

# Tax transparent funds



# New authorised fund regimes

The UK Tax Transparent Fund (TTF) regime came into effect on 1st July 2013.

The TTF regime allows for two forms of authorised contractual scheme (ACS) that are treated as transparent for tax purposes:

- Limited partnerships. As these are already tax transparent, this is a regulatory change to allow them to be used as a suitable vehicle for an authorised fund that qualifies as a qualified investor scheme (QIS) or non - UCITS retail scheme (NURS);
- Co-ownership funds. These are to be treated for the purposes of UK residents' taxation as transparent for income but opaque for gains, so that investors will not be taxable on gains made by the fund, but will instead be chargeable to tax on capital gains on profits from the disposal of their interest in the fund, This makes it an onshore UK vehicle comparable to a Jersey Unit Trust or a Luxembourg FCP. There is, however, uncertainty as to the treatment for Stamp Duty Land Tax purposes. This is discussed further below.

The changes to tax legislation to allow tax transparent funds came into effect in June. Unfortunately these changes do not address the treatment for SDLT purposes.

This is clearly a major issue for the vehicle to be used as a real estate fund. The Association of Real Estate Funds is lobbying for clarification in two areas:

- The treatment of transfers of units in the fund. Should the fund be treated as opaque for SDLT purposes?
- Will contributions of assets to the TTF be exempt from SDLT?

If the SDLT treatment can be resolved positively, then the co-ownership Tax Transparent Fund would appear to be an attractive vehicle for real estate funds generally and would seem to provide a suitable onshore UK vehicle for those investors who can invest in a Luxembourg FCP.



## Regulatory provisions

As indicated on page 2, the new rules add two forms of new authorised fund, the limited partnership and the co-ownership fund. These can be a QIS or a NURS. This is illustrated in the diagram on page 4.

Numerous amendments were required to the FCA rules to introduce the regulatory environment for ACSs that will be treated as TTFs. The FCA consulted on these in Chapter 8 of CP12/5. Following substantial changes made by the Treasury to the features of ACSs, the FCA proposed further amendments to the Collective Investment Schemes sourcebook (COLL) in the FCA Handbook in CP13/5.

Following these consultations, on 27th June 2013, the FCA Board made the necessary changes to the FCA Handbook through an instrument, the Authorised Contractual Scheme (Handbook Amendments) Instrument 2013 (FCA 2013/50)

The co-ownership scheme is defined in section 235A(2) of the the Financial Services and Markets Act 2000 (FSMA).

As with other authorised funds, the ACS will be required to be open-ended. If the ACS is a NURS, under COLL 6.2.19R it must provide for sales and redemptions at least once in every six months. If the ACS is a QIS, the rules on liquidity are more ambiguous.

FCA 2013/50 introduces additional limits on investors for an ACS that is a NURS, and this is extended to QIS by COLL 8 annex 2. Investors must be

- a) Large investors;
- b) Professional investors; or
- c) Existing investors.

Definitions of large ACS investor and professional ACS investor have been added to the glossary o the FCA Handbook:

### *Large ACS investor*

in relation to an ACS, a person who in exchange for units in the scheme:

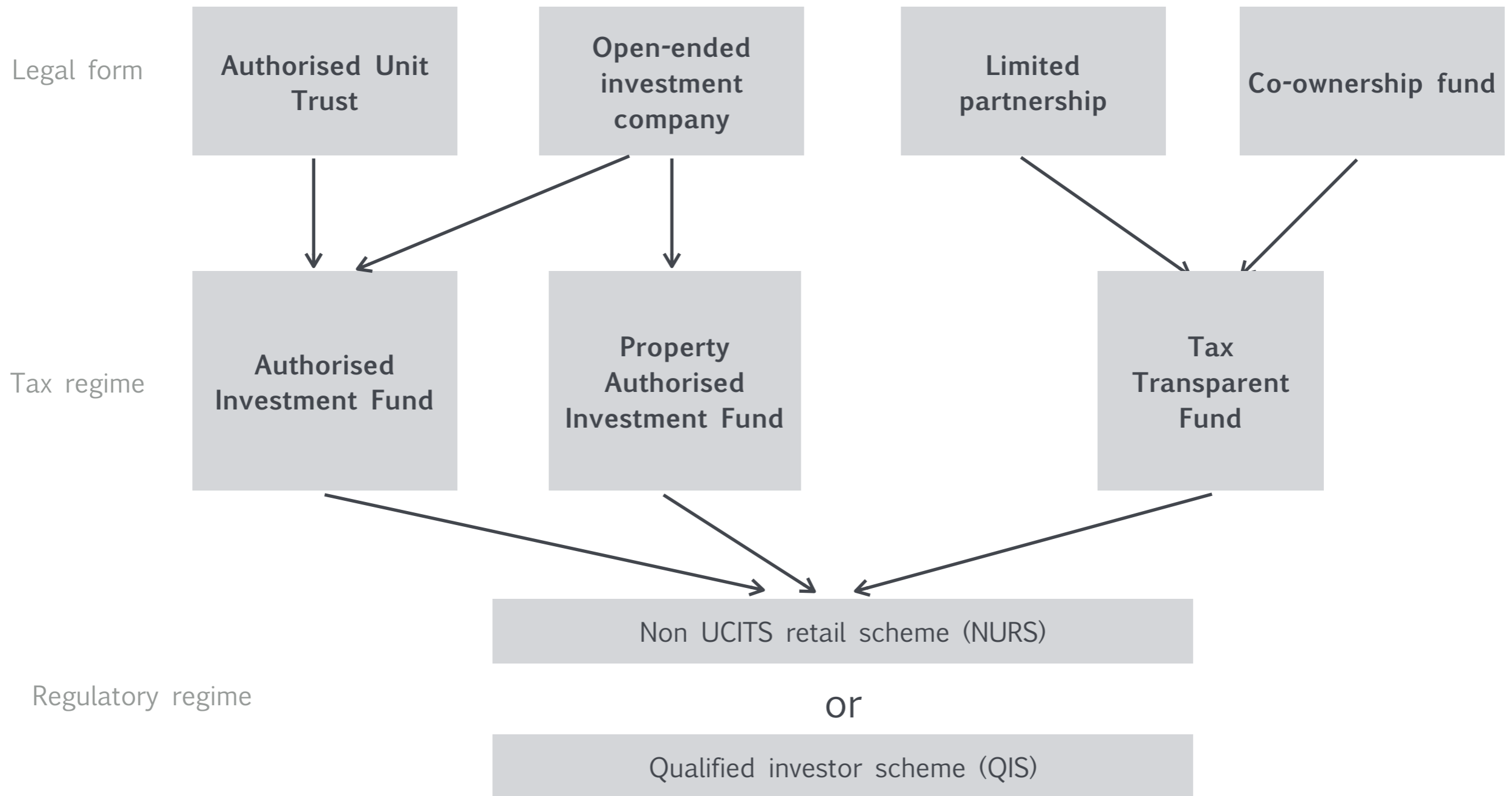
- (a) makes a payment of not less than £1,000,000; or
- (b) contributes property with a value of not less than £1,000,000.

### *Professional ACS investor*

in relation to an ACS, a person who falls within one of the categories (1) to (4) of Section I of Annex II (professional clients for the purpose of that directive) to MiFID.



# UK authorised investment funds (for real estate investment)



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