

# The Use of Jersey Holding Companies for UK Corporate Migrations

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The current fiscal uncertainty and difficult economic climate is incentivising corporates to leave the UK's tax regime in favour of jurisdictions with more benign tax regimes. Since 2007, when the UK Government first announced a revision of the UK rules applying to the taxation of foreign profits of UK companies, several companies have chosen to migrate offshore. These include Shire, Henderson Group, Regus and Signet. Many other multi-nationals with significant overseas profits have been giving active consideration to migrating out of the UK.

Although revised proposals were put forward by HM Treasury in response to widespread industry concerns on the harshness of the initial proposals, the uncertainty that remains together with the significant tax benefits offered by other jurisdictions has made migration out of the UK very attractive.

As an example in Ireland the headline rate of corporation tax is 12.5% for trading income and 25% for non trading income. This compares very favourably with the UK's 28% headline rate of corporation tax. Moreover, a company based in the UK will pay 28% corporation tax on its worldwide profits including dividends and income from non-UK companies.

The principal benefit of migrating offshore would be mitigation of (i) the UK tax that a group would bear on non-UK profits such as tax on dividends received from subsidiaries established in jurisdictions where those dividends have been taxed at less than 28% and (ii) mitigation of tax on the profits of its low tax subsidiaries being deemed as distributed to the UK parent even if the profits have not actually been distributed.

Although the Ireland tax-resident Jersey holding company structure is more popular, other jurisdictions are sometimes chosen. Bermuda is favoured by insurers whilst Luxembourg has also been used recently. Moreover, Luxembourg and Ireland both have a double taxation treaty with the UK and are part of the EU.

## **BENEFITS OF JERSEY**

A Jersey company will either be deemed non-resident in Jersey for tax purposes or tax resident at 0%. There is no capital gains tax, value added tax or withholding tax in Jersey and no stamp duty will be applicable to the issue transfer or redemption of shares in a Jersey company. Jersey companies may also (i) redeem shares from any source of funds and (ii) make a distribution out of any source (other than capital redemption reserve and the nominal account).

Shares in a Jersey company may be included in the FTSE100/250 and when listed on the LSE or AIM may be traded in uncertificated form through CREST. The UK Takeover Code applies to Jersey companies also.

## **THE MIGRATION PROCESS**

The process of migration is relatively complex and will require extensive due diligence on the parent company before it is commenced. This is because the Jersey holding company may need to accede to the financing, pension and benefits arrangements already in existence. The migration itself is effected by way of a scheme of arrangement pursuant to **sections 895-899 of the Companies Act 2006** (the "UK Act"). A Jersey company is incorporated as a non-UK tax resident company and interposed between the existing UK parent company and its shareholders. A great deal of care must be taken so that the Jersey holding company is non-UK resident. This means that it must be managed and controlled outside the UK, and must take all strategic decisions at board meetings held outside the UK.

If desired the Jersey company's articles of association may include rights and obligations in relation to pre-emption rights, disclosure rules and

the issue of shares that would normally be embedded in the articles of a UK listed parent. Shareholders in the UK parent company each receive shares in the Jersey holding company in exchange for their shares in the old UK parent company. It is common for further restructuring to be required so that certain non-UK subsidiaries of the old UK parent company move up the structure and become subsidiaries of the Jersey holding company instead.

## **DIVIDEND ACCESS SCHEME**

Once the migration is complete the new structure in place will mean that any UK resident shareholders will receive dividends from a non-UK resident Jersey holding company. The UK tax treatment of the dividends paid by the non-UK resident Jersey holding company may not be desirable for some UK resident shareholders so provision may be made for a mechanism under which shareholders may continue to receive UK dividends should they wish to do so. This is usually achieved by a dividend access scheme whereby shareholders in the Jersey holding company may elect to receive dividends from the old UK parent company pursuant to a trust arrangement.

## **CONCLUSION**

Whilst the legal, regulatory and administrative requirements of migrations will need to be dealt with, there are considerable benefits to migrating offshore.

Research by Mark Estella.

Should you have any questions or requests for further information, please contact:

**Mark Lewis**  
**Local Group Head – Corporate & Commercial**  
mlewis@applebyglobal.com  
Tel: +44 (0)1534 818042

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## The Right People. The Right Places.

### **Bermuda**

Canon's Court  
22 Victoria Street  
PO Box HM 1179  
Hamilton HM EX  
Bermuda

Tel +1 441 295 2244  
Fax +1 441 292 8666

### **Jersey**

PO Box 207  
13-14 Esplanade  
St Helier  
Jersey JE1 1BD  
Channel Islands

Tel +44 (0)1534 888 777  
Fax +44 (0)1534 888 778

### **British Virgin Islands**

No 56 Admin Drive  
Wickhams Cay 1  
PO Box 3190  
Road Town  
Tortola VG 1110  
British Virgin Islands

Tel +1 284 494 4742  
Fax +1 284 494 7279

### **London**

2nd Floor  
2 Royal Exchange Bldgs  
London EC3V 3LF  
United Kingdom

Tel +44 (0)20 7283 6061  
Fax +44 (0)20 7469 0540

### **Cayman Islands**

Clifton House  
75 Fort Street  
PO Box 190  
Grand Cayman KY1-1104  
Cayman Islands

Tel +1 345 949 4900  
Fax +1 345 949 4901

### **Mauritius**

8<sup>th</sup> Floor  
Medine Mews  
La Chaussée  
Port Louis  
Mauritius

Tel +230 203 4300  
Fax +230 210 8792

### **Hong Kong**

8<sup>th</sup> Floor  
Bank of America Tower  
12 Harcourt Road  
Central  
Hong Kong

Tel +852 2523 8123  
Fax +852 2524 5548

### **Zurich**

Bahnhofstrasse 52  
CH-8001  
Zurich  
Switzerland

Tel: +41 44 214 6525  
Fax: +41 44 214 6524