HM Government

Corporate Re-domiciliation Consultation

Summary of Responses

April 2022

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1. Background

1.1 On 27 October 2021, the UK Government launched a public consultation on the introduction of a UK corporate re-domiciliation regime.[1] The consultation closed on 7 January 2022.

1.2 This document summarises the key comments raised by respondents. We have considered all submissions in drafting this summary of responses and would like to thank respondents for sharing their views on the consultation.

1.3 Re-domiciliation would enable a foreign-incorporated company to change its place of incorporation whilst maintaining its legal identity as a corporate body. This gives companies maximum continuity over business operations when redomiciling and substantially reduces administrative complexity compared to other routes of relocating and incorporating in the UK.

1.4 The Government intends to introduce such a regime, making it possible for companies to move their domicile to and relocate to the UK by enabling the re-domiciliation of companies. This could modernise the UK's legal framework and bring the UK in line with our international peers, such as Canada, Singapore, New Zealand and a number of US states.

1.5 The consultation set out the principles for introducing a UK re-domiciliation regime and invited views on particular aspects including:

- The advantages of enabling companies to re-domicile
- The level of demand that exists, among which types of companies and sectors
- The appropriate checks and entry criteria
- The merits of establishing an outward re-domiciliation regime
- Any tax implications associated with the introduction of a re-domiciliation regime

1.6 Consultees were asked to respond to a total of 45 questions, which are considered in detail in the following sections.

Conducting the consultation

1.7 The consultation was published online, and responses were submitted by email.

1.8 BEIS, HM Treasury and HMRC engaged in a number of stakeholder meetings during the consultation period. This included a series of roundtable meetings with legal and accountancy firms specialising in corporate law. These sessions were supplemented by meetings with professional representative bodies and firms operating in overseas jurisdictions.

[1] https://www.gov.uk/government/consultations/corporate-re-domiciliation

1.9 Research was commissioned from key organisations in the field of re-domiciliation. Overseas registrars and offshore jurisdictions were asked for information on the operation of their respective regimes. Diplomatic posts in overseas jurisdictions were also consulted to gauge their experience of similar regimes, and the resulting impact of companies using such mechanisms.

2. Summary

2.1. Overall, respondents were broadly supportive of the government's proposal to introduce a corporate re-domiciliation regime and noted that existing routes to relocate companies are cumbersome and costly. However, many respondents noted that a regime in itself would not be enough to attract overseas companies to the UK; the wider business environment (both in the UK and internationally) is likely to be the main driver for attracting overseas companies to re-domicile to the UK.

2.2. Given the consultation was focused on the principles of a re-domiciliation regime, it was understandable that some respondents thought that further detail on the design of the regime would be helpful. Whilst the consultation offered a high-level overview of the proposed regime design, many noted that there was limited detail on how it would work in practice and this sometimes prevented respondents providing more fulsome answers to the questions.

2.3. Respondents agreed that a regime should be flexible but recognised the need to balance simplicity of design with sufficient rigour and appropriate checks. More generally, respondents sought clarity around the process and how the regime would work in practice. Predictability and certainty were highlighted as desirable characteristics of any UK regime.

2.4. The majority of respondents supported a two-way regime, permitting both inward and outward re-domiciliation. Some highlighted the principles of reciprocity which might prevent an outgoing jurisdiction permitting re-domiciliation to the UK if the UK did not conversely allow its own companies to re-domicile overseas. Many noted that a two-way regime could increase the attractiveness of a UK regime to overseas companies who may wish to have flexibility to move to or from the UK in the future. However, respondents were unable to provide detailed information or evidence of the potential demand for outward re-domiciliation.

2.5. There was a variety of views as to whether the existing arrangements (which prevent UK companies from transferring their place of incorporation between nations) would have an impact on overseas companies' decisions to re-domicile to the UK. Most respondents agreed that intra-UK re-domiciliation was not likely to have a significant impact on a company's decision to re-domicile, but some considered this approach to be inconsistent with the proposal to allow overseas companies a choice of where to incorporate within the UK.

2.6. There was general support for re-domiciled companies to be treated the same as a UK incorporated companies for tax purposes. Respondents want a UK re-domiciliation regime that is simple and consistent with existing tax regimes but did not favour a new category or distinct tax treatment for re-domiciled businesses. Respondents agreed that more detail was needed to provide a detailed view on the tax implications of re-domiciling to and from the UK.

2.7. Respondents agreed there were implications for personal tax and many addressed the indirect impacts of a UK re-domiciliation regime. Most agreed that the attraction of a UK re-domiciliation regime will be significantly influenced by the tax rates in the UK compared to other jurisdictions with re-domiciliation regimes.

3. Responses to the consultation questions

3.1. The UK Government received 40 responses to the public consultation. All responses have been recorded and the Government has analysed the common themes that emerged to obtain an indication of the most frequently expressed points of view

3.2. In reporting the overall response to each question, we have used a number of terms:

- ‘Majority’ and ’most’ indicates the clear view of more than 50% of respondents to that question;
- ‘Minority’ and ’few’ indicates the clear view of fewer than 50% of respondents to that question;
- ‘Mixed’ indicates no clear overall view expressed by respondents to that question.

3.3. Of the 40 responses, 4 were from private limited companies, 3 from public limited companies, 12 from business representative organisations and trade industry groups, 8 from professional services, 1 from transparency organisations, 2 from individuals, 3 from government bodies, 4 from law societies and 3 from others. A list of respondents to this consultation is provided in the Annex.

3.4. Analysis has shown that the majority of respondents were supportive of the proposals set out in the consultation. Internal analysis of responses captured the different ranges of how strongly respondents supported the proposal, ranging from overall supportive, broadly supportive, neither supportive/unsupportive, broadly unsupportive and overall unsupportive. Almost 80% of respondents were either broadly or overall supportive of the concept, with no response assessed as being unsupportive overall. Only two respondents were broadly unsupportive.

3.5. Stakeholders generally responded according to the questions asked. No stakeholder answered every question, although the most answered question concerned the suitability of an outward regime (Question 29); and the least answered questions were those on demand for outward re-domiciliation (Question 33) and barriers to companies re-domiciling out of the UK (Question 34).

3.6. This summary of stakeholder responses to the consultation is organised under the appropriate chapter with each consultation question presented in the order they appeared in the original consultation.

Chapter 2 – Rationale for re-domiciliation

Question 1: What do you see as the advantages of re-domiciliation compared to existing routes to relocate a company to the UK, and how material are they?

3.7. Respondents who commented on this question agreed that a re-domiciliation regime would have several advantages compared to currently existing routes of relocating a company to the UK.

3.8. Re-domiciliation was described as simpler than currently existing routes. Respondents mentioned that it would be less administratively complex and therefore less time intensive and less costly, for example by saving management time and legal fees. Respondents also highlighted that re-domiciliation would give companies greater continuity, as it allows them to maintain their legal entity as well as their property as they re-domicile.

3.9. Some respondents noted that re-domiciliation would facilitate the migration of a company's tax residency, which one respondent described as "the most common reason companies may wish to re-domicile to the UK". Currently, there are perceived obstacles for companies wanting to migrate their tax residency to the UK.

3.10. According to several respondents, the complexities and costs associated with existing routes to relocate a company to the UK are likely to dissuade businesses from doing so. As a result, many respondents believed introducing a re-domiciliation regime could increase the attractiveness of the UK as a business location. However, one respondent noted that they were not convinced a re-domiciliation regime would make a big difference in attracting overseas companies, noting that the most important factor to consider is the wider business environment and making the UK a more attractive place for businesses.

Question 2: From what types of companies, and from which sectors, is there likely to be the most demand for re-domiciliation to the UK, and why?

3.11. While a few themes emerged, there was no overwhelming consensus amongst respondents who commented on this question. A few respondents noted that they were unsure about what types of companies and sectors would have demand for re-domiciliation to the UK. However, many others provided specific answers, among which were some repeat examples.

3.12. Holding companies were most often identified, with some respondents referring to Luxembourg holding companies, as well as investment funds and group companies. Other company types mentioned were venture companies or acquisition vehicles and limited liability companies.

3.13. While one respondent stated that the appeal for re-domiciliation would be industry agnostic, others pointed out that there would be demand for re-domiciliation especially in the sectors of real estate, natural resources, financial services as well as in sectors which have experienced changes following the UK's exit from the EU.

3.14. One respondent noted that re-domiciliation would be easier for companies with limited physical presence and management activities which can then be re-established in the UK. This respondent also highlighted that companies which plan to continue to have active business in their current jurisdiction are less likely to re-domicile to the UK.

3.15. Some respondents also referred to specific objectives that would make a company want to re-domicile to the UK. These included gaining access to the London Stock Exchange and other UK-based sources of investment, being in a better position to secure UK Government contracts or UK subsidies, aligning their domicile with their tax residency (if they are already tax resident in the UK), aligning their domicile with the place that has most commercial significance to them (if that happens to be the UK), and achieving regulatory consolidation.

3.16. Respondents indicated that companies might also want to re-domicile to the UK in order to move away from jurisdictions that are currently experiencing political upheaval and threats to the stability of their legal systems.

Question 3: What level of demand might the UK see from firms seeking to re-domicile?

3.17. The majority of respondents felt there too many factors at play to estimate the level of demand. Many believed that initial demand will be relatively low until companies see the benefits compared to existing methods. One respondent felt it was extremely difficult to quantify as choice will depend on different factors specific to each organisation. Respondents reported there was little evidence of how many companies have used re-domiciliation in other regimes.

3.18. One respondent thought there was a strong demand for a re-domiciliation regime as other countries are more advanced in establishing re-domiciliation regimes. Others anticipated a tangible demand because the lack of a regime is a competitive disadvantage.

Question 4: From what jurisdictions would companies be most likely to re-domicile to the UK?

3.19. A respondent referred to Luxembourg and other EU Member States affected by the Anti-Tax Avoidance Directive. Demand was also expected from offshore financial centres (especially the Cayman Islands and British Virgin Islands) where existing tax advantages are being eroded. Respondents frequently spoke in broad terms, but some noted that Dutch incorporated companies that are already UK tax resident are likely to feature. Companies from English speaking Commonwealth States with a common law system are likely to be attracted by a UK regime. Similarly, companies with a physical presence in the UK and high operating costs in their current jurisdiction were also thought to find such a regime attractive.

3.20. Crown Dependencies and Overseas Territories (CDOTs) were also identified as a potential source of demand, with Bermuda and Nevis and St Kitts specifically mentioned by one respondent. The Channel Islands and Isle of Man featured as did jurisdictions with strong UK ties e.g. Ireland, Cyprus, and Malta. One respondent thought that a UK regime might be popular with holding companies in Asia. However, there was no overriding single jurisdiction that stood out with stakeholders who responded to this question.

Question 5: Are there aspects to other jurisdictions' re-domiciliation regimes which the UK should seek to replicate or avoid?

3.21. One respondent recommended Luxembourg as a model regime due to its system of adapting foreign entities to domestic law. Jersey's migration rules were thought to be informative, workable but more significantly provide protection against companies that seek to evade creditors or other obligations. The need for simplicity was emphasised by respondents who cited Singapore, Malta and Gibraltar as exemplars.

3.22. Whilst Singapore was mentioned as a positive example, another respondent felt the Singaporean approach to good faith should not be copied as it relied too heavily on voluntary disclosures. The Isle of Man's re-domiciliation regime was also mentioned as a potential model for a UK regime but it was generally felt that any new regime should avoid rules that are too prescriptive and pursue reciprocity where possible.

Question 6: What evidence is there that supports the economic benefits of countries permitting re-domiciliation?

3.23. Respondents were uncertain about the potential economic benefits arising from re-domiciliation. They commented that evidence of such benefits was difficult to obtain and difficult to quantify. However, one respondent noted that re-domiciliation could be a valuable contributing factor to improving the UK's competitiveness. Another respondent suggested that increased investment from foreign firms could have unintended consequences. They noted that global multinationals relocating their headquarters to the UK might not create more jobs and the presence of global headquarters could distort our understanding of the UK economy.

Question 7: Are there other administrative, financial, or other barriers that would still prevent a company re-domiciling to the UK even with a re-domiciliation regime being established?

3.24. Respondents alighted on several areas affecting a company's decision to re-domicile. Barriers created by the outgoing jurisdiction were identified, for example an outgoing jurisdiction's exit taxes might deter a company from pursuing re-domiciliation. Closely aligned to this point was the lack of incentives to re-domicile, and the conclusion that a regime alone would be insufficient to attract companies. Moreover, an outgoing jurisdiction may not allow re-domiciliation and immediately prevent further consideration of the matter.

3.25. A UK regime itself (whilst robust and proportionate) may also present a barrier to companies. Existing business regulation and governance sets a relatively high bar for incoming companies. A UK re-domiciliation regime may require a standard of financial reporting that is unfamiliar to overseas companies. This highlighted differences in respective company law regimes, and how overseas entities might see the transition as a barrier to re-domiciliation.

3.26. Respondents strongly believed the UK re-domiciliation regime should be clear and simple to navigate. Unnecessary complexity would represent a significant barrier and disincentive. Costs should be closely controlled and mindful of other regimes offering more competitive options for companies. UK stamp duty, VAT and tax burden were also seen as potential areas that companies would consider in making a decision whether to re-domicile.

Question 8: What should the Government consider to ensure firms in regulated industries can re-domicile to the UK?

3.27. Respondents broadly agreed that the process for regulated companies should work in conjunction with a re-domiciliation regime. Clear consent and timing of re-domiciliation was considered vital, especially providing clarity on the point at which UK regulators assumed supervision of the company.

3.28. Consistency was required in the application of regulatory regimes, both to UK and incoming companies. Similarly, complimentary arrangements should be established between domestic and overseas regulators, with a clear procedure to maintain compliance with UK standards in regulated industries. An approved list of comparable regulatory regimes would help maintain the process.

3.29. Other respondents felt regulators should be part of the application process to ensure a smooth transition. For example, a condition in the application requiring approval from the regulator would ensure compliance at a key stage of the process. In any event, regulators need clear guidance on how the transition and supervision of companies will work in practice.

Question 9: Do you have any wider concerns about a re-domiciliation regime that the Government should be aware of?

3.30. Respondents highlighted a variety of concerns arising from re-domiciliation. One drew attention to the differences in company law between the UK and outgoing jurisdictions. There are variations in terminology especially where share capital and profit is concerned, and accounting standards can vary widely which will be an issue for incoming companies.

3.31. The impact on existing contracts regulated by the outgoing jurisdictions was also seen as problematic. Respondents questioned the position if re-domiciled companies become subject to UK insolvency rules with creditors based overseas. Others felt there was a risk that companies could re-domicile to avoid scrutiny and disrupt ongoing investigations. A regime could also be used to avoid paying creditors in other jurisdictions. Respondents highlighted the need to build in protections against economic crime in any regime.

3.32. There was broad agreement among respondents that the new regime should be robust to protect the integrity of UK company law, but also proportionate to ensure companies are not deterred from using the facility. Respondents also pointed out that a minimum one-year trading requirement was overly generous and did not represent a strong track record and could be open to abuse. It was also felt that limited historical information available on a re-domiciled company could affect its credit rating and ability to do business.

3.33. In the case of an outward regime, respondents stressed that artificial barriers should not be created to prevent companies from leaving the UK jurisdiction. A fair and straight forward regime should apply both ways to ensure it remains attractive to business. However, a key concern for many respondents was the concept of parity between UK companies and incoming entities. Equal treatment was considered essential, particularly in the tax treatment of companies migrating through existing mechanisms.

Chapter 3 – Entry criteria for re-domiciling companies

Question 10: The Government’s view is that an economic substance test is not necessary for re-domiciliation. Do you agree?

3.34. The overwhelming majority of respondents (79%) agreed that an economic substance test was not necessary. It was seen as contrary to consistency and fairness, particularly where there is no requirement for UK companies to satisfy such a test. Other respondents said that companies who can most easily re-domicile are unlikely to have economic substance in their own jurisdiction. Such tests were generally seen as unnecessary and might even act as a deterrent to companies.

3.35. However, some respondents sounded a note of caution and pointed out that re-domiciled companies may only exist on paper, so of limited benefit to the UK economy. They questioned whether some companies should be encouraged to re-domicile if they don't generate employment or economic activity. Others believed that an economic substance test could prevent tax and other financial abuse and reduce administrative burden from the re-domiciling of small companies with limited economic value.

Question 11: Are there factors that would influence your choice of place of incorporation within the UK?

3.36. Several respondents referred to head office location and proximity to supply chains and customer base. The business centre of gravity and physical location of the company headquarters was seen as a major consideration.

3.37. The position on intra-UK movement was mentioned by several respondents. Some agreed that companies would find it restrictive if they weren't able to move between nations once re-domiciled. However, this view is based more on legal symmetry, and many noted it wouldn't be sufficient to influence a company's decision on their place of incorporation. Another respondent added that companies could be influenced by regional government incentives.

3.38. Of respondents who answered this question, a minority of respondents favoured intra-UK re-domiciliation.

Question 12: Will the existing arrangements that do not allow companies to move between certain UK nations have a bearing on overseas companies' decisions whether to re-domicile in the UK?

3.39. Of the 18 respondents who replied to this question, 8 agreed existing arrangements would not have a bearing on their decision to re-domicile to the UK.

3.40. However, some noted inconsistency if the rules did not allow UK companies to re-domicile. They saw no reason to maintain the restriction and felt that overseas companies might circumvent the rule by transferring out and then back to an alternative UK jurisdiction.

Question 13: Do you have any views on how the regime should best ensure departing country conditions are met? Is there anything else we should consider?

3.41. Respondents expressed numerous views on how departing country conditions should be satisfied in the regime. Generally, respondents were positive about the eligibility criteria set out in the consultation document. They found the approach taken to be fair and sensible but stressed that UK requirements should align with international best practices. There should be adequate checks and balances with a clear evidence base to support the case for re-domiciliation.

3.42. They favoured liaison with competent authorities in the outgoing jurisdiction. Acceptable forms should be negotiated, and consideration given to development of a 'whitelist' featuring jurisdictions that have reciprocal arrangements for re-domiciliation.

But many noted it was the company's responsibility to ensure they had met pre-transfer requirements. There was uniform agreement that the competent authority must decide whether conditions for re-domiciliation have been satisfied, who would then give the appropriate authorisation.

3.43. Respondents presented a variety of opinions as to the information required from competent authorities, from simple consent that conditions have been met to a certificate of good conduct and due diligence checks. But ultimately, they felt that explicit authorisation must be received from the competent authority.

Question 14: Do you have views on our proposed approach, which would allow all bodies corporate to re-domicile to the UK, subject to the relevant entry criteria?

3.44. Respondents generally agreed that the approach set out was appropriate and reasonable. There was consensus that the regime should not be limited to collective investment vehicles and should be open to a wide spectrum of overseas companies. One respondent felt the type of body corporate should not have any bearing on a company's ability to re-domicile. Others believed that an overseas entity should be a body corporate that is broadly compatible with a UK company. However, several respondents were unclear as to how a test of comparability might be applied.

3.45. There was strong support among respondents to allow overseas companies a choice in their new form of body corporate, provided it meets with UK requirements. The content of such requirements drew a variety of opinions. One respondent considered whether this requirement should focus on the core characteristics of a company, and test whether the entity has legal personality, the ability to own assets and enter into contracts. However, some found it difficult to judge whether an overseas company is similar to a private limited company or PLC. It was suggested that an elective regime could provide maximum flexibility.

3.46. Some respondents noted that it would be helpful to agree which legal entities can be transferred into which UK company form, and also identify where there could be overlaps. Working definitions were seen a key feature; for example, what it means to be an LLP could very different according to the jurisdiction. A pre-agreed whitelist with associated vehicle types was also identified as an aid to interpretation. It was generally felt the regime should open to all bodies corporate provided the form adopted is replicable under UK law.

Question 15: Should we preclude directors who do not have a good standing (i.e. pending court cases) from re-domiciling to the UK? If so, is confirmation from the departing jurisdiction's competent authority the best way of assessing this?

3.47. Respondents generally supported the need to ensure corporate governance and good standing requirements are maintained. Behaviour that is incompatible with the duties of director should be taken into account, but a distinction should be drawn between the director's conduct and that of the company. Others believed there were complexities to consider particularly the concept of parity between UK and imported companies. It was thought essential that re-domiciling company directors meet the same standard as UK based directors. One respondent stressed credibility in the UK's regulatory regime and robust corporate governance was seen as key to this objective.

3.48. However, several respondents were unsure whether overseas authorities would be able to provide a certificate of good standing on the basis that no proceedings have taken place against directors. They questioned whether it was reasonable to expect a competent authority to provide this type of information. There is no equivalent concept of good standing in some company law regimes and would be a complicating factor. Respondents expected a standard UK test to be applied to directors of overseas companies. However, individuals disqualified in another country should not necessarily bar them from acting as director in the UK as laws may be different in the outgoing jurisdiction.

3.49. A common observation was that re-domiciliation should be analogous to a new establishment in the UK. If directors are eligible to act as such in the UK, then this should be sufficient. Others were very definite in what information was required. Sufficient evidence should be obtained from outgoing authorities, and where departing jurisdictions are considered high-risk, it should automatically trigger enhanced due diligence. Directors should sign attestations and a false declaration should allow cancellation of proceedings or trigger investigations by UK authorities.

3.50. Some respondents differed as UK directors are not required to satisfy a good standing test, so why would one apply to re-domiciled companies? The competent authority's confirmation of good standing from the outgoing jurisdiction should be a requirement. Directors of the entity could also provide a sworn statement stating there are no grounds for disqualification or evidence of criminal conduct in the laws of the outgoing jurisdiction or in the UK. Another respondent thought such attestation should incur the penalty of removal if it proved inaccurate.

Question 16: Do you have any views on our good faith criteria?

3.51. Whilst respondents agreed on the principles underpinning the good faith criteria, there was a good deal of uncertainty as to its practical application. Some believed the good faith criteria may not be sufficient, greater certainty could be provided with the certified translation of documents and evidence the company is re-domiciling in the public interest. Many were not clear how the criteria would work in practice and how to objectively assess it. Respondents suggested it might be used as a reserved power; if the competent authority believes an application is made in bad faith it can refuse an application, but it would not need to actively determine whether an application is being made in good faith.

3.52. Other respondents found it difficult to foresee how good faith can be determined. They suggested the application of a pre-approval screening programme similar to that introduced under the National Security and Investment Act 2021. Another respondent added that more detail is required on how a company would demonstrate and guarantee good faith particularly for creditors. There was felt to be an absence of clear and objective evidence. Some noted it would be helpful to set out the assessment process and timelines to be confirmed for assessment. Respondents agreed with the need for a residual anti-abuse provision, but wherever possible should be capable of independent and transparent validation in order to provide legal and commercial certainty.

3.53. There was clear focus on how discretion would be exercised by HM Government. This will require further explanation particularly as there is a careful balance of cost against certainty in protection of the UK economy. The consultation paper gives no indication of how good faith would be measured or defined, as such, respondents were unable to form any detailed views and felt more thought was required.

Question 17: Should it be necessary for firms to have completed a reporting period to re-domicile? What other reporting information should be provided to the Registrar, or should it be able to request and is the audited accounts requirement sufficient and proportionate?

3.54. There was a mixed reaction to the proposal that companies complete a reporting period before re-domiciliation. Some respondents believed one set of accounts was an insufficient demonstration of a company's track record. They suggested two- and three-years' worth of accounts before a company could re-domicile. One respondent favoured five years' worth of accounts in a comparable UK format. For others, it needn't be a hard and fast rule – jurisdictions will have differing accounting standards, so may be appropriate to have applicant companies prepare accounts compliant with UK standards.

3.55. Whilst a one-year reporting period was supported others felt this could be a deterrent. It may also have the effect of excluding companies who wish to relocate as part of a corporate reorganisation in the early stages of activity. They noted that an implicit time delay may limit the attractiveness of the UK as a potential location. It may also have the effect of stifling innovation and start-up companies who are yet to complete their first accounting period. If there were alternatives available to prove legitimate activity it would offer greater flexibility.

3.56. In terms of other reporting information to be provided, respondents referred to common areas of interest. In addition to final accounts, shareholder movements, statements of capital, charges, confirmation statements, annual returns, incorporation, and directors appointed were all identified.

3.57. Others expressed concern that a company might re-domicile with limited financial information available to interested parties. They may have a significant trading history that would not necessarily be revealed by one year's worth of accounts. Additional information could be recorded including a declaration that the entity was originally established overseas, original name and registration number. This would allow more comprehensive checks to be completed by those dealing with the company.

Question 18: Are the proposed solvency requirements sufficient and proportionate? If not, what would you recommend?

3.58. The majority of respondents broadly agreed with the proposed solvency requirements. Of respondents who answered this question, a minority indicated that they were unsure regarding the proposed requirements, with some of these respondents indicating that they felt creditor protection should be a matter for the outgoing jurisdiction, and some others suggesting that a solvency declaration by directors alone would be sufficient.

3.59. A smaller minority of respondents indicated they were opposed to the proposed solvency requirements, with one respondent indicating that they are onerous, and a another suggesting that the UK should allow insolvent companies to re-domicile to take advantage of the UK's restructuring regime and thereby provide a potential benefit to professional services firms.

Question 19: The Government is not minded to prescribe a minimum turnover/size of companies that can re-domicile. Do you agree?

3.60. The majority of correspondents (83%) agreed that the UK should not prescribe a minimum turnover/size of companies that can re-domicile. Respondents broadly highlighted that they anticipated holding companies would be interested in re-domiciling to the UK, and that the lack of a turnover requirement would make that process easier.

3.61. Some respondents indicated that there should not be any turnover or size requirements to re-domicile as there would not be such requirements for the formation of a new company. Of respondents who answered this question, a minority did not agree and suggested avoiding the re-domiciliation of very small companies as they felt they were unlikely to bring any financial benefit to the UK and indicated that holding companies could be measured by the overall group size/turnover.

Question 20: Are there any other entry criteria we should consider?

3.62. Overall, 17 respondents replied to this question. One respondent suggested there needed to be greater consideration regarding the potential impacts upon employees in the criteria. Another respondent suggested requiring the filing of historic financial information for the three previous years conforming to the requirements of the UK register as part of the process.

3.63. A further respondent suggested additional safeguards with respect to companies with their corporate seat in 'blacklisted' jurisdictions. One respondent suggested obtaining confirmation that there are no arrangements in place involving the company that would constitute a breach of applicable law in the UK. A couple of respondents mentioned that they would like greater clarity around proposals for a report on the wider impact criteria. Another suggested that the Government should consider the development of the regime in the context of the National Security and Investment Act 2021.

Question 21: What measures ought to be adopted to ensure re-domiciliation is not used to harm creditors in other jurisdictions?

3.64. Respondents expressed a range of views but there was a focus on creditors being properly sighted when re-domiciliation takes place. For example, respondents believed UK rules should contain a formal obligation to inform creditors listed in the accounts. It was also felt that creditors from outgoing jurisdictions should be provided with adequate protection and safeguards.

3.65. Generally, respondents agreed that the eligibility criteria outlined in the consultation document would be sufficient. One respondent believed the written approval of creditors over a certain threshold would be preferable accompanied by the appropriate declaration of directors. Another thought creditors should still be able to bring action against the company in the local jurisdiction. This would operate for a specified period after re-domiciliation to ensure creditors rights are not defeated.

3.66. The majority of respondents believed creditor protection was a matter for the outgoing jurisdiction to determine. However, in order to protect the UK's reputation there should be adequate creditor protection in the outgoing jurisdiction which could contribute to a whitelist assessment. In practice a typical re-domiciliation scheme might require that notice be sent to all creditors of the company (unless creditors have already consented in writing). Following publication in a local gazette the re-domiciliation could proceed after a specified period has elapsed. Further study of overseas jurisdictions may help on this point.

Question 22: Are there further safeguards required to prevent exploitation of UK rules, which may be more flexible and business friendly than some foreign regimes?

3.67. Respondents expressed a range of views that has been covered elsewhere in this summary. However, they expected companies that have re-domiciled to UK to be precluded from leaving for a period of three years. Some suggested that the proposal for companies to provide a report on the wider impact of re-domiciliation should be subject to penalties, if it is found that rules are exploited without proper reference to the consequences.

3.68. An equivalence assessment was suggested allied to local rules which could ensure creditors are protected in outgoing jurisdictions. One respondent felt that once an overseas entity has fully re-domiciled it will be UK laws that will apply so overseas regimes will no longer be considered – it is then a matter of assessing the adequacy of UK laws. It was also pointed out there is judicial acceptance of good forum shopping that benefits stakeholders and the UK economy.

Question 23: The Ratings (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill makes provision for the disqualification of directors in companies that are dissolved without becoming insolvent. Is this measure sufficient for UK authorities to investigate directors of companies that have re-domiciled?

3.69. The nature of response was heavily dependent on individual interpretation. According to one respondent, once a company has re-domiciled with continuity of legal personality, they (including directors) will be subject to the jurisdiction of the courts. However, they noted it would be helpful to secure the agreement and co-operation of the competent authority in the outgoing jurisdiction.

3.70. Others alighted on the drafting of legislation. They expect the Ratings (Coronavirus) and Directors Disqualification (Dissolved Companies) Act (known henceforth as the Act) will apply to any entity that has re-domiciled in the UK and subsequently dissolved, so presumed this provision would be adequate. Respondents added that it would need to be addressed in the drafting of legislation and any necessary changes being made to make provision for re-domiciled companies.

3.71. It wasn't entirely clear to some respondents that the purpose of this question was to assess the adequacy of the new powers extended to the Insolvency Service through the Act.

Question 24: Given investigations may be necessary what bilateral arrangements may be required with exporting jurisdictions?

3.72. Several respondents agreed the obligation for dialogue with the outgoing jurisdiction should fall on the entity wanting to re-domicile rather than the relevant UK authority. However, the UK authority should consider whether existing bilateral arrangements are sufficient.

3.73. Others felt a regime should be flexible enough to work seamlessly with other jurisdictions, and as a starting point there should be an agreement to include information sharing. One respondent thought recognition of insolvency officeholders' powers to investigate may need to be established. An inter-governmental agreement with outgoing jurisdictions was also felt be beneficial.

Question 25: Are there any other matters relating to insolvency that would have implications for a UK re-domiciliation regime?

3.74. All respondents (6 out of 40) to this question landed on the investigatory aspects of insolvency. Section 234-237 of the Insolvency Act 1986 provide an insolvency office holder with investigatory powers. These powers in particular section 236 could be amended to provide for extra-territorial effect.

3.75. Antecedent transactions may date back to a time prior to re-domiciliation and would have to be included in the insolvency regime. There are a number of issues to explore in this area.

3.76. In an insolvency event there is an obligation to investigate transactions going back three years. Investigate director's conduct and can result in transactions being rescinded. Enforcement and recovery will be more challenging if the directors of a re-domiciled company are based overseas.

Question 26: Do you agree that existing protections and sanctions against director misconduct provide sufficient protection for the UK's re-domiciliation regime?

3.77. The majority of respondents (77%) agreed that existing protections and sanctions against director misconduct would provide sufficient protection for the UK's re-domiciliation regime. However, one respondent noted that it was 'near impossible' that reliance on the Company Directors Disqualification Act regime would offer sufficient protection for the proposed measures to allow re-domiciliation.

3.78. Another respondent indicated that they were unsure on this question, due to a lack of clarity on whether directors of a re-domiciled company will be subject to disqualification measures in the same way the UK company directors are. The final respondent to take an unsure view noted the importance of enforcement of these measures, which was also mentioned as an issue by one other respondent.

Question 27: Do you have views, including evidence from other jurisdictions, to inform how the Registrar could seek assurance over the standing of the company before approving re-domiciliation, in order to safeguard the UK's business environment?

3.79. Several respondents indicated that they felt that re-domiciliations should be treated in the same way as new company registrations. One respondent noted that future register reform legislation, including new powers for Companies House would need to be introduced prior to re-domiciliation, and noted that evidence from the transferring jurisdiction should be provided as part of the re-domiciliation process with enhanced processes for companies from high-risk jurisdictions.

3.80. While one respondent recommended the use of certificates of good standing, another noted that "good standing" is not a term of art in the UK and the process to be applied by the Registrar would have to be clear and compatible with the current company formation regime in the UK.

Question 28: Do you agree that Companies House should have the ability to refuse an application or petition for the winding up of companies in the circumstances as set out above?

3.81. A large majority of respondents (89%) agreed that Companies House should have the ability to refuse an application or petition for the winding up of companies in relevant circumstances, with no respondents suggesting that they should not have such powers, and two respondents giving responses in the unsure category. Of the unsure respondents, one noted that they felt measures should be consistent with wider register reform measures which discounted the power to wind up companies. The second unsure respondent indicated that they felt documents should be taken at face value and there should be a very high bar to wind up companies.

Chapter 4 – Outward re-domiciliation

Question 29: Would you be in favour of the UK introducing an outward re-domiciliation regime?

3.82. This was the most answered question in the consultation exercise, with 30 out of 40 stakeholders responding. Internal analysis of responses suggests respondents were broadly supportive of the UK introducing an outward re-domiciliation regime. This was primarily as they took the view that permitting outward re-domiciliation would increase demand for inward re-domiciliation. Some respondents also felt that not permitting outward re-domiciliation could send a negative signal to businesses regarding the competitiveness of the UK economy. A couple of respondents expressed the view that outward re-domiciliation is necessary as other jurisdictions may not allow inward re-domiciliation to the UK unless we reciprocate. One respondent indicated that they were in favour of an outward regime to enable intra-UK re-domiciliation.

3.83. Four respondents were either broadly or overall unsupportive. One indicated that outward would not be in the UK's best interest without wider issues such as financial passporting being resolved. Another flagged the impact of outward re-domiciliation in relation to the Pension Protection Fund (PPF). The main concern was that enforcement action against a UK domiciled country is likely to be easier and less costly than it would be against a company that is not UK domiciled as the PPF is funded by recoveries.

3.84. There were several neither supportive nor unsupportive respondents, one of whom noted that the UK may potentially be inhibited in future policymaking by the presence of an outward corporate re-domiciliation regime. Several respondents indicated that they thought an outward regime would not increase demand for re-domiciliation to the UK.

Question 30: What do you see as the economic or other benefits to the UK of allowing outward re-domiciliation?

3.85. The majority of respondents did not provide an answer to this question, and the few who did answer expressed the view that they did not have any information on the potential economic or other benefits of the UK allowing outward re-domiciliation. Some respondents indicated that allowing outward re-domiciliation would make the UK seem more competitive and open as a jurisdiction and increase demand for inward re-domiciliation. One respondent suggested that an economic benefit could be derived through increased fees for outward re-domiciliation compared to the fees for inward re-domiciliation.

3.86. A couple of respondents indicated that there were no direct economic benefits of allowing outward re-domiciliation and one respondent expressed the view that it may cause economic losses to the UK.

Question 31: What is your view of the economic or other risks to the UK of allowing outward re-domiciliation?

3.87. A number of respondents believed large companies could leave the UK and impact the tax base. There was also potential for the EU to use an outward scheme that encouraged companies to leave the UK. They identified the risk that companies could re-domicile out of the UK as a method of moving their place of tax residency. However, one respondent noted that an outward regime by itself would not be sufficient reason for a company to leave. Other respondents concurred and saw no significant risks for the UK of an outward regime.

3.88. Respondents drew attention to the impact on UK economic interests and standing in the global market. The practical effect of outgoing companies failing to settle their liabilities was also highlighted. Others agreed and were conscious of creditors being properly protected. Several respondents had conducted no analysis in this area and were unable to quantify the risk. It was felt the benefits of inward re-domiciliation outweighed the risks of outward re-domiciliation.

Question 32: In your view, is there a demand for outward re-domiciliation from current UK-incorporated firms? If so, which jurisdictions would they likely seek to re-domicile to, and why?

3.89. The overwhelming majority of respondents did not provide a response to this question. Among the 11 respondents who did provide a response, 5 expressed that there was not a demand for outward re-domiciliation from existing UK companies, and 6 indicated that there was demand from existing UK companies.

Question 33: What types of companies, and in what sectors, is there likely to be the most demand for re-domiciliation out of the UK, and why?

3.90. Along with question 34, this was the least answered question in the consultation exercise, with only 6 out of 40 stakeholders responding. Among the respondents who provided an answer, three suggested that companies may wish to re-domicile to the EU/EEA, of these, one respondent indicated that this was due to companies wishing to have an EU presence, another answered that it was due to unnamed commercial and operational reasons and the third suggested that companies may wish to benefit from EEA regulatory schemes. One respondent highlighted Ireland and Luxembourg as destinations.

3.91. One respondent highlighted that the US and particularly Delaware would be of interest as a potential jurisdiction for companies with a listing in the US. Several respondents mentioned that companies may wish to re-domicile out of the UK to simplify corporate structures without naming the jurisdictions which would be attractive to such companies.

Question 34: Are there other administrative, financial, or other barriers that would still prevent a company re-domiciling out of the UK even with an outward re-domiciliation regime being established?

3.92. Along with question 33, this was the least answered question in the consultation exercise, with only 6 out of 40 stakeholders responding. Several respondents noted that barriers would depend upon which country a company wishes to re-domicile to and whether that country allows re-domiciling, noting that many countries do not allow re-domiciliation.

3.93. One respondent outlined their view that companies would be required to engage in a due diligence exercise to determine the impact of the re-domiciliation on members' rights, creditors, regulatory/licencing arrangements, employees, tax authorities and contractual counterparties among other factors. A couple of respondents highlighted that potential cost or complexity of the process may present barriers to outward re-domiciliation.

Question 35: What is your view on these potential conditions for outward re-domiciliation? Are there other conditions you think that the Government should require to minimise the economic risks to the UK?

3.94. Internal analysis of responses suggests respondents were generally supportive, but some felt unable to comment without details of the inward regime. The suggested conditions seemed reasonable and not too onerous for business. Respondents believed all tax liabilities should be settled, and the considerable complexity of planning an exit could be simplified by an outward regime. It was deemed logical that conditions applied to the inward regime would also apply to the outward equivalent. Shareholder approval was considered essential and threshold consistent with major commercial decisions (e.g. 75%).

Question 36: If the Government were to place a time limit on being domiciled outside of the UK before being allowed to return what would be the positives and negatives in your view? If appropriate to set a time limit, how long should this be for?

3.95. Respondents expressed numerous views on timescales and possibility of the regime operating as a 'revolving door' for migrating companies. It was felt the Government should not make it difficult for viable, well-run firms to locate in the UK. They expected a time limit to be imposed on companies re-domiciling in and out – this would ensure that companies do not continually move jurisdictions.

3.96. However one respondent believed there should be no time limit on being domiciled outside the UK and flexibility would be preferable. Another respondent commented the decision to re-domicile will always be strategic and complex but suggested that re-entry should only be allowed after completion of at least one audit.

Chapter 5 – Tax

Company Residency

For a company which re-domiciles to the UK, the Government is considering whether legislation should ensure that, subject to any double tax agreement, the company will:

- Be treated as UK resident by virtue of the re-domiciliation or
- Only be treated as UK resident if the central management and control is in the UK.

For a company which re-domiciles out of the UK, the Government is considering whether legislation should be introduced which ensures that, subject to CMC being outside the UK, it will:

- Cease to be UK resident by virtue of the re-domiciliation or

- Continue to be treated as UK resident unless and until it is treated as non-UK resident by virtue of any double tax agreement.

Question 37: Is clarification required as to whether a company will become or cease to be UK resident following a re-domiciliation to or from the UK?

3.97. Many respondents suggested that clarification would be required or helpful to provide certainty. One respondent suggests that clarification should be in legislation, rather than guidance.

3.98. Some respondents indicated that in the absence of any changes to tax law a company that re-domiciles to the UK would be treated as UK resident under section 14 Corporation Tax Act (CTA) 2009, subject to being treated as non-UK resident under a Double Taxation Agreement (DTA).

3.99. One respondent suggested it would be useful if any legislation concerning re-domiciliation clarifies whether the place of incorporation is deemed to have changed for all purposes to remove any doubt as to whether there is a distinction between the current and original place of incorporation. Assuming that re-domiciliation involves a change in place of incorporation for all purposes, they didn't see a need for additional guidance as current laws around corporate tax residence should already be sufficient.

3.100. One respondent suggested that the current provisions regarding company residence are generally fact-specific and require exercise of judgement. Therefore, for the sake of clarity and certainty in tax treatment, they suggested that a clearly set out test will be required, perhaps akin to the Statutory Residence Test which applies to individuals.

3.101. One respondent suggested that businesses should be provided with certainty in a time-efficient manner through a formal process, which should be provided prospectively based on agreed assumptions and not on a retrospective basis after a company has moved.

3.102. Two respondents suggested that the regime should seek to provide as much certainty as possible concerning the point at time at which the change in the place of incorporation takes place to ensure that there is no point in time when the company is considered to be incorporated in two places or nowhere.

Question 38: Which of the above options would be preferable and why?

3.103. Most respondents indicated it would be preferable, subject to any DTA, to treat a company which re-domiciles to the UK as UK resident by virtue of the re-domiciliation rather than only being treated as UK resident if the central management and control (CMC) is in the UK. The main reason given was that this would ensure parity of treatment between companies originally incorporated in the UK and those that re-domiciled to the UK. Some respondents also suggested this would be simpler, provide more certainty (including with regards to the timing of when a company would become UK resident) and would reduce the risk of companies becoming a resident of nowhere.

3.104. One respondent indicated that a company re-domiciling to the UK should only be treated as UK resident if CMC is in the UK. This would ensure that such a company's residence status would continue to be assessed for UK tax purposes in the same way as previously. They suggested that companies may wish to re-domicile to the UK for a variety of reasons and imposing UK residence automatically may operate as a disincentive for some.

3.105. Most respondents indicated it would be preferable, subject to CMC being outside the UK, to treat a company which re-domiciles out of the UK as ceasing to be UK resident by virtue of the re-domiciliation rather than continuing to be UK resident unless and until it is treated as non-UK resident by virtue of any DTA.

3.106. Some respondents suggested this would ensure parity between companies that were originally incorporated outside the UK and those that have re-domiciled out of the UK. Some also suggested it would be simpler and would avoid companies having to rely on the provisions of a DTA, which they believe can increase uncertainty, costs and delays in reaching an outcome.

3.107. One respondent noted that a UK incorporated company cannot currently migrate its tax residence to a jurisdiction with which the UK does not have a DTA. They believe introducing an outward re-domiciliation would make this possible. They consider this to be an inextricable consequence of introducing an outward re-domiciliation regime as it would be difficult to see how the UK could continue to regard as UK resident a company that was neither incorporated nor CMC in the UK and which might not have any other ties to the UK.

3.108. One respondent suggested that whilst allowing companies to cease being UK resident by virtue of a re-domiciliation out of the UK may give rise to concerns about potential loss of corporation tax base, they consider the best way to counter this risk is by enhancing the UK's global competitiveness through various measures that include improvements to the UK's tax system. They could also envisage a rule preventing a re-domiciliation back to the UK before a number of years have passed to prevent companies re-domiciling out of the UK at will (and ceasing to be UK resident) for tax avoidance purposes. Another respondent noted that there are existing checks and controls to capture tax when a company ceases to be UK resident.

3.109. One respondent suggested that a company re-domiciling out of the UK should continue to be treated as UK resident unless and until it is treated as non-UK resident by virtue of any DTA, as this would provide more flexibility than a blanket rule.

Question 39: Are there are any other options which should be considered?

3.110. One respondent suggested that where a company re-domiciles to the UK, it should be treated as UK resident only if CMC also moves to the UK or the jurisdiction from which it is re-domiciling from does not use CMC as a test of residence.

3.111. One respondent suggested that if legislation was introduced to ensure that a company which re-domiciles to the UK will, subject to any DTA, only be treated as UK resident if CMC was in the UK, this could be modified such that a company would also become UK resident where the company would otherwise be resident nowhere (for example because CMC remained in the territory which it is re-domiciling from but that jurisdiction does not use CMC as a test of residence).

3.112. One respondent suggested that full flexibility could be given by allowing companies which re-domicile to or from the UK optionality (by election) over which test to apply, although they noted this would increase complexity.

Loss Importation

Loss importation involves non-UK resident companies becoming UK resident in order to set foreign losses against the UK profits of other group companies under the UK's group relief provisions.

This is a risk that already exists but could be increased if a re-domiciliation regime makes it easier to switch residence to the UK.

There are a number of provisions which may already prevent such practice. However, some of these depend on the loss being attributable to a trade carried on wholly abroad, the amount being deductible or allowable against the non-UK profits of another person for the purposes of non-UK tax or the company being dual resident, and such provisions may not be applicable in all cases.

Question 40: Do you have any views on how material this risk is, and what additional protections might be introduced to prevent such loss importation?

3.113. Although some respondents noted that allowing companies to re-domicile to the UK may make it easier to for those companies to become UK resident and import foreign losses, the general view was that this is not a new risk as non-UK incorporated companies can already become UK resident by moving CMC to the UK, existing protections should be sufficient and that a re-domiciliation regime should not materially increase the risk. Some respondents indicated that no different rules should apply to companies which re-domicile to the UK and those which become UK resident by moving CMC to the UK.

3.114. Two respondents indicated that clarification may be required to ensure that existing provisions relating to loss importation apply to a company that re-domiciles to the UK. Another suggested consideration could be given to ring-fencing losses where a company is dual resident.

3.115. One respondent recognised that existing protections may not apply in all cases and that they would be happy to comment on specific proposals directed at areas where material risk had been identified and where existing provisions were not sufficient. Two others suggested that before adding targeted avoidance rules, gaps they are intended to address should be identified.

Capital gains and intangible asset base cost on inward re-domiciliation

When companies migrate their residence to the UK, assets that are brought into the UK corporation tax net are brought in at their market value if the migration is from an EU country.

The Government is considering whether those rules should be expanded to migrations of companies from non-EU jurisdictions.

That would be relevant to migration of residence resulting from a re-domiciliation but could also apply to migrations achieved under routes already available under UK law e.g., a change in the central management and control of a company.

Question 41: Do you have any views on this?

3.116. All respondents were consistent in their view that there should be no difference in treatment between an outward and inward re-domiciliation for capital gains and the intangible asset base cost for companies. The territorial approach suggested of an uplift in base cost when a company re-domiciles to the UK would only tax the gain whilst the company is UK domiciled which is seen as fair, but only in the instance there was an exit charge when the company re-domiciled out of the other jurisdiction.

3.117. It is acknowledged that establishing the base cost of assets that become taxable in the UK is complex and there are a number of different approaches that can be taken. Respondents were all of the view that market value should be utilised for both intangible and tangible assets. This was on the basis of the existing tax treatment under s184J Taxation of Chargeable Gains Act (TCGA) 1992, the EU Exit Tax rules for chargeable assets and s863A CTA 2009 for intangible fixed assets. These provisions use market value when the company is transferring to the UK.

3.118. The re-domiciliation regime's approach could be modelled on the re-basing rules in Sch 4AA TCGA 1992, where disposals by non-residents of UK land use the market value of the asset at the time of the re-domiciliation as the base cost amount. Similarly, the regime could also be based on the treatment of assets that are sold to a different UK group with a blanket rebasing of the asset base cost to the market value of the assets on re-domiciling to the UK regardless of exit charges in the departing jurisdiction.

3.119. A further comparison was with the existing calculation of the base cost of assets brought through migration to the UK where no EU Exit Tax is imposed by the exporting state. For capital gains this is the allowable cost to the company in accordance with s38 TCGA 1992, and for intangible fixed assets is determined as the accounting value as per s863 CTA 2009. This contrasts with a UK resident company that acquires an asset from a related party which is deemed to be at market value for capital gains purposes under s17 TCGA 1992 and for intangible fixed assets as the arms-length price under Part 4 of TIOPA 2010, or the market value, if higher, in accordance with s846(1A) - (1B) CTA 2009.

3.120. Respondents suggested that a particular drawback from using a market value approach for intangible assets is that it moves away from the accounting basis of the regime and introduces more tax adjustments making it more complex. This would therefore require companies to engage professional services which would add cost and increases the likelihood of mistakes. Whilst original cost and accounting value, the default position, are matters of fact. The uncertainty of valuing internally generated goodwill was also noted if the market value approach is introduced.

3.121. For assets within the charge to capital gains, it was suggested that re-domiciling companies could have the option to make an election to use the historical base cost instead, but any loss on a disposal would then not be an allowable loss for capital gains purposes.

3.122. It was recognised assets of non-UK companies already within the UK CT charge, such as interests in UK land, should not be subject to rebasing when re-domiciling. This approach is fair and would make the UK re-domiciliation regime more attractive. Alternatively, an election could be introduced within the regime to exclude such assets for both inward and outward re-domiciliation.

3.123. Respondents' main concern was if treatment between jurisdictions is not symmetrical it will make the UK regime unattractive, creating mismatches and potentially double taxation. To ensure symmetry a non-EU exit charge for both re-domiciliation under the new regime and also UK residence migration under existing routes would be required.

3.124. Finally, it was raised that consideration should be given to the asset holding company regime and the tax consequences of re-domiciling a qualified asset holding company. There should be clarification as to their treatment and the distinctions between other companies especially in the context of the proposed reforms.

Personal taxation for the owners of companies

As part of the proposals for re-domiciliation the Government would like to consider the impact on the personal tax liabilities of individuals, including whether any anti-avoidance measures could be needed for a re-domiciliation regime.

Question 42: Do you have any views on the impact of the proposals for a re-domiciliation regime on personal taxation?

3.125. The introduction of a UK re-domiciliation regime will impact the UK tax liabilities of the directors and shareholders of the re-domiciling companies. Respondents indicated that the take up of a UK re-domiciliation regime will therefore be directly linked to whether the regime is seen to be supportive of the personal tax impacts for these individuals. To aid in the attractiveness of an UK re-domiciliation regime, respondents indicated that the personal tax impacts should be made clear in the legislation to ensure certainty.

3.126. When a company re-domiciles to the UK unless the existing UK rules are changed, it is anticipated by respondents that the shares of the company will become UK situs assets for UK capital gains tax and inheritance tax (IHT) purposes upon re-domiciliation.

3.127. A UK re-domiciliation regime is expected to have a limited impact on individuals both resident and domiciled in the UK. Whilst for resident non-UK domiciled individuals a re-domiciliation regime creates issues that need be considered further. Respondents' concerns are predominately in respect of the effect re-domiciliation will have on the situs of company shares and securities. This is because the remittance basis will not be available for gains arising on the disposal of the shares or securities after the company has re-domiciled to the UK. Also, income earned from the shares or securities may become UK source income after re-domiciliation and subject to UK tax, regardless of whether it is remitted. The impact re-domiciliation has on the situs of shares or securities will also have IHT consequences.

3.128. Respondents suggested that specific rules and exemptions should be introduced to prevent any additional liabilities arising for these individuals because of re-domiciliation. It was suggested that if a base cost uplift is introduced on re-domiciliation there should not be a deemed disposal and reacquisition for these individuals for tax purposes.

3.129. Alternatively, if it is decided that on re-domiciliation there is a deemed disposal, respondents suggested that an election should be introduced allowing the company to defer the tax treatment that would otherwise arise under section 3 Taxation of Chargeable Gains Act 1992 until the asset is actually disposed of and it should be ensured that gains are charged in the correct jurisdiction.

3.130. Some respondents indicated that the transfer of assets abroad rules (Chapter 2 of Part 13 to Income Tax Act 2007) and their interaction with such a UK re-domiciliation regime should also be considered to prevent any unintended consequences. Whilst some other respondents were of the view the transfer of assets abroad provisions should cease to apply to companies when re-domiciling to the UK if the company is no longer resident abroad.

3.131. Company re-domiciliation could also mean that a company's shares and securities are UK assets for IHT purposes. Respondents indicated that this will be unattractive to shareholders, as value created outside the UK would be charged to IHT unless the company is not held directly by the shareholder. As migration out of the UK for IHT takes effect after a set period of non-UK residence, respondents suggested that similar treatment could also be introduced as part of the re-domiciliation regime.

3.132. Respondents recognised that the overall tax impact on individuals is also dependent on the other jurisdiction's tax rules.

Stamp Taxes on Shares and Securities (STS)

The Government is considering the implications of a re-domiciliation regime for STS, including whether any anti-avoidance measures could be needed for any outward re-domiciliation regime.

Question 43: Do you have any views on the impact of the proposals for a re-domiciliation regime on STS?

3.133. Respondents agreed that the STS treatment of re-domiciled companies should be clarified in legislation. They thought that consistent STS treatment between originally UK incorporated and re-domiciling companies for both inward and outward movement is the best approach. They therefore expected that inward re-domiciling company shares would be subject to STS once they are UK domiciled.

3.134. Respondents thought that as part of clarifying STS treatment, the definition of chargeable shares and securities may need to be amended to include shares of companies re-domiciling to the UK, and to exclude shares of outward re-domiciling companies. They thought that this would depend on the rules introduced around the registration and de-registration of companies utilising the re-domiciliation regime.

3.135. Despite respondents' expectations that inward re-domiciling companies will be subject to STS, they thought that the current UK stamp taxes on shares and securities may significantly disincentivise companies from re-domiciling to the UK. A comparison was made with the exemption for companies from SDRT if they are not incorporated in the

UK on the basis the shares are not registered in the UK. Certain companies with a worldwide presence and regular share transactions not currently subject to a SDRT charge may therefore not re-domicile to the UK unless an exemption is introduced.

3.136. Respondents thought that if differing treatment between originally UK incorporated companies and those that re-domicile into the UK is considered, then it should also be considered whether any difference in their treatment is justifiable. Also to be considered is the potential for companies to enter into contrived arrangements in order to benefit from differences in treatment and the anti-avoidance measures that may be required to counter this.

3.137. If outward re-domiciliation is introduced, it is likely that anti-avoidance measures would be necessary. A number of respondents suggested that a time-based charge may be needed. This would help to prevent the avoidance of stamp duty charges. It was mentioned that the length of such a timeframe should be considered carefully so as not to unfairly impact legitimate business motivations. Alternatively, a Targeted Anti Avoidance Rule (TAAR) could be introduced to prevent such behaviour.

3.138. Some respondents thought that where a re-domiciling company's shares are held in a clearance service or depositary receipt system, it should be clarified whether the higher rate of 1.5% stamp duty/SDRT is triggered. It was thought that an exemption from this charge would again be attractive to business.

3.139. It was mentioned that foreign incorporated companies must list in the UK through the depository interest structure, whilst a UK re-domiciliation regime will allow re-domiciling companies to list their shares in the UK directly. This will bring the re-domiciling companies into scope of SDRT, with the potential for a double charge to arise on those securities already in the depositary interest structure unless they can be removed, and a specific exemption could be put in place to avoid a double charge and or allow the securities to be transferred out of the depositary interest structure without charge. It was thought that there is the potential for little to no demand of the depository interest structure in this scenario, which would collapse depository interest arrangements.

3.140. It was stated that collective Investment vehicles (CIV) should not be subject to STS to prevent double tax, which is consistent with the existing rules when a CIV changes residence. Furthermore, it was raised that the STS treatment of shares in investment trust companies, VCTs and UK REITS should be the same for shares in unit trusts and OEICs.

3.141. Some respondents also mentioned that the proposed asset holding company regime, for share repurchases and securitisation companies, in the context of a UK re-domiciliation regime would mean taxing investors on their shares and securities that previously were not subject to STS. It was thought that such treatment should be exempted to continue to encourage the asset holding company regime.

Value Added Tax

As part of developing the proposals for re-domiciliation the Government is considering the implications for VAT, including whether any additional anti avoidance measures could be needed for a re-domiciliation regime.

Question 44: Do you have any views on the impact of the proposals for a re-domiciliation regime on VAT?

3.142. Respondents recognised that if companies can re-domicile in and out of the UK it will change supply chains and/or create a movement of establishment that impacts VAT.

3.143. It was expressed by respondents that the introduction of a re-domiciliation regime may help to reduce the complex and costly arrangements of a business that would otherwise need to incorporate a new entity in the UK to transfer its assets to. Such a regime is therefore welcomed by respondents as there will not be a supply of goods or services between separate legal entities that VAT is due on.

3.144. One respondent stated that a UK re-domiciliation regime should be consistent in its tax treatment and not mix aspects of direct tax and indirect tax but align them as closely as possible. It is recognised by the respondent that this cannot be the case in all instances, but then the differences should be made clear ensuring certainty for business.

3.145. Some respondents expressed the view that the same rules and process for companies to register for VAT should apply to re-domiciled entities in the same way they apply to UK incorporated companies. If so, then the existing VAT rules should be sufficient. No new avoidance concerns were raised by respondents in respect of VAT but due to the lack of detail given in the consultation this may change when further detail is provided.

3.146. Under the VAT place of supply rules it is important to the respondents that there should be clarity as to where the recipient and supplier of services "belong" for VAT purposes. The questions raised by most respondents was what the definition of "establishment", "fixed establishment" and "usual place of residence" for both inward and outward re-domiciling companies will be, and whether there will be differences between the VAT rules and the rules used to determine residence for corporation tax purposes. Furthermore, it was noted by respondents that the place an entity is established is not necessarily where an entity is incorporated. Respondents were keen for clarity on such points within both legislation and guidance for a UK re-domiciliation regime to provide business with certainty upon re-domiciliation.

3.147. One respondent detailed that it is understood that UK VAT should be charged on certain services which are invoiced to a UK incorporated company with its registered office in the UK, even if it has no other presence in the UK. The respondent then expects this to likely create an additional VAT cost for re-domiciling businesses which will disincentivise re-domiciliation if companies cannot recover this cost.

3.148. It was also said by some respondents that the attribution of supplies for VAT purposes also requires further consideration for UK re-domiciliation purposes and how it will affect the relevant companies VAT position.

Question 45: Do you have any views on any other tax consequences of a company re-domiciling in or out of the UK and whether any other amendments to UK tax law should be considered?

3.149. One respondent indicated that there would need to be an ongoing process of review depending on how the re-domiciliation legislation is drafted and implemented.

3.150. Some respondents indicated that consideration should be given to the impact of a re-domiciliation on the source rules for interest and other forms of income. For example, consideration should be given as to whether interest payments on debts of a company re-domiciling to the UK would become UK source payments and subject to UK withholding tax.

3.151. Some respondents suggested that consideration should be given as to whether a company which re-domiciles to the UK should be allowed relief for foreign losses accrued prior to the company coming within the charge to UK corporation tax. Whilst some recognised that appropriate safeguards may be needed (for example to ensure that accrued losses can only be offset against the profits of the same trade and cannot be surrendered as group relief to reduce the UK profits of other group companies), it was suggested that such rules could be aimed at start-up companies, companies in certain high growth industries and companies carrying on certain activities of economic strategic value to the UK and it could make the regime more attractive.

3.152. Other respondents suggested other tax consequences should be considered, including:

- Whether the UK should impose a (market value) exit tax upon an outbound re-domiciliation, which would align with the position in many other jurisdictions.
- How re-domiciled companies will be treated under certain reporting regimes which apply to large companies (such as Senior Accounting Officer rules and the framework for the disclosure of uncertain tax positions) with definitions for large companies excluding non-UK incorporated entities.
- Whether companies will be required to notify HMRC of its intention to re-domicile out of the UK, and whether any revisions to section 109B Taxes Management Act 1970 are required.
- Whether the UK customs rules needs any clarification to allow a re-domiciled company to act as importer/exporter, and whether a company would need to have UK-based activities or management to qualify.
- Whether a company which re-domiciled to the UK would be able to elect for branch exemption if it retains activities in a permanent establishment in its country of origin.
- How to deal with adjustments in value of bad and doubtful debts and other assets before and after re-domiciliation.
- How to fix a value for capital allowances claims and other similar allowances following a re-domiciliation.

4. Next Steps

4.1. The Government intends to introduce such a regime, making it possible for companies to move their domicile to and relocate to the UK by enabling the re-domiciliation of companies.

4.2. As outlined previously, this was a consultation exploring the principles and feasibility of a UK re-domiciliation regime. As this represents the early stages of the policy development process, BEIS in partnership with HM Treasury and HMRC, will continue to refine this policy, engaging publicly as appropriate.

4.3. The Government is grateful for the extensive and constructive engagement from stakeholders over the course of this consultation. The points raised by respondents will be considered carefully as the development of these proposals continues.

4.4. This policy will require legislation to be enacted. However, more detailed analysis and engagement is needed before that is possible. The Government will continue to develop these proposals taking full account of the responses to this consultation, including further formal consultation as appropriate.

Annex

List of respondents to consultation

Below is a list of consultees who responded to this consultation and did not request confidentiality.

- Responses received from individuals
- Anglo American
- Make UK
- Institute of Chartered Accountants in England and Wales
- INREV
- Spotlight on Corruption
- TheCityUK
- STEP
- British Property Federation
- City of London Law Society
- Law Society
- MSP Secretaries Limited
- Ernst & Young LLP
- Association of Investment Companies
- Caesium International LLP
- Association of Accounting Technicians
- BIPA
- PricewaterhouseCoopers LLP
- Joint working party City of London Law Society and the Law Society
- Eversheds Sutherland
- Law Society of Scotland
- Insolvency Lawyers' Association
- Euroclear UK & International
- Chartered Institute of Taxation

- Baker and McKenzie
- Macfarlanes LLP

This publication is available from: www.gov.uk/government/consultations/corporate-re-domiciliation

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