

TAX PLANNING FOR THE ENTREPRENEURIAL CLIENT

INNOVATIVE AND PROVEN STRATEGIES



3 December 2012

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Agenda

1.30pm	Registration	
2.00pm	Opening Speech	Michael Dawson
2.10pm	Entrepreneurs Relief Planning for a Sale	Andrew Marr
2.30pm	LLP Planning for Property Partnerships	Michael Dawson
3.00pm	Family Investment Companies v Trusts	Laura Hutchinson
3.30pm	<i>Coffee Break</i>	
3.45pm	Capital Reductions – Tax’s Best Kept Secret	Andrew Marr
4.10pm	Tax ‘Easy Wins’	Tom Minnikin
4.25pm	Employment Cost Management	Chris O’Hara
4.45pm	Capital Gains Tax Deferral Strategies	Michelle Hogan
5.15pm	Alternative Dispute Resolution	John Norman
5.30pm	Closing remarks followed by drinks/nibbles	Michael Dawson

Entrepreneurs' Relief Planning for a Sale



3 December 2012

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Overview

- Recap on Entrepreneurs' Relief Rules (10% versus 28% CGT)
- What can be done?
 - Simple planning e.g. spouse transfers, appointment as an officer
 - Complex planning involving share restructuring

Recap – Entrepreneurs’ Relief (10% v 28%) on a Sale of Shares

Key conditions (must be met for 1 year up to sale):

1. Trading company (or holding company of a trading group)
2. Shareholder must be an officer or employee
3. Shareholder must own at least 5% of the ordinary share capital
4. The 5% holding must also carry at least 5% of the voting rights in the company
5. Lifetime limit of £10M

SIMPLE PLANNING TECHNIQUES



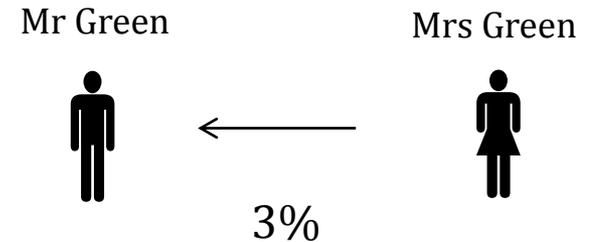
Example: Trading Limited

Possible Sale of Company for £100M

Name	Share %	Proceeds £
Officer/employee		
Mr Anderson	10	10,000,000
Mr Brown	10	10,000,000
Mr Cunningham	2.5	2,500,000
Mr Davis	2.5	2,500,000
Mr Ellis	32	32,000,000
Mr Green	5	5,000,000
Mrs Hall	3	3,000,000
Mrs Ellis	0	0
Not officer/employee		
Mr Fletcher	32	32,000,000
Mrs Green	3	3,000,000
Total	100	100,000,000

Husband and wife transfer

Name	Share %	Proceeds £
Officer/employee		
Mr Anderson	10	10,000,000
Mr Brown	10	10,000,000
Mr Cunningham	2.5	2,500,000
Mr Davis	2.5	2,500,000
Mr Ellis	32	32,000,000
Mr Green	5	5,000,000
Mrs Hall	3	3,000,000
Mrs Ellis	0	0
Not officer/employee		
Mr Fletcher	32	32,000,000
Mrs Green	3	3,000,000
Total	100	100,000,000



Revised holdings: 8%

0%

No gain no loss for CGT purposes
No 12 month requirement
Tax saving: £3M @ 18% = £540,000

Insufficient lifetime allowance remaining

Name	Share %	Proceeds £
Officer/employee		
Mr Anderson	10	10,000,000
Mr Brown	10	10,000,000
Mr Cunningham	2.5	2,500,000
Mr Davis	2.5	2,500,000
Mr Ellis	32	32,000,000
Mr Green	5	5,000,000
Mrs Hall	3	3,000,000
Mrs Ellis	0	0
Not officer/employee		
Mr Fletcher	32	32,000,000
Mrs Green	3	3,000,000
Total	100	100,000,000

Mr Ellis Mrs Ellis



10%

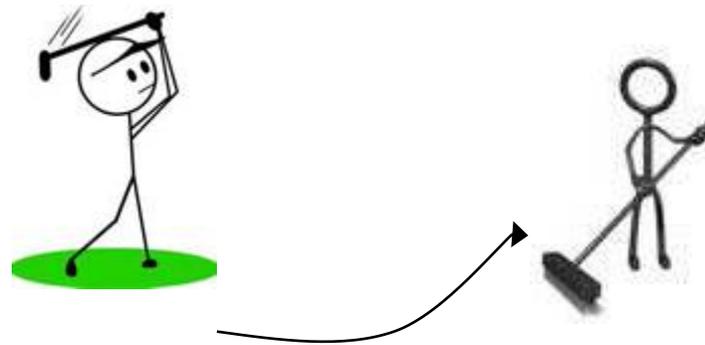
Revised
holdings 22%

10%

No gain no loss for CGT purposes
12 month requirement applies
Tax saving: £10M @ 18% = £1,800,000

Officer/employee condition not met

Name	Share %	Proceeds £
Officer/employee		
Mr Anderson	10	10,000,000
Mr Brown	10	10,000,000
Mr Cunningham	2.5	2,500,000
Mr Davis	2.5	2,500,000
Mr Ellis	32	32,000,000
Mr Green	5	5,000,000
Mrs Hall	3	3,000,000
Mrs Ellis	0	0
Not officer/employee		
Mr Fletcher	32	32,000,000
Mrs Green	3	3,000,000
Total	100	100,000,000



Minor role within the business

Working hours and level of remuneration – no specific requirement

12 month requirement applies

Tax saved is £10M @ 18% = £1,800,000

STRUCTURING MANAGEMENT SHAREHOLDINGS FOR ER



More Complex Planning

Structuring Management Shareholdings for Entrepreneurs' Relief (ER)

Name	Share %	Proceeds £
Officer/employee		
Mr Anderson	10	10,000,000
Mr Brown	10	10,000,000
Mr Cunningham	2.5	2,500,000
Mr Davis	2.5	2,500,000
Mr Ellis	32	32,000,000
Mr Green	5	5,000,000
Mrs Hall	3	3,000,000
Mrs Ellis	0	0
Not officer/employee		
Mr Fletcher	32	32,000,000
Mrs Green	3	3,000,000
Total	100	100,000,000

Potential tax saving if act now: £8,000,000 @ 18% = £1,440,000

Options available if the 5% test is not met *(but other conditions are met)*

Main Options Available:

1. Subscribe for new voting shares;
2. Acquire shares from willing shareholders; or
3. Set up a new company (making use of joint venture company rules)

IMPORTANT: This must take place more than one year before sale!

Option 1- Summary of revised shareholdings

Name	Nominal share capital £	Current Holding %	New share capital issued £	Nominal share capital £	Revised Holding %
Mr Anderson	10	10		10	9.17
Mr Brown	10	10		10	9.17
Mr Cunningham	2.5	2.5	3	5.5	5.05
Mr Davis	2.5	2.5	3	5.5	5.05
Mr Ellis	32	32		32	29.36
Mr Fletcher	32	32		32	29.36
Mrs Ellis	0	0		0	0
Mr Green	5	5		5	4.59
Mrs Green	3	3		3	2.75
Mrs Hall	3	3	3	6	5.50
Total	100	100	9	109	100.00

- Full voting rights (but capital rights restricted to par).
- Limited right to assets on a winding up.
- **But** dilutes the voting rights of existing shareholders.
- Employment related securities?

What is the problem?

Revised shareholdings

Commentary:

Name	Current Holding No.	Current Holding %	New shares issued	Revised Holding No.	Revised Holding %
Mr Anderson	10	10		10	9.17
Mr Brown	10	10		10	9.17
Mr Cunningham	2.5	2.5	3	5.5	5.05
Mr Davis	2.5	2.5	3	5.5	5.05
Mr Ellis	32	32		32	29.36
Mr Fletcher	32	32		32	29.36
Mrs Ellis	0	0	0	0	0
Mr Green	5	5		5	4.59
Mrs Green	3	3		3	2.75
Mrs Hall	3	3	3	6	5.50
Total	100	100	9	109	100.00

Solution: Issue 'V' shares to Mr Green.

Preserve ER for Mr Green

(assume holding = proportion of voting rights)

Issue Mr Green with one new share:

Name	Current Holding No.	Current Holding %	New shares issued	Revised Holding No.	Revised Holding %
Mr Anderson	10	10		10	9.09
Mr Brown	10	10		10	9.09
Mr Cunningham	2.5	2.5	3	5.5	5.00
Mr Davis	2.5	2.5	3	5.5	5.00
Mr Ellis	32	32		32	29.09
Mr Fletcher	32	32		32	29.09
Mrs Ellis	0	0		0	0
Mr Green	5	5	1	6	5.45
Mrs Green	3	3		3	2.73
Mrs Hall	3	3	3	6	5.45
Total	100	100	10	110	100.00

Option 2 - Members of management acquire A shares from willing shareholders

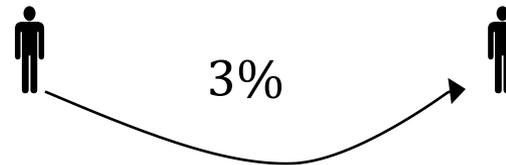
Name	Share %	Proceeds £	
Officer/employee			Buy shares from a friendly party (who has ER status)
Mr Anderson	10	10,000,000	Takes voting control > 5%
Mr Brown	10	10,000,000	
Mr Cunningham	2.5	2,500,000	but the voting rights of the sellers will be reduced
Mr Davis	2.5	2,500,000	
Mr Ellis	32	32,000,000	Proceeds on loan <u>but</u> tax liability
Mr Green	5	5,000,000	
Mrs Hall	3	3,000,000	
Mrs Ellis	0	0	
Not officer/employee			
Mr Fletcher	32	32,000,000	
Mrs Green	3	3,000,000	
Total	100	100,000,000	

Mr Brown sells to Mr Cunningham

Current
shareholdings:

Mr Brown
10%

Mr Cunningham
2.5%



- Proceeds (£100M @ 3%) £3M
- Tax (£3M @ 10%) £300K
- Stamp duty (£3M @ 0.5%) £15K

Restructuring of shares

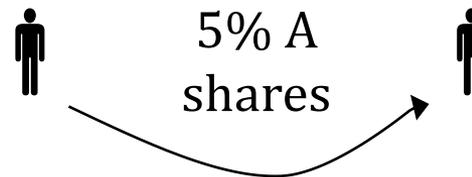
Name	A shares with capital rights Up to £1M and voting rights		B Non voting shares	
	Capital %	Voting %	Capital %	Voting %
Officer/employee				
Mr Anderson	5	10	5	0
Mr Brown	5	10	5	0
Mr Cunningham	1.25	2.5	1.25	0
Mr Davis	1.25	2.5	1.25	0
Mr Ellis	16	32	16	0
Mr Green	2.5	5	2.5	0
Mrs Hall	1.5	3	1.5	0
Mrs Ellis	0	0	0	0
Not officer/employee				
Mr Fletcher	16	32	16	0
Mrs Green	1.5	3	1.5	0
Total	50	100	50	0

Mr Brown sells to Mr Cunningham

Current
shareholdings:

Mr Brown
10%

Mr Cunningham
2.5%

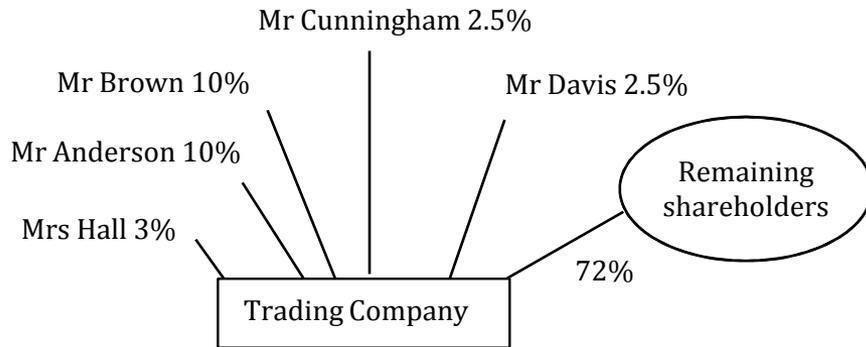


- Proceeds (£1M @ 5%) £50K
- Tax (£50K @ 10%) £5K
- Stamp duty (£50K @ 0.5%) £250

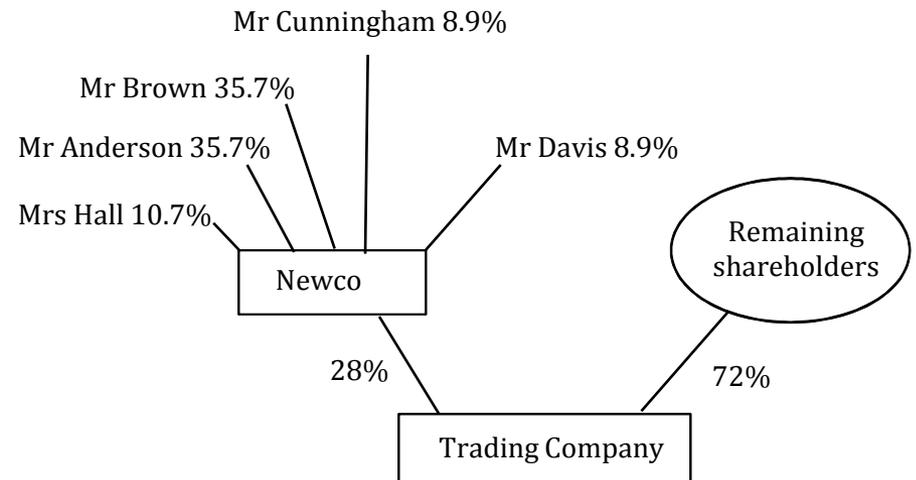
Option 3 (more complicated)

The management team set up a new company

Current Position



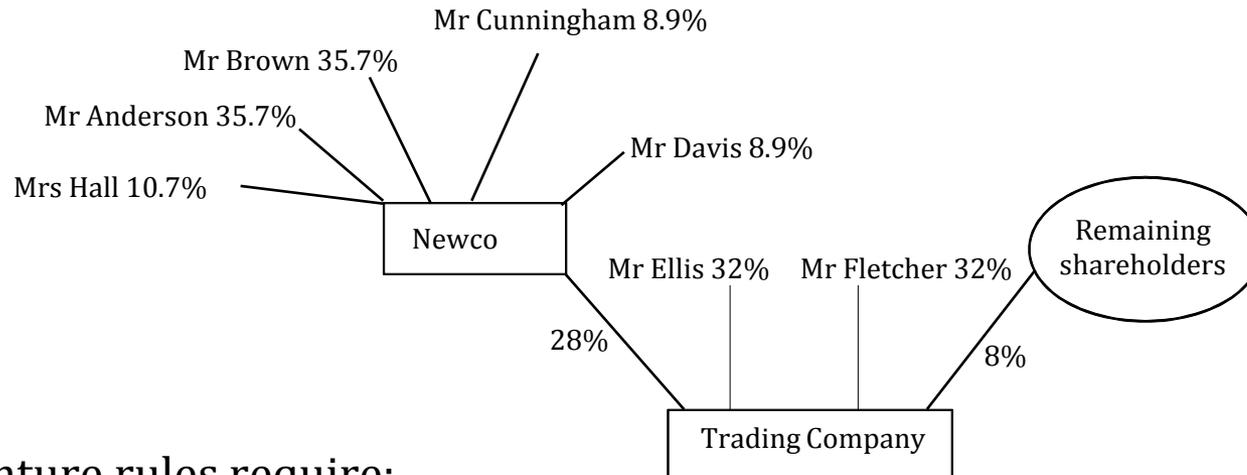
Proposed Position



Involve Mr Anderson and Mr Brown:

- to satisfy joint venture rules and,
- obtain clearance (25% test).

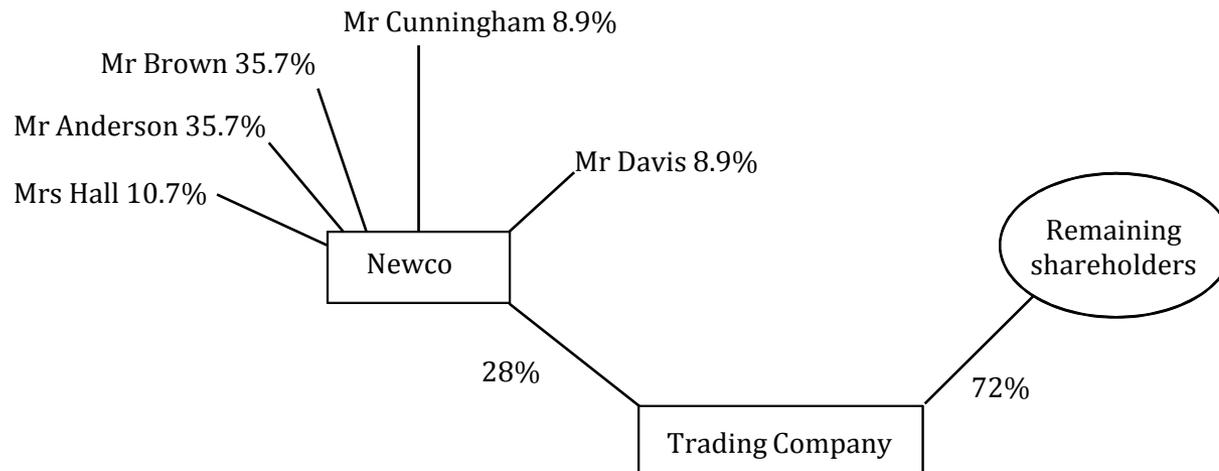
Joint Venture Rules



Joint venture rules require:

- New Co. to hold at least 10% of the share capital of the existing company, and
- 75% of the existing Company must be held by no more than 5 persons (including the new company).

Further Commentary



- Bona fide commercial reason
- Holding period for ER purposes continues (clearance recommended)
- Stamp duty charged at 0.5% (possible minority discount)

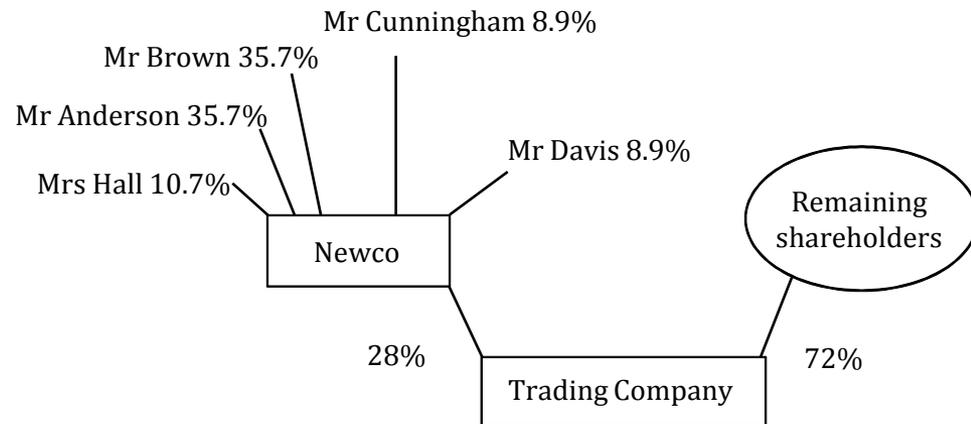
Commercial issues surrounding a sale of the existing company

The purchaser could either:

- Purchase the shares in New Co. or;
- Purchase New Co.'s shares in the existing company

If the latter, no problem arises for ER as:

If liquidate New Co. < 3 years of a sale:
ER on capital distribution at liquidation.



If all else fails:

Capital Gains Tax Deferral

Planning for Property Partnerships



3 December 2012

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INTRODUCTION – investment property structures

- UK resident /domiciled individuals
- OPTIONS
 - joint ownership
 - partnership (? Type)
 - company
 - hybrid – the magic answer ?

Non Tax factors - financing
- limited liability protection

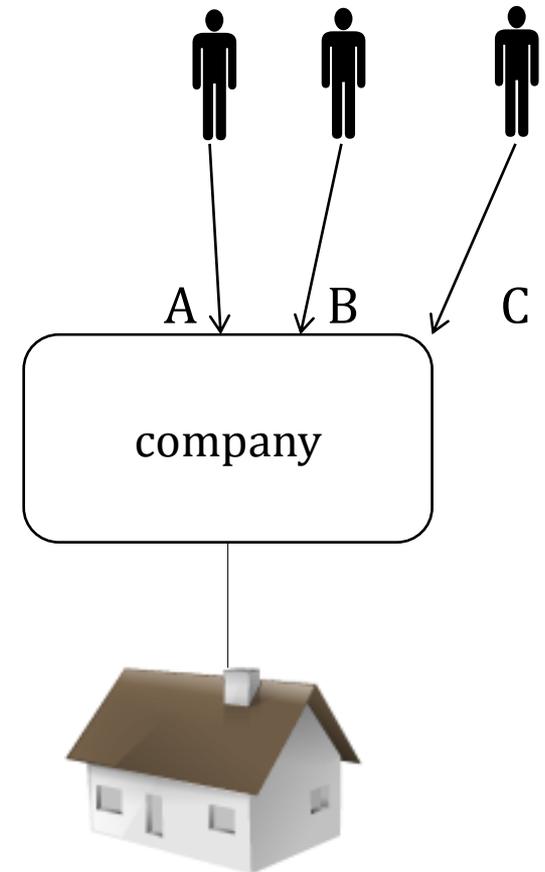
CURRENT TAX RATES

	Rental income	Capital gains	Allowances
Individual	50%	28%	annual exemption
Partnership	50%	28%	annual exemption
Company	24%	24%	indexation allowance

No entrepreneur's relief
No inheritance tax reliefs

Ownership by company

- Income & gains taxed at same rates
- Main rate of CT 24% (23% from April 2013)
- Indexation allowance on capital gains
- Share structure offers flexibility
- Use in place of trusts ?
- Costs of extracting funds
 - double tax layer
 - divi tax credit non refundable



A property held for investment purposes?

- Primary intention to realise capital appreciation & generate investment income in the form of rental income
- Key factors to consider (case law) :
 - Motive for purchase
 - Period of ownership
 - Reasons for disposal
 - Frequency of transactions
 - Transaction history
 - Income from the property
 - Financing arrangement;
 - Accounting treatment

IF TRADING TAXED AS INCOME !

Types of joint ownership / partnership

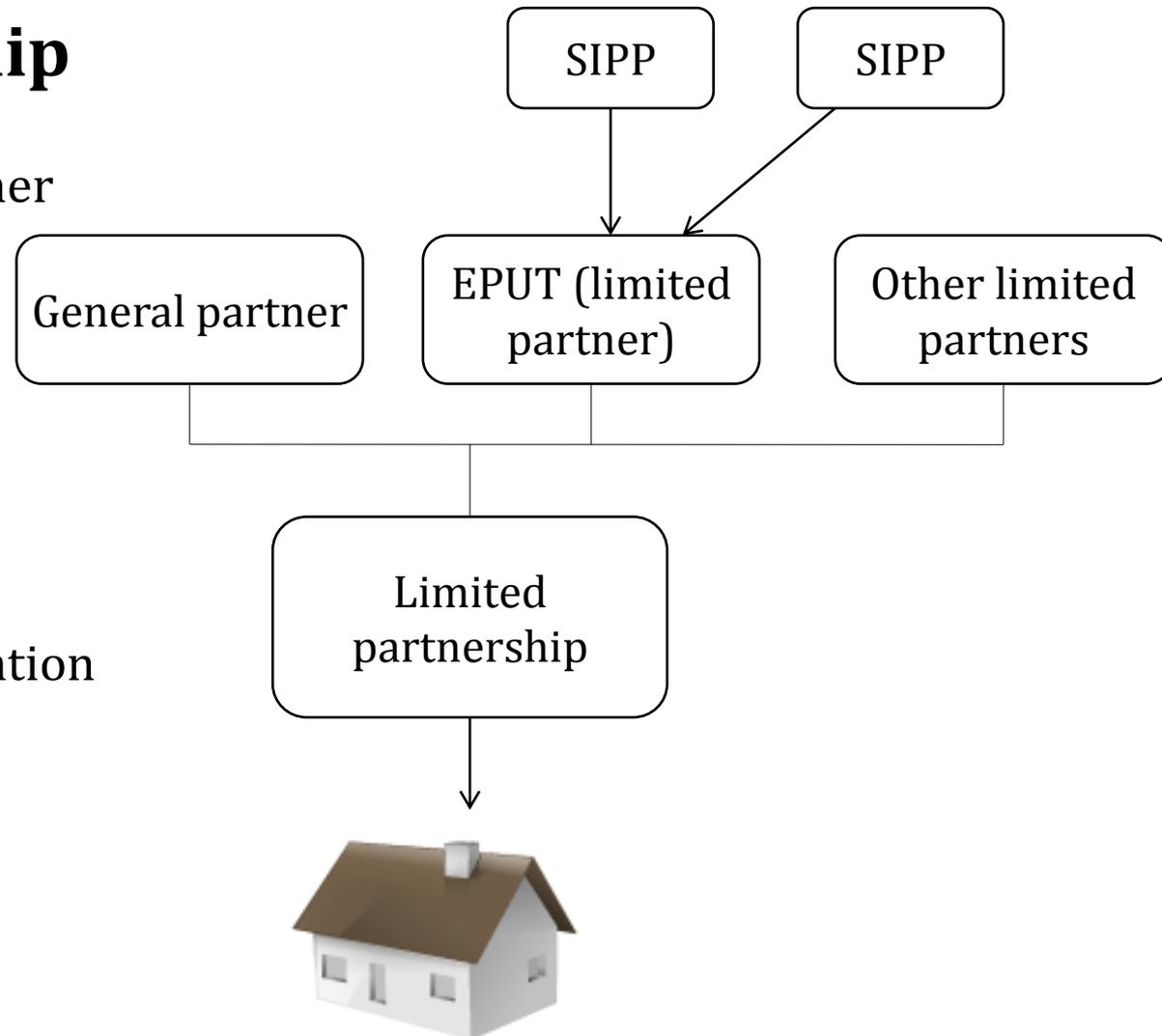
- Joint tenants or tenants in common
- Syndicate arrangements (typically with nominee company)
- PARTNERSHIPS
 - General
 - Limited Partnership
 - Limited Liability Partnership - LLP

Partnership tax treatment

- Generally transparent
 - Income and gains allocated to partners
 - Taxed directly on partners
 - Single level of tax
- Capital gains subject to HMRC practice in SP D12
- Special SDLT rules for investment partnerships
- Flexibility of income /gains/losses allocation
- Drawings not taxed

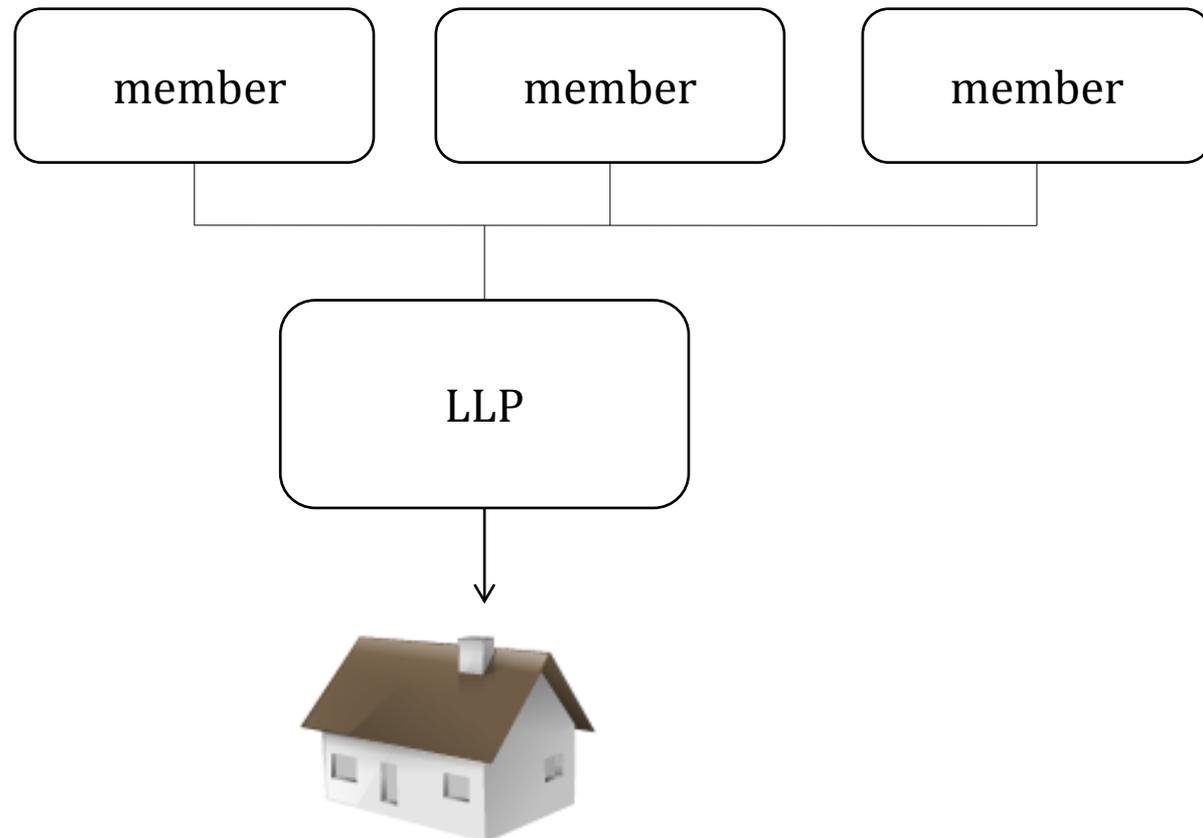
Limited partnership

- Control by general partner
- Exempt funds
- Family ownership
- BUT - CIS issues/ regulation



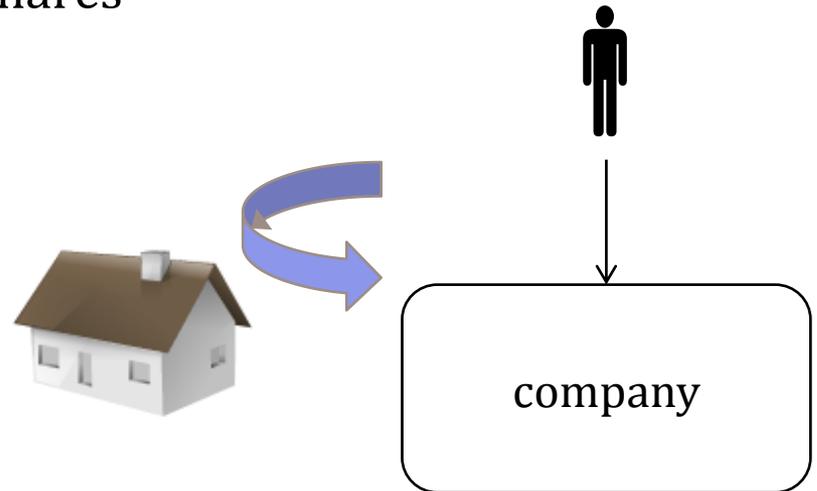
LLP

- All members active
- Semi transparent
- Not exempt funds
- Less regulation



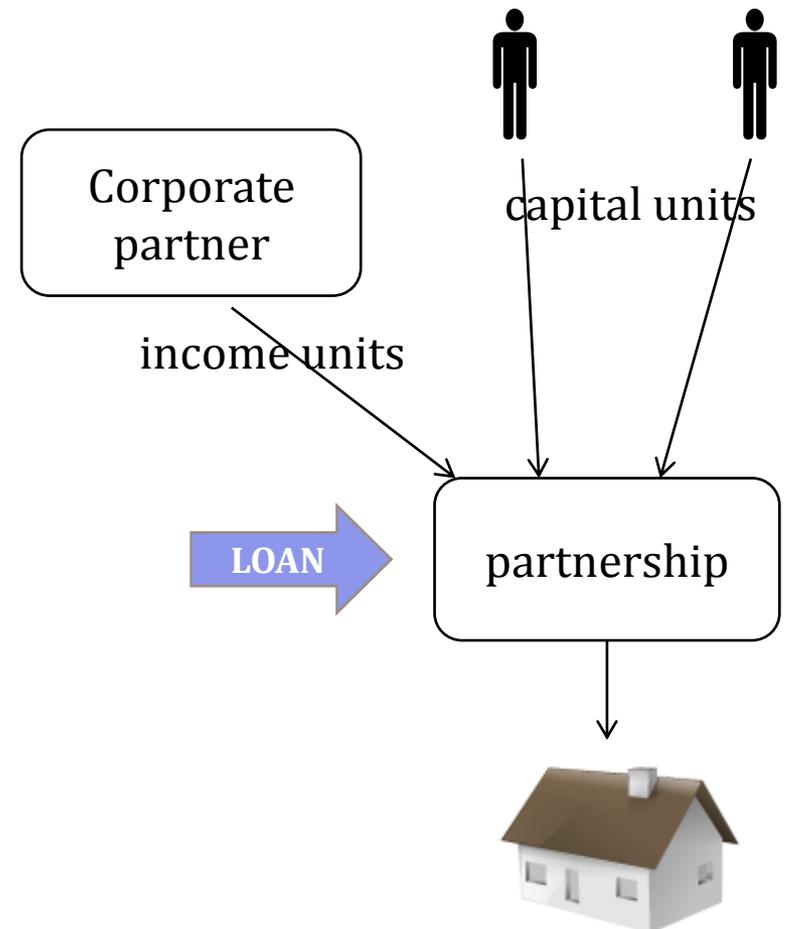
Incorporation of property business

- Capital gains disposal
- Section 162 relief if in exchange for shares
- Uplift base cost of property to MV
- SDLT charges
- Can be best solution



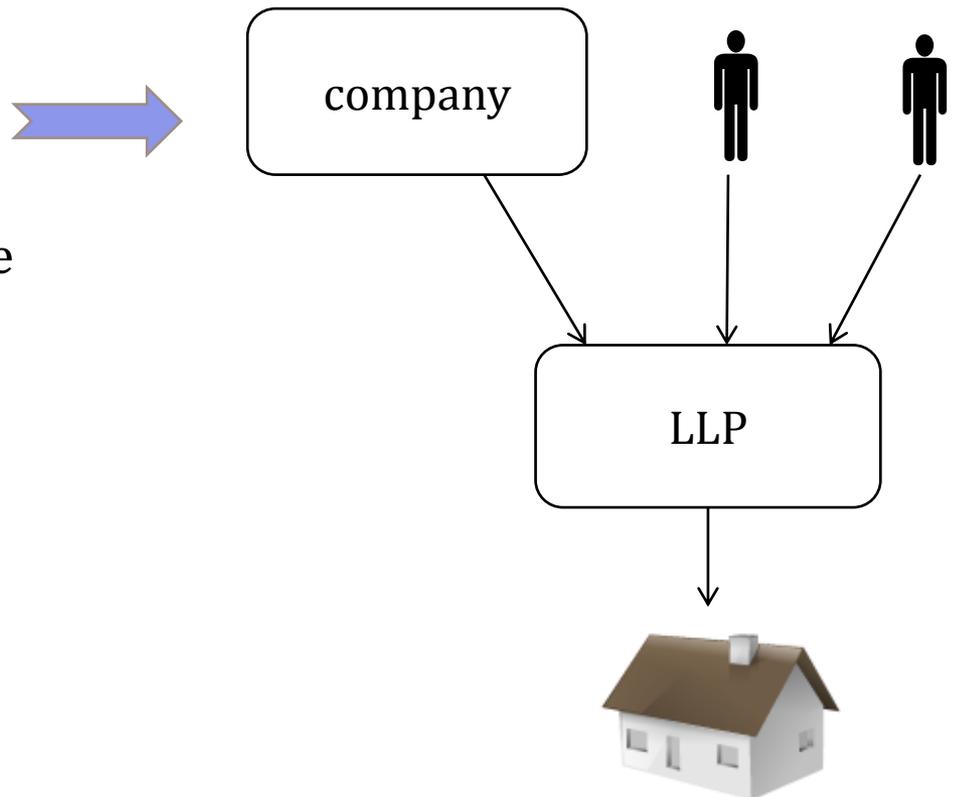
Hybrid -LLP with company

- Best of both worlds ?
- LLP = Partnership business
- Borrowing at level of LLP



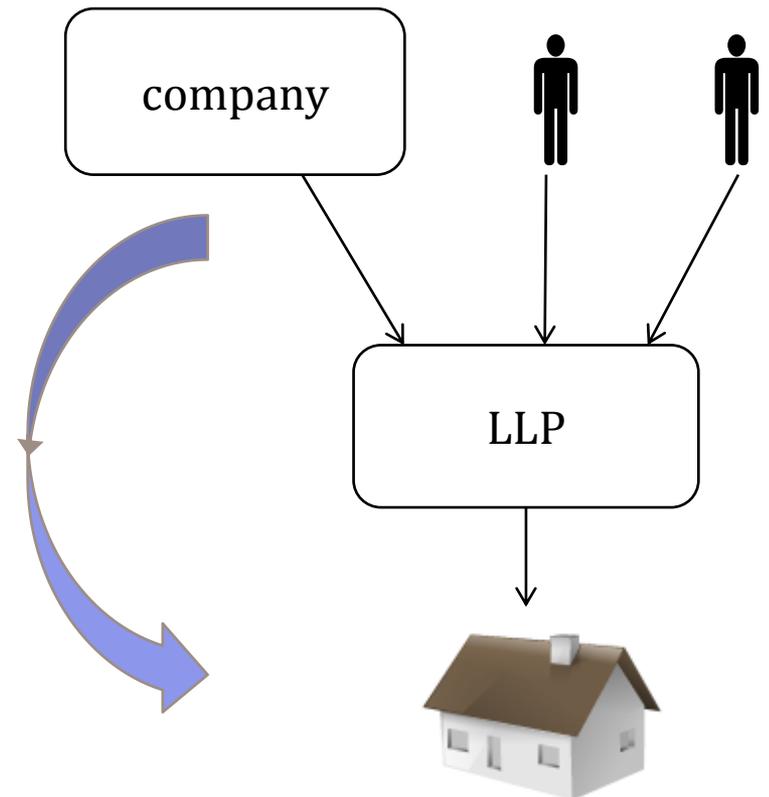
LLP introduces company member

- Introduce corporate member
- Gift “income units” to company
 - CGT ok
 - SDLT – potential relief available



Company introduces property to LLP

- Company contributes property
- Capital gains on transfer of capital rights
- SDLT charge?



Repaying property borrowings with net rentals

Property cost £1m; borrowings £500K at 5%; rentals £80K p.a.

Year 1	Partnership £	Company £
Annual rental income	80,000	80,000
Annual interest charge	<u>(25,000)</u>	<u>(25,000)</u>
Net taxable income	55,000	55,000
Less tax at 50% / 24%	<u>(27,500)</u>	<u>(13,200)</u>
Net cash to repay loan	<u>27,500</u>	<u>41,800</u>
Years until loan repayment	15 YEARS	10 YEARS

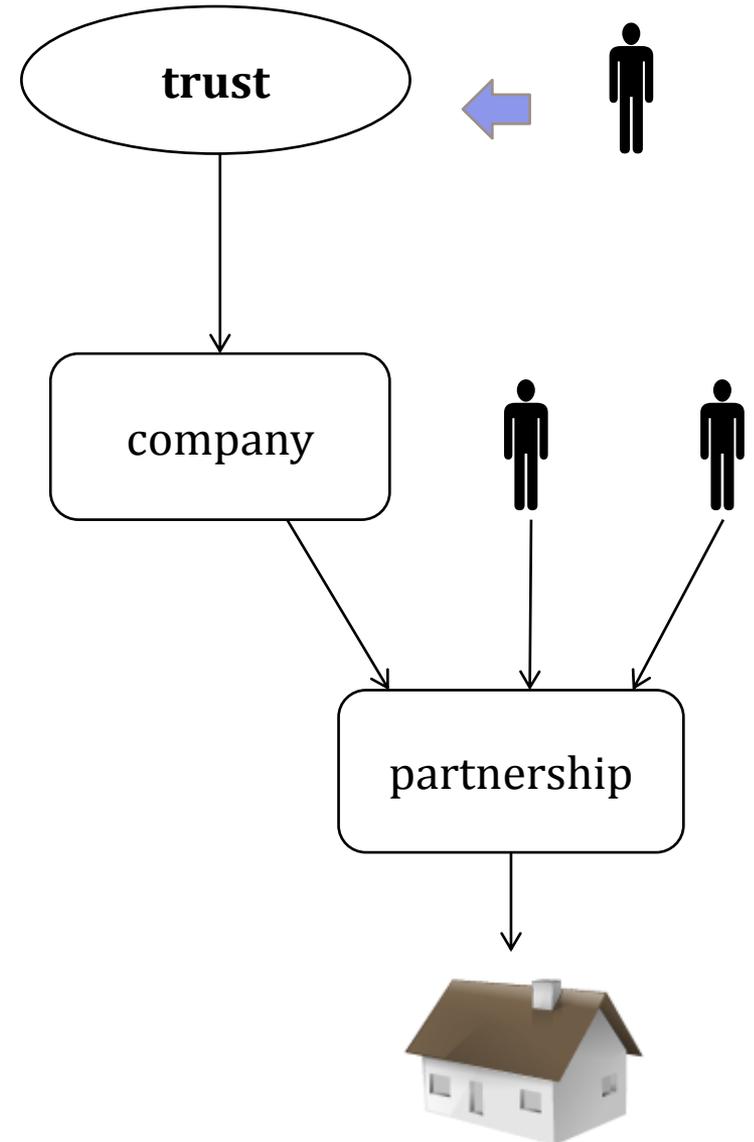
Eventual sale of property - example

Property cost £1m; borrowings £500K at 5%; rentals £80K p.a.;
Sell after 10 years for £2m, once loan repaid

	LLP £	Company £
Sale proceeds on disposal	2,000,000	
Tax on allocated gain (£1m at 28%)	<u>(280,000)</u>	
Net cash to allocate	1,720,000	
Cash due to corporate member	<u>(500,000)</u>	<u>500,000</u>
Allocation to individual members	<u>1,220,000</u>	

IHT planning

- Put company shares into trust
- 20% charge on MV
- Low MV – only carry rights to rentals



Summary of property investment structures

- Company tax on income v beneficial
- Single layer of tax on gains in LLP
 - BUT inflationary gains only protected in Company
- Hybrid can be best option

Family Investment Companies v Trusts



3 December 2012

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Issues covered

- Benefits of Family Investment Company
- New and existing corporate structure
- Offshore companies
- Extraction of profits

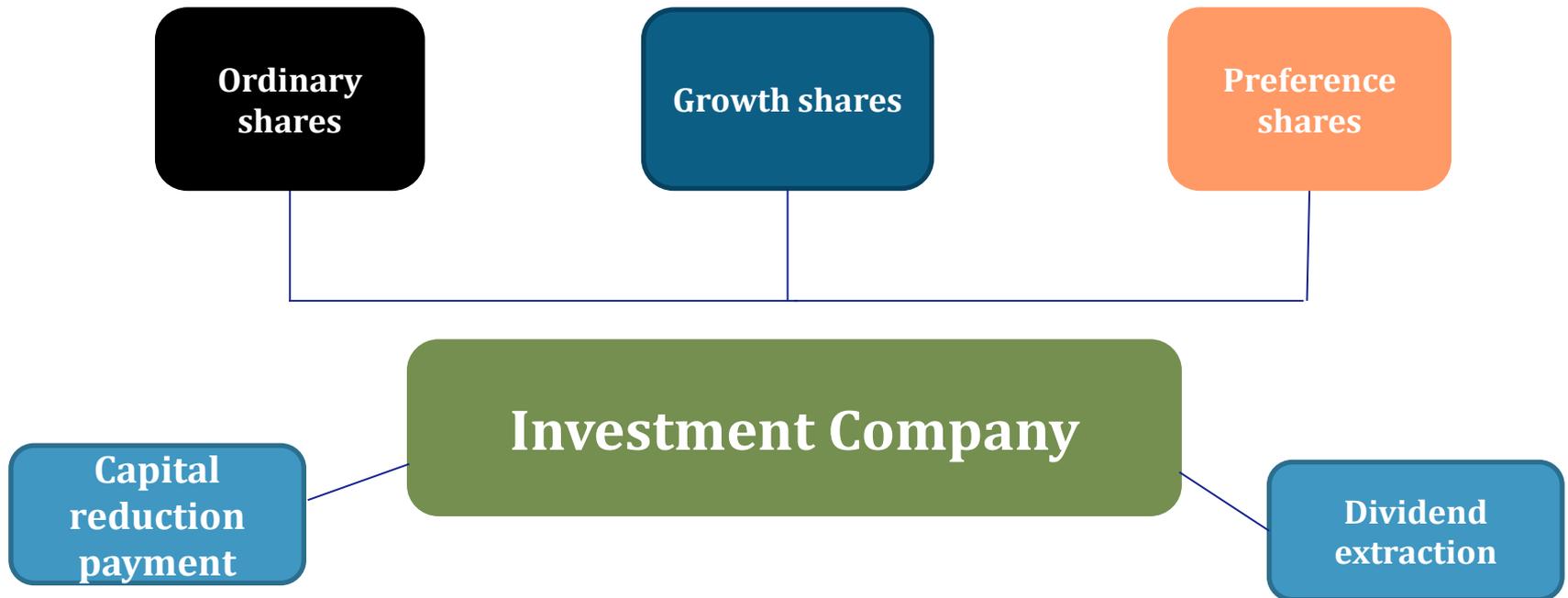
Client's aim

- Reduce inheritance tax estate
- Retain control
- Retain some benefit
- Avoid capital gains tax

Family Investment Company

- Company to acquire/hold investments for family's benefit
- Tax efficient way to pass wealth on
- Protection against divorce

Inheritance tax Planning – Use of Family Investment Company



For typical Inheritance tax structure:

- **Ordinary Shares control the company – held in trust.**
- **Preference Shares retained to provide income for expected life.**
- **Growth Shares given away to reduce capital value of Estate.**

Trusts (post 2006)

- Restricted values – 20% inheritance tax charge
- Ten year charges to inheritance tax
- Income tax issues if retain benefit
- Capital gains – no holdover if retain benefit

Family Investment Company

- Inheritance tax savings
- Income tax efficient
- Flexible
- Control

On-going taxation

- Corporate tax rates (20%/22% from April 2014)
- Indexation allowance against chargeable gains
- Value of shares in shareholder's estate – no BPR

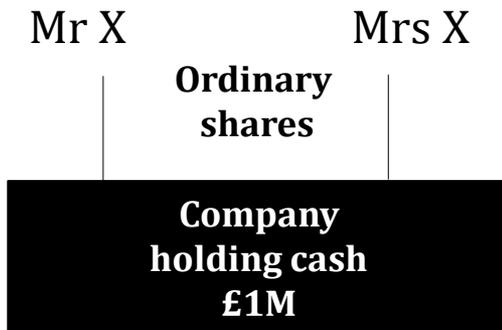
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EXISTING COMPANY



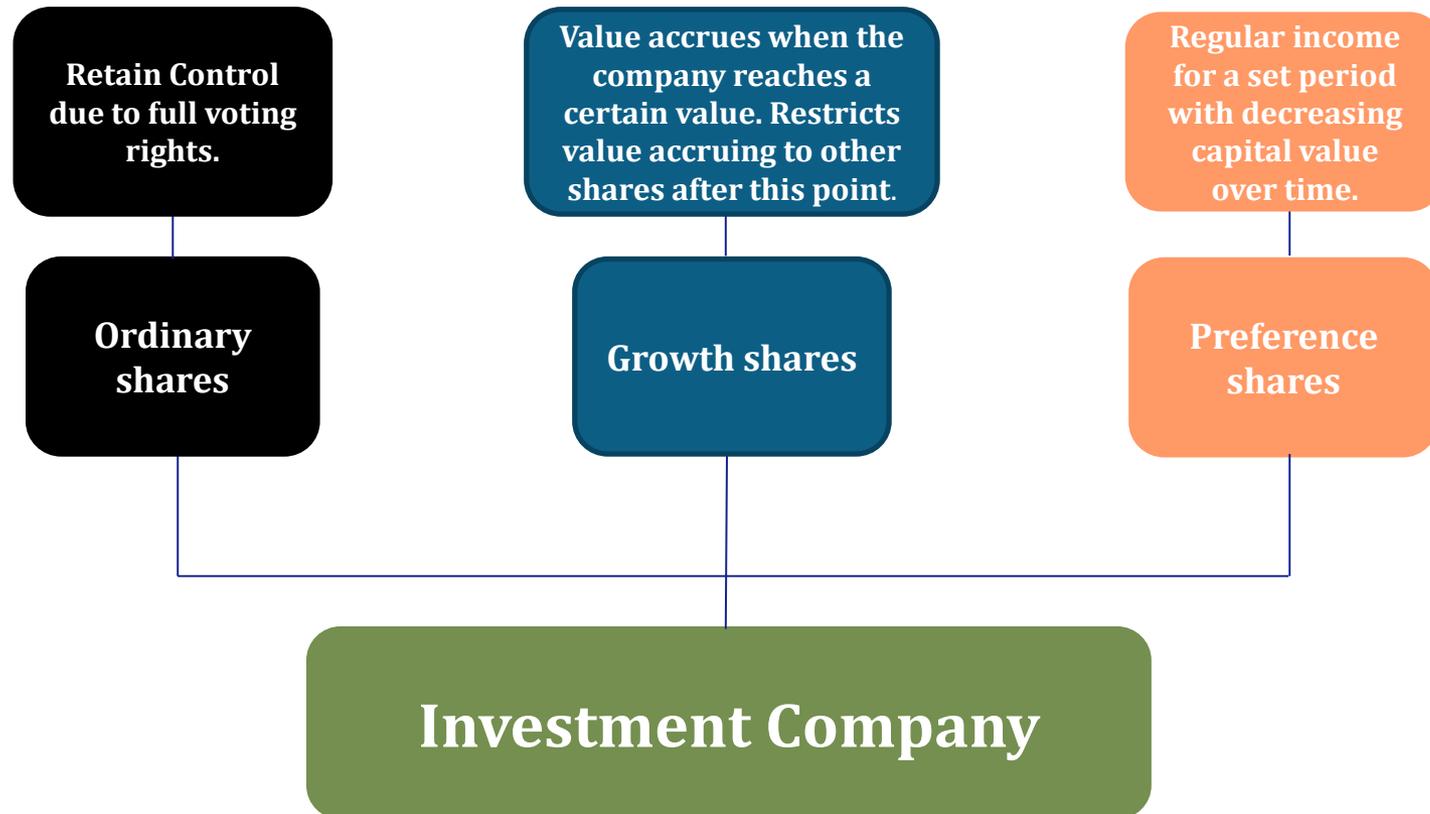
Client case study

Current position:



- **£1M valuation**
- **No BPR**
- **Previously trading Co - 10% ER on winding up**
- **Want to benefit family**

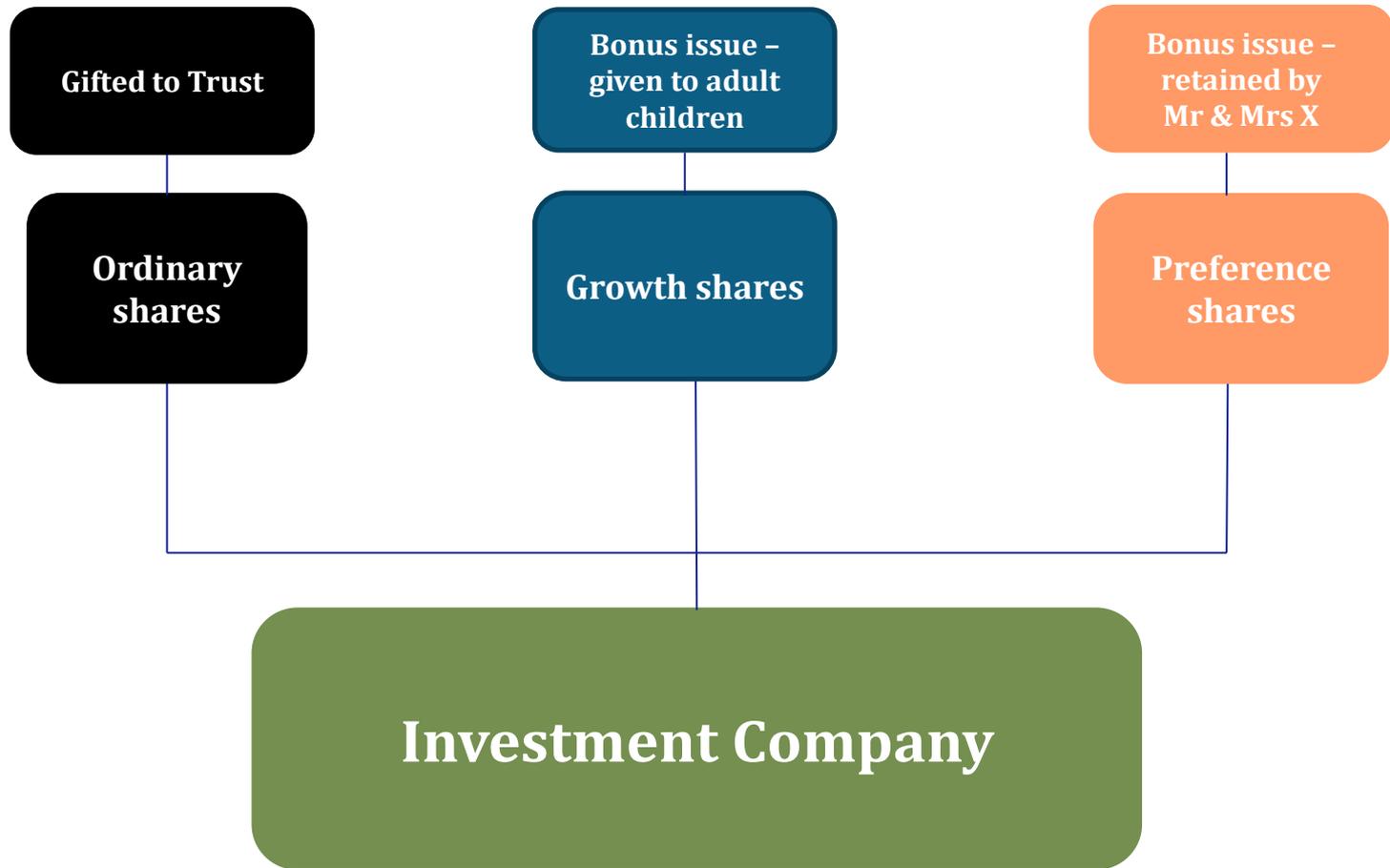
Intended share structure



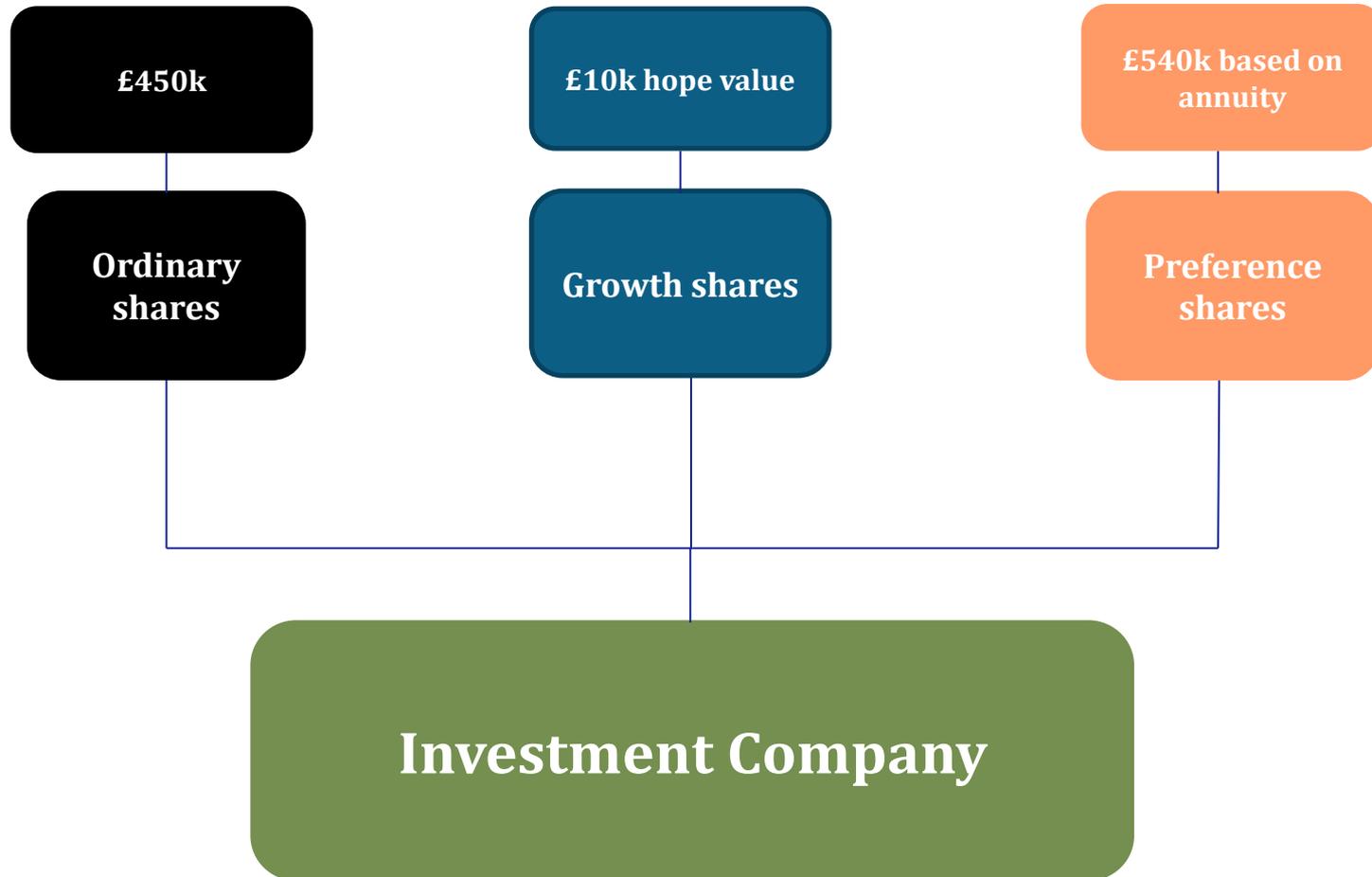
Client case study

- Total value of company £1m
- Preference dividends payable over 20 years @ £40k p.a. – annuity value £540k
- Growth shares – hope value, say £10k
- Ordinary shares $£1m - £540k - £10k = £450k$

Revised shareholdings



Carving out of value



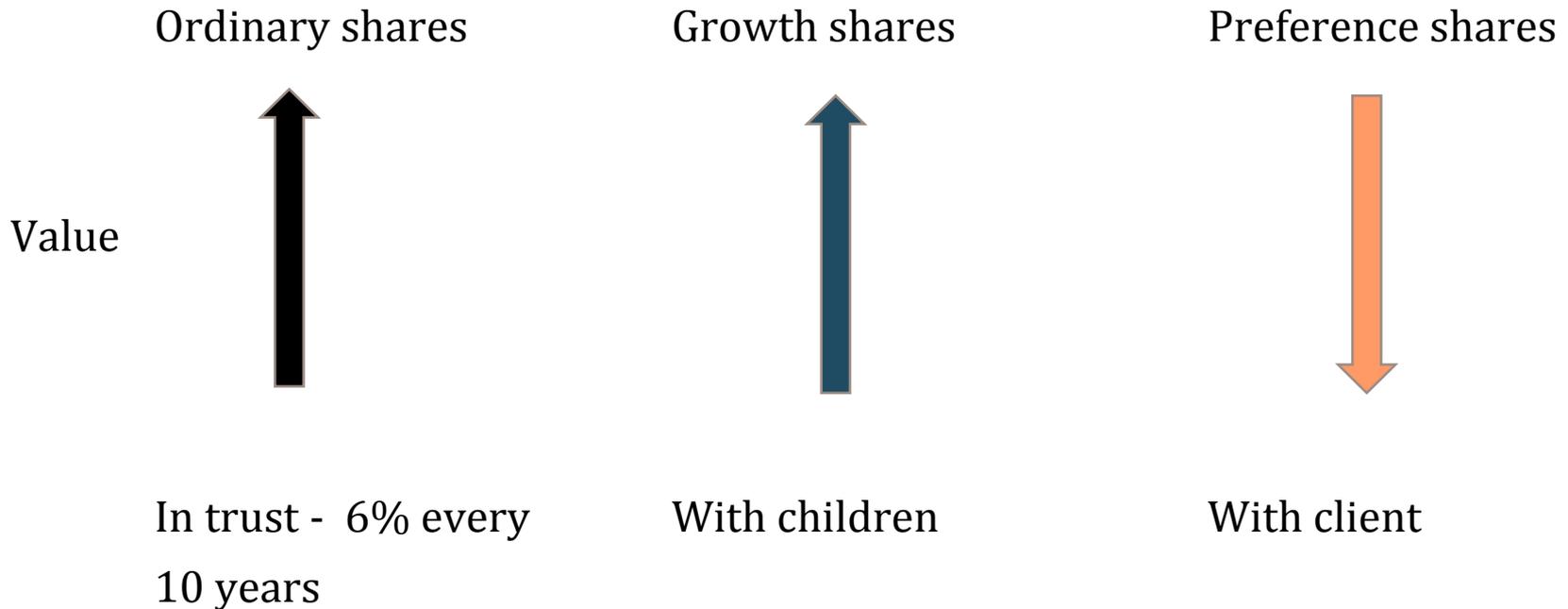
INHERITANCE TAX EFFECT



Inheritance tax transfers

- Bonus issue – no inheritance tax effect
- CLT – Gift into trust < £325k
- PET – give growth shares to individuals

Inheritance tax saving



Note - Rysaffe trusts

Inheritance tax saving timetable

- At day 1 – growth outside estate
- After 7 years – up to £325,000 outside estate
- Term of preference dividends – gradual reduction until full value drops out

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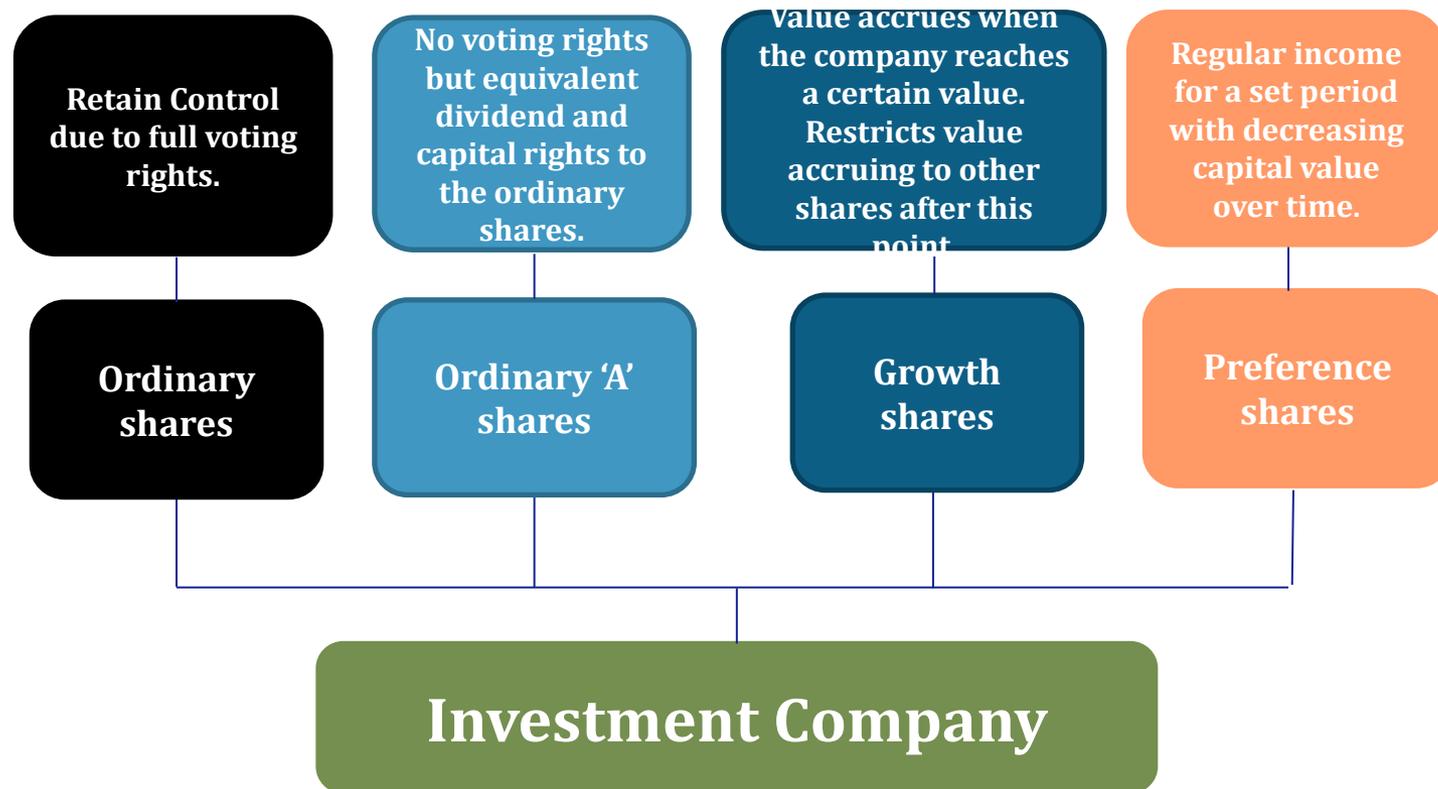
NEW COMPANY



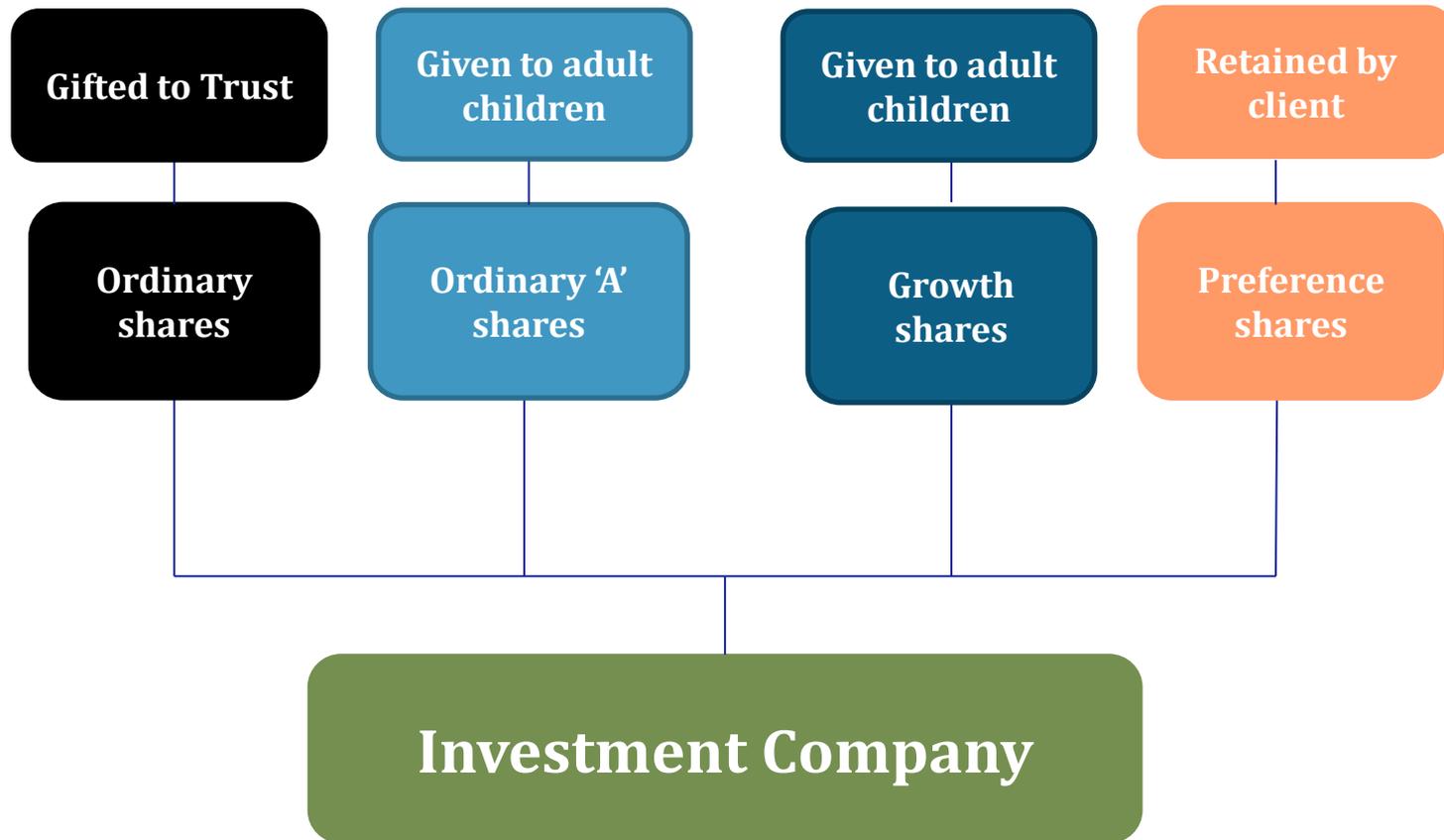
New company structure

- Flexibility from the start – Articles
- Client subscribes for ordinary shares with cash
- Bonus issue of other shares to client
- Loans from client/children to company

New Family Investment Company



Revised share holdings



Loans and/or preference shares

- Loans repayments simpler and received tax free
- Higher rate taxpayer – redeemable preference shares or loans
- Preference shares – greater Inheritance tax savings due to discounts

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INCORPORATION



Incorporation

- Existing property partnerships or sole trader business
- S162 TCGA 1992 – ‘business’ – *Ramsay [2012]*
- SDLT – residential averaging, otherwise large cost

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OFFSHORE



Offshore company

- Non domiciliaries – trust and offshore company structure, tax free roll up
- Anti-avoidance UK domiciliaries – offshore insurance bonds
- EU Treaty countries – Luxembourg (not real estate)

Offshore company

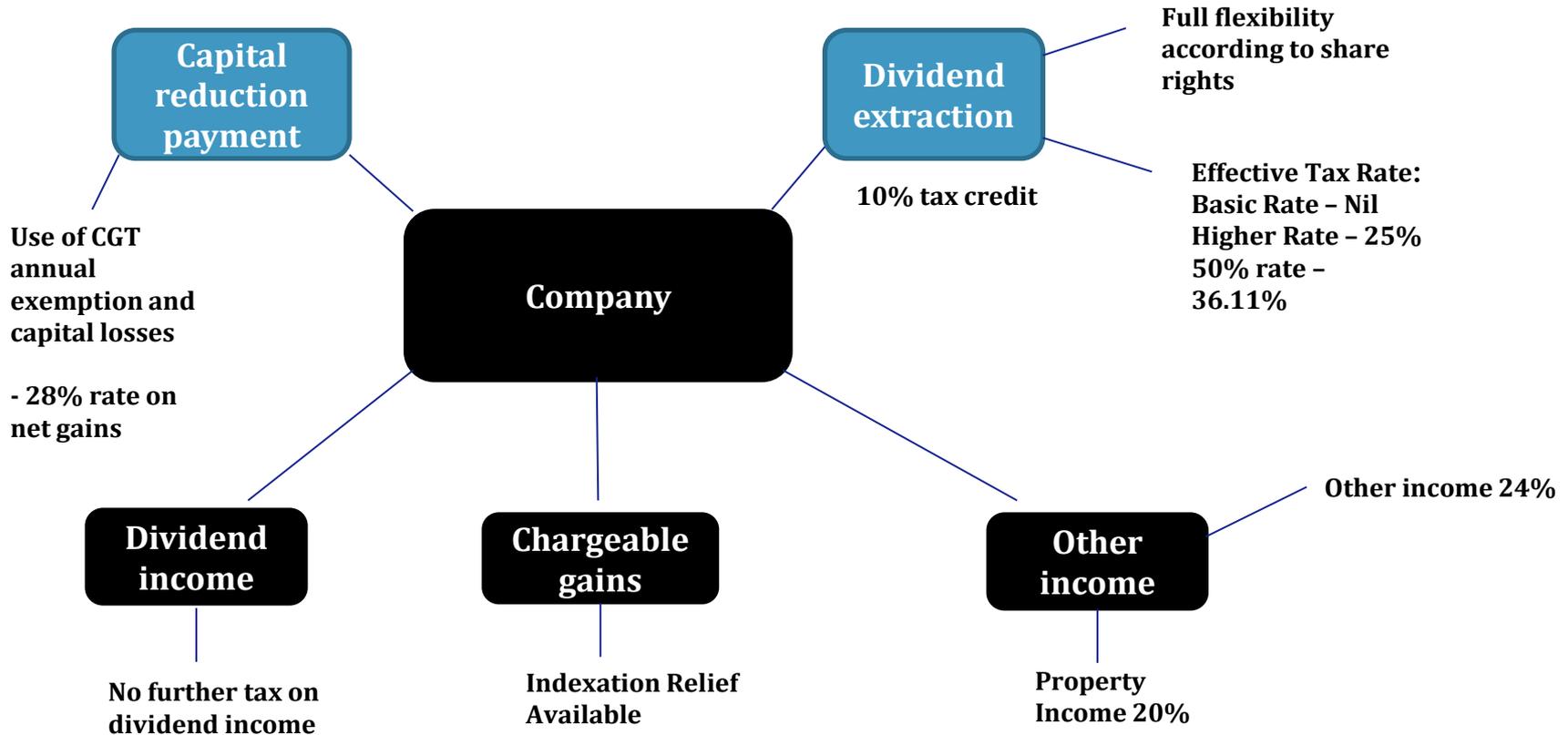
- SDLT increased rates – residential properties > £2m
- Annual capital gains tax charge – residential properties > £2m
- Exemption for property held for investment purposes?

EXTRACTION OF PROFITS



Inheritance tax Planning – Use of Family Investment Company: Position in the Company

Holding Investments in a Company is efficient as the Company has low corporation tax rates (now 24%) and flexibility in distributing profits to shareholders.



Extracting profits

- Intention – to accumulate profits
- Dividends – lowest tax on extraction
- Double tax – effective rates of corporate tax (20%) and dividends
 - 40% for a 32.5% taxpayer
 - 44% for a 37.5% taxpayer and trusts

Income tax considerations

- Option to waive preference dividends irregularly
- Consider reinvestment of 'other' assets held – e.g insurance bonds
- Loan funds to company – give loan away

Capital extraction

- Redeemable preference shares/loans if from new company
- Capital reduction if sufficient paid up capital
- Capital gains tax rates of 28%, annual exemptions

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END RESULT



End result

- Large values outside estate
- Low corporation tax rates
- Control retained

Bespoke ideas

- Very much tailored to client
- Attractive to clients – understand companies
- Different income needs, family situation, values of assets

Capital Reductions – Tax’s Best Kept Secret



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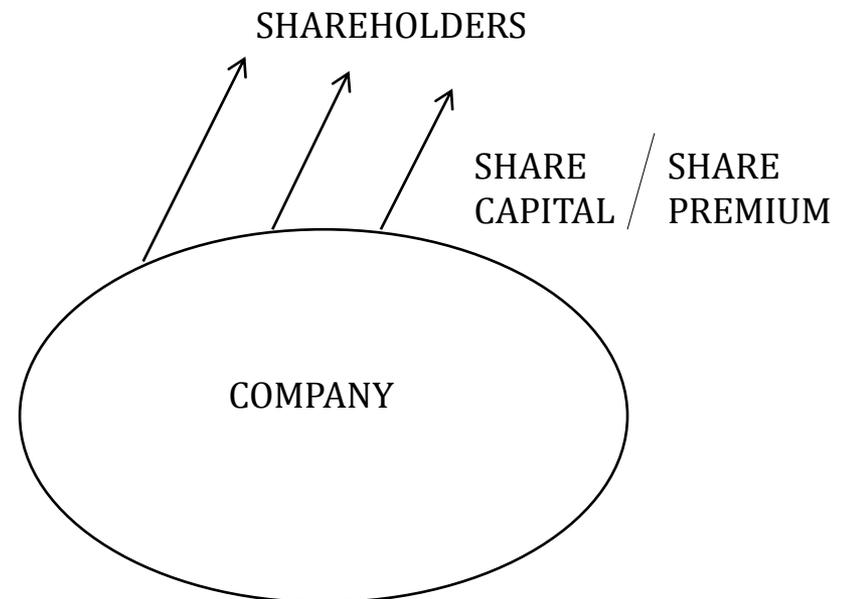
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Overview

1. What are Capital Reductions?
2. Capital Reductions – The Legal Bits
3. Capital Reductions – The Tax Bits
4. Suitable Scenarios
5. Practical Example
6. Capital Reduction v Share Buy Back
7. Transactions in Securities Legislation
8. Caveats – What not to do
9. Demerger by Capital Reduction
10. Summary

1. What are Capital Reductions?

- Sufficient Share Capital
- Certain Conditions Met
- Pay Capital to Shareholders
- Tax efficient (???)
- Legally simpler since 2008



2. CAPITAL REDUCTIONS – The Legal Bits



CAPITAL REDUCTIONS



In your corner.



CAPITAL REDUCTIONS

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CAPITAL REDUCTIONS

- Limited companies
- Share capital (or other capital)
- Unlimited companies
- Protection for creditors – purpose of the rules

CAPITAL REDUCTIONS

- Two routes
 - Court route
 - “Paper” route
- Court route
 - Must if PLC, optional if private company
 - Undertakings
 - Creditors
 - Accounts
 - Timing

CAPITAL REDUCTIONS

- Paper route
- Accounts/creditors
- Solvency statement
- Directors’ liability
- Creditors’ position
- Timing

3. Capital Reductions – The Tax Bits

Capital Gains Treatment

- Taxed as capital (rather than dividend) (Section 1000 CTA 2010).
- Therefore, capital gains tax advantages:
 - Capital gains tax rates of 28% or 10% (!).
 - Annual Exemption (currently £10,600).
 - Relief for Capital losses.
 - Relief for base cost.

Capital Reductions – The Tax Bits (Cont.)

Effective Tax Rates assuming 23% corporate rate / 45% income tax rate.

(Using 2013/2014 data)

EXTRACTION METHOD	SALARY	DIVIDEND	28% CAPITAL REDUCTION RATE	10% CAPITAL REDUCTION RATE
EFFECTIVE TAX RATE	53.4%	46.5%	44.6%	30.7%

Appendix 1 - Traditional Forms of Cash Extraction 2013/2014 Dividend v Bonus

For 45% (additional rate) taxpayers

		BONUS v DIVIDENDS		
		Small companies rate	Marginal rate	Main rate
		20%	23.75%	23%
		£	£	£
Extra profits to be extracted		300,000	300,000	300,000
Dividends				
	Profit before taxation	300,000	300,000	300,000
	Corporation tax payable	(60,000)	(71,250)	(69,000)
	Cash value of dividend	240,000	228,750	231,000
30.56%	Higher rate income tax	(73,344)	(69,906)	(70,594)
	Net receipt	166,656	158,844	160,406
Effective rate of tax (Income tax and corporation tax together)		44.4%	47.1%	46.5%
Salary/Bonuses				
	Profit before taxation	300,000	300,000	300,000
	Deduction for gross salary + Employers NIC	(300,000)	(300,000)	(300,000)
	Taxable profits	0	0	0
	Corporation tax payable	0	0	0
13.8%	Employers National Insurance	36,380	36,380	36,380
	Gross salary	263,620	263,620	263,620
2%	Employees national insurance	(5,272)	(5,272)	(5,272)
45%	Marginal rate of income tax	(118,629)	(118,629)	(118,629)
	Net receipt	139,719	139,719	139,719
Effective rate of tax		53.4%	53.4%	53.4%
Reduction in tax rate due to paying dividends		9.0%	6.4%	6.9%

Dividends always win!!

Appendix 2 - Traditional Forms of Cash Extraction 2013/2014 Dividend v Capital Reduction (28%)

For 45% (additional rate) taxpayers

	DIVIDENDS v 28% CAPITAL REDUCTION		
	Small companies rate 20% £	Marginal rate 23.75% £	Main rate 23% £
Extra profits to be extracted	300,000	300,000	300,000
Dividends			
Profit before taxation	300,000	300,000	300,000
Corporation tax payable	(60,000)	(71,250)	(69,000)
Cash value of dividend	240,000	228,750	231,000
Higher rate income tax	30.56% (73,344)	(69,906)	(70,594)
Net receipt	<u>166,656</u>	<u>158,844</u>	<u>160,406</u>
Effective rate of tax (Income tax and corporation tax together)	44.4%	47.1%	46.531%
Capital Reduction at 28%			
Profit before taxation	300,000	300,000	300,000
Corporation tax payable	(60,000)	(71,250)	(69,000)
Cash value of capital reduction	240,000	228,750	231,000
28% capital gains tax rate	28% (67,200)	(64,050)	(64,680)
Net receipt	<u>172,800</u>	<u>164,700</u>	<u>166,320</u>
Effective rate of tax (Income tax and corporation tax together)	42.4%	45.1%	44.560%
Reduction / (increase) compared to dividends	2.0%	2.0%	2.0%

Appendix 3 - Traditional Forms of Cash Extraction 2013/2014 Dividend v Capital Reduction (10%)

For 45% (additional rate) taxpayers

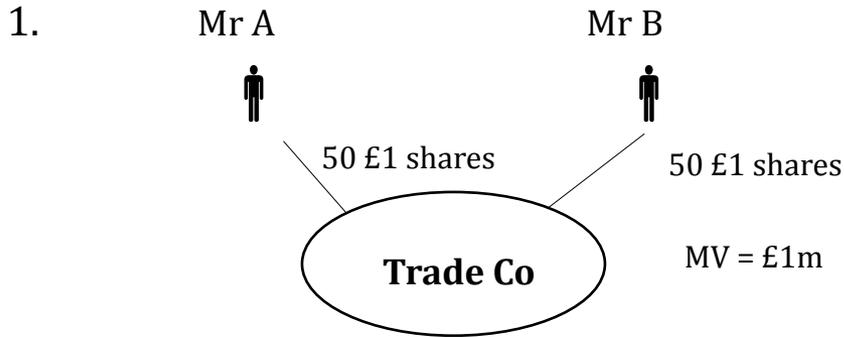
DIVIDENDS v 10% CAPITAL REDUCTION

	Small companies rate 20% £	Marginal rate 23.75% £	Main rate 23% £
Extra profits to be extracted	300,000	300,000	300,000
Dividends			
Profit before taxation	300,000	300,000	300,000
Corporation tax payable	(60,000)	(71,250)	(69,000)
Cash value of dividend	240,000	228,750	231,000
Higher rate income tax	30.56% (73,344)	(69,906)	(70,594)
Net receipt	<u>166,656</u>	<u>158,844</u>	<u>160,406</u>
Effective rate of tax (Income tax and corporation tax together)	44.4%	47.1%	46.5%
Capital Reduction at 28%			
Profit before taxation	300,000	300,000	300,000
Corporation tax payable	(60,000)	(71,250)	(69,000)
Cash value of capital reduction	240,000	228,750	231,000
10% capital gains tax rate	10% (24,000)	(22,875)	(23,100)
Net receipt	<u>216,000</u>	<u>205,875</u>	<u>207,900</u>
Effective rate of tax (Income tax and corporation tax together)	28.0%	31.4%	30.7%
Reduction / (increase) compared to dividends	16.4%	15.7%	15.8%

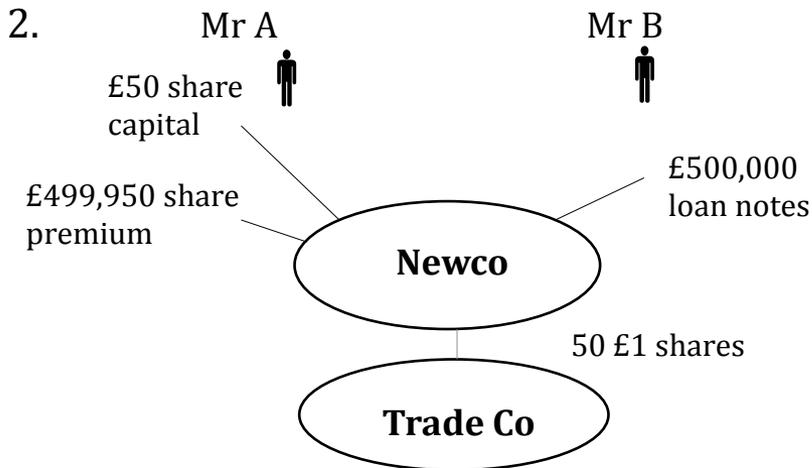
4. Suitable Scenarios

- Legal Issues
- Need share capital/share premium account
(Not applicable for companies with a low share capital)
- EIS subscriptions cash back? – (After 3 year holding period)
- Previous share for share reorganisation
 - This uplifts share capital to market value of subsidiary

5. Practical Example



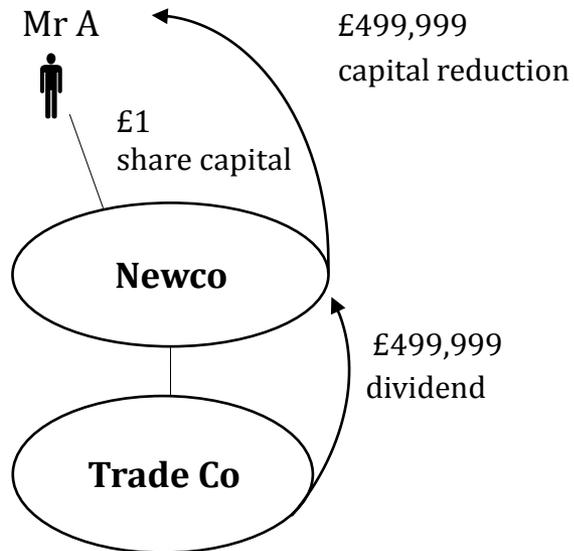
B is to be bought out for £500,000



NB. Clearance needed to avoid crystallising gain on share for share exchange.

Practical Example (Cont.)

..... Down the line



6. Capital Reduction v Share Buyback

Capital Reduction



CAPITAL REDUCTION

CGT Calculation

	£
Amount paid	x
Cost	(x)
GAIN	<u>x</u>

Share Buyback



MARKET VALUE

	£
Amount paid	x
Return of capital	(x)
Taxed as distribution	<u>x</u>

- Distributable reserves needed
- Stamp duty in buyback

7. Transactions in Securities Legislation

- HMRC do not like things that could have been taxed as dividends being taxed as capital.
- Capital Reductions are transactions in Securities.
- ‘Counteraction’ – Effectively overrides normal legislation and taxes as a dividend.

Transactions in Securities Legislation (Cont.)

In broad terms 4 questions:

1. Was the tax payer “party” to one or more transactions in securities?
2. Has taxpayer obtained income tax advantage in consequence?
3. Was obtaining of income tax advantage the purpose or main purpose of person being party to the transaction?
4. Other fairly complex conditions.

All answers have to be YES for counteraction to apply.

Transactions in Securities Legislation (Cont.)

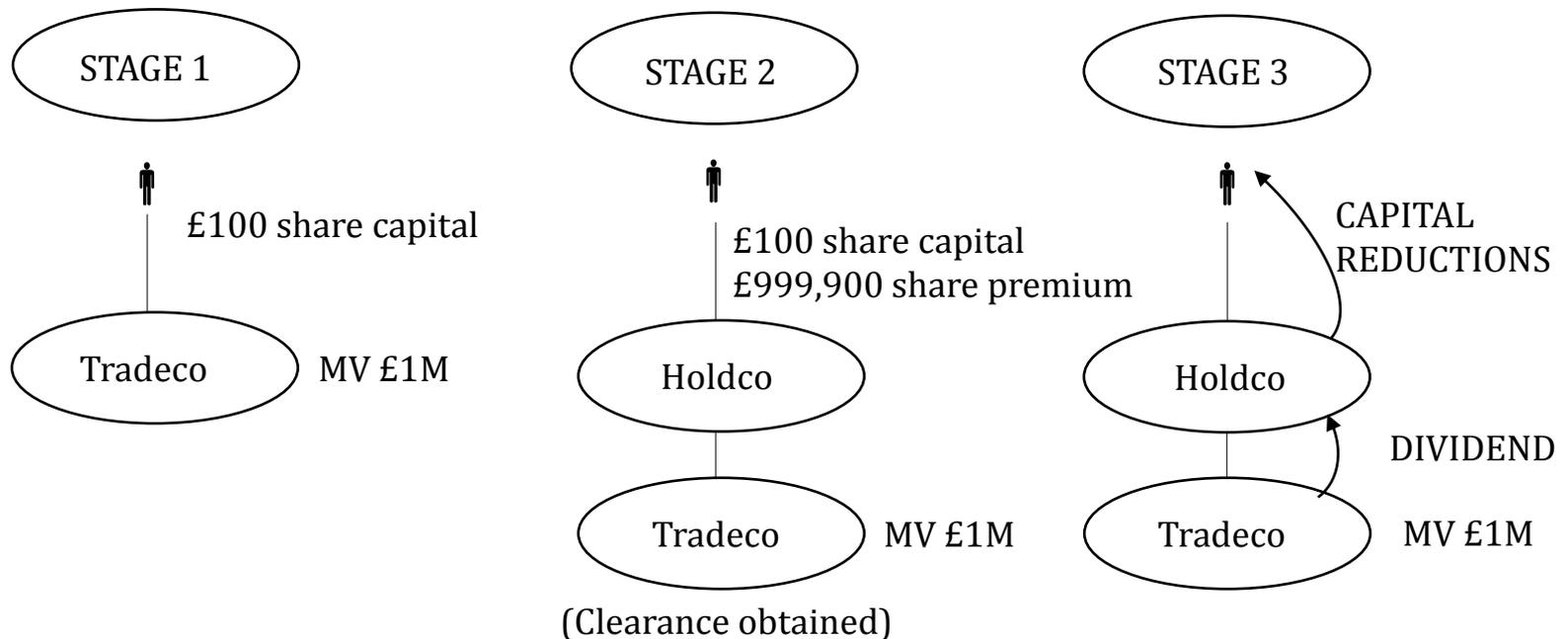
Clearances (that counteraction will not apply)

- Certainty
- But increase chance of HMRC counteracting???

Otherwise...

- No mechanism to self-assess this legislation (therefore no question of penalties)
- HMRC have 6 years from end of tax year to issue counteraction notice.

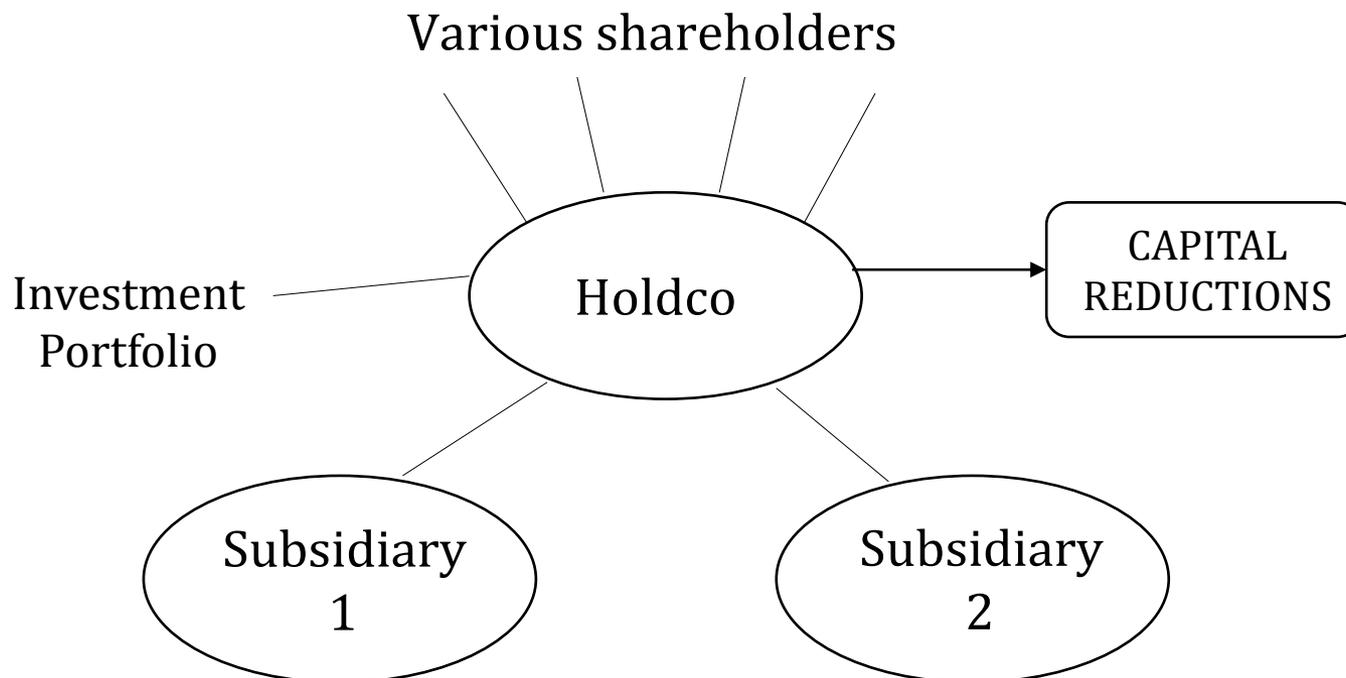
8. Caveats – What not to do



- High chance of counteraction?
- Jeopardise Stage 2 tax clearance – Disaster!!!

9. Demerger by Capital Reduction

- Some reorganisations take place through a liquidation route.
- Capital reduction route often preferable
- No need for Liquidator



10. Summary

Capital Reductions

1. Need share capital.
2. Simple from legal perspective.
3. Attractive from a tax perspective.
4. Can be used for clever things like demergers.
5. But watch out for transactions in securities.
6. Don't sail too close to the wind.

Tax 'easy wins'



Capital Allowances, Research & Development, Patent Box

3 December 2012

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Tax 'easy wins'

Capital allowances

- Historical reviews
- New fixtures rules

Research and Development

- Budget 2012 changes
- Maximising claims

Patent Box

- The potential benefits to clients
- Practical considerations

Capital allowances



Capital allowances

Undertaking an historical review

- When a property is acquired what is actually being purchased?
 - Land
 - Buildings
 - Plant and machinery!
- Can capital allowances be claimed?
 - First step - is the client eligible/suitable (i.e. are they taxpaying?!)
 - Does the client still own the property and the fixtures?
 - Due diligence exercise require to establish capital allowances history

Capital allowances – What can a client expect?

Pre-integral features

Type of property	Main Pool (%)	Integral (%)	Total (%)	Number surveyed
Care home	9.5	0.0	9.5	1
Commercial	12.8	0.0	12.8	1
Office Space	17.4	0.0	17.4	2
Restaurant	17.0	0.0	17.0	2
Retail	19.8	0.0	19.8	3
School	7.2	0.0	7.2	1
Warehouse & Office space	12.4	0.0	12.4	4
Grand Total	14.8	0.0	14.8	14

Capital allowances – What can a client expect?

Post-integral features

Type of property	Main Pool (%)	Integral (%)	Total (%)	Number surveyed
Care home	17.7	13.2	30.9	2
Commercial	3.6	29.8	33.3	5
Office Space	4.6	6.2	10.8	1
Retail	7.0	29.3	36.3	1
School	10.4	8.3	18.7	2
Warehouse	9.9	12.1	22.0	2
Warehouse & Office space	10.3	8.1	18.4	2
Church	20.1	8.5	28.6	1
Grand Total	9.1	17.3	26.4	16

Capital allowances

New fixtures rules

- The 'mischief' and background to the 2011 consultation
- The 'record of agreement' requirement (1 April 2012)
- The 'pooling requirement' (1 April 2014)
- How will this work in practice?

Key messages

- Capital allowances need to be considered at the time of the contract
- The buyer is the one who stands to lose out
- £1 elections are still acceptable
- Capital allowances are a negotiating tool.

Research and Development

A close-up photograph of a female scientist with blonde hair, wearing a white lab coat, clear safety goggles, and a light blue surgical mask. She is holding a glass test tube in her gloved right hand, looking intently at the liquid inside. In the foreground, several other test tubes are visible in a rack. The background is slightly blurred, showing another person in a lab coat.

Research and Development

Budget 2012 changes

- rate of R&D tax credits SMEs increased to 225%;
- the limit of the SME payable credit, based on SME's PAYE/NICs liability, will be removed;
- £10,000 minimum expenditure requirement abolished.

Research and Development

Maximising claims

- Key requirement is that there must be 'technological uncertainty'
- Speak to those involved at the front end – too often we see R&D claims missed because management don't fully appreciate the degree of uncertainty that has been overcome
- HMRC are friendly to discussing claims where there are doubts as to the eligibility



Patent box

Patent Box

The potential benefits

- Headline 10% tax rate.
- Must own the patent, or an exclusive license, and be exploiting it.
- Relief being phased in over 5 years
- Complex formula which seeks to extrapolate true profits attributable to patented products (example overleaf)

Financial year	Effective rate - large co	Effective rate - small co
2013/14	15.20%	13.20%
2014/15	13.90%	12.10%
2015/16	12.60%	11.00%
2016/17	11.30%	9.80%
2017/18	10.00%	8.70%

Patent Box – worked example

LARGE COMPANY		Current rules		Patent Box	
Sales			10,000,000		6,000,000 (say, 60%)
Expenses:	R&D	400,000		240,000	
	R&D relief	120,000			
	Marketing	500,000		300,000	
	Admin	7,000,000		4,200,000	
			<u>-8,020,000</u>		<u>-4,740,000</u>
Profit before tax			1,980,000		1,260,000
Routine mark-up on admin/marketing (10%)					<u>-450,000</u>
Profit on qualifying income					810,000
Less notional marketing return (say, 25%)					<u>-168,750</u>
Patent Box Profit					641,250
Tax (simplified calculation)		Current rules		Patent Box	
Small companies rate (24%) (on 1,980,000)			475,200		ANNUAL SAVING
Patent box rate (10%) (on 641,250)				64,125	
Tax on residue (24%) (on 1,338,750)				321,300	
Comparable tax charge			475,200	385,425	89,775

Patent box

Practical considerations

Companies should consider:

- whether or not patent box offers enough savings
- accelerating the progression of any IP assets which might qualify
- what can be done to extend the lifetime of soon-to-expire patents
- refining internal processes to ensure income/expense streams are properly recorded

Employee Cost Management



3 December 2012

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There are a number of opportunities whereby employers and employees can access tax and/or NIC savings

- Total People Limited
 - Class 1 NIC reclaims
- SMART pensions and spousal contributions
 - NIC saving for employer (13.8%) and employee (12%/2%)
- Subsistence Allowance Management
 - Annual Tax and NIC savings for employer and employee of up to £1,100 per employee

There are a number of opportunities whereby employers and employees can access tax and/or NIC savings (cont)

- Uniform/clothing allowances
 - Income tax refunds and on-going tax relief for employees
- Managing fleet costs - green car policies and mileage capture
 - Income tax savings for employee. Reduced costs and NIC savings for employer
- Identify and risk assess key processes – the easiest saving of all

Capital Gains Tax Deferral Strategies



3 December 2012

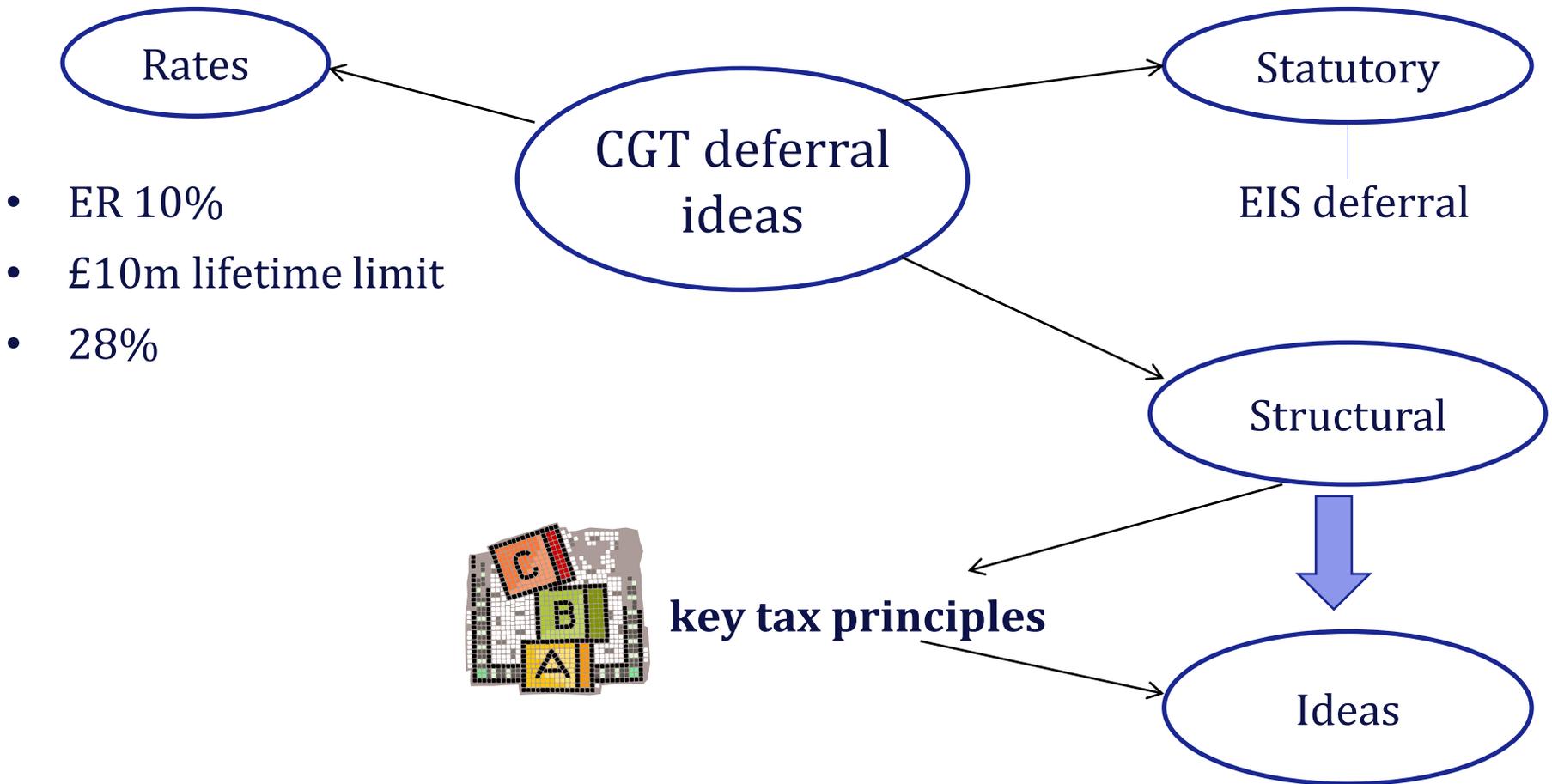
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Overview



Building blocks to pre-sale planning

Getting assets into appropriate structure:

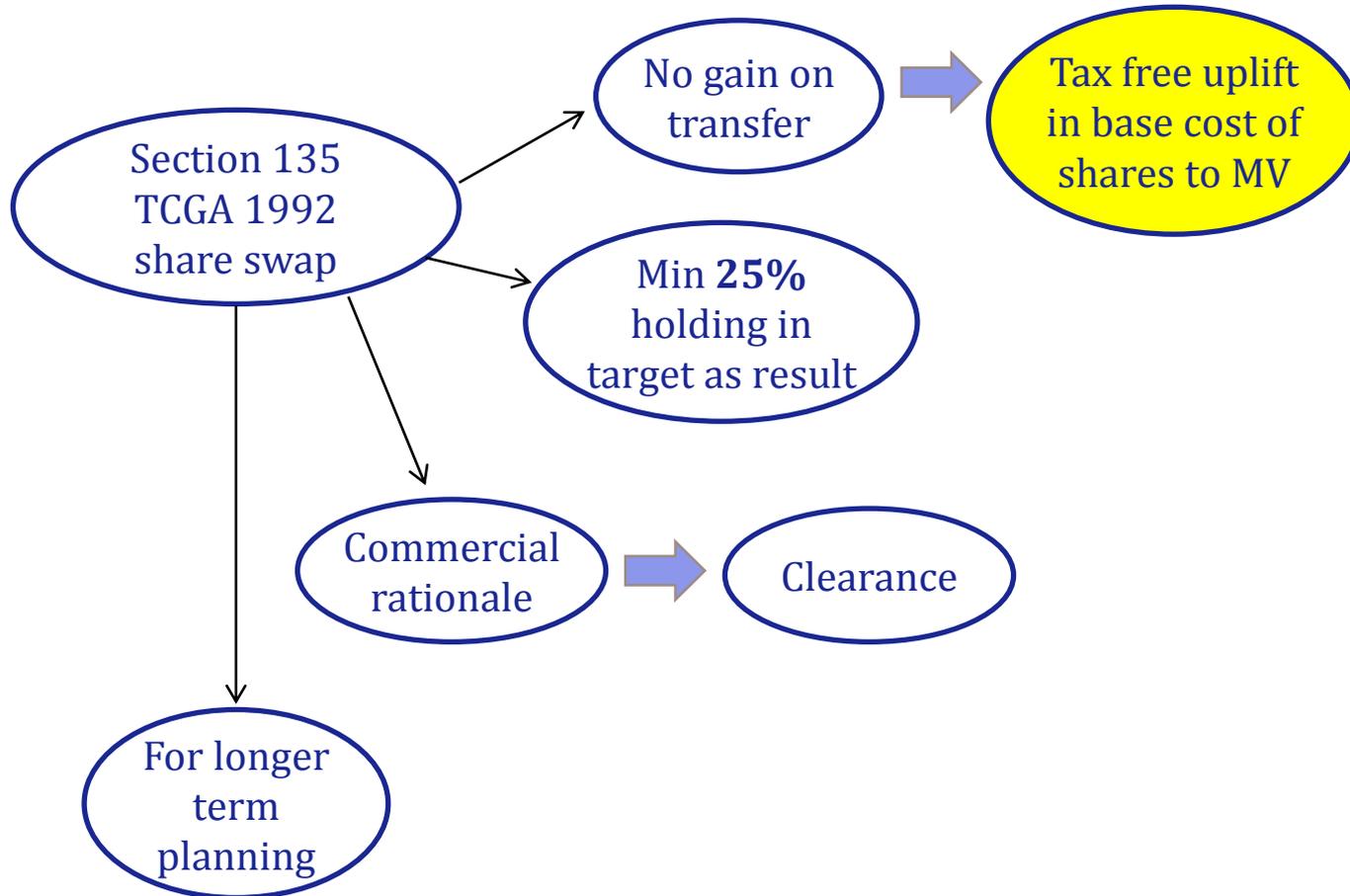


Share for share exchange under s135 TCGA 1992



Straightforward transfer of shares to a holdco

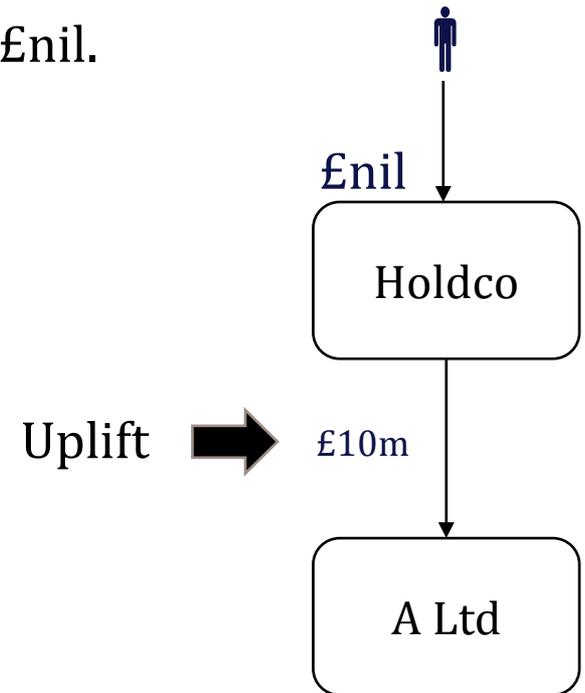
Key principle no. 1 – share-for-share exchange



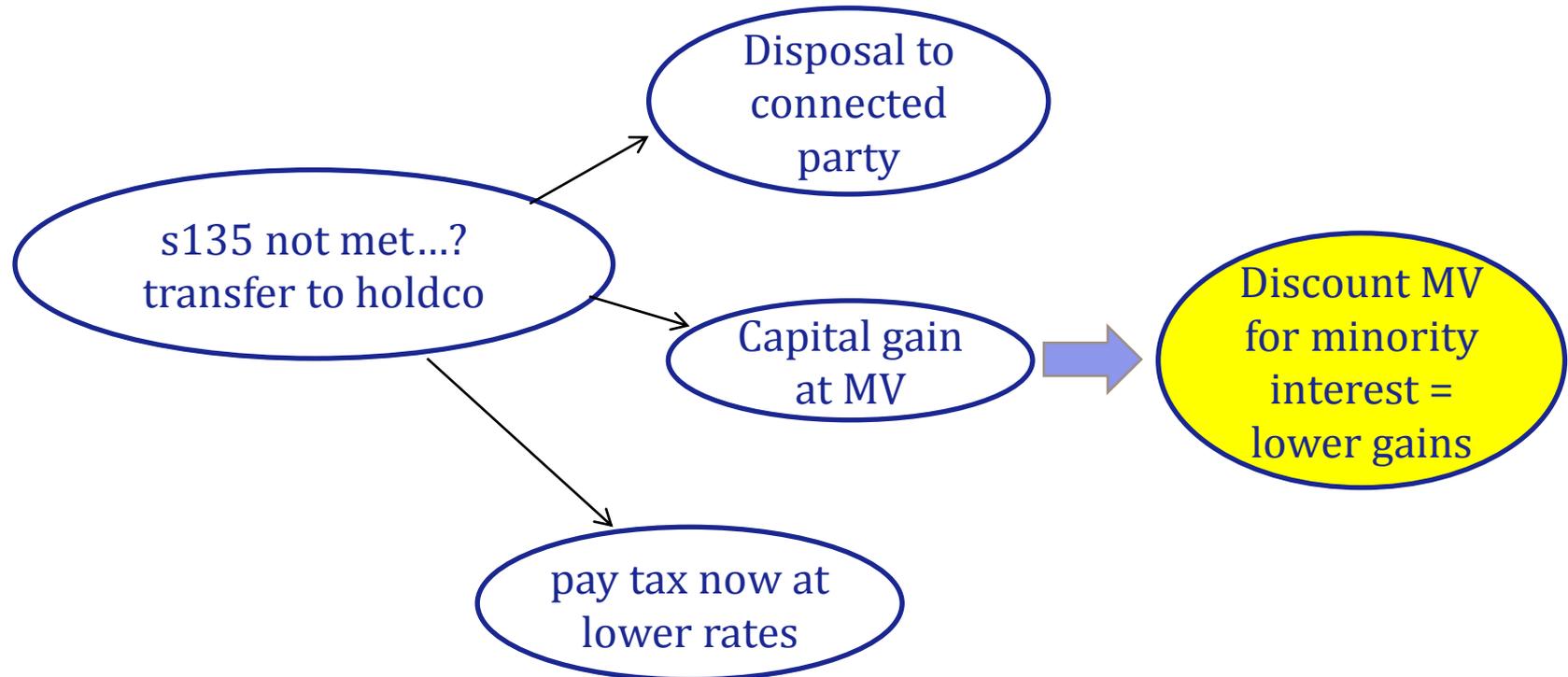
Example

Mr X owns 100% of A Ltd; MV is £10m; base cost £nil.
Transfers to Holdco in exchange for share issue:

- Tax base cost of Holdco now £nil
- Tax base cost of A Ltd uplifted to £10m
- Tax free uplift of £10m
- Assumes clearance obtained under s135



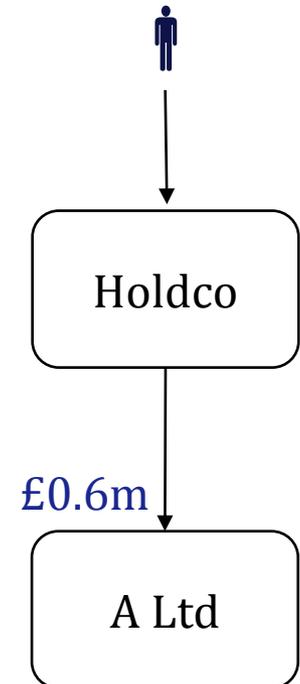
Key principle no. 2 – straightforward share transfer



Example

Mr X now owns 20% of A Ltd; expects to sell in future at £2m;
Wants to get shares into structure now:
Transfers to A Ltd to Holdco, triggering capital gain:

	£m
Open market value	2.0
Less minority discount, say 70%	<u>(1.4)</u>
Adjusted market value	0.6
Less original cost	<u>-</u>
Gain taxable at 28%	<u>0.6</u>



- Pay tax now on adjusted MV to get shares into required structure

Capital gains tax deferral ideas

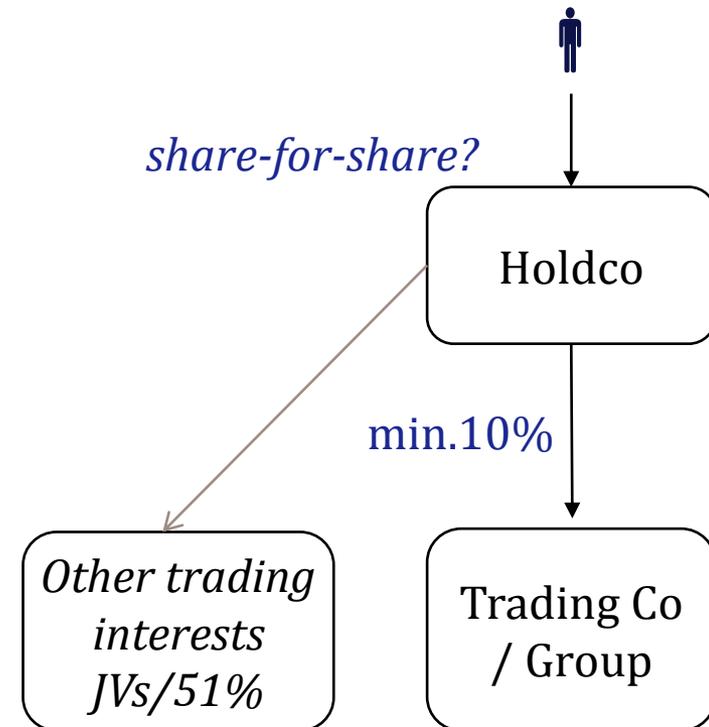
Overview

1. Corporate structure to take advantage of SSE
2. Holding company in treaty protected jurisdiction
3. Protected Cell Company
4. Offshore investment bond structures
5. Offshore trust / company structure for non-domiciled UK residents

1. Corporate structure to take advantage of Substantial Shareholdings Exemption

Structure

- Shares in qualifying trading co.
- 12 months minimum holding period
- Qualifying investing co.
- Both before & immediately AFTER
- Non-trading activities / tests
- Reinvestment of proceeds



1. Corporate structure to take advantage of Substantial Shareholdings Exemption

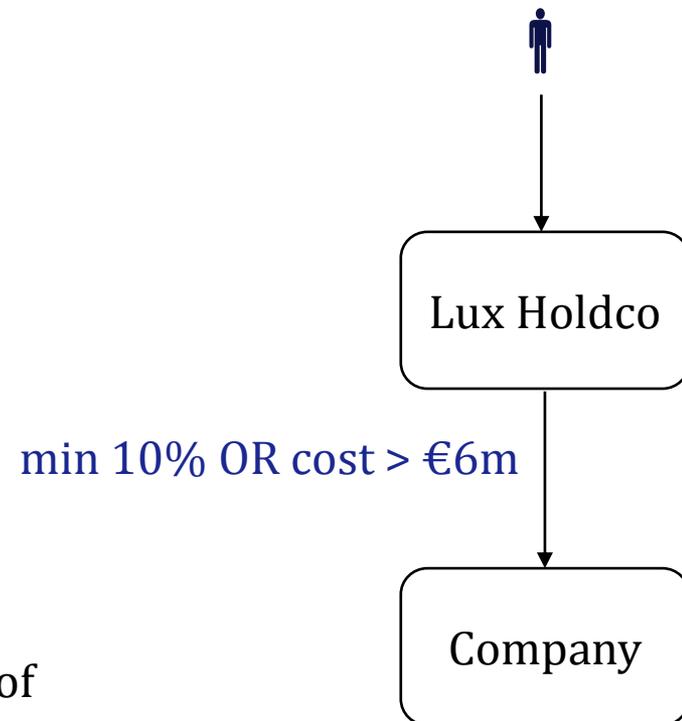
Summary

- Relatively straightforward
- Non-aggressive
- Low cost
- Low risk – uplift in MV if no SSE
- Qualifying trading activities before & after
- Eventual extraction of cash

2. Holding company in treaty protected jurisdiction

Luxembourg corporate capital gains

- Rely on double tax agreement
- Useful if SSE requirements not met
- 12 month holding period
- Lux. DTA overrides s13 attribution of gains
- Article 13(3) - Gains taxable only in country of residence of disposing company



2. Holding company in treaty protected jurisdiction

Summary

- Single holdings where high MV increase anticipated
- No trading status restrictions before / after disposal
- CGT likely on transfer of investments (commercial rationale for s135..?)
- Central management & control in Luxembourg to avoid being UK resident
- Bank account, directors, board meetings etc.
- DTA open to change

3. Protected Cell Company structure (PCC)

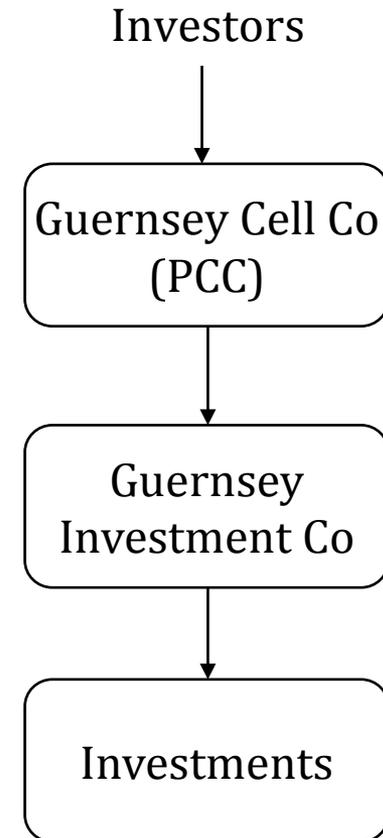
What is a PCC?

- Special type of company available in certain jurisdictions
- Divided into separate cells
- Each cell:
 - can be owned by a group
 - has own distinct assets
 - sets own investment objectives
- Capital gains not attributed back to investors (section 13 TCGA 1992)

3. Protected Cell Company structure (PCC)

Structure

- Section 13 does not apply to structure
- PCC quoted (CISX), or
- Unquoted but cell interest < 10% PCC value
- No minimum holding period
- CGT on transfer (timing..)
- Very costly
- Future revisions to section 13..?



4. Offshore investment bonds

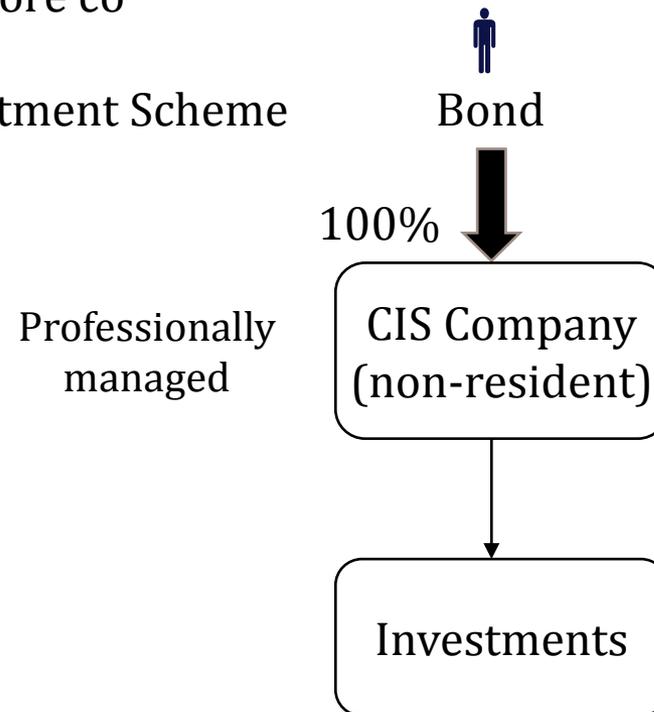
Overview - taxation

- UK investor subject to income tax at marginal rates
- 5% annual allowance – tax free receipt of capital
- Gains deferred until policy matures or surrender of bond
- No tax on switching funds / assigning
- Personal Portfolio Bonds – anti-avoidance measure

4. Offshore investment bonds

Personalised structure

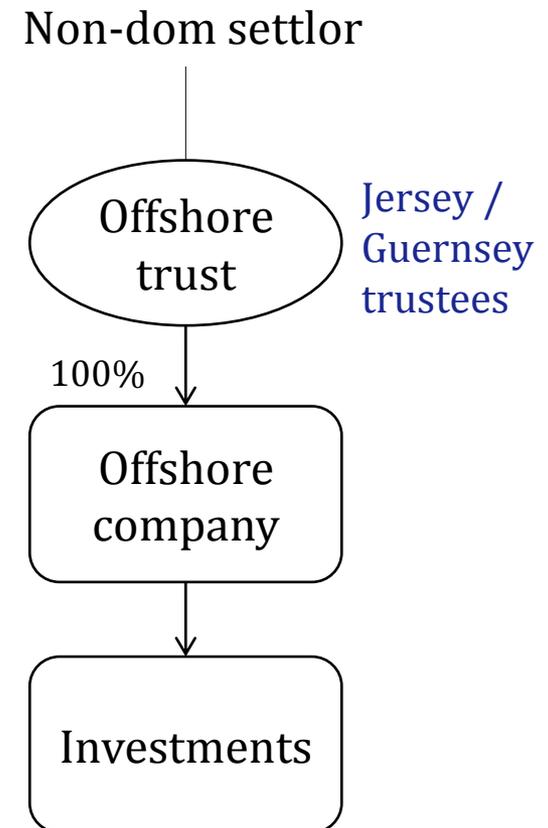
- Bond subscribes for shares in 100% offshore co
- Company must qualify as Collective Investment Scheme
- CIS holds shares / property etc.
- Membership criteria of CIS
- Beneficiaries no day-to-day control
- Good for establishing high value investment portfolio
- Longer term strategy



5. Offshore trust / company structure for non-UK domiciled settlors

Summary

- S.87 – no attribution of gains until paid to beneficiaries
- Tax deferred on disposal by offshore co.
- CGT on transfer of UK asset into structure
- Flexibility of trust structure
- Costs – professional trustees & directors required



CGT deferral strategies - summary

Key points

1. Can we better current exposure?
 - Rate of tax 28% / 18% / 10%
 - Value of investment for CGT purposes
2. Deferral can mean indefinitely / unknown quantity
3. Consider simple techniques to start with e.g. holdco / corporate structures
4. More sophisticated planning techniques depending on investment portfolio

Alternative Dispute Resolution



3 December 2012

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Agenda

- Background
- What is ADR?
- Introduction of ADR
- Potential advantages of ADR
- Which cases does ADR apply to?
- How does it work?

Background

- Historically most cases settled by individual negotiation
- Inconsistency and unfairness...but “got the job done”
- Increased technology in HMRC = increased consistency
- Litigation and Settlement Strategy (“LSS”);
 - Very detailed fact finding
 - Time consuming, expensive and long running
 - Cases caught between negotiation and LSS with no “roadmap”
- ADR one of measures introduced by HMRC to resolve suitable cases

What is ADR?

- A third party / HMRC facilitator is brought in;
 - Trained in mediation process
 - Help parties fully understand disputed facts and arguments
 - Ensure proper communication between parties
 - Help explain what one or other party is trying to say
 - Facilitate discussions with a view to parties reaching agreement

Introduction of ADR (1)

- 2011/12 two pilot schemes;
 - Large & Complex – extended into 2012/13
 - SME – second phase ran from January 2012 to 30 November 2012

Introduction of ADR (2)

- Initial feedback from SME pilot scheme;
 - 144 cases entered
 - Of those, 95 were completed at time that results published;
 - 48 fully resolved
 - 9 partially resolved
 - 38 unresolved and returned to review team
 - 16 meetings, 75 items of correspondence, average 13 calls/case
 - Average tax at stake circa £12K/case
 - Taxpayers agreed £666,320 of tax that was previously in dispute
 - HMRC reduced assessments by £344,005
 - Generally positive feedback

Potential Advantages of ADR?

- Fresh perspective to case and change of dynamics
- May lead to speedier resolution
- Cost savings
 - May help to resolve dispute without Tribunal
 - If not, may significantly reduce preparation/hearing time by;
 - Reducing number of issues at stake
 - Gather clearer idea of HMRC's (and own) case strengths/weaknesses
- Both parties retain ownership in decision
- Enhance working relationships with client & HMRC
- Accelerate flow of fee income (and tax receipts!)

What cases does ADR apply to?

- Long running disputes
- Parties entrenched in positions/progress stalled
- Not before facts established & technical views exchanged
- Transfer pricing, valuations, capital v revenue
- HMRC view is that ADR may not be suitable where;
 - A precedent that may have wider interest is at stake
 - Appeal is “stood behind” others, or test cases
 - Resolution possible only by departure from HMRC policy
 - Integrity of taxpayer may be suspect

How does it work? (1)

- Voluntary online application by taxpayer or agent
- HMRC may suggest ADR to taxpayer
- Subject to HMRC (Dispute Resolution Unit) acceptance;
 - Is a facilitator available?
 - Have parties made genuine attempt to resolve in usual way?
 - Does facilitator think case is suitable?
 - Potential for settling case per published case selection criteria
 - Decision usually within 30 days
 - If rejected, facilitator will monitor subsequent progress of case

How does it work? (2)

- Can withdraw at any time; appeal rights unaffected
- Completion of ADR Memorandum of Understanding

How does it work? (3)

- ADR “process management agreement”
 - Scope of dispute
 - Administrative (e.g. timetable, contact details, venue for any meetings)
 - Without prejudice nature of discussions
 - Aims and possible outcomes of ADR

How does it work? (4)

- Pre-mediation structured discussions
 - Record disputed facts and respective positions
 - Preparation of joint document

How does it work? (5)

- Mediation meeting
 - Welcome/reading of statement/brief responses
 - Mediator holds separate confidential sessions with each party
 - “Movement” communicated by mediator
 - If agreement reached it is documented and signed on the day