AREF FutureGen Educational Series 2022
The Fund Lifecycle Revisited
Event 2: Fund Structures and Tax

Thursday 28th July 2022

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Sponsored by

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FutureGen Welcome

Clare Grimes, Investment Associate at Octopus Real Estate
& Member of the FutureGen Committee

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Welcome and Introduction

Matthew Brehaut, Partner at Carey Olsen

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Agenda for today

09.00	Event start
09.00	FutureGen welcome - Clare Grimes, Octopus Real Estate
09.05	Welcome and introduction - Matt Brehaut, Carey Olsen
09.05	Fund Structures and Tax Presentation from Samuel Campbell, Associate Director in Real Estate Tax at Deloitte Jonny Greengrass, Associate Director in Real Estate Tax at Deloitte
09.45	Q&A with speakers - Moderated by Christopher Austin, Head of Tax, Private Assets, Schroders & Chair of the AREF Tax Committee
10.00	Close

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Today's speakers

Samuel Campbell

Associate Director, Real Estate Tax

Deloitte

Jonny Greengrass

Associate Director, Real Estate Tax

Deloitte

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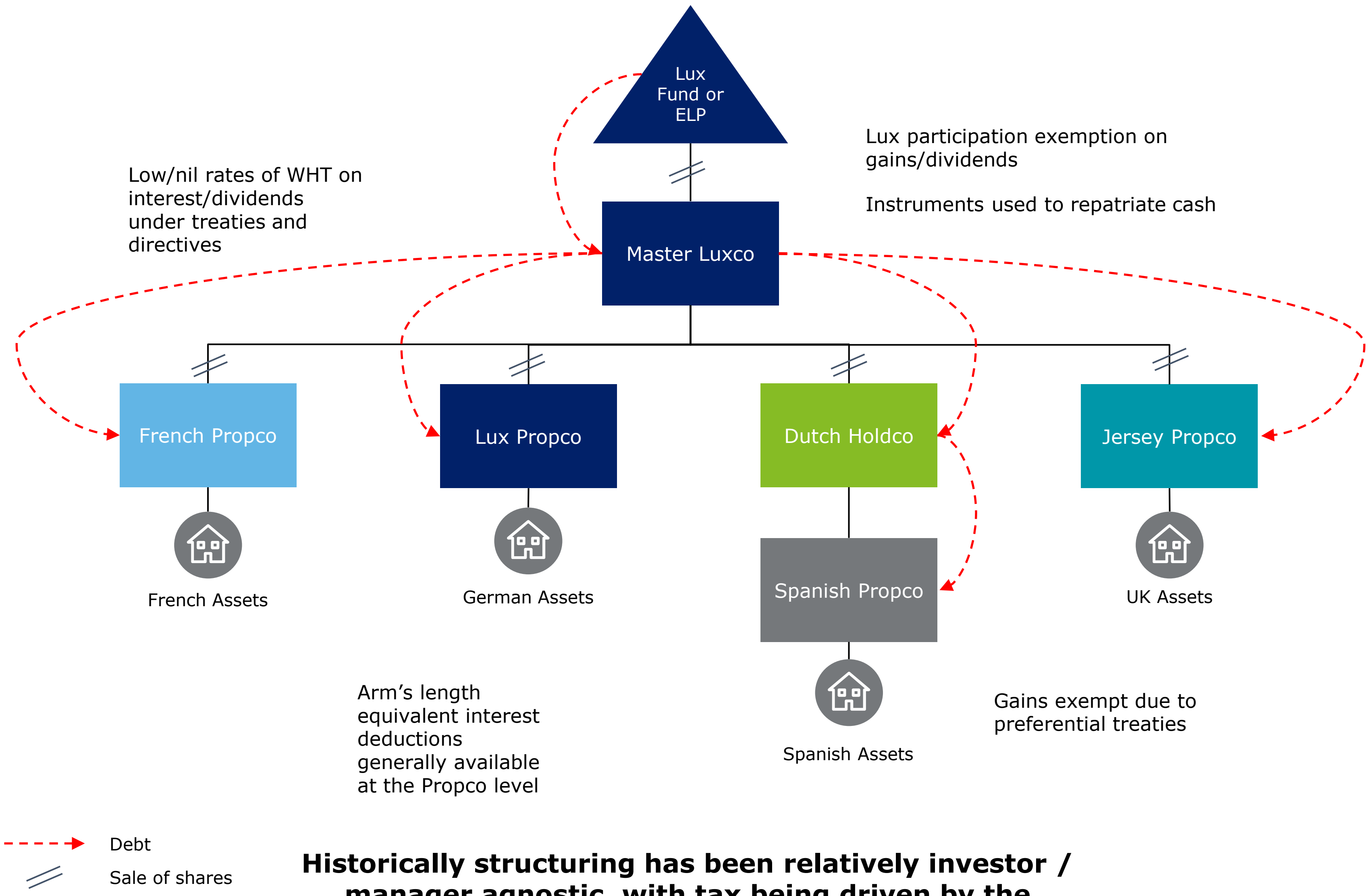
Deloitte.

Changes in tax landscape and the impact on fund structuring

Samuel Campbell, Jonny Greengrass
28 July 2022

Historical fund structures

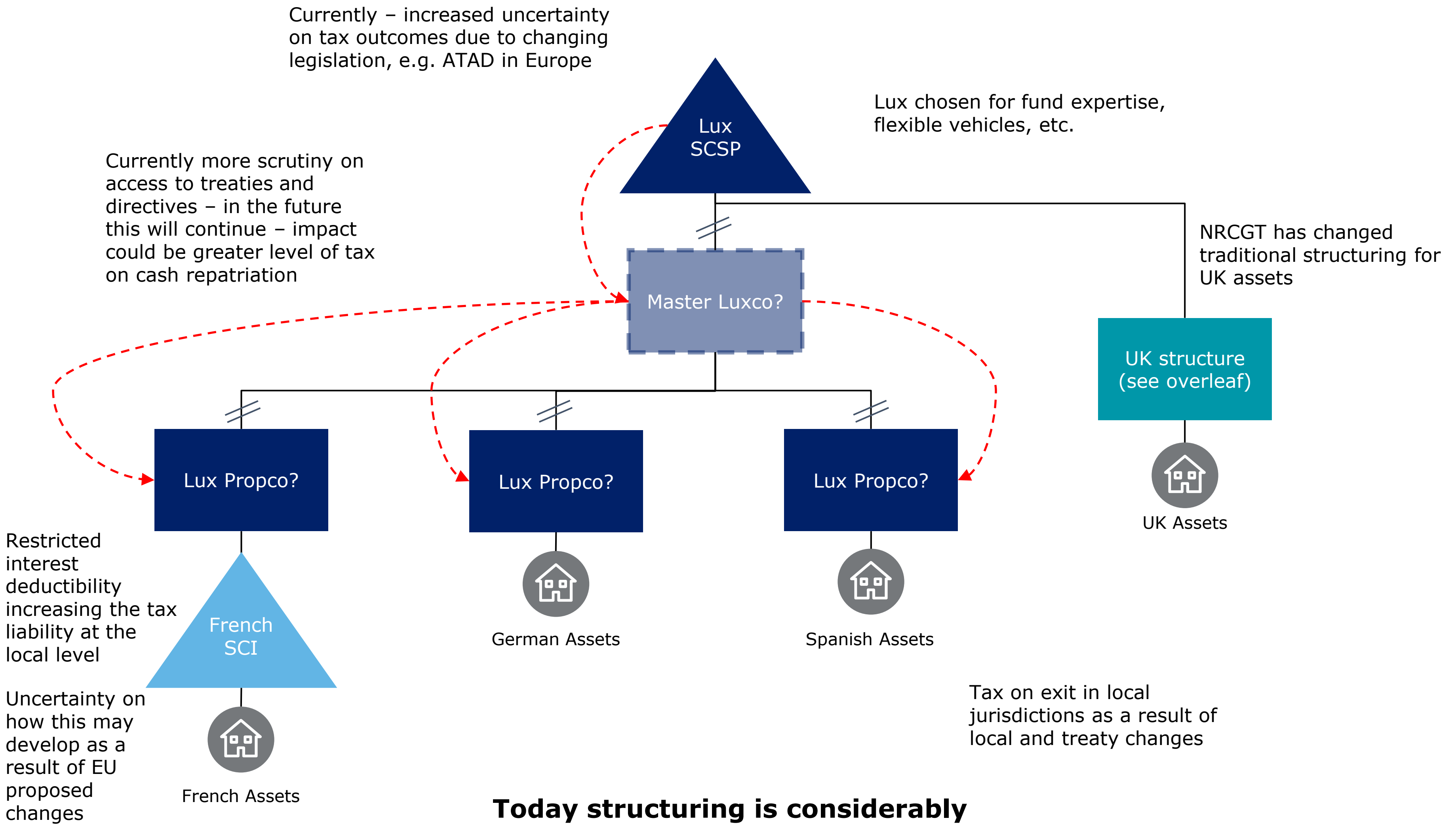


Historically structuring has been relatively investor / manager agnostic, with tax being driven by the structure itself

The changing tax and fund environment
What has happened

- General
  - *OECD initiated the BEPS (Base Erosion and Profit Shifting) project*
  - *EU case law in relation to access to tax treaties*
- Changes to taxation of income
  - *European interest deductibility restrictions (local and EU changes)*
  - *Growth of REIT/REIT like structures (e.g. UK REIT, Spanish Socimi, French OPCI, Italian REIF)*
- Taxation of gains
  - *Real estate rich clauses*
  - *UK introduction of NRCGT – taxation of gains but exemption for certain investors*
- Repatriation of income
  - *Restrictions on treaty access, increasing focus on beneficial ownership and substance, changes recommended by the OECD*
- Changes in fund environment
  - *Increased regulation, e.g. AIFMD – affecting choice of fund vehicles*
  - *Luxembourg ruling processes and substance*

Fund structures today



Today structuring is considerably influenced by tax status of investors / managers

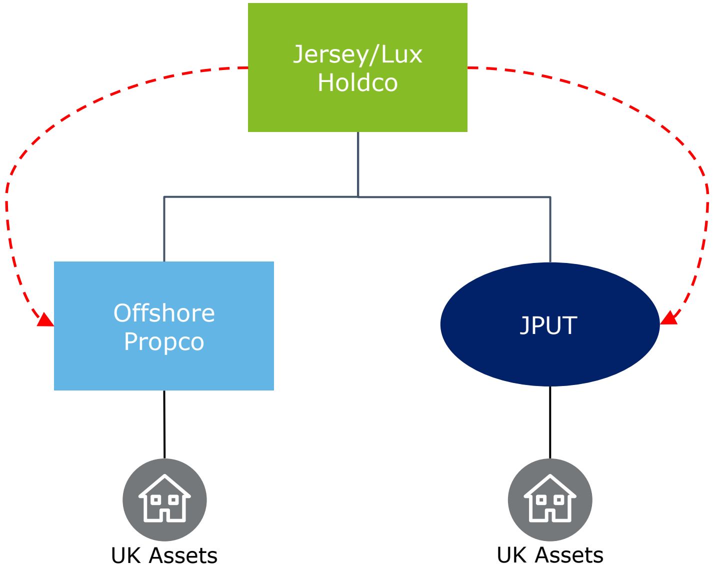
Debt

Sale of shares

UK structuring

Tax change driving increasing variety of structures

Traditional UK structures



Going forward

- NRCGT (2019) and transition to corporation tax (2020) have reduced the effectiveness of traditional UK investment structures.
- Removal of historical treaty protection from UK tax for Luxembourg structures.
- New and old regimes bring more choice, e.g.:

REIT

Exemption regime

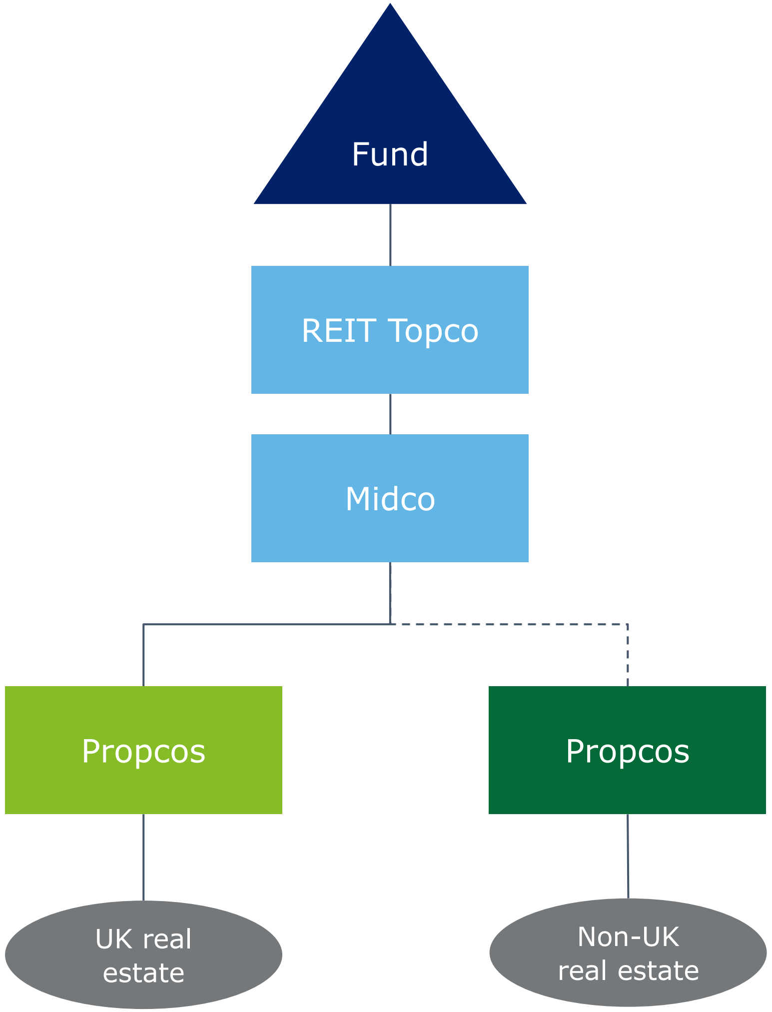
Transparency regime

Standard corporate structure

Move the tax point up to the investor level

- Greater choice of vehicles and regimes – as well as the above we have ACS, PAIF, EUUT – though some vehicles have additional regulatory/tax compliance obligations.
- Trends towards onshoring structures.
- Investors may have different preferences depending on their individual tax status (e.g. pension schemes, sovereigns tend to prefer ‘transparent’ investment structures which allow them to access their status).

UK structuring
UK REIT



Overview of structure

- REIT Topco must be UK resident (could be non-UK incorporated).
- Fund must be a widely-held collective investment scheme or otherwise held 50%+ by institutional investors.
- Listing requirement for REIT Topco, unless the Fund is GDO and/or held 70%+ by institutional investors.
- Structure itself becomes tax-exempt and UK tax is instead suffered at the investor level.

Taxation of income

- Net UK rental profits arising to the Propcos exempt from UK corporation tax but subject to 20% WHT on distribution by REIT Topco (subject to potential investor reclaim).

Taxation of gains

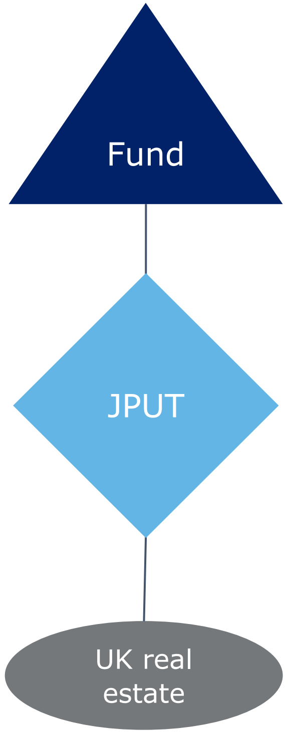
- Property disposals exempt from UK corporation tax but subject to 20% WHT on distribution by REIT Topco (subject to potential investor reclaim).
- Disposals of Propco and Midco potentially exempt.

Other considerations

- Business plan needs to be compatible with general policy objectives of a REIT.
- On an ongoing basis REIT conditions and requirements need to be satisfied.
- No investor level filings, although WHT reclaims may be required in respect of PIDs.
- Elimination of latent capital gains on a company entering and leaving a REIT (subject to anti-avoidance).

UK structuring

Transparency regime JPUT



Overview of structure

- JPUT must be non-UK resident, UK property rich and a collective investment scheme.
- A *Baker* trust.

Taxation of income

- Net UK rental profits arising to the JPUT taxable on investors in the Fund.

Taxation of gains

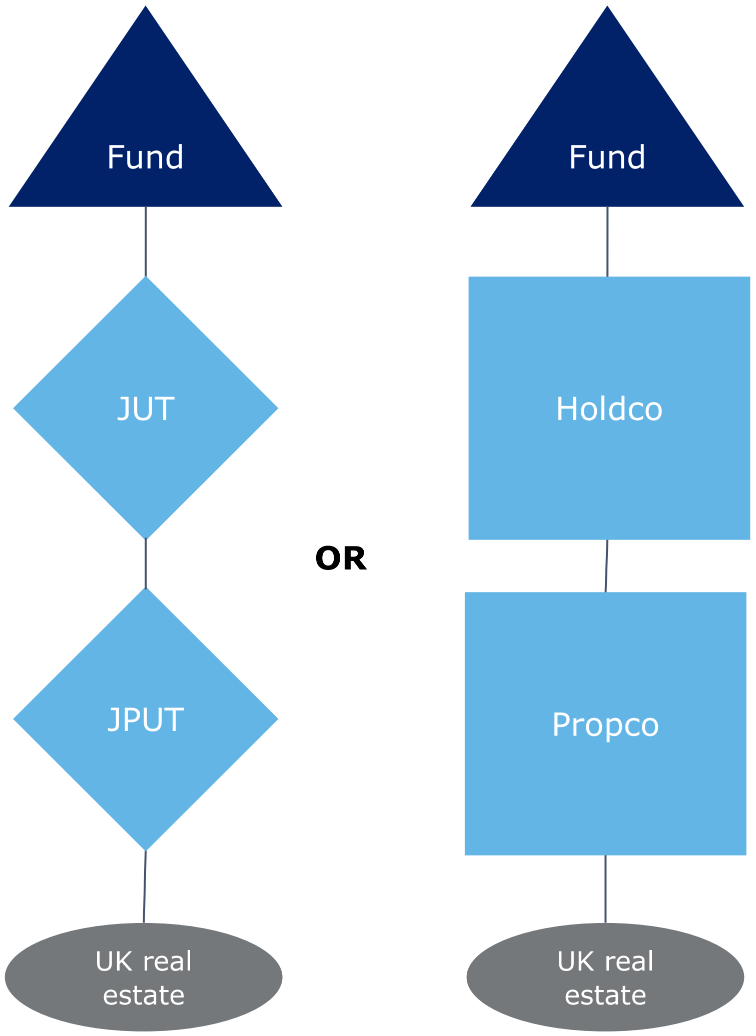
- Property disposals taxable on investors in the Fund.
- Unit disposals also taxable on investors in the Fund.

Other considerations

- SWF investors and UK pension schemes exempt from UK tax (subject to consultation on changes to sovereign regime), overseas pension scheme investors exempt from UK tax on gains, companies subject to UK corporation tax at 25% and other investors taxed depending on their UK tax profile.
- Potential to block investors sensitive to filings.
- Purchaser should obtain full tax basis.
- Potential investor level filings on secondary sale, etc.

UK structuring

Exemption regime JPUT/company



Overview of structure

- Detailed eligibility criteria, but generally only available for widely held funds or funds that are owned by 'qualifying investors'.
- Not available when >25% of investors would be able to use a tax treaty to exempt any gains.
- Each of JUT and JPUT should also be a *Baker* trust.

Taxation of income

- JPUT structure: Net UK rental profits arising to the JPUT taxable on investors in the Fund. Care should be taken in relation to NRLS registrations.
- Corporate structure: Income taxed in Propco at the corporation tax rate.

Taxation of gains

- Disposal of property or of units in JPUT / Propco exempt at the level of JUT / Holdco, but taxable on investors in the Fund on distribution (in a capital form).
- Disposal of JUT / Holdco taxable on investors in the Fund.

Oher considerations

- As with other structures, allows investors to make use of their own UK tax exemptions.
- Potential in some cases to block investor filings.
- Elimination of latent gains on disposal of JPUT or Propco

Fund structuring considerations

Stakeholder	Considerations
Investor	• Ability to access benefit of exemptions which are conferred as a result of investor status (via streaming of benefits back to investor). • Minimising (or blanket exclusion) of local tax filings as a consequence of investing in fund. • Reputational risk.
Fund	• Structuring to facilitate utilisation of investor tax attributes. • Substance in investment/holding jurisdictions and ability to access treaty benefits on interest, dividends and gains. • Minimising tax within the structure. • Flexibility on level of exit.
Manager	• Consistency of fund structure with commercial objectives, strategy and lifecycle of fund. • Tax-efficient structuring of promote/carried interest. • Marketability of fund structure to potential investors. • Reputational factors.

Trends for the future

- Tax outcomes are increasingly influenced by the tax profile of investors rather than the structure itself
- Growing trend for distinctions between investors
- Greater focus on purpose of arrangements and commercial rationales for structures (tendency against use of structures solely for tax purposes)
- Funds/JV partners will require more information about an investor's tax status; investors will seek to ensure the benefits of their status flow to them
- Tax risk/reputation being considered and queried at the highest level
- BEPS-related increases in tax
- Growing use of retrospective legislation and significant changes in tax treatment during life of investment → uncertainty

Q&A

Moderator:

Christopher Austin, Head of Tax, Private Assets, Schroders
& Chair of the AREF Tax Committee

Thank you