BCLP. Client Intelligent

Insights

JPUTS MAY NOW NEED TO BE REGISTERED UNDER THE TRUST REGISTRATION SERVICE

Feb 02, 2023

SUMMARY

Some of the most commonly used trust structures in UK real estate ownership are Jersey Property Unit Trusts (**JPUTs**). It has become clear recently, following confirmation from HMRC, and HMRC now changing its published guidance, that the trust registration service (the **TRS**) can apply to JPUTs. If it applies, trustees will need to register the trust with HMRC under the TRS and keep records.

Recent HMRC guidance had said neither authorised nor unauthorised unit trusts were required to be registered. Now HMRC's guidance says unauthorised unit trusts may need to register if they meet the general registration requirements (see below for the primary triggers for registration).

It is not just those who are managing existing JPUT structures or setting up new JPUT structures who need to consider the TRS. Buyers of UK real estate where they are buying into the structure may also consider it, as will lenders to such structures.

First, how did we get here and how do the TRS rules operate?

Background

The TRS regime provides that the trustees of certain trusts are required to register the trust with HMRC on the UK's Trust Registration Service by providing HMRC with information about the beneficial ownership of the trust. The regime further consists of obligations to keep records, update HMRC of relevant changes in information and contains specific anti-money laundering (**AML**) rules for registered trusts.

Original application to taxable trusts only

The original TRS was introduced in 2017. It applied only to "taxable trusts" where the trustee(s) had a liability to pay certain types of UK taxes, including income tax, CGT and SDLT amongst other

taxes. In addition, the trust needed to be a "UK trust" (where, subject to some exceptions, all of the trustees are UK tax resident) or a "non-UK trust" (i.e. a trust that is not a UK trust) which receives income from a UK source or has UK assets.

Extended to non-taxable trusts in 2020

However, in October 2020 the TRS was extended to certain "non-taxable trusts" as part of an extension of AML rules. It was extended to all UK trusts (broadening the reach of the TRS significantly) and to certain non-UK trusts, whether or not the trusts are taxable.

The non-UK trusts that are caught by the extension are ones where the trustee(s):

- on or after 6 October 2020 acquire an interest in UK land; or
- on or after 6 October 2020 enter into a business relationship with a relevant entity in the UK that is required to carry out customer due diligence checks, but this latter trigger for registration is very unlikely to apply to a JPUT because JPUTs will normally be set up with non-UK tax resident trustees and this trigger requires the trust to have at least one UK tax resident trustee.

Given the extension of the regime to non-taxable trusts is potentially very broad, the legislation includes a number of exclusions from the registration requirement (but not the record keeping requirement). For example there is an exclusion from registration for authorised unit trusts that are not-taxable trusts. This exemption remains after the change in HMRC's guidance. Other useful exclusions are available, but are outside the scope of this blog.

How do the rules apply to JPUTs holding UK real estate?

Typically, we would now expect a JPUT to be registrable where it acquires an interest in UK land. The trigger may be either that it acquired the land directly on or after 6 October 2020 or the trustees of the JPUT had a liability to a relevant UK tax as a taxable trust.

In practice, we expect the relevant tax triggering registration to be a liability to pay SDLT, rather than income tax or capital gains tax, because of the typical tax treatment of JPUTs holding UK real estate.

Obvious triggers for registration include where the JPUT:

- acquires UK land directly;
- acquires a partnership interest holding UK land or the partnership in which it invests acquires UK land (because of the tax transparency of partnerships for SDLT purposes); or
- manages an asset in a way that triggers a liability to pay SDLT (e.g. a JPUT landlord pays chargeable consideration for a surrender of a lease).

Is there a historical angle here? Do I need to consider just new structures or existing ones?

Certainly, you will need to consider new structures but, as mentioned above, you may also need to consider historical ones, e.g. JPUTs that have had a liability to pay SDLT as far back as tax year 2016/2017. The registration requirement for taxable trusts applies in respect of relevant tax liabilities arising from tax year 2016/2017.

What about penalties?

HMRC published general guidance that it would not impose a penalty for a first offence of failure to register or late registration of a trust unless that failure is shown to be due to deliberate behaviour on the part of the trustees.

In addition, HMRC's guidance on JPUTs has shifted since the TRS was introduced, so it is hoped that HMRC will take this additional factor into account. Its recent published guidance said that unauthorised unit trusts (which includes JPUTs) were not registrable. This guidance changed on 31 January 2023.

What are the deadlines for registration?

The rules on deadlines to register are detailed and depend upon when the trust was set up and when the tax liability arose (in the case of taxable trusts) and when the trigger to register arose (for non-taxable trusts). For taxable trusts such as JPUTs, where confirmation from HMRC that they are within scope has recently changed, the deadline could technically have been as early as 31 January 2018. However, please note the section on penalties above, which should provide some comfort.

RELATED PRACTICE AREAS

- Corporate Real Estate and Funds
- Real Estate Tax
- Tax Advice & Controversy

MEET THE TEAM

Kieran Saunders

London

kieran.saunders@bclplaw.com
+44 (0) 20 3400 4749

Chris Adams

London

chris.adams@bclplaw.com
+44 (0) 20 3400 2257

Anne Powell

London

anne.powell@bclplaw.com
+44 (0) 20 3400 2162

Harriet Raff

London

harriet.raff@bclplaw.com
+44 (0) 20 3400 4217

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.

© 2024 Bryan Cave Leighton Paisner LLP.