



“Tax and the Entrepreneur – Latest Developments”





Eoin Kennelly, Director
Patrick Kinnane, Director

Thursday 12 April 2018

Tax and the Entrepreneur – latest developments

- Finance Act 2017 – Impact on Entrepreneurs
- Entrepreneur relief – recent experience
- Tax exemption on sale of property
- Tax Appeal Case on share buyback

2018 - Tax rates

- ▶ Income – 55% 
- ▶ Capital gains – 33% 
- 10% 
- 0% 

Finance Act 2017 and the Entrepreneur

- ▶ Bad news



- ▶ Good news



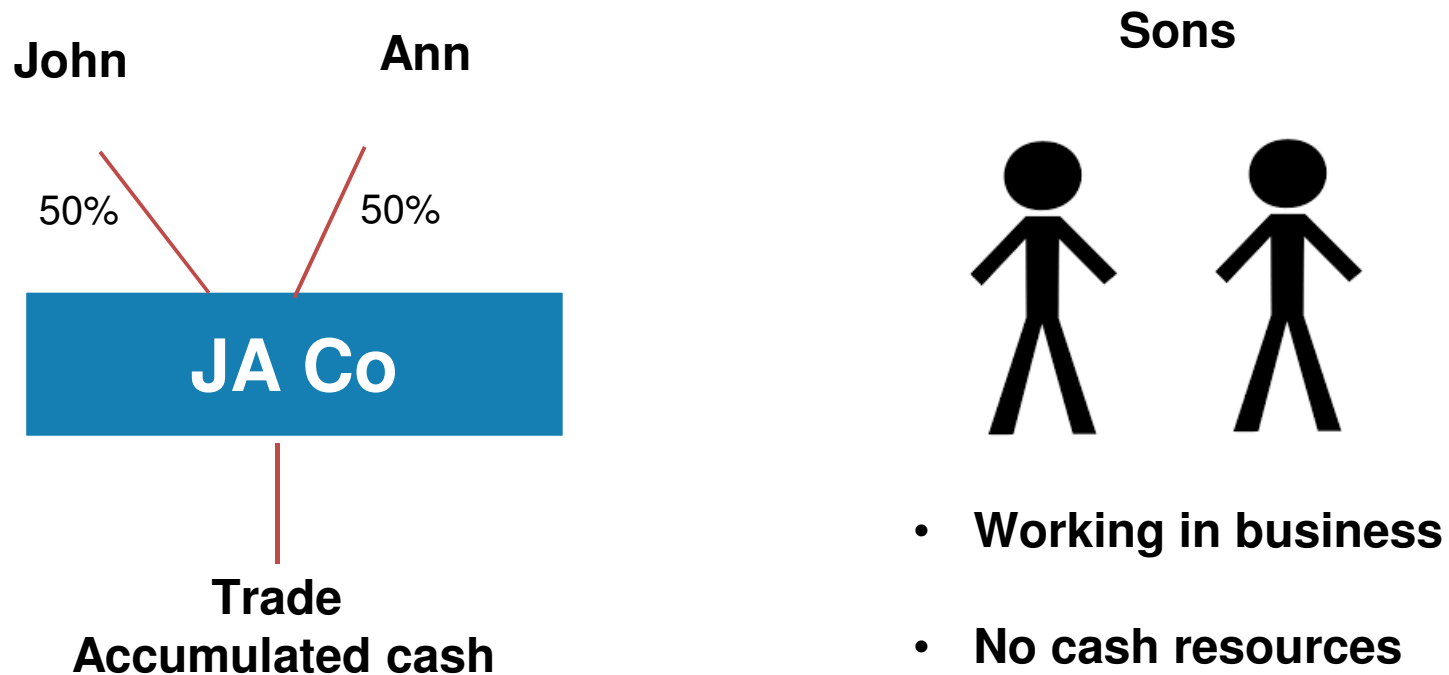
New Legislation – FA 2017

▶ Negative impact on



- Transfer of family companies to next generation
- Management Buy Outs (MBO)
- Potential to convert capital gains into income distributions

Family Company – FA 2017



Family Company – FA 2017

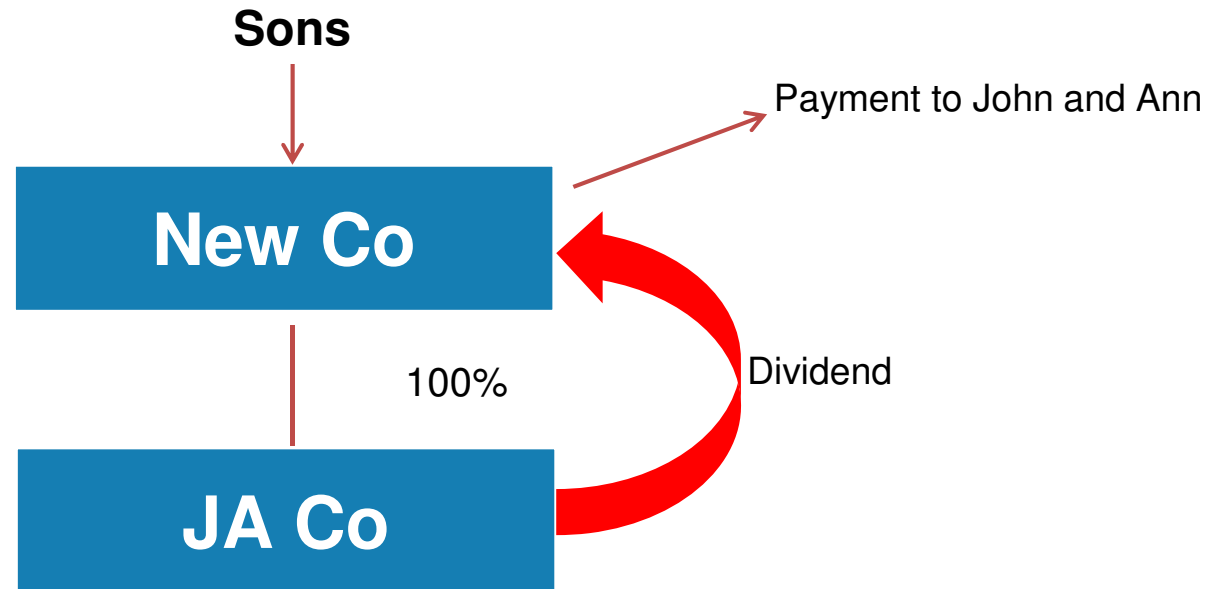


New Co purchases JA Co from John and Ann

Family Company – FA 2017

- ▶ John and Ann (husband and wife) each own 50% of trading company (JA Co)
- ▶ Retirement and pass the business to their sons for cash consideration
- ▶ Accumulated cash within JA Co from trading profits
- ▶ Sons do not have cash resources to fund the purchase

Family Company – FA 2017

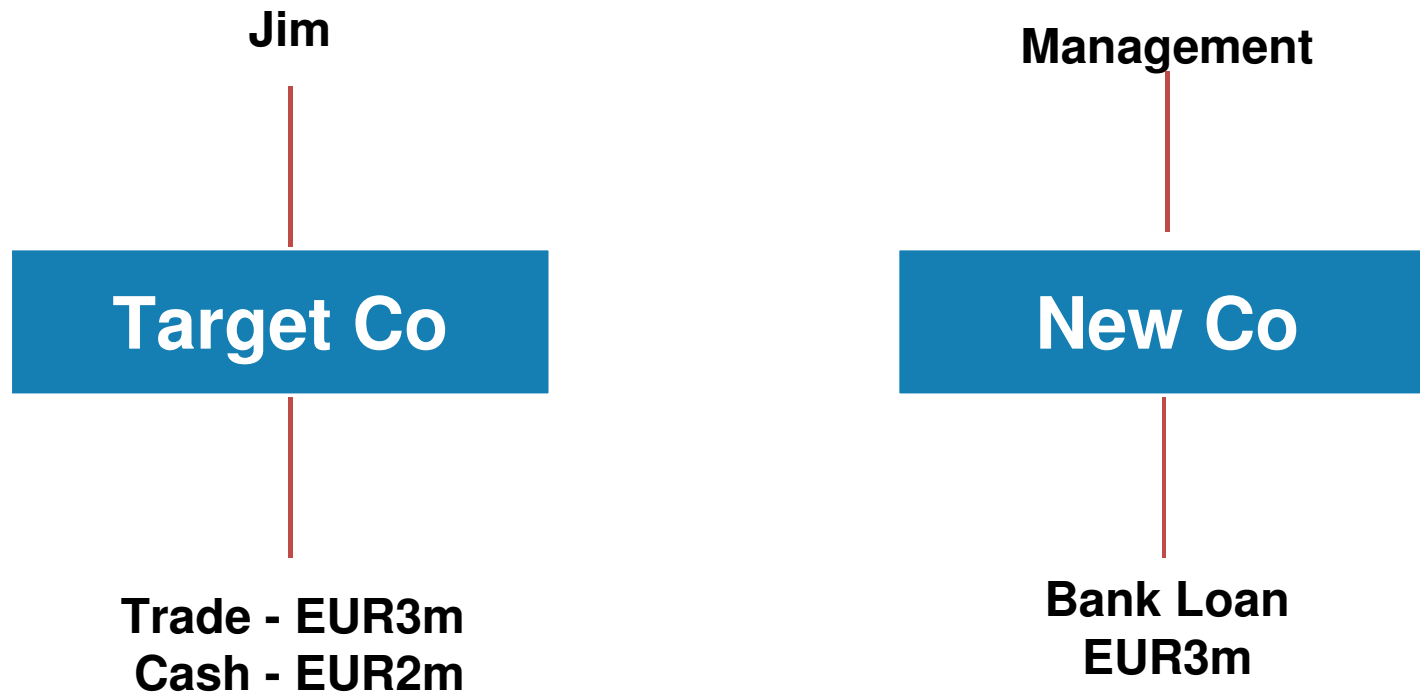


- ▶ Dividend paid by JA Co to New Co
- ▶ New Co pays John and Ann
- ▶ Payment to John and Ann - capital gains tax treatment ??

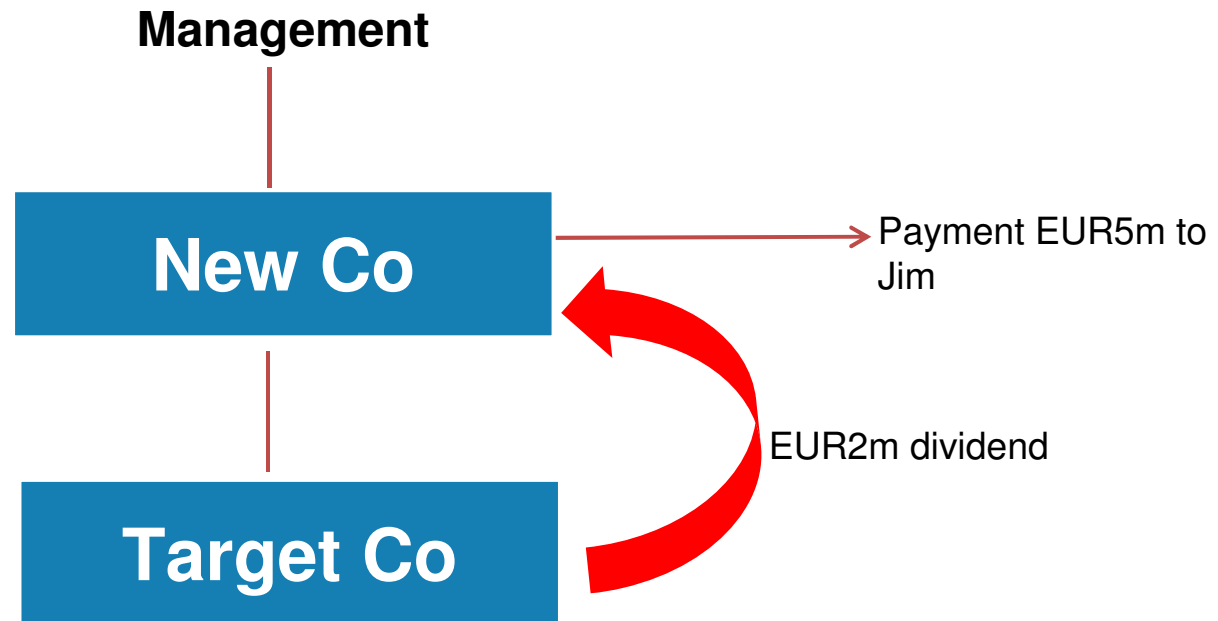
Family Company – FA 2017

- ▶ Shareholder (John and Ann) of a company (JA Co) enters arrangements directly or indirectly with another company (New Co) whereby
 - Shareholder (John and Ann) in a company (JA Co) sells shares to another company (New Co), and
 - consideration is paid directly or indirectly out of the assets of the first company (JA Co)
- ▶ Consideration treated as an income distribution

Management Buy Out (MBO) – FA 2017



MBO – FA 2017



- ▶ EUR3m funded by bank debt – CGT
- ▶ EUR2m indirectly funded by dividend from Target Co – Income tax

Revenue Guidance – FA 2017

- ▶ Legislation – concern it applies to commercial transactions
- ▶ Revenue state it will not apply to bona-fide financing arrangements entered into by purchaser
- ▶ Revenue will decide what are bona-fide arrangements
- ▶ No advance opinions = Uncertainty

Solutions?



- ▶ Liquidation of Trade Co – CGT



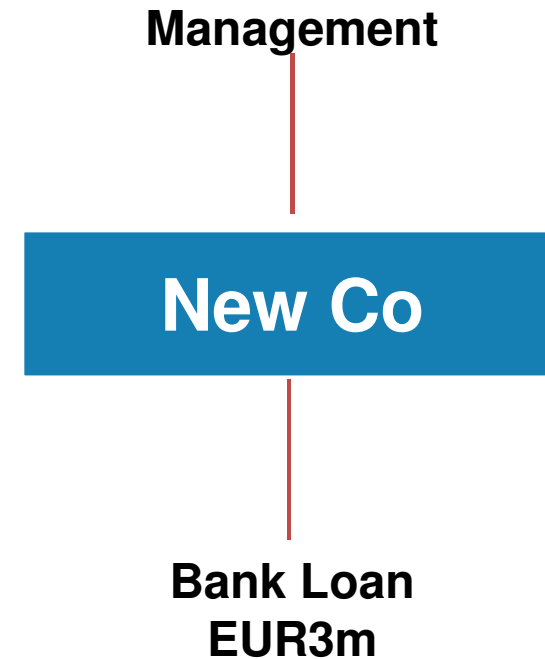
- ▶ Share buybacks – CGT if conditions met



- ▶ Short term bank finance

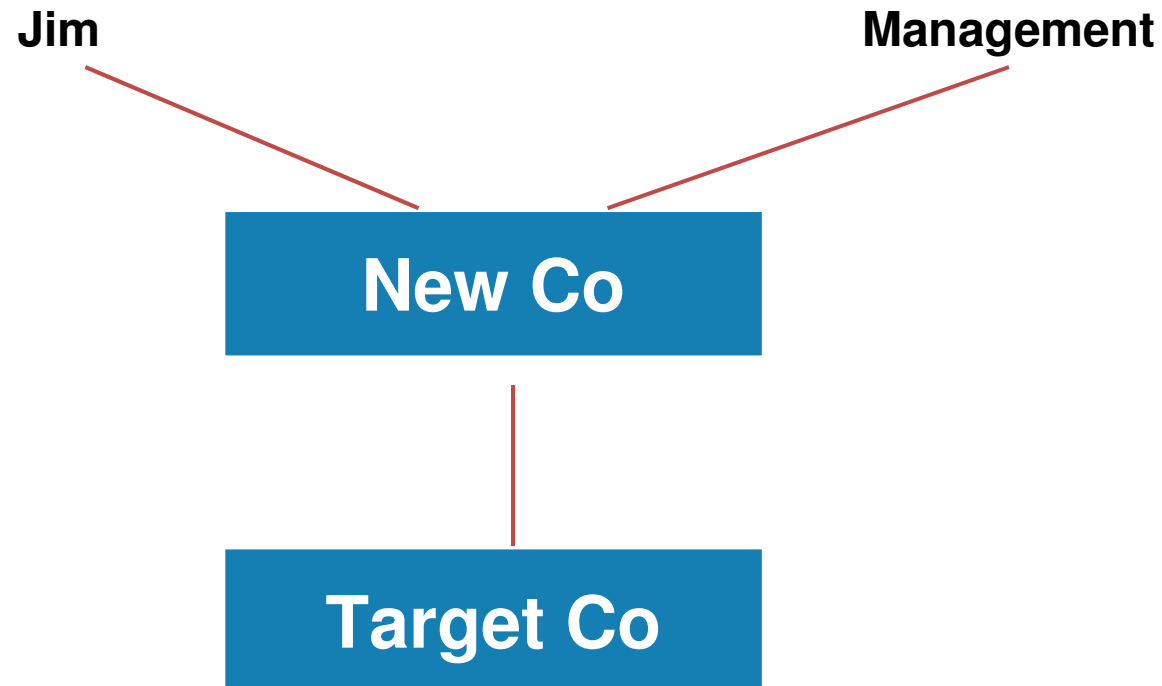


MBO – FA 2017



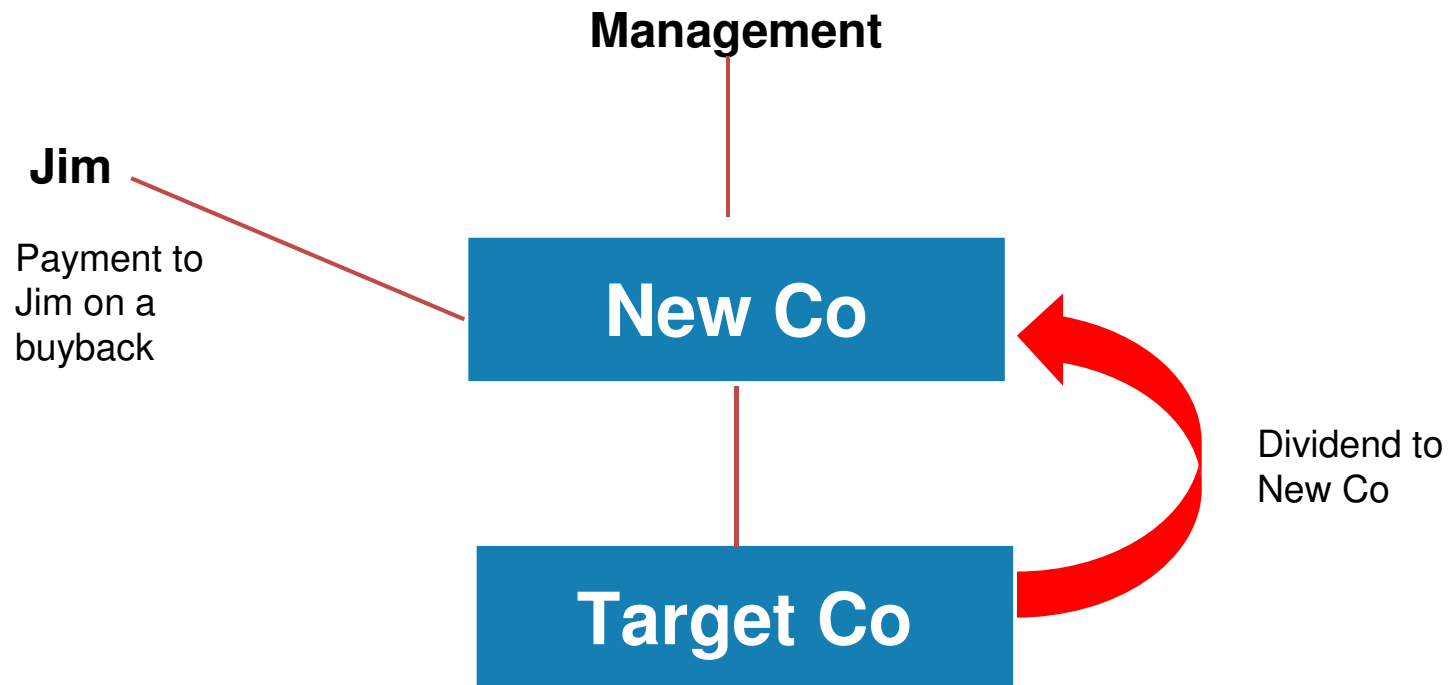
Share Buyback

- ▶ Step 1- Reconstruction
 - New Co inserted as a holding company



Share Buyback

- ▶ Step 2 – Buyback of Jim’s shares

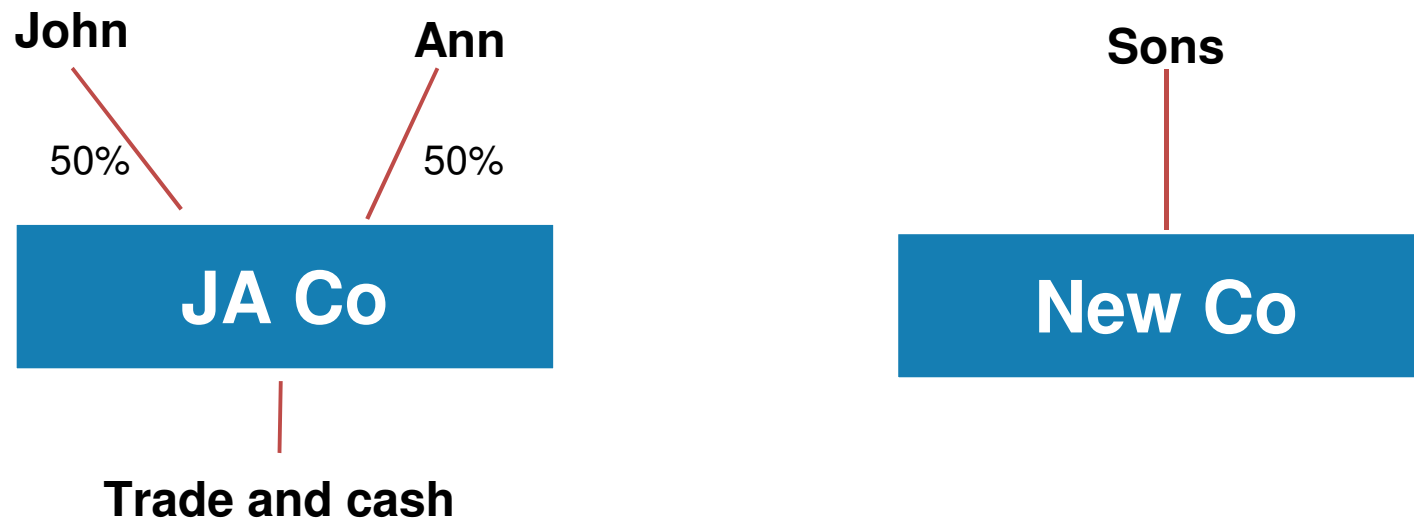


- ▶ Trade benefit test- advance ruling

Bank Finance

- ▶ Can purchaser obtain short term bank loan?
- ▶ Vendor not a party to the loan arrangement
- ▶ Loan repaid from cash in target company over a period of time.

Family Company – FA 2017



- ▶ New Co obtains bank loan to fund purchase
- ▶ New Co repays bank loan over period of time

ENTREPRENEUR RELIEF - UPDATE

Entrepreneur relief – FA 2017

- ▶ No change in 10% rate
- ▶ No change in EUR1m threshold
- ▶ Certain restrictions

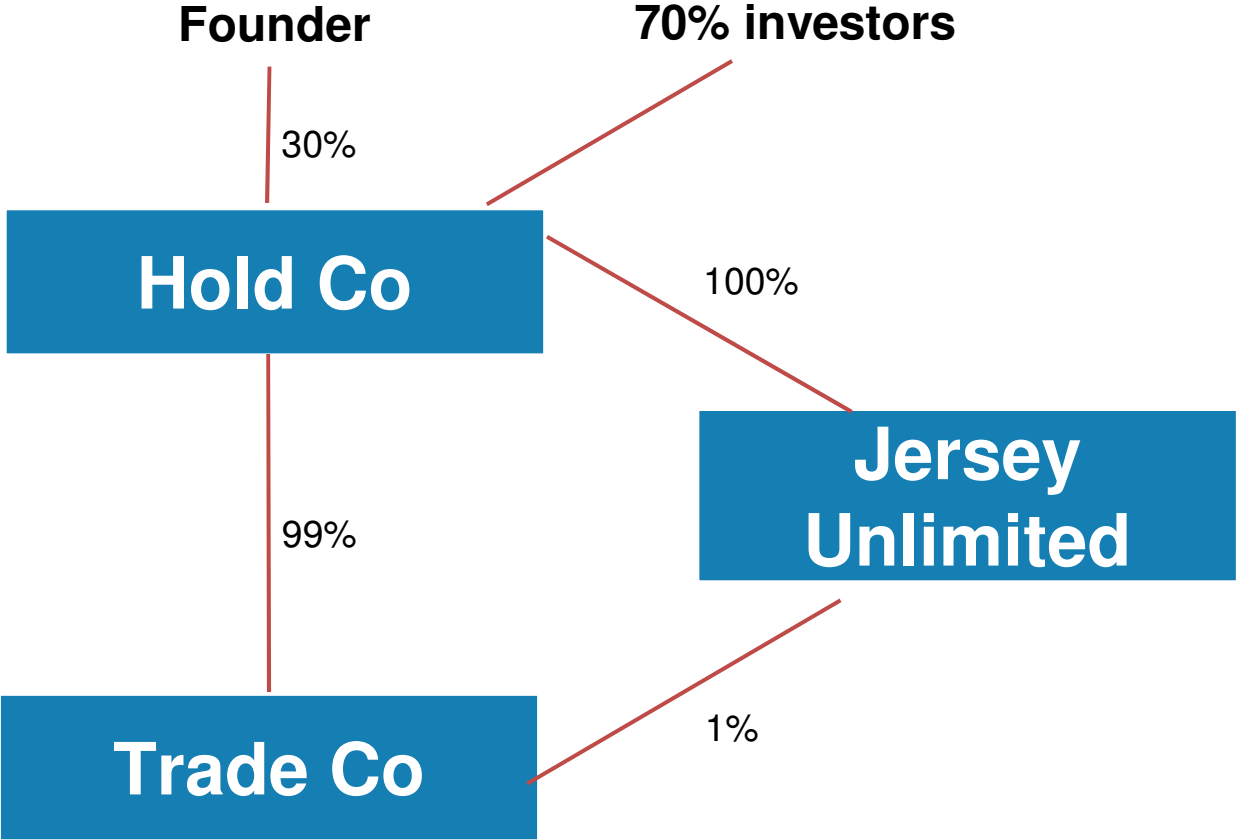


Entrepreneur relief

What qualifies?

- ▶ 5% of trading company
- ▶ 5% of holding company
- ▶ Assets used in a trade/business
- ▶ “trading group” – every 51% subsidiary must be trading or a holding company

Entrepreneur relief – group structure



Entrepreneur - group structure

- ▶ Not all 51% subsidiaries are trading/holding companies
- ▶ But purpose of group structure was commercial
- ▶ Revenue submission
- ▶ Revenue agreed that shares in Hold Co qualify for relief



Entrepreneur relief

Who qualifies?

- ▶ Must own the asset for at least 3 continuous years in the 5 years up to sale
- ▶ Director/Employee of the company and spend 50% of working time in the company (3 continuous years in the 5 years up to sale)

Entrepreneur relief – FA 2017

Does not apply to

- ▶ Sale of goodwill to a connected company
- ▶ Sale of shares to a company connected with the vendor
- ▶ Use of Trust?

Good news - FA 2017

- ▶ Capital gains tax exemption on sale of certain land/buildings
- ▶ 7 year holding period reduced to 4 year
- ▶ Land and buildings in EEA
- ▶ Purchased 7 December 2011 to 31 December 2014



CGT exemption

- ▶ 4 year holding period
- ▶ Sell between 4 and 7 years - full exemption
- ▶ Sell after 7 years – partial exemption
- ▶ e.g. sell after 10 years – 70% of gain is exempt

CGT exemption

- ▶ Many properties purchased in December 2014
- ▶ Exemption will apply from December 2018 onwards
- ▶ Plan to trigger a sale in 3 year period when full exemption applies.

CGT Exemption

- ▶ Development property
- ▶ Enhancement expenditure does not have to be incurred pre 31 December 2014
- ▶ Construction of buildings on land or completion of partially constructed buildings

Enhancement expenditure

- ▶ Land purchased in 2014 for EUR400K
- ▶ Building constructed in 2015 for EUR300K
- ▶ Property to be sold in 2019 EUR1M
- ▶ Gain of EUR300K exempt from CGT

CGT Exemption – Beware



▶ Exemption if Prop Co sells the property ✓

▶ No exemption if Leo sells Prop Co ✗

CGT Exemption – Beware

- ▶ Property fallen in value
- ▶ Capital loss not allowable
- ▶ Sell before 4 years?
- ▶ Retain and sell when value rises?

Tax Appeals Case

- ▶ Delivered October 2017
- ▶ Was cash extraction an income distribution or capital?
- ▶ Income tax assessment EUR360K
- ▶ Retirement relief
- ▶ Other important points.

Outline facts

- ▶ Appeal decision 22TACD2017
- ▶ Family company
- ▶ Cash extraction
- ▶ Transfer to son 3 and others

Outline facts

- ▶ Father held 44,500 shares (89%)
- ▶ 12,500 shares bought back for €749,000 (85.33%)
- ▶ 20,750 shares to son 3 and others

Post Transaction

- ▶ Father now holds 30%

Revenue query

- ▶ Share buyback
- ▶ Must be a 'substantial reduction' – 25%
- ▶ But only went from 89% to 85.33%
- ▶ After transfer to son 3 reduced to 30%

What had happened

- ▶ Same day transaction
- ▶ 2 stages
 - Share buyback
 - Transfer to son 3
- ▶ Family meeting - No advisers present
- ▶ 22 documents to sign - No sequence
- ▶ Meeting lasted approximately 10 minutes

Appeal hearing

- ▶ Revenue argued as per advisers 2 stage transaction
- ▶ Buyback was first thus test failed
- ▶ Evidence of father and son 3, all documents signed together

Appeal decision

- ▶ Share buybacks and transfers happened simultaneously
- ▶ Condition was met
- ▶ Taxpayer appeal allowed
- ▶ Income tax assessment of EUR360K reduced to NIL

Other points

- ▶ Commentary on trade benefit test
- ▶ Shares can be valued differently in the same transaction

