

TAX PLANNING FOR THE ENTREPRENEURIAL CLIENT

INNOVATIVE AND PROVEN STRATEGIES



9 December 2013

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Agenda

1.30pm	Registration	
2.00pm	Welcome address	Michael Dawson
2.10pm	Inheritance Tax –Maximising reliefs and structuring tips	Laura Hutchinson
2.35pm	Update after Autumn Statement	Michael Dawson
3.00pm	Top 10 Tax Opportunities that are being missed	Andrew Marr
3.25pm	<i>Coffee Break</i>	
3.45pm	The EBT Settlement Opportunity	Tom Minnikin
4.00pm	Using Capital Reductions to save tax	Andrew Marr
4.25pm	Pensions – Mitigating the 55% charge	Michael Dawson
4.45pm	Questions to the floor	
4.55pm	Closing remarks followed by drinks	Michael Dawson

Inheritance Tax - Maximising reliefs and structuring tips



9 December 2013

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Agenda

- Business Property Relief
- Case Study restructuring to attract reliefs
- IHT & Investment Property

IHT Relief

- Business Property Relief ('BPR')
- Agricultural Property Relief ('APR')

BPR (1)

- **100% BPR available:**
 - Unquoted shares in a trading company
 - Securities (e.g. loan notes) in a trading company – if they or with other shares give control of the company
 - Interest in a trading business

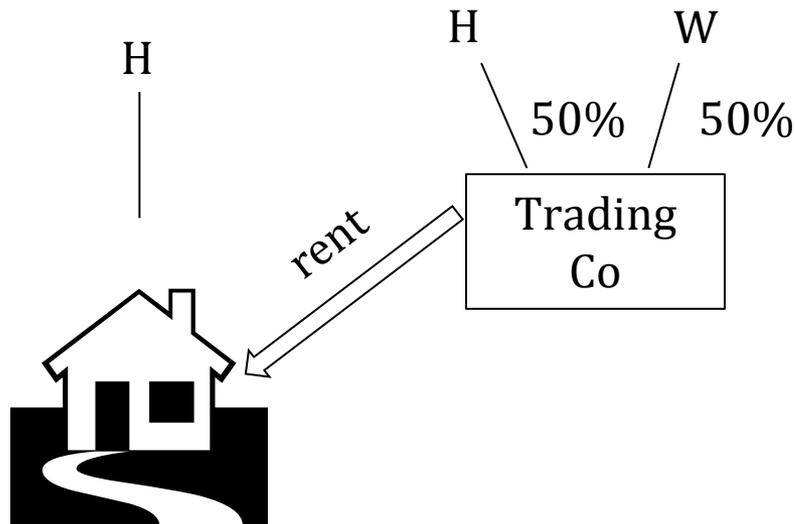
BPR (2)

- **50% BPR available:**
 - Quoted shares - a controlling interest;
 - Assets, including land and buildings used in the trading partnership of which he was a partner, or within a company of which he was a controlling shareholder;
 - Assets, including land and buildings in IIP trust if the business is carried on by the life tenant

BPR tests

- Is the company trading – wholly or mainly? 50% or more
- Investment companies no relief
- Look at in the round - asset value, time spent, turnover, profits, activity
- Look over a reasonable period, taking into account seasonal fluctuations in profits, use of investment funds (no bank lending) etc.
- Generally accepted – tangible asset value and profit - trading and BPR available

Structure of group



Analysis

1. H & W related parties for IHT. Ownership is combined for control test.
2. 100% BPR on the shares.
3. 50% BPR on the property used in the trade (due to controlling shareholding).

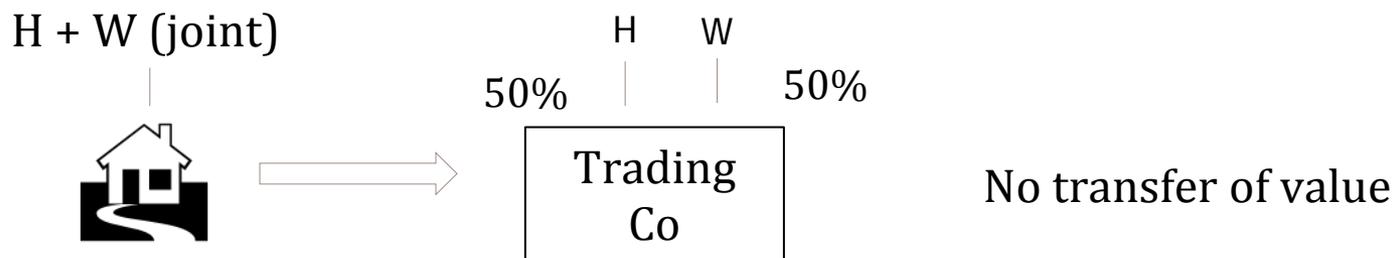
Property outside the company

- Land and buildings held outside company, used in the trade – 50% relief, but **only if** controls
- Beware of gifts with < 51% shareholding
- Consider transferring property to company
- Taxes: SDLT, CGT, IHT

Benefits/pitfalls of transferring property into company

Inheritance tax transfer

- If shares not owned by current property owners could be CLT
- Cannot be a PET as gift not to an individual
- Otherwise if no diminution in value – no transfer for IHT



Benefits/Pitfalls of transferring property into company (2)

Capital gains tax

- Hold over available – business asset - capital gain deferred (no restriction for rents)
- Receive cash up to price paid for the property (no restriction on hold over)
- ER restricted on property o/s company if rent received (post 5 April 2008)
- No restriction on ER shares in trading company

Benefits/Pitfalls of transferring property into company (3)

Corporation Tax

- No deduction for rents going forward – low CT rates now

Income Tax

- No NI free payments to property owners

SDLT

- Deemed market value consideration on transfer to a company

Excepted assets

- Excepted assets – those assets not required within the business
- Reduce the relief by excepted asset value
- Excepted asset unless:
 - Has been used within the previous two years in the business, or
 - Required at the time of the transfer for future use in the business

Pitfalls – excepted assets – surplus cash

- Surplus cash – earmarked; marketing campaign, new business premises?
Document action
- Argument required for the business
- Consider pension contributions/EBT contributions/ Co buy-in/
remuneration
- Look at balance sheet – has to be surplus net assets
- Are funds required for creditors? Seasonal business? Special type of
activity – travel agents

Surplus Cash

Barclays Bank Trust Co Ltd v CIR (1998) Case

Facts

- Turnover of trade - £600,000
- Cash held £450,000
- Had looked to acquire properties previously
- Cash on deposit for 30 days rolling

Decision

- Cash was excessive by £300,000
- Generally accepted 25% of turnover is OK

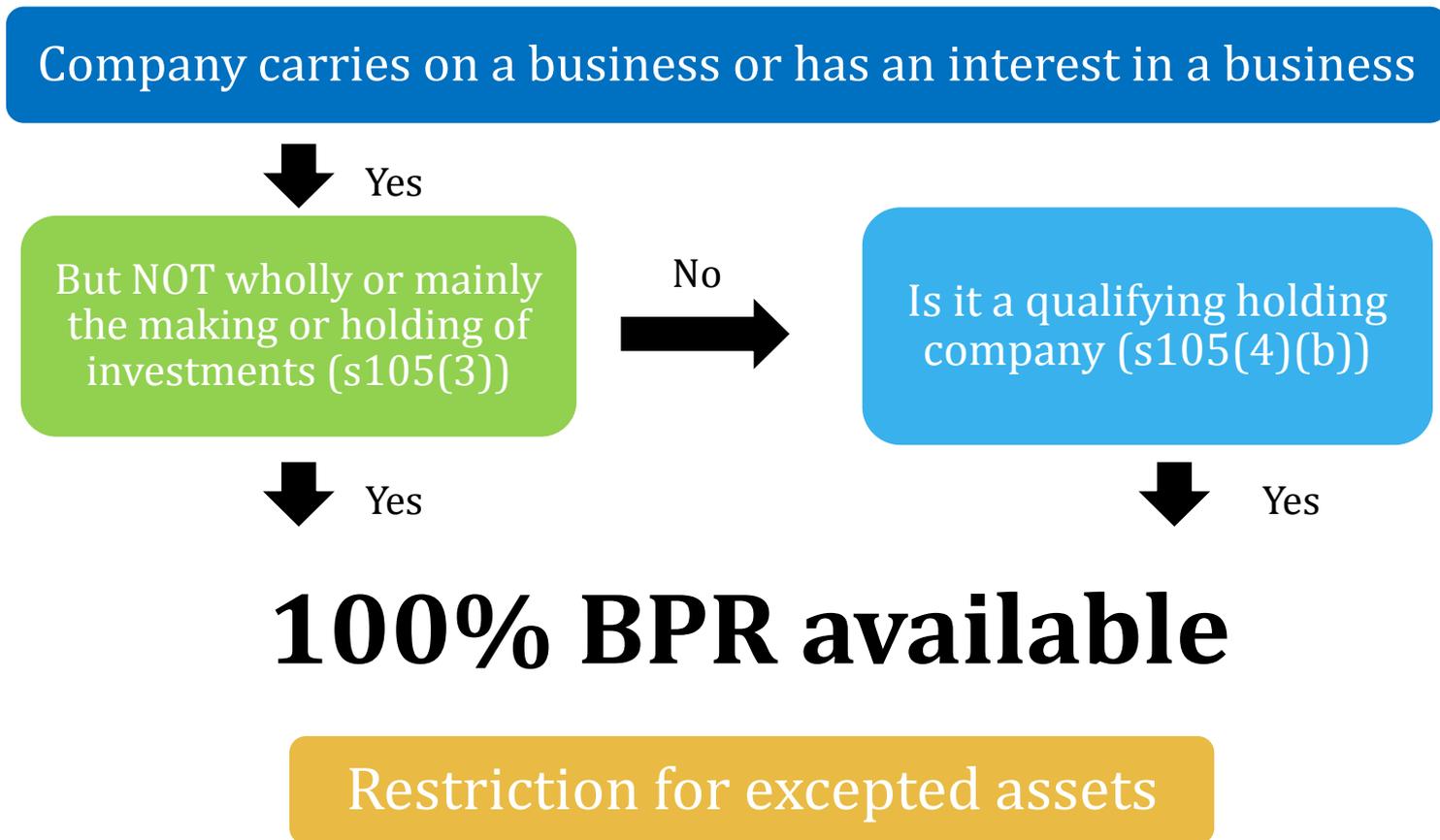
Argument against decision

- American Leaf case – “the business of a company is whatever the company does” – money on deposit used as part of business
- Required as fall back – difficulty borrowing from banks
- Evidence of approach to buy properties – board minutes etc

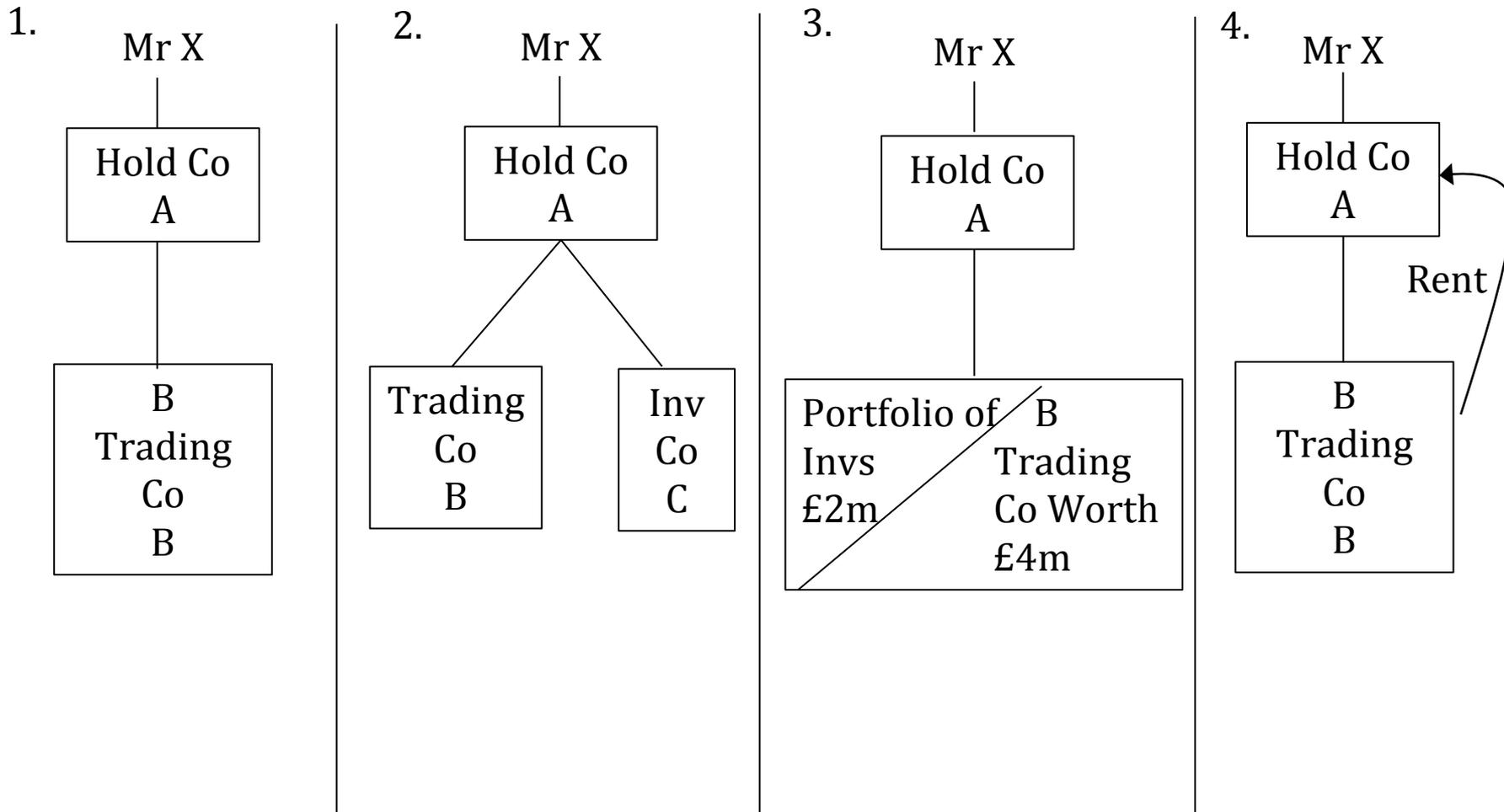
Pitfalls – excepted assets - investments

- Holding shares – if actively managed this is an investment *business*
- If passively held; excepted asset
- Ensure actively managed - activity and value etc. is < 50% of total business

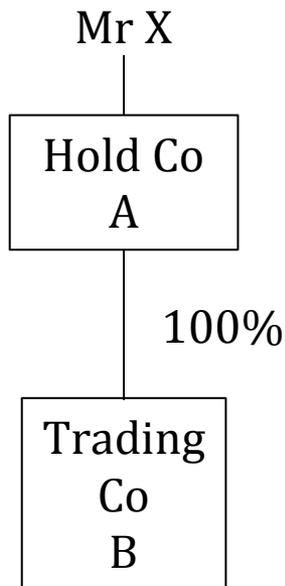
Summary: BPR on shares



Summary of common group structures



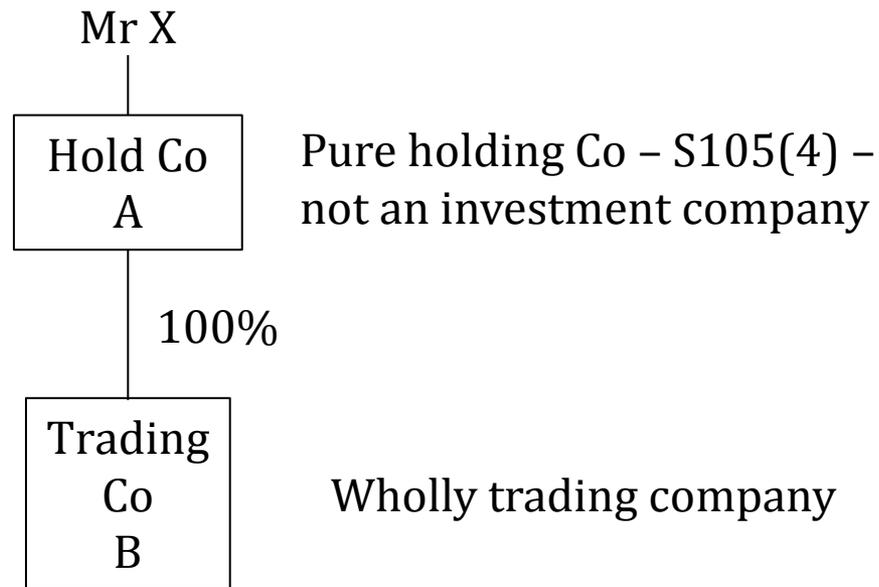
Structure 1



BPR in a group

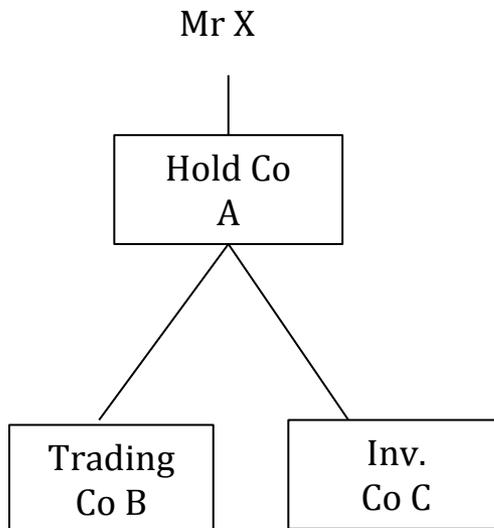
- An investment company within a group – no BPR - s105(3) IHTA
- A pure holding company exempted from this -if group is a trading group s105(4)
- Examine activities, income sources and asset values of group as a **whole** – ‘wholly or mainly’ test

Structure 1



BPR available on full value of Co A shares

Structure 2 Restriction to BPR

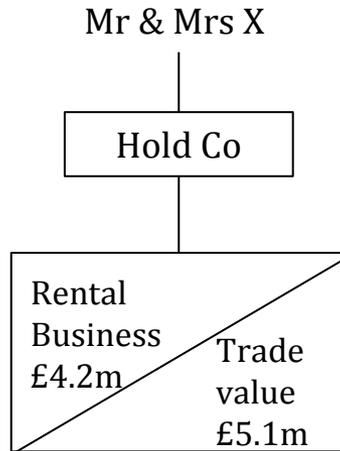


Investment element- restriction

- Group, as a whole, satisfies test of a trading group
- Exclude from the value of the holding company shares, the value of any investment subsidiary – s105(3)
- Restriction to relief but not fully denied
- Is there a better alternative?

	Co B	Co C	Total
Asset Value:	£4m	£2m	£6m
Time Spent:	325 days	25 days	350 days
Turnover:	£600k	£60k	£660k
Profits also analysed			

Case Study – Mixed activities – Full BPR



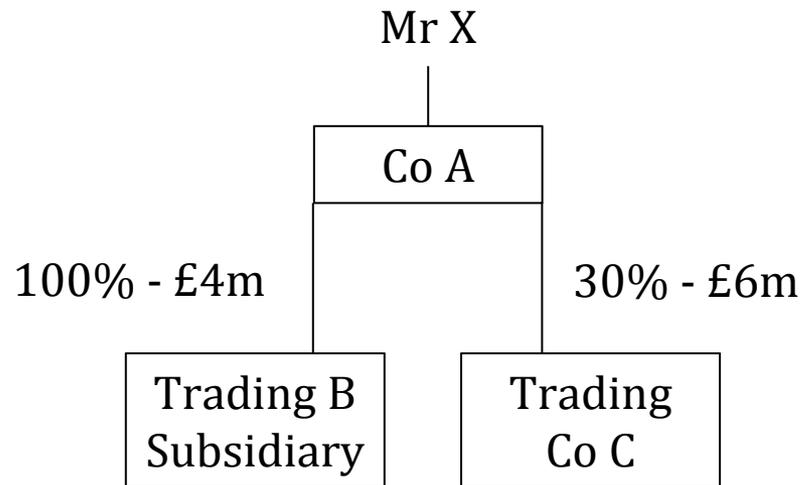
	Investment £	Trade £
Net asset value	4.2m	5.1m
% net asset	45%	55%
Turnover	6%	94%
No of employees	0	45

- Clients operated a previously successful textile wholesale trade
- Profits generated in trade historically used to acquire commercial investment property
- All staff employed in trade only
- Trade suffered during the recession and cost of raw materials, with drop in profits
- Rental profits exceeding trading profits 73%/27% in last year
- Basis of valuation - key to relief granted
 - No dividends paid – not used dividend yield approach
 - Significant downturn in profits – not used multiple of earnings basis
 - Remaining valuation option – net asset valuation
- 100% BPR allowed

Mixed trade and investment

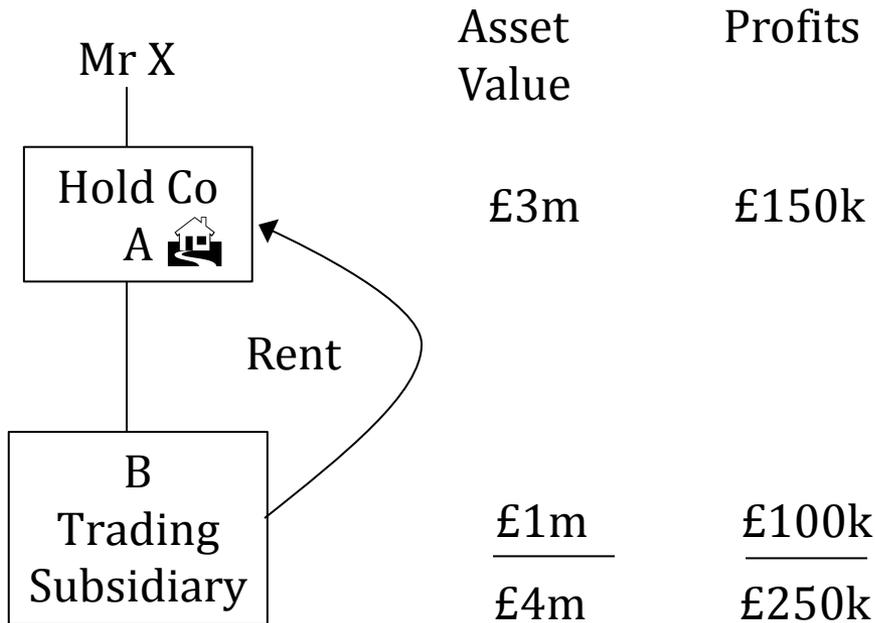
- Consider undertaking investment and trading activities within one subsidiary
- Provided the group is wholly or mainly trading (>50% of activities) BPR will apply – no restriction
- The usual tests against income, asset values and time spent apply

Structure 3



- Investment in Trading Co C – not trading subsidiary
- Look at in the round
- Depends upon usual tests, values, profit etc
- No relief on this instance – not wholly or mainly a trading group

Structure 4



Holding company - rent (1)

- Common practice to charge rents to trading subsidiary
- Problem - no longer wholly or mainly a holding company - so no specific exemption under s105(4)
- No statutory guidance - look at usual tests overall value, income and time to see if group is trading
- May accept consolidated accounts but technically look at individual companies (IHT Manuals)

Holding company – rent (2)

- The value of the properties or level of rents received may cause problems – not wholly or mainly trading
- **No BPR** on the shares
- No apportionment of values into trading and non-trading – instead **no relief**
- What to do?

Holding company – rent (3)

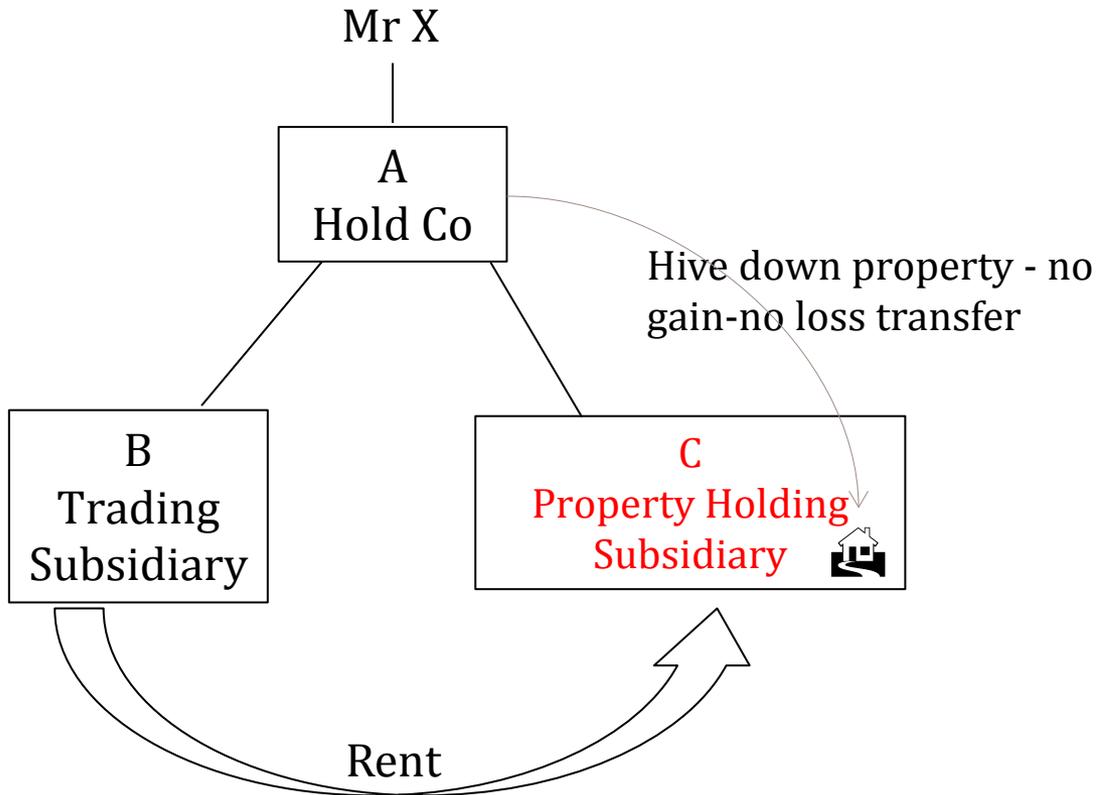
Options:

1. Clearance with HMRC to ascertain the position if a transaction underway
2. Test the position – transfer shares into trust
3. Restructure the group

Holding company – rent (3)

- **Clearance** – only if a transaction is underway and tax is at stake i.e. a transfer into trust
- **Test the position** – IHT100 – could result in tax payable
- **Restructuring** – specific exemption for a subsidiary that holds and rents the property used by its fellow subsidiary in the trade – s111

Restructure the group (1)



Restructure the group (2)

- Three separate companies; Holding co, Trading co, and Property Holding Co
- No restriction on value of shares in Property Holding Co provided property is used in the trade by trading group
- Full relief compared to no relief under Structure 4

S111 IHTA – Where the business of any company in a group is an investment company under S105(3) unless it is either:

- that the business is that of a holding company S105(4), or
- that business is wholly or mainly in the holding of land or buildings, wholly or mainly occupied by members of the trading group the value of the investment company does not attract relief.

Case study – Restructure assets to attract greater relief

Property held:

Where property held:

Farmhouse	Own name
Farmland	In SIPP
Investment property	In company 'Property Co'
Furnished holiday lettings on farmland	In Property Co
Interest in farming partnership	In husband and wife's and sons' names

Case study(2)

Farmhouse and farmland - APR

- Must occupy the farmhouse for agriculture
- Farmhouse – character appropriate – need farmland to create character
- Buy farmland from SIPP – swap chargeable cash for APR farmland - SDLT
- Actively farm the land– member of farming partnership (FBT would not constitute occupation)

Case study(3)

Furnished holiday lettings - BPR

- Furnished holiday lettings – *Pawson case*
- Look to transfer FHL into farming partnership
- Unlikely to attract BPR but ‘hide’ investment business within trade of farming – wholly or mainly trading - BPR

Property investment – no relief

- Property investment company – no relief – other planning – e.g. gift of shares

IHT and investment property

- Often large values
- No reliefs
- Difficult to plan:
 - Capital gains tax on gifts
 - SDLT on transfers for consideration
- Simple solutions to reduce IHT

New acquisitions

- Acquire between family members
- Purchase in a trust (if sufficient cash already in trust, or loan)
- Purchase through a company – subscribe for shares to provide cash

Between family members

- Gift cash to family members – PET
- Maximum of four members to legally own
- Pay SDLT once on acquisition
- Many people's exemptions, reliefs etc. against gains and rents

Trust ownership

- Problem getting large cash values in - CLT
- Loan funds to trust to acquire the property – growth in trust
- Ten year charges on property value in trust
- Rents assessable on life tenants

Corporate ownership

- Value of property inherent in shares – change terms of shares, shift value, make gifts of shares
- Rents taxed at corporation tax rates of 20% from 1 April 2015 (even large companies)
- Extract rents by way of dividend – restrict personal tax to income required

Deferred lease

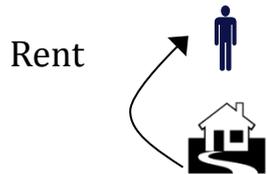
- Rental property – want to retain rents
- Large value in property – IHT problem
- Large CGT liability of gift
- Consider deferred lease

Deferred lease (2)

- Carve out a long lease that begins in less than 21 years' time – the 'deferred lease'
- Give/sell this interest to a family trust, for example
- The freehold is retained so rents received for 21 year period

Deferred lease illustration (3)

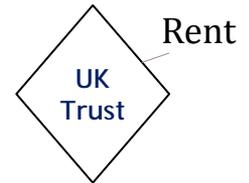
Current position



Stage 1



Stage 2 – in 20 years



	Freehold	Freehold	Leasehold
Value	£1m	£620k	£300k
IHT	£400k	£248k	-

	Freehold	Leasehold
Value	-	£1m
IHT	-	£81k

- For illustration purposes, the value has not increased over 20 years
- Immediate loss of £80,000 on marriage value – careful as HMRC will argue transfer of value
- Restrict total loss to estate to £325,000 + AE

Deferred lease (4)

- Value in deferred lease increases as start date approaches
- Freehold value reduces up to 21 year date when is nominal
- Professional valuations are essential
- Must have held freehold interest for previous 7 years - GROB

Tax issues - deferred lease

- Capital gains tax disposal at market value – lower than a full sale but payable unless trust holdover
- SDLT if sell to the trust
- IHT transfer if gift to the trust – careful of values – diminution in value
- Consider transferring to spouse to use nil rate bands and allowances

Example gift of deferred lease

Property value £1.8m Tax

Carve out lease – revised values:

Freehold £1.2m

Deferred lease £0.4m

Total £1.6m

‘Lost’ £200k due to marriage values

After 21 years:

Freehold £0.0m

Deferred lease £1.8m

Assumes no increase in value over 21 years for illustration only

IHT – transfer of value - £600k (£1.8m - £1.2m) – Ensure use nil rate band of H & W so no IHT if survive 7 years

CGT - £200k value each so capital gain – assume no base cost – CGT of £53,200 x 2 but holdover

SDLT – none provided no mortgage as is a gift

Tax saving - > £720,000 after 21 years. £1.8m out but also growth with no further IHT transfers required

Update after Autumn Statement



9 December 2013

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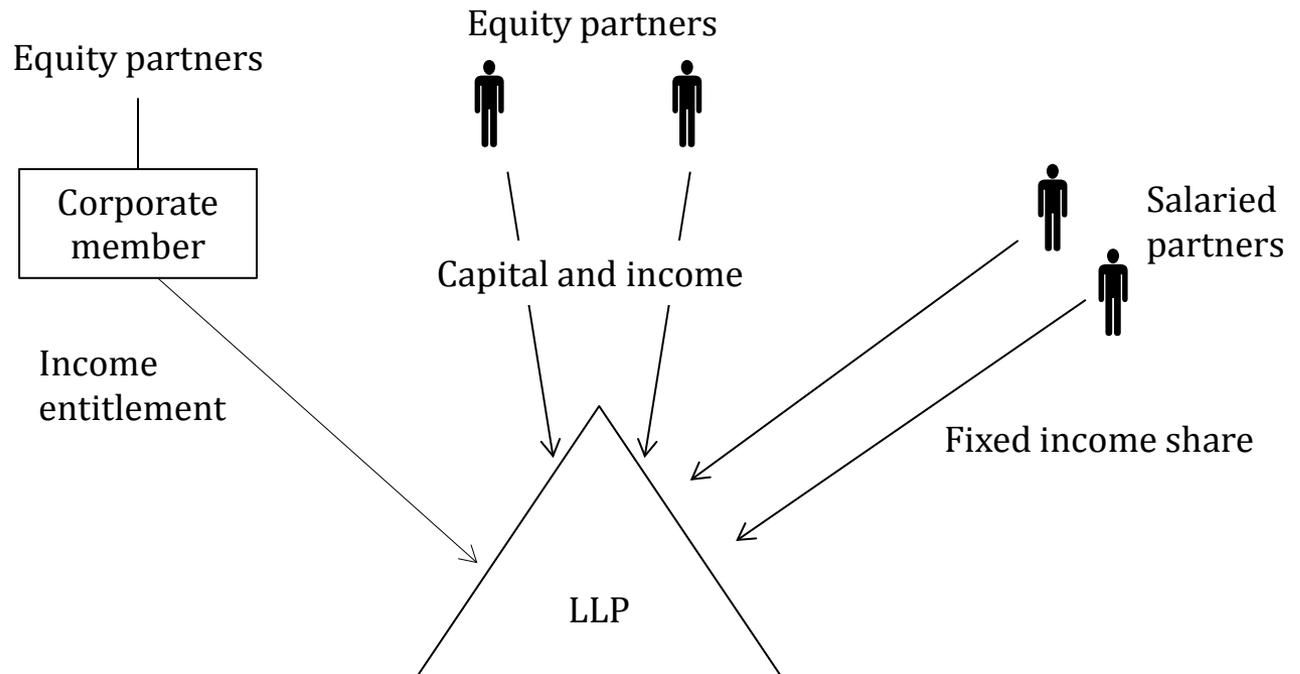
Autumn Statement

- Attack on “mixed” partnerships
- CGT – residential property
 - non residents post April 15
 - final period main residence exemption halved to 18 months
- Trusts
 - IHT simplification
 - splitting of nil rate band
- Attack on schemes and high-risk promoters

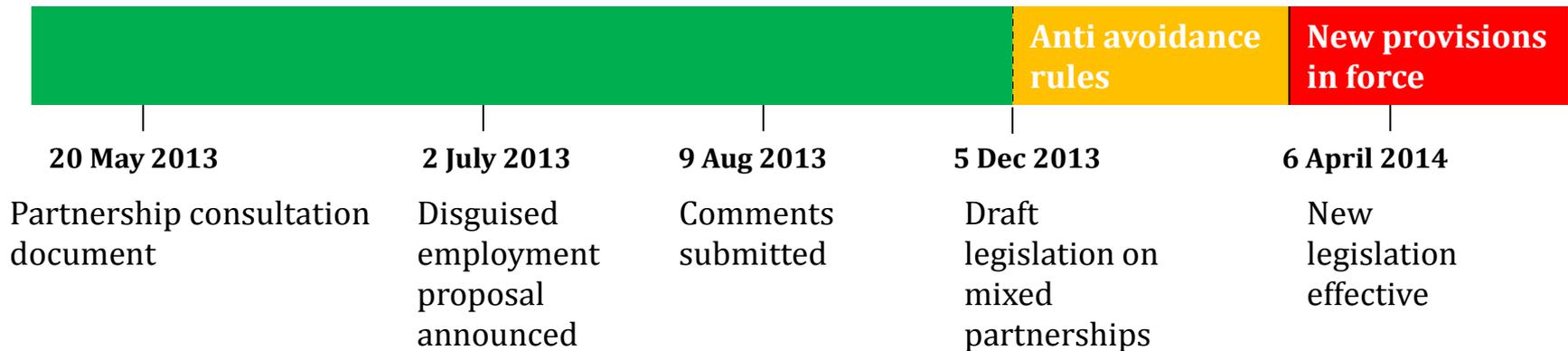
Mixed partnerships - background

- Individual members and “non individual” members
- Non individuals = companies or trusts (? why are trusts offensive)
- Increasing use of company in partnerships due to benefits:
 - Low CT rates on profits (20% vs 45%)
 - Goodwill amortisation
 - Flexibility of dividend payments
 - Personal retention of capital rights
 - NIC savings for individual members

Typical professional partnership structure



LLPs and partnerships – HMRC timetable



LLPs – Disguised employment

- Partnerships
 - Sch D partners
 - Sch E partners – “salaried”
- LLPs – Current law - member self employed

From 6 April 2014 presumption of self employment removed

Mixed partnerships and LLPs – Mischief attacked

1. Transfer pricing : compensating adjustments
2. Loss allocation to individuals
3. Excess profit allocation to companies

Draft legislation covers 2 and 3

Excess loss allocation to individuals

- Individual has a loss
- Relevant tax avoidance arrangements exist
- Losses allocated to an individual rather than non individual

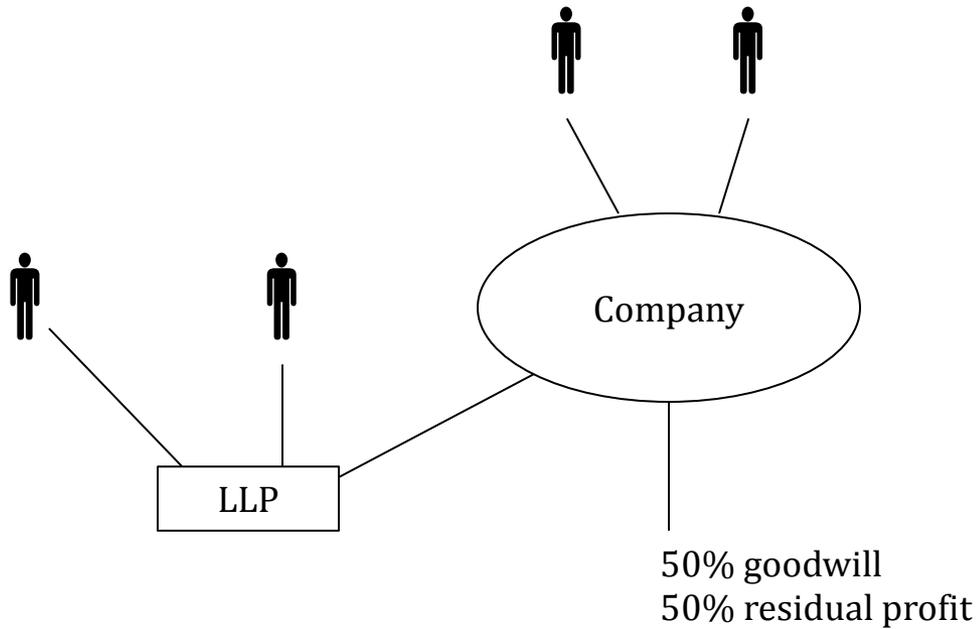
Excess profit allocation to non individuals

- Reasonable to suppose;
 - Individual's deferred profit in company
 - Individual's profit and tax reduced
- Individual can be attacked if not a partner of the firm!

Notional profit and power to enjoy

- Individual must have 'power to enjoy' company profit
- Company notional profit = capital return and consideration for services
- Excess of actual profit over notional profit reallocated
- Provisions to prevent double tax

Accountants practice



Argue no excess profit

Property investment partnership



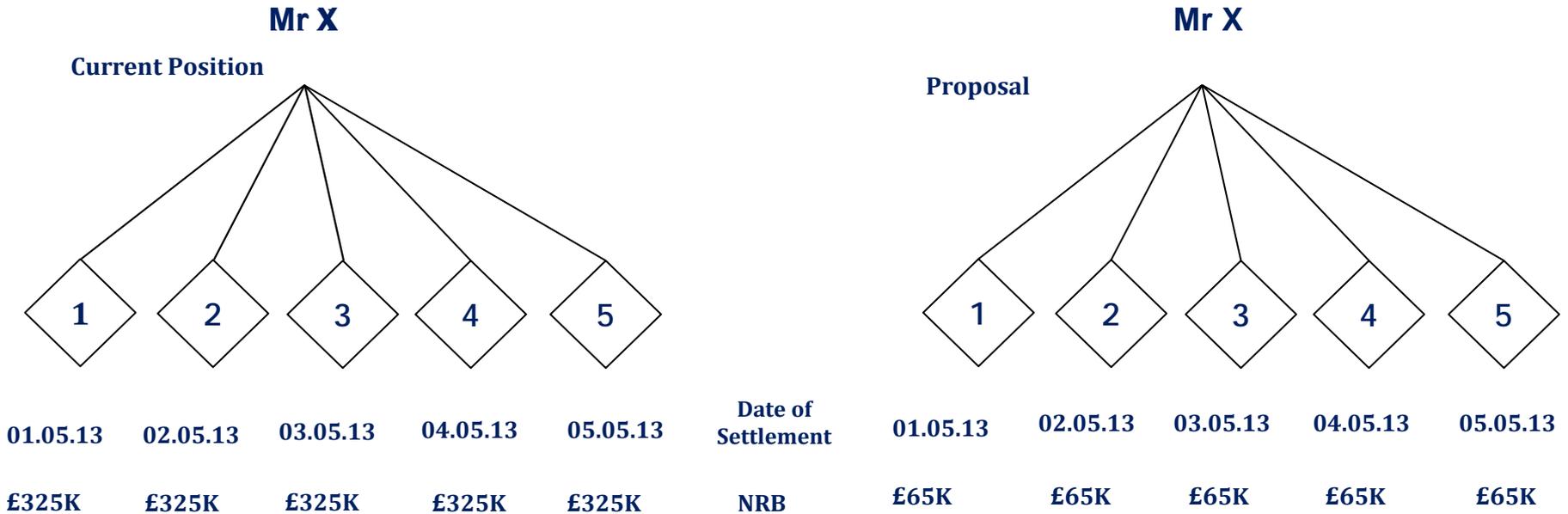
Company provides majority of capital via loans from individual partners –
Does this work?

Mixed partnerships - solutions

- Justify profit allocations – HMRC clearance?
- Full incorporation
- Corporate partnership

Inheritance Tax – Simplification of trusts

1. Split of Nil Rate Band



Inheritance Tax – Simplification of Trusts

Changes to 10 Year Charge Calculation

- Exit charge - complex calculation - little tax yield
- HMRC consultation - Proposals Spring 2014
 - Implementation 2015

Finance Bill 2014 – changes to be implemented

- Simplification of filing and payment dates
- Undistributed income after 5 years = trust capital

Top 10 Tax Opportunities that are being missed



9 December 2013

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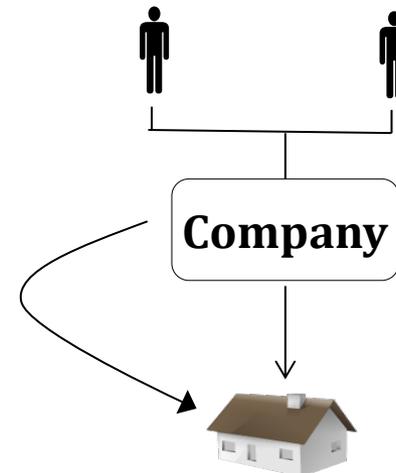
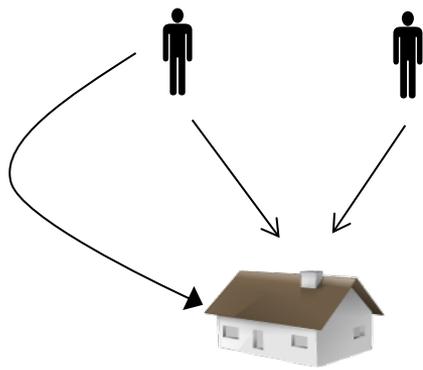
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Forbes Dawson Tax Bites

- Tax issues we face on regular basis
- Short, punchy overview
- Weekly
- Get on the list!

1. Incorporation of property business

- Capital gains disposal
- Section 162 TCGA 1992 relief available if in exchange for shares
- Uplift base cost of property to MV
- SDLT charges can be avoided for partnerships
- Recently obtained clearance from HMRC on this issue



1. Incorporation of property business

Common Barriers:

1. Is it a business? (Ramsay)
2. SDLT Cost (Multiple dwelling relief/partnership rules)
3. Favourable bank borrowings (Deed of trust?)

2. Capital reductions

- Taxed as capital (rather than dividend) (Section 1000 CTA 2010)
- Due to Companies Act changes, are easy to achieve. Needs to be sufficient share capital, can include share premium
- Therefore, capital gains tax advantages:
 - Capital gains tax rates of 28% or 10% (!)
 - Annual Exemption (currently £10,600)
 - Relief for Capital losses and base cost
- Transaction in securities legislation but onus on HMRC to invoke
- Effective Tax Rates assuming 23% corporate rate / 45% income tax rate (Using 2013/2014 data)

Extraction Method	Salary	Dividend	28% Capital Gains Tax	10% Capital Gains Tax
Effective Rate of Tax	53.4%	46.5%	44.6%	30.7%

3. Research and Development claims

- Valuable relief that businesses are not claiming
- Every £100 of qualifying expenditure benefits from £225 tax deduction (for SMEs)
- Resolving technological or scientific uncertainties - consider a claim such as:
 - Design of vehicle manufacture
 - Viability of materials in production
 - Software consultancy businesses
- Time limit - 2 years from the end of the accounting period to make a claim

3. Research and Development claims

Example

- £400,000 expenditure (10% of £4m)
- £500,000 'bonus' tax deduction
- Worth **£115,000** at 23%

4. Enterprise Management Incentives (“EMI”)

- Entrepreneurs’ Relief from 5 April 2008 made EMI less attractive
- Only got 10% if 5% shareholding conditions met etc.

Recent changes:

- No 5% condition
- 12 months runs from date of grant

Old Benefits:

- Minority discount
- CT deduction

4. Enterprise Management Incentives (“EMI”)

EMI exit events

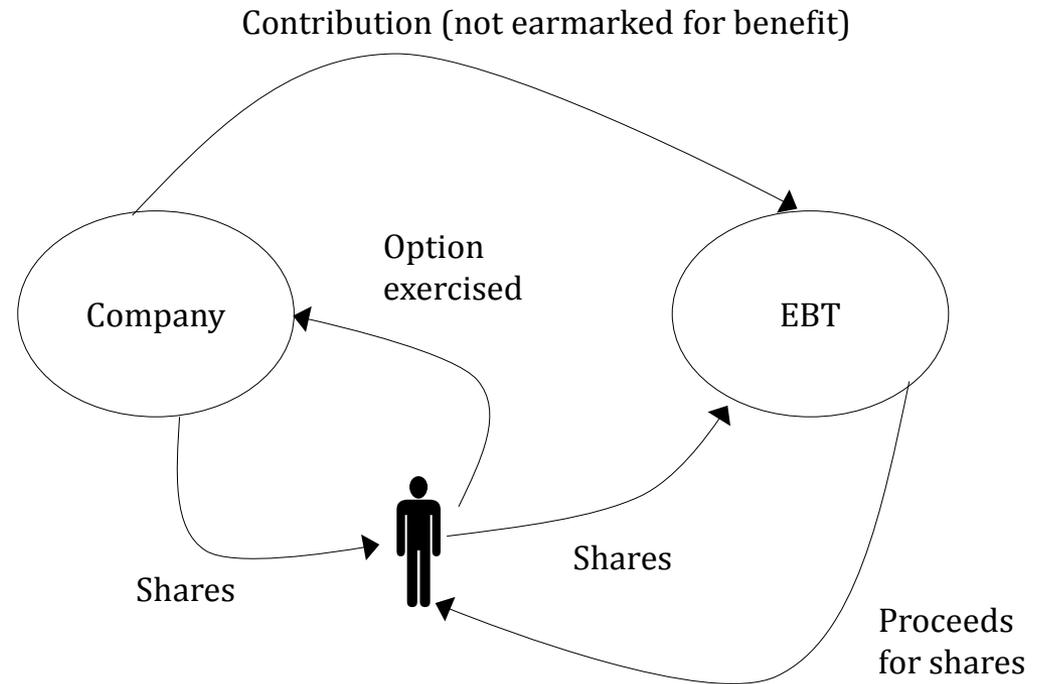
- Often only exercisable on exit event such as a sale
- But this is not required!
- Are there ways of ‘manufacturing’ a sale event?
- Want to maintain value uplift on sale
- EBT?
- Company reconstruction (with new holding company)

4. Enterprise Management Incentives (“EMI”)

EMI exit events - EBT

But:

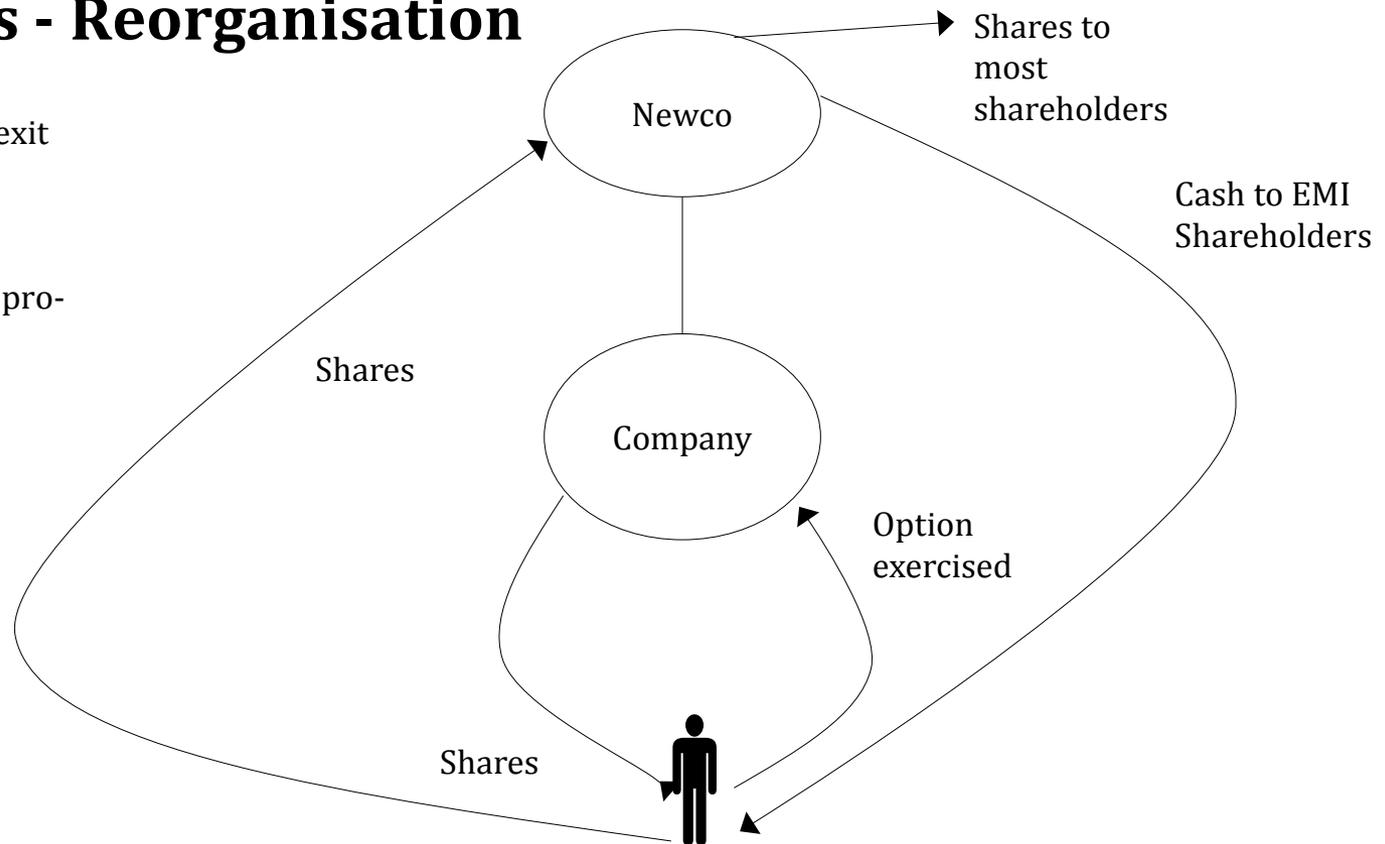
- Take care with share valuations (discounts can still apply)
- Excessive consideration subject to PAYE ∴ agree with HMRC
- This event needs to be in EMI agreement



4. Enterprise Management Incentives (“EMI”)

EMI exit events - Reorganisation

- Commercial reasons for exit as company will lose independence
- More chance of agreeing pro-rata value with HMRC in contrast with EBT route
- Define as exit event in agreement



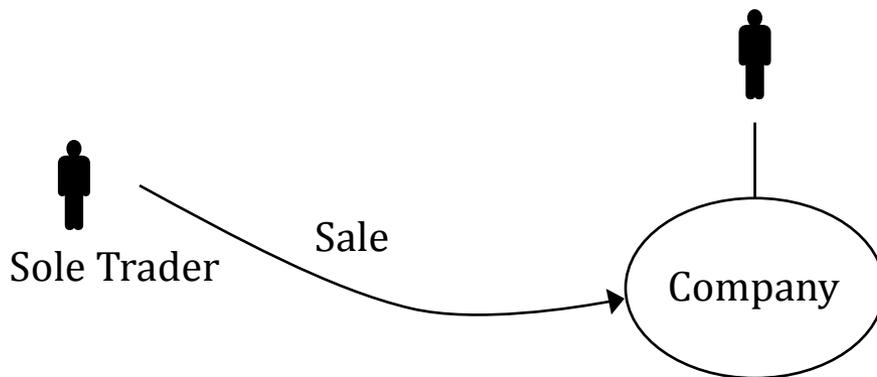
5. Employee shareholder status – key points

- Company gives shares to employees if they forfeit rights:
(Unfair dismissal and various lesser rights)
- They suffer no tax on disposal
- Value between £2,000 and £50,000
- Company may purchase shares at market value when employee leaves company
(and capital treatment will automatically apply)
- Anything over £2,000 is subject to tax and NI
- ∴ still have the issue of dry tax charge (but only up to £48,000)
- Also no big tax deduction in company.

5. Employee shareholder status – main uses

- Low value shares – eg. on leveraged buyout
- Start-up companies
- When EMI condition (eg. trading requirements) not met
- Cases where no Entrepreneurs' Relief (eg. sale taking place within a year)
- Where employee rights not seen as valuable
- No reason why can't mix this planning with 'growth shares'

6. Amortisation of goodwill on incorporation

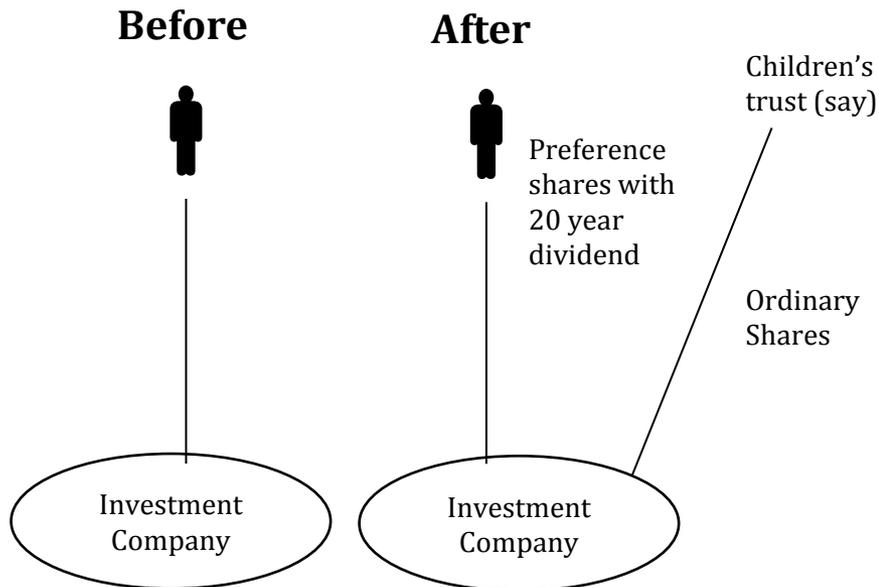


- Post 1 April 2002 goodwill amortised
- Even if connected!!
- Tax often reduced to negligible amounts
- Old rules but getting more and more relevant!

7. Non UK Domiciled Individuals – Remittances

- Remit foreign funds to the UK without a tax charge
- Either loan to, or acquisition of shares in the qualifying company:
 - Unlisted
 - Commercially trading (with at least 80% trading activities)
 - Letting income or income from R&D activities counts as a qualifying trade
- Possibility of EIS Relief
- 45 days grace on either side

8. Inheritance tax planning for shares in investment companies



Idea

Erode value of shareholdings in investment companies over time to decrease taxable estate.

How it Works

Shares are restructured so that the bulk of value is in preference shares which pay a dividend over a finite period of time (say 20 years). Ordinary shares with low value are gifted.

Issues

- Valuation issues re converting ordinary shares to preference shares
- Possibility of making gifts of income free from IHT

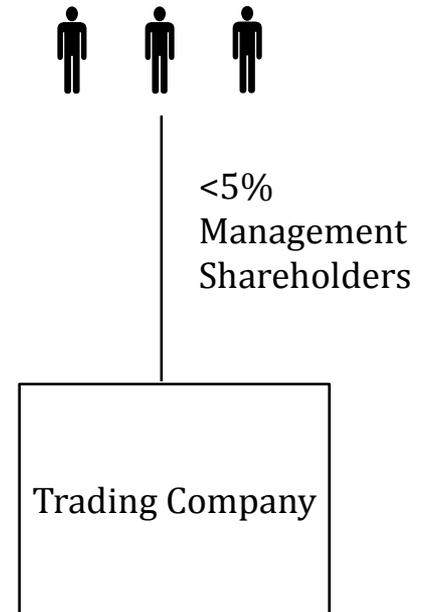
9. Restructuring Shares for Entrepreneurs' Relief

Issue

- Small Shareholdings owned by management
- There will be no Entrepreneurs' Relief on sale

Solutions

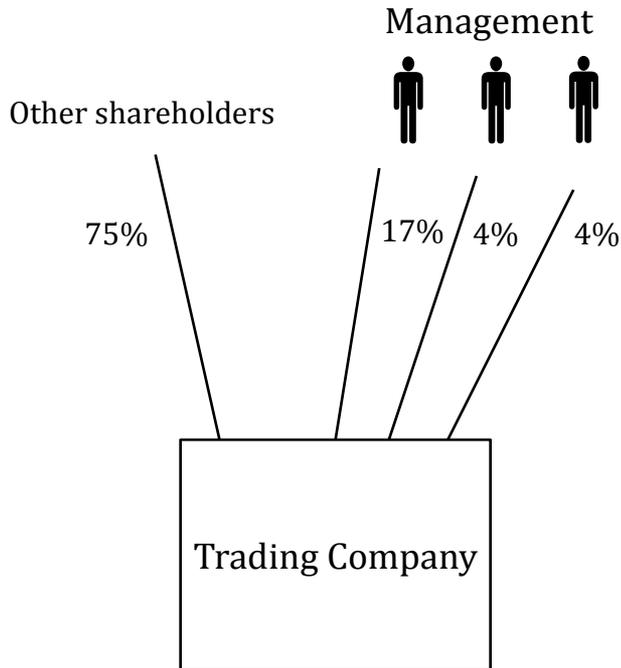
- Issue more voting shares with limited capital rights
- Management Holding Company



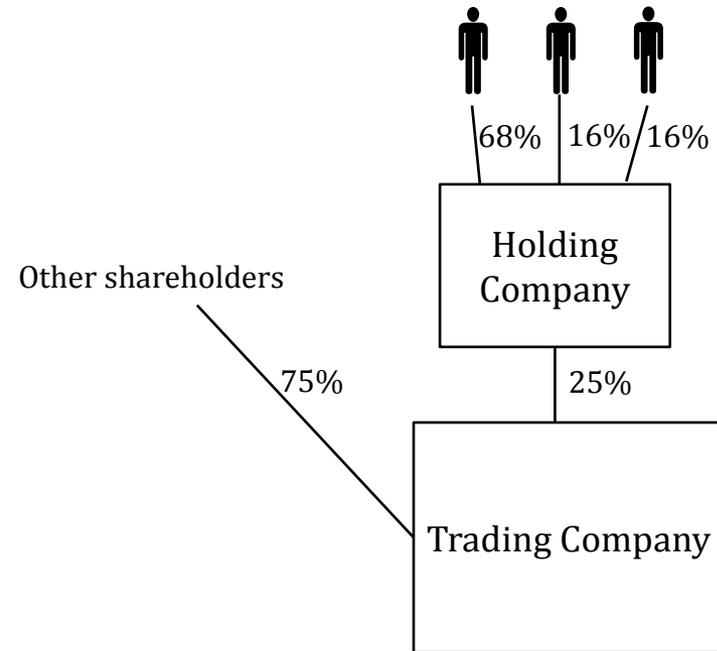
- Problem

9. Restructuring Shares for Entrepreneurs' Relief Management Holding Company

Before



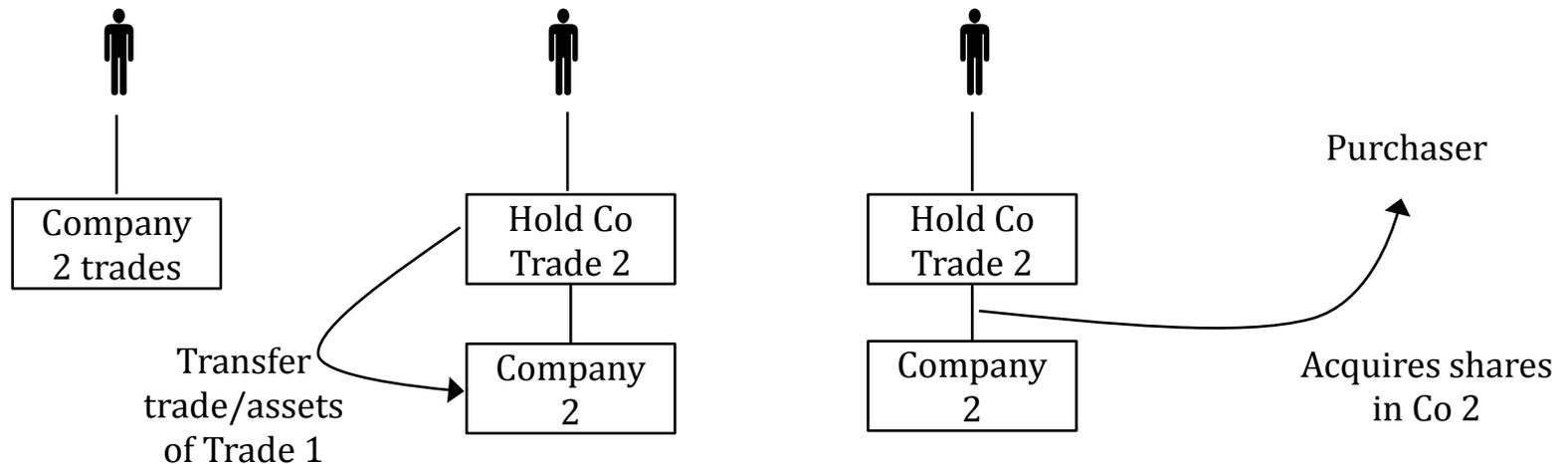
After



New Structure needed for 1 year

10. Substantial Shareholdings Exemption (“SSE”)

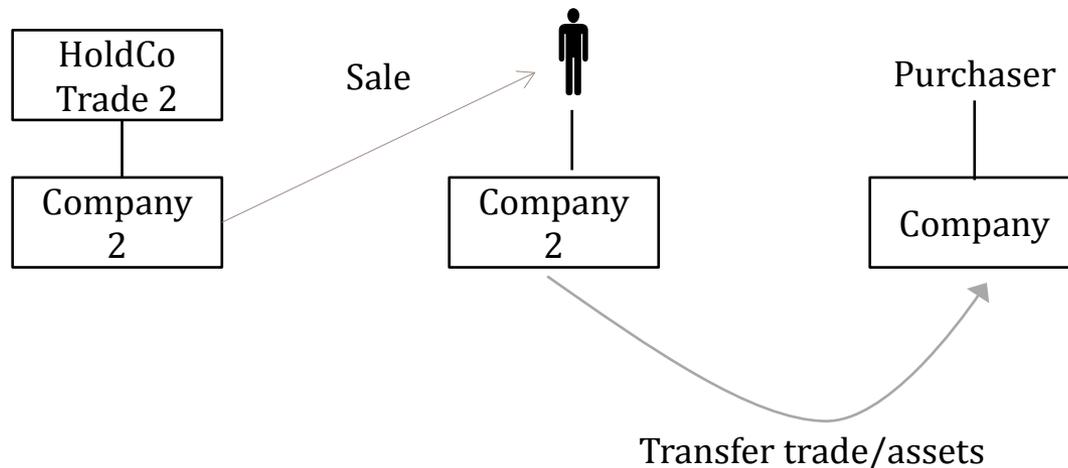
- Company carries on multiple trades
- Sale of trade to a purchaser is a capital gains disposal which is subject to corporation tax
- Could transfer one of the trades to a subsidiary company and sell the shares to purchaser.
- SSE exemption applies resulting in no corporation tax being due



10. Substantial Shareholdings Exemption (“SSE”)

Use of a Middle Man

- But purchaser wants goodwill (amortisation relief)
- Best of both worlds?
- Use middle-man



The HMRC Employee Benefit Trust Settlement Opportunity



9 December 2013

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The EBT Settlement Opportunity

Contents

- Background to EBTs and EBT schemes
- Why HMRC have been challenging EBT arrangements
- What the Settlement Opportunity is all about
- Pros and cons of settling
- Our experience

The EBT Settlement Opportunity

What is an Employee Benefit Trust (“EBT”)?

- Trusts(usually discretionary)
- Employers contribute amounts to be held for the benefit of their employees and/or employees’ families
- Beneficiaries can include shareholders and their relatives
- Used often as bonus pots and in employee share schemes

The EBT Settlement Opportunity

EBT Schemes

- EBTs used to facilitate tax planning with long term deferral/mitigation of tax and NICs
- Typical schemes:
 1. EBT used to make loans to employees (sometimes via subtrusts)
 2. EBT appoints funds onto subtrusts which are used as investment vehicles

The EBT Settlement Opportunity

HMRC's view of schemes

- HMRC Spotlight 5 - planning is “ineffective”
- Tax and NICs arising at point when assets allocated by the Trustees to employee
- PAYE/NIC withholding obligation arises on employer/trustee

The EBT Settlement Opportunity

HMRC's view of schemes

- Possible lines of attack:
 - Re-categorisation of payment which the employee was already entitled to – therefore earnings
 - No reality of loan ever being required to be repaid

The EBT Settlement Opportunity

Disguised Remuneration

- New legislation introduced from 9 December 2010
- Amounts treated as earnings where as a result of a 'relevant step' a third party 'earmarks' assets for employees.
- Can apply in a wide variety of situations

The EBT Settlement Opportunity

What is the Settlement Opportunity?

- Opportunity to resolve enquiries and settle historic tax liabilities in relation to EBTs
- HMRC published stance is that all taxes must be paid (Tax/NIC/IHT)
- Interest will be applied but in most cases settlement will be available without the imposition of penalties

The EBT Settlement Opportunity

Weighing up the benefits of settlement v litigation

- Prospect of lengthy process of litigation
- If settlement is reached then funds should be able to be distributed without further tax or NIC (“Paragraph 59 credit”)
- Are HMRC in time to challenge? (depends on disclosure)
- Possibility of ‘tax free’ growth for assets held within the EBT
- Corporation tax relief may be available.

The EBT Settlement Opportunity

Weighing up the benefits of settlement v litigation

- Company may be able to settle without 'grossing up'
- Avoids having to give onerous indemnities in case of a sale
- May be flexibility in negotiations with HMRC e.g. in relation to determining the point at which tax is recognised

The EBT Settlement Opportunity

What we have been doing

- Carried out a number of case reviews for employers
- Advising employees on their position
- Engaged in dialogue with the HMRC EBT Taskforce
- Opportunity to put cases forward (no-names basis if required)

Using Capital Reductions to Save Tax



9 December 2013

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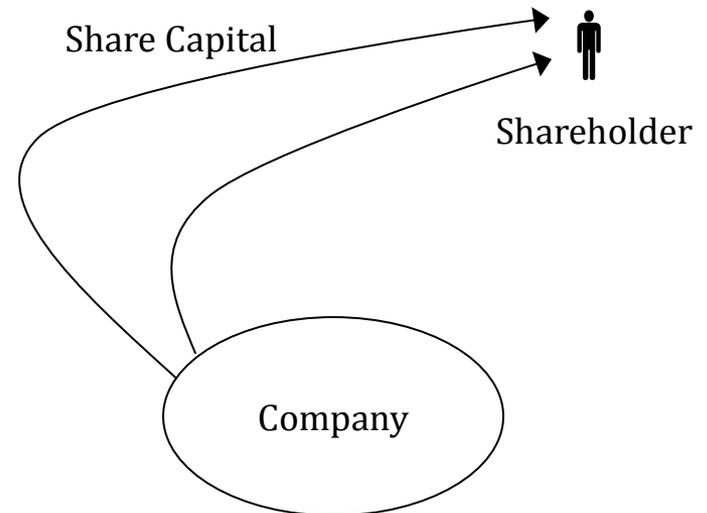
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Overview

- Recap on the concept
- Transactions in securities legislation
- Appropriate scenarios
- Case Study 1 – Reorganisation later followed by a capital reduction
- Case Study 2 – The ‘magic’ uplift in capital reduction demerger
- Take home messages

Capital Reductions - Recap

- If company has significant share capital then consider a reduction
- Easy since Companies Act 2006 removed the need to go to Court
- Legislation is clear that this must be treated as capital in the tax return
- Therefore choice of 30.56% / 25% income tax or 10% on capital reduction (assuming Entrepreneurs' Relief).
- Watch out for Transactions in Securities legislation!



Capital Reductions - Recap

Effective Tax Rates

23% corporate rate / 45% income tax rate

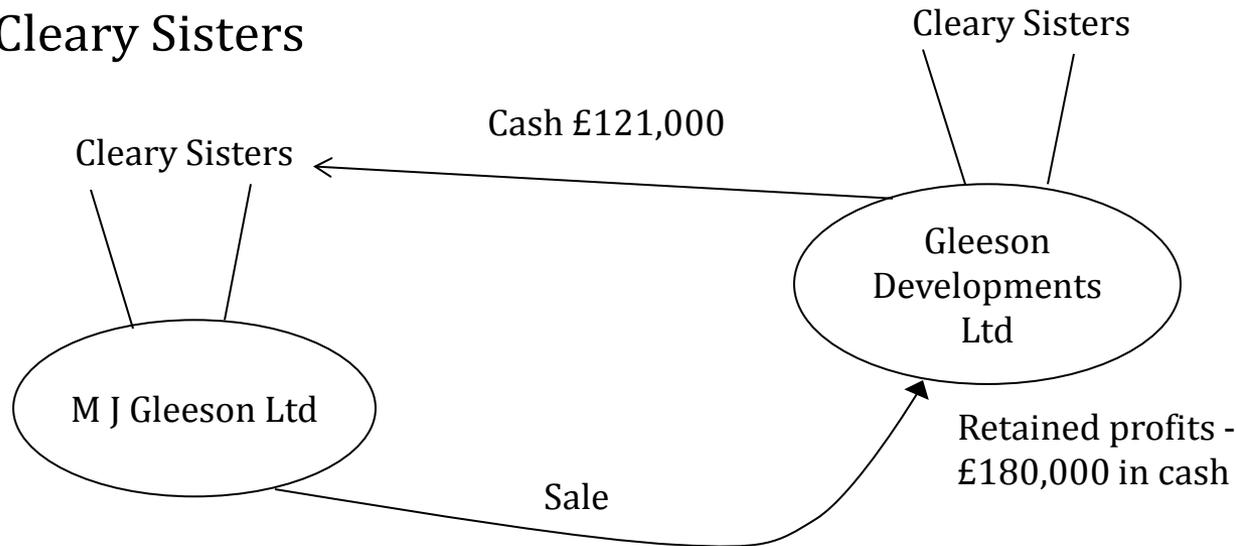
	Salary	Dividend	28% CGT	10% CGT
Effective Rate	53.4%	46.5%	44.6%	30.7%

Transactions in Securities Legislation

- Fairly complex legislation
- HMRC can counteract by taxing capital as income
- Various conditions
- Counteraction means taxpayer has to pay the difference between income tax and capital gains tax
- How did legislation come about?

Transactions in Securities Legislation

..... Cleary Sisters



- Sell M J Gleeson Ltd to Gleeson Developments Ltd
- Gleeson Developments Ltd use retained profits to buy
- HMRC counteracted and charged proceeds to income tax

- BUT some good news.....

Transactions in Securities Legislation

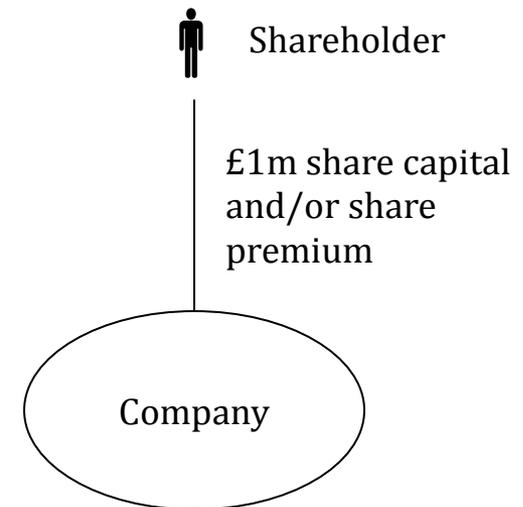
The Good News

- Unlike most legislation not self-assessable
- Onus all on HMRC!
- No possibility of penalties
- But HMRC have 6 years from end of tax year to counteract
- Defence against capital reduction ? (more later)
- Seek clearance?

Appropriate Scenarios (we need share capital)

1. Simple Case

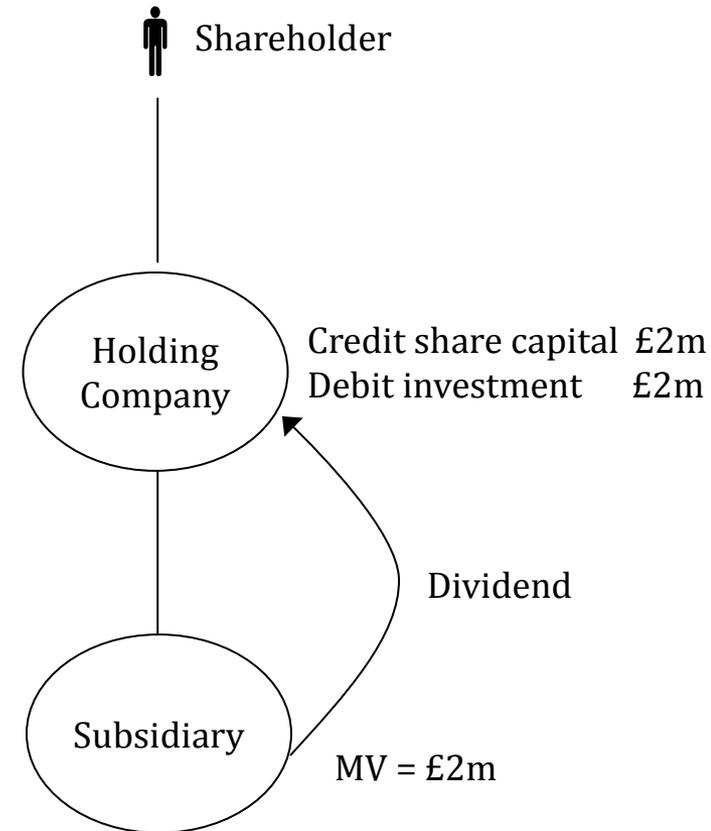
- Large share capital subscribed at start
- Unusual
- Probably low risk of transactions in securities applying
- May be relevant for EIS subscriptions after 3 year period (and then tax rate is nil!)



Appropriate Scenarios (we need share capital)

2. Post Reorganisation

- Share for share exchange rebases subsidiary to market value in holding company
- Need bona fide commercial reason to get clearance (e.g. de-risking subsidiary)
- Do not do this just to achieve capital reduction (right within transactions in securities legislation)
- Watch out for merger reserves (care needed with the legal work)

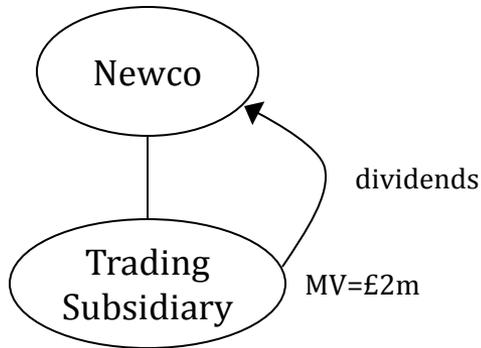


What do HMRC say?

- 11 February 2013 Guidance Note – Capital Reductions
- Confirm capital treatment and CGT
- No mention of Transactions in Securities
- Legitimate expectation?

Case Study 1 – Reorganisation followed by a capital reduction

January 2012



- New holding company put over trading company
- Share for share
- Clearance sought and granted
- No plans for extraction (capital reduction)

March 2012

- Company year end
- £800,000 director's loan account

December 2012

- Loan needs repaying to avoid Section 455 charge at 25%

• Dividend?

• How about capital reduction?
We have the capital!

• No clearance made

• Defence

5 April 2013

- Capital reduction taxed at 10% in tax return

Case Study 1 – Reorganisation followed by a capital reduction

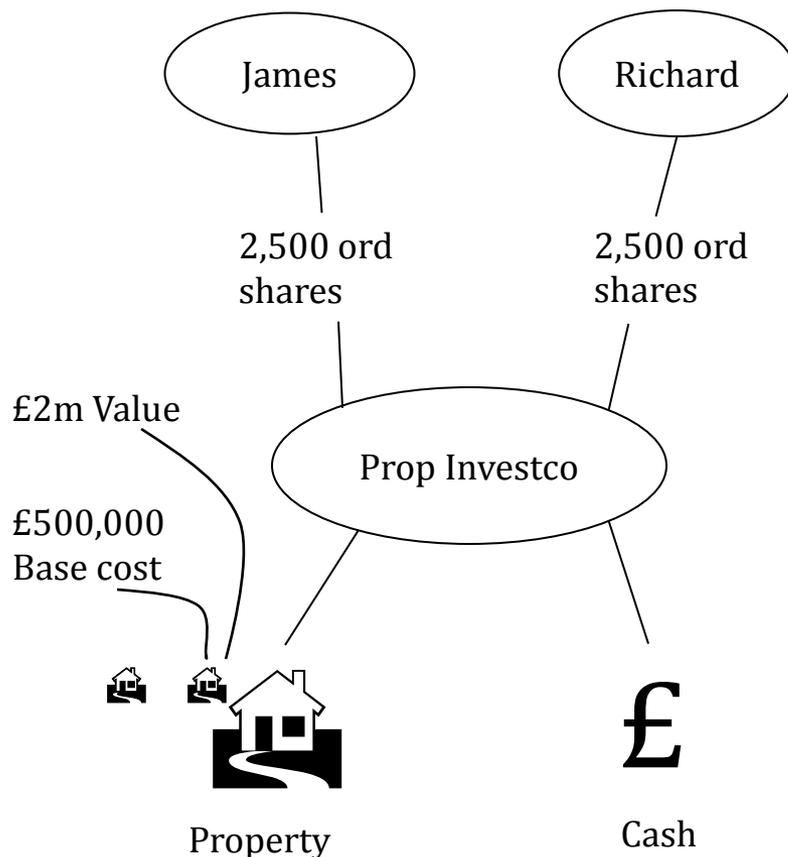
- No clearance because HMRC unhelpful in complex cases
- Don't need to give reasons for refusal
- Better to have no clearance than refusal
- But do not have certainty until 6 years have passed

Case Study 1 – Reorganisation followed by a capital reduction

Defence from transactions in securities legislation

- S685(6) ITA 2007
References in subsection (2)(a) and (b) to assets do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities.....
- This prevents legislation from attacking a simple capital reduction
- But does not protect if HMRC can argue that reorganisation was undertaken as a precursor to the capital reduction

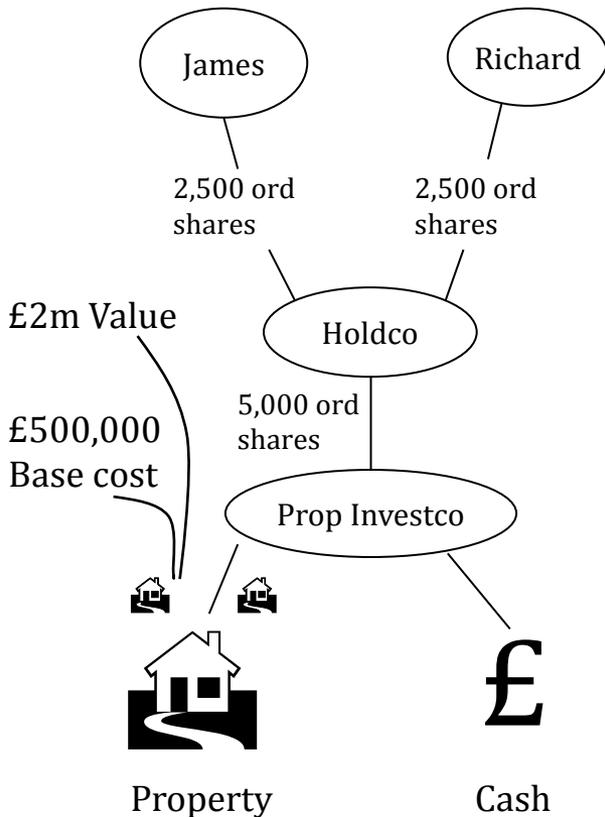
Case Study 2 – The ‘magic’ uplift in capital reduction demerger



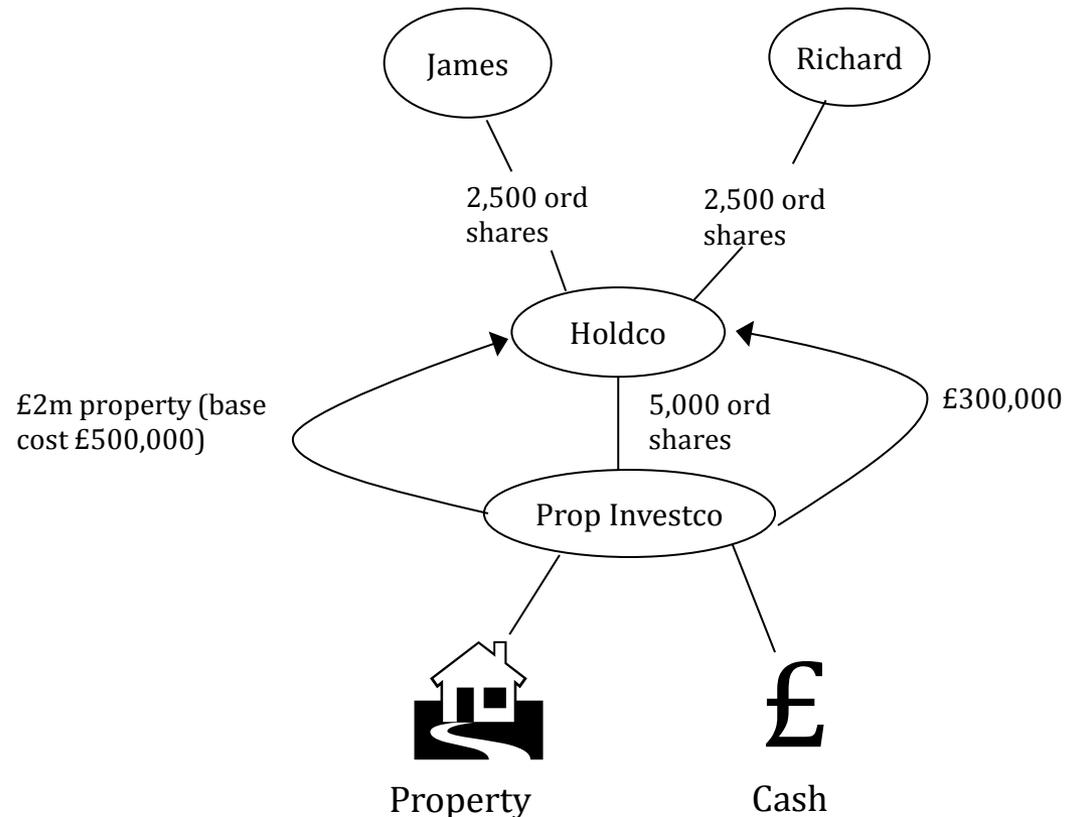
- Shareholders going separate ways
- Aim to split into two companies without tax
- Richard gets £2m of property (base cost £500,000) and £300,000 cash
- We can achieve this and more besides

Case Study 2 – The ‘magic’ uplift in capital reduction demerger

Step 1 – Insert Newco using share for share exchange

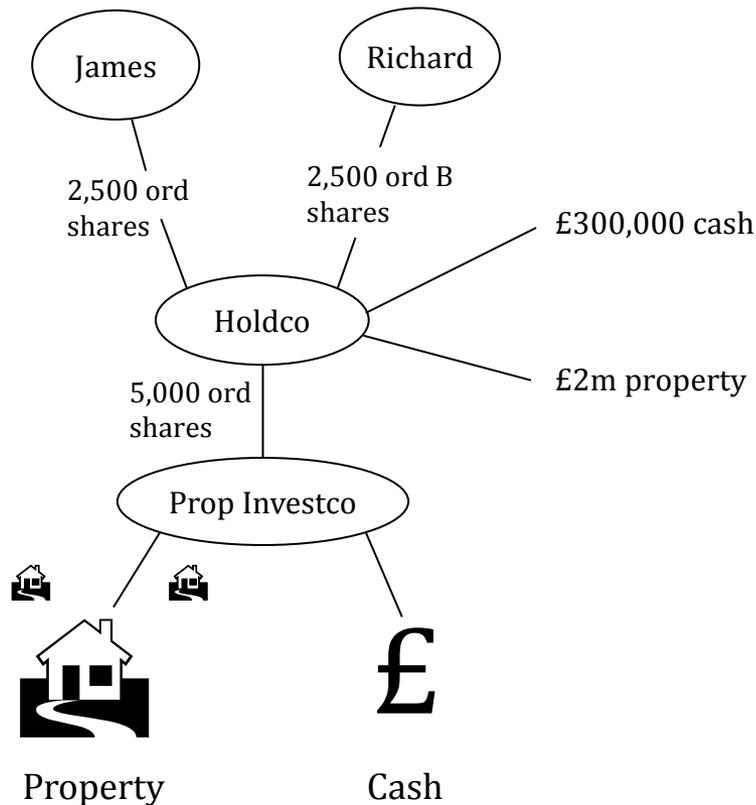


Step 2 – Cash and land paid up to Holdco as a dividend

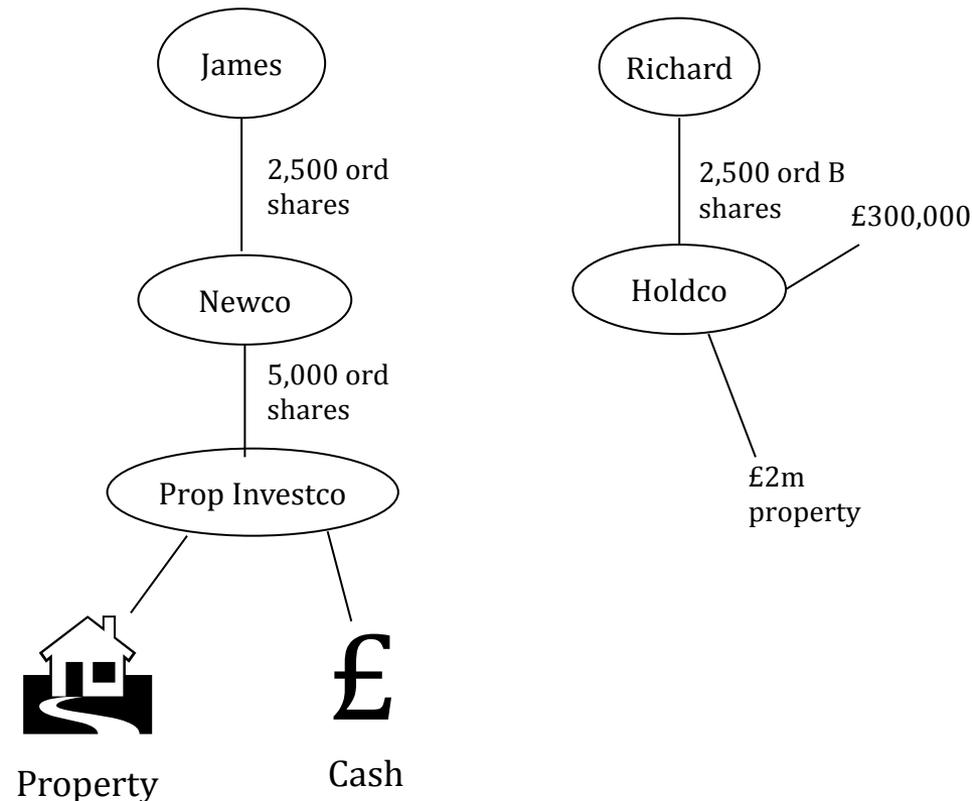


Case Study 2 – The ‘magic’ uplift in capital reduction demerger

Step 3 – Richard’s shares linked to property and cash

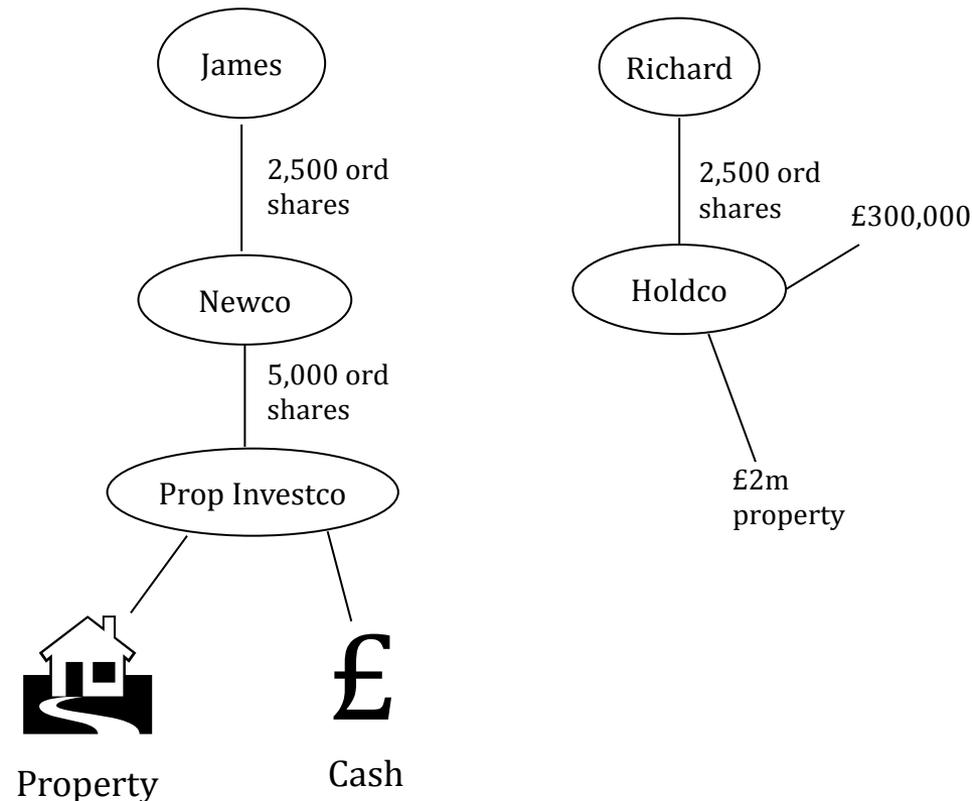


Step 4 – Holdco issues shares in Prop Investco to James in exchange for Holdco reducing share capital in respect of B ordinary shares



Case Study 2 – The ‘magic’ uplift in capital reduction demerger

- Various clearances sought from HMRC
- Neither James or Richard pay any tax
- **The magic:**
 - Degrouping charge when Holdco leaves group
 - Charge would arise in Holdco as an addition to proceeds on disposal of Prop Investco
 - But this is treated as a no gain/no loss transaction - \therefore charge disappears
 - But property now treated as acquired for £2m market value – inherent gain has disappeared



Case Study 2 – The ‘magic’ uplift in capital reduction demerger

- But be careful!
- Tax uplift should be seen as a ‘bonus’ from a commercial transaction
- Do not let the tax uplift drive the transaction
- Include intentions in clearance letter to HMRC
- Also don’t forget that you have done this (good file records)

Take home messages

- Capital reductions can significantly cut the cost of cash extraction
- Client needs to know risk of transactions in securities legislation and understand that there is a defence
- Capital reductions can be a useful mechanism for demerging companies
- In certain circumstances a demerger through a capital reduction can give rise to tax-free uplift in base cost

ANY QUESTIONS?

Pensions – avoiding the 55% charge and other issues



9 December 2013

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Managing Partner

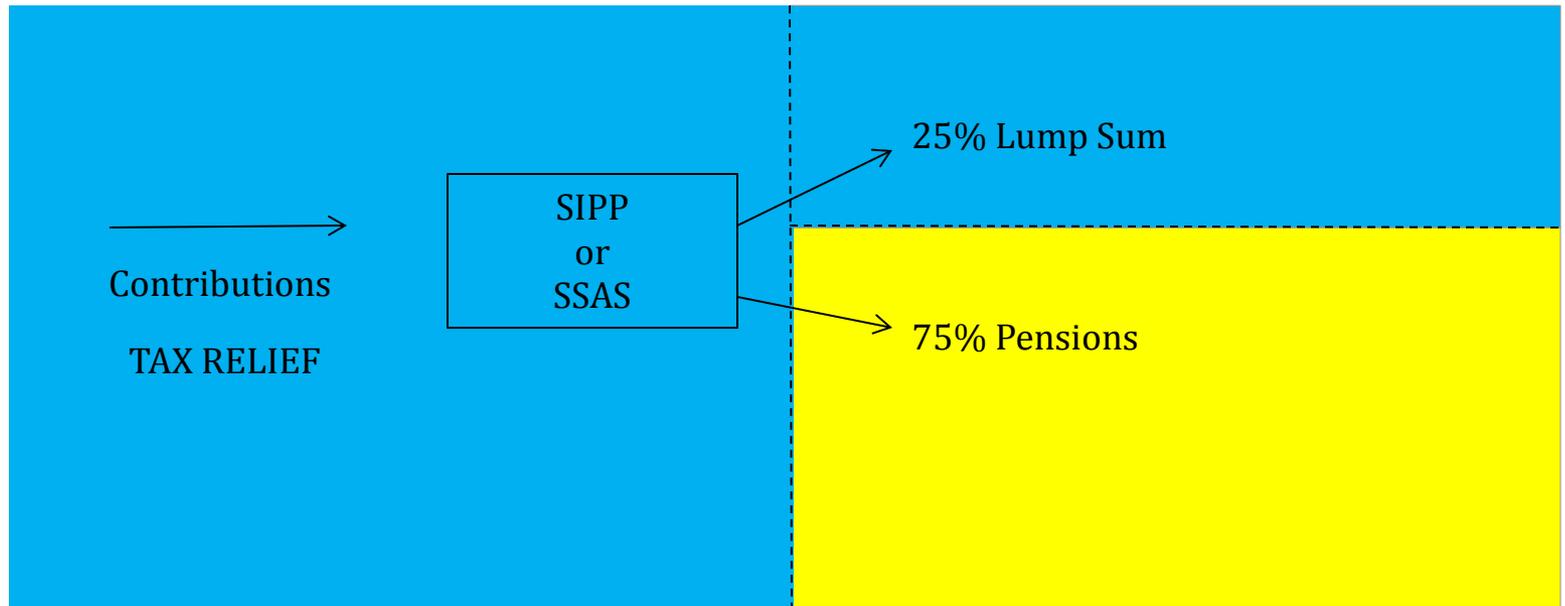
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Pensions – avoiding the 55% charge and other issues

- UK regulated schemes and QROPS
- Unapproved schemes
- Alternative saving vehicles

UK regulated schemes



-  TAXABLE
-  TAX FREE

Company as Investment Vehicle

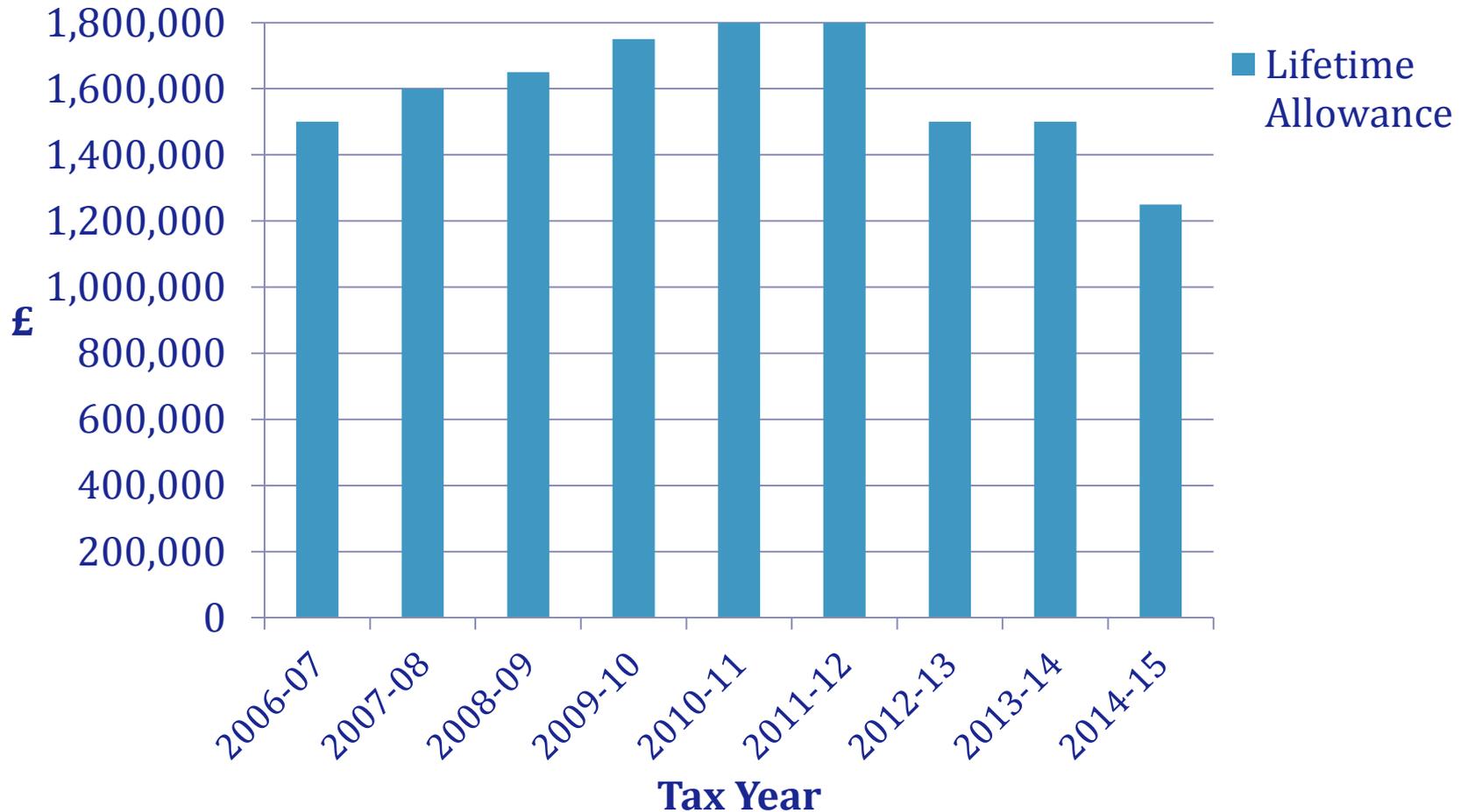
	UK Company	Pension Scheme	Offshore Bond
Tax relief contribution	No	Yes	No
Tax in vehicle	20% (Dividends Nil)	Nil	Nil
Investments	Unlimited	Restricted	Restricted
Size	Unlimited	Restricted	Unlimited
Tax on Exit (%)	Nil/25/30.6	20/40/45	20/40/45
IHT Relief	No	Yes	No

UK regulated schemes

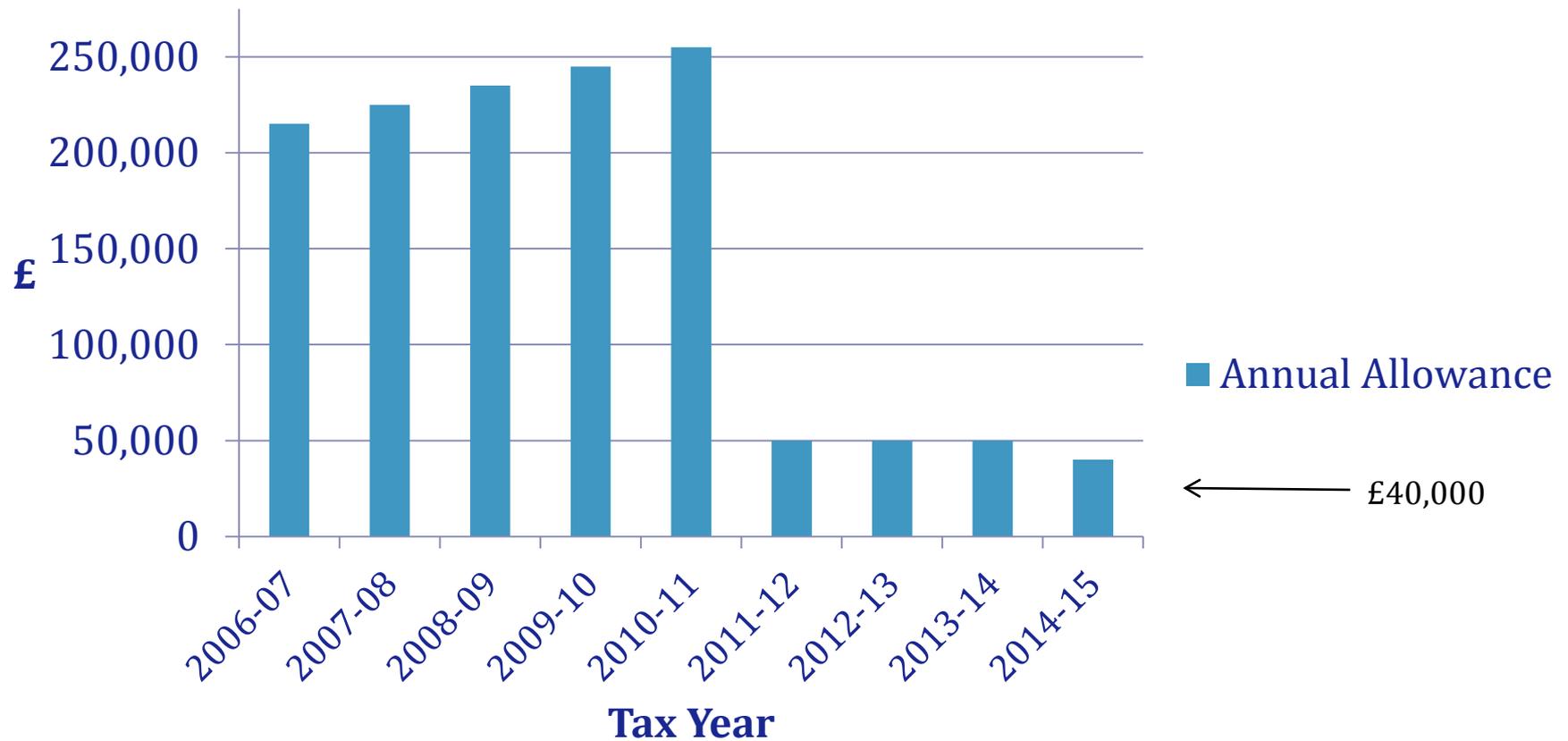
Reducing Benefits

- Lifetime allowance ↓
- Annual allowance ↓
- 55% charge on death
- QROPS transfers restricted

Pension – Lifetime Allowance



Pension – Annual Allowance



Taking benefits

- From age 55
- 25% tax-free cash
- Annuity
- Capped Drawdown
- Flexible Drawdown



Tax mitigation

- Maximise drawing
- Phased drawdown
- Scheme pension
- QROPS



Death benefits

The rules

- Pre-age 75, pre-tax-free cash
 - 100% tax-free

- Post-age 75, pre or post-tax-free cash
 - 100% spouse pension
 - 55% recovery charge



Flexible drawdown

- No limit on what can be drawn
- Criteria - MIR of £20,000
 - State pension
 - annuities
 - final salary
- Subject to highest marginal rate on tax
- Gifts out of surplus income



Client scenario

- Client is 65 years old
- Income £60,000 per annum
- Existing 'secured' pensions
 - £9,000 State pension
 - £3,000 final salary
- £1.2m SSAS



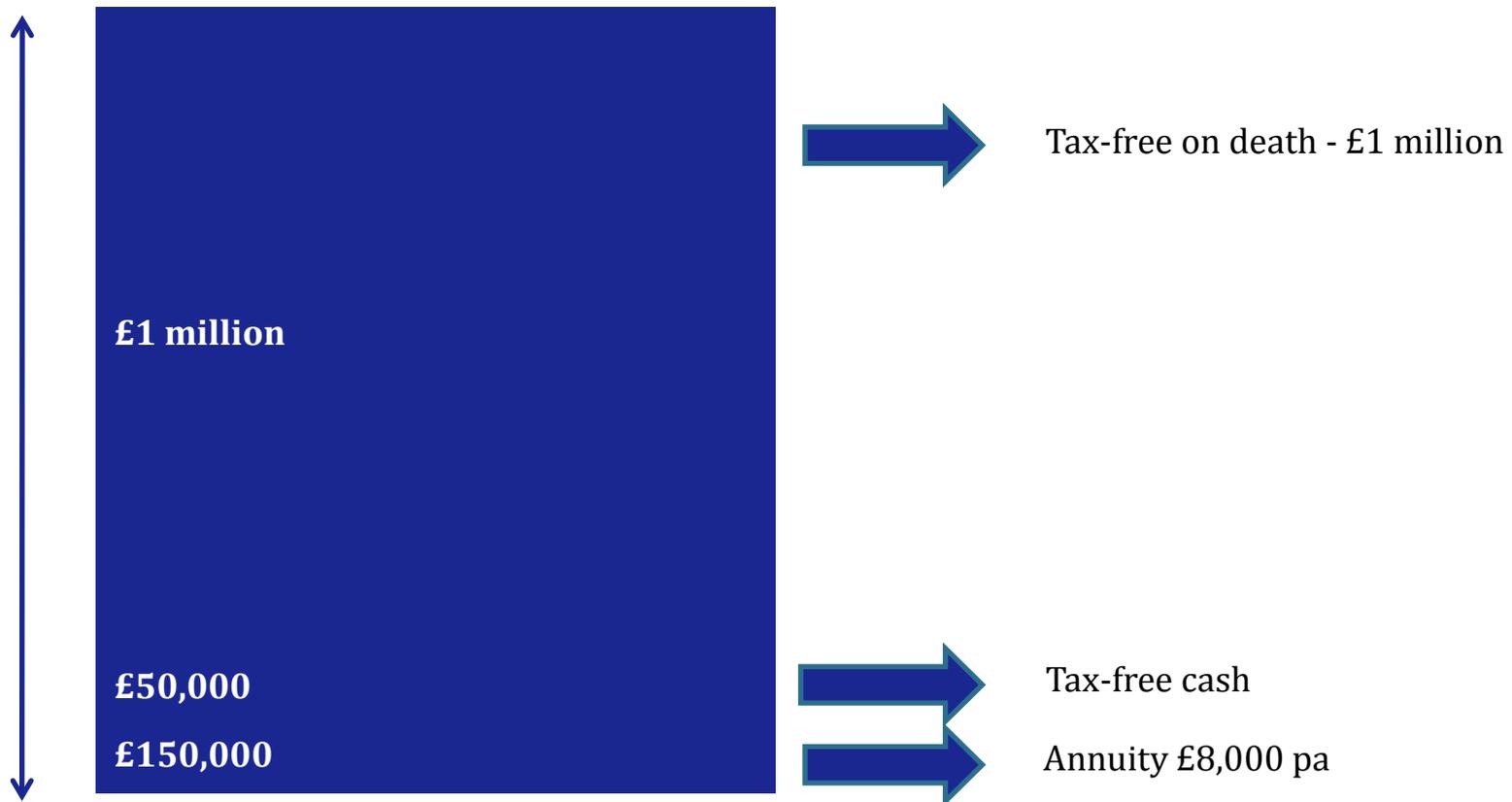
Capped drawdown

Traditional Route

- Crystallise enough fund to provide income
- £196,785 to crystallise (£1,003,215)
- Tax Free Cash £49,196
- Income £10,804
- Next Year more crystallisation – further £200,000
- 55% tax charge activated
- Alternative

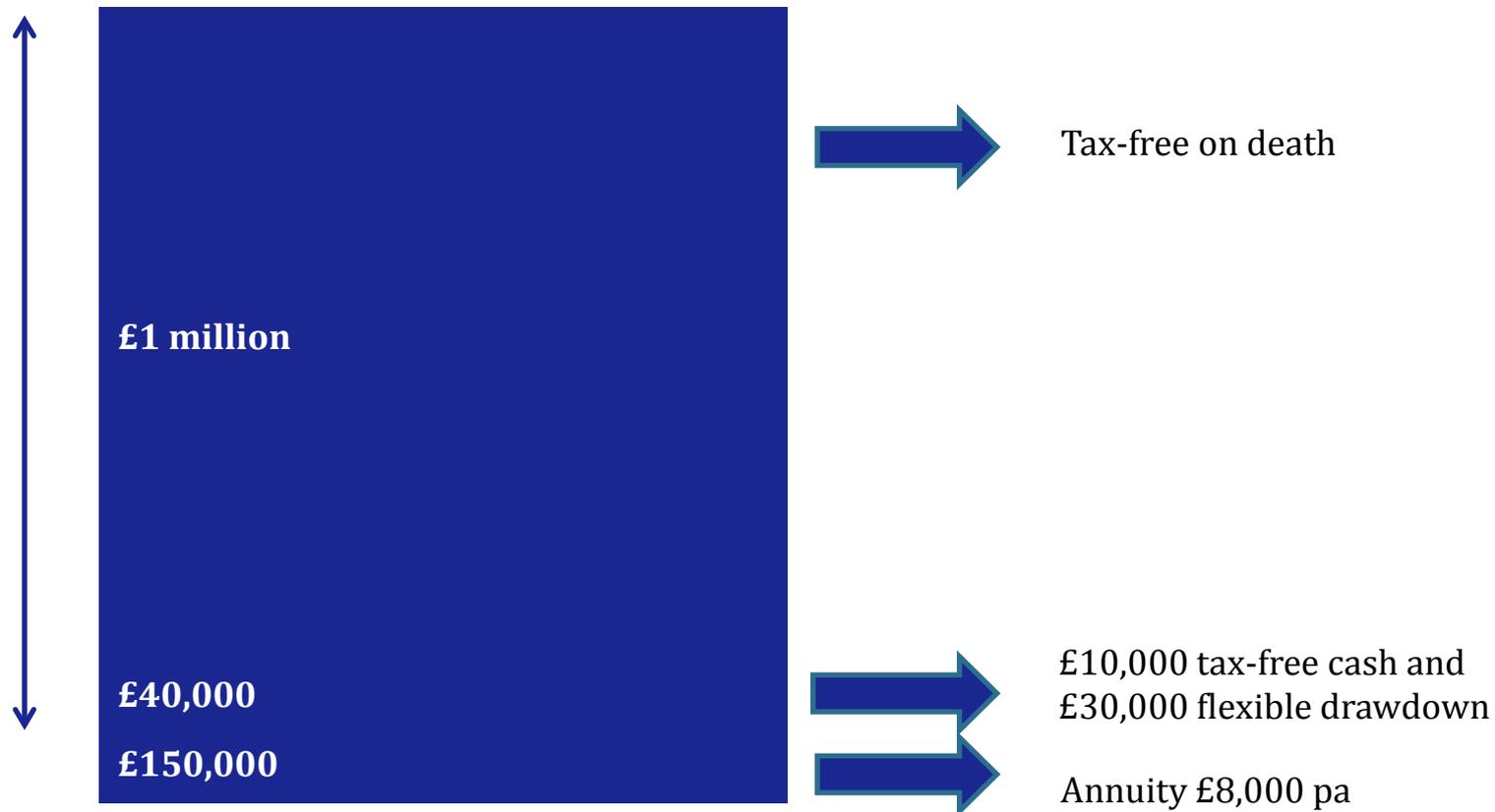
Flexible drawdown

Solution – year one



Succession planning

Solution – year two – 4% growth



Scheme pension and guarantee period

Family pension scheme

- Objective - capital preservation for family
- A variation on capped drawdown
- Allows a higher pension than capped drawdown to be maintained
- Accelerates capital transfer to family
- Continued payments after death using a guarantee period
- A powerful mechanism to mitigate tax exposure
- ‘Reconstruction required’

Scheme pension - guarantee period

Scheme pension

- Adopt new scheme rules
- Income (**subjective vs objective**)
 - Actuarially assessed on a case-by-case basis
 - Health
 - Underlying asset allocation
 - Triennial reviews
 - Payment may continue after death using a guarantee period

Scheme pension - guarantee period

Benefits of the guarantee period on death

- Maximum 10-year guarantee period
- Paid to any person(s)
- Payments not part of member's estate - no IHT
- Income is taxed at recipient's marginal rate only
- Exhaust fund within guarantee period

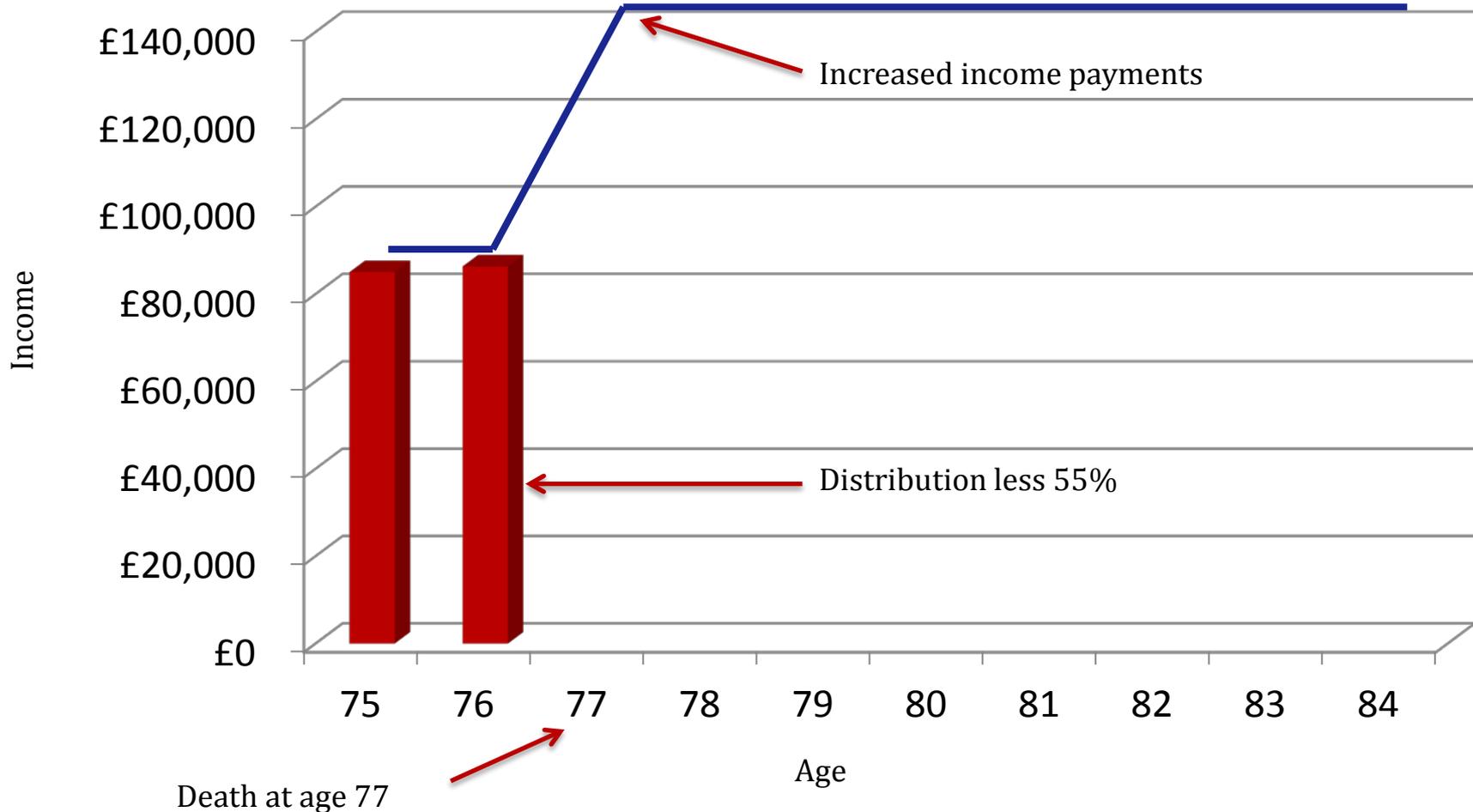
**'Can ensure fund is paid out subject to income tax, not
55% tax'**

Scheme pension – distinct approach

Guarantee period – how it works (assuming a 4% return)

Age 75		
Fund	-	£1,000,000
Scheme pension	-	£91,125 p.a. (10-year guarantee)
Terrie dies after 2 years		
Residual fund	-	£924,619
Income payments	-	£126,858 p.a. (to exhaust fund over 8 years)
Income tax liability		
Higher - 40%	-	£405,945
Basic - 20%	-	£202,972
compared with recovery tax charge		
(55% tax)	-	£503,504
Tax saving	-	£97,559 to £300,532

Scheme pension – guarantee period



Unapproved pension schemes

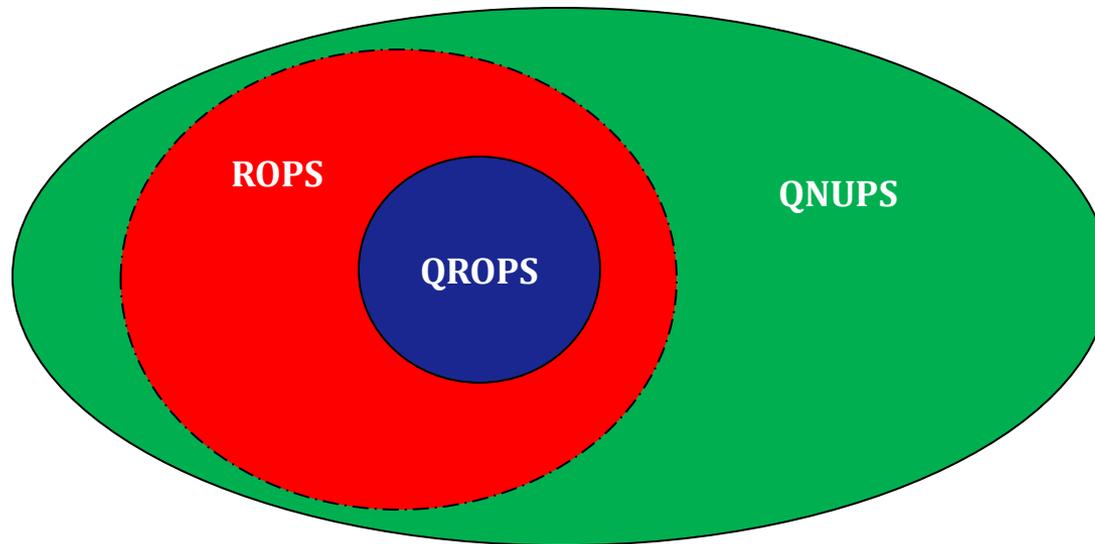
- Company schemes - EFRBS (non resident to avoid UK tax)
- Personal schemes – QNUPS (non resident by definition)

EFRBS – Employer Funded Retirement Benefit Scheme

- Defined by S393A ITEPA 2003
- Must provide “relevant benefits”
- No CT deduction
- Caught by disguised remuneration – i.e. upfront income tax for employee

NO LONGER ATTRACTIVE

Overseas pensions schemes recognised by UK legislation



- ROPS = Recognised overseas pension scheme
- QROPS = Qualifying recognised overseas pension scheme
- QNUPS = Qualifying non UK pension scheme

QROPS

- 2012 rules tightened – benefits exemption test
- Guernsey closed – 157E schemes not accepted
- Malta; place of choice
 - EU location
 - Only taxable where member is resident

QROPS – Avoiding the 55% tax on death

- 5 year member non residence requirement
- For UK residents – distribute 5 years post death
- Use scheme annuity
 - segregate assets from pension
 - annuity capital fund escapes tax

QNUPS - Overview

- IHT free by statute
- No UK reporting
- Tax free growth – but possible local tax
- Flexibility of investment e.g.. residential property

QNUPS – Suitable for high earners

- No tax relief on contributions
- Guernsey – location of choice
- 30% tax free lump sum
- Pension taxable; 10% overseas relief

Conclusions

- There are solutions to 55% charge
- High earners - consider non pension vehicles – e.g., companies and offshore bonds
 - QNUPS have advantages
- Complex and ever changing area of tax

Thank you for your time and attention

Any questions?

