Corporate re-domiciliation: Consultation on the Government's proposals

7 January 2022

About INREV: the voice of the European non-listed real estate investment industry

INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. We provide guidance, research and information related to the development and harmonisation of professional standards, reporting guidelines and corporate governance within the non-listed property funds industry across Europe.

INREV currently has more than 465 members. Our member base includes institutional investors from around the globe including pension funds, insurance companies and sovereign wealth funds, as well as investment banks, fund managers, fund of funds managers and advisors representing all facets of investing into non-listed real estate vehicles in the UK and the rest of Europe. Our fund manager members manage more than 500 non-listed real estate investment funds, as well as joint ventures, club deals and separate accounts for institutional investors.

Summary

INREV supports the introduction of a UK corporate re-domiciliation regime. Such a regime has the potential to enhance the UK's attractiveness as a jurisdiction in which to locate and administer investment vehicles and in which to invest, particularly given a number of other jurisdictions already permit re-domiciliation. INREV views a new re-domiciliation regime as a useful part of an overall "package" of measures (many of which are under consideration already) that are collectively intended to make the UK a more attractive place to do business.

The availability of re-domiciliation as a tool to enable overseas entities, including corporates and investment vehicles, to relocate to the UK has the potential to support the UK Funds Regime Review, in particular Finance Bill provisions for Asset Holding Companies and other proposals considered in the 26 January 2021 Call for Input. The intention behind that Review was to suggest reforms that could enhance the UK's attractiveness as a location for asset management and for funds in particular. In our view, non-listed real estate investment funds and other vehicles - managed from the UK and currently domiciled in jurisdictions that lack the advantages the UK offers - would be likely to consider re-domiciliation. It is important however that the UK's commercial, regulatory and tax environment align to make this a workable and practical solution. In particular, while recognising certain safeguards will be necessary, we recommend that any process which is devised should be as straight-forward as possible.

If re-domiciliation measures are to succeed in enhancing the UK as an attractive destination, however, we believe that both inward and outward re-domiciliation should be permitted (as discussed further in our response below). Some entities may only be prepared to re-domicile to the UK if they can subsequently leave if their circumstances change. Permitting only inbound re-domiciliation seems unnecessarily restrictive. Other popular fund jurisdictions such as Luxembourg and Ireland allow both inbound and outbound re-domiciliation and would be likely to be considered more attractive than the UK if the UK does not allow this as well.

We note that the consultation primarily focusses on "corporate" re-domiciliation while not specifying in detail which entities this would capture. The investment industry uses a number of vehicles which

might find a comparative structure in the UK useful to re-domicile as, including Open-Ended Investment Companies and other non-corporate vehicles such as limited partnerships. While we recognise that it would be useful to have an expansive re-domiciliation regime covering all possible vehicles, we appreciate that consideration of the intricacies of these vehicles (and their related regulatory position) would require further workstreams involving the FCA in particular and could be better addressed separately on a different timescale.

A successful re-domiciliation regime will require Companies House, relevant regulators and agencies to be closely involved in the re-domiciliation process. These bodies will need to liaise with counterparts in other jurisdictions and oversee the entry and/or exit criteria. Knowledgeable and well-resourced teams, dedicated to the re-domiciliation process, will be critically important to the success and smooth operation of any such new re-domiciliation regime.

INREV has had the opportunity to review earlier drafts of the City of London Law Society's response to the consultation and the Law Society's response to the technical chapter on tax issues. INREV agrees with the positions therein and acknowledges that our comments have been greatly informed by those responses.

We hope our comments that follow will make a constructive contribution to this important effort.

Responses to consultation questions:

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?**

There are limited routes to re-domicile into the UK currently, which include establishing new holding structures or feeders within groups, or alternatively establishing a new UK entity and transferring the business of the existing non-UK entity to it.

These routes can be unnecessarily cumbersome and can result in the loss of legal identity, may trigger additional taxes (and even where this is not the case, will require careful consideration from a tax perspective to confirm the position) and likely involve a significant number of amendments/requests for consent or waiver under legal documents. For example, interposing new holding structures can trigger "change of control" clauses, and transferring assets to a new entity can require various consents which may not always be possible to obtain. The time it takes to renegotiate those agreements can be significant and expensive. The net result is that the UK is often discounted from consideration when analysing potential restructuring/re-domiciliation options.

A re-domiciliation regime could avoid unnecessary schemes of arrangements and enable existing structures and agreements to remain in place. This feature would be welcomed by investment vehicles looking to transfer their incorporation to the UK.

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?**

Demand for re-domiciliation could arise for a number of reasons in the non-listed real estate investment sector. These include:

- Investment vehicles, including funds, partnerships, joint ventures and club deals, might want to align their domicile with their tax residency. A significant number of vehicles have chosen to be UK tax resident in recent years, or have moved their tax residence from low-tax and other jurisdictions to the UK. This may have been driven, in some cases, by the competitive tax regime offered by the UK in certain areas, and in others by a desire to avoid tax residence in what is seen as a “tax haven”. Where such UK tax-resident vehicles are not UK domiciled, allowing them to align their jurisdiction of domicile with their tax residence may reduce administrative inconvenience and also, potentially, remove dual residence concerns. Locating various fund and fund-management related functions in the same place to support availability of treaty benefits or reduce the risk of availability of treaty benefits being undermined by a lack of substance may also be a motivating consideration for re-domiciling. However, it is noted that, from a tax perspective, stamp duty on shares currently remains a disincentive to the decision to establish an investment vehicle in the UK.

- Regulated entities may want to achieve regulatory consolidation in the UK and change the lead regulator for the group to one in the UK.

- Investment vehicles may want to re-domicile because of the broader legal framework of the UK (or elsewhere) relative to the country in which they are currently domiciled, including aspects such as solvency law, dispute resolution and fund regulation.

- Some investment vehicles may want to re-domicile to the UK from countries now considered “non-co-operative jurisdictions” for tax or anti-money laundering or countering terrorist financing purposes or from countries experiencing political upheaval or threats to the stability of their legal system.

- Investment vehicles with a branch in the UK that has become increasingly significant to the entity’s business may desire to re-domicile to the UK to align the entity’s domicile with the place of most commercial significance to them.

- Investment vehicles may want to re-domicile to the UK for commercial and operational reasons. They might include access to top legal and financial support services and access to UK courts in case of commercial disputes.

As noted in our introduction, the UK Funds Regime Review is intended to identify measures to enhance the UK’s attractiveness as a location for asset management and for funds, and a UK re-domiciliation regime could enable fund vehicles, their related holding structures, and potentially manager or sponsor entities to access those benefits. We have certainly seen funds take advantage of other re-domiciliation regimes globally, and see no reason the UK might not be part of this with the right framework in place.

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

While this is difficult to quantify, we have checked with a number of our members who indicate that there certainly would be demand for re-domiciliation by non-listed real estate investment entities if the details of the regime, including tax treatment, are right. More importantly, however, we believe that the UK is currently at a competitive disadvantage because it does not have such a regime in place. It detracts from the image of the UK as having a company law regime that is flexible and facilitates international business transactions, as well as being an attractive place to establish business.

As a result, INREV believes that introducing corporate re-domiciliation in the UK will be an important additional tool available for the UK to attract investment vehicles.

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

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

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

Both Luxembourg and Ireland have re-domiciliation regimes that are attractive as a result of being flexible, efficient and predictable. They both also offer re-domiciliation both inbound and outbound. The UK should seek to replicate these regimes.

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

Evidence of the economic benefits of re-domiciliation is difficult to obtain; however, INREV members and their respective legal and other advisory firms regularly advise investment vehicles interested in re-domiciliation. Often such vehicles are disappointed to learn that only more cumbersome alternative routes are available to re-domicile to the UK. The administrative, legal and regulatory hurdles that need to be overcome can deter some vehicles from relocating to the UK when other simpler re-domiciliation regimes exist elsewhere.

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?**

Inbound re-domiciliation will require the departing jurisdiction to recognise the re-domiciliation process and approve the entity re-domiciling to the UK (the form of such approval being likely to vary depending on the applicable regime in the departing jurisdiction). It will be critical that a vehicle can move smoothly to the UK, thus the process must be coordinated to ensure, for example, that the vehicle is not de-registered in its departing jurisdiction before it is re-domiciled in the UK (or that not being permitted).

The proposed re-domiciliation regime will require Companies House to be closely involved in the re-domiciliation process of corporates and the FCA or other agencies in the case of non-corporate investment entities frequently used in the non-listed real estate investment industry. The precise requirements and process for each departing jurisdiction are likely to vary, and protocols will develop on a case-by-case basis.

As noted in the response to Question 2 above, from a tax perspective, stamp duty on shares currently remains a disincentive to the decision to incorporate a company in the UK. In addition, if the departing jurisdiction's tax rules impose 'exit' charges this will also operate as a disincentive.

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

While the process for any regulatory requirements will need to work in tandem with the re-domiciliation process, the re-domiciliation regime itself does not need to deal specifically with the additional requirements applicable to regulated entities. The entity applying to re-domicile should be able to advise the UK authorities that it needs to co-ordinate the date of re-domiciliation with the other consents needed. In such cases, the UK authorities should only determine the date of re-domiciliation once the entity has met all necessary UK requirements plus any requirements in the country it is leaving and has advised UK authorities that the other consents are in place (or will be on the relevant date). It will be important to ensure that re-domiciliation occurs at a defined point in time, once necessary consents have been given, so that all parties are clear as to when the entity becomes regulated by a new regulator.

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

Vehicles applying for re-domiciliation will need to carry out a review of the impact the re-domiciliation will have on stakeholders, including contractual counterparties. If a re-domiciling vehicle has outstanding debt at the point it re-domiciles to the UK, its lenders will hold debt which becomes subject to the UK corporate solvency regime but which was lent on the terms of documentation drafted to cater for the departing jurisdiction's solvency regime. However the re-domiciliation regime itself does not need to separately address these types of issues, they are points which will need to be considered by the re-domiciling vehicles themselves.

Similarly, if (if) UK tax residence (or non-residence) follows automatically as a consequence of redomiciliation, there will be knock on tax implications for stakeholders.

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

INREV agrees with this view. We believe that re-domiciliation should be analogous to a new vehicle being established in the UK where there is no economic substance test. The legal and other costs in effecting a re-domiciliation are likely to deter vehicles from undertaking a re-domiciliation unnecessarily.

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

The choice of place of re-establishment upon a re-domiciliation into the UK is likely to be driven by the same factors that drive that choice upon a new establishment (i.e. the "centre of gravity" of the business and physical location of headquarters as the registered office). Overseas vehicles are likely to find it surprising, and unduly restrictive, if they cannot move between UK nations once re-domiciled in one of them. It also seems illogical to permit re-domiciliation from a multitude of overseas jurisdictions (with quite different legal systems) into the UK, but not to permit re-domiciliation between the different constituent nations of the UK (which adopt many of the same frameworks).

The issue must clearly be considered in the context of the possibility, at some point in the future, that certain constituent nations within the UK gain a greater degree of independence from the UK. Many overseas vehicles looking to re-domicile would consider this possibility, and accordingly would want to be able to move flexibly between such constituent nations in future. Restricting this ability is likely to mean that the UK as a whole (and not merely an individual constituent nation), is seen as a less attractive destination by overseas vehicles.

As a result, an entity established in one part of the UK should be able to re-domicile to another part of the UK. This would ensure that there is complete flexibility and a level playing field.

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 redomicile in the UK?**

Please see our response to the question above.

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?**

If the Government aim is to ensure that inward re-domiciliation provides the UK with a competitive advantage, then its general approach should be to treat the re-domiciliation process as similar to the establishment of a new entity in the UK. The process should therefore be clear and simple and the requirements should be as similar as possible to those required for a new establishment of a like entity in the UK. How the departing jurisdiction's conditions are met must be predominantly judged by the departing jurisdiction itself and resolved between the entity concerned and the departing jurisdiction.

INREV agrees that some form of authorisation from the departing jurisdiction (or other evidence such as a notarial or other certificate or legal opinion) should be required in the UK for inward re-domiciliations. This document will constitute evidence that the entity has met the requirements of its current domicile to re-domicile, and there is certainty that the entity will cease to be domiciled in that jurisdiction as a result of re-domiciliation. It will be critical from the perspective of the re-domiciling entity that there is continuation of its legal existence at all times, which requires good communication between appropriate authority/ies in the UK and the outgoing registry/competent authority/ies, and flexibility on the UK's part as to what evidence is necessary in each case, depending on what is possible and provided for by the law in the departing jurisdiction.

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?

INREV agrees the regime should be open to a wide spectrum of overseas companies and other vehicles as well.

The Consultation Paper refers to all bodies corporate being able to re-domicile "to the extent that they are comparable with UK forms". It is not clear how a test of "comparability" could be applied, and it is likely unworkable to try to judge whether an overseas company is most similar to a private limited company, a public limited company or other kind of body corporate. Instead, if an overseas body corporate wants to re-domicile to the UK, it should be able to do this, and choose whichever form of body corporate it prefers (whether that be a public company, private company, company limited by guarantee, unlimited company, LLP etc.), provided it meets the UK requirements for that particular form of body corporate at the time it re-domiciles.

HM Treasury might wish to undertake a separate consultation on a potential re-domiciliation regime for other types of investment vehicles, including Open-Ended Investment Companies and protected cell companies.

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?

The re-domiciliation process should be seen as analogous to new establishment in the UK, therefore we believe that provided the directors are eligible to be UK directors, then this should be sufficient.

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

If the Government believes that a national interest test is important to prevent a re-domiciliation where it would have an adverse impact on the UK's business reputation, we suggest such a power is treated as a reserve power for the Secretary of State. It is not clear how other good faith criteria would work in practice, i.e., how to objectively assess this.

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?**

There is a legitimate concern that companies which have significant operations or trading histories may be able to re-domicile to the UK and carry on business without any financial information being available to persons dealing with that company until the time of its first deadline for filing accounts. There is therefore an argument that, to the extent a re-domiciling company has completed a reporting period, it should be required to file with Companies House its most recent accounts, even where such accounts would not be expected to be prepared to a UK standard. This would provide persons dealing with that company with information about its financial standing. However, it is also worth noting that some entities may not have been required by their departing jurisdiction to either produce accounts or to make any accounts produced publicly available.

Whatever decision is taken in relation to the filing of financial information in the UK on re-domiciliation, we believe that it should be stated on an entity's file at the relevant supervisory agency that the entity was originally established overseas and has conducted a re-domiciliation. That file should also provide key information such as the entity's original name, registration number in the departing jurisdiction and registry in which it was registered in that jurisdiction, so third parties can undertake searches in that registry, including for historic financial information, if available.

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

INREV has no views on this point.

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

INREV agree with this position, given there is no corresponding requirement for new establishment in the UK, save for the minimum authorised share capital requirement for public companies.

20. **Are there any other entry criteria we should consider?**

The Consultation Paper includes a reference to the need for a report on the "wider impact criteria". If these criteria are to be included, the Government should provide guidance as to exactly what the required report should include, who the report is being prepared for, who will determine (and how) whether a particular report explains the "full legal and economic impacts" of the transfer and the implications for creditors, shareholders and key stakeholders.

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

Issues around creditor protection are largely for the departing jurisdiction to determine. The solvency of a company coming to the UK (as opposed to creditor protection concerns for the jurisdiction of origin) should not be a concern given that foreign companies can already use the UK insolvency regime without the need to re-domicile by moving the entity's Centre of Main Interest (CoMI).

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

INREV has no views on this point.

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?

INREV has no views on this point.

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

We believe that the primary obligation for dialogue with the exporting jurisdiction should fall on the entity wanting to re-domicile rather than the relevant UK authority. However, to the extent that enquiries need to be made of the departing jurisdiction, we suggest the relevant UK authority considers specifically whether existing bilateral arrangements would be sufficient to allow this dialogue.

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

INREV has no views on this point.

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

INREV has no views on this point.

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?

We believe that re-domiciliation applications should be treated by the Registrar as new incorporations in the UK are treated. As a result, provided the necessary forms and other paperwork required are provided to and checked by the relevant supervisory authority, and the directors or management board members are liable for any false or misleading information provided, the relevant supervisory authority should not have to undertake further checks.

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?

We agree that Companies House should have this ability where it has concerns about the incoming company and it does not receive satisfactory answers to the questions of concern. Clearly, it will be preferable for an application for re-domiciliation to be denied at the time of request, rather than petitioning for winding up after a re-domiciliation has occurred; however, we would expect the latter course of action will only be relevant in cases of misstatement or fraud as to the information provided at the point of the application to re-domicile.

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

As we stated earlier, to ensure that the UK remains an attractive destination, we believe that both inward and outward re-domiciliation should be permitted. There is concern that some entities may not be prepared to re-domicile to the UK if they cannot subsequently leave if their circumstances change. Permitting only inbound re-domiciliation seems unnecessarily restrictive in a jurisdiction which is generally considered open to cross-border investment, both inward and outward. Other jurisdictions allow both inbound and outbound re-domiciliation and may be seen as being more attractive than the UK if the UK does not allow this.

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

Please refer to the response to Question 29. We strongly believe that if the Government wants companies to re-domicile to the UK, it must be prepared to provide the flexibility for those companies to also leave the UK if they subsequently wish to do so. If outward re-domiciliation is not permitted, other jurisdictions that provide both inward and outward re-domiciliation could be seen as more attractive destinations than the UK. In addition, companies that explore the possibility of re-domiciliation into the UK are, by virtue of having already embarked upon that course, inevitably going to consider the possibility of conducting a further re-domiciliation in future. Therefore, we believe that making the process “one-way” will act as a disincentive to the very companies that the UK is seeking to attract.

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

We do not foresee any significant economic or other risks to the UK flowing from outward re-domiciliation of non-listed real estate investment vehicles.

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?

We do not foresee any significant demand for outward re-domiciliation by non-listed real estate vehicles; however, any which did want to re-domicile may wish to do so in order to benefit from EU regulatory schemes. We would expect those vehicles to re-domicile to jurisdictions such as Luxembourg and Ireland.

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?

INREV has no views on this point.

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?

INREV has no views on this point.

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?

Once UK requirements are satisfied, it would be critical for the relevant UK supervisory agency to “sign-off” the re-domiciliation and confirm clearly the date and time at which an entity ceases to be incorporated in the UK and removed from any relevant register(s)

If a UK entity wants to re-domicile out of the UK, some countries require more than the current certificate of good standing Companies House or relevant UK supervisory agencies produce on request. Where there are concerns that an outward re-domiciliation is being proposed as a means of evading criminal liability or is an abuse of the process, the Government might consider reserving a residual power to prevent the re-domiciliation from proceeding.

36. If the Government were are 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?

INREV has no views on this point.

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?

As mentioned earlier (see, e.g., our response to Q 13), we believe the regime should seek to provide as much certainty as possible concerning the point in time at which that change takes place and to ensure there is no point in time when the company is considered to be incorporated in two places or nowhere. If that is accomplished, no additional rules would be necessary to supplement the existing UK tax rules on residence.

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

We believe the existing residence tests should be applied to companies that re-domicile in either direction. For inward re-domiciliations, assuming the re-domiciliation results in the company becoming incorporated in the UK, applying the existing residence tests should mean that:

- If there is nothing (e.g. central management and control or "CMC") keeping the company resident in the departure jurisdiction, the company should become UK resident on re-domiciliation.
- If CMC (or another rule) keeps the company resident in the departure jurisdiction as well as the UK, then the terms of any applicable tax treaty should be applied and respected to determine residence.
- If CMC (or another rule) keeps the company resident in the departure jurisdiction and there is no tax treaty between the UK and the other jurisdiction, the company would become dual resident.

For outward re-domiciliations, similarly assuming the re-domiciliation results in the company becoming incorporated outside of the UK, applying the existing rules should mean the company becomes non-UK resident following the re-domiciliation unless its CMC remains in the UK. If the company does remain centrally managed and controlled in the UK, the provisions of any applicable double tax treaty would need to be considered.

Any alternative to this approach would mean applying special residence rules to re-domiciled companies based on their history. In our view, that seems unnecessary and could be a source of confusion and risk.

On inward re-domiciliation to the UK, we believe the outcome whereby the company is only treated as UK resident if its central management and control ("CMC") is in the UK, is preferable. This would mean that such a company's residence would continue to be assessed for UK tax purposes in the same way as previously and that on re-domiciling to the UK its tax residence would not automatically shift to the UK. As noted above, companies may consider re-domiciling to the UK for a variety of different reasons and imposing UK residence automatically may operate as a disincentive for some.

Providing continuity of approach for a company undertaking an inward re-domiciliation (whereby its residence was determined by reference to its CMC and to treaty tie-breaker provisions, where relevant) would reflect the continuing practical reality for the company concerned.

On re-domiciliation out of the UK, we believe the outcome that, subject to CMC being outside the UK, the company ceases to be UK resident by virtue of the re-domiciliation, is also preferable. Again, this would reflect the continuing practical reality for the company concerned. It would also mean that on outward re-domiciliation the company's residence for UK tax purposes was assessed in a manner that was in line with the existing approach for non-UK incorporated companies.

We do recognise, though, that the above approach disturbs the symmetry of the existing UK domestic law position to an extent, in so far as under current law, UK-incorporated companies are treated as UK resident (unless the provisions of an applicable treaty tie-breaker determine otherwise) and non-UK incorporated companies are treated as UK resident if centrally-managed and controlled in the UK (again, unless the provisions of an applicable treaty tie-breaker determine otherwise). Therefore, continuing to assess a company's residence for UK tax purposes by reference to CMC on an inward re-domiciliation would represent a departure from the domestic law starting point that a company is deemed UK resident if it is UK-incorporated by effectively creating a third category of company that took the form of a UK-incorporated company but was not necessarily UK resident under domestic law.

On the above approach, for inward re-domiciliations:

- If central management and control ("CMC") shifts to the UK, the company should become UK resident on re-domiciliation.
- If a domestic rule in the departing country keeps the company resident in the departure jurisdiction as well as the UK, then the terms of any applicable tax treaty should be applied and respected to determine tax residence (and if there is no applicable treaty, the company would become dual resident).

For outward re-domiciliations, assuming the re-domiciliation results in the company becoming incorporated outside the UK, applying existing UK rules on residence should mean the company becomes non-UK resident following the re-domiciliation unless its CMC remains in the UK. If the company's CMC does remain in the UK, the provisions of any applicable double tax treaty would need to be considered.

If the need for simplicity and certainty (including the ability to determine by reference to a company's domicile whether UK residence is automatically considered to apply under domestic rules) overrides concerns about the possible disincentive that automatic UK residence may represent for some companies, then for inward re-domiciliations it should be made clear that the existing incorporation rule applies / extends to companies that have re-domiciled to the UK, such that:

- If there is nothing keeping the company resident in the departing jurisdiction, the company becomes UK resident on re-domiciliation to the UK.
- If a domestic rule keeps the company resident in the departure jurisdiction as well as the UK, then the terms of any applicable tax treaty should be applied and respected to determine tax residence (and if there is no applicable treaty, the company would become dual resident).

The latter approach to inbound re-domiciliation would avoid the need to apply special UK residence rules to re-domiciled companies based on their history and rule out a potential source of confusion and risk (albeit at the cost of some companies potentially choosing not to re-domicile as a result).

Finally, we note that whatever system is adopted will need to be flexible enough to cater for a variety of approaches to residence in the departing jurisdiction (on an inward re-domiciliation) or the destination jurisdiction (on an outward re-domiciliation). We have not undertaken a review of other countries' re-domiciliation rules but note that under some jurisdictions' domestic rules a company is deemed resident if it has its registered office in the jurisdiction concerned. Where there is a double tax treaty between the UK and the departing or, as applicable, destination jurisdiction, the position can be determined by reference to the tie breaker provisions in the treaty. For companies re-domiciling from jurisdictions where there is no relevant treaty, the prospect of dual residence may also operate as a disincentive so to the extent possible it would be helpful to keep to a minimum the situations where dual residence is a potential outcome.

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

Please see our response to Q 38 above.

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

UK corporation tax relief is generally not available for trading losses incurred by a company before it comes within the charge to corporation tax. It is treated as starting to carry on a trade when it starts to be within the charge (section 41 CTA 2009). This would also trigger a new accounting period of the company (section 10/12 CTA 2009). HMRC also reference other existing protective rules in the consultation document.

However, we recommend that re-domiciling businesses should be allowed to carry forward non-UK losses to set against profits following re-domiciliation, although this could be limited to allow set off only against profits of the same trade. Such an approach would alleviate a potential instance of taxation where a company has no economic profit overall across the relevant accounting periods, which could otherwise prove a barrier for companies considering re-domiciliation. For example, it may be that start-up businesses (which the UK may wish to attract to the UK) are more likely to have sustained losses as a result of making investments in the early days of their business. Any risk of stranding those losses could act as a disincentive to re- domiciliation.

41. Do you have any views on this?

For chargeable assets for corporation tax on capital gains purposes, there is no step up in base cost when a company becomes UK resident, unless the company is subject to an EU exit charge in relation to the asset, in which case there is a market value step up (see section 184J TCGA 1992).

We believe consideration should be given to allowing a market value step up in base costs in wider range of cases in relation to re-domiciliations that bring assets within the charge to corporation tax and/or result in a change of tax residence. Such a rule would help protect companies re-domiciling to the UK from the risk of double taxation in two different jurisdictions.

It would seem more consistent to apply such a rule regardless of how such a change is triggered (e.g. by a re-domiciliation or by a change in the company's place of central management and control).

One option for a market value uplift provision would allow for a market value base cost on re-domiciliation that is applied to all assets without making that conditional upon their having been subject to a non-UK exit charge. That would put the re-domiciling company in a position that is comparable to a new company that has bought the assets at market value, which is an alternative that groups would potentially employ at the current time (absent any re-domiciliation legislation) to achieve a similar effect to a re-domiciliation through the employment of a range of restructuring or reorganisation transactions which would be structurally more complicated.

Another option would be to impose a condition that allows a market value base cost only where an exit charge has been imposed in the relevant EU or non-EU exit jurisdiction. If such a condition is imposed, we would support widening it to include non-EU exit charges for both re-domiciliations under the new regime and also UK corporate migrations achieved under routes already available under UK law (e.g. moving central management and control to the UK). Such a condition could be framed by reference to charges that are reasonably comparable to UK exit charges (e.g. section 185 TCGA 1992) although consideration would need to be given about how to provide as much clarity as possible about the application of such a rule in practice.

Some assets of non-UK companies are already within the charge to corporation tax. This applies to interests in UK land and capital assets that are attributable to a permanent establishment that is trading in the UK. For such assets that remain within the charge to corporation tax both before and after re-domiciliation, we think the case for any special rules applying is weaker. We therefore suggest there should be continuity of the UK tax base cost for such assets before and after re-domiciliation.

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

The opportunity for companies to migrate to the UK, without needing, for example, complex share-for-share exchange transactions to insert a new UK holding company, is likely to be a welcome simplification for their shareholders. However, it would be helpful to clarify that a re-domiciled company remains the same company throughout meaning that no disposals of shares are crystallised for shareholders as a result of a re-domiciliation.

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

Stamp duty is payable on instruments of transfer, such as stock transfer forms. Its main applicable is to instruments of transfer relating to stock and marketable securities where such an instrument is: executed in the UK; or, more relevant for non-listed real estate industry, relates to any property situated, or any matter or things done or to be done, in the UK. In practice, it is therefore much more likely to be relevant to shares in a UK company than shares in a non-UK company.

In terms of inward re-domiciliations, we consider that the imposition of the current UK stamp taxes on shares and securities may significantly disincentivise company decision-makers from choosing to incorporate in the UK by means of a re-domiciliation. This gives rise to an important question about whether to apply the existing rules determining the scope of STS that carry this significant disincentive. The alternative would be to provide a specific new exemption, although we recognise that would require careful consideration.

Imposition of UK stamp taxes on transactions relating to the shares and securities of a re-domiciled company does, we accept, have the merit of simplicity and consistency with the current UK stamp taxes treatment of other UK incorporated companies on equivalent transactions. However, given that the current Consultation is predicated on the re-domiciliation regime being attractive to prospective users, establishing that consistency between originally incorporated UK companies and re-domiciled companies may materially weaken the intended attractiveness of re-domiciliation.

The flipside of this is a similar policy question that arises in relation to outward re-domiciliations. This may be what is alluded to in paragraph 5.19 of the consultation document which says the government is considering whether any anti-avoidance measures could be needed for any outward re-domiciliation regime. The question in this case is whether it is considered desirable, in certain circumstances following outward re- domiciliation, to change the UK STS rules to keep shares and securities within scope for longer than would otherwise be the case. If inbound re-domiciliating companies are not granted a stamp duty exemption relating to transactions in shares and securities (as contemplated above), then a consistent position would be for outward corporate re-domiciliations to result in the disapplication of UK STS.

Even if UK STS is retained for outward re-domiciliations, that regime should only be retained for a re-domiciliating company if considered necessary and any rule should be appropriately targeted. For example, this could mean limiting any extension of STS following outward re-domiciliation by reference to:

- a particular period of time following re- domiciliation (e.g. 1-3 years);
- whether or not there are any arrangements in place in relation to the re- domiciliation whose purpose is to avoid UK STS; and/or
- whether some equivalent to UK STS will apply in the new jurisdiction of incorporation.

However, we would have concerns about any continued application of UK STS following an outward re-domiciliation for a fixed period without any other limitations.

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

The implications of re-domiciliation on whether there is a business establishment, fixed establishment, and/or a usual place of residence in the UK, as well as for the attribution of supplies for VAT purposes, merits further consideration. Businesses considering changing their place of incorporation through a re-domiciliation need as much clarity as possible on how that could affect their VAT position.

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?

The possibility that the source of payments made by a re-domiciling company could change should be considered. If interest payments on debts of a re-domiciling company become UK source payments, for example, there is a risk that UK law would impose withholding tax on those payments. Withholding tax on interest could trigger a gross up clause under the terms of the arrangements governing a company's borrowings.

Such a withholding tax (or uncertainty as to whether such a withholding tax might arise), has the potential to create a significant barrier to inward re-domiciliation. Furthermore, it seems wrong as matter of principle, on the basis that whether a payment has a UK source depends on the "source of the obligation", for re-domiciliation to alter the tax treatment of an obligation which has not itself been varied.

One option for consideration to prevent withholding tax being a barrier to inward re-domiciliation might be to provide that the existing source of a payment arising from an obligation assumed before a re-domiciliation is not altered by re-domiciliation, at least unless or until that obligation is varied.

Other areas for consideration include:

- how to deal with adjustments in value of bad and doubtful debts and other financial assets before and after re-domiciliation; and
- how to fix a value for capital allowances claims and other similar allowances following a re-domiciliation.