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REAL ESTATE HOLDING STRUCTURES IN JERSEY

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A wide range of Jersey entities may be used for real estate holding structures, with companies, limited partnerships and unit trusts being the most commonly favoured, often in combination. The choice of entity will depend principally on the proposed use of the entity and considerations such as structuring flexibility, limitation of liability and tax efficiency. This briefing summarises the main characteristics and tax advantages of Jersey companies, partnerships and unit trusts for holding UK real estate. The briefing focuses in particular on the holding of UK real estate, although Jersey structures can be used to hold real estate anywhere in the world.

Jersey companies

The Companies (Jersey) Law 1991 (the "Companies Law"), which is based on UK companies law, provides a modern, sophisticated, flexible framework for the formation and operation of Jersey companies. A wide variety of companies may be formed in Jersey and these include private limited liability companies (including single member companies), public limited liability companies, companies limited by guarantee, hybrid companies limited by shares and guarantee, unlimited liability companies, companies of limited life, incorporated cell companies and protected cell companies. The Companies Law also permits the migration of companies to and from Jersey, includes streamlined merger provisions and contains flexible provisions enabling the distribution of income and capital provided the company is solvent.

Taxation of Jersey Companies in Jersey

In most instances, a company incorporated in Jersey or managed and controlled in Jersey will be subject to corporate income tax in Jersey at the rate of zero per cent. Other rates of income tax can apply to companies undertaking certain specified activities (e.g. certain types of financial services, where the tax rate is 10 per cent), but these are unlikely to apply to international real estate holding structures. No Jersey corporate income tax is charged on either non-Jersey source income and gains or, by concession, Jersey bank interest. Jersey real estate holding companies are not obliged or entitled to deduct withholding tax on the payment of dividends to non-Jersey resident shareholders. There is no taxation in Jersey of any income or gains arising in respect of shares held in a Jersey company by non-Jersey resident share-holders.

There is no capital gains tax, corporation tax, profits tax, value added tax or inheritance tax in Jersey that applies to a Jersey company or its shareholders. No stamp duty or stamp duty reserve tax ("SDRT") or equivalent charge is levied in Jersey on the issue, conversion, redemption, repurchase or transfer of shares (save in relation to the transfer of shares in a company which by virtue of its articles of association confers a right of occupation of land in Jersey). There are no annual taxes or charges in Jersey by reference to a Jersey company's authorised or issued share capital.

Goods and Services Tax ("GST") is charged on the value of goods and services supplied locally in Jersey at a rate of 5 per cent, but provided no individual ordinarily resident in Jersey has an interest in the company it would usually register as an international services entity and thereby fall outside of the scope of GST.

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An interest in a Jersey company is an asset situate in Jersey. There is no inheritance tax in Jersey, but where shares are held directly by a natural person upon death a grant of probate or letters of administration must be obtained in Jersey and stamp duty of between 0.5 per cent and 0.75 per cent is chargeable on the value of the Jersey shares.

Jersey Partnerships

A number of different types of partnership may be established in Jersey. These include ordinary partnerships (also known as "general" or "customary law" partnerships), traditional limited partnerships, separate limited partnerships ("SLPs"), incorporated limited partnerships ("ILPs") and limited liability partnerships ("LLPs"). Neither ordinary partnerships nor traditional limited partnerships have separate legal personality, whereas SLPs, ILPs and LLPs do. ILPs are unique amongst these partnerships as they are, by statute, designated as a body corporate with perpetual succession.

Partnership property of a traditional limited partnership is vested in the name of the general partner for the benefit of its limited partners. Partnership property of an SLP and ILP may be vested in either the name of the partnership or the general partner of the partnership. Partnership property of an LLP is vested in the name of the LLP or can be held by any person on its behalf. UK real estate is often held by two corporate nominees on bare trust for a partnership for "overreaching" purposes. (Under English law, two corporate nominees holding a property on trust are able to transfer good title to the property to a buyer, automatically extinguishing (and "overreaching") any overriding interest in the property.)

Jersey partnerships can offer the benefits of tax transparency and limited liability, combined with a high degree of flexibility.

Taxation of Jersey Partnerships in Jersey

Jersey limited partnerships (traditional, separate and incorporated limited partnerships) and LLPs are all tax transparent.

Non-Jersey resident partners of a Jersey partnership are chargeable to Jersey income tax only on the income profits of any trade carried on in Jersey. They will not be chargeable to Jersey income tax on income or capital profits from investments or trading activities outside of Jersey, interest on loans made to a Jersey partnership (if any), interest on Jersey bank deposits, or on dividends or interest paid to the Jersey partnership by a Jersey resident company subject to zero per cent corporate income tax. There is also no charge to Jersey income tax on distributions of such non-Jersey source income by the Jersey partnership to Jersey resident investment holding companies or trusts whose shareholders or beneficiaries, respectively, are entirely non-Jersey resident.

The tax treatment in Jersey of Jersey partnership interests is similar to the position described above in relation to shares in a Jersey company. However, if the sole or main activity of the Jersey partnership is investing or dealing in interests in land in the UK, then a charge to UK stamp duty land tax ("SDLT") will apply on the transfer of a partner's interest and the admission of new partners.

Jersey Unit Trusts

A wide variety of Jersey trusts may be used for property structures from a 'private client' trust (usually, a discretionary trust), through to the more commonly used Jersey property unit trust ("JPUT"). All Jersey trusts are governed by the Trusts (Jersey) Law 1984, which is based on English trust law principles and provides a flexible and familiar legal framework.

A trust or JPUT does not have separate legal status and acts by its trustee or trustees. Usually, a professional regulated trust company acts as trustee, but in certain cases, a special purpose trustee ("private trust company") may fulfil such role. A unit trust may have managing trustees or separate trustees and a manager. It is commonly the case that a JPUT holding UK real estate has two trustees or a trustee and a nominee of that trustee to facilitate "overreaching" under English property law.

Taxation of JPUTs in Jersey
JPUTs are generally drafted so as to be tax transparent. Distributions made to Jersey resident individual holders of units in a JPUT will be chargeable to Jersey income tax and, in such situations, the trustees will need to deduct and account for that Jersey income tax. Non-Jersey source investment income or gains and, by concession, Jersey bank interest of a JPUT are not ordinarily subject to any Jersey income tax.

The tax treatment in Jersey of units in a JPUT is similar to the position described above in relation to shares in a Jersey company.

Jersey trusts can be an effective way of holding property to ensure that it does not form part of a person's estate, which may not be able to be achieved in the same way by a company. Jersey trusts, as well as ensuring long term continuous ownership, offer protection to property from, for instance, legal succession rights, stamp duties, probate formalities and high taxation.

Taxation of Jersey companies, partnerships and JPUTs in the UK

For a variety of reasons including, among others, Jersey's proximity to the UK and the similarity of company, trust and partnership laws, many Jersey property holding structures hold UK real estate. Fundamental to most of these structures is the requirement for the Jersey entity to remain tax resident in Jersey by being managed and controlled in Jersey. For these purposes, two Jersey resident directors are usually appointed to the board of the Jersey company or, in the case of a limited partnership, the general partner or, in the case of a JPUT, the trustee or trustees, to assist in establishing tax residency offshore. Highlighted below are some of the principal tax efficiencies offered by Jersey entities holding UK real estate.

Companies
The acquisition and transfer of UK property ordinarily gives rise to a charge to UK SDLT of up to 4 per cent on UK commercial property and up to 7 per cent on UK residential property. A common method of reducing this charge is for the UK property to be acquired by a company and then for shares in that company to be transferred, rather than the underlying property. The transfer of shares in an English company gives rise to a charge to UK stamp duty or UK SDRT of 0.5 per cent, whereas the transfer of shares in a Jersey company is not subject to those taxes or any equivalent charges.

Property holding companies can also be used to preserve and maintain the confidentiality of the ultimate property owners, to insulate the property from potential UK inheritance tax (on the basis that the shares in the Jersey company are Jersey situs assets) and to shelter future capital appreciation of the property from a charge to UK capital gains tax.

A Jersey resident company holding commercial property in the UK will not ordinarily be charged to UK capital gains tax on the sale of that property, unless it is considered to be carrying on a trade through a permanent establishment in the UK.

In relation to UK income tax, the net rental income derived from UK property held by a Jersey resident company is charged to UK income tax at the rate of, currently, 20 per cent. The taxable rental income can be reduced by maximising tax deductible interest by way of shareholder debt or external financing arrangements, by maximising deductible expenses incurred wholly and exclusively for the purposes of a UK property rental business and by claiming capital allowances in respect of qualifying expenditure in investment assets. It is also possible for a Jersey resident company to obtain clearance from the UK H.M. Revenue & Customs under the non-resident landlord scheme to receive rental income gross (i.e. without requiring the tenants to withhold and account for income tax on their rental payments). UK property rental income is also exempted from the recently revised UK Controlled Foreign Company regime.

In relation to UK VAT, it is possible for Jersey companies to register for UK VAT and to elect to waive the exemption for VAT in order to recover VAT. It is also possible for management and other services to be provided by a Jersey entity to the property holding entity without a charge to UK VAT.

There are now UK tax rules relating to the "enveloping" of high value residential property within a corporate "wrapper". A 15 per cent charge (to be returned to 7 per cent from the date of Royal

Assent of the Finance Bill 2013 (expected end of July 2013)) to UK SDLT applies on the acquisition of UK residential property with a value of over £2 million by a "non-natural person" (being a company, wherever incorporated (except when acting as a trustee), a partnership (where one or more of its partners is a company) or a collective investment scheme) unless certain reliefs or exemptions are available. An additional UK SDLT annual charge of up to £140,000 (known as the "Annual Tax on Enveloped Dwellings" or the "Annual Residential Property Tax" ("ARPT")) is levied on non-natural persons holding such property and UK capital gains tax at 28 per cent applies to the disposal of such property by non-natural persons who are not resident in the UK, unless certain reliefs exemptions are available. The holding of commercial property in the UK within a Jersey corporate entity is outside of the high value UK SDLT charge, the UK ARPT and extended UK capital gains tax regime and continues to negate a charge to UK stamp duty or UK SDRT on a subsequent transfer of shares in a Jersey property holding company.

Partnerships

In general terms, Jersey limited partnerships (save for ILPs) and LLPs are tax transparent for UK income tax and UK capital gains tax. An ILP is non-transparent for UK capital gains tax on the basis that it is a body corporate. Partnership interests in a Jersey partnership are treated as non-UK situs for UK inheritance tax purposes.

In relation to UK property, although UK SDLT now applies to transfers of land to partnerships, transfers of partnership interests and the admission of new partners and the dissolution of partnerships, Jersey partnerships may still be used as part of arrangements which mitigate payment of UK SDLT by being used in conjunction with an overlying JPUT or company holding interests in the Jersey partnership, where UK SDLT is saved on the subsequent sale of units in the JPUT or shares in the company.

JPUTS

JPUTs can be a tax-efficient way of holding property and are commonly used for property structures. Tax transparency can be achieved by structuring a JPUT as a 'Baker' trust for UK tax purposes. As the rental income belongs to the unit holder as it arises, the unit holder may be subject to UK income tax, and not the JPUT itself. The 'benefits-in-kind' UK tax provisions, which may apply to company officers who, for instance, occupy property owned by a company rent-free, should not, by contrast, apply to a JPUT. A JPUT will not be subject to UK capital gains tax on the sale of any UK property, unless it is considered to be 'trading' in property. Units in a JPUT are treated as non-UK situs for UK inheritance tax purposes.

Although, UK SDLT is charged when a JPUT first acquires UK property, no UK SDLT, UK stamp duty or UK SDRT is chargeable on any subsequent issue, transfer or redemption of units in the JPUT. It is also clear that the UK ARPT charge and the extended UK capital gains tax regime do not apply to the trustees of a JPUT holding commercial property in the UK. Further, the surrender or redemption of units in a JPUT is not subject to UK stamp duty or UK SDRT, as opposed to a 0.5 per cent UK stamp duty or UK SDRT charge in respect to a UK unit trust.

Conclusion

Jersey offers a wide range of property investment and holding structures and has a mature property funds and investment sector, providing high quality legal, accounting and administration expertise. Jersey entities may be formed quickly and cost efficiently with each type of entity providing its own degree of flexibility for structuring purposes and able to meet promoter's and investor's requirements.

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