Revenue-effective corporate restructures

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Abstract: Any business enterprise may, at some stage of its life, find it necessary or desirable to restructure, for any of a variety of practical, business and even personal reasons. The revenue consequences of restructuring a business would often be prohibitive, but for various concessions provided under the tax and stamp duty laws. This article sets out and discusses the main revenue concessions available in relation to the restructuring of businesses operated via companies. In particular, the article considers individual to company roll-overs, partnership to company roll-overs, company to company roll-overs, scrip-for-scrip exchanges, the tax consolidations regime, and other transaction costs. In each case, the article discusses the relevant legal requirements, and offers insights into potential traps. In conclusion, the author believes that if a methodical approach is adopted, it will generally be possible to achieve all of the client's commercial objectives without triggering adverse revenue consequences.

Introduction

Most businesses need to consider restructuring at least once during their life cycle. The range of factors that might trigger the need to restructure a business are almost limitless. Generally, at least one of the following factors would apply:

(1) growth in the size or profitability, or both, of the business;

(2) increased complexity of the business operations;

(3) changes in the risk profiles of the business or the owners of the business;

(4) changes in the equity ownership of the business;

(5) legislative changes, particularly in relation to tax, workplace health and safety and industrial relations; and

(6) succession planning.

The revenue consequences of restructuring a business would often be prohibitive, but for various concessions provided under the tax and stamp duty laws.

This article sets out the main restructuring concessions available in relation to businesses operated via companies from a revenue perspective, and in particular:

(1) individual to company roll-overs;

(2) company to company roll-overs;

(3) scrip-for-scrip exchanges;

(4) the tax consolidations regime; and

(5) other transaction costs.

Each of these topics are dealt with in turn below.

In relation to the various capital gains tax (CGT) concessions, best practice dictates a careful review of the legislation at the date of seeking to implement any rearrangement.

Individual to company roll-overs (Subdiv 122-A)

CGT roll-over relief is available to:

- individuals; and
- trustees of trusts.

The CGT roll-over relief is available in relation to assets that are transferred to a wholly owned company. The transfer, however, must be either:

- a single CGT asset; or
- all of the assets of a business.

While the roll-over can apply to a wide range of CGT events, it is generally accessed on the occurrence of CGT event A1 (ie disposal).

Main requirements

The two main requirements to access the roll-over relief are that:

(1) the party seeking to access the roll-over relief can only receive non-redeemable shares in the recipient company as consideration for the transfer; and

(2) to the extent that the assets being disposed of are business assets, then the acquiring company can pay the consideration partly by assuming liabilities in relation to the assets acquired.

While there are a number of technical requirements in the legislation, arguably the most important practical requirement from a structuring perspective is that the taxpayer who is seeking the roll-over must be the person or entity that receives the shares in the company as part of the transaction.

In other words, there is no ability to restructure the ownership of the ultimate underlying equity in the business.

An example of an individual person rolling their business into a company is set out in Diagram 1.

Diagram 2 summarises the roll-over by a trust of an investment property under Subdiv 122-A.

If the taxpayer chooses to access the roll-over relief, then any capital gain (or loss) on the transfer of the asset is disregarded.

Precluded assets

There are a number of assets that are unable to be transferred — unless they are being transferred with all of the assets of a business. The assets in this regard include:

- depreciating assets; and
- trading stock.[1]

A separate strategy for minimising revenue costs on disposal will therefore be required in relation to these types of assets.

Trading stock

Trading stock is defined as being anything produced, manufactured or acquired that

Diagram 1

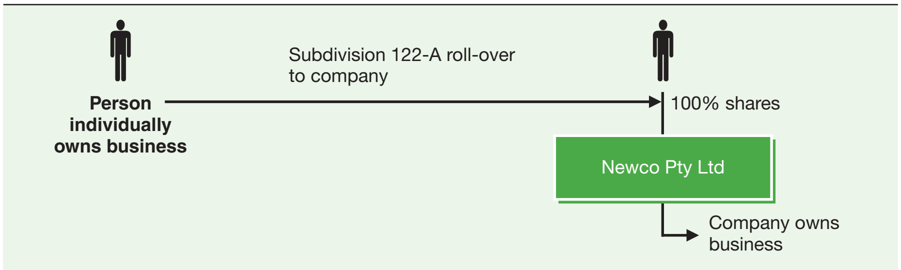
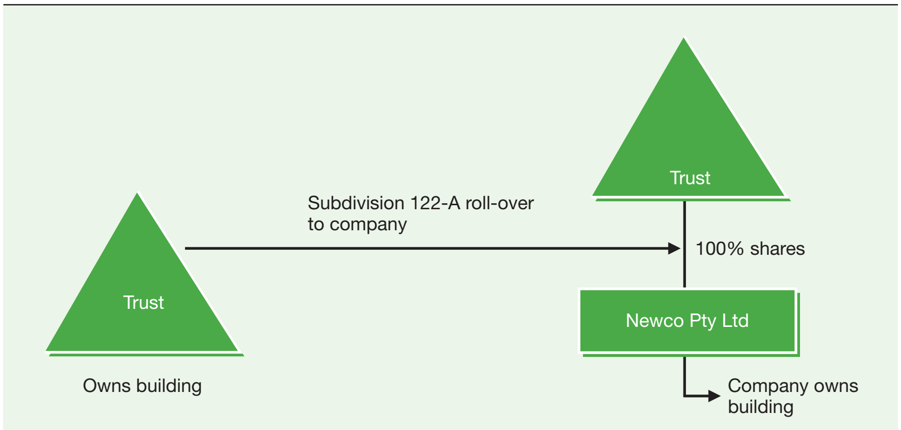


Diagram 2



is held for purposes of manufacture, sale or exchange in the ordinary course of business.[3]

The disposal of trading stock outside the ordinary course of business is regulated.[4] In particular, a disposal of an item of trading stock outside the ordinary course of business is included in assessable income at the item's market value at the time of disposal.[5] However, there are a number of strategies which can be implemented to minimise this cost where trading stock is transferred as part of an internal restructure.

For instance, it is generally accepted that the "market value" of an asset is the price at which a purchaser can buy that item in their market on the day of disposal. In the case of a retail business, the market value is likely to be the wholesale cost of that item, rather than the retail price.

Consequently, the transfer of trading stock to a related entity may not trigger any taxable gain, as the trading stock will be deemed to have been sold for the same wholesale value for which it was acquired.

Alternatively:

(1) if only one other asset is being transferred, then it may be possible to put trading stock on consignment with the purchasing company and avoid the need to transfer it;[1] and

(2) in contrast, if the whole business is being transferred, then the stock should form part of that transfer, and therefore, fall within the scope of the roll-over relief.

As an alternative, if all the assets of the business are not being transferred, and there is a desire to transfer trading stock, then an election for roll-over relief may be available.[6]

This section allows trading stock to be valued and transferred at its tax carrying cost, rather than market value, on disposal in certain circumstances. If the roll-over relief is not accessed, then the taxpayer is required to return as assessable income the market value of the trading stock as at the date of disposal.

In order to access the roll-over relief, the entity which owned the trading stock immediately before the transfer must retain a minimum of a 25% interest (in partnership) in the trading stock with the transferor.

Depreciating assets

The issues in relation to depreciating assets are similar to those outlined in relation to trading stock.

In particular, Div 40 ITAA97 imposes a balancing charge on any change of ownership in a depreciating asset, unless a specific roll-over can be accessed.

While depreciating assets are precluded from the roll-over relief available under Subdiv 122-A, in some circumstances, Div 40 will provide relief from any balancing charge, such that:

(1) there is no balancing adjustment for the party disposing of the asset; and

(2) the company will "stand in the shoes" of the seller in relation to the amount of, and timing for, future deductions, and must adopt the same method and balance of the effective life the seller was using.[7]

Cost base of shares issued

The CGT cost base of the shares issued as part of a Subdiv 122-A roll-over depends on whether the business assets were originally acquired before or after the introduction of CGT on 19 September 1985.

There is a "pure" roll-over available, such that if the original business assets were acquired pre-CGT, then the shares in the new company retain that coveted pre-CGT status, even though the company will almost always have been registered well after September 1985.[1]

This issue is one that needs to be considered carefully in relation to any subsequent restructures. For example, it is entirely possible that a company that registered in, say, 1998, may in fact, for CGT purposes, have pre-CGT shares issued or own pre-CGT assets.

It is important to note, however, that if one or more of the assets of a pre-CGT business is a precluded asset, then not all of the shares will be deemed to be pre-CGT following the roll-over.

Instead, only a certain percentage of them will be deemed to be pre-CGT. The issues in this regard are relatively complex and will depend on a range of issues specific to each particular business.

If all of the assets of the business have been acquired after 20 September 1985 (ie they are post-CGT assets), then the shares issued as part of a Subdiv 122-A roll-over have a cost base equal to:

- the sum of the market value of the precluded assets;

- plus the existing cost bases of all the other assets; and
- less any liabilities the company undertakes to discharge in relation to the transaction.

Cost base position for company

Essentially, the recipient company stands in the shoes of the seller in relation to the assets that it acquires.[1] This means:

- in relation to post-CGT assets, the cost base is equal to the cost base the taxpayer had; or
- in relation to pre-CGT assets, they retain that status despite the change in legal ownership.

Asset acquisition price

One aspect of the roll-over provisions that is not dealt with by Subdiv 122-A is at what price assets are disposed of.

Broadly, there are three alternatives, namely:

(1) nil or nominal;

(2) historic cost; and

(3) market value.

Regardless of which approach is adopted, the following factors will be identical, namely:

- cost base of the shares for CGT purposes; and
- the market value of shares.

The decision is important, however, as, depending on the approach adopted, there can be potentially significant accounting impacts and differences on any ultimate sale of assets by the recipient company. For instance, if the market value is chosen, then:

- subsequent capital reductions will likely be easier because of a higher share capital account; and
- anecdotally, the "uplift" of assets recorded on the balance sheet to market value can have a positive impact in relation to financing arrangements and, indeed, any ultimate sale to a third party, since the true value of this asset is visible on the balance sheet rather than its acquisition cost.

By contrast, selecting a nil or nominal consideration may materially reduce other transaction costs, such as titles office transaction fees (where real property is being transferred).

Potential traps

Subdivision 122-A roll-overs provide a myriad of potential benefits, particularly where there is a desire to "corporatise" the culture of a business and access benefits such as limited liability.

There are, however, at least two significant potential difficulties with the roll-over relief, namely:

(1) the rules in relation to assumption of liabilities; and

(2) stamp duty in certain jurisdictions.

In relation to liabilities, there is a limit on the quantum that may be assumed by the transferor company. In particular, where the assets are all:

(1) post-CGT, then the maximum amount of liabilities that can be assumed must be less than the total market value of the precluded assets and the existing cost bases of other assets; or

(2) pre-CGT, then the maximum amount of liabilities assumed must be less than the sum of the market value of all assets.

> *"As with any restructure, there are a myriad of potential issues that need to be taken into account."*

Special rules also apply in relation to situations where there is a mixture of pre- and post-CGT assets.[8]

In relation to stamp duty, while there are some jurisdictions that have abolished stamp duty on business transfers (in particular, Victoria), most jurisdictions (including Queensland and New South Wales) continue to impose business transfer duty.

This means that, in the vast majority of situations where CGT roll-over relief is accessed under Subdiv 122-A, stamp duty will be payable on the market value of the assets being transferred.

Partnership to company roll-overs – Subdiv 122-B

Partners in a partnership can access CGT roll-over on the transfer of assets to a company.[9]

In all substantive respects, the provisions of Subdiv 122-B mirror the rules explained above in relation to Subdiv 122-A, with the key distinction being that the asset subject to the transfer is the relevant partnership interest. On this basis, there is no separate analysis of the Subdiv 122-B provisions in this article.

Division 152

For completeness, while outside the scope of this article, it is important to note that, in relation to any transaction that might otherwise comply with Subdiv 122-A or Subdiv 122-B, it may also be possible to structure the rearrangement to satisfy the small business CGT concessions under Div 152 ITAA97.

Obviously, there are a number of other requirements that need to be satisfied in relation to accessing Div 152. Furthermore, the actual tax consequences generally need to be considered on a case-by-case basis.

Company to company roll-overs – (Div 615, formerly Subdiv 124-G)

CGT event A1 (disposal) will usually be triggered when a taxpayer transfers their shares in a company.[10]

Broadly, the CGT payable on a share transfer is the amount by which the market value of the shares at the time of the transfer exceeds the cost base of the shares.

Similarly, the allotment of shares in a company would ordinarily trigger CGT event D1,[11] subject to a specific CGT exemption available for any allotment of shares in a company.

Division 615 ITAA97 (formerly Subdiv 124-G) is designed to provide roll-over relief for the reorganisation of companies where there is a new holding company created to acquire all of the shares in an existing company.

This type of rearrangement is commonly referred to by a number of different names, including:

- an interposition;
- a top hat arrangement;
- a company to company roll-over; or
- an inter-entity roll-over.

Key provisions

As with the roll-overs outlined above, there are a number of specific rules that must be satisfied.

In broad terms, the steps involved are:

(1) a new company is incorporated, with the ultimate shareholders being identical to the existing shareholders in the target company;

(2) the shareholders in the target company transfer their shares to the new holding company; and

(3) the consideration for the share transfer by the new holding company is the allotment of shares in itself to the shareholders of the target company.[12]

This style of rearrangement is set out in Diagram 3.

Importantly, the Australian Taxation Office seems to accept that Div 615 rearrangements are not required to be "lineal" and can be implemented simultaneously over any number of companies. The main requirement in this regard is that every one of the target companies must have identical shareholders. Again, diagrammatically, a simultaneous interposition is set out in Diagram 4.[12]

Roll-over consequences

Where the conditions for relief are satisfied:

- there is no CGT on the transfer of the shares by the original shareholders to the new holding company;
- the shares issued in the new holding company have the same CGT characteristics as the originally disposed shares (again, Div 615 is a "pure" roll-over such that if the original shares are pre-CGT, the new shares will also be deemed to be pre-CGT); and
- the time of acquisition of the shares in the new holding company will also be deemed to be the same as the original shares in the original company. This means that, for example, there will be no need to retain the shares for a further 12 months from the date of the transaction in order to access the 50% general CGT discount.

Arguably, the most critical aspect of the rules to access the concessions is the requirement that the market value of the shares issued in the new holding company must equal the value of the original shares in the original company, and the proportionate shareholdings in each company must be the same.[13]

For this reason, it is generally the case that an independent third party (for example, an adviser to the group) will own shares in the new holding company immediately before the transaction is entered into, so as to help ensure that the proportionality requirements of the roll-over can be achieved.

It is also important to note that the roll-over is only available when there are at least two shareholders in the company. Where there is only one shareholder, then a company to company rearrangement can normally be achieved via a Subdiv 122-A rearrangement, albeit with potentially different tax outcomes in relation to the ultimate tax cost bases.

As with any restructure, there are a myriad of potential issues that need to be taken into account.

Potential traps

Four of the more common issues that arise in Div 615 restructures are:

(1) managing the subsequent transfer of assets among group companies;

(2) payment of dividends from subsidiary companies to the head company;

(3) CGT event K6 and Div 149 ITAA97; and

(4) the impact of any pre-existing tax consolidated group.

Each of the above issues are dealt with in turn below.

Asset transfers

Any CGT asset of the target company that it is intended to be transferred to the new

Diagram 3

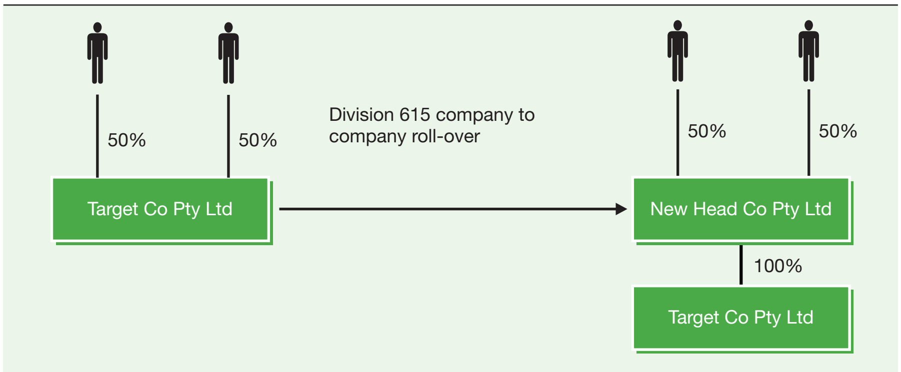
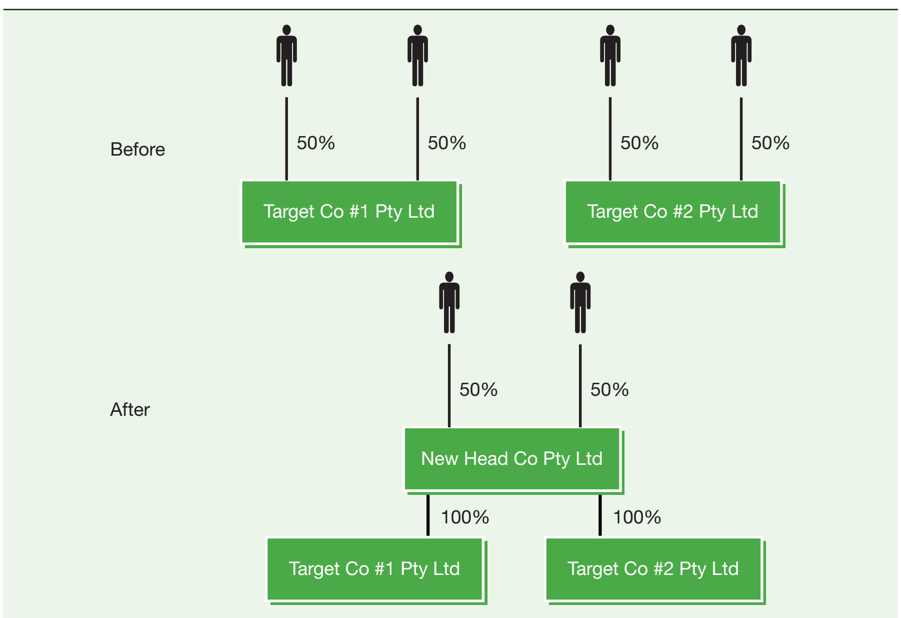


Diagram 4



head company will only be able to be done without CGT consequences if:

- the cost base equals its arm's length market value at the date of the transfer; or
- the new head company and original company are part of the same tax consolidated group.

Further comments on the tax consolidations regime are set out below.

In the absence of a tax consolidated group, any asset transfer will trigger the usual CGT ramifications and will therefore require an analysis as to whether the asset's market value exceeds its tax cost base.

Dividends

If the target company has retained earnings, it is often desirable to have them declared as a dividend to the new head company from an asset protection perspective.

In particular, if the target company is conducting the business operations or otherwise undertaking any activities which expose it to risk, then moving the retained profits to the new head company can significantly diminish the prospects of those funds being exposed to creditors of the business.

Even if the funds are immediately lent by the new head company back to the target company for operating costs and cash flow purposes, security can be taken to ensure that the new head company is a priority or secured creditor of the target company.[14]

In order for unfranked dividends to pass between a target company and a new head company, however, a tax consolidated group must be in existence, and again further comments in this regard are set out below.

CGT event K6 and Div 149

CGT event K6 happens in relation to a company where:

- the taxpayer owns a pre-CGT interest in a company;
- a relevant CGT event happens in relation to that interest; and
- the market value of property acquired by the company after 20 September 1985 is greater than 75% of the net value of the company at the time.[15]

If CGT event K6 happens, the taxpayer makes a capital gain equal to that part of the capital proceeds from the interest that is reasonably attributable to the amount by which the market value of the post-CGT property is more than the sum of the cost bases of that property.

Where a taxpayer owns an interest in a holding company with subsidiaries, the above calculation includes the post-CGT property of the holding company and its subsidiaries.

There is a deeming provision that requires a company's pre-CGT assets to be treated as though they are post-CGT assets where, in the case of a company, there has been a change to more than 50% of the beneficial interests of the ultimate owners of the company.[16]

Although Div 149 permits a look through of entities following an interposition under Div 615 to identify the ultimate beneficial owners, where an entity is close to failing the 50% test, it would be prudent to pay very close attention to the percentage shareholdings following the interposition to ensure Div 149 is not inadvertently triggered as a result of rounding issues.

Pre-existing consolidated group

It may be that a Div 615 roll-over is implemented in relation to the original head company of a pre-existing tax consolidated group. See Diagram 5 for how this type of rearrangement may look.

In this style of situation, the new head company must choose to continue the pre-existing consolidated group within 28 days of the transaction.

Again, more detailed comments in relation to the various issues surrounding tax consolidated groups are set out below.

Scrip-for-scrip roll-over relief – Subdiv 124-M

In many respects, the roll-over under the provisions in Subdiv 124-M ITAA97 are similar to the rules in relation to the Div 615 roll-over provisions.

There are, however, a number of critical differences including:

- the roll-over relief is not "pure", such that if the shares being transferred are pre-CGT, they lose that status and become post-CGT assets; and
- there are various other integrity measures that, in certain circumstances (particularly in closely held groups), can cause unintended outcomes.

Diagram 6 summarises how a scrip-for-scrip arrangement can be implemented. It is important to note that the final percentages in the raid company set out below would depend entirely on the relative values a between target company and a raid company.

Key provisions

The broad requirements that need to be satisfied in order to gain access to the roll-over relief are as follows:

- the shareholders in one company (target company) exchange their shares in the company for shares in another company (raid company);
- the exchange of shares is part of a single arrangement;
- the raid company must acquire at least 80% of the voting shares in the target company;

Diagram 5

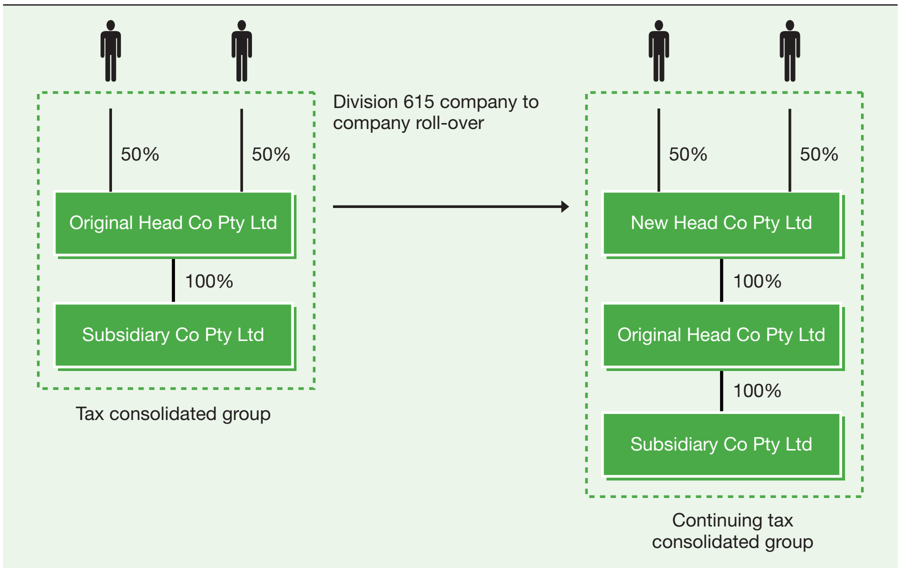
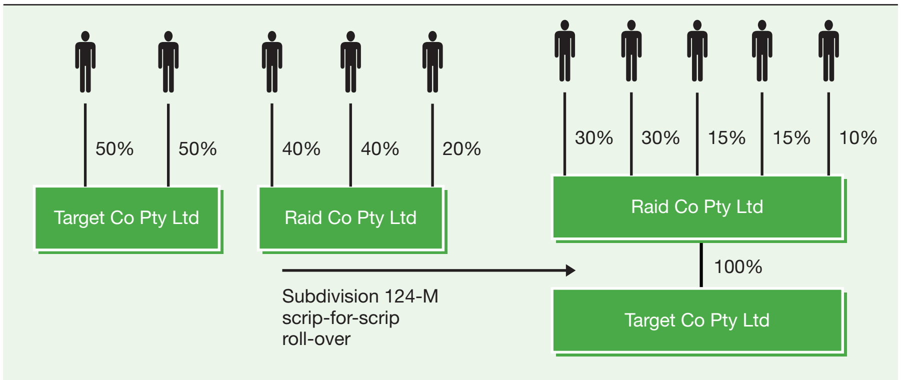


Diagram 6



- all of the shareholders must be eligible to participate in the transaction on the same terms; and
- unless the transaction involves widely held entities (ie more than 300 shareholders), the market value of the capital proceeds received by the shareholders of the target company must be substantially similar to the original interests that they held.[17]

Unlike Div 615 roll-overs, scrip-for-scrip provisions are available in relation to trusts, however, the trust must essentially be a fixed trust.

While outside the scope of this article, the ability to satisfy the definition of a fixed trust has been an area of significant concern, particularly since the decision in *Colonial*.[18]

It is also important to note that the scrip-for-scrip provisions under Subdiv 124-M require "like-for-like" transactions — in other words, shares can only be exchanged for shares and units can only be exchanged for units, so it is not possible for a unit trust to be acquired by a company.

Furthermore, the roll-over relief is only available to the extent that the consideration is satisfied by scrip. To the extent that there is cash or other property received a part of the transaction, the target shareholders will potentially be subject to CGT on that component of the consideration.

Finally, again unless the transaction is in relation to widely held companies (generally more than 300 shareholders), the cost base for the raid company of the shares that it acquires in the target company will be equal to the cost base of the shares as held by the existing shareholders of the raid company.

Potential traps

As mentioned above, the exact percentages of shares on issue in the raid company, following completion of the scrip-for-scrip, will depend on the proportionate values of all shares on issue at the date of the transaction.

This exercise is largely an accounting process and, practically, it is often preferable to ensure a significant number of shares are on issue in both the target company and the raid company prior to the transaction to ensure that the appropriate proportions can be achieved.

As noted above in relation to CGT event K6, generally a share split will be the preferred way to ensure a significant number of shares are on issue in each company, as this can be implemented without any tax or stamp duty consequences.

Assuming the landholder duty provisions do not apply, the stamp duty consequences of a straight scrip-for-scrip arrangement are generally nil, other than in New South Wales and South Australia. This is because they are the only two jurisdictions that continue to charge stamp duty in relation to transactions involving shares.

Any subsequent transfer of assets among entities in the group may, however, be subject to stamp duty and the issues in this regard are dealt with in more detail below.

Any CGT asset of the target company that it is intended to be transferred to the raid company will only be able to be done without CGT consequences if:

- the cost base equals its arm's length market value at the date of the transfer; or
- the raid company and target company are part of the same tax consolidated group.[12]

Again, further comments on the tax consolidated regime are set out below.

Related transaction costs

In relation to any company restructure, there are obviously a range of other potential transaction costs that will need to be considered. Most of these are outside the scope of this article, however, they include:

- GST;
- various state-based taxes and charges, including stamp duty, land tax, payroll tax and titles office registration fees;
- other income tax provisions, including Div 7A of the *Income Tax Assessment Act 1936* (Cth), commercial debt forgiveness and value shifting;
- anti-avoidance provisions under both the tax legislation and the stamp duty legislation; and
- the impact of residency of any shareholders (in a number of cases, the tax roll-overs expressly exclude relief for non-resident taxpayers).

One key revenue consequence that will be addressed below is the tax consolidations regime.

The rules in relation to consolidations generally are most relevant where there is the desire to transfer assets or declare dividends between companies in a corporate group.

The reasons for moving assets within a corporate group will again largely depend on the factual matrix, however, can include:

- segregating assets of different risk profiles in separate companies;
- quarantining profits from trading operations by a subsidiary company in a head company;
- more easily allowing compliance with various government legislation by segregating different activities into different companies;
- succession planning, for example, by allowing different shareholders in subsidiary companies for particular aspects of an overall group;
- financing arrangements, including more easily allowing for the securitisation of intercompany loans;
- branding and marketing different aspects of a group; and
- making a group "deal ready" by ensuring that the company that is the

subject of a purchase by third party is a “clean skin” company.

The balance of this article considers the tax consolidations consequences of a restructure designed to achieve the following objectives:

- segregation of retained profits from a trading entity into a new head co; and
- isolation of a passive investment asset from an active trading business.

In summary, the steps involved are as follows:

(1) the interposition of a new head company under Div 615;

(2) formation of a tax consolidated group;

(3) creation of a new subsidiary company;

(4) transfer of the building to the new subsidiary company; and

(5) declaration of a dividend to the head company.

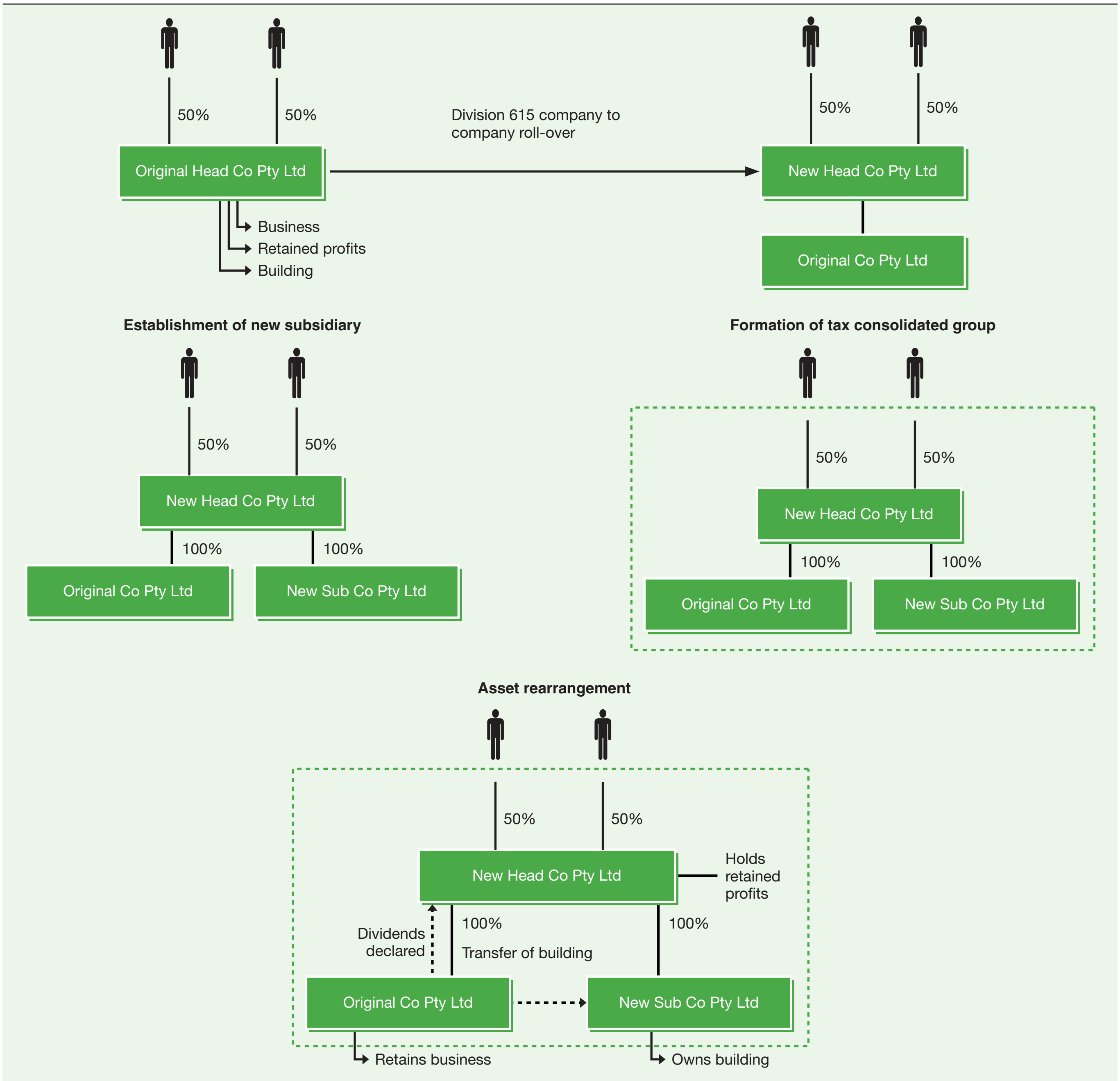
The above steps are summarised in Diagram 7.

The consolidation issues in relation to the above example are dealt with below.

Consolidations

Where a head company of a wholly owned group consisting of two or more companies elects to form a consolidated group, that group will be treated as a single entity for income tax purposes.

Diagram 7



This means that all intra group transactions between the various companies will be ignored for tax purposes. The subsidiaries of the head company, to the extent that they are owned 100% by the head company, are essentially treated as "divisions" or "parts" of the head company and lose their former individual tax identities.

Importantly, the "fiction" of the group forming one legal entity is relevant only for tax purposes. In other words, it does not change the position at law, particularly from an asset protection perspective. This means that each company in the group retains its separate legal identity.

For completeness, it should be noted that in some limited circumstances, trusts can form part of a consolidated group, so long as the trusts are unit trusts and all of the interests in the trusts are owned by other companies in the consolidated group.

Unit trusts cannot, however, be the head entity of a consolidated group.

Formation

A tax consolidated group is formed by the head company making the relevant, irrevocable, election to the ATO. Once formed, the consolidated group:

- lodges a single tax return;
- pays any income tax instalments on a consolidated basis;
- maintains a single franking account;
- is able to create franking credits, regardless of which entity in the group generates the taxable income; and
- pools all losses.

Importantly, in the context of a rearrangement of assets, such as those anticipated in the example outlined above, all intragroup transactions are ignored for tax purposes.

Similarly, any intragroup dividends will not be assessable or subject to the franking regime.

This means that despite any of the CGT or income tax consequences that would normally result on the transfer or disposal of assets, all such revenue implications are simply ignored as the group is treated as a single entity for tax purposes.

Allocable cost amount

Before forming a tax consolidated group, it is critical to understand the impact of the allocable cost amount (ACA). The ACA is calculated on the formation of a consolidated group and is used to reset the cost bases of each asset in the group to reflect the head company's tax cost for assets brought into the group by the various member entities.

The rules in relation to ACA calculations are detailed and in many cases can be complex.

Depending on the exact circumstances, the tax cost of assets for the head company may be identical to the original tax cost or reset to either a higher or lower amount.

Critically, where a tax cost is reset, this can trigger either an immediate tax cost, or alternatively, reduce the amount of future tax benefits (for example, by reducing the depreciating value of particular assets).

Generally, it is recommended that a "back of the envelope" ACA calculation be performed in relation to the proposed formation of a consolidated group before proceeding to elect to consolidate.

This allows the parties to decide either to proceed with the restructure and complete the full ACA calculations (assuming that the revenue outcomes of the ACA exercise are not prohibitive) or, alternatively, develop alternatives for achieving the commercial objectives that are not financially prohibitive.

Assuming that the ACA calculations do not cause a significant tax detriment, in the example outlined above, the formation of the tax consolidated group would allow both the transfer of the building from the original company to the new subsidiary company, as well as the declaration of the dividend from the original company to the new head company to take place without any tax consequences.

Tax obligations

One additional commercial issue that should always be considered relates to the fact that all members of a tax consolidated group are jointly and severally liable for the group's tax obligations.

The joint and several liability does not arise, though, if the group has implemented a binding tax sharing agreement (TSA).[19]

A comprehensive TSA will set out the methodology for determining the proportion of the total tax liability for the group that each member of the group is required to pay directly if the head company fails to do so.

In other words, if a head company does not pay the total group liability, the TSA can ensure that each member is only liable for their proportionate share of the tax impost.

There are a number of specific requirements that the ATO requires be dealt with in a TSA before it is considered valid. Arguably, the most important aspects in this regard are that it must:

- set out a method for the allocation of tax liability among group members;
- be in a written form that can be produced to the ATO on request; and
- be implemented before the point in time that the head company is due to pay the relevant group tax liability.

While not necessarily as important as a TSA, a tax funding agreement (TFA) is another document that the members of a consolidated group should consider implementing.

A TFA complements a TSA by:

- confirming how each subsidiary will fund the payment of tax by the head entity;
- listing out when the head entity must make payments to the subsidiaries for certain tax attributes that those subsidiaries create that benefit the wider group (for example, tax losses); and
- setting out in detail how the tax accounting entries will be made in the financial statements.

In many cases, the commercial objectives of a restructure of a corporate group are unable to be achieved in a transaction cost effective manner unless a tax consolidated group is formed.

Anecdotally at least, the perception that the consolidations regime is largely only relevant for "the big end of town" is no longer the case, as more and more businesses look to address the myriad of issues that give rise to the commercial need to restructure.

However, in light of the inability to reverse the decision to form a tax consolidated group once the relevant notice has been lodged, it is important that business owners and their advisers fully understand the ramifications of consolidating, prior to making the final decision to form a consolidated group.

Conclusion

While the number of technical provisions that potentially need to be satisfied on any corporate reconstruction can be significant, the potential benefits are similarly significant.

As there are also a very large range of potential reasons that a corporate group may need to explore restructuring opportunities, it is important to adopt a methodical approach to every restructure situation.

If a methodical approach is adopted, there will generally be the ability to achieve all commercial objectives of a client without triggering adverse revenue consequences.

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