The Association of
Real Estate Funds

Authorised Contractual Schemes

Summary & Comparison with Other Common Property Pooling Vehicles

March 2015

Introduction

In 2013 the UK introduced two new tax-transparent authorised funds, an authorised co-ownership scheme (**CoACS**) and an authorised limited partnership (**ALP**).

The government decided to establish a UK tax-transparent fund structure comparable to the Luxembourg FCP and Irish CCF in order to improve the UK asset management industry's competitive position (both because of a perceived risk of existing UK fund ranges being restructured into cross-border master/feeder structures following UCITS III and to attract new entrants to the European market to use the UK as their primary fund location).

It was not clear at the outset whether a contractual co-ownership structure or a partnership structure would be more useful, or, indeed, whether it would be possible to create a contractual fund under UK law. As a result, the government took a twin-track route which has resulted in the UK having two types of tax-transparent authorised contractual scheme. As they have different practical and (perhaps oddly for tax-transparent vehicles) tax characteristics it is in fact useful, particularly in the property arena, to have both. In the most basic terms, the CoACS is comparable to an onshore Jersey (etc) property unit trust (save, critically, at the moment, for stamp duty land tax purposes, as described later) and the ALP is essentially an authorised form of UK limited partnership.

Legal framework

CoACSs are the UK equivalent of Luxembourg FCPs and Irish CCFs (and as noted above are comparable to Jersey property unit trusts). The essence of CoACS is that the investors own the scheme property as co-owners (although it will be held for them by the scheme’s depositary). CoACSs may be established in standalone form or else as umbrella funds containing a number of individual sub-funds, each with their own investment objective and strategy. Regulations limit each investor’s liability for the debts of the scheme to the value of that investor’s units from time to time in a standalone fund or the relevant sub-fund of an umbrella fund.

ALPs are very similar to regular limited partnerships in terms of their structure and way of operating. In particular, the investors (the limited partners) can invest and disinvest their capital in the same way as with other authorised collective investment schemes. The operator (the general partner) will also not normally be liable for the debts of the authorised limited partnership, which is unusual in limited partnerships, but is to mirror the position of the operator in other authorised collective investment schemes.

Tax treatment

Both types of ACS are transparent for UK income tax purposes so they are not subject to income or corporation tax on their income. Instead, the unitholders are liable to tax where appropriate on their proportionate interest in the underlying income. The ACS's tax transparency is intended to allow unitholders in them to benefit from reduced rates of withholding tax under double tax treaties between each unitholder’s own state and the state in which each investment is located.

The position regarding capital gains realised on the disposal of investments by CoACSs is similar i.e. no tax in the fund itself. However, for simplicity, UK taxpayers are taxed as if their interest in the fund was an asset for capital gains purposes (and not the underlying assets); this is not relevant to investors outside the UK tax system.

The UK tax position of ALPs is the same as other UK (and non-UK) partnerships; they are tax-transparent for UK income and capital gains tax purposes.

Both types of ACS also benefit from favourable UK stamp tax treatment except in the case of UK land and buildings in ALPs and, at the moment, in CoACSs. Currently, in the case of UK land and buildings in CoACSs, transfers of interests attract stamp duty land tax (unlike for example Jersey property unit trusts). The government has announced that it intends to introduce an exemption from stamp duty land tax on transfers of units, and seeding, in 2016 (provided it can be satisfied that doing so will not open up avoidance). This would create a more level playing field for use of CoACSs and certain offshore structures.

ACSs also benefit from exemption from VAT (value added tax) on their management fees like other UK authorised investment funds.

Comparison of fund structures for UK commercial property

	ACS	JPUT/GPUT	FCP	ALP (ELP)	AUT	PAIF
Regulatory issues						
Main investor types	UK and non-UK occupational pension funds, life companies, various types of investment fund, potentially high net worth individuals	UK and some non-UK occupational pension funds, UK life companies and ones from certain other jurisdictions, various types of investment fund, potentially high net worth individuals (Note: as trusts are common law constructs, investors in civil law jurisdictions may have difficulty investing in them)	UK and non-UK occupational pension funds, life companies, various types of investment fund, potentially high net worth individuals	UK and non-UK occupational pension funds, life companies, more limited types of investment fund	UK and non-UK occupational pension funds, life companies, investment funds, high net worth individuals and (depending on FCA-regulatory category) retail investors (Note: as trusts are common law constructs, investors in civil law jurisdictions may have difficulty investing in them)	UK and non-UK occupational pension funds, life companies, investment funds, high net worth individuals and (depending on FCA-regulatory category) retail investors
Are there restrictions on the freedom of investment including gearing?	Yes; they depend on the FCA-regulatory category	For practical purposes, no	Yes; they depend on the CSSF-regulatory category	Yes; they depend on the FCA-regulatory category (ELP: no)	Yes; they depend on the FCA-regulatory category	Yes; they depend on the FCA-regulatory category, but also the PAIF status tax requirements
Can strategic management be UK-based?	Yes	No	No	Yes	Yes	Yes

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UK taxation						
How is income taxed?	Fund is transparent for income tax: • No tax liability at fund level • Tax liabilities (if any depending on the investor) arise at investor level in respect of the rental income, any dividends and any interest The non-resident landlords scheme is available	Fund is transparent for income tax: • No tax liability at fund level • Tax liabilities (if any depending on the investor) arise at investor level in respect of the rental income, any dividends and any interest The non-resident landlords scheme is available	Fund is transparent for income tax: • No tax liability at fund level • Tax liabilities (if any depending on the investor) arise at investor level in respect of the rental income, any dividends and any interest The non-resident landlords scheme is available	Fund is transparent for income tax: • No tax liability at fund level • Tax liabilities (if any depending on the investor) arise at investor level in respect of the rental income, any dividends and any interest The non-resident landlords scheme is available	Fund is opaque for income tax: • Tax (at 20%) on net rental income • Tax (at the investors' appropriate rate) on their receipt of distributions (Note: income distributions are dividends with dividend tax credits - these may be offset against the investors' liability to UK tax but not reclaimed)	Fund is effectively transparent for income tax: • Generally no tax liability at fund level • Tax liabilities (if any depending on the investor) arise at investor level in respect of the rental income, any dividends and any interest
How are gains taxed?	Fund not taxable on gains realised on portfolio disposals UK taxpaying investors pay tax (if applicable) on gains realised on the eventual disposal of their investment in the fund Generally non-UK investors will not be taxable on gains	Fund not taxable on gains realised on portfolio disposals UK taxpaying investors pay tax (if applicable) on gains realised on the eventual disposal of their investment in the fund	Fund not taxable on gains realised on portfolio disposals UK taxpaying investors pay tax (if applicable) on gains realised on the eventual disposal of their investment in the fund	Fund not taxable on gains realised on portfolio disposals UK taxpaying investors pay tax (if applicable) on gains realised on each disposal of property in the portfolio and on each reduction of their interest in the portfolio property	Fund not taxable on gains realised on portfolio disposals UK taxpaying investors pay tax (if applicable) on gains realised on the eventual disposal of their investment in the fund	Fund not taxable on gains realised on portfolio disposals UK taxpaying investors pay tax (if applicable) on gains realised on the eventual disposal of their investment in the fund
What VAT rate applies to fund management fees supplied by a UK manager?	Exempt	Generally outside the scope of UK VAT with no right to deduct input tax	Outside the scope of UK VAT, reverse charge in Luxembourg	Exempt (ELP: standard-rated unless grouping used)	Exempt	Exempt

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What stamp taxes arise on transfers/issues/redemptions of interests in the fund and seeding with existing UK property?	Currently 4% No stamp tax arises on seeding A new regime is likely to be enacted in 2016	None 4% arises on seeding	Currently 4% No stamp tax arises on seeding A new regime is likely to be enacted in 2016	4% There is a complex stamp tax regime but it is generally possible for an initial investor to seed without stamp tax arising	None (subject to one exception) 4% arises on seeding	None (subject to one exception) 4% arises on seeding A new regime is likely to be enacted in 2016