Real estate funds…and the lure of the Channel Islands!

Hot off the press, this year's Monterey Insight fund research reports for Guernsey and Jersey make impressive reading for their real estate industries – the value of closed-ended real estate AUA in the Islands stands at over $85.5bn, and that's even before you take into account the billions in real estate held by pension funds and other institutional investors.

What these stats clearly tell us is that the Channel Islands are a leading location for real estate investment structures. But, in a world where real estate managers are hardly stuck for choice, the real question is why?

Tax neutrality, not avoidance

A favourable tax environment is a must-have for any manager, and this is certainly something offered by Guernsey and Jersey. Both Islands are tax neutral, meaning that the intermediary vehicles through which investments are made and held are not subject to local taxation.

It's important to point out that tax avoidance isn't the goal here – tax remains payable by the investors and the vehicle's investments at the rates applicable in their home jurisdiction. Incorporating the vehicle in Guernsey or Jersey just helps to ensure that tax is only paid once, and that there is no tax leakage along the way!

Good news on the Capital Gains Tax front

Remaining on the topic of tax, real estate managers using or thinking about using the Channel Islands for their investment structures would have been buoyed by the recent developments on CGT.

As a quick recap, HMRC announced proposals in November 2017 to tax non-resident investors on capital gains made on UK commercial property. Among other things, a large part of the rationale for this move was to create a level playing field between resident and non-resident investors.

The general view within the real estate industry was that the proposals would potentially impact FDI in the UK and create a convoluted system that could see investors subject to double taxation and tax charges at different levels of the fund structure.

Having taken on board feedback from industry participants and representative bodies, HMRC have now confirmed that certain elections will be available to non-UK resident Collective Investment Vehicles (CIVs), whereby CGT may not be imposed on those CIVs which meet certain criteria or on those investors which are already benefitting from tax exemptions.

It goes without saying that this is extremely positive news for the Channel Islands, as it means vehicles established in Guernsey and Jersey can continue to operate in a tax-transparent fashion – something which has always been a central part of their appeal to real estate managers and investors.

Partnerships, PUTs and private regimes

Guernsey and Jersey offer real estate managers a variety of options when it comes to choosing a vehicle for their investments, including limited partnerships, trusts and companies, all of which have overlaying legal and regulatory frameworks that have been finely tuned to meet demands of the alternative investment market.

One of the most widely used vehicles, certainly as far as UK real estate is concerned, is the Property Unit Trust. Under this arrangement, the trustee – which would typically be a special purpose vehicle – owns the property and holds it on trust for the benefit of the unit holders, i.e. the investors.

Using the Jersey Property Unit Trust (JPUT) as an example, there are several advantages to using this structure. The most notable of these being stamp duty may not be payable on the transfer of units, CGT may be deferred and, as it's a Jersey vehicle, it does not incur local taxes.

Tax advantages aside, JPUTs are inherently flexible vehicles. The structure and fundamental operation of the JPUT is almost entirely a matter for the trust instrument, including in areas such as distributions, unit holder rights and unit transfers.

PUTs, limited partnerships and companies can all be established under Guernsey or Jersey's private fund regimes, enabling managers to enjoy light-touch regulation and improved speed to market. With the Jersey Private Fund (JPF) regime, for example, there is no requirement to have an offer document, produce audited accounts, or for the promoter (manager) to have prior approval from the regulator. Better still, authorisation is granted within 48 hours!

"But managers can't market their funds in Europe through Guernsey or Jersey…"

This is an all-too-common rebuttal to non-EU jurisdictions and, thankfully, the answer to this misinformed statement is: "oh yes you can". National private placement regimes are a perfectly viable alternative to the AIFMD passport, particularly where the manager is marketing to only a handful of EU countries – as is generally the case.

You only have to look at the list of real estate and other alternative investment managers with funds serviced in the Channel Islands to see that the overwhelming majority, 114 out of 157 to be exact, are European managers.

Administration – it's what we do best!

Over 20,000 people work in the Channel Islands' finance industry – that's over 20% of the region's combined working population. Not only does that mean that the finance sector is the engine room of their economy, but it also means that when you choose to domicile your funds offshore, the chances are that you're leaving them in very safe hands – especially given that the bulk of those finance employees have a specialist knowledge of fund and corporate entity administration.

To put the size and scale of the industry into perspective, more than 154 real estate managers outsource the administration of over $79.2bn to service providers in the Channel Islands. This represents a resounding vote of confidence in the Islands' collective aptitude for fund administration.

It's also important to mention the array of other service providers on the Island integral to the establishment and ongoing administration of funds, from the "Big Four" and other accountancy firms to a multitude of top-quality law firms with specialist teams focused on alternative investment structuring, banks and custodians.

Reputation matters

As well as having confidence in their proficiency, managers who choose the Channel Islands can be confident that they are working with well-regulated and compliant jurisdictions, cooperative on a range of matters including tax transparency, financial crime and regulatory reporting.

Jersey and Guernsey are both fully aligned with the standards required by the EU Anti-Money Laundering Directive, as well as being early adopters of the Common Reporting Standard, the global standard in Automatic Exchange of Information, and FATCA. They were also rated compliant by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Final thoughts…

Anyone with any experience of working with the Channel Islands will likely have read this article thinking that are still numerous other benefits to be mentioned, and they would be right. Infrastructure, proximity to the UK, a robust legal system and political stability are just a few other factors that serve to heighten the attractiveness of Jersey and Guernsey, and topics on which we could have written a whole other article.

That said, we hope that this has given you a flavour of what has rendered – and continues to render – the Channel Islands a standout location for real estate funds.