

# Offshore Planning for Ultra High Net Worth Individuals Using Corporate Family Investment Structures

24th March 2020

Family investment companies continue to prove popular as an alternative to trusts in wealth, estate and succession planning.

## **What is a Family Investment Company?**

A family investment company is a company used by a family in their wealth, estate or succession planning which can act as an alternative to a trust. Their use has grown significantly in recent years, particularly in instances where it is difficult for individuals to pass value into a trust without immediate tax charges but there is a desire to continue to have some control or influence over the family's wealth protection.

## **Benefits of a Family Investment Company include;**

1. If an individual has available cash to transfer into a company, the transfer into the company would be tax-free.
2. For UK domiciled or deemed domiciled individuals there would be no immediate charge to Inheritance Tax (IHT) on a gift of shares from the donor to another individual as this is deemed to be a potentially exempt transfer (PET). There will be no further IHT implications for the donor if they survive for seven years following the date of gift.
3. The donor can still retain some element of control in the company providing the articles of association are carefully drafted.
4. There is no ten year anniversary or IHT exit charge
5. They are income tax efficient for dividend income as dividends are received tax free into the company
6. Shareholders only pay tax to the extent that the company distributes income or provides benefits. If the profits are retained within the company therefore, no further tax would be payable, other than corporation tax as appropriate.
7. International families making direct investments into UK companies as individuals are liable to UK Inheritance Tax on those UK situs assets and it is also advisable

that they have a UK will to deal with those assets on their death. Making those investments through a non-UK resident family investment company removes the liability to UK inheritance tax and removes the need to have a UK will.

8. Memorandum and articles of association can be bespoke to the family requirements for example having different classes of shares with varying rights for different family members to suit their circumstances and to meet the wealth and succession planning objectives of the founders.

### **Trusts vs. Family Investment Companies**

Below is a comparison of key features and benefits to individuals, assuming that individual is not actually or deemed to be UK domiciled.

|                                     | <b>Trust</b>                                                                                                                          | <b>Family Investment Company</b>                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Who's in control?</b>            | Controlled by the trustees.                                                                                                           | Controlled by the directors.                                                                                                                                                                                                                                                                                                                                               |
| <b>Who benefits?</b>                | The value of the trust fund is for the benefit of the beneficiaries.                                                                  | The value of the entity belongs to the shareholders.<br><br>Shareholders hold shares, which may be of different classes and which may allow dividends to be paid to shareholders. It is difficult to change interests after inception without tax consequences and therefore, the interests associated with each shareholder may be considered less flexible than a trust. |
| <b>Flexibility around payments?</b> | Typically, a trust will be discretionary, so that the trustees have discretion over what payments, if any, are made to beneficiaries. |                                                                                                                                                                                                                                                                                                                                                                            |

Can you roll up income and gains?

It is possible to roll up offshore income and gains within a trust. Tax is paid when amounts are distributed to UK resident beneficiaries, chargeable to income tax to the extent there is accumulated income in the structure and capital gains tax if there are gains in the structure.

Laws in place?

Long established jurisprudence in family law and probate situations. Position continues to evolve.

A family investment company can roll up income and gains, however, to the extent the person who established the company still has an interest, income tax would be payable on an arising basis. It is also possible for the company to be incorporated offshore with UK directors. This would give rise to a corporation tax liability at company level but then no further taxes at shareholder level until amounts are distributed from the company.

Company law is well established.

**Governed by?**

Governed by a trust deed and a letter of wishes, both of which in most instances are private documents.

Governed by articles and shareholders agreement. The articles of a company are, in many jurisdictions, a public document and therefore any matters of a sensitive nature will generally be included in a shareholders agreement.

**Registration requirements?**

There is a requirement for any trusts with a UK tax obligation/liability to be included on a register of trust beneficial ownership. This private register is maintained by the HM Revenue & Customs in the UK.

Shareholders of Guernsey companies are included on a beneficial ownership register maintained by the Guernsey Companies Registry. Unlike the UK persons of significant control register, this is a private register.

**Taxed in Guernsey?**

No tax in Guernsey on income or gains.

No tax in Guernsey on income or gains.

### **Why Use a Guernsey Company?**

The company will pay tax at a rate of 0% on any profits that it generates.

Provided the company is incorporated offshore and the register of members is kept, as required, offshore it is possible to retain 'excluded property' status for IHT (apart from UK residential property).

The shares in the company are not a UK situs asset. If the company is a private Guernsey company, it does not need to file accounts. Whilst there is a beneficial ownership register for companies in Guernsey, this is private and not searchable by the public.

In contrast, a UK company would file accounts on public record, and directors and shareholders would be listed on Companies House, a free searchable website, whose shareholders have a UK situs asset regardless, of where in the world they live.

### **Additional Information**

If you require additional information on this topic, please contact your usual Dixcart adviser or speak to Steven de Jersey in the Guernsey office:

[advice.guernsey@dixcart.com](mailto:advice.guernsey@dixcart.com).