Analysis

Corporate re-domiciliation Panel Report: potential impact on structuring inward bound re-domiciliation

Speed read

The Panel Report on Corporate Re-domiciliation was published in October 2024 and proposes a new company law regime to facilitate re-domiciliations to the UK. The proposal would significantly simplify the current options available to groups wishing to relocate their holding structure to the UK. The tax implications of the proposed regime have been considered by the Panel, with recommendations made for its implementation.

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The Panel Report

The weather is awful, the food is bland and the beer is warm. Why would anyone consider redomiciling to the UK? For a holding company, at least, the UK is and remains an attractive destination from a tax perspective, for reasons readers will be familiar with. This supports the many non-tax reasons that, in our experience, provide a draw for established public and private groups to consider relocating to the UK (which include a corporate law environment that is relatively stable and familiar to investors in multinational groups). In October 2024, the *Corporate Re-domiciliation: Report of the UK Independent Expert Panel* was published, with suggestions on the design of a new company law framework to facilitate re-domiciliations. The bulk of the Report is focused on company law matters, but it also contains (at section 6) some thoughtful discussion of tax considerations. This article touches on these, with a focus on the corporate and transactional tax aspects of structuring inward bound re-domiciliations.

Re-domiciliations in practice

Under current law, moving an existing group to the UK can be cumbersome. Migrating the central management and control of the existing holding company's business is at best a partial solution, as it does not result in a 'true' elimination of the non-UK top company. For groups parented in tax haven jurisdictions which are encountering legal difficulties under their current structure, migration therefore may be unattractive (as source countries or investors may not consider a change of tax residence to fully address concerns). Further, a migration may entail changes to management practices around UK board meetings that may be distortive (a UK-incorporated parent listed in the US with US-based senior management, for example, may be able to hold regular board meetings in the US without prejudicing its UK tax residence, whereas this will not be possible for a non-UK incorporated parent which seeks to migrate here). More generally, relying on 'CMC' principles in an era of video-conferencing and remote working is inherently uncertain and somewhat anachronistic.

A new company incorporated in England and Wales will therefore typically need to be introduced and inserted on top of the group through some kind of reorganisation transaction (such as a share for share exchange). The group's shareholders will dispose of their shares and may face a taxable event. There could be local transfer taxes. The insertion of a new holding company may require diligence on change of control clauses in contracts, and on the implications for carry-forward of tax attributes and non-resident capital gains charges in subsidiary jurisdictions. Liquidation of the old parent will generally be desired, which may require further reorganisation steps and tax analysis. Practical questions around who should establish and capitalise the newco before the transaction closes, and how to deal with that person's shareholding afterwards, will need to be addressed.

For groups which are already publicly traded, it may be necessary to implement this step using a 'triangular' merger, which entails establishing the new UK holding company with an SPV ('Merger Sub') beneath it, incorporated generally in the same non-UK jurisdiction as the original holding company. The original holding company will then merge into Merger Sub and either Merger Sub will survive (a forward merger) or the original holding company will do so (a reverse merger). Here, aside from the tax position of shareholders, the UK holding company's position needs to be considered. Can it obtain a market value basis in Merger Sub (where Merger Sub survives)? If Merger Sub does not survive, has the UK holding company made a disposal of it for valuable consideration (and if so, are any reorganisation reliefs available)? Practitioners have varying views on these questions, and in cases of uncertainty it may be necessary to clear the position with HMRC.

A regime for overseas companies to become incorporated in the UK while retaining their existing legal personality therefore offers scope for significant simplification, and so boosting the UK's attractiveness to business and inbound investment (and aligning with the corporate law offering of certain peer or competitor jurisdictions). This was the objective behind the (then) Government's 2021 consultation to explore the introduction of such a regime. Responses suggested a general consensus in favour of introducing an inbound (and outbound) re-domiciliation regime. Following this, an independent expert panel was convened by the Department for Business and Trade to develop this work, which has resulted in the October Report.

The Panel's recommendations

The Panel is supportive of the UK introducing a re-domiciliation regime available to bodies corporate which are solvent and intend to carry on business following their re-domiciliation. There should be flexibility for such bodies to become either a private or public UK company. The existing legal personality of the body corporate would continue. The redomiciled UK company should be treated in the same way as a company originally incorporated in the UK: it will become a company incorporated under the Companies Act 2006 with effect from the date of the certificate of re-domiciliation. The Panel also recommends that a parallel outbound re-domiciliation should be created alongside the inbound one, as this flexibility will increase the appeal of the regime. A general theme of the Panel's recommendations is for tax legislation to apply to redomiciled companies as it does to other UK-incorporated companies with minimal differences, and for the rules to apply largely symmetrically when a company redomiciles out of the UK, to avoid a 'two-tier' regime.

> The proposed legislative regime looks to provide a helpful means of facilitating re-domiciliations to the UK and could meaningfully simplify some of the complexities that advisers are faced with under current law

Residence

The Panel's proposal is that a redomiciled company would become UK tax resident under CTA 2009 s 14 from the date of issue by Companies House of a certificate of re-domiciliation. This will be subject to CTA 2009 s 18 in case the company remains resident in another jurisdiction and a treaty tie-breaker is applied. While HMRC guidance is requested to address particular circumstances (for example, dual residence – and indeed dual incorporation – issues), for many cases this recommendation should introduce welcome (and prospective) clarity, in contrast with agreeing the commencement of tax residence under CMC principles. Indeed, it may be that non-UK companies which are already UK resident (say, Jersey-incorporated holdcos in a private equity 'stack') may wish to make use of the regime in advance of an IPO or other transaction.

Entity classification

It is proposed that the regime be available to 'bodies corporate' as defined at CA 2006 s 1173. The Panel notes that this is not necessarily synonymous with the concept of a 'company' for corporation tax purposes. There may therefore be cases (for example, a foreign partnership that is a body corporate as a matter of foreign company law, but transparent for tax purposes) where a re-domiciliation is treated as a taxable event for UK shareholders. Conversely, the Panel notes there may be cases where the non-UK company is opaque but does not have 'issued share capital' before it redomiciles, observing this may (potentially) be seen as a disposal event. These scenarios, though perhaps unlikely to be encountered frequently, suggest that the new regime will not entirely dispense with the need for a careful tax analysis of the corporate law nature of the re-domiciliation event for UK shareholders; and that it will be important for HMRC to retain its 'adaptable and pragmatic approach' to overseas company law issues in this context (see HMRC's *Company Taxation Manual* at CTM00516). This will also be true for the application of the distributions rules at CTA 2010 Part 23 – while the Panel expresses the view that additional provisions here may not be necessary, it seems possible that some difficult questions may arise. For example, when applying s 1025, should regard be had to the share premium account stated as at re-domiciliation, or to the historic position under the non-UK regime?

Pillar Two

For the purposes of determining when an entity becomes UK tax resident under the Pillar Two rules, the Panel suggests that the existing position under the OECD Model Rules and the UK Multinational Top-up Tax regime is sufficient. F(No.2)A 2023 s 239(7)(b) provides that where an entity's location (for Pillar Two purposes) changes during an accounting period, it is to be treated as remaining located where it was at the start of the period (and would therefore become located in the UK at the beginning of the next period). This will be of importance to companies redomiciling from jurisdictions that have not implemented Pillar Two and need time to get up to speed with the reporting and compliance burden it introduces.

Base cost of assets

The Panel recommends that on re-domiciliation, a company's base cost in its chargeable gains assets should be stepped up to market value, citing economic fairness: the UK taxation of those assets would be calculated by reference to the gains accruing on those assets during the time in which the company is resident in the UK. This is a rational approach and a welcome departure from the current position for a company that migrates its tax residence to the UK (see HMRC's *Capital Gains Manual* at CG42350 which confirms that there is no rule that uplifts base cost, save where EU exit charges have been imposed). The Panel recommends that a market value step-up also be applied to companies migrating their residence to the UK, as well as to redomiciling companies. Rebasing to market value is recommended too for intangible fixed assets, stock and capital allowances, and, for consistency, loan relationships and derivative contracts (though the potential for computational complexity here was acknowledged). For re-domiciliations of 'pure' holding companies of existing listed trading groups (where debt is raised elsewhere in the structure), the practical significance of these proposals may be limited. In other cases, however, obtaining valuations (and HMRC's agreement to them) may be a significant exercise.

CFCs

The Panel makes an interesting suggestion – not raised in the Government's initial consultation – to amend TIOPA 2010 s 371EC to clarify that 'relevant UK funds or other assets' do not include funds deriving from profits from trading activities carried on outside the UK in non-UK subsidiaries or in exempt non-UK branches of a company. Managing the application of the CFC rules on reinvestment of non-UK profits following a re-domiciliation is a complex area (where practitioners and HMRC may not always agree), so further engagement with this question at the next phase of consultation will be welcome.

Loss importation

The Panel recommends that the existing position that a company migrating tax residence to the UK cannot obtain relief for losses arising before it became subject to UK taxation, is bolstered with a specific provision precluding relief for expenses or losses arising pre-re-domiciliation. This looks well-reasoned. However, the suggestion that a body corporate redomiciling to the UK should be restricted from surrendering to members of the UK tax group for a period of time post-re-domiciliation looks rather more draconian (and contrary to the principle of not creating a two-tier system for redomiciled companies). Beyond this potential restriction, however, the Panel recommends that no further anti-avoidance provisions are introduced here.

> While the new Government has welcomed the Panel's Report, and intends to consult further on the proposed regime, there is little clarity on the timetable

Withholding tax

The suggestion is made that guidance be introduced to clarify that a re-domiciliation, in and of itself, should not necessarily switch a payment's source, for withholding tax purposes, to the UK. However, at a practical level, it seems unlikely that tax advisers would feel confident to rely on such guidance alone (unless the guidance is unequivocal). Further, it seems probable that in many cases aspects of the 'multifactorial' test (including residence of the debtor both for purposes of legal proceedings and for tax purposes) may have changed by virtue of the re-domiciliation. More generally, a simplified re-domiciliation procedure will not obviate the need to understand the withholding tax impact of a UK resident entity on cashflows within the group and to third parties.

Stamp duty and SDRT

A body corporate that redomiciles to the UK will be treated in all respects as a UK-incorporated company, and accordingly its shares are expected to become subject to stamp duty and SDRT. For publicly traded companies this looks to be a disadvantage only for companies that are traded through CREST, as companies that maintain a listing on a foreign exchange are typically traded through the facilities of a clearance service or depositary receipt system such that transfers are exempt from stamp taxes. Although the Report notes that the re-domiciliation itself does not involve a transfer of the shares (and so will not itself cause a stamp duty or SDRT charge), in practice it is to be expected that depositary banks and clearance services will have contractual requirements around the documentation and processes for a UK-incorporated company which will presumably need to be put in place before the re-domiciliation can proceed. Engagement from HMRC, market participants and advisers in the consultation phase will be important to avoid these requirements impeding take-up of the regime.

Takeaways and next steps

The proposed legislative regime looks to provide a helpful means of facilitating re-domiciliations to the UK and could meaningfully simplify some of the complexities that advisers are faced with under current law.

However, while the new Government has welcomed the Panel's Report, and intends to consult further in due course on the proposed regime, there is little clarity on the timetable. It seems unlikely that developments will materialise swiftly enough for transactions currently under consideration for 2025. That said, there should be an opportunity for interested parties to engage constructively with Government as the policy develops, with a view to realising the simplification benefits of the proposals as much as possible. ■

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