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Re-domiciliation regime welcome for real estate investment

INREV welcomes and supports the implementation of a UK corporate re-domiciliation regime as part of an incremental package to encourage more business and investment in the UK.

As acknowledged in the consultation, companies typically move jurisdictions to gain better access to capital, to simplify group structures, access less burdensome tax regimes, and for other commercial, economic or political reasons. This is the same for listed and non-listed real estate investment vehicles: often non-corporates. If the regime were widened to include all types of real estate investment vehicles it could assist in meeting the government's desire to onshore investment structures.

We agree that the proposed regime complements the UK Qualifying Asset Holding Company (QAHC). By making it easier for intermediate holding companies to re-domicile could encourage them to onshore to access these regimes.

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

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

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

Reasons for real estate investment funds to re-domicile

There are various reasons why investment vehicles, including funds, partnerships, joint ventures and club deals, might wish to re-domicile in the UK. These include:

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

Barriers for real estate investment vehicles locating and re-domiciling to the UK

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

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

Level of demand for investment vehicles to re-domicile

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

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

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

Eligibility criteria

The introduction to the consultation acknowledges that a re-domiciliation regime may be particularly attractive to companies within the financial services sector. The investment industry uses a variety of investment vehicles which might find a comparative structure in the UK useful to re-domicile. Some may be considered as body corporates, e.g. listed REITs, and could use the proposed regime, however there are some, such as JPUTs, Luxembourg FCP, Open-Ended Investment Companies and limited partnerships that wouldn't be able to re-domicile under the regime. Ideally it would be useful to have an expansive re-domiciliation regime covering all possible vehicles. We appreciate the government is looking to deliver a regime as quickly as possible, however, we would ask that the widest range of investment vehicles are considered for the regime at the earliest opportunity.

¹ Other than with the Reserved Investor Fund