

Offshore Real Estate Investment Structures

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Introduction

The use of offshore real estate investment vehicles for acquiring and holding commercial property in London and other European cities can offer significant advantages to US investors. Fiscal benefits, including stamp duty savings, tax deductibility of interest and operating expenses and Value Added Tax efficiencies, make the Channel Islands an ideal environment for real estate investment structures. Jersey, in particular, has developed significant asset class experience and know-how in relation to commercial property investment structures.

The benefits of using a Channel Islands structure to hold real estate assets include the ability to manage and control the investment vehicle without suffering any local income tax or deductions for withholding. Market practice has resulted in large numbers of Jersey holding vehicles being used by international investors for UK commercial property transactions. The holding structures available in Jersey include property unit trusts, companies and limited partnerships, all of which can be established as investment funds. In addition, private trusts and various types of partnership can be used. Ogier can advise on the structuring options available from straightforward property holding vehicles to complex investment fund structures set up for a range of international investors. We can also assist with the establishment and ongoing operation of real estate investment structures.

Background

Continuing volatility in the world's financial markets has left investors looking for alternative investment assets that will provide long-term stable income and the potential for capital gains.

Why invest in UK real estate?

Despite the challenges in the global economy, UK commercial real estate has proved to be a safe haven for international investors and continues to perform strongly. In particular, prime commercial property in London remains a strong asset class providing stable rental returns and affording a degree of protection against inflation. This, combined with the relative strength of the US Dollar against other currencies, makes it opportune for US Dollar investors to diversify their portfolios to include UK and/or European real estate.

The funding crisis and regulatory tightening of capital adequacy requirements for European banks is likely to result in many existing leveraged structures having to exit the London property market, in many cases at a discount to intrinsic value. As European banks continue to be under pressure to shrink their balance sheets, purchasers with access to equity or debt finance will be well placed to take advantage of opportunities in the UK and European market.

Advantages of Jersey

Stability and expertise are key elements in Jersey's proposition. The Island is a well established, transparent and sensibly regulated offshore jurisdiction in the same time zone as London. The Island has substantive experience of commercial property as an asset class and in the set up and operation of real estate investment structures. In 2012, the City of London index of international competitiveness ranked Jersey as the top rated international finance centre. Jersey's low tax status, proximity to the financial markets of Europe and a sophisticated banking and professional infrastructure have also contributed to the success of the Island as a base in which to establish long-term, real estate holding structures.

The use of Jersey investment vehicles to acquire and hold real estate offers significant benefits to US investors in terms of fiscal efficiencies and expertise. Specifically in relation to the UK, these include the ability to manage and control investment vehicles, deductions for withholding, stamp duty savings, exemption from UK capital gains tax, fiscal transparency and flexible regulation. These advantages are set out in more detail below.

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The use of a tax transparent or tax neutral Jersey investment vehicle frequently enables investors to mitigate exposure to taxation in the jurisdiction where the property is situated.

Income Tax

A key attraction to using a Jersey property unit trust (JPUT) to hold UK commercial property is that a JPUT can generally be structured as a 'Baker Trust', meaning that income of the JPUT will be directly attributable to the unitholders and taxed on the basis of their own tax status. Unitholders will also have the ability to set off interest and real

estate operational expenses of a JPUT against rental income.

Jersey limited partnerships will generally be treated as transparent for UK income tax purposes, resulting in partnership income being treated as arising directly in the hands of the limited partners who will be taxed in accordance with their own tax status.

Non-resident companies investing in UK real estate will be charged to income tax in the UK on taxable rental profits on a fiscal year basis. The corporate tax rate for a UK resident vehicle is currently 24% in comparison to the rate for a non-resident Jersey corporate investment vehicle of 20%.

Taxable rental profits are broadly based upon the profit calculated under generally accepted accounting principles. Deductible expenses include UK property agent fees, management fees, interest paid on loan finance (to the extent that this is provided on arm's length terms) and tax depreciation in the form of capital allowances.

Non-resident landlord scheme

Jersey holding structures can register under the non-resident landlord scheme whereby rents may be received gross of UK tax. There is a double tax treaty between the UK and Jersey which can be used to optimise the tax treatment of particular structures, for example, by using a Jersey resident company for investment and developing real estate in the UK.

VAT

A non-UK resident company can register for VAT purposes to allow recovery of VAT on the purchase of UK real estate. Additionally, a real estate holding vehicle managed by an offshore manager can often benefit from VAT savings on fees billed to the vehicle by the manager and other service providers.

Stamp Duties

UK real estate held through a Jersey company or JPUT may be transferred free of stamp duty or stamp duty land tax charges by structuring the transfer as a sale of interests in the holding structure rather than a direct conveyance of the property itself. There is no stamp duty in the UK or Jersey applicable on the transfer of shares in a Jersey Company or units in a JPUT. This contrasts with SDLT of 4% payable on the transfer of UK commercial property and Stamp Duty Reserve Tax payable on the transfer of units in an English unit trust of 0.5%.

Capital Gains

Jersey companies, JPUTs and Jersey limited partnerships will generally be exempt from

UK capital gains tax on the sale of underlying UK commercial real estate provided the investment vehicle has been managed and controlled outside the UK. Jersey entities will not be subject to taxation in Jersey on any capital gains (see below).

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JPUTs, limited partnerships and companies (in most circumstances) will be taxed in Jersey at the rate of 0% on their worldwide income and will not be subject to withholding tax on any dividend or other payment made by them.

There is no capital gains tax, corporation tax, stamp duty, VAT or inheritance tax payable in respect of the issue or realisation of units in a JPUT, shares in a Jersey company or interests in a Jersey limited partnership and no corporation tax, inheritance tax or withholding tax is applicable in Jersey to any unitholders, shareholders or partners of such vehicles.

In addition, no stamp duty is payable in Jersey on the transfer of units, shares or partnership interests.

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Jersey is a well regulated and stable jurisdiction in which to establish real estate holding structures and the flexibility in structuring and regulatory options that Jersey offers means that it continues to be well regarded by investors. Advantages to using a Jersey structure include:

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In 2012, Jersey was ranked as the highest rated offshore international finance centre in the Global Finance Centres Index published by the City of London. Jersey is a member of the OECD and has been on the G20 white list of offshore jurisdictions since this list was published in 2009. In addition, Jersey's regulatory regime is compliant with international

standards and is endorsed by IOSCO, OECD, IMF and G20. Jersey has also entered into information exchange agreements with a number of countries including the United States and the United Kingdom.

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In comparison to UK corporate investment vehicles, JPUTs and Jersey limited partnerships are extremely flexible in terms of their ability to make distributions. There are no Jersey legal or regulatory limitations in the exercise of the trustee's power to distribute trust assets to unitholders or the source from which such distributions may be made (although, where there is more than one unitholder, the trust instrument will usually provide for distributions to be made in proportion to the units held). A Jersey company may make a distribution from any source (other than its nominal capital account and capital redemption reserve) subject to satisfying certain solvency tests. In particular, a distribution can be made from a share premium account (for a par value company) or a stated capital account (for a no par value company) and, in either case, from a profit and loss account, even where a company has accumulated losses. Similarly, Jersey limited partnerships are highly flexible in their ability to make distributions out of income and capital.

Management and Control

The place in which an investment holding structure is managed and controlled will be a question of fact determined by looking at by whom and from where the strategic direction of an entity is exercised. An investment structure established in Jersey needs to ensure it is managed and controlled outside the UK and generally will achieve this by demonstrating that:

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About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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Meet the Author



Katrina Edge

Partner

Jersey

E: katrina.edge@ogier.com

T: [+44 1534 514192](tel:+441534514192)

Key Contacts



Richard Daggett

Partner

Jersey

E: richard.daggett@ogier.com

T: [+44 1534 514071](tel:+441534514071)

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