

Real Estate:UK response to - Open for business: implementing a UK corporate re- domiciliation regime

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Real Estate:UK

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Consultation Summary

Re-domiciliation regime a welcome step for real estate investment

We welcome and support the implementation of a UK corporate re-domiciliation regime as part of an incremental package to encourage more business and investment in the UK.

As acknowledged in the consultation, companies typically move jurisdictions to gain better access to capital, to simplify group structures, access less burdensome tax regimes, and for other commercial, economic or political reasons. This is the same for real estate investment vehicles. We agree that the proposed regime compliments the UK Qualifying Asset Holding Company (QAHC). By making it easier for intermediate holding companies to re-domicile - this could encourage them to onshore to access these regimes.

There are legacy real estate investment vehicles where it was advantageous for them to be set up offshore even though they are managed and controlled from the UK. Those advantages may not exist now, and these vehicles may consider re-domiciling in the UK

Re-domiciling corporate investment vehicles to the UK is currently cumbersome; this can include establishing new holding structures or feeders within groups or alternatively establishing a new UK entity and transferring the business of the existing non-UK entity to it. For real estate holdings in particular, the transfer of assets (whether shares or real estate) to a new UK company is likely to give rise to material tax costs, whether as a result of crystallising a latent gain in the "original" jurisdiction or because of the imposition of transfer taxes. Including corporate investment vehicles in the re-domiciliation regime could avoid unnecessary schemes of arrangements and enable existing structures and agreements to remain in place.

A particular example of the onerous process of re-domiciling a company is where an e.g. Luxembourg property owning company is purchased and there is a desire to hold the property through a UK company, usually for cost and simplification of administration reasons. The main way this is currently undertaken is re-domiciling the Luxembourg Company to a Guernsey or Jersey company which is then UK managed and controlled. This costly and arduous process could be simplified by widening the re-domiciling regime to include real estate investment vehicles – and would be equally beneficial to a corporate fund as an underlying holding company (SPV).

Reasons for real estate investment funds to re-domicile

There are various reasons why investment vehicles might wish to re-domicile in the UK. These include:

- Wanting to align their domicile with their tax residency. This may reduce administrative inconvenience and also, potentially, remove dual residence concerns. Locating various fund and fund-management related functions in the same place to support availability of treaty benefits or reduce the risk of availability of treaty benefits being undermined by a lack of substance may also be a motivating consideration for re-domiciling.
- Regulated entities wanting to achieve regulatory consolidation in the UK and change the lead regulator for the group to one in the UK.
- The broader legal framework of the UK, relative to the country in which they are currently domiciled, including aspects such as solvency law, dispute resolution and fund regulation. Sometimes this is due to there being legal changes in the jurisdiction they are domiciled in that disadvantage the investment vehicle or its investors.
- Some investment vehicles wanting to re-domicile to the UK from countries now considered “non-co-operative jurisdictions” for tax or anti-money laundering or countering terrorist financing purposes or from countries experiencing political upheaval or threats to the stability of their legal system.
- Investment vehicles with a branch in the UK that has become increasingly significant to the entity's business. They may wish to re-domicile to the UK to align the entity's domicile with the place of most commercial significance to them.
- Commercial and operational reasons. This may be having access to top legal and financial support services and access to UK courts in case of commercial disputes.
- A reduction in costs by having everything in the UK and not having to pay for substance in an offshore jurisdiction.
- Simplification of investment vehicle structures where several types of structures are held.
- Wishing to re-domicile recently bought offshore companies (see the example given above regarding re-domiciling Luxembourg companies to the Channel Islands).

Barriers to real estate funds locating and re-domiciling to the UK

Funds may choose to locate corporate or non-corporate vehicles in different jurisdictions for a range of reasons. Although tax is not the focus of this consultation, it is a significant factor in any decision about fund location or re-domiciliation. In addition to any transaction taxes or gains taxes that may arise when onshoring a vehicle, several tax challenges should be considered as part of the Government's wider efforts to improve the competitiveness of the UK investment management sector more broadly – which could support both corporate and non-corporate vehicles. The list below is not comprehensive, but highlights some material considerations:

- Stamp duty on share transfers¹. There are already stamp duty exceptions for trading in shares on the Private Intermittent Securities and Capital Exchange System (PISCES) and the Alternative Investment Market (AIM). Consideration should be given to extend this treatment to other vehicles or exchanges to ensure transaction taxes don't create a barrier to trade or onshoring.
- The application of VAT on fund management fees can be a material commercial cost for investment vehicles – and often puts the UK at a competitive disadvantage. Investment vehicles that are on HMRC's VATA list are exempt from VAT on their management fees. However, not all types of investment vehicles are on the VATA list and we understand the Government have no plans to update the list any time soon. For some investment vehicles the VAT on management fees can be recovered but this depends upon the type of assets the vehicle invests in – and predominantly disadvantages investment vehicles investing in residential property.
- Tax relief on interest costs – the UK corporate interest restriction rules are very complicated and can be quite restrictive. Given interest costs can be material for real estate investment structures, the tax treatment of interest costs is an important consideration – and we'd welcome reconsideration of these rules to ensure more certainty around tax relief for third party interest costs.

Level of demand for investment vehicles to redomicile

While this is difficult to quantify, we understand from members there certainly would be demand for re-domiciliation by non-listed and listed real estate investment entities if the details of the regime, including tax treatment, are right. More importantly, however, we believe that the UK is currently at a competitive disadvantage because there are currently only cumbersome routes available to re-domicile to the UK. The administrative, legal and regulatory hurdles that need to be overcome can deter some vehicles from relocating to the UK when other simpler re-domiciliation regimes exist elsewhere.

From what jurisdictions would investment vehicles most likely to re-domicile to the UK?

Initially investment vehicles may come from common law jurisdictions that have a historic nexus with the UK and already permit re-domiciliation themselves, such as the Cayman Islands, the British Virgin Islands, Jersey, Guernsey and the Isle of Man. However, Ireland, Luxembourg, Cyprus, Gibraltar and Delaware are examples of other jurisdictions from which companies may look to re-domicile as well.

¹ Other than with the Reserved Investor Fund

General Comments

Proposed framework

Broad principles and general approach

Question 1 To what extent do you agree with these broad principles? Are there other principles you think should be included? If so, please set out your reasons?

Agree

Eligibility criteria

Question 2 To what extent do you agree with the proposed eligibility criteria? Please set out any other criteria the government should consider and why.

The introduction to the consultation acknowledges that a re-domiciliation regime may be particularly attractive to companies within the financial services sector. The investment industry uses a variety of investment vehicles which might find a comparative structure in the UK useful to re-domicile. Some are body corporates, e.g. property-holding corporate SPVs and corporate funds/REITs, could use the proposed regime.

As touched on above, there are also many investment entities that are not corporate entities. We would welcome further consideration of addressing the barriers for onshoring and locating in the UK for non-corporate entities as well – in order to ensure the UK is an attractive location for both corporate and non-corporate investment structures.

Information to be provided

General approach

Question 3 To what extent do you agree with the list of the information to be provided when applying to re-domicile in the UK, as set out in section 2.3 of the Panel's report?

Solvency statement
Question 4

To what extent do you agree that:

- (i) the proposed director(s) should be required to make a solvency statement, no more than 15 days before the date of the application
- (ii) there should be a duty to update the statement if there is a change or event that would have prevented the solvency statement being made
- (iii) a refreshed solvency statement should be provided if the application has not been completed within 6 months

N/A

Question 5 **To what extent do you agree that a person who committed an offence for making a solvency statement without reasonable grounds or for failing to notify a notifiable change of an event or change affecting the statement, should lead to imprisonment and/or a fine?**

N/A

Question 6 **To what extent do you agree solvency statements should not be independently audited (in line with existing practice)?**

N/A

Types of company

Question 7 **To what extent do you agree a body corporate should be able to apply to become a private company limited by shares or an unlimited company or a public company regardless of its form in its departing jurisdiction, but not to become a company limited by guarantee?**

Other aspects of the application process and information to be provided

Question 8 **Do you have any comments on the proposed list of information detailed in paragraphs 2.5 to 2.26 of the Panel Report or any other matter related to the application process and information to be provided?**

The interrelationship between re-domiciliation and the Register of Overseas Entities

Question 9 **What are your views on the proposed 60-day timeframe (extendable by application) for companies that have re-domiciled to the UK to de-register as an overseas entity, and do you foresee any practical challenges for overseas entities in meeting these de-registration requirements?**

Question 10 **What enforcement mechanisms or additional legislative powers do you believe should apply where a re-domiciled company fails to de-register from the Register of Overseas Entities within the specified timeframe?**

Question 11 **Should an entity's eligibility to re-domicile to the UK be affected by outstanding penalties, ongoing compliance actions, or unresolved regulatory breaches under the Register of Overseas Entities? If so, should this apply to all types of non-compliance, or only to certain categories.**

Credit rating

Question 12 Do you think the proposed information would provide sufficient information for credit reference agencies?

N/A

Question 13 Are there other matters relating to credit ratings the government should consider?

N/A

How the application is determined**General approach/ Relevant authority**

Question 14 Do you think Companies House should issue non-statutory guidance on the re-domiciliation process, including indicative timings for dealing with applications?

N/A

Departing jurisdiction requirements

Question 15 To what extent do you agree the process for ensuring the departing jurisdiction's conditions for re-domiciliation have been met should be resolved between the departing jurisdiction and the re-domiciling body corporate?

Question 16 Do you think Companies House should be required to verify only whether the applicant meets the UK's entry criteria and not the departing jurisdictions criteria for re-domiciliation? Please provide the reasons for your answer.

Good faith criteria

Question 17 To what extent do you agree that, in accordance with existing UK legislation applying to new company incorporations, the eligibility criteria should not include a 'good faith' requirement?

National security:

Question 18 To what extent do you agree a national security assessment is not necessary and that applicants should provide confirmation, both as part of the application process and annually thereafter, that its future activities will be lawful?

Determining the effective date of re-domiciliation

- Question 19** To what extent do you agree applications should be approved in principle and the re-domiciliation will be effective from the date the certificate of re-domiciliation is issued by Companies House? Please set out your reasons for your response.
- Question 20** Do you think a period of 60 days from the date of registration (extendable upon application) provides an appropriate timeframe after which failure to provide a certificate of de-registration from the departing jurisdiction would result in the re-domiciled company being struck off the UK register by Companies House?
- Question 21** Is there anything else you think the government should consider?

Proposed offence:

- Question 22** To what extent do you agree that there should not be a specific offence for failure to provide evidence? Please provide any alternative measures which could incentivise the timely provision of the required evidence.

N/A

Absence of conditions / Unsuccessful applications

- Question 23** Do you think Companies House should provide written reasons for an application being rejected within a set timeframe? Should this mirror the process used when rejecting applications to set up a new company? What timeframe do you think would be reasonable for Companies House to provide those reasons?

N/A

- Question 24** ~~With regard to the proposed offence for failure to provide evidence, please provide any alternative measures which could incentivise the timely provision of the required evidence.~~ **With regard to the proposed offence for failure to provide evidence, please provide any alternative measures which could incentivise the timely provision of the required evidence.**

N/A

N/A

Issue of a certificate of re-domiciliation

Contents of the certificate

- Question 25** ~~To what extent do you agree with the proposed contents of the certificate? Failure to provide evidence? Please provide any alternative measures which could incentivise the timely provision of the required evidence.~~ **To what extent do you agree with the proposed contents of the certificate? Failure to provide evidence? Please provide any alternative measures which could incentivise the timely provision of the required evidence.**

N/A

Registered number

Question 26 Do you think the proposed changes to the law should make it a specific offence for a company to fail to provide evidence? Please provide any alternative measures which you think might be more proportionate. Please also set out any views on how a re-domiciled company might be distinguished in a proportionate way.

N/A

N/A

Publicity for the application form / Process for issue of certificate

Question 27 To what extent do you agree with the proposed process for the issue of a certificate to provide evidence? Please provide any alternative measures which you think might be more proportionate. Please also set out any views on how a re-domiciled company might be distinguished in a proportionate way.

N/A

Effect of inward re-domiciliation

Question 28 Do you think that legislation should be enacted which should make it an offence for a company to fail to provide evidence? Please provide any alternative measures which you think might be more proportionate. Please also set out any views on how a re-domiciled company might be distinguished in a proportionate way.

N/A

N/A

Question 29 To what extent do you agree with the proposed process for the issue of a certificate to provide evidence? Please provide any alternative measures which you think might be more proportionate. Please also set out any views on how a re-domiciled company might be distinguished in a proportionate way.

N/A

N/A

Effectiveness of existing resolutions and/or authorities

Question 30 To what extent do you agree with the proposed process for the issue of a certificate to provide evidence? Please provide any alternative measures which you think might be more proportionate. Please also set out any views on how a re-domiciled company might be distinguished in a proportionate way.

N/A

N/A

Shareholders

Question 31 Do you think that legislation should be enacted which should make it an offence for a company to fail to provide evidence? Please provide any alternative measures which you think might be more proportionate. Please also set out any views on how a re-domiciled company might be distinguished in a proportionate way.

N/A

N/A

Company register obligations

Question 32 To what extent do you agree that companies should be required to maintain books and records that existed prior to re-domiciliation for 10 years after re-domiciliation?

N/A

Employees/workers

Question 33 To what extent do you agree that companies should be required to maintain books and records that existed prior to re-domiciliation for 10 years after re-domiciliation? To what extent do you agree that no specific legislative provision is needed in respect of workers? Are there other points you would like the government to consider?

Changes that may be required to tax legislation

Depository Interest Structure

Question 34 To what extent do you agree that a double charge will not arise? If you think a double charge will arise, please explain why and in what circumstances it could arise.

N/A

Changes for accounting purposes and distributions

Question 35 Do you have any views on the Panel's proposals within section 7 or on any other changes required to the UK accounting and audit requirements?

N/A

Insolvency regime and creditor protection

Creditor protection

Question 36 Do you believe a solvency statement by the applicant would create sufficient protection for creditors in the UK? If not, please set out your reasons.

N/A

Interrelationship between re-domiciliation and UK restructuring and insolvency proceedings

Question 37 To what extent do you agree it would be neither necessary nor advisable to change the application of UK restructuring and insolvency processes to companies which have re-domiciled to the UK?

Addressing director misconduct and antecedent transactions

Question 38 To what extent do you agree all UK legal provisions, including the provisions of the Company Directors Disqualification Act 1986, should apply to the review of the conduct of the directors of a re-domiciled company?

N/A

Question 39 Do you think a liquidator or administrator of a re-domiciled company should ensure the review of directors' conduct may take into account conduct before re-domiciliation as well as after it? If not, please explain why.

N/A

Question 40 To what extent do you agree that the vulnerable period for transactions detrimental to the general body of the company's creditors, ought to be capable of extending back beyond the body's corporate's re-domiciliation? Do you have a view on whether the Insolvency Act 1986 should be amended to achieve this effect?

N/A

Question 41 To what extent do you think it necessary to provide an exception to the application of UK rules on antecedent transactions, in circumstances where a transaction was subject to rules that did not allow any means of challenging it in the departing jurisdiction?

N/A

Re-domiciliation and security interests

Question 42 To what extent do you agree only new charges, created after the UK's re-domiciliation process has completed, should be determined in the same way as any other UK incorporated company?

N/A

Question 43 Are there other points you would like the government to consider, including from the Report?

N/A

Additional powers needed for Companies House

Question 44 To what extent do you agree the existing requirements for Companies House to publish notices when issuing a certificate of incorporation are sufficient in applying to certificates issued on re-domiciliation into the UK? If not, please say why.

N/A

Question 45 To what extent do you agree Companies House should be able to use its existing powers to give notice to a body corporate applying to re-domicile to the UK to deliver a document to it or give notice to Companies House of any matter related to the application? If not, please set out why.

N/A

Question 46 Are there other points you would like the government to consider, including from the Report (see paragraphs 9.1 to 9.12)?

N/A

Changes required to the Companies Act 2006

Question 47 Do you have any views on any of the proposed changes set out by the Panel in its Report – see sections 11.1 to 11.9?

N/A

Question 48 Are there other points you would like the government to consider, including from the Report?

N/A

End of response