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Family partnerships

A family partnership is a term used to describe a partnership between members of a family, often parents and their children. It can be a useful vehicle for holding investment and/or trading assets for the benefit of a number of family members.

The family partnership enables a structure where parents retain a degree of control over any investments or trading assets they wish to share with their children during their life-time, but where the value of the partnership is dispersed between all partners in the partnership.
However, partners in a family partnership can also comprise of corporate entities rather than purely individuals.

Why form a family partnership?

The benefit of a family partnership is that it allows parents to transfer assets to their children today and pay tax at today's current market values while still retaining control of the assets. No tax charge should arise at the time the children obtain control of the partnership. This is because they should be treated in tax terms as being owners of their respective interest in the capital account of the limited partnership from the date when the assets were first subscribed.

Parents can transfer assets into the partnership that they believe will accumulate greater value into the future, while retaining control over these assets and thereby limiting the exposure to gift or inheritance tax for their children in the future should the value of the assets grow.

How is it structured?

A family partnership can be formed when the child/children becomes the majority partner in value terms in the partnership. Each partner's contributed capital generally determines the partnership shares. It is common to see this as 90% for the children and 10% for the parents, however it is for the partners to agree. A partnership agreement is drafted and put in place to regulate the running of the partnership.
If any of the partners are minors then their parents (trustees) normally enter into the partnership agreement on their behalf.

There should be no tax considerations on the initial registration of the partnership. Careful legal drafting will be essential to this step of the process and legal advice should be sought.

A partnership agreement should be prepared which will set out terms of the partnership. The partnership will also be obligated to register for taxes, file tax returns and depending on the type of partnership established file accounts on public record with the Companies Registration Office (CRO).

Types of partnership

Limited partnership

Benefits

Liability of all partners except for at least one is limited to the amount that the partner has contributed, meaning that they should not be liable for the debts of the partnership beyond their capped limit.

Requirements:

- must register as a limited partnership;
- must file annual accounts; and
- must register trading name as a business.

General partnership

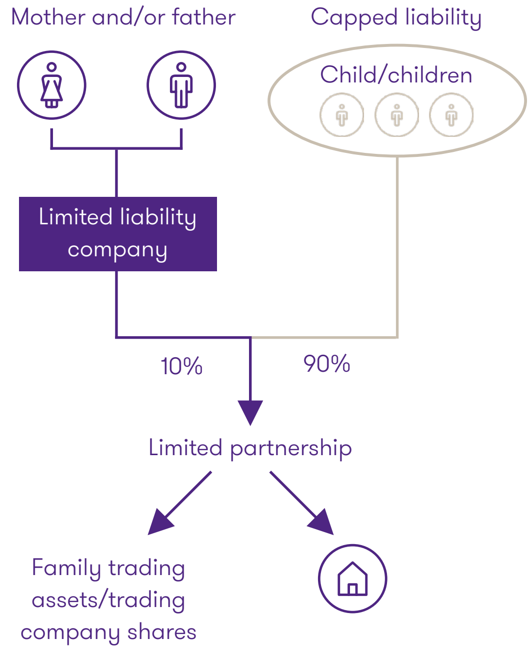
Benefits

Less administrative burden than a limited partnership, however every partner is liable for the debts of the partnership without limit. Personal assets of the individual held outside the partnership are not protected.

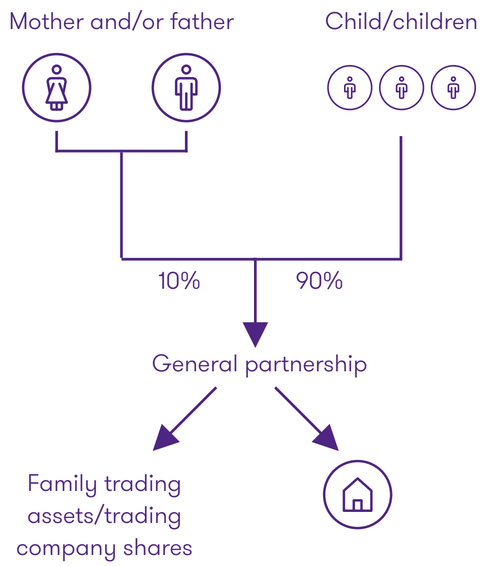
Requirements:

- no accounts filing requirement; and
- must register trading name as a business.

Unlimited general partner



All unlimited partners



How will it work?

1 Example one - parents transfer trading assets/shares in a trading company to the partnership for no consideration (a gift)

Step one - Disposal of the trading company shares/trading assets to the partnership by the parents.

Tax implications

Capital Gains Tax (CGT) arises to the parents with retirement relief potentially available to offset liabilities arising.

Stamp duty will also need to be considered by the partnership, for example, 1% is chargeable on the transfer of trading shares and residential property up to €1 million, 2% on the transfer of assets and 6% on investment property/shares deriving their value from investment property.

Capital Acquisitions Tax (CAT) would be chargeable to the children on receipt of the gift of the shares/assets through the partnership. Each child would have a tax free threshold of €310,000[1] and have an entitlement to an annual small gift exemption of €3,000, which can be used to mitigate the CAT liability. Furthermore, where the shares consist of qualifying business property/qualifying shares, business asset relief may be available to reduce the taxable value of the gift by 90%.

Step two - The trading company/business continues undisrupted.

Tax implications

Income tax returns will need to be filed for each partner. The structure of income distribution from the partnership, such as the dividend policy of the company or the profit apportionment of trading income, should be considered in light of the income tax exposure for all partners. The partnership agreement should provide that profits be shared as determined by the general partner(s) in their absolute discretion.

2 Example two - The family partnership purchases assets

Step one - Gift of cash to the children.

Tax implications

There is no charge to CGT or stamp duty on the transfer of cash. CAT would be chargeable to the children on receipt of the gift. Each child has a tax free threshold of €310,000[1] and has an entitlement to an annual small gift exemption of €3,000 which can be used to mitigate the CAT liability.

Step two - Contribution of cash to the partnership by each of the children.

1 Subject to prior gifts/inheritances received. The tax free threshold for future gifts or inheritances will be eroded.

Tax implications

There should be no tax implications provided each partner makes an equal contribution. Again, carefully drafted paperwork is crucial to ensure the partnership is established in the correct way.

Step three - Purchase of an investment property by the partnership.

Tax Implications

Stamp duty will be payable on purchase by the partnership.

Step four - Rental Income received by the partnership and distributed as directed by the general partner(s).

Tax implications

Income tax returns will need to be filed for each partner. The general partner(s) may elect to attribute all distributable profits after expenses to themselves, meaning no income tax charge arises to the children.

Alternative The partnership could alternatively purchase property with a 100% mortgage, subject to loan approval, and rental income can be used to discharge the borrowings.

Tax implications

No initial gift and no CAT exposure and no impact on the children's tax free thresholds for future benefits.

What are the benefits?

As the investment asset, trading or shares appreciate in value, the CAT exposure on ultimate transfer to the children is minimised as the capital appreciation will accrue to all of the partners, including the children. Only the parent's minimal share in the asset will be subject to CAT on the ultimate transfer of this share to the children.

Dissolution/break-up of the partnership

Unless otherwise provided, the retirement of one partner can dissolve the partnership therefore, the partnership agreement should adequately cover a situation where a partner retires, dies or wishes to wind up the partnership.

When dissolving the partnership, careful consideration should be given to the clawback provisions of any reliefs previously claimed, such as CAT business asset relief or CGT retirement relief.

Risk

In order for the financial and commercial benefits outlined above to apply, the partnership must be properly constituted and suited to the circumstances, whether its family investment or shares. This is why it is essential that your particular circumstances are analysed and discussed to confirm suitability and an agreement is drafted correctly and specific provisions are defined accurately in order to avoid any ambiguity or potential conflict amongst the partners. Consideration should be given to the type of partnership to be setup, being a general partnership (all partners are equally liable) or a Limited Liability Partnership (LLP) where liability rests with the general partner.

Action

We would recommend that families who are seeking succession planning opportunities identify assets which they believe to be increasing in value and consider the benefits and suitability of creating a family partnership.

How can we help?

Grant Thornton will be happy to discuss the structure and suitability of forming a family partnership, as well as identifying any potential beneficial succession planning opportunities, for individuals of all size asset portfolios. We have a specialist team of people working in this area providing a service to the highest standards across a diverse range of individuals and families. We can assist with the set-up and maintenance of your family structure, thereby ensuring that all obligations are met in a seamless and confidential manner and tax reliefs are identified and executed.

Contact

If you would like some further assistance, guidance or indeed an opportunity to discuss the matter in more detail please call your usual Grant Thornton contact. Alternatively, feel free to contact any of our specialists below.

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