# UNITED KINGDOM LIMITED LIABILITY PARTNERSHIPS

**Background**
A United Kingdom Limited Liability Partnership (LLP) has become a very popular vehicle for international commercial activity. This is because the UK LLP is a body corporate with legal personality that provides its members with limited liability, whilst, at the some. time, being tax transparent.

Section 10 of the LLP Act 2000 states that a trade, profession or business carried out by an LLP shall be treated as though carried out in partnership by its members. The effect of this section is to ensure that members of an LLP ore taxed as though they ore partners in a partnership.

**Taxation Opportunity for International Business**
The UK only taxes non residents of the UK on their UK source income or profits associated with a UK permanent establishment. This means that where a UK LLP is engaged in a trade, profession or business, with a view to making a profit, does not have UK members and has no UK trade or permanent establishment or UK source income, the UK will have no taxing authority on the LLP or its members.

The members will, however, need to consider if they have a tax liability in their home jurisdiction(s).

Many UK LLPs ore therefore formed to carry out non UK business by companies in zero or low tax jurisdictions.

**Can a UK LLP Benefit from the UK's Double Tax Treaties or Obtain a Tax Residence Certificate?**
As a UK LLP is not taxable, it cannot obtain a tax residence certificate. In addition, as a UK LLP is not subject to tax on its profits, it cannot use the UK's network of double tax treaties.

The relevant jurisdiction for tax residence certificates and the application of double tax treaties is the country of residence of the LLP members.

**Can a UK LLP register for VAT in the UK?**
In practice, a UK LLP without a UK trade, UK place of business or UK members will find it difficult to register for V AT in the UK.

**Can a UK LLP which has no UK Members or UK Trade or Source Income have a UK Virtual Office?**
A UK address and telephone answering service ore not on their own sufficient to create a permanent establishment in the UK. If all activities ore undertaken outside the UK, having o UK virtual office should not cause non-UK members of a UK LLP without a UK trade or source income to have a UK tax liability on the profits of such an LLP.

**Who has the Powers of Management of an LLP?**
The powers of management rest with the members of an LLP. It is sensible to have a members' agreement which sets out the authority of the members to bind the LLP.
Even where a member's authority is limited, if the member acts broadly within the ambit of the LLP's business, his acts are likely to bind the LLP, even if he was acting outside of his authority, as defined in the members' agreement. This is provided that the party with which the member is dealing does not know of such limitations to the powers of the member.

**Do UK LLPs have to be Audited?**
The members of o LLP ore obliged to prepare a balance sheet and profit and loss account for each financial year of the LLP. These accounts, together with a copy of the auditor's report (where applicable) must be delivered to the Registrar of Companies. The accounts will then be in the public domain and open to inspection.

LLPs that are regarded as small ore exempt from an audit requirement. To qualify as a small LLP the LLP must have gross assets of not more than £3.26 million, and its turnover must not exceed £6.5 million. In addition, the LLP must not be part of a group where a public company is a member, or where the group is not defined as small.

It should be noted that even where an audit is not required, members are still required to prepare and file true and fair accounts.

**Is there a Minimum Capital Requirement?**
There is no minimum capital requirement for the formation of an LLP. An LLP must, however, have at least two members. The members may be corporate bodies and may be resident anywhere in the world.

**Are there any Activities for which an LLP should not be used?**
An LLP is tax transparent on/y if it is engaged in a trade or profession, or business with a view to making a profit. It is therefore not tax transparent for clubs, charities or similar organisations.

There is some anti-avoidance legislation and, in particular, if a pension fund is a member of a LLP which invests in property, that LLP will not be tax transparent.

UK resident members of an investment LLP will not be able to offset any interest charges against income they receive from such an LLP when calculating their taxable income. This obviously will have no effect on non-UK members of an investment LLP that has no UK source income.

**Summary**
LLPs are becoming increasingly popular. This' is largely due to the fact that no personal liability falls on a member of an LLP far contracts or debts of the LLP and there is no joint or several liability for negligence of any other member.

If correctly structured, international business operated by UK non resident members will not be subject to UK taxation, but will, nevertheless, present a UK presence to the outside world.

How we can assist you

- Incorporation of UK LLPs
- Advice on and drafting of LLP agreements
- Incorporation and management of companies set up to be members of the UK LLP
- Registered office and secretarial services
- Virtual office services
- Statutory accounting services
- Acting as tax agent

For further information please contact us.

## UK INTERNATIONAL HOLDING COMPANIES

### Ideal Characteristics for the Location of an International Holding Company

The location of a holding company is an important consideration in any international structure where there is a desire to minimise the tax charged on the income flow. Ideally the company should be resident in a jurisdiction which:

- has a good double tax treaty network, thereby minimising withholding taxes on dividends received
- exempts dividend income from taxation
- does not charge capital gains tax on the disposal of subsidiaries
- does not impose withholding taxes on distributions from the holding company to its parent or shareholders
- does not impose capital gains tax on profits arising from the sale of shares in the holding company by non-resident shareholders
- does not impose capita! duties on share capital
- does not have a minimum paid up share capital

UK holding companies can benefit from all of the above.

### Advantages Available to UK Holding Companies

*Tax Treaty Network*

The UK has the largest network of double tax treaties in the world. In most situations where a UK company owns more than 10% of the issued share capital of an overseas subsidiary, the rate of withholding tax is reduced to 5%.

As the UK is part of the EU, it con also benefit from the EU Parent/Subsidiary Directive, thereby reducing withholding tax to zero on dividends from many EU countries.

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*Tax Exemption for Foreign Income Dividends*

<u>Small Companies</u>

Small companies are companies with less than 50 employees that meet one or both of the financial criteria below:

- turnover less than € 10 million
- balance sheet total of less than € 10 million

Small companies receive a full exemption from the taxation of foreign income dividends if these ore received from a territory which has a double taxation agreement with the UK that contains a non-discrimination article.

<u>Medium and Large Companies</u>

A full exemption from taxation of foreign dividends will apply if the dividend falls into one of several classes of exempt dividend. The most relevant classes ore:

- dividends paid by a company that is controlled by the UK recipient company

- dividends paid in respect of ordinary share capital that is non redeemable
- most portfolio dividends
- dividends derived trom transactions not designed to reduce tax

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*Capital Gains Tax*

There is no capital gains tax on disposals by a trading company or by a member of a trading group. This relates to the disposal of all or part of a substantial shareholding in another trading company, or the disposal of the holding company of a trading group or sub-group.

To have a substantial shareholding, a company must have owned at least 10% of the ordinary shares in the company and to have held these far a continuous period of 12 months during the two years before disposal.

To qualify far this exemption, the investing company must still be a trading company or a member of a trading group immediately after the disposal. If it is no longer a trading company or member of a trading group, dissolution of the holding company should proceed immediately, in order to qualify far the exemption.

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*Sale* of *Shares in the Holding Company*

The UK does not charge capital gains tax on the sale of assets situated in the UK by non-residents.

UK residents pay capita! gains tax at a rate of 18%.

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No *Withholding Taxes*

The UK does not impose withholding taxes on the distribution of dividends to shareholders or parent companies. This is the situation regardless of where in the world the shareholder is resident.

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*Capital Duty*

n the UK, there is no capital duty on paid up or issued share capitol. Stamp duty at 0.5% is however payable on subsequent transfers.

No Minimum Paid up Share Capital

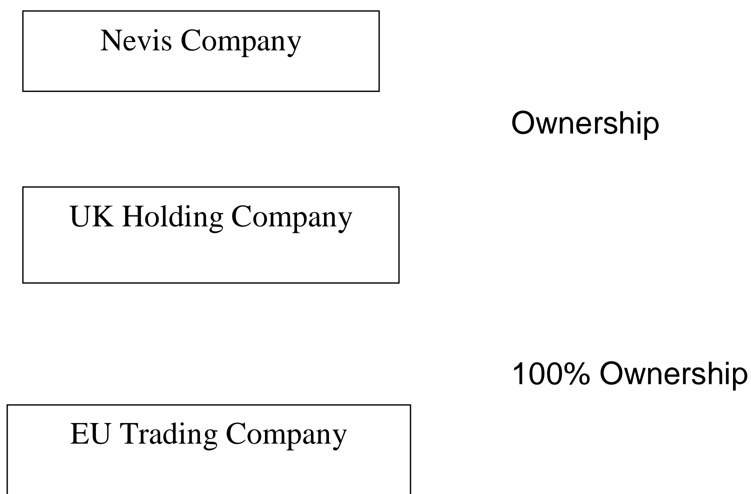
There is no minimum paid up share capita! far normal limited companies in the UK. In the event that a client wishes to use a public company, the minimum issued share capital is £50,000, of which 25% must be paid up. Public companies ore normally only used far substantial activities.

**Conclusion**
The UK international holding company is a leading contender far trading groups due to:
- o the UK's extensive double tax treaty network
- o exemption of dividends from taxation in the UK
- o capital gains tax exemption far trading companies
- o the absence of withholding taxes
- o the absence of capital gains tax on the sale of shares in the holding company by foreign shareholders

APPENDIX 1 - EXAMPLES OF THE USES OF A UK HOLDING COMPANY

The classic structure far the use of a UK holding company is as follows:

Example I




In the above example, where the trading company is situated in the EU, the UK company would benefit tram the EU Parent Subsidiary Directive resulting in no withholding taxes on payment of dividends to the UK company.

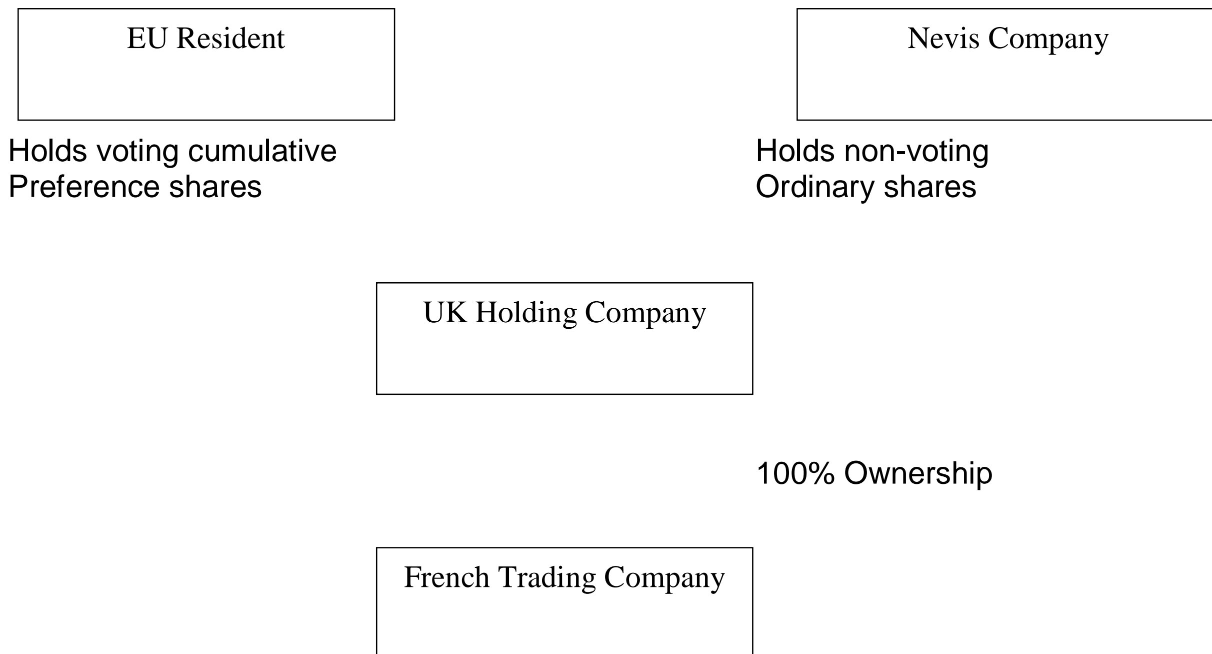
When these dividends ore received by the UK company they will be exempt if the holding company is small and in a jurisdiction in a territory with a double taxation agreement containing a non-discrimination article. If the holding company is medium or large the dividend will be exempt from tax in the UK because the dividend is being paid from a company controlled by the UK recipient company.

As the UK company is wholly owned by non residents of the UK, it would be difficult to argue that there is o UK tax avoidance motive and therefore anti-avoidance provisions ore unlikely to be applicable. Dividends can therefore be paid to the Nevis company without any deduction of tax.
Example 2

Considering the previous case study, if the EU company is, far example, a French company in order to avoid French withholding taxes it is necessary far the directors to certify that:

1. the UK company is the beneficial owner of the dividends
2. the UK company has held 25% of the voting shares of the French company far two years prior to the dividend being paid
3. the company is controlled from within the EU

The structure would therefore need to be set up as follows:




In this scenario the UK company is controlled by the EU resident who holds voting cumulative Preference shares, redeemable at par. The directors would therefore be able to provide the declaration as detailed in the three points itemised above. Dividends will only be declared on the non-voting Ordinary shares.

In the two examples detailed above:

- There is no UK withholding tax on the payment of dividends by the UK company.
- If the subsidiaries ore sold there will be no capita I gains tax on this disposal by the UK holding company, provided that:
    - the holding company is' a trading company or member of a trading group
    - the holding company has held a substantial shareholding, i.e. at least 10% of the Ordinary shares in the investee company far a continuous period of 12 months during the two years before disposal
    - the holding company is still a trading company or a member of a trading group immediately after disposal.

If the UK company was not a member of a trading group after disposal it could still escape a tax on the capital gain provided that it was wound up or dissolved a soon as reasonably practical following the disposal.