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TAX PLANNING FOR THE ENTREPRENURIAL CLIENT

8 December 2016

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Agenda

1.30pm	Registration and refreshments	
2.00pm	Opening Address	Michael Dawson
2.10pm	Autumn statement update	Tom Minnikin
2.30pm	Non dom changes for beginners	Laura Hutchinson
3.00pm	Continued attack on buy-to-let properties	Andrew Marr
3.35pm	*Coffee Break*	
4.00pm	Tax issues around companies holding surplus cash	Michelle Hogan
4.30pm	Employment issues and salary sacrifice changes	Michael Dawson
5.00pm	Drinks and discussion	

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Autumn Statement 2016

Tom Minnikin
Senior Tax Consultant

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Autumn Statement 2016

- What was announced
- What wasn’t announced
- What’s to come

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What was announced

- Personal allowance
  - Increase to £11,500 from 6 April 2017
  - Commitment to raise threshold to £12,500 by 2020
- Higher rate tax threshold
  - Increase to £45,000 from 6 April 2017
  - Commitment to raise threshold to £50,000 by 2020
- Also remember:
  - £5,000 starting rate savings band
  - £1,000 personal savings allowance (£500 for higher rate taxpayers)
  - £5,000 tax-free dividend allowance

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What was announced

- Employee shareholder status
  - Effectively shut down from 2 December 2016
  - Full CGT exemption remains for ESS schemes prior to 16 March 2016
  - £100k exemption for schemes between 16 March 2016 and 2 December 2016

- Key point: consider EMI

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What was announced

- Corporation tax
  - Confirmed reductions in rate to 19% from 1 April 2017 and 17% from 1 April 2020
  - Will the USA seek to 'trump' UK with a lower rate?
- Loss reliefs
  - Confirmed plans to reform corporate loss relief rules from 6 April 2017
  - More flexible use of losses incurred after that date
  - Ability to carry forward and group relief
  - Subject to loss streaming rules and restrictions for large companies
- Research and Development tax relief
  - Hint of further incentives as part of government innovation drive

What was announced

- Substantial Shareholdings Exemption ('SSE')
  - Current requirements:
    - 10% shareholding
    - Investee company is a trading company or holding company of a trading group before and after the disposal
    - Investing company is a trading company or member of a trading group before and after the disposal
    - Conditions must be met throughout a 12 month period starting no later than 2 years prior to the disposal
    - Exemption will not be prevented from applying if investing company is wound up within a 'reasonably practicable' timescale

What was announced

- Substantial Shareholdings Exemption ('SSE')
  - From 1 April 2017:
    - Investing company conditions removed
    - Investing company only needs to have held 10% for 12 months within the last 6 years
    - Investee company no longer needs to be a trading company or holding company of a trading group after the disposal (unless disposal is to a connected party)
  - Also: New comprehensive exemption for 'institutional investors'
    - Must hold at least 80% of the shares in a company
    - Partial exemption for holdings of between 25% and 80%
    - No requirements relating to the nature of the business

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What was announced

- Salary sacrifice schemes – Michael will be considering these changes

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What wasn't announced

- No changes to buy-to-let rules
  - 3% SDLT charge on second homes
  - Financing cost restriction being tapered in from 6 April 2017
  - CGT on residential property remains at 28%

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What wasn't announced

- No major change to pension rules
  - Fear that government would make changes either to the 25% tax-free lump sum, or the rate of relief for contributions
  - Minor change restricting ability to recycle monies into pensions for those in flexible drawdown
  - Remember: pensions annual allowance tapering now applies for higher earners

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What wasn't announced

- No changes to non-dom rules – Laura will be discussing the new rules

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What's to come

- Incorporations
  - Cited as one of the main reasons for lower than expected tax receipts
  - Consultation to be held
  - Possibility of incorporation relief being removed?

- Key point: consider taking action now in case rules change

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What's to come

- Disguised remuneration schemes (EBTs)
  - 'Sunset clause' for EBTs protection of investment growth – will no longer apply from 1 April 2017
  - Earnings charge on outstanding loans as at 1 April 2019
    - Only payments in money will count as repayment
    - Clarity required over how HMRC will handle cases where the employer refuses/can't pay the liability

- Key point: Now is a good time to consider settlement options

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An overview of the new tax rules for non-domiciliaries

Laura Hutchinson
Partner

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Areas covered

- The concept of the new deemed domiciled individual
- Old rules v new rules (remittance basis v arising basis)
- Transitional beneficial rules
- IHT deemed domiciled
- Pointers to mitigate tax

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Deemed domiciled

- Relevance?
- Increased administration
- Tax planning before 5 April 2017
- Under ‘normal’ tax rules going forward

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What is a non-UK domiciliary

- Domicile of origin outside the UK – based on father's domicile position
- Domicile of choice – where the permanent home is
- New concept – the returning UK domiciliary known as the 'formerly domiciled resident' – the 'boomerang'!

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Domicile of origin

- Have had a privileged tax status
- Possible to be non-UK domiciled and have lived here for many years
- Second and possibly third generation non-UK domiciliaries
- Long-term residents are the ones under attack

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Previous rules for long-term residents

- Deferral and often avoidance of UK tax entirely on foreign income and gains
- Claim remittance basis and pay Remittance Basis Charge ('RBC') – up to £90k
- Careful record keeping required if want to use monies in the UK
- No record keeping if only used the funds abroad

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New rules – applies from 6 April 2017

- Affects those resident for more than 15 years out of last 20 (will become domiciled in the 16th year, even if not resident!)
- New concept of the deemed domiciliary (not to be confused with the IHT term!)
- No remittance basis – worldwide arising basis
- Others – still remittance basis under old rules (maximum RBC £60k)

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Practical effect of new rules

- No secrecy now
- Greater record keeping required
- Higher amounts of tax payable
- Conventional tax planning required to mitigate tax

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Transitional rules – some good news

Tax breaks:

1. Rebasing of foreign assets @ 6 April 2017

2. Ability to sort out ‘mixed funds’

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Rebasing of assets

- Effect is that only gains post April 2017 will be chargeable to tax
- Conditions:
  - Deemed domiciliaries @ 6 April 2017 and no-one else
  - Have to have paid the RBC for any tax year up to 5 April 2017
  - Have to have held the asset on 5 April 2017 (*this has changed and was previously to have held @ 8 July 2015 - Summer Budget*)
- Draft legislation 6 December 2016

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Tax advice on rebasing of assets

- Last chance to pay RBC to fall within the conditions
- Check gains on all assets, consider exchange differences – get info now!
- Elect out for specific properties – irrevocable (4 year time limit)
- Don't sell foreign assets until after 5 April 2017. Compare deferral now to complete exemption post 5 April
- Careful of bringing proceeds into UK - tracing rules of what was used to buy the asset originally

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Mixed funds – all non-doms

- Ability to tidy up bank accounts or assets that comprise income, capital gains and clean capital
- Otherwise unfavourable tax rules treat income as remitted first
- Have ***two*** years from 6 April 2017 to 5 April 2019
- Don't need to have paid RBC
- Applies to all non-doms except formerly domiciled residents

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Tax advice on mixed funds

- Review entries in bank accounts to calculate income, gains and clean capital
- Sell assets post 5 April 2017 that were acquired using mixed funds
- Separate sources into different bank accounts
- Remit clean capital and leave the rest offshore
- Possibly gift from income accounts to avoid future remittances

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Deemed domiciliaries

- May be favourable to become deemed domiciled in 2017/18
- Revisit years of residence
- Old rules prior to 2008, SRT afterwards

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Use of trusts

- Offshore trusts complex area
- Overview – good to set up trusts before 5 April 2017
- Transfer cash or assets not at a gain
- Protected settlement rules

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Protected settlement rules

- Still ability to defer income tax and capital gains if trust set up before deemed domiciled and no additions
- Softening of proposals in light of consultation. Only now taxed on payments/benefits received
- Payments to close relatives will be taxed on them (if assessable); if not on the settlor. No using non-resident beneficiaries to wash out historical capital gains
- Can also defer tax on income in underlying offshore company too
- Review existing trusts

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Returning non-domiciliary

- Those who were either:
  - **Born here** (where domicile of origin o/s UK) ***and*** (was thought to be or)
  - Have a domicile of origin here
- Are known as the formerly domiciled resident
- Will be 'punished' on return here
- They will NOT attract any of the transitional reliefs and will be deemed domiciled immediately on return

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Inheritance ('IHT') tax rules

- Brought into line with new deemed domicile concept
- Previously IHT on worldwide assets if resident for 17 out of last 20 years
- Now IHT on worldwide assets if resident for at least 15 years out of the last 20

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IHT tax rules

- Can be subject to UK IHT even if not resident in the year of death
  - If have been resident for at least 15 years out of last 20 in the year of the transfer AND
  - Was resident in at least one of the last four tax years prior to the transfer

- Don’t assume that just because not resident they are outside the scope of UK IHT

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IHT tax rules

- Careful calculation on leaving the UK as to whether shed UK domicile

1. Requires 6 years outside the UK but can lose DD at the beginning of 5th year

2. Leave in 14th year of residence to avoid automatically becoming deemed domiciled in 16th year

3. UK dom leaving remains the 3 year rule from date decide to live somewhere else permanently

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Summary

- Look at individual's residence – will they be deemed domiciled from 6 April 2017? Do they want to be?
- Pay the RBC on 31/01/17 or 31/01/18 to claim the rebasing? Ascertain the capital gains now.
- Are trusts suitable?
- Review existing settlements to ensure protection

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Summary

- Leave the UK to avoid becoming deemed domiciled for inheritance tax purposes on 6 April 2017 (transitional rules)
- Delay remitted funds from mixed accounts until can be tidied up
- Delay sales of foreign assets until after 5 April 2017
- Returning domiciliaries to take advice before coming back

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Any questions?

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Is there a way out for buy-to-let investors?

Andrew Marr
Partner

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Outline

- History of the attack
- Focus on interest restrictions (final straw?)
- Incorporation recap
- Practical barriers of incorporation
  - CGT
  - SDLT
  - Loans
- Case study
- Looking to the future

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History of the attack

Timeline of the attack

- 22/03/2012: SDLT special rate of 15% for purchases of 'high value' (£2m) residential dwelling interests acquired by Companies (but relief for buy-to-lets)
- 01/04/2013: Annual Tax on Enveloped Dwellings (ATED) introduced for £2m homes
- 20/03/2014: 15% SDLT corporate rate to apply to £500k properties
- 01/04/2015: ATED to apply to properties of £1m plus
- 04/12/2014: major changes to SDLT rates – high value homes hit much harder by the tax

BTL?

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History of the attack cont…

- 6/4/2015: CGT extended to non-UK resident persons for certain residential property — BTL?
- 1/4/2016: ATED to apply to properties of £500k plus
- 1/4/2016: 3% SDLT surcharge for virtually all buy to let investments — BTL?
- 6/4/2017: Phased introduction of restriction on interest relief for individual landlords — BTL?
- 6/4/2017: changes to IHT for Non-Doms such that interests in UK residential property will not be *'excluded property'* — BTL?

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Focus on interest restrictions (final straw)

- Highly geared businesses hit hardest
- Even basic rate tax payers will be hit hard
- By 2020/2021 interest relief only at 20%
- Gradually the interest tax deductions will be replaced by 20% tax credit

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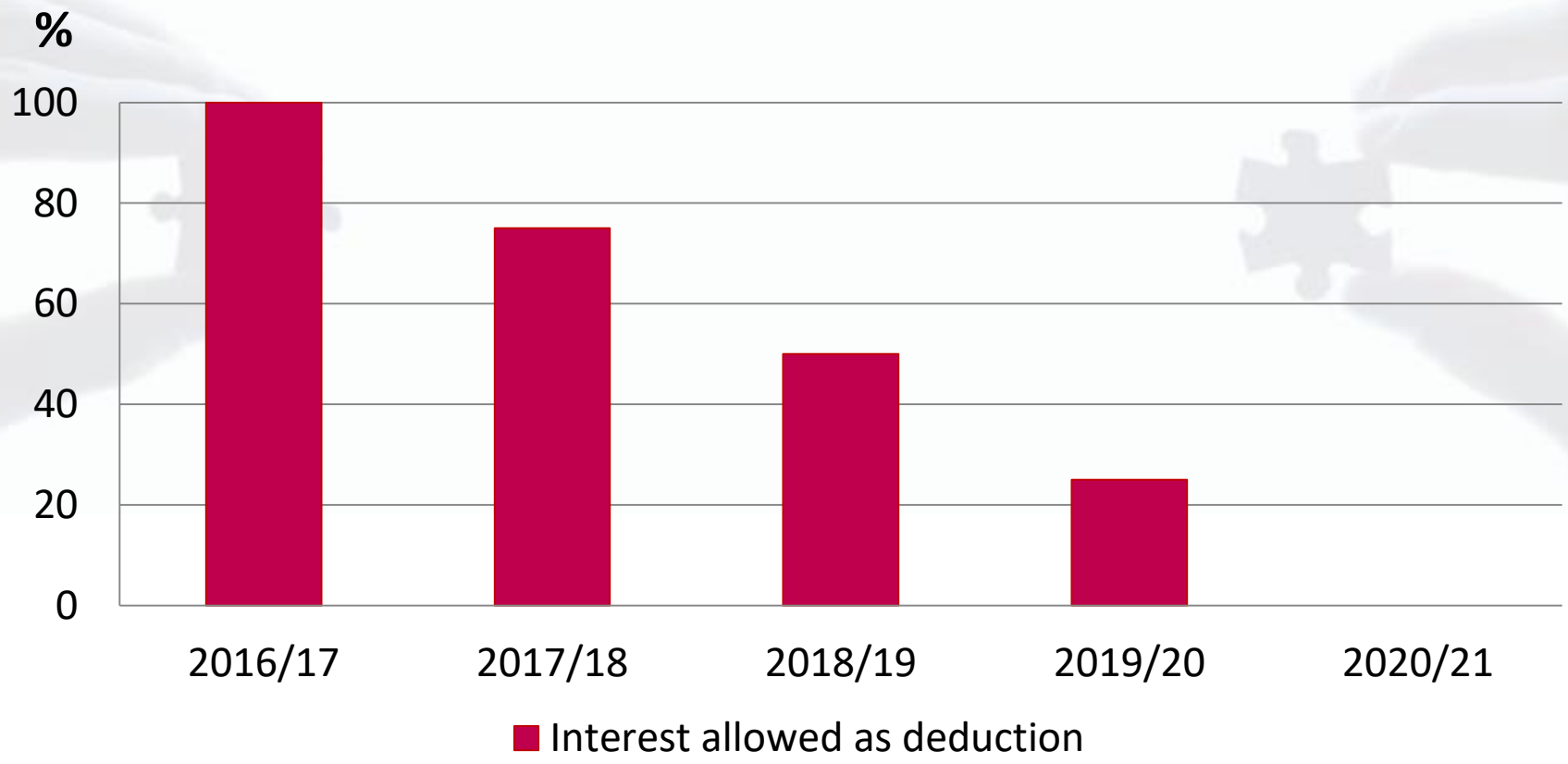
Effect of new interest restrictions on residential rentals - 40% taxpayer



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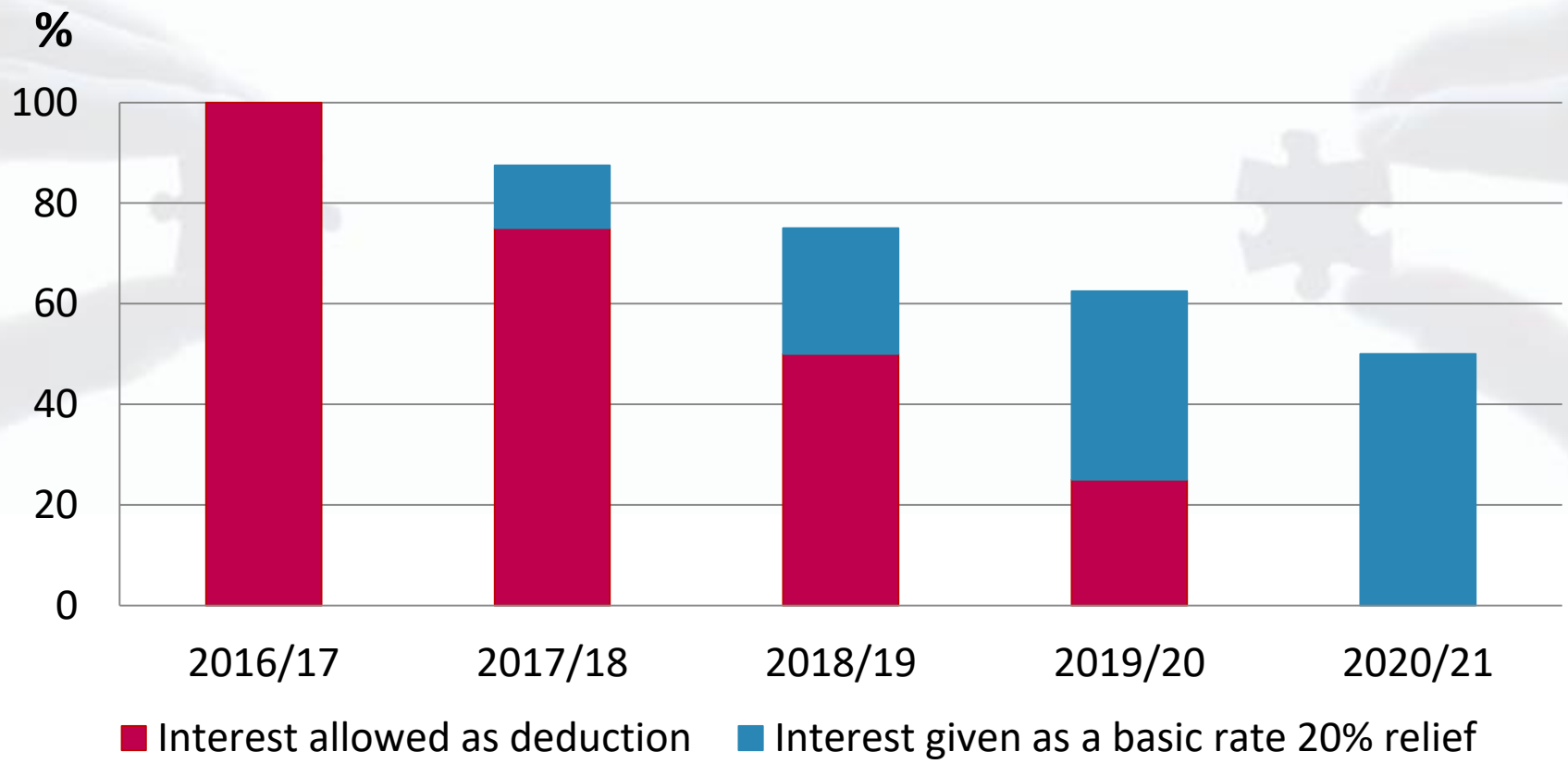
Effect of new interest restrictions on residential rentals – 40% tax payer



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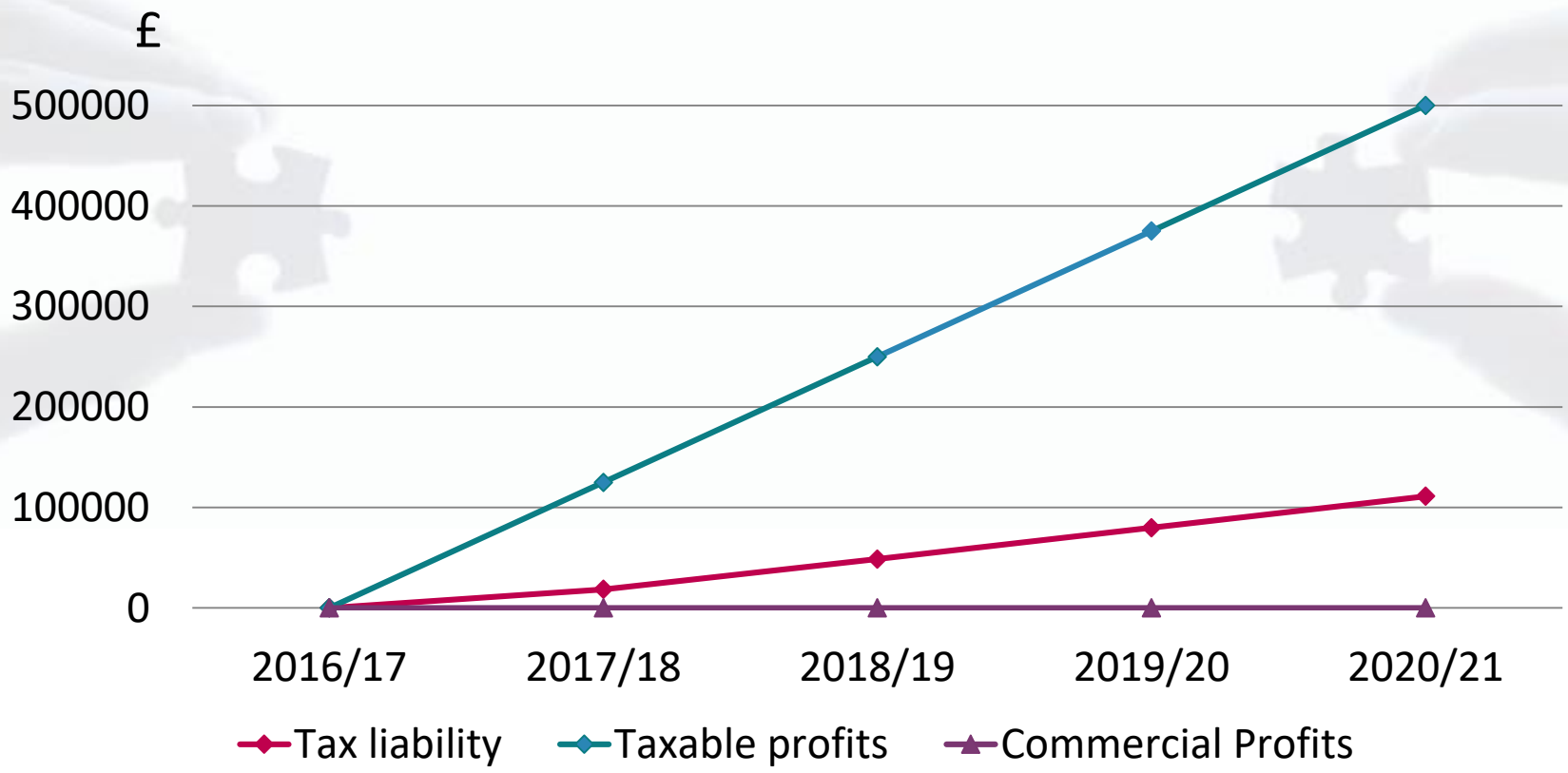
Buy to let investor - £500K income and £500K interest



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Buy-to-let mortgage tax relief battle backed by Cherie Blair

The wife of former Prime Minister Tony Blair took up the case - and says the result is ‘disappointing’.

The Telegraph

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Money › Investing › Buy-to-let

Cherie Booth: Challenge to buy-to-let tax 'not over yet' despite judicial review failure

share

Cherie Booth: Fight against tax changes 'not over yet' CREDIT: DAVID PARRY/PA

By Olivia Rudgard

MONEY MOST VIEWED

1. How hipsters have caused a house price boom across the country — 05 Dec 2016, 4:42pm
2. More lenders offer 100pc. 'no deposit' mortgages — 05 Dec 2016, 8:00am
3. Buy-to-let: best-buy mortgages if you set up as a company — 05 Dec 2016, 10:50am
4. What will mortgage lenders accept as income? — 05 Dec 2016, 1:04pm
5. We saved £65k building our home – and this is how you can save even more — 05 Dec 2016, 9:39am

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Options for highly geared investor

- Sell up and get out of the game
- Incorporate to make the situation tolerable
  - Companies don't have interest restrictions
  - Low corporate tax rates
- But barriers to entry…….

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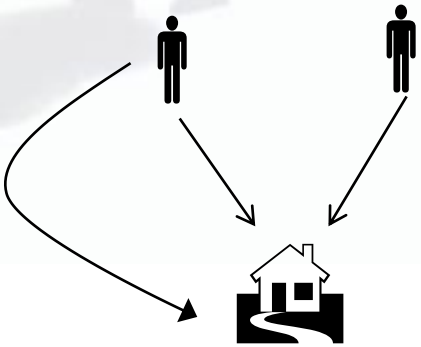
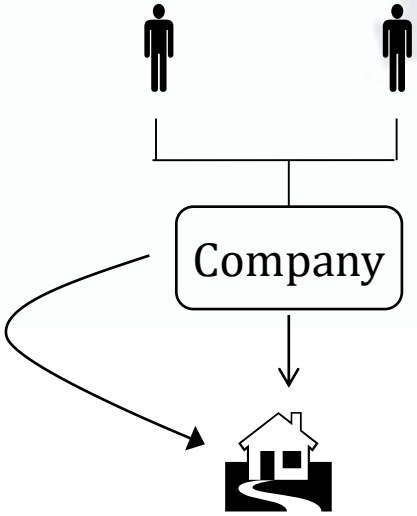
Incorporation recap

- Capital gains disposal
- Section 162 TCGA 1992 relief if in exchange for shares
- Uplift base cost of property to market value
- SDLT charge – subject to reliefs





ACT NOW BEFORE INCORPORATION RELIEF DISAPPEARS! (consultation!)

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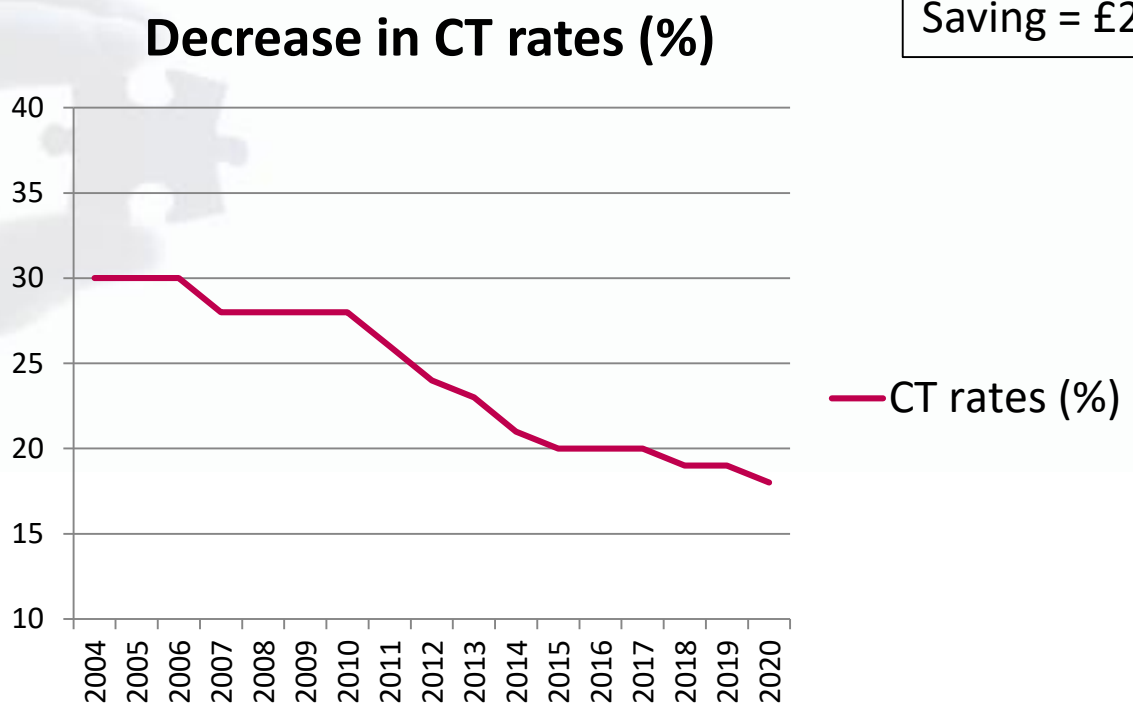
The benefit of lower corporation tax rates

- Individual = 45% income tax
- Company = 20% corporation tax

Example: £100,000
Individual (45%) = £45,000 tax
Company (20%) = £20,000 tax
Saving = £25,000



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Personal tax on dividends – Current year

	Personal tax	Company tax	Total
Exemption (£5,000)	0	20%	20%
Basic rate (20%)	7.5%	20%	26%
Higher rate (40%)	32.5%	20%	46%
High Earner (45%)	38.1%	20%	50.48%
Capital gains (20%)	20%	20%	36%

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Practical barriers of incorporation (and how to overcome them)

- CGT – Crystallise market value disposal?
- SDLT – Market value SDLT rule for transfers to connected company
- LOANS – Will lenders simply transfer loan to a company??

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Practical barriers of incorporation (and how to overcome them)

CGT

- TCGA 1992 Section 162 incorporation relief
- Is it a business? (size, office, way it is run etc.)
- Ramsay confused things……
- Do we actually have gains?

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Practical barriers of incorporation (and how to overcome them)

SDLT

Default position

- SDLT payable based on market value when property transferred to a connected company
- Multiple dwelling relief (MDR) sometimes made this bearable
- Not anymore with new 3% rate hike

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Practical barriers of incorporation (and how to overcome them)

- Multiple Dwelling Relief (MDR)

Example:

Take a £6m portfolio of 28 properties…..

Average value = £214,286

MDR old rules		**MDR new rules**	
£125,000 @ 0%	= £ 0	£125,000 @ 3%	= £ 3,750
£89,286 @ 2%	= £ 1,786	£89,286 @ 5%	= £ 4,464
£214,286	£ 1,786		£ 8,214
£1,786 x 28	= £50,000	£8,214 x 28	= £230,000

But must be at least 1%

£6m @ 1% = £60,000

BIG DIFFERENCE!

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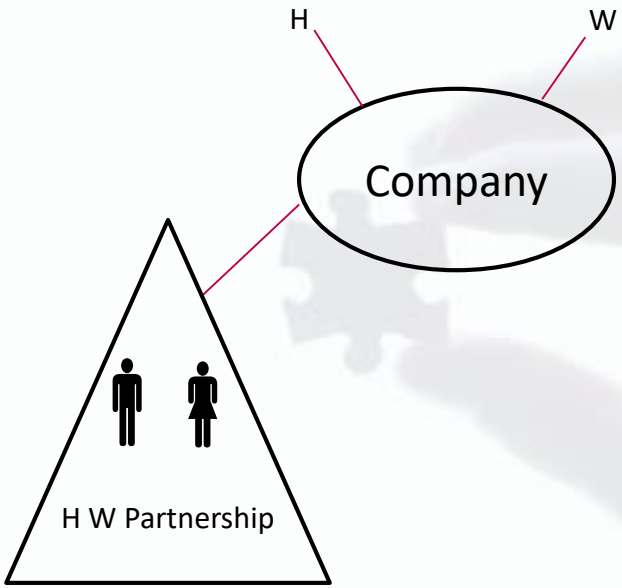
Practical barriers of incorporation (and how to overcome them)

SDLT – Partnership defence

- Family partnerships can generally incorporate without SDLT
- Complicated numerical rates but accepted by HMRC
- What is a partnership?
- ‘a partnership is the relation which subsists between persons carrying a business in common with a view of profit’ 1890 Partnership Act



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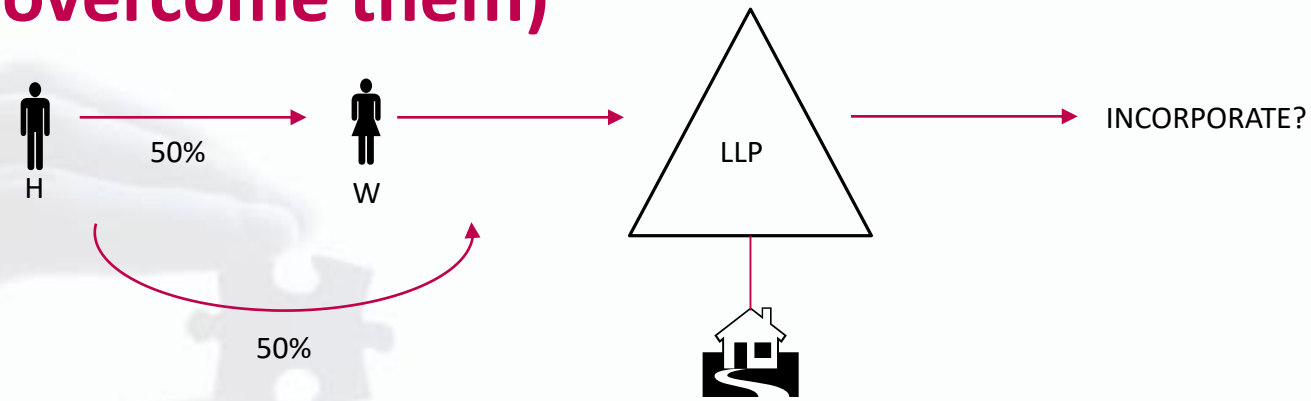
Practical barriers of incorporation (and how to overcome them)



SDLT – Partnership defence

1. SDLT on property debt?
2. Do we really have a partnership?
3. FA 2009 s 75A – SDLT anti-avoidance
4. Issues with transfer of assets within three years of partnership set-up

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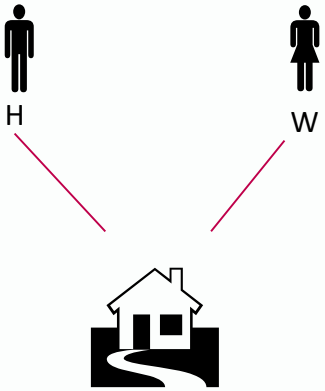
Practical barriers of incorporation (and how to overcome them)



- Defend partnership position
- Non-statutory business clearance?
- Take stance and no SDLT returns?

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Clearance Letter

HM Revenue
& Customs

HM Revenue & Customs
CTISA Birmingham Stamp Taxes
Birmingham Stamp Office
9th Floor City Centre House
30 Union Street
Birmingham
B2 4AR

Tel 03000570020
Fax 03000570316
www.hmrc.gov.uk

DX 15001 Birmingham 1

Addressee

Date
Our ref
Your ref

Dear Sir

Re: [ ]

Further to your letter of [date] [and our telephone conversation], I can confirm that the arrangements outlined will constitute a partnership for SDLT purposes and the provisions of Schedule 15 Finance Act 2003 will apply.

This view is based on the facts and context of the transaction that you provided in your letter relating to this application. Consequently, we may review the tax consequences of the transaction where it becomes apparent that the transaction was carried out in a materially different way/form to that set out in your application.

This response applies to the specific transactions on which you asked for advice. There is no precedent value for the advice set out in this letter that could be applied for other customers or for any other transaction(s), even if similar in nature/form.

Yours faithfully

Debbie Smith
Guidance and Technical Team

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RAMSAY

Staff

100% of properties

Maintenance services

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Practical barriers of incorporation (and how to overcome them)

Loans

- If incorporation relief applies then the company can take on debt without it triggering a gain (ESC D32)
- But lenders may not readily agree to debt being taken on by a company (although more 'free cash')
- Declaration of trust?
- Restriction to rollover if borrowings exceed cost of properties on accounts

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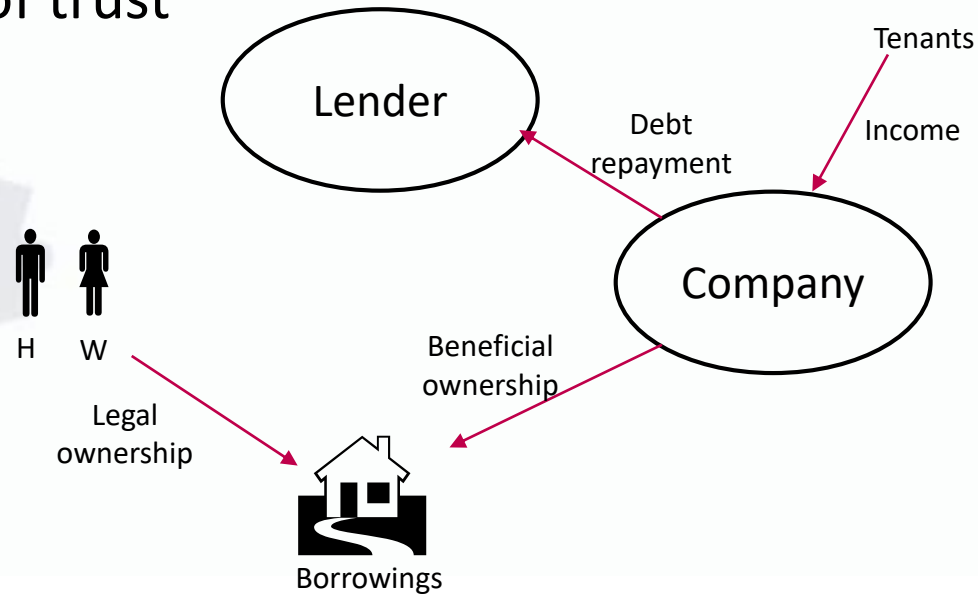
Practical barriers of incorporation (and how to overcome them)

Declaration of trust



- Breach of mortgage conditions?
- Schemes?
- Ethical?
- Refinance?

Ask an expert

Avoiding bankruptcy through property incorporation

Andrew Marr
Forbes Dawson
Andrew Marr is a partner at Forbes Dawson. Andrew's expertise lies in bespoke tax planning for owner managed businesses and non-domiciled individuals. He also has extensive experience of offshore tax structures, which he advises on and implements. Email: andrew@forbesdawson.co.uk; tel: 0161 927 3854.

A husband and wife jointly hold a residential property portfolio of 19 properties valued at £5m (and costing £4m). The portfolio has £4m of mortgages attached to it. Net rental income before finance costs is £300,000 and mortgage interest is £175,000, giving an annual joint 'Schedule A' income of £125,000 which they live off. This has historically been reported on the couple's personal tax returns (£62,500 each), and there is no formal partnership. The couple have asked how the new interest rules will affect them and they have also heard that they should become an LLP, so as to avoid SDLT on an incorporation. They require general advice on their position.

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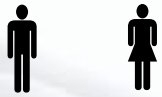
Case Study



H W

19 properties worth £5m

Debt = £4m

Cost £3m

Profit

Income	£300,000	
Mortgage interest	(£175,000)	
	£125,000	
	£62,500	£62,500
	£14,200 tax	£14,200 tax

No formal partnership

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Case study

If don't Incorporate

- Tax on £150,000 with £17,500 credit (£36,100) over double (by 2020/2021)
- Tax on everything whether extracted or not
- 28% capital gains tax exposure on sale.

Costs of incorporating

- SDLT of £209,760 using MDR (previously £59,850)
- Loan issues/declaration of trust
- Seek clearance on SDLT?/File as a partnership and take risk???

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Case study – Don't fall into the equity trap!!!

Potential capital gain

= £5m - £3m = £2m

Company balance sheet

	£
Property	5m
Less debt	(4m)
Business equity	1m
Less gain	(£2m)
	- 1m

IMPOSSIBLE:
£280K of CGT

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Case study – Deductibility of debt

Cost = £3m
Debt = £4m!!

Deductible borrowings restricted to value when brought into business

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Selling up

	£
Property	5m (vacant possession)
Debt	(4m)
28% of £2m	(0.56m)
Net cash	0.44m (maybe less)

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What does the future hold?

- Backtracking? Cherie Blair etc?
- Closing down escape routes? – threat of consultation
- Finance restrictions for companies!!! – Unlikely!
- Commercial relaxations – Banks embracing incorporations!

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Surplus cash & the family company

Michelle Hogan
Senior Tax Consultant

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Overview

- The surplus cash ‘problem’
- Considerations for the ageing shareholder
- The Entrepreneurs’ Relief (‘ER’) and Business Property Relief (‘BPR’) anomaly
- Case study

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‘Surplus’ cash is more common than you think

- Small family companies
- Historical disparity between income tax & capital gains tax rates
- Lack of incentive to take excess cash out as dividend
- Increasing exposure to IHT on shares

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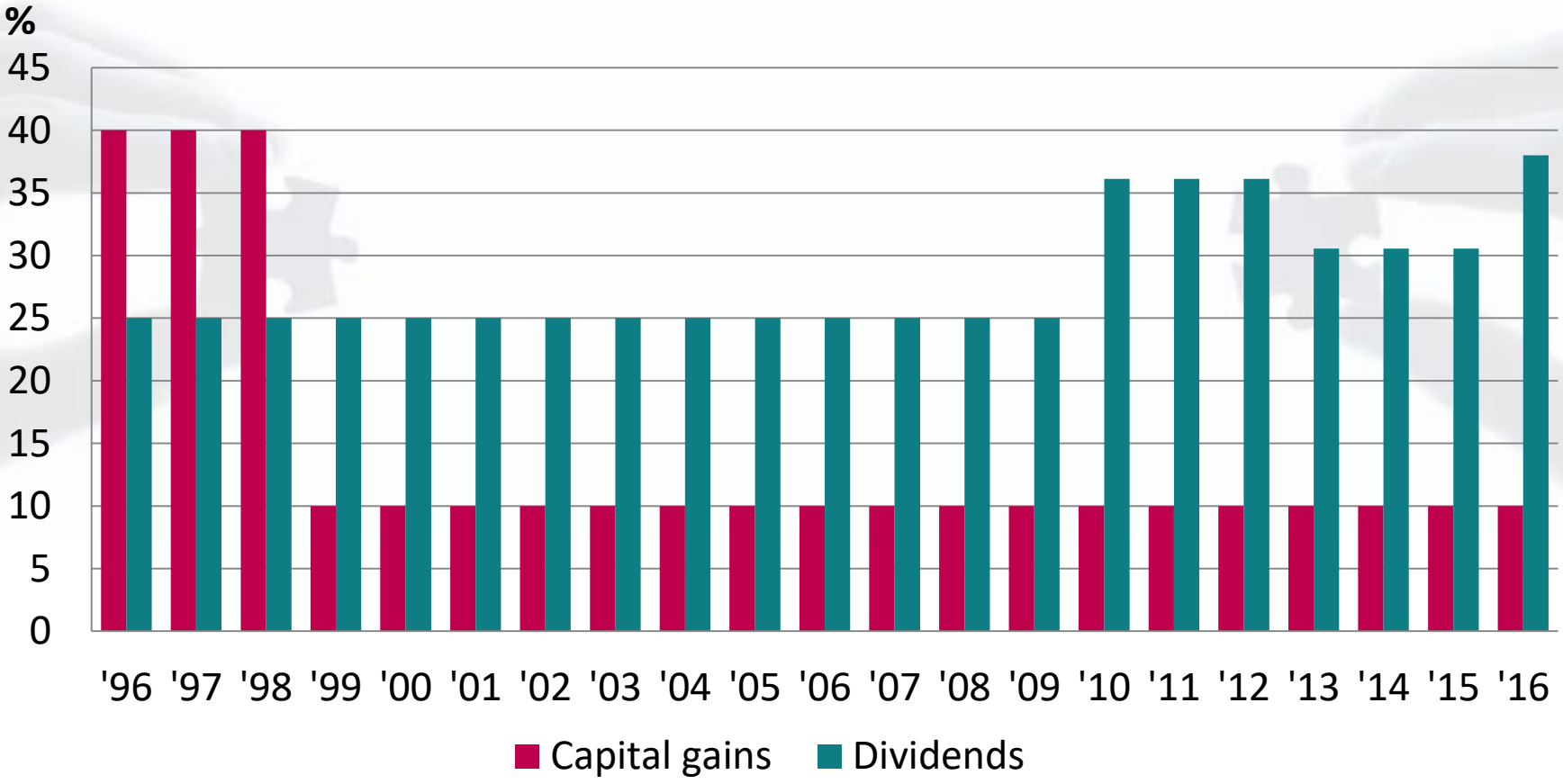
Historical CGT/income tax divide

Historical differences between additional rate tax on dividends and higher rate capital gains tax (assuming business reliefs where appropriate)



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Example – dividends vs capital

Extraction of £1m surplus cash from company:

	£	£
Income tax on dividend (38.1%)	381,000	381,000
Extract as capital with ER (10% CGT)	100,000	
Extract as capital without ER (20% CGT)		200,000
Tax saving on capital extraction	281,000	181,000

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The ER/BPR anomaly: surplus cash in the company

Generally speaking…

ER

'Passively' holding 'surplus' cash is OK!

BPR

'Passively' holding 'surplus' cash is **not** OK!

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Qualifying shares: Entrepreneurs' Relief

- CGT rate of 10% on lifetime limit of £10 million
- 'Trading company' or 'holding company of a trading group'
- Not a 'substantial extent' (>20%) of non-trading activities
- Look at various measures:
  - Income from non-trading activities (e.g. investment income, rental)
  - Asset values
  - Expenses incurred or time spent undertaking activities (e.g. management time, treasury function)

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Qualifying shares: Entrepreneurs' Relief

- Surplus cash > 20% of assets?
- Identifiable 'activity' distinct from the trading activity?
- Time spent managing cash etc.
- HMRC accept holding of cash on deposit is not an 'activity'…therefore cannot be a 'non-trading activity'
- 'Money-boxing' – future target?

Balance sheet	£m
Other net trading assets	5
Investments	1
Cash	4
Net assets	**10**

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Qualifying shares: IHT and Business Property Relief

‘Wholly or mainly’ test

- **All or nothing** measure for shares
- ‘Wholly or mainly’ a trading co or holding co of a trading group
- Wholly or mainly is > 50%
- Trading activities vs Investment activities

‘Excepted assets’ test

- **Restriction** of BPR on value of shares
- Where underlying ‘excepted assets’ in co
- What are ‘excepted assets’?

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Qualifying shares: BPR and 'excepted assets'

- 'Excepted assets' are neither:
  - Used for business purposes throughout two years before transfer
  - Required for future use in business
- Includes cash surplus to requirements of business
- 'Rule of thumb'
  - 25% turnover, plus
  - cash earmarked for projects
- 'Investment activities' are **not** excepted assets
- Actively invest cash but care not to undermine 'wholly/mainly' test

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Qualifying shares: BPR and 'excepted assets'

*"If..[a company]..has trading and investment interests…consider whether the latter is part of a hybrid business activity. If..a hybrid company is mainly trading..[i.e. 'wholly & mainly']..**the 'excepted assets' rules will not apply to investments constituting part of the hybrid business'**. [They] can only apply to assets which are not used in either part of the hybrid's business.*

***A degree of activity is required to constitute a business** and whether investments involve sufficient activity must depend on their nature and the particular facts.."*

HMRC Shares & Valuation Manual SVM111220

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Qualifying shares: Business Property Relief

- MV of company £10m
- Investment assets (cash) £5.5m
- Not ‘wholly or mainly’ trading (45%)
- No BPR on shares
- IHT 40% x £10m = £4m
- *ER*

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Qualifying shares: Business Property Relief

Tradeco 2

MV £10m

Investment assets £4.5m

'Wholly or mainly' trading (55%)

Shares qualify for BPR ✓

No 'excepted assets' ✓

IHT = £nil

ER ✗

Tradeco 3

MV £10m

Surplus cash £4.5m

'Wholly or mainly' trading (55%)

Shares qualify for BPR ✓

'Excepted assets' - cash ✗

IHT 40% x £4.5m = £1.8m

ER ✓

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Options for the cash-rich family company

- Do nothing
- Set up investment arm (& possibly demerge)
- Partial exit paid for by reserves
- (Company buyback of shares)
- Full exit (retire) and extract cash as capital
  - Sell shares
  - Sell business assets and liquidate
  - Wind down and liquidate

Invest cash personally in BPR friendly investments

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Options - Doing nothing

- Surplus cash builds up
- IHT exposure on shares (excepted asset for BPR)
- Will HMRC eventually attack ‘money-boxing’?
- Commercially – low returns

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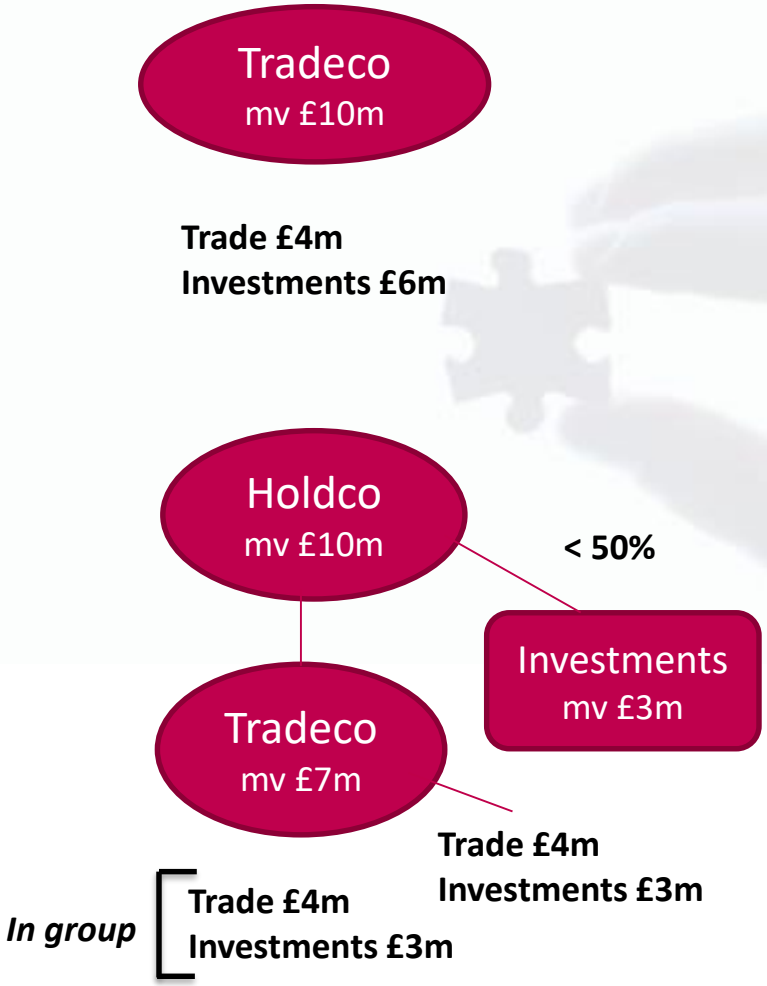
Options - Setting up an investment arm

- Currently no BPR on 'Tradeco' shares (75% investment)
- Move some cash to Holdco to invest
- Holdco's minority stakes not excepted assets
- Full BPR available on Holdco shares as group wholly or mainly trading
- Or, set up an investment subsidiary & demerge



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Options - Partial exit paid for by reserves

- FA2016 Transactions in Securities changes
- Trickier to extract cash as capital & retain significant interest
- Fundamental change in ownership definition – ‘safe harbour’ test
- Can no longer retain control
  - Pre-2016 – hold <75% after transfer via a new holding company
  - Post-2016 – all ‘original shareholders & ‘associates’ hold <25% directly or indirectly

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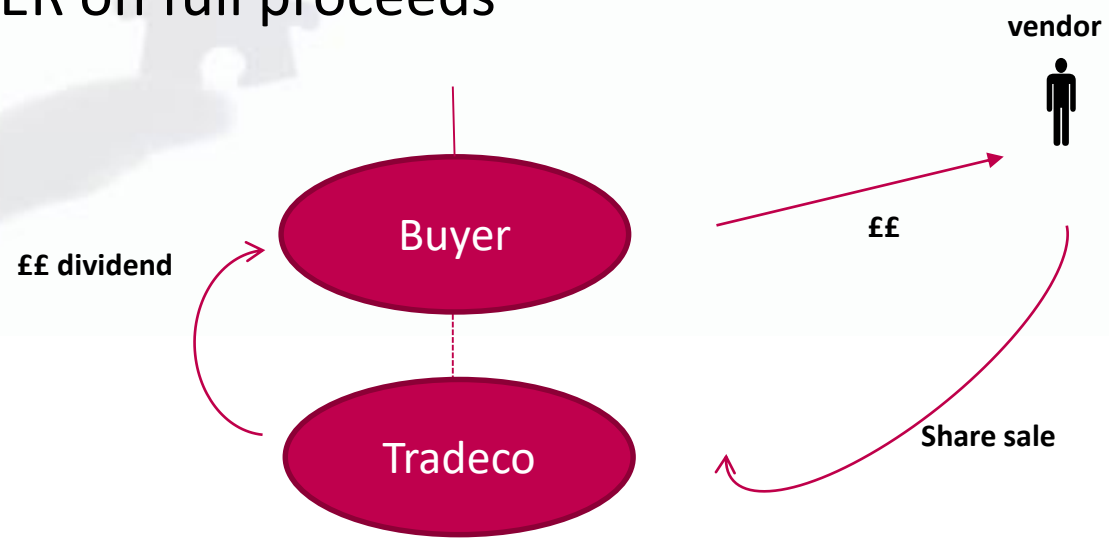
Options - Full exit: plan for share sale

- Commercially robust!
- Friendly corporate buyer to pay for cash value in shares
- Use dividends of target to fund proceeds
- ER on full proceeds



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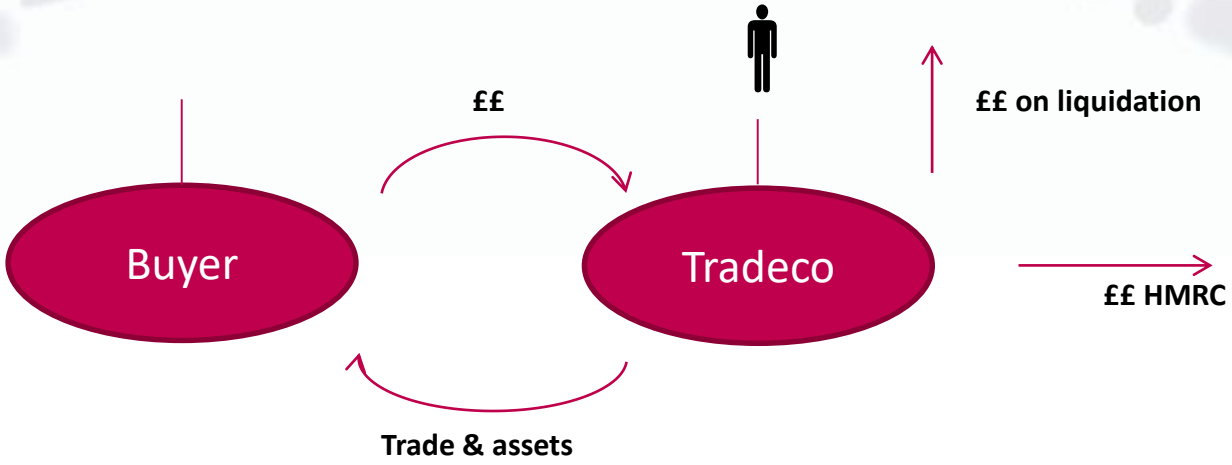
Options - Full exit: trade & assets sale then liquidate

- Buyer acquires trade & assets
- CT at 19% on disposal of goodwill
- Distribute cash as capital on liquidation
- Distribution within 3 years for ER to apply



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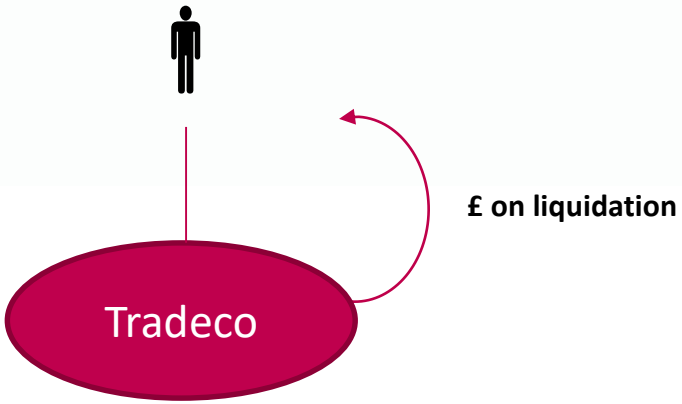
Options - Full exit: wind down trade then liquidate

- Distribute cash as capital on liquidation
- Distribution within 3 years for ER to apply
- 'Phoenixing' – don't be tempted back within two years!
- Applies to similar activities whether involvement via:
  - Sole traders, or
  - Partnership, or
  - Company



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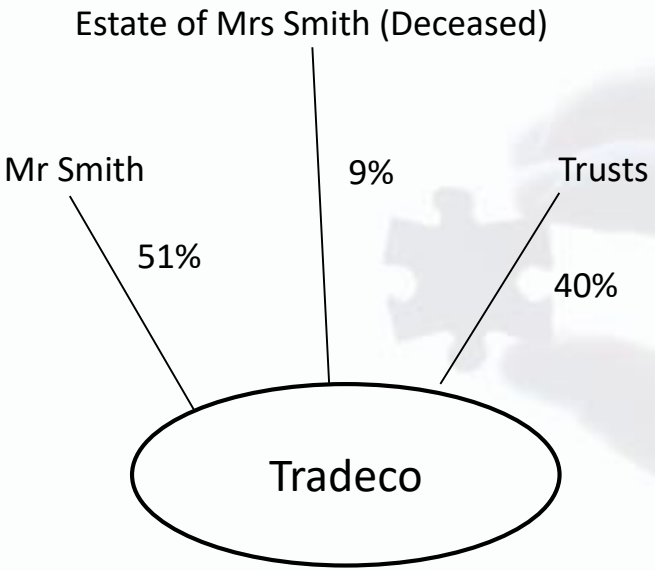
A case study: the Smith family

- Family company
- Controlled by Mr & Mrs Smith
- 40% Trusts for adult children
- Mrs Smith had died
- Co net assets £11m, cash £6.6m



Restructuring objectives

- Reduce value of Mr Smith's estate
- Mitigate IHT exposure - potential restriction of BPR on shares
- Mr Smith to retain control over trading company for now
- Improve returns on cash

Solution

- Company purchase of own shares
  - buyback deceased wife's 9% interest from Trustees

- Demerger of investment & trading business
  - Adult children to take control of investment business (cash)
  - Mr Smith to retain control of trading company
  - Capital reduction demerger

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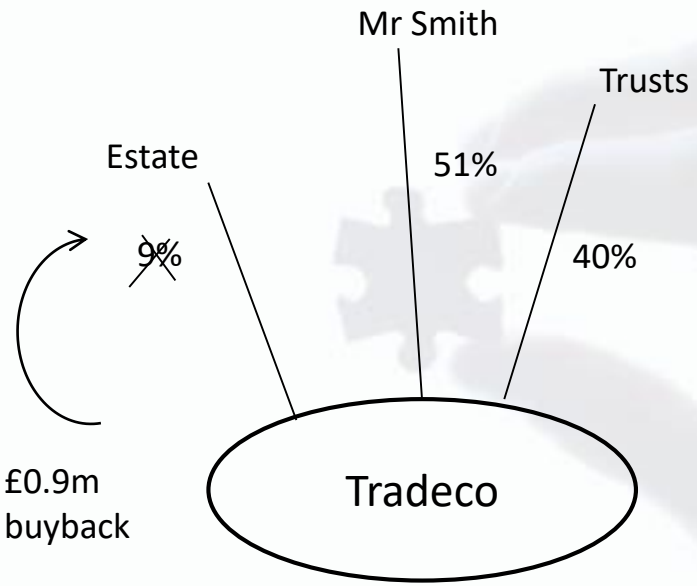
Stage 1 – Company purchase of own shares ('CPOS')

- Will - shares into discretionary trust
- Beneficiaries – adult children
- Trustees required to diversify risk
- HMRC clearance - capital treatment
- Buyback shares for £0.9m cash



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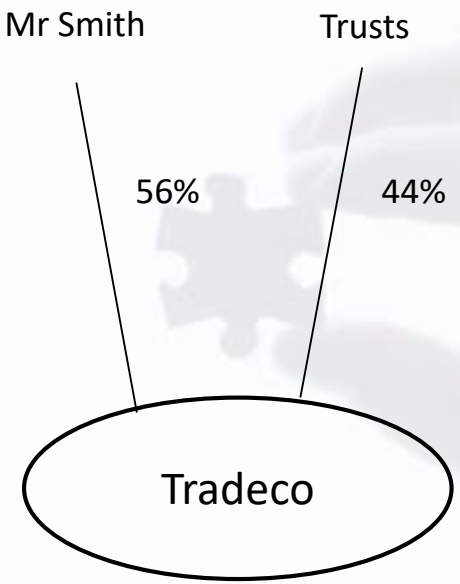
Stage 2 – reorganisation to separate cash from trade

- Initial company structure following CPOS
- 44% interest = approx 'surplus' cash
- £11m x 44% = £4.8m
- Demerge into investment co



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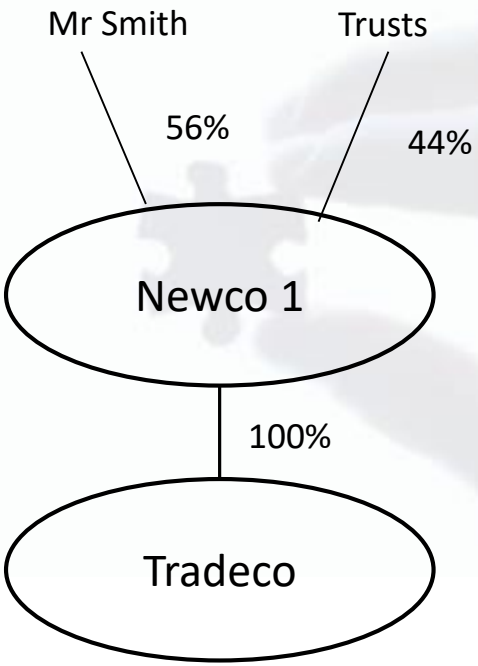
Step (i): insert new holding company

- Insert Newco 1 via share-for-share exchange
- HMRC clearance
- Tax neutral



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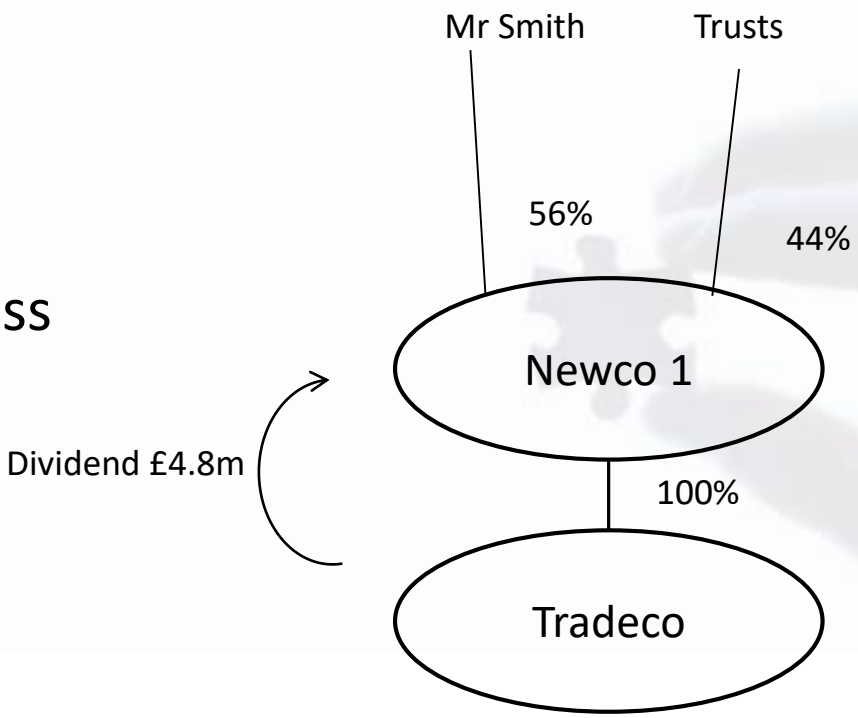
Step (ii): Tradeco makes cash distribution to Newco1

- £4.8m dividend to Newco1
- Distributable reserves
- Tax-free receipt
- Comprises investment business



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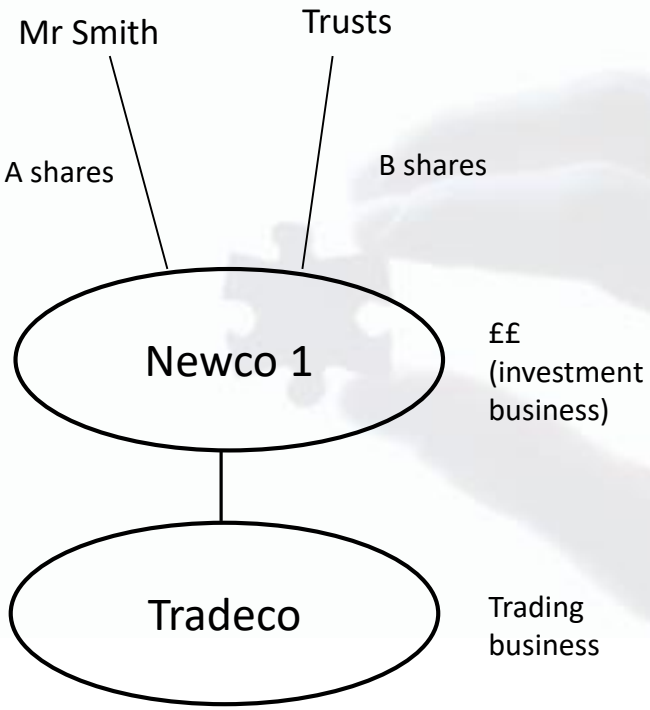
Step (iii): reclassify shares in Newco1

- Reclassify Newco's shares
- 'A' & 'B' shares
- A: rights over the Tradeco business
- B: rights over the investment business (i.e. cash)



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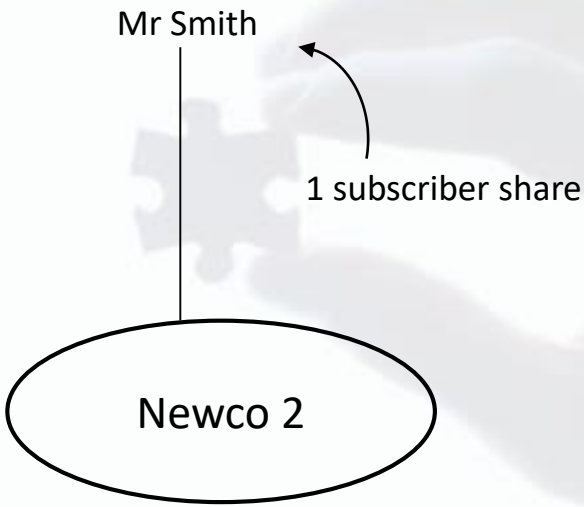
Step (iv): incorporate Newco2

- Newco2 issues subscriber share to Mr Smith
- Newco2 will eventually hold the Tradeco



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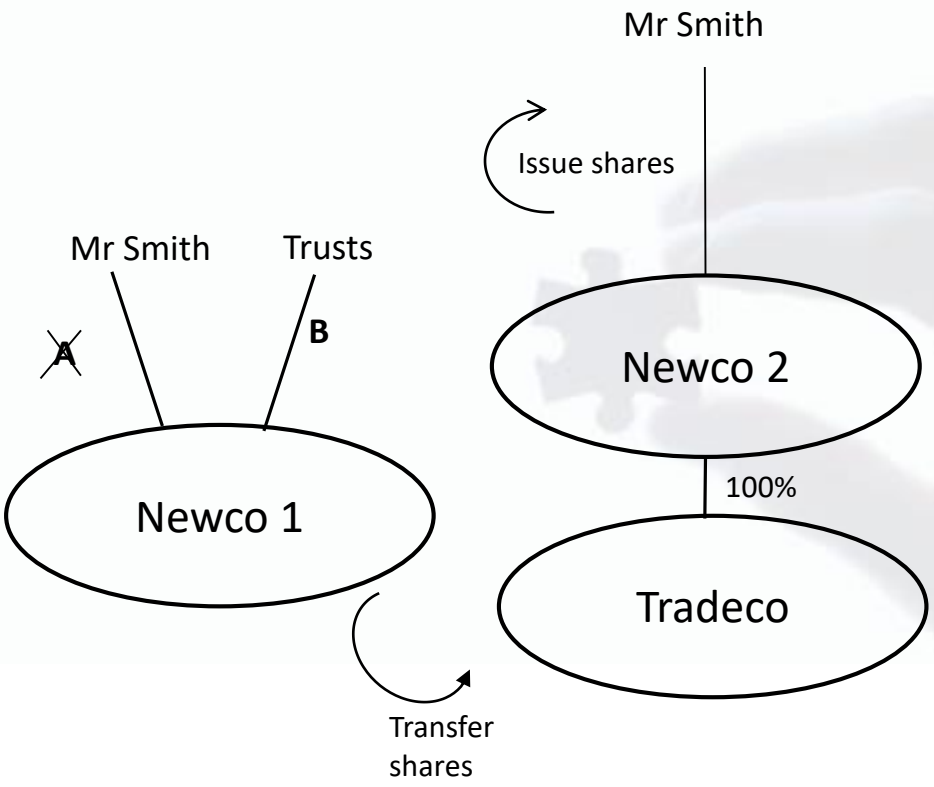
Step (v): Capital reduction demerger of trading & investment businesses

- ‘A’ shares in Newco1 are reduced in exchange for Newco1 distributing its shares in Tradeco
- Tradeco shares distributed to Newco2 in exchange for Newco2 issuing new shares to Mr Smith



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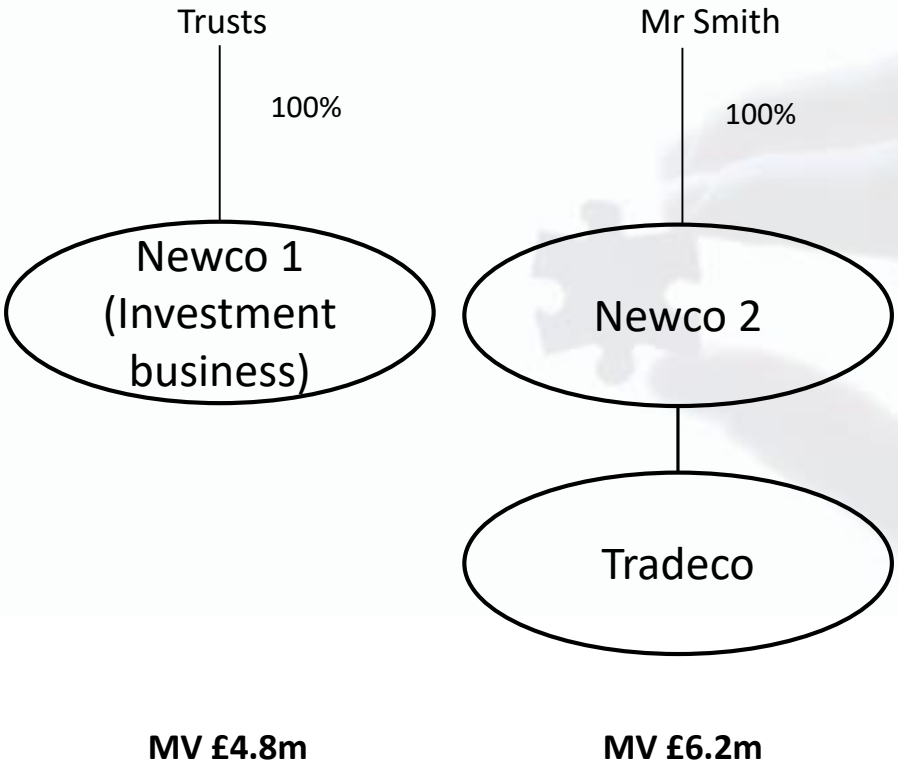
End position

- Investment business owned by children's Trusts
- Trading business retained by Mr Smith
- Tradeco shares qualify for BPR & ER



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Summary

- Look at cash balances
- Shareholders' objectives - retain control? sell? handover?
- Mitigate IHT exposures (40% vs 0% with full BPR)
- Consider ER for capital extraction
- Tailor planning carefully to family circumstances

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Employment Tax Update

Michael Dawson
Managing Partner

Forbes Dawson
THE TAX SPECIALISTS

Employment Tax Update

- Salary sacrifice
- Termination payments
- Trivial benefits
- Attack on public sector use of service companies
- Review of benefits in kind and employee expense deductions

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Salary Sacrifice
The Principle

- Employee agrees to reduced pay
- Accepts other benefits instead

WIN WIN

- Employer saves NIC (13.8%)
- Employee saves
  - Income tax (up to 45%)
  - NIC (12% or 2%)

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Salary Sacrifice Post April 2017

'Permitted' Benefits

Cycle to work

Pensions (+ advice)

Childcare

Ultra low emission cars

Other Benefits

- If in place > April 2017 - taxable

Transitional protection for pre April 2017 arrangements

- Cars, accommodation and school fees to April 2021
- All other benefits to April 2018 (e.g. phones and parking)

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Salary Sacrifice – not a level playing field

Holes in the rules

Caught by new rules. Reduce salary in lieu of a benefit ✗

Agree on commencement of employment ✓

Benefit is imposed by the employer ✓

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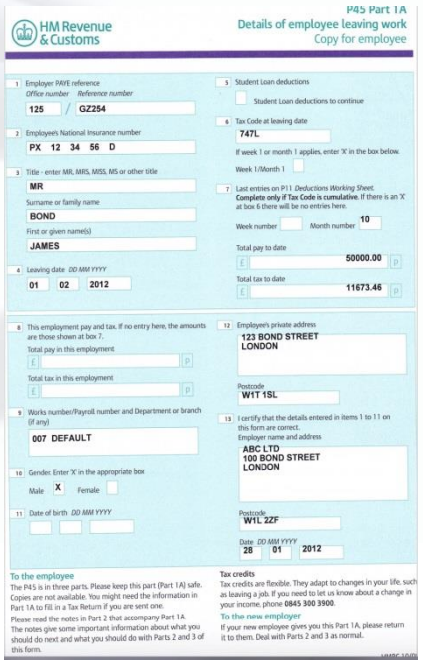
Termination Payments

Simplification – but at a cost to employers from 6 April 2018


HM Revenue & Customs

P45 Part 1A
Details of employee leaving work
Copy for employee

1 Employer PAYE reference
Office number / Reference number
125 / GZ254

2 Employee's National Insurance number
PX 12 34 56 D

3 Title - enter MR, MRS, MISS, MS or other title
MR

Surname or family name
BOND

First or given name(s)
JAMES

4 Leaving date DD MM YYYY
01 02 2012

5 Student Loan deductions
Student Loan deductions to continue

6 Tax Code at leaving date
747L

If week 1 or month 1 applies, enter 'X' in the box below.
Week 1/Month 1

7 Last entries on P11 Deductions Working Sheet.
Complete only if Tax Code is cumulative. If there is an 'X' at box 6 there will be no entries here.
Week number
Month number 10

Total pay to date
£ 50000.00 p

Total tax to date
£ 11673.46 p

8 This employment pay and tax. If no entry here, the amounts are those shown at box 7.
Total pay in this employment
£ p

Total tax in this employment
£ p

9 Works number/Payroll number and Department or branch (if any)
007 DEFAULT

10 Gender. Enter 'X' in the appropriate box
Male X Female

11 Date of birth DD MM YYYY

12 Employee's private address
123 BOND STREET
LONDON

Postcode
W1T 1SL

13 I certify that the details entered in items 1 to 11 on this form are correct.
Employer name and address
ABC LTD
100 BOND STREET
LONDON

Postcode
W1L 2ZF

Date DD MM YYYY
28 01 2012

To the employee
The P45 is in three parts. Please keep this part (Part 1A) safe. Copies are not available. You might need the information in Part 1A to fill in a Tax Return if you are sent one.
Please read the notes in Part 2 that accompany Part 1A. The notes give some important information about what you should do next and what you should do with Parts 2 and 3 of this form.

Tax credits
Tax credits are flexible. They adapt to changes in your life, such as leaving a job. If you need to let us know about a change in your income, phone **0845 300 3900**.

To the new employer
If your new employee gives you this Part 1A, please return it to them. Deal with Parts 2 and 3 as normal.

- PILONS: Income tax and NIC whether contractual or not
- Termination payments: £30,000 tax and NIC free

  Excess – subject to Income tax and Employer NIC
  - No employee NIC

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Trivial Benefits – not so trivial?

From 5 April 2016 'trivial benefits' do not need reporting to HMRC and incur no income tax or NIC

- £50 limit per benefit
- Not cash or cash voucher
- Not a salary sacrifice arrangement
- £300 per year cap for close company directors


Merry
Christmas
& Happy
New Year