Family Investment Companies

What is a Family Investment Company?

A Family Investment Company ("FIC") is an option for individuals who are considering a wealth preservation and succession planning strategy.

No two FICs are the same, and the structure of each company is bespoke to the family, assets and wealth involved. They are private companies, the shareholders of which are members of the same family and/or family trusts.

An FIC will have a memorandum and articles of association and a shareholders' agreement. The memorandum and articles will be public documents, but the shareholders' agreement is private and it is this that can provide for family governance procedures, although it may be supplemented by a family constitution. Importantly, there are no substantive regulatory requirements associated with FICs as there may be with other company structures.

FIC Vs Trusts

Traditionally trusts have been used to pass assets down the generations whilst retaining control and providing wealth protection for the family. Whilst trusts used to be a very tax efficient planning tool, the ability to put funds into a trust without incurring an immediate 20% inheritance tax ("**IHT**") charge has been severely curtailed and changes have been made to the way trusts are taxed on an ongoing basis which, means that they are no longer the most appropriate structure.

FICs provide an alternative to trusts because they enable family wealth to be passed to future generations in a tax efficient manner whilst allowing the founder to retain significant control of the assets.

As well as being tax efficient, the flexible structure may also offer increased asset protection in relation to divorce proceedings and creditors.

The benefits of a FIC

There are a number of factors which may make a FIC an attractive structure for holding personal investments, including:

1. Tax efficiency

- IHT – shares in the FIC can be given to family members and, after seven years, the value of the gifts will fall outside of the donor's estate for IHT purposes. Furthermore, FICs are not subject to the 20% entry charges and 10-yearly charges for IHT that are applicable to trusts.
- Dividend income is generally tax free - there is no tax payable on UK, and most non-UK, company dividends received by the FIC.
- Income and capital gains generally taxed at the corporation rate of 20% (or 21%). In addition, there is still an allowance for inflation in relation to capital gains. This rate is far lower than the current rate of income tax for trusts of 45%, and the higher and additional rates of income tax for individuals of 40% and 45% respectively.
- Rental losses can be offset against other income in the company rather than just those relating to the rental business.
- Portfolio and other management fees can be deducted for tax purposes.

Individuals setting up a FIC must be careful not to be caught by the "gift with reservation of benefit" rules (or "GROB" rules). For IHT purposes, a gift that is not fully given away because the person (the donor) making the gift keeps back some benefit for himself, is a GROB and, as such, will be subject to IHT as though that gift remained in the donor's estate. Therefore, it is important to consider who has the right to dividends/income within the FIC structure as this could lead to an avoidable IHT liability.

2. Asset protection

- Divorce – FICs benefit from the 2013 Supreme Court decision in *Prest v Petrodel [2013] UKSC 34* that reinforced the inability of the family courts to "pierce the corporate veil" to seize the assets of a company on a divorce.
- Restriction on transfer of shares – the Articles of Association of the FIC can provide restrictions on the transfer of the shares to spouses and to non-family members.
- Shareholders' agreement – additional protection can be achieved under a separate agreement between the shareholders.

3. Control

- Distribution of profits to shareholders - the directors (who normally include the donor) have the power to decide the level and timing of any dividends.
- Investment decisions – the directors have complete control.
- Appointment/removal of directors – the structure can require approval of the board before changes can be made.
- Voting– the donor can retain voting shares if appropriate, and give away non-voting shares.

Summary

FICs can provide a highly effective vehicle for passing wealth down to future generations whilst retaining control and securing tax efficiency. For wealthy families wishing to consider succession planning over the longer term, the FIC may well provide the perfect solution. The benefits of a FIC will depend on individual circumstances and we recommend that all options are considered as part of an individual's overall strategy.

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