

3 OCTOBER 2022

**Settlement and extraction of UK situs  
assets in Singapore trusts - Yay or nay?  
A no nonsense guide.**

Suzanne Johnston, Partner, Singapore



# Today, I will cover!

## The headlines



- Individuals and trustees should be wary of the scope of UK tax - much broader than you may expect...
- **Consider**
  - UK inheritance tax ("**IHT**") position on acquisition, retention and disposal of UK residential "resi" property
  - UK Capital Gains Tax ("**CGT**") and Income Tax ("**IT**") position on acquisition, retention and disposal of UK resi property
  - UK Stamp Duty Land Tax ("**SDLT**") position on acquisition, retention and disposal of UK resi property
  - Additional UK tax consideration for enveloped dwellings
  - The tax considerations for trusts holding **other** UK situs assets directly or indirectly
- Possible extraction solutions for all UK situs assets
- Regulatory – TRS and the register of overseas entities



# Can a SG trust still hold UK resi property?

Yay or nay?



- Unique benefits for resident non-domicile (RND) and non-residents owning UK property has largely disappeared – 2017 and 2019
- Irrespective of whether an individual is UK resident, RND or non-resident
- **Inheritance tax – UK resi property**
  - UK property owned by a SG trust subject to IHT as not excluded property
  - A UK property held by a SG trust will be subject to relevant property regime (RPR)
  - Therefore, it may be subject to entry, periodic and exit charges (although an entry charge can be avoided)
    - a) **Entry charge** – immediate charge to IHT at 20% on entry
    - b) **10 year anniversary charges** – up to 6% of the entry/anniversary value of the assets within the trust
    - c) **Exit charges** – up to 6% of the value of the assets within the trust
  - Although caught in RPR, IHT on 10 year anniversaries and exits is relatively low – still value in a structure for succession planning purposes

WK1  
SJ1

### Slide 3

---

**WK1** By settling foreign currency offshore, which trustees use for the purchase  
Wesleigh Kirby, 8/2/2022

**SJ1** Don't follow this comment?  
Suzanne Johnston, 8/28/2022

## UK IHT pitfalls – the double IHT trap



- Settlor retains an interest in the trust – as will normally be the case in structures in APAC
- UK resi property will remain in the RNDs estate for IHT purposes under Gift With Reservation of Benefit (“**GROB**”) rules
  - Disposes of asset but settlor still able to obtain a benefit
  - Normally excluded in UK trust through the express exclusion of the settlor
- **Double IHT taxation**
  - 10 year charges will apply on the UK resi property – up to 6% every 10 years
  - IHT will be payable in the UK on the settlor’s death – 40% on the value of the UK resi property at the date of settlor’s death

# UK CGT for SG trusts holding UK resi property



- CGT can arise on disposal by the trustees – UK CGT 28%
- Principal Private Residence Relief (“**PPR**”) may be available if main residence - if:
  - Main residence of a beneficiary who occupies and is entitled to occupy under terms of the trust
  - Applicable to both life interest trusts and discretionary trusts
- If no PPR, gain post 6 April 2015 subject to non-resident CGT (“**NRCGT**”) payable by the trustees
- Alternatively, can elect for gain to be rebased on time apportioned basis or for it not to be rebased
- If UK domiciled settlor, the gain not taxable on trustees, then taxed on settlor as it arises
- Can also be matched to capital payment to UK resident beneficiaries and beneficiaries charged to CGT – charge can be avoided (remittance basis/payment to non-UK resident)

# UK CGT and UK income tax for SG trusts on UK resi property



- **CGT also issue pre disposal**
  - If beneficiary has rent free occupation or below market rate rent agreement – may amount to capital payment
  - Beware trusts holding more than only UK property - gains realised on other assets may be matched to capital payment and CGT will arise on value of benefit of reduced rent
- **Income tax**
  - Income tax (“**IT**”) charges can arise where other income producing assets in trust
  - Any capital payment matched with relevant income and charged to income – up to 45%
  - Should ensure trust structure has no income in it

## UK SDLT for SG trusts



- **SDLT primarily issue on acquisition**
  - Banded system – from 0% up to £125,000 rising to 10% up to £1.5m - once beyond £1.5m – 12% on balance (special rates for first time buyers apply)
  - Additional 3% surcharge for multiple properties
  - Additional 2% for non resident purchasers (non-resident for SDLT purposes is a day count test)
  - Commercial relief may be available – significant reductions in rates applicable – removes surcharges irrespective if multiple properties or non resident purchaser
  - Multiple Dwelling Relief helpful relief – splits SDLT between the number of properties and reapplies the banded system to each of the properties
  - Where purchaser is a trust – SDLT rate is usually flat rate



## Enveloped dwellings (SG trust/ company structure)



- Common practice to hold UK property through enveloped structure – from April 2017, the value of the shares subject to IHT and the GROB problem as before still applies to the settlor
- Instead of CGT, Corporation tax charges can arise (subject to 2015 rebasing) – this previously would have been ATED related CGT and/or NRCGT
- If not taxed on the holding company, will become chargeable to CGT when matched to capital payments to UK resident beneficiaries
- Alternatively, rather than selling property, trustee can sell the shares – any gain arising is taxed on trustees and will be rebased at 5 April 2019
- Transfer of assets rules may again be relevant – will be taxed on UK resident beneficiaries when they receive a benefit – if no income – no problem
- ATED charges will also be an ongoing consideration – annual increases to discourage ownership

# Enveloped dwellings – ATED during ownership by offshore entity



## ATED charges during ownership

Property Value	Annual Charge
More than £500,000 up to £1 million	£3,800
More than £1 million up to £2 million	£7,700
More than £2 million up to £5 million	£26,050
More than £5 million up to £10 million	£60,900
More than £10 million up to £20 million	£122,250
More than £20 million	£244,750

# UK tax considerations on holding *other* UK situs assets directly or indirectly



- **IHT**
  - Trusts holding UK situs assets directly will not be excluded property trusts – relevant property regime applies – anniversary and exit charges will apply
  - However, trusts holding UK situs assets indirectly (through offshore holding company) – will be excluded property trust – no anniversary or exit charges apply
- **CGT**
  - Distributions by trusts other than cash are disposals for CGT purposes
  - Generally only chargeable on UK residents
  - SG trusts with non UK resident beneficiaries and trustees will be outside the scope of CGT
- **Income Tax**
  - As highlighted, income can be matched on distributions – up to 45%
- **SDRT** (Stamp duty reserve tax)
  - SDRT payable on transfers of UK stocks/securities – 0.5% of consideration
  - If distribution of UK situs assets (shares), SDRT payable
  - If distribution of holding co shares, no SDRT on disposal as non UK shares
  - Consider impact of debt

# Acquiring a UK resi property in 2022 – is a trust the answer?



- **Acquiring UK property through a trust?**
  - Caution should be taken when purchasing UK resi property in a trust – value depends on specific facts
- **Ownership – will depend on use of property – there is no “one size fits all” approach**
  - If a property is occupied by the individual – best to own directly – reduces highest rate of SDLT, avoids ATED and possible benefits in kind charge (due to occupation) – but consider IHT charges on death
  - If rented out, purchase through a company – corporation tax rates v personal income tax rates on rental income
  - Reduced scope for purchasing a UK property directly through a trust in 2022 – asset/creditor protection?? Confidentiality eroded by register of overseas entities

## Acquiring a UK resi property in 2022 (continued)



	Individual	SG company	SG trust
<b>Acquisition</b>	<b>SDLT</b> <ul style="list-style-type: none"> <li>Up to 12% residents</li> <li>Up to 14% for non-resident</li> <li>Up to 15%/17% if additional properties</li> </ul>	<b>SDLT</b> <ul style="list-style-type: none"> <li>Up to 15% or flat 15% for UK resident</li> <li>Up to 17% or flat 17% for non-residents</li> </ul>	<b>SDLT</b> <ul style="list-style-type: none"> <li>Up to 15% for UK resident</li> <li>Up to 17% non resident</li> </ul> <b>IHT</b> – entry charge 20% (can be avoided)
<b>While holding</b>	<b>No ATED</b>  If rented – income tax on rental income up to 40%	<b>ATED</b> up to £244,750  If rented – corporation tax at 19%	<b>No ATED</b>  Potential matching to CGT and IT on benefit or income up 40%  <b>IHT</b> – 10 year charges at 6%
<b>On disposal</b>	<b>CGT</b> 18%/28% (unless PPR available)	<b>Corporation tax</b> at 19%	<b>CGT</b> at 18%/28% (unless PPR available)  <b>IHT</b> as exit charge up to 6% on distributing from trust
<b>On death of settlor</b>	<b>IHT</b> up to 40%	<b>IHT</b> up to 40%	<b>IHT</b> up to 40%  <b>IHT</b> up to 6% as exit charge on distribution

# Possible extraction solutions for UK resi property and UK situs assets



## Possible options for extraction:

- Distribution in specie – exit charges will arise
  - Could a loan be granted to the beneficiary and then subsequently forgiven? Consider proximity of forgiveness of the loan
  - Be aware of GAAR – will determine whether caught – is structuring for genuine reason i.e. preservation of asset for beneficiary or avoidance?
- For SG trusts holding UK property through offshore company
  - Dividend in specie?
  - Could the offshore company be liquidated and a liquidation dividend be declared instead?
  - Or is it best to sell the UK property from the offshore company first and distribute the proceeds?
  - Sell the shares in the offshore company? No SDLT on purchase (as long as no debt), CT on the sale proceeds.
  - What about any debt within the structure?
- For SG trusts holding UK situs assets through offshore company
  - Extraction simpler, the offshore company creates barrier for UK tax purposes
  - Remember, extraction from top down eg distribution of shares in offshore company owning UK situs assets to beneficiary. If offshore company wound up first and assets owned directly by the trust, IHT charges apply on exit.

## Additional considerations



- Although there is anonymity in holding through trust – this is being eroded and additional reporting is required:
  - **Trust registration service**
    - Deadline for registration was **1 September 2022** (Hopefully you have registered!!)
    - Applies to any offshore trust giving rise to a UK tax liability
    - Applies to non-taxable trusts holding UK property
    - Penalties up to **£5,000** for failing to register or keep details up to date
  - **Register of overseas entities**
    - Deadline for registration is **31 January 2023**
    - Applies to overseas entities holding UK land
    - Criminal Offence for failure to register – fines and/or prison sentence up to **12 months** for overseas entity
    - Retrospective!

## Additional considerations (continued)



- **Register of overseas entities**

- Brought into force **1 August 2022**
- Relevant to all overseas entities which held interest in land at **28 February 2022**
- All overseas entities must register by **31 January 2022**
- Purpose is to provide further transparency of ultimate beneficial owner of UK property
- Applicable to trusts and to companies
- Most information submitted will be publicly available
- Cannot deal in UK property without Overseas Entity ID number which follows registration

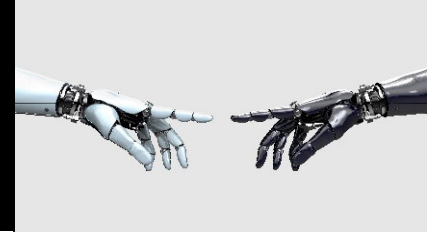
- **Penalties**

- Fines for delivering or enabling the delivery of misleading, false or deceptive information
- Non intentional – fines **£2,500 per day**
- Intentional – fines as above and prison sentence for parties involved for up to **12 months**
- Restrictions on dealings with the Land Registry



# Q&A

# Contact



## Suzanne Johnston

Partner

T: +65 6622 9649

E: [suzanne.johnston@shlegal.com](mailto:suzanne.johnston@shlegal.com)