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Readers' forum: Amicable split

Two businesses, one bank account.

My client has operated a range of activities through a limited company that is owned 60:40 with his wife, whose involvement is minor, although she is paid a modest director's fee and dividends. An activity that generates about 25% of the turnover has recently become subject to regulations about owners and managers, and the client is considering separating the business into two companies – one that he will own 100%, and the other that will probably be split 50:50 with his wife. It will then be easier to comply with the regulations because his wife will be completely excluded from the regulated business.

I can see several potential pitfalls. One particular suggestion by the client concerns me: he does not want to open a separate bank account for the new company.

Is it possible for two companies to share a bank account and to split their income and expenses as an internal accounting exercise? Both businesses would be registered for VAT.

Readers' comments on this would be welcome.

Query 19,231– Reginald Ulated.

Reply by Bramble

Would a joint account mean the wife is really excluded from the business?

This is more of a legal, accounting and banking matter than a tax issue. Whether the company's bank would permit the account to be operated in such a manner must be ascertained; I suspect its terms and conditions would prevent this.

I understand there is nothing illegal in two (or more) companies sharing the same bank account. There are numerous joint bank accounts through which each joint holder, usually an individual, can make transactions. However, it is not clear from the query whether it will be a joint account or will continue as a sole account in the name of the existing company with transactions relating to the new company dealt with by internal bookkeeping.

Many issues are likely to crop up that would otherwise not if each company had its own account. Perhaps the client is trying to avoid bank charges on a second account, although this would seem a trivial matter when there are more serious concerns.

One concern is with the premise: 'It will then be easier to comply with the regulations because his wife will be completely excluded from the regulated business.' I do not see that this will be the

case if the same bank account is used for both companies since her minor involvement in the business and directorship would still give her access to the account, so she would not be completely excluded from the regulated business. We are not told the type of regulatory business involved but it is likely to be an issue if it is financial-related, especially if client money is involved. Will the relevant regulator accept a shared or joint bank account? Probably not. There are also likely to be anti-money laundering issues from operating an account in such a way.

It is noted that both companies will be VAT-registered and having a single bank account might prove to be problematic when dealing with payments to and refunds from HMRC. It appears that a VAT group would not be possible since one of the companies will be owned 50:50 by the client and his wife (see VATA 1994, s 43A). Likewise for real-time information purposes, dealing with PAYE through a single bank account may be problematic.

The internal accounting for both companies would require them to maintain details of income and expenditure and a reconciled bank balance, which together would need to total the actual balance. How would an overdrawn bank account be dealt with when it comes to liability to repay (possibly on demand)? It would be an administrative headache, to say the least. How would a liquidator or receiver be able to act if either company failed?

Given that one company would be a regulated business, it is likely to require an annual audit – either a normal statutory basis or one that would meet the regulator’s requirements.

The client should be advised to open a separate bank account for the new company.

Reply by Pete Miller, The Miller Partnership

Separation of the businesses would require a demerger to be carried out.

There are many issues here. First, separation of two businesses carried on by one company into two separate companies is a complex process, statutorily referred to as a ‘division’, but colloquially as a ‘demerger’.

At its simplest, the client might be able to transfer one of the businesses currently in the company into another one, by distribution *in specie*. The transaction would have to be structured to comply with the rules for it to be classed as a scheme of reconstruction, so that the reliefs from capital gains tax would apply (TCGA 1992, s 136 and s 139). It would also be important that the transaction complies with the rules for it to be an exempt distribution (CTA 2010, s 1074 to s 1095). None of this should be undertaken lightly and expert advice should be sought.

Given that the exempt distributions legislation is prescriptive, it might, in fact, be necessary to use some other mechanism to effect the demerger, such as a reduction of capital (my preferred mechanism) or a liquidation. The facts would need to be inspected closely to decide whether one of these approaches is required.

The important message here is that the owner cannot simply stop trading in one company and start trading in another because this might be treated as a disposal chargeable either to capital gains tax in the hands of the shareholders or corporation tax in the company.

In terms of the disparity of shareholdings, given that the shareholders are husband and wife, I suspect that the easiest approach will be to carry out the reconstruction and then for one spouse to gift shares to the other so that the appropriate shareholdings are achieved. This should be tax-free, as for all inter-spousal transfers.

I would strongly recommend that each company has a separate bank account. While opening a bank account for a new company can be quite a painful process these days, I cannot imagine a scenario in which a single bank account shared by two separate businesses in two separate companies is ever a good idea. Commercially, it can create muddle and confusion, in particular

as to which expenses and, sometimes, which income belongs to which company. I have seen this sort of problem myself several times when sole traders simply operate through a single current account rather than have a separate business account. The simple message here is, just don't do it.

It is also likely, depending on the type of business, that the regulatory requirements for the regulated business would entail it having a separate bank account. It is hard to say more on this point because we don't know what the business is.

That said, there is no reason in tax statute why a shared bank account cannot be acceptable for tax purposes. But it will be vital to keep track of every entry in the bank statements to be certain as to which companies and businesses the income and expenditure apply. Further, if there is any degree of apportionment of shared costs between the two companies, HMRC may want evidence to support the way in which these costs have been split between the businesses.

A closer look ...

Scheme of reconstruction

The replies to 'Amicable split' consider the division of one company into two. Tolley's Corporation Tax 2018-19 explains that there are two reliefs applicable to schemes of reconstruction – broadly, when companies and groups are reconstructed and there is an issue of shares as part of the transaction. First, the original shareholders are treated as if the transaction were a reorganisation of share capital. Second, any transfer of assets by a company may be at a consideration that gives rise to no gain and no loss for capital gains purposes.

A 'scheme of reconstruction' is a scheme of merger, division or other restructuring which, subject to other parameters, meets conditions (a) and (b) and either condition (c) or (d) below.

1. Issue of ordinary share capital. The scheme must involve the issue of 'ordinary share capital' of a company or companies (the 'successor company' or 'successor companies') to holders of ordinary share capital of another company or companies (the 'original company' or 'original companies'). Or, if the original company or any of the original companies has more than one class of ordinary shares, the issue to holders of one or more classes of ordinary share capital of any such company. The scheme must not involve the issue of ordinary share capital of the successor company or companies to anyone else.
2. Equal entitlement to new shares. The entitlement of any person to acquire ordinary share capital of the successor company or companies by virtue of holding ordinary share capital (or any class of such capital) of the original company or companies involved in the scheme (as in (a) above) must be the same as that of any other person holding such shares (or shares of that class).
3. Continuity of business. The effect of the restructuring must be either:

- if there is one original company, that the business or substantially the whole of the business carried on by it is carried on by a successor company (which must not be the original one) or successors (which may include the original one); or
- if there is more than one original company, that all or part of the business(es) carried on by one or more of the original companies is carried on by a different company, and the whole or substantially the whole of the business(es) carried on by the original companies are carried on by the successor (which may be one of the original companies) or successor companies (which may be the same as or include the original companies).

4. *Compromise or arrangement with members*. The scheme must be carried out in pursuance of a compromise or arrangement under Companies Act 2006 (or equivalent), and no part of the business of the original company, or any of the original companies, must be transferred under the scheme to any other person.

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