PKF

Tax Talk

Simplifying the complexities of Tax

April 2022

pkf-l.com

Tax Talk: April 2022

Global Mobility
Social security for mobile employees 2

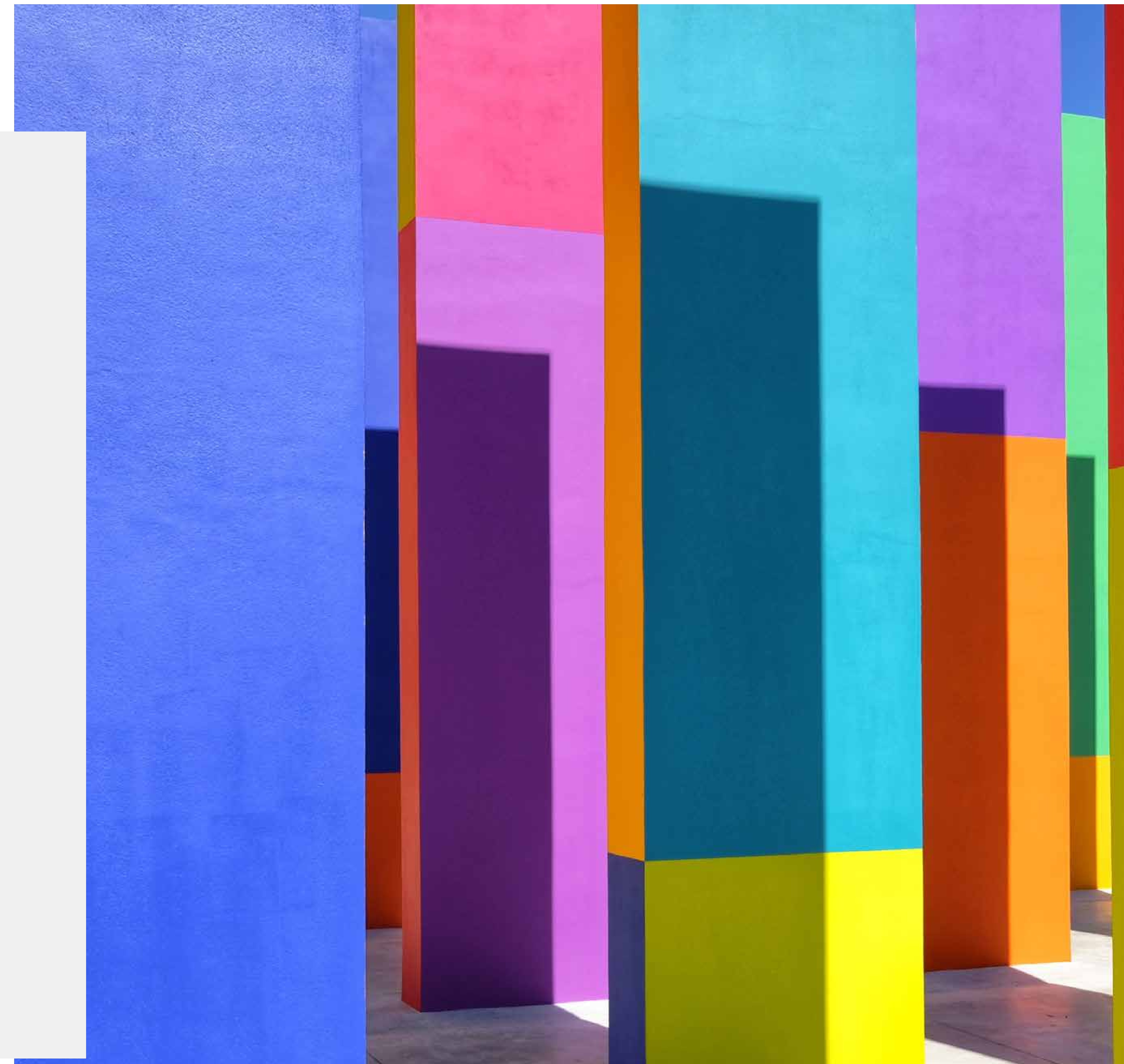
Corporate Tax
Losses and extensions post-pandemic 4

Personal Tax
Nudging taxpayers towards compliance 6

VAT
The ins and outs of VAT groups 8

Our tax webinar series 10

About PKF 11



Moving around Europe - social security for mobile employees

While the Brexit Withdrawal Agreement aims to protect rights and maintain the old social security rules, individuals can still get caught and further changes to the UK's agreements with EU and EEA countries are still possible.

Louise Fryer
Director

+44 (0)20 7516 2446
lfryer@pkf-l.com

Social security is independent of tax and has different rules and regulations. It is usually only payable in one country at a time. For globally mobile individuals, there is a network of agreements ensuring social security is not paid in two countries at once (voluntary contributions excepted).

The rules are complex and social security agreements with EU countries are driven by EU legislation. When the UK left the EU, the Withdrawal Agreement preserved the existing arrangements (subject to certain criteria) but it also highlighted that the various country authorities would be reviewing their agreements and seeking alternatives.

The pre-Brexit rules

Historically, employers could move their staff within the EU or EEA for a fixed period of time under a secondment agreement (usually two years) with no impact on their social security status as long as they applied for a Certificate A1 or E101. Companies could apply for an extension to the secondment of up to five years under Article 16 of the EU regulations.

For people who travelled internationally and spent at least 25% of their time working in their home country, it was possible to apply for a Multi State Certificate of Coverage, keeping them in their home social security scheme whilst working in other countries.

The certificate provided the employer and the employee with important evidence that they had considered the social security coordination rules and determined home country social security contributions were due.

Impact of the Withdrawal Agreement

The Withdrawal Agreement protects the social security coordination rights of those in its scope, and qualifying individuals remain covered by bilateral or multilateral agreements.

The old rules still apply to individuals posted to or from the EU before 31 December 2020, and an extension of up to five years applied for after that date.

However, for people posted after 1 January 2021, there is no provision made in the Social Security Coordination Protocol for extending certificates beyond two years.

Moving around Europe - social security for mobile employees

The Protocol does protect an individual's access to healthcare when working outside their home country and it also follows the earlier mentioned principle that social security should only be payable in one country at a time.

HMRC indicated that after Brexit mobility between the UK and Switzerland, Iceland and Norway would be governed by the terms of existing bilateral agreements. As there was no agreement between the UK and Liechtenstein, it became a 'non-agreement' country for the UK, and UK domestic rules would apply going forward (including, where appropriate, 52-weeks continuing liability to or exemption from home country contributions).

Further changes post-Brexit

The Withdrawal Agreement and Protocol are largely facilitating what they were put in place to do. However, there have been issues around extensions of the A1 (now re-named PDA1) and E101 certificates beyond the initial two-year period.

Recently, as a matter of policy, the French authorities were not agreeing to any applications made under the Withdrawal Agreement to extend certificates of coverage beyond 30 June 2021.

After talks between the French and UK authorities, the French have agreed that where individuals who have been UK insured whilst working in France, but have a pending application to HMRC for an Article 16 exception to extend their expired PDA1, should continue to pay UK National Insurance. This is pending further advice from HMRC and the French social security authorities.

UK/Swiss social security coordination

On 9 September 2021, the UK and Switzerland signed a Convention on social security coordination supporting business and trade by ensuring that cross-border workers and their employers would only be liable to pay social security contributions in one state at a time.

Pending entry into force, the new UK/Swiss Convention on Social Security Coordination provisionally came into force on 1 November 2021.

The agreement benefits citizens who live and work abroad in either country by giving access to healthcare using a European Health Insurance Card (EHIC) or its UK successor, the Global Health Insurance Card (GHIC) as well as providing eligibility to state pensions and other social security entitlements.

The impact of Covid travel restrictions

HMRC has also recognised the impact of the Pandemic on global mobility. In deciding whether UK National Insurance contributions should be paid, it has said it will take into account the circumstances of individuals who normally work in the UK or the EU and have temporarily changed their work location because of Covid travel restrictions.

Individuals should apply for a certificate and include details of the Covid restrictions affecting them in their application. HMRC will continue to apply its current approach to social security coordination with the EU for Covid-19 purposes until 30 June 2022.

The future

No doubt there will be further changes. The UK government continues to work with the EU to establish practical, reciprocal provisions on social security coordination which includes preventing paying social security in two countries at once. In the meantime, the best approach is to seek advice.

Losses and extensions post-pandemic

Although the UK may have entered the phase of 'living with Covid', companies can still take advantage of Corporation Tax measures introduced during the pandemic to help ease cash-flow.

From a Corporation Tax standpoint, the most relevant measure introduced was in relation to the 'Extended Loss Carry Back Claims' where temporary measures were introduced to help businesses that may have previously been profitable but then found themselves making losses over two years due to difficult trading conditions caused by the Pandemic.

The original rules

In simplistic terms, the loss carry-back rules allow a company, subject to trading conditions, to set off trading losses incurred during an accounting period against total profits of the same accounting period and carry back any excess trading losses and offset these against trading profits of the preceding 12-month period.

Where the preceding accounting period is for longer than 12 months, only the profits falling within the relevant 12-month period can be relieved.

Where a company instead ceases trading, and a loss is sustained in the final accounting period of trading, the losses incurred during that accounting period can be carried back to the preceding three years, with the losses being offset against profits incurred in later years first.

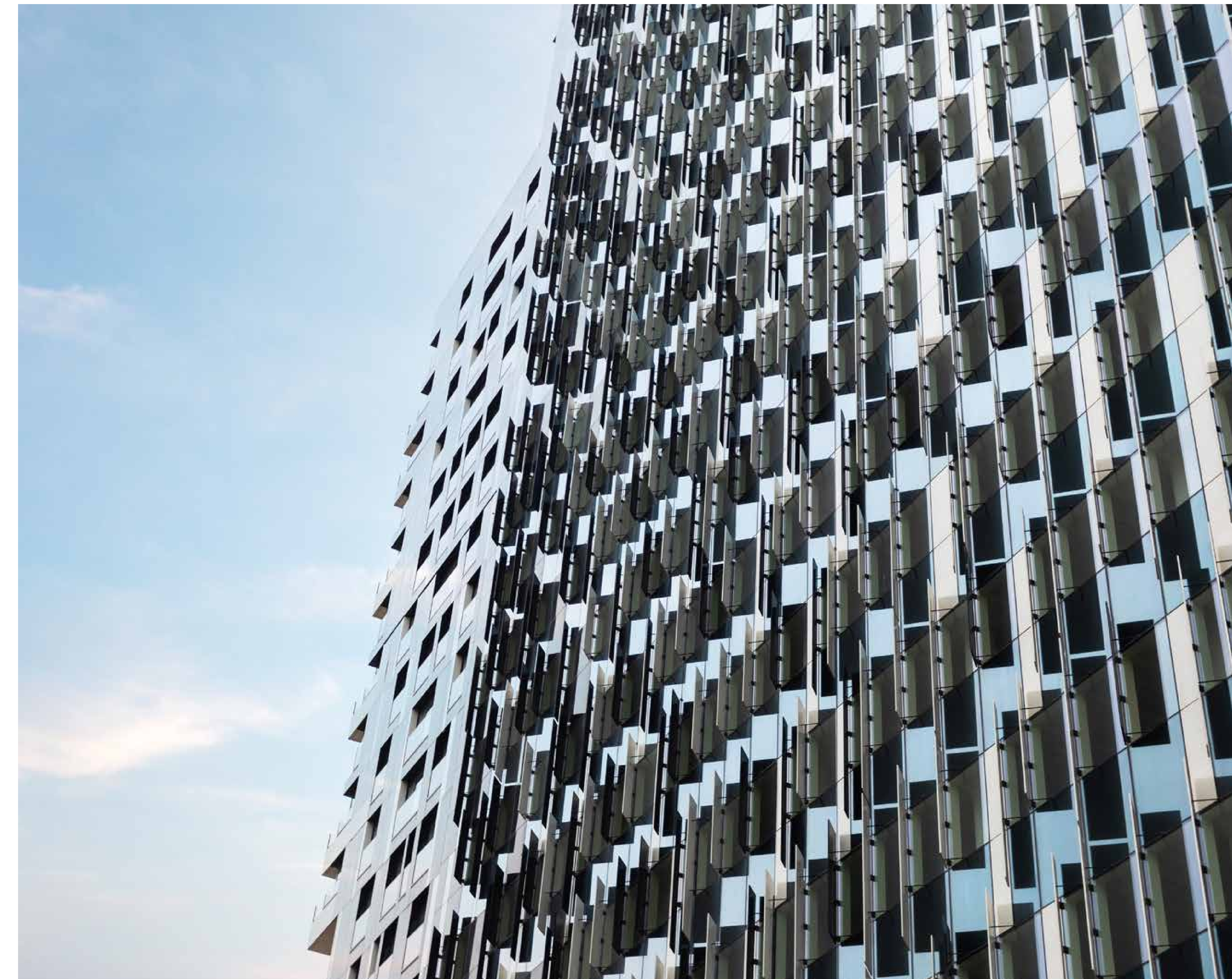
The Covid temporary extension

The temporary extension introduced by the government permitted companies, subject to the same trading conditions, to carry back excess trading losses incurred during accounting periods ending any time in the two years between 1 April 2020 and 31 March 2022 against trading profits incurred during the preceding three years (instead of the usual 12 months).

There is a £2m cap on the amount of losses that can be carried back to the two earlier years, which applies separately to accounting periods ended between 1 April 2020 and 31 March 2021 and those ending between 1 April 2021 and 31 March 2022. Group companies are subject to a group cap of £2m for each period.

Submitting a claim

For companies looking to claim a loss carry back of less than £200,000 there is a further concession. Although most claims under the temporary extension need to be made by submitting a Corporation Tax Return to HMRC, the temporary rules permit such claims to be made even if their annual financial statements, and thereby the corporation tax return, are not yet complete.



Losses and extensions post-pandemic

Such claims can be made as soon as the losses are 'established' – effectively, once the relevant accounting period in which the losses have been incurred has ended and can be evidenced by management accounts prepared for the relevant period.

Time Limit:

Companies have two years from the end of the relevant loss-making accounting period in which to make a claim. So, for example, for losses incurred during an accounting period ended 30 June 2020, the deadline for making a claim under the temporary extension provisions will be 30 June 2022.

In the above scenario, though there is potential for losses to be carried back to offset profits that arose between 1 July 2016 – 30 June 2019, where the June 2022 deadline is missed, the availability of loss utilisation against profits made in the period between 1 July 2016 and 30 June 2017 may be lost.

Relief today or relief tomorrow? A final word of caution

While the temporary extension rules are undoubtedly favourable, companies should consider alternative ways of using their losses. With Corporation Tax rates set to rise from 1 April 2023, some may prefer to keep hold of their losses and obtain relief on future profits at 25% rather than make a claim under the temporary extension and receive a refund at 19%.

Every company is different, and factors including cash flow and the future viability of the trading company or profits all need to be taken into account. The PKF Corporation Tax team can help you make the right decision.

Ivy Ojediran
Manager

+44 (0)20 7516 2452
iojediran@pkf-l.com

Nudging taxpayers towards compliance

HMRC is making greater use of 'nudge letters' to prompt taxpayers to check whether their UK tax affairs are in order and to encourage self-correction. If you receive one, think carefully about how to respond and, if in doubt, contact us.

HMRC has a wide range of powers and strategies to enforce tax compliance and pursue whatever tax it believes is owed. Traditionally, these measures have ranged from informal enquiries and routine compliance checks through to criminal investigations.

In recent years HMRC has increasingly used non-statutory letters, usually prompted by information received, to encourage taxpayers to disclose undeclared income or gains and omissions from tax returns – 'nudging' them towards compliance.

Why more nudge letters?

Some nudge letters are educational, issued to remind taxpayers of reporting obligations and how tax liabilities can arise. These have included campaigns focussed on taxpayers who are not UK domiciled or who invest in crypto assets – where tax legislation is complex and tax treatments are uncertain.

But information sharing across tax jurisdictions is also playing its part.

The adoption of the Common Reporting Standard and the UK's signing of Tax Information Exchange Agreements means HMRC receives millions of items of data from other jurisdictions. This is analysed by HMRC's Connect super-computer system to identify apparent inconsistencies across a wide range of tax areas.

Rather than checking potential discrepancies against tax returns, HMRC issues nudge letters to taxpayers who may or may not have made a mistake or omission. This approach is cost effective for HMRC and passes the burden of investigating a taxpayer's affairs to the taxpayer.

Who is HMRC targeting?

Taxpayers likely to be contacted include individuals with a non-UK aspect to their tax affairs – such as non-UK domiciliaries who have claimed the remittance basis or long-term UK residents who are deemed domiciled in the UK. But any taxpayers where HMRC's data analysis identifies discrepancies are going to be in the spotlight.

Nudging taxpayers towards compliance

What should I do if I receive a nudge letter?

Receiving a nudge letter does not necessarily mean you have submitted an incorrect tax return or underpaid tax, but it may do.

If HMRC does not receive a response to their nudge letter they are likely to continue to chase for a reply and may issue a formal enquiry notice. If you do not respond to a nudge letter and your tax return is incorrect, you are likely to be charged increased penalties.

You should review your situation carefully and establish whether there is an inaccuracy on your tax return or if a source of income or gains has not been disclosed. If in doubt, speak to the PKF Personal Tax team who understand nudge letters and are experienced in dealing with HMRC disclosures.

There are different ways to respond to HMRC, not all of which are stated in the nudge letter, and we will help you to correct any errors and advise how best to regularise your position. One option could be to submit a disclosure using HMRC's Worldwide Disclosure Facility.

Working with an adviser also demonstrates to HMRC you are taking your position seriously and can help mitigate tax and penalties. This is particularly important if a disclosure concerns offshore income or gains as these have been the subject of numerous HMRC campaigns in recent years. Furthermore, an enhanced penalty regime and extended time limits for HMRC to assess these tax liabilities have been introduced.

'Certificates of tax position' - beware

A nudge letter is often accompanied by a 'Certificate of tax position to be completed and returned to HMRC' with the relevant box ticked certifying the taxpayer:

- will declare all their outstanding UK tax
- has declared all their income and/or gains correctly on their tax returns
- has not declared their income and/or gains as they are covered by personal allowances or reliefs
- has not declared their income and/or gains as they are not liable to UK tax.

The certificate includes a declaration by the taxpayer confirming their understanding that a false statement can be a criminal offence and result in investigation and prosecution, yet the statement applies to all tax years and sizes of mistakes.

As a nudge letter is not a statutory letter, you are under no legal obligation to sign the certificate, but this is not made clear in HMRC's letter.

It is important to take care when deciding how to respond to the nudge letter and, if in doubt, take advice from the PKF Personal Tax team at an early stage.

Jonathon Collins
Senior Manager

+44 (0)20 7516 2226
jcollins@pkf-l.com

The ins and outs of VAT groups

Ongoing VAT Grouping uncertainties, including recently issued HMRC guidance and ongoing litigation, mean you should ask a VAT expert to double-check your thinking around VAT group changes/accounting before acting.

The comedian Groucho Marx famously quipped, "I don't want to belong to any club that will accept me as a member". Although corporate entities have always been able to join a VAT group, subject to certain conditions, individuals (and partnerships) have only been eligible since 1 November 2019. So Groucho's reluctance to join such a 'club' wouldn't have been so easy anyway.

VAT group delays

Currently, joining an existing VAT group or forming a new one is proving difficult for everyone. The Pandemic has created a backlog of VAT group registration applications. Processing times are so behind that HMRC has been compelled to issue guidance (in the form of updates to VAT Grouping Notice 700/2) to address complications arising from the delays.

Although HMRC's latest guidance is helpful, it doesn't get around the fact that each situation has its own nuances that need careful consideration.

VAT issues on intra-group supplies

Another challenge is the VAT accounting treatment of inter-company charges when there have been changes to the constitution of the business's VAT group.

The main advantage of VAT grouping is that it avoids a VAT liability on intra-group supplies. This is an important facility if the recipient cannot recover any or all of the VAT it incurs and was highlighted in a recent topical First Tier Tribunal case, The Prudential Assurance Company Limited v HMRC.

Prudential, a regulated life assurance company, was the representative member of a VAT group that included Silver Fleet Capital Ltd ("SCL"). SCL provided investment management services to Prudential. The consideration that SCL received comprised two elements; a management fee calculated by reference to the amount of investments made and a deferred performance fee payable in the event that the performance of the funds exceeded a set benchmark rate of return.

The ins and outs of VAT groups

As SLC was a member of Prudential's VAT group during the period when it provided investment management services, it did not charge VAT on those services. However, by the time the performance fee was triggered, SCL had left Prudential's VAT group and separately registered for VAT. SCL consequently charged VAT on the significant performance fees.

Prudential is a partially exempt business and would have been unable to recover the VAT incurred on the SCL performance invoices.

Unsurprisingly, Prudential argued that the performance fees were consideration for the services SCL provided while it was a member of Prudential's VAT group and as a result should be disregarded with no VAT due.

HMRC maintained that SCL's services should be characterised as a continuous supply of services under SI 1995/2518 regulation 90 and therefore the tax point or time of supply was when an invoice was issued or consideration received. As SCL was no longer a member of the Prudential VAT group at the time it invoiced for its performance services, VAT was chargeable.

The First Tier Tribunal ruled that SCL's business was deemed to be carried on by the representative member whilst it was in the VAT group and consequently SCL was not a 'taxable person' during that period. As there was no supply within the scope of VAT, the time of supply rules were not applicable and no VAT was due. Predictably however, HMRC has appealed the case to the Upper Tribunal and a common sense approach remains elusive for the taxpayer.

PKF's VAT team understands that what many businesses need right now, on these fast changing and complex issues, is practical, bespoke advice that meets the needs of each business's particular circumstances.

Natalie Braier
Manager

+44 (0)20 7516 2262
nbraier@pkf-l.com

Global Indirect Taxes Webinars

We are delighted to invite you to register for a free series of Global Indirect Taxes webinars

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 - Global Indirect Tax Update - Watch on demand
Session 2 - eCommerce – Goods and Marketplaces - Watch on demand
Session 3 - Cross-border services – navigating local requirements - Watch on demand
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

9th largest Tax practice in the UK

£165 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.

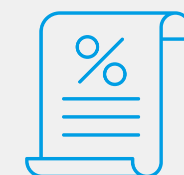
Read more

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

This document is prepared as a general guide. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the author or publisher.

PKF Littlejohn LLP, Chartered Accountants. A list of members' names is available at the above address. PKF Littlejohn LLP is a limited liability partnership registered in England and Wales No. 0C342572.

Registered office as above.

PKF Littlejohn LLP is a member firm of the PKF International Limited family of legally independent firms and does not accept any responsibility or liability for the actions or inactions of any individual member or correspondent firm or firms.

PKF International Limited administers a network of legally independent firms which carry on separate business under the PKF Name.

PKF International Limited is not responsible for the acts or omissions of individual member firms of the network.

PKF Littlejohn LLP,
15 Westferry Circus,
Canary Wharf,
London E14 4HD

Tel: +44 (0)20 7516 2200
www.pkf-l.com