Family Investment Companies

A client guide

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What is a FIC?

A FIC is typically a UK private limited company which is set up by a ‘founder’ and holds assets for his/her family. It is a structure that enables you to protect and maintain control of your assets, and an alternative way to pass those assets and wealth to the next generation. Each FIC should be bespoke and tailored to its founder’s unique circumstances but most FICs have the following features:

- Formed with at least two classes of shares:
  - ‘Founder’ shares (which carry voting rights but no capital or income rights) are held by the founder; and
  - Non-voting shares (which carry capital and income rights but no voting rights) are gifted to family members.
- The founder is typically the sole director (at least initially).
- The FIC holds wealth which is surplus to the founder’s everyday needs and makes a variety of investments as opposed to actually trading
- The founder (or his/her appointed advisors) retains control of the investments and the payment of dividends.

Tax planning with FICs

FICs can be a tax-efficient way to hold and manage assets. For some families, they also offer significant estate planning opportunities. Provided that the subscription for shares is paid for with cash, there will be no immediate tax consequences when a founder sets up a FIC. The founder is treated as making a gift to the other shareholders, which will be a ‘potentially exempt transfer’ and will fall outside of the inheritance tax net once he/she survives seven years from the date of the gift. However, the transfer of some assets may trigger capital gains or stamp tax liabilities so advice must always be sought in this respect.

There are various ways that investment profits can be extracted from the FIC. The FIC’s shareholders (e.g. the founder’s family members) would commonly receive dividends. They will not be taxed on the first £5,000 of dividends received in a tax year. Above this allowance, they will pay income tax on dividends at their marginal rate of tax. The founder may avoid dividend taxes if he/she funds the FIC by loan, and that loan is later repaid out of the FIC’s profits.

A FIC is subject to corporation tax on its income and capital gains generally. This rate of tax is lower than income tax and capital gains tax, potentially meaning that the FIC investments can grow more quickly. Most dividends received by a FIC are exempt from corporation tax, regardless of whether the dividend has a UK or overseas source.

Wealth protection

Each FIC can be tailored to the founder's circumstances and preferences. Many wealth owners opt for a company structure because of the high level of control that can be retained over the family assets. Bespoke articles of association and shareholders' agreements can be drafted to regulate which family members can make decisions and determine their rights to dividends and capital.

Other benefits

- Transfers of shares gifted to the founder's children can be restricted to, for example, protect the shares in a later family breakdown.
- Control of the FIC can be handed over gradually as and when appropriate, either through the appointment of other family members as directors and/or through the transfer of voting shares.
- FICs can be an efficient way to fund university fees and expenses through dividends to adult children who otherwise have no income.

Key risks

There is no single wealth and succession planning strategy that works for all. Individuals and families should therefore seek advice to make sure they do not fall foul of the potential risks in using FICs, including:

- Potential double taxation because the FIC's profits are subject to corporation tax and then subject to income tax when subsequently distributed to shareholders through dividends;
- FICs may not be as private as trust structures because of the UK's company reporting requirements and the obligation to maintain a register of 'persons with significant control';
- Founders must be aware that dividends paid to their children whilst still minors would be taxed on the founder as the source of the underlying capital; and
- The tax advantages outlined above are always susceptible to change and expert advice should be taken to ensure that arrangements are up to date.

How Irwin Mitchell Private Wealth can help

FICs are an attractive alternative to trusts for many entrepreneurial clients who are used to working with company structures. FICs are also popular with clients from both the UK and overseas who benefit from their tax treatment and flexibility in respect of control. However, each founder and family has different assets and circumstances and careful tax advice should be sought before incorporating a FIC.

Irwin Mitchell's Private Wealth team includes private client and corporate experts that offer a joined up service to advise clients on their tax and corporate matters.

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