

Isle of Man Property Unit Trusts.

An Isle of Man Property Unit Trust (“INPUT”) is a form of Isle of Man trust that is commonly used as a vehicle to acquire and/or hold UK real estate assets. These assets are held on trust by one (or more) trustee(s) (as the legal owner(s)) on behalf of unitholders (i.e. the beneficial owners) in accordance with the terms of the trust instrument/deed.

INPUTs do not have separate legal personality and are often structured as “Baker Trusts” (based on the principle established in *Baker v Archer-Shee*), which allows income generated by the trust assets to accrue directly to the unitholders, rather than forming part of the trust fund which the trustee(s) must then later distribute.

The degree of regulatory oversight applicable to INPUT varies, depending on the number and type of investors. This Article deals with the establishment of an INPUT that is an “exempt scheme” within the meaning of the Isle of Man Collective Investment Schemes Act 2008 (i.e. it is a private arrangement, there are no more than 49 unitholders in total, and the unit trust deed expressly prohibits the making of an invitation to the public to subscribe in any part of the world).

Benefits of using an INPUT

Some of the benefits of an INPUT (which is structured as a Baker Trust) can be identified as follows:

- the high degree of similarity of underlying trust law principles with those in England and Wales;
- no requirement to obtain consent from the Isle of Man Financial Services Authority (“FSA”) prior to its establishment, when units are issued and/or where any distributions are effected (where the INPUT is an exempt scheme);
- any income generated by the INPUT “passes through” the investment vehicle and will be directly attributable to the unitholders pro-rata, thereby allowing unit holders to be able to set-off any expenses incurred by the INPUT against that income;
- an INPUT is not a legal entity and its existence (including its instrument of establishment and register of unitholders) is not required to be filed or made publicly available in the Isle of Man;
- the availability of VAT registration on an expedited basis (usually within 5 working days) and the ability to VAT group with companies from other jurisdictions;
- as no statutory provisions currently exist to regulate the relationship between an INPUT and its unitholders (or between the unitholders themselves), this allows for flexibility in how the trust instrument is drafted and in the rights that can be granted to unitholders; and
- any transfer of underlying property may be transferred as a sale of units (which would not incur any stamp duty under Isle of Man law, as no stamp duty is payable in the Isle of Man).

There are no restrictions under Isle of Man law as to the manner in which an INPUT may make distributions of capital or income subject to the Baker Trust requirements and unless otherwise so restricted in the trust deed). There are no regulatory hurdles to be satisfied or filings to be made, and furthermore there is no solvency test to satisfy or requirement to ensure that any/all distributions are made out of realised profits assets.

There are also no Isle of Man law restrictions on a unitholder granting security over its units in an INPUT (under a unit charge) or the trustee(s) granting guarantees or creating security over the assets of the INPUT. Accordingly, this means that a lender may freely take advantage of the Isle of Man's creditor friendly regime (which mirrors that of England and Wales prior to the introduction of the Insolvency Act 1986 and the Enterprise Act 2002).

Isle of Man tax treatment of an IPUT

Where the IPUT is structured as a Baker Trust, it will not be liable to Manx income tax in respect of income arising to the IPUT. Unitholders in the IPUT resident outside the Isle of Man will typically have no liability to Manx income tax in respect of their holding in the IPUT provided that the IPUT does not hold any Isle of Man property.

There are no inheritance, wealth, gift, death or capital gains taxes charged in the Isle of Man.

UK tax treatment of an IPUT

Income	Where an IPUT is structured as a Baker Trust, it will typically be treated as transparent for UK income tax purposes.	Income arising to the IPUT will be treated as belonging to the unitholders, who will be liable to UK income tax in accordance with their specific UK tax status.
Capital Gains	<p>From 6 April 2019, the UK tax treatment for non-UK collective investment vehicles ("CIVs") investing in UK land changed significantly: typically both direct and indirect disposals of UK land by a non-UK resident will be subject to UK tax on gains arising on the disposal of the UK land.</p> <p>An IPUT that derives more than 75% of its value from UK property will be within the scope of these rules.</p>	<p>The default position is that a UK property rich CIV is treated as a company for UK tax purposes. The CIV will be subject to UK corporation tax on any gains realised on direct disposals of UK immovable property and indirect holdings of UK property.</p> <p>An alternative to the default position is for the CIV to make one of two possible elections, the transparency or exemption elections.</p>
The transparency election	This election has the effect of treating a UK property rich CIV like a partnership, such that the CIV itself is not subject to tax on any gains arising within the structure	Instead the unit holders are directly taxable on disposals of the underlying assets of the CIV in accordance with their specific tax status for UK tax purposes.
The exemption election	This exemption is aimed at widely held CIVs. This election provides an exemption from tax on gains for UK property rich CIVs, provided certain qualifying conditions are met.	<p>The unit holders will remain taxable on any gains on their individual disposal of their interest in the CIV in accordance with their specific UK tax status.</p> <p>The decision by the fund manager to make such an election will result in enhanced annual reporting to HMRC for the CIV.</p>

Establishing an IPUT

An IPUT is formed by:

- the execution of an Isle of Man law governed trust instrument by a trustee or, in the case of an IPUT established to directly hold UK real estate, two trustees (which ensures that any issues arising from the doctrine of overreaching may be avoided);
- the vesting of trust property upon its establishment (this may take the form of existing assets held by the prospective unitholders (which are transferred to the trust vehicle in exchange for units) or a nominal cash sum (where the IPUT is to be used as an acquisition vehicle and a requirement exists for it to be established prior to the property acquisition taking place));
- a minimum of two unitholders (with a maximum of 49 unitholders to ensure that the IPUT remains an exempt scheme).

Upon issuance of a unit (which represents an undivided share of the underlying trust fund and such rights as set out in the trust instrument) to a unitholder, that unitholder's name will be entered into a register of unitholders, maintained (privately) by the trustee(s).

There is no requirement under Isle of Man law for an IPUT to have a manager (though one may be appointed if required). Where a manager is to be appointed, it is typically the case that it is made a party to the trust instrument, under which its responsibilities and role is set out.

Trustee(s) and Unitholders

The trustee(s) are independent of the unitholders and the duties owed by trustee(s) to unitholders are typically set out in the trust deed, as are to a large extent, the powers of the trustee(s). The trust deed may contain such provisions to provide unitholders with as much, or as little control over the IPUT (e.g. where unitholders prefer to retain control, the trust deed may set out a schedule of reserved matters pursuant to which only certain action may be taken with the prior consent of all (or a specified majority) of unitholders). Specific advice may however be required, to ensure that any control rights given to the unitholders do not affect any tax structuring objectives.

Irrespective of the terms of the trust deed however, where unanimous consent has been obtained from all unitholders on a specified action, the principles of *Saunders v Vautier* will apply - i.e. a trustee must act in accordance with the directions of the beneficiaries of a trust where such beneficiaries have full legal capacity and are absolutely entitled to all of the assets of the IPUT.

Trustee(s) of an IPUT may be a professional trust company (which may itself hold (but need not necessarily do so in relation to an exempt scheme) a Class 3 licence issued by the FSA) or a special purpose vehicle which has been incorporated for the purposes of acting as trustee of an IPUT.

Typically, IPUTs are established with newly incorporated corporate vehicles acting as trustee(s) as this allows unitholders to ensure that they are able to retain control of the IPUT (by appointing directors to the board of the trustee(s)). An additional benefit of this structure would mean that any change of administrator following a sale of the IPUT can be achieved with minimal disruption, as it would involve a transfer of the shares in the special purpose vehicle trustee(s). The administration of an IPUT which is structured as an exempt scheme must be undertaken by an entity which is suitably licensed by the FSA.

Trustees owe a duty of care (codified under the Trustee Act 2001 and in common law) and, where the trustee(s) is/are a professional trust company, must comply with additional requirements set out in the Financial Services Rule Book 2016 (as amended 2019), which applies to all licenceholders.

Winding-Up

The term of the IPUT, process and procedure for winding-up and termination are almost always set out in the trust deed (though again, the principles set out in *Saunders* will also apply).

For more information please contact



Tim Shepherd
Director
+44 1624 638327
tim.shepherd@cains.com



Stephanie Chew
Managing Associate
+44 1624 638306
stephanie.chew@cains.com

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts at Cains or the above individuals.

T: +44 1624 638300 | E: law@cains.com | Cains, Fort Anne, Douglas, Isle of Man IM1 5PD

Cains is the trading name of Cains Advocates Limited, an incorporated legal practice in the Isle of Man with registered number 009770V. A list of all the directors' names is open to inspection at Cains' registered office. Registered office: Fort Anne, Douglas, Isle of Man IM1 5PD