Ogier

Jersey's offering for UK real estate stands up as opportunistic investors circle

Insights - 19/09/2018

It is fair to say that, if the UK commercial real estate sector was a glass, it would be very difficult to determine whether it was half full or half empty. Every positive headline about the sector booming has been accompanied with a harbinger of doom regarding its future.

For example, with Brexit, the drop in the value of sterling has meant UK property has become increasingly attractive for overseas investors and record amounts have poured into London from Asia – wonderful! But nervousness around Brexit has led to some proposed high profile exits from London (HSBC, JPMorgan, UBS) – definitely not wonderful.

Numerous property funds have announced multi-billion pound build to rent schemes – fantastic! But at the same time, we hear of the woes of the retail sector (with CVAs for House of Fraser, New Look and CarpetRight all making the news cycle) – less than fantastic.

Three of the four biggest UK real estate deals ever have taken place in the past 18 months (Walkie Talkie, Goldman Sachs HQ and Cheesegrater), all from overseas investors – brilliant! But HMRC have proposed further tax changes that may make the UK less appealing to said overseas investors – not brilliant.

There is a much used quip relating to the half-glass empty scenario – whilst the optimist, pessimist and realist are all arguing about the state of the glass, the opportunist drinks it. This certainly applies to the UK's property industry right now. Since the Brexit vote in June the nervousness as to London's (and the UK more generally) long term viability as a place to do business, and therefore its attractiveness to the real estate investment community, has seen some investors paralysed into inaction – should I invest in the UK but take the risk that values plummet following March 2019 when the UK finally (in theory) leaves the EU? Or should I deploy my capital into Paris, Dublin and Frankfurt (who all stand to potentially gain from a downturn in London's fortunes) but take the risk that I miss opportunities in the UK? This inactivity has led to numerous real estate investors holding large amounts of usable funds whilst "waiting for the right deals".

This locking up of capital was made even worse over the past 10 months following HMRC's new proposals regarding the payment of capital gains tax (**CGT**) by non-resident investors in respect of UK commercial property. The UK had become an outlier by not seeking to charge certain taxable gains on real estate in its own jurisdiction (namely, UK real estate held by non-residents) – almost all other jurisdictions tax such gains – and it was perhaps only a matter of time before HMRC addressed this point. However, there were broad macro-economic questions to be asked about the timing of its implementation – with Brexit looming, the perceived wisdom was that the UK should avoid actions that would make it less appealing to overseas investors (which would definitely include not widening the scope of CGT to cover them). Furthermore, as there would be a rebasing of the value of commercial property as of March 2019 when the proposals are due to become effective, questions were raised over the potential tax take achievable as, if the value of the property fell (as is obviously a possibility with no one knowing how Brexit will play out), there may not be as much "gain" to tax.

But beyond those broad queries, the devil in the detail of the proposal threatened to have some significant unintended consequences that would have an impact on the use of Jersey vehicles for structuring purposes.

Tax exempt investors (such as pension schemes and sovereign wealth funds) do not, as their name suggests, generally pay tax in the UK. However, the new proposals could have resulted in them being exposed to CGT further down their investment structure. Similarly, with offshore funds, there was the possibility that the proposals could result in multiple tax charges at various levels of the fund's investment structure, impacting on taxable and tax exempt investors alike.

HMRC have conducted a wide-ranging consultation on the proposals, with comments being submitted by investors, advisers and industry bodies (including Jersey Finance and the Jersey Funds Association), and in July this year, HMRC published their response. Refreshingly, much has been taken on board and the issues of tax exempt investors and offshore funds were addressed directly. The suggested approach is to allow certain entities to elect for special treatment. In one scenario, it could elect to be treated as transparent for tax purposes, allowing each investor to be assessed to tax on their own merits (meaning the tax exempt investor could remain tax exempt but a taxable investor would be caught). Separately, an offshore fund could elect, subject to certain reporting requirements, to only be taxable at the fund vehicle level and not at any of the vehicles within its investment structure (avoiding multiple tax charges).

Exactly what type of vehicle will be eligible to take advantage of these regimes is still subject to further discussion, but the current direction of travel following further interaction with HMRC is promising for many of the investment structures used in Jersey, and this has been evident in a recent uptick in the use of Jersey vehicles again.

So will we see further opportunistic real estate investors prepared to bet on the UK beyond its departure from the EU? Those prepared to hold their nerve, deploy capital and actively manage investments could seek to reap rewards in these turbulent times. And with the positive news coming out of HMRC regarding the CGT proposals, they may be using Jersey vehicles to do so.

Richard Daggett is a partner in Ogier's Jersey team focused on real estate. He is recognised as a leading lawyer in the IFLR 1000, and by both Chambers UK and Legal 500. Richard has a broad corporate finance practice focusing on offshore property holding structures, mergers and acquisitions, private equity structures and joint ventures.

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.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under Legal Notice

Meet the Author

Richard Daggett

Partner

Jersey

E: richard.daggett@ogier.com

T: +44 1534 514071

Related Services

Legal

Related Sectors

Real Estate