Article by: Liam Grimes, AITI, Moderator- Professional 2 Advanced Taxation

Company structures

There is an old saying that no man is a hero to his successor. This is true in business life. Whereas a hairdresser might use words such as “who cut your hair last” in the tax world this equates to “well I wouldn’t have structured it like that”.

Structuring is very important when it comes to holding companies. Traditionally, one of the benefits of holding assets or trading through a company is the low tax rate of 12.5%/25% v 56% for individuals. It is also easier to sell shares rather than assets because of the low 1% stamp duty charge on share sales.

Individuals tend to rush into transferring assets to a company and ignore the hidden traps of close company surcharges and double exit charges on liquidations.

Even when they decide to incorporate they sometimes hold two or three companies in their own names ignoring the obvious benefits of group relief. Most of the benefits of holding various companies in the individual’s hand have been negated with recent Finance Act changes.

Example

Tom owns shares in Dick Limited and Harry Limited. The benefit with this structure is that Tom can sell either company and there is only one charge to CGT.

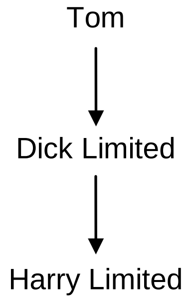
The downside is that the companies are not in a group and miss the benefits of grouping losses and excess R&D credits. Any transfer of assets between the companies can give rise to a CGT charge at the company level.

The two most common structures are:

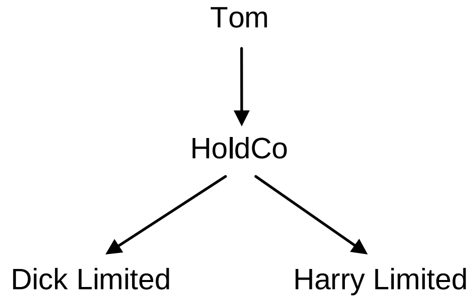
1. The Stack, and
2. Parent / Child

These are illustrated below.

The Stack



Parent / Child



Let us now analyse the difference.

The Stack has one obvious benefit in that it has one less company with less filing obligations and secretarial costs. The downside is that if Harry Limited is sold then Dick Limited is no longer in a group and any deferred gain on intergroup transfers to Dick Limited crystallises. You could of course avoid this by forming a new subsidiary for Dick Limited prior to selling Harry limited.

If Tom holds both companies as an individual he can create the group by availing of relief under Section 586 TCA 1997. This is commonly referred to as paper for paper relief and involves Tom transferring the shares in Harry Limited to Dick Limited in return for shares in Dick Limited, or, he can transfer the shares in Dick Limited to HoldCo in return for shares in HoldCo and shares in Harry Limited to HoldCo in return for shares in HoldCo.

One of the main stumbling blocks in forming a group was removed in recent Finance Acts. Before 2008 if a subsidiary paid up dividends to its holding company (in the above either Dick Limited or HoldCo) then this dividend was treated as a receipt of franked investment income and gave rise to a surcharge problem in the hands of the recipient. The 2008 legislation removed the obstacle but provided for a waiver in that the dividend is ignored completely for surcharge purposes. This has an obvious downside in that the subsidiary company cannot take account of the dividend payment it is has its own internal surcharge issue.

Different types of groups

51% Groups

This allows the payment of interest and royalties between group companies without the need to deduct income tax.

The requirement is that there is more than 51% relationship either direct or indirect.

The minimum relationship also sets the 2003 threshold for R&D tax credits. Interestingly enough there is an exception for R&D in the sense that unlike payment groups the two resident companies can be held by a foreign non EU parent.

75% Groups

This generally provides for the surrender of trade losses and excess charges. Also, whereas a 51% relationship is set in computing the 2003 threshold for R&D a 75% relationship is required before two companies can surrender unused R&D tax credits.

CGT Groups

The difference between a CGT Group and a 75% Group is that a CGT Group includes a 75% sub subsidiary. Therefore, if company A owns 80% of company B and company B owns 80% of company C - they are in a single CGT Group. For Loss Relief / R&D Relief you have two separate groupings (a) and (b) and (b) and (c).

A CGT Group provides for a CGT free zone in that assets can be transferred tax free between group companies. The acquiring company receives the asset at the original historic cost to the first group purchaser.

Care should always be taken when acquiring a group company in that if a company leaves a group with an asset acquired on a group transfer then the departing company must account for the deferred gain.

VAT Groups

Revenue has no hard and fast rule with regard to the level of shareholding required for a VAT Group. The main requirement is that the companies are bound by financial, economic and organisational links and that the Inspector is satisfied that by allowing group registration it would lead to efficiencies and no loss of Revenue.

A Group company is nominated as the Group remitter.

The VAT free inter group transfer of goods does not apply to sale of buildings or other real property.

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