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CLIENT BRIEFING

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The Court of Appeal in *Muller* considers the scope and effect of a deeming provision which is part of the rules for taxation of partnerships with the result that deductions for amortisation were denied by the related-party rule. HMRC consult on the proposed extension of the Uncertain Tax Treatment regime, including the possibility of an additional trigger to broaden the range of legal interpretation uncertainties that are notifiable; the proposed new trigger, framed around "credible" alternative interpretations, appears potentially even more subjective than the previously abandoned third trigger and risks being even more uncertain and unworkable. The Department for Business and Trade consults on the detailed design of a proposed inbound corporate re-domiciliation regime; however, it seems unlikely that there will be much demand for the new regime purely from a tax perspective.

Muller: scope and effect of the notional company fiction

In *Muller UK and Ireland Group LLP v HMRC* [2026] EWCA Civ 248 the Court of Appeal addressed how the intangible fixed assets rules in CTA 2009, Part 8 interact with the notional company fiction in CTA 2009 s 1259, which applies to enable the computation of profits of a partnership for corporation tax purposes before those profits are then apportioned between the corporate partners.

In 2013, three UK companies in the Muller group formed an LLP and transferred their trades and intangible assets, including goodwill, to it in exchange for membership units. The LLP recorded these assets at fair value and amortised them over five years, claiming tax deductions for the amortisation expense. HMRC denied these deductions from 2014 to 2017 under CTA 2009 s 882, on the basis that the assets were acquired from a related party.

The taxpayers contended that the "related party" exception should not apply. Their argument rested on section 1259(3)(a), which stipulates that the profits of the LLP are to be computed as if it were a company engaged in the same trade as the LLP. The taxpayers interpreted this provision literally, asserting that it did not require the attribution of any real-world features of ownership or control of the LLP to the notional company.

The Court of Appeal rejected this narrow and literal approach and adopted a purposive approach to construction of the deeming provision. The Court decided that the starting point was the purpose of the deeming provision and the scope of the deeming provision (and how much of the real-world attributes of the LLP should be brought into it) should then be commensurate with the statutory purpose.

In *Muller*, it was the real-world characteristics of the LLP necessary to calculate profits which required attribution but, as the Court pointed out, another deeming provision, depending on its purpose, might require other assumptions. Accordingly, the Court of Appeal agreed with HMRC (as had both tribunals) that the statutory fiction of the notional company did allow for the notional company to be treated as having the same ownership and control characteristics as the LLP. As a result, the intangible assets acquired by the LLP were deemed to have been obtained from a "related party" and, in accordance with s 882, deductions for amortisation were denied due to the related party rule.

Changes were made by Finance Act 2016 to the related party definition for the purposes of s 882 so that it now works better for partnerships but the Court of Appeal did not have to rely on this change because it based its decision on the scope and effect of the deeming provision in s 1259(3). The discussion of the scope and effect of the notional company deeming provision in particular will be useful for taxpayers navigating their way around other parts of the intangible fixed assets rules that still use a "related party" definition that do not cater properly for partnerships where it is not always clear how transactions between partnerships and partners, or indeed other partnerships, should be taxed. More broadly, the Court of Appeal's purposive and commensurate approach is helpful for construction of other deeming provisions.

Extension of notification of Uncertain Tax Treatment (UTT) regime

Under the somewhat odd heading "Opportunities to Extend Uncertain Tax Treatment" HMRC have launched a consultation (running until 4 June) on proposals to extend the notification of Uncertain Tax Treatment (UTT) regime. Although it is claimed this will "promote fairness and transparency" whilst also "contribut[ing] towards reducing the legal interpretation portion of the tax gap" it is clear that it is really just about the latter. HMRC estimates that the total tax gap in the 2023 to 2024 tax year was £46.8 billion of which the legal interpretation portion was £5.4 billion. Somewhat ironically (in a non-Alanis Morissette way for the 90s music fans), it is currently rather uncertain what would be in scope for notification under the proposals.

At present the UTT regime applies only to "large businesses" (those with a UK turnover of more than £200 million and UK balance sheet total of more than £2 billion) and the taxes covered are corporation tax, VAT, and income tax (including PAYE). The consultation published on 12 March sets out three proposals. The first is the extension of the notification requirements, beyond the companies and partnerships which constitute large businesses, to individuals and trusts where the tax advantage of the legal interpretation exceeds £5 million. The second proposal is the addition of further taxes (SDLT, NICs, construction industry scheme obligations, IHT and CGT) to be within scope of UTT.

But it is the third proposal to introduce an additional trigger to broaden the range of legal interpretation uncertainties that are notifiable which will be of most relevance to corporates already within scope of the UTT regime. Currently there are two triggers for notification (recognition of a provision in the accounts to reflect the probability of a different tax treatment being applied; and reliance on interpretation or application of the law that is not in accordance with HMRC's "known position"). A third trigger (where there was a substantial possibility that a tribunal or court would find the tax treatment to be incorrect in one or more material respects) had been mooted but was dropped before the UTT regime was introduced in 2022 "because it was considered too subjective" and would have made it difficult to determine if a notification was required or not.

With the proposed additional trigger, HMRC wants to capture the situation where:((i) there is more than one credible legal interpretation; and (ii) HMRC's view is not known. Whilst the consultation states that "this option reduces some of the subjectivity involved in determining whether there was a substantial possibility a court or tribunal will find the treatment to be materially incorrect" it is difficult to see how when two key elements of the test deemed "too subjective" have simply been removed. Merely stating "credible" raises two obvious questions. First, "credible" to whom? To the taxpayer; their advisers; to HMRC; or to the man on the Clapham Omnibus? At least with the original formulation we knew we were effectively testing credibility before a tribunal or court which would presumably be expected to have heard all relevant evidence and possess suitable expertise. What if there are differences of opinion – is it sufficient if it would be credible to someone? The second obvious question is what level of "credibility" will suffice. The Cambridge Dictionary defines "barely credible" as "almost impossible to believe". But something which is "almost impossible to believe" can, by definition, be believed – i.e. it is literally "credible". Again, at least "substantial possibility" would allow you to have a stab at where on the spectrum you were.

So it is difficult to escape the feeling that HMRC would like to introduce the previously rejected third test but feel that having gone on record that they accept that as being unworkably subjective have had to recast it as something potentially even more subjective, uncertain and unworkable. The consultation document almost seems to admit as much stating that "the trigger will capture situations where there is a genuine uncertainty and a meaningful risk of challenge". What is a meaningful risk of challenge if not a substantial possibility of losing in litigation? Or – and this rather highlights the uncertainty – does that merely mean meaningful risk of challenge by HMRC, even if unlikely to be successful in court? One credible interpretation of this (nod to Alanis again) would be that if you are aware of any tenable arguments HMRC might want to run against you, you have to tell them.

And on the subject of uncertainty, it is also worth noting that "legal interpretation" in this context does not mean legal interpretation. Or rather whilst it does in the "Scope of this consultation" section at the beginning where it is stated that "'legal interpretation' is where the taxpayer and HMRC interpret the law differently and that results in a different tax outcome" it soon gets expanded. By the time we hit section 3.2 Purpose we are given a non-exhaustive list of three "drivers" that cause "legal interpretation uncertainties" of which "differences in interpretation of the law – meaning what the law says or means" is only one. The others listed being "differences in interpretation of facts" and "differences in approaches to valuation, apportionment, calculation or allocation".

Proposed UK corporate re-domiciliation regime

The Department for Business & Trade's corporate re-domiciliation consultation, open until 19 June 2026, seeks feedback on an inbound regime allowing foreign companies to change their place of incorporation to the UK without losing legal identity. Outward re-domiciliation is ruled out, leaving the focus solely on encouraging UK growth.

According to the research by an independent expert panel into the demand for, and benefits of, an inward re-domiciliation regime, a significant proportion of re-domiciling companies is expected to consist of blocks of intermediate holding companies of multinational groups seeking to restructure. Such holding companies will not directly bring significant jobs or investment to the UK but they are expected to increase demand for the UK's professional and business services which will help grow this sector (which by 2035 is expected to double business

investment to £65bn according to The UK's Modern Industrial Strategy). The research also identified demand within the financial services sector for companies wishing to take advantage of the UK's tax regimes for asset holding companies and captive insurance companies.

Implementing the re-domiciliation regime will require primary legislation and updates to Companies House systems. The government is also working with regulators like the FCA and the PRA, acknowledging the many component parts of implementation but aiming to act as quickly as possible, "recognising companies are waiting to come to the UK once a regime is in place" and will set out the next steps and timings in more detail in the consultation response document later this year.

Tax perspective

The consultation explains the legislation for the re-domiciliation framework will be finalised first and then the government will consider what tax changes are required, but in the meantime invites comments on section 6 of the October 2024 report of the UK independent expert panel which considered tax changes.

Although in various places the paper implies that a company may wish to re-domicile to the UK to access a particular tax regime, it does also acknowledge that a company may be tax resident in a different jurisdiction to its legal domicile and, with one obvious exception, we are not aware of any UK tax regime that is driven by UK incorporation rather than UK residence. Reference is made to the Qualifying Asset Holding Company (QAHC) regime for example. But whilst a QAHC needs to be UK tax resident it does not matter whether or not it is UK incorporated. The obvious exception is, of course, stamp duty reserve tax (SDRT). It is notable that there is only one Case Study in the consultation, "a large, listed investment company incorporated in Jersey and tax resident in the UK" and the consultation omits to mention that the only tax consequence of re-domiciling to the UK would be to introduce SDRT on trading in the company's shares. Yes, that is the same SDRT that was acknowledged to have an adverse impact on valuations and liquidity in the announcement of the SDRT – UK Listing Relief holiday in November's Budget.

Given that a non-UK incorporated company can already move its tax residence to the UK through central management and control, and that re-domiciling into the UK would be a one-way ticket into SDRT without the ability to leave again, it seems unlikely that there will be much demand for the new regime purely from a tax perspective. Once upon a time the deemed UK tax residence that comes through UK incorporation may have been an attractive prize for getting access to the extensive UK double tax treaty network without needing any directors physically to travel to the UK. However, that would be going against the grain now with many jurisdictions checking for sufficient local substance to justify beneficial ownership of shares or debt before granting relief for withholding taxes.

All of that said, if the expert panel's recommendations to introduce a market value step up for tax purposes where a company re-domiciles to the UK are followed, that would at least remove a potential tax obstacle to re-domiciling to the UK when that is otherwise the preferred option. For a pure intermediate holding company which expects to benefit from the substantial shareholdings exemption on any disposals it makes this may not matter, but that could be beneficial for companies with other assets and liabilities and where an offshore transfer to step up basis before coming to the UK might otherwise have been required.

Indeed, making those changes will be important because if there are regulatory or other good reasons for a company to redomicile to the UK, tax should not be an obstacle to re-domiciliation even if it is unlikely to be a driver.

What to look out for:

- **On 21 April, the Court of Appeal is scheduled to hear the appeal in the joined cases of *Redevco* and the *Trustees of the P Panayi Settlements* on the compatibility with EU law of exit charges on ceasing to be tax resident in the UK which did not, at the relevant time, provide an option to pay in instalments.**
- **18 May is the earliest date tax advisers can register for an agent services account to comply with the new tax adviser registration requirement (see HMRC guidance on when to register for the registration dates which apply in different circumstances). Further HMRC guidance is expected before 18 May.**
- **A technical consultation is expected in "Spring" 2026 on draft regulations to require in-scope multinationals to report cross-border related-party transactions by filing an "international controlled transactions schedule" in a standardised format. The information obtained will be used for automated risk profiling and manual risk assessment by HMRC.**

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