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UK property tax changes – what they mean for Jersey and Guernsey structures

Service area / Real Estate
Location / Jersey and Guernsey
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The UK Government has announced that with effect from April 2019, it intends to bring non-UK investors into scope for either capital gains tax ("CGT") or corporation tax ("CT") on any direct or indirect gains made in relation to investments in UK property.

Jersey and Guernsey have responded to the public consultations and liaised with HMRC and industry bodies with the aim of i) protecting the status of both UK and foreign exempt investors (such as pension and sovereign wealth funds) investing through Jersey or Guernsey and ii) ensuring that investment in UK property through Jersey and Guernsey vehicles - and in particular fund structures and the property unit trusts known as JPUTs and GPUTs - does not give rise to any double-tax.

On 7 November 2018, details of the proposed implementation of the CGT and CT changes were published, and the following positive outcomes have become clear:

- specific provision has been made that will enable collective investment vehicles of a kind that will include typical JPUTs and GPUTs to elect to be treated as transparent for any gains subject to satisfaction of certain conditions (the "Transparency Election"). Investors in JPUTs and GPUTs making a Transparency Election will be taxed in their own hands on any gain made in respect of investments in UK property and therefore i) the status of exempt investors is preserved and ii) no double-tax will result as a consequence of investment through these vehicles;
- UK property-rich Jersey and Guernsey fund structures which are widely held and which are prepared to fulfil certain reporting requirements will be able to elect to be treated as exempt (the "Exemption Election"). This will mean that not only the fund itself but also any underlying holding entities will be disregarded for CGT/CT purposes (in respect of UK property gains), and investors will be taxed in their own hands on any gain made on their interests in the fund; and
- the treatment of Jersey and Guernsey companies which qualify as UK REITs will be preserved with any underlying holding entities of such companies also being excluded from the impact of the changes.

However, structures such as closely-held companies holding UK property will become subject to UK CT in respect of any gains made and this could give rise to double taxation (as non-exempt investors will also be subject to UK CGT on gains made in respect of any disposal of their shares in such a company). Investors in such structures will need to give careful consideration as to whether they will continue to be fit for purpose following April 2019 – particularly given the availability of the Transparency Election for certain unit trust structures.

Carey Olsen's involvement in the consultation process provides us with unique insight which will assist clients seeking to address the impact of the proposed changes on their existing and future structures.

If you wish to discuss the forthcoming changes and their impact on existing or potential Jersey and Guernsey structures, please contact your usual Carey Olsen contact or a member of the Jersey or Guernsey team below.

Key contacts for Jersey and Guernsey

For further information or professional advice please contact your usual Carey Olsen contact or a partner below:

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