Tax or Income tax.
- Flexible for profit distributions.
- Can be useful for ensuring efficient repatriation of profits.
- Can be used for an Innovator visa and a skilled worker or ICT visa sponsor.
- Limited liability defined by the capital and net assets of the business.
- Can have individuals and corporate companies as members (partners).

Cons:

- Not as well recognised or understood as a limited company.
- Needs at least two people or companies to set one up.
- You must file accounts which will be publicly available.
- Members all have to file UK tax returns and pay UK tax on profits derived from UK activities.
- Very limited access to R&D incentives.
- Cannot be used for a Representative of an Overseas Business visa.

UK establishment (branch)

A UK establishment is the place of business or branch of an overseas company within the UK. Effectively, it's a direct extension of the overseas company, officially registered at Companies House and the tax authorities to trade. Financial reports of the parent company are likely to be filed in the UK annually.

Pros:

- Enables the direct offset of costs in the parent company jurisdiction and can mean that losses can be claimed in a foreign country.
- Part of the parent and therefore could in theory give better credit terms than a newly incorporated company.
- Compatible with EIS and SEIS if establishment is with the Top Co of the overseas company.
- No audit required.
- Can be a skilled worker or ICT visa sponsor and a Representative of an Overseas Business visa.

Cons:

- Part of the parent without separate limited liability thereby exposing the whole business to the UK risks.
- It is likely the group accounts would need to be filed publicly with Companies House, even if they are not filed at home.
- Makes it more problematic opening bank accounts, or engaging with some suppliers who see you as a "foreign" company .
- Cannot take advantage of the low UK rate of 19% if the parent company jurisdiction has a higher rate of Corporation Tax.
- Unlikely to work under an Innovator visa.
- Can be seen as temporary or early stage activities.
- Very limited access to R&D incentives.

Companies Limited by Guarantee

Companies limited by guarantee are similar to limited companies but do not have share capital or shareholders. These companies are limited by guarantee and have members. Furthermore, profits are not distributed to members and are retained within the company. This structure is mainly used by charities, clubs and societies.

Let us Introduce Ourselves

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To learn more about charities, you can read our charity quick guide at:

https://www.ouryclark.com/resource-library/quick-guides/charities/duplicate-of-agency-and-distribution-agreements.html

Sole Trader/Partnership

A sole trader is the simplest vehicle for a person trading alone, or as a partnership, where more than one person trades. If you are planning to operate in this way, then you merely need to apply to the Tax authorities (HMRC) to be recognised as a 'Sole Trader' or 'Partnership'. You may give your business a trading name.

Pros:

- Flexible and efficient for tax - potential to claim a variety of expenses without having to worry about benefit in kind, or complex reporting.
- Very easy to set up - simply inform HMRC that you are commencing trade within three months of so doing.
- No requirement to file information publicly, but there is an obligation to provide information to HMRC.
- Low administration cost – the sole trader and individual partners incorporate the business information into their personal tax returns.

Cons:

- Unlimited personal liability for the debts and actions of the business. Partners are jointly and severally liable (unlimited) for the actions of the other partners.
- Often misunderstood and does not carry the credibility of a Limited Company.
- No access to R&D tax relief
- Not a vehicle that you raise capital through shareholding
- No access to EIS/SEIS reliefs for investors