SQUIRE SANDERS

FAMILY INVESTMENT VEHICLES

There is an increasing appetite for new vehicles to replace trust structures in family wealth planning as a result of the operation of IHT charges over trusts. The imposition of a 20% IHT charge on the transfer of assets into the trust, the ten-yearly charge over assets and a potential exit charge makes a trust unattractive. Accordingly, a Family Limited (Liability) Partnership (FLP) or a Family Investment Company (FIC) is worth considering as alternatives in succession and wealth planning (but it should be noted that these are not without their own limitations).

This note briefly considers FICs and FLPs but specialist tax advice ought to be sought to really understand the complex tax implications of each option.

When Should I Use an FIC?

If the family has a lot of liquid investment/wealth the lower rates of tax applicable to corporates will mean funds can grow in a tax efficient manner by the use of a company.

How Does it Work?

Assets are introduced to the company and the shares are held by various members of the family as desired. The income and gains are taxed at lower rates in the company and the capital value is reflected in the shares which can be transferred to the next generation without any real loss of control.

What are the Downsides?

- An FIC will not provide complete asset protection (for creditors or a former spouse) and there is limited scope to defer benefit to children until they reach say 25.
- There are additional reporting obligations for a company as opposed to a trust which (as with an LLP) may make the family affairs public although a shareholder's agreement can remain private or the use of an unlimited company may alleviate this risk.
- Unlike with an FLP there will be an additional tax charge on the shareholders when they extract income from the company.

When Should I Use an FLP?

An FLP may be a suitable vehicle in the case of a property rental portfolio. Income will be taxable on each party in proportion to their profit share at a much higher rate than with a company. Care must be taken (as with an FIC) when diverting income to minors.

How Does it Work?

The parents can control the wealth by the use of a carefully drafted partnership agreement.

Shares in the partnership can be transferred to younger partners without any undesirable CGT or IHT charges.

What are the Downsides?

A limitation of an FLP is the danger of it becoming a Collective Investment Scheme and therefore becoming subject to the onerous regulatory constraints.

When is a Trust Really What I Want and How do I Make This Work for Me?

The flexibility that a trust provides should not be underestimated. If the assets in question are business property or agricultural property then these should qualify for IHT relief in their own right and no structure will be required (although you may still want the succession planning capabilities of a trust).

A trust will be tax neutral if transfers in can be covered by the £325,000 nil rate band available to both the mother and the father so transfers of up to £650,000 will not attract a 20% charge. After seven years, another £650,000 of IHT transfers in can be made.

If the family is non-UK domiciled then they will rarely need to be concerned with an FIC or FLP as with careful planning the IHT charges applicable to trusts can be mitigated.

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