Asset Protection

The current economic climate has increased those seeking to protect their businesses from future risk.

Here, our tax team take a look at some options available to assist with protecting your assets.

Holding Companies

Family Investment Companies

Debt-Equity Conversions

Trusts

Foundations

Holding Companies

A holding company is a separate parent company with a controlling interest in a subsidiary company or companies.

One of the main benefits to having a holding company is risk management. If a company undertakes multiple trades, or has separate investments such as property, separating these into separate subsidiary companies under a holding company should be considered.

Within such a structure, the risk to the group as a whole is minimised should one part perform poorly or become insolvent as compared to if everything was operated within a single company. Care is however needed with the timing of such transfers because the movement of assets and/or reserves from one corporate to another can be recovered in the event that the transferor enters into insolvency within 2 years of the transfer.

The holding company can also be used to hold the valuable assets of the business such as property, or cash and other investments. The subsidiary companies then operate the day to day trading operations of the business and its trade. These assets should then be protected from creditors and other liabilities that the subsidiary companies may incur.

There may also be tax benefits and potential cost savings by sharing costs in setting up a holding company or group structure. For instance, dividends between the subsidiary companies and the holding company can be paid without incurring tax charges.

A future sale of subsidiary company shares can also be free of tax with the cash paid directly to the holding company. The gross proceeds could therefore be reinvested in further investments or wider group activities. Alternatively, a reorganisation could take place prior to a sale in order to ensure the proceeds are taxed directly on the shareholders and not "locked" within the group.

However, there are many considerations before proceeding with such a reorganisation to prevent any unexpected tax charges arising. As such, we would always recommend seeking professional advice before undertaking a reorganisation.

Family Investment Companies

A Family Investment Company (FIC) is a bespoke corporate vehicle which can be used as an alternative to, or in collaboration with, a family trust. It is generally a private company whose shareholders are family members and it allows parents to retain control over assets whilst accumulating wealth in a tax efficient manner for the ultimate benefit of their family.

The parents setting up the FIC will usually provide the funds to the company by way of a loan or by subscribing for preference shares. This will allow them to extract funds in a tax efficient manner at a later date. The parents would also subscribe for voting shares giving them control of the company whilst the children can be gifted non-voting shares.

Debt-Equity Conversions

If a company has a high level of debt (be that to a shareholder or a third party) it may be beneficial to request the debt be released in consideration for shares in the company. This may improve the balance sheet position of the company and assist if additional financing is required.

This is a complex area and the accounting and tax treatment of such conversions require careful consideration to ensure the conversion is accurately reflected in the company accounts and tax return and that the balance of control is not inadvertently changed.

Trusts

A trust is a separate legal entity and as such can be used to protect assets for the next and future generations. It is essentially a legal arrangement between a donor (the settlor) who transfers some of their assets to a person (the trustee) to be held and used for the benefit of one or more persons (the beneficiaries). The terms of the trust will be set out in a trust deed.

There are several different types of trusts with each having different characteristics. The most frequently used of these is a discretionary trust whereby the settlor gifts the assets to the trust absolutely and the trustees have wide-ranging decision-making powers as to how the trust fund is invested and how and when trust funds are distributed to beneficiaries.

Other types of trust include bare trusts where a trustee simply hold property for another individual. The trustee will generally have no active powers and will simply act on the instruction of the beneficiary for whom they act.

An interest in possession trust shares many features with a discretionary trust but the trust deed will set out the distribution of the assets in a pre-determined manner. Generally, the 'life tenant' will be entitled to the income during their lifetime whilst the capital will revert to the remaining beneficiaries (the remaindermen) after the life tenant has died.

Trusts are created to help a beneficiary or a group of beneficiaries and provide security as they can be set up without giving a beneficiary full access to the capital. There can be inheritance tax advantages to establishing a trust however, there are a number of tax and administrative responsibilities involved in the establishment and ongoing structure so advice should always be taken.

Foundations

Foundations are effectively a hybrid vehicle which share some features with companies and others with trusts. A foundation is a separate legal entity and much have clearly defined objects. A foundation owns any property transferred to it by its founder and is managed in accordance with its charter and rules.

Foundations can be particularly useful for families based in a civil law jurisdiction which may not recognise the concept of a trust.

Whether you are looking to protect personal or business assets, our team of dedicated experts are on hand to help you plan a tailored and tax efficient approach to your affairs that ensures you can maximise the tax opportunities available.

If you wish to discuss any of the above, or have any other queries relating to tax planning, please get in touch with a member of our specialist tax team today.

Get in touch

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