

Guernsey Property Unit Trusts: Uses and Benefits

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1st December 2022

What is a Guernsey Property Unit Trust (“GPUT”)?

A Guernsey Property Unit Trust (“GPUT”) is a form of Guernsey trust commonly used when structuring UK real estate acquisitions.

The assets of a GPUT are held in the name of the trustee on behalf of the unitholders (beneficiaries) who will hold units in the GPUT corresponding to their interest in the underlying asset. The legal ownership of the asset therefore rests with the trustee whilst the unitholders have the beneficial interest in the trusts’ assets.

The trustee will typically appoint a Property Manager to manage the real estate held.

Uses and Benefits of a GPUT

Up until 2006 a GPUT could benefit from an exemption to UK Stamp Duty Tax (“SDLT”). Whilst that exemption no longer exists, a GPUT is still an attractive investment vehicle with the following benefits:

- No Stamp Duty payable on transfer of units in a GPUT (where the GPUT qualifies as a ‘collective investment scheme’)

- No liability to income tax or capital gains tax for the Trustee in Guernsey

- The GPUT may be transparent for UK income tax when correctly structured as a “Baker” trust

- No requirement to be audited (where not regulated or listed)

- Flexibility in relation to unitholder’s rights, such as different classes of units to allow certain unitholders to receive varying returns on their units

- A GPUT may (subject to tax advice) offer unitholders a greater degree of influence over the trustee, by allowing them to appoint directors to the board and/or include limitations to trustee powers under the terms of the trust instrument.

Rights of Unitholders

The rights of the unitholders will be largely governed by the terms of the trust instrument which will contain commercial terms that govern the GPUT, such as voting thresholds, rights on such matters as redemption, transfers and removal of a trustee.

The trustee is independent of the unitholders, however, unitholders are able to maintain a degree of control over the trustee by including limitations on the powers of the trustee under the terms of the trust instrument.

GPUT Trustee

It is typically recommended that a special purpose vehicle (SPV) is established to act as the trustee to a new GPUT which then allows for limited liability status for the trustee. Although the provision of trustee services is a regulated activity in Guernsey, an exemption from this requirement is available where the following criteria are met:

- The SPV trustee is administered by a Guernsey regulated fiduciary service provider, and

- The SPV trustee’s sole purpose and only activity is to act as the trustee to the NEW GPUT

A GPUT must have at least one trustee, however in practice a GPUT will often have two SPV trustees if the GPUT structure is to hold UK real estate in order to address overriding interests in English law.

A SPV trustee can be owned by a foundation or a charitable or non-charitable purpose trust.

Regulation of a GPUT in Guernsey

The requirement of a GPUT to be regulated will be dependent on the number of proposed unitholders and the sophistication of those individuals.

Where a GPUT is regulated under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the "POI Law"), it will qualify as a "collective investment scheme", being any arrangement relating to property (of any description):

- where the purpose is for investors to participate in, or receive profits or income arising from, the acquisition and disposal of the property, and
- in which investors do not exert management or control over the property to which the arrangement refers, and
- under which:
 - The contributions of the investors and the profits and/or income out of which payments are to be made are pooled, or
 - The property is managed as a whole, by or on behalf of, the person responsible for its management

Dixcart Team

Any persons wishing to establish a Guernsey Property Unit Trust (GPUT) will require both legal and tax advice to ensure that the GPUT is structured to meet their needs as well as a licensed Guernsey administrator to provide trustee services.

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