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Have UK Tax Reforms for Holding UK Real Estate Affected the Use of Guernsey Structures?

Many other reasons for using Guernsey structures, besides the mitigation of tax leakage for holding UK real estate.

23rd November 2021

The Aim of this Note

The aim of this Article is to highlight the many other reasons for using Guernsey structures, besides the mitigation of tax leakage for holding UK real estate (and other assets). In the past the focus on the benefits of using Guernsey structures was often concentrated purely on the tax benefits available, whilst ignoring other potential benefits.

What's Changed? – Tax Reforms for Non-UK Resident Owners

Since 2015 the UK government has announced various tax reforms to more closely align the tax treatment of non-UK resident owners of UK property (both residential and commercial) with that of UK residents holding UK property.

These reforms were introduced as part of the UK government's wider efforts to tackle tax avoidance, evasion and non-compliance and were designed to 'level the playing field' in terms of taxation of gains between non-UK resident and UK-resident investors in UK real estate.

Notwithstanding these reforms, investors are still free to structure their investments in UK real estate through Guernsey structures reducing some of the adverse UK tax implications which use of UK vehicles may incur.

Lawful mitigation of tax liabilities is still permissible.

Why the Use of Guernsey Structures Can be Beneficial

There are a number of important non-tax related reasons why structuring through a Guernsey structure is beneficial for holding UK real estate (and other assets):

1. *The Versatility of Guernsey Vehicle Options Available*

Guernsey legislation allows a versatile variety of structures that can be used. Some of the key advantages are the flexibility of the laws such as:

Companies – Very flexible company law, distributions on a solvency basis (not limited to distribution of profits), no withholding tax on distributions, re-domiciliation allowed, Guernsey corporation tax is currently 0% with no capital gains tax.

Limited Partnerships / Guernsey Property Unit Trusts (GPUTS) – Both of these provide options for tax transparent structures which can aid planning, particularly where there is a diverse pool of international investors.

Protected Cell Companies – Provides a company which has the ability to appoint different shareholders to different cells and ring fence assets in those cells, and can be an alternative to a Collective Investment Scheme.

Trusts and Foundations – For those investors who have estate planning in mind, Guernsey is a world leader in this area with a well-developed trust regime. Since 2012 Guernsey has been able to offer Foundations for wealth planning and asset holding which are increasingly popular, particularly with clients from civil law jurisdictions. Guernsey Foundations are particularly interesting due to their ‘disenfranchised’ beneficiary legislation.

2. *Guernsey Collective Investment Schemes and Listed Real Estate Investment Trusts*

Guernsey Collective Investment Schemes (CIS) and The International Stock Exchange (TISE) listed Real Estate Investment Trusts (REITs), which use British offshore entities as the listing vehicles, offer the following benefits to investors:

- **improved returns** – exemption or potential exemption from UK corporation tax on rental income and from UK capital gains tax on corporate profits at the fund level, through the "transparency election" or an "exemption election";

- **reduced or no transaction costs** – no stamp duty arises in relation to the sale of shares in or units of a Guernsey entity unlike the SDLT suffered with a UK entity;

- **Private Investment Fund (PIF) Regime** – provides a lighter touch regulation for a CIS and is therefore more cost-effective to use, rather than other more regulated fund structures.

3. *Eurobond Exemption to UK Withholding Taxes*

The TISE is an internationally recognised stock exchange headquartered in Guernsey, with offices in Isle of Man, Jersey, Dublin and London.

Currently, nearly one third of all UK REITs are listed on the TISE to take advantage of the Eurobond Exemption to UK Withholding Taxes, as non-UK companies issuing debt secured on UK real estate can list the debt on a recognised stock exchange in order to pay interest to non-UK Entities and Persons, without deducting UK withholding tax.

4. *Privacy and Confidentiality (not secrecy)*

Ultimate beneficial ownership of structures is not currently publicly available, but is required to be disclosed to the Guernsey Registry, and shared to fully meet the obligations of the Common Reporting Standard and Tax Information Exchange Agreements.

In addition, trust and foundation instruments, limited partnership agreements and limited liability company (LLC) agreements are not publicly available, so investors can manage their affairs privately.

5. *Internationally Recognised Jurisdiction*

Guernsey has a reputation for being a well-regulated and transparent international finance centre. Guernsey has robust and extensive anti-money laundering laws and has entered into over 61 TIEAs based on the OECD model arrangement. Guernsey also has a world-class, professional infrastructure with numerous legal, tax, accounting and corporate service providers providing the high level of services required from investors. Other benefits include:

- All trust and corporate services providers must be regulated (not a requirement in many other countries including the UK).

- Most major UK, EU and US financial institutions are familiar with Guernsey and willing to provide services. Compliance related matters and therefore procedures such as opening bank accounts and raising finance can be carried out with minimal issues arising.

6. *Guernsey: Ability to Redomicile Entities*

It is often necessary or advantageous to move, or redomicile structures to other jurisdictions. For example, where geopolitical events or legislation become adverse, or there is a change in the investment strategy being followed, or there is adverse opinion regarding the structure's current jurisdiction.

One of the attractions of this re-domiciliation option is that it permits an entity to transfer its legal base to a different jurisdiction, while maintaining its legal personality and so remaining subject to all agreements (including external financing arrangements and related security), to which the entity was party prior to re-domiciliation taking effect.

By contrast, companies incorporated in the UK or in some other jurisdictions cannot be redomiciled, which can limit the multi-jurisdictional structuring options available to such onshore companies.

7. *Ability to Open Up to a Wider Buyer Audience on Exit*

Holding UK real estate or infrastructure assets through a Guernsey entity can create a wider international buying audience at the time of exit. An international buyer may not wish to hold shares directly in a UK company if they do not currently have a UK tax exposure.

It is also perfectly acceptable for a UK resident to have the asset held through a Guernsey company, to register the company as UK tax resident, and run the company's affairs from the UK. At the time of sale, the shares in the Guernsey company can be sold and the Guernsey company either re-domiciled (as described above), or have its tax residency changed to suit the new owner.

Have UK Tax Reforms Changed the Use of Guernsey Structures?

In short, no, not entirely.

CIS benefits continue to persist as the UK government permits CIS to make either a transparency election or an exemption election, thereby meaning that investors will not be subject to possible double taxation. As a result, we have seen a steady use of Guernsey holding structures and continue to see new enquiries.

We have also experienced a number of structures migrating to Guernsey to benefit from the jurisdiction's reputation and expertise, particularly as substance requirements are now increasingly important to demonstrate.

In addition, advisers and clients are less focused on tax advantages but reverting back to traditional reasons for using Guernsey structures, such as; wealth preservation and succession planning.

There are clearly a considerable number of benefits to investors in utilising Guernsey structures to hold real estate and other assets, with a great deal of flexibility and variety, to form a structure and to suit any investor.

Additional Information

For more information regarding the use of Guernsey structures to hold UK real estate and other assets, please contact Steven de Jersey or John Nelson at the Dixcart office in Guernsey: advice.guernsey@dixcart.com

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