Saffery

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Open for business: implementing a UK corporate re-domiciliation regime

Consultation on the design of the UK framework

Comments from Saffery LLP

Since 1855

1. Executive summary

1.1 We welcome the opportunity to comment on the proposed UK framework for implementing a corporate re-domiciliation regime, and in particular the government's request for views on the tax considerations identified in Section 6 of the UK independent expert Panel's report.

1.2 In summary, our key points are as follows:

- We broadly agree with the Panel's principle that existing UK tax legislation should be used, and that a separate regime for re-domiciled companies should be avoided.
- In our view, the report overstates in some areas the extent to which new tax legislation is required.
- The UK tax treatment of companies is primarily determined by residence, and the existing rules for companies entering the UK tax system should generally provide an appropriate framework.
- Any changes should be consistent with the existing treatment of companies migrating their tax residence to the UK.
- In some areas, the risks identified are already addressed by existing rules and announced policy developments, in particular the move to a mandatory exemption for foreign permanent establishments.
- In many cases, HMRC guidance or statements of practice will be more appropriate than new legislation.
- Greater clarity will be needed in some areas, in particular to confirm that re-domiciliation does not of itself give rise to disposals for tax purposes.

1.3 Section 2 below makes some general comments on the proposals and section 3 covers our comments on Section 6 of the Panel report.

1.4 We are responding to this consultation as a large business in the accounting, audit and tax sector.

1.5 We would be happy to discuss the points raised here in further detail. If you have any questions, or would like any further information, please contact: Robert Langston, Tax Partner, Large Business on +44 (0)20 7841 4129 or email robert.langston@saffery.com or Ami Jack, Partner, National Tax, on +44 (0)330 094 3079 or email ami.jack@saffery.com.

2. General points

2.1 We agree with the Panel's overarching principle that the tax treatment of re-domiciled companies should, as far as possible, rely on existing UK tax legislation and should not create a separate or distinct regime.

2.2 In our view, the tax consequences of re-domiciliation should largely follow the established framework that already applies where a company changes its tax residence. In many areas, those rules already provide a workable and coherent outcome, including in relation to entry into and exit from the UK tax system.

2.3 Against that background, we do not consider that extensive new tax legislation is required. Introducing separate or bespoke rules for re-domiciliation risks adding complexity and could create unintended differences between re-domiciled companies and those that simply migrate their tax residence or are incorporated in the UK from the outset.

2.4 Where areas of uncertainty arise, these will often be more appropriately addressed through HMRC guidance or statements of practice, rather than through new primary legislation.

2.5 We also note that, in the absence of an outward re-domiciliation regime, groups seeking flexibility may continue to incorporate entities outside the UK and rely on central management and control to establish UK tax residence where needed. This allows for relatively straightforward changes in residence by moving central management and control, which may be preferable in some cases to re-domiciliation. This may be particularly relevant in private investment company structures, where an individual temporarily in the UK may wish to migrate (with an exit charge) once they leave, and may therefore have limited reasons to incorporate in the UK in the absence of an outward re-domiciliation regime.

2.6 More generally, non-tax factors will continue to influence the choice of jurisdiction for incorporation. For example, in the real estate sector, the ability to make distributions out of capital under overseas company law may remain an important consideration. As a result, an inward re-domiciliation regime alone may not significantly alter existing structuring choices in all cases.

3. Comments on the Panel report - section 6 (changes that may be required to tax legislation)

3.1 Overall approach to tax legislation (paragraphs 6.1 to 6.6)

3.1.1 We broadly agree with the Panel's conclusion that existing UK tax legislation should form the basis of the re-domiciliation regime and that a separate tier of tax rules should be avoided.

3.1.2 However, in our view the report overstates, in some areas, the extent to which new tax legislation is required.

3.1.3 The tax treatment of a company is determined primarily by its residence, rather than its place of incorporation. Re-domiciliation does not, in itself, change the tax status of a company. While re-domiciliation may result in a company becoming UK tax resident, the existing rules governing companies entering the UK tax system are already well established and should generally apply.

3.1.4 On that basis, we consider that there isn't a general need for new legislation, as existing rules should be sufficient, supported where necessary by HMRC guidance.

3.2 Corporate tax residence (paragraphs 6.15 to 6.19)

3.2.1 We agree with the approach in paragraph 6.17 that a company should be treated as UK tax resident from the date that Companies House issues a certificate of re-domiciliation, subject to addressing the question of dual residence under the treaty tie-breaker provisions.

3.2.2 We also agree that more complex cases, including dual residence scenarios, are better addressed through HMRC guidance rather than attempting to legislate for all possible

outcomes. However, it will be important that any such guidance, or new or updated Statements of Practice, are published in advance of the regime being implemented.

3.3 Entry into the UK tax system: disposals and asset base cost (paragraphs 6.21 to 6.28)

3.3.1 We consider that clarity is needed on the treatment of assets on re-domiciliation.

3.3.2 In particular, there should be a clear statement, in legislation or guidance, that re-domiciliation does not, in itself, give rise to a disposal of assets for tax purposes. This is important to ensure that unintended charges do not arise on entry into the UK tax system.

3.3.3 Noting the Panel's discussion at paragraph 6.22 of the relationship between asset rebasing and exit charges in other jurisdictions, we consider that these interactions may in practice be addressed through existing double tax relief mechanisms, rather than through bespoke rules for re-domiciliation. In particular, where tax is charged in another jurisdiction and the UK subsequently brings the same gain into charge, it would be helpful to consider whether established approaches, such as those reflected in Statement of Practice SP6/88, are sufficient to deal with potential double taxation.

3.3.4 In relation to asset base cost, we note the Panel's suggestion that assets should be rebased to market value on entry (paragraph 6.23). While this approach has some logic, it does not align with the existing treatment of companies becoming UK tax resident, which generally do not receive such an uplift.

3.3.5 More generally, any approach to asset base cost should be consistent with the treatment of companies that migrate their tax residence to the UK. Introducing different rules for re-domiciling companies risks creating distortions and would not align with the wider tax framework.

3.3.6 Consistent with the Panel's observation at paragraph 6.28, if a market value rebasing approach on entry into the UK were to be adopted, this could be considered welcome (and fair), but it would be important that it is applied consistently across the wider tax framework rather than being limited to re-domiciling companies.

3.4 Losses and anti-avoidance (paragraphs 6.31 to 6.35)

3.4.1 We do not consider that additional provisions are needed to restrict the use of losses following re-domiciliation.

3.4.2 In particular:

a. Losses relating to a UK trade should be relieved in the normal way for a UK company, and

b. Losses relating to a foreign branch will, under the move to a mandatory exemption for foreign permanent establishments, not be available for relief in the UK.

3.4.3 Introducing a separate regime for re-domiciled companies would risk creating distortions and could incentivise companies to move tax residence without re-domiciling.

3.4.4 We agree with the Panel's conclusion that existing anti-avoidance rules should apply without modification. These rules are well-established and should be capable of addressing any concerns in practice, supported by HMRC guidance where necessary.

3.5 Foreign branch exemption election (paragraph 6.36 and 6.37)

3.5.1 The Panel's comments on the interaction with the foreign branch exemption reflect the current elective regime. However, we note that the government has announced changes under which the exemption for foreign permanent establishments will become mandatory and therefore these comments are no longer relevant.

3.6 Withholding tax and source (paragraph 6.39)

3.6.1 We agree that it would be helpful for HMRC guidance to confirm that re-domiciliation does not, in itself, change the source of cross-border payments.

3.7 Other matters (paragraph 6.40 and 6.44)

3.7.1 Consideration should be given to how HMRC systems will interact with Companies House processes on re-domiciliation. It will be important to ensure continuity of tax records and avoid unintended consequences, such as the possibility of the creation of a new accounting period where HMRC's systems treat the company as newly established, despite it already being UK tax resident.

3.7.2 We agree with the Panel's recommendation in paragraph 6.44 that legislation or HMRC guidance should make it clear that re-domiciliation does not give rise to a disposal of interests in a body corporate in these circumstances. Consideration should be given to the interaction with existing reorganisation provisions (for example, s126ff TCGA 1992) and whether this would be the mechanism to give effect to this outcome.

4. About Saffery LLP

4.1 At Saffery, we're more than just chartered accountants and tax and business advisers. We're a partner-led and people-focused firm, committed to our clients and honouring our heritage.

4.2 Since 1855, we've evolved in size and scope, but our unwavering dedication to exceptional client service remains the same.

4.3 As a proud member of Nexia, a worldwide network of trusted member firms, we've got access to local insight on a global scale.

4.4 In the UK, Saffery LLP is the 15th largest accountancy firm by fee income, with 90+ partners and 1,300+ staff across nine offices. Saffery also has an office in Dublin, Ireland.