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QLD State Taxes – Tips and traps for 2021

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Information provided is general in nature; precise application depends on specific circumstances



Overview

- Small business restructure stamp duty exemption
- Aggregation of dutiable transactions
- Foreign surcharge for land tax
- Payroll tax grouping cases



Stamp duty business exemption

- Business transfers dutiable in Queensland
- **Trap: transfers of units in a unit trust conducting a Queensland business are dutiable**
- Public Ruling DA000.16.1
 - Stamp duty exemption restructuring business into a company
 - Applies to transfer of business assets < \$10 million
 - Annual turnover <\$5 million
 - Business must be based in Queensland
 - Restructured company must be:
 - Newly registered
 - Dormant:
 - Not have held any assets or liabilities since registration
 - Not been a party to an agreement or **a beneficiary** or trustee of a trust
 - Not have issued or sole any shares or rights relating to shares



Stamp duty business exemption

- Available restructures:
 - Individual to company with individual as shareholder
 - Partnership to company with partners as shareholders (in the same proportion)
 - Trust to company with beneficiaries as shareholders (in the same proportion)
- Special rules in relation to trust and 'beneficiaries':
 - Beneficiaries of unit trust are the unitholders;
 - For a discretionary trust purpose, a *'taker in default of an appointment by the trustee'* will be considered a beneficiary of the discretionary trust
 - Colloquially known as 'default beneficiary'
 - The person who benefits from income if the trustee fails to exercise its discretion
 - The person who benefits from the capital if the trustee fails to exercise its discretion

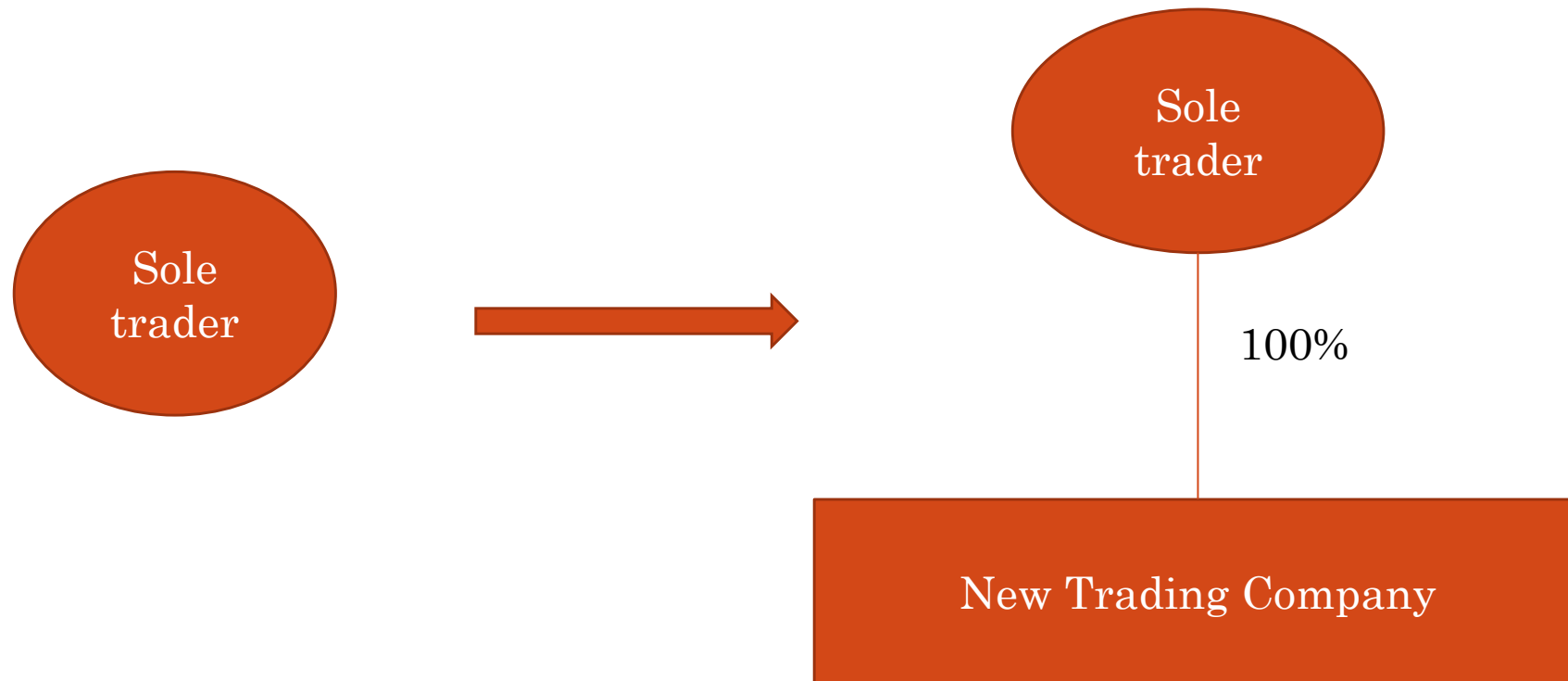


Stamp duty business exemption

- Transfer duty exempt to the extent the ownership interest before the transfer is the same as the taxpayer's share interest in the transferee company after the transfer.
- If there are more than one default beneficiaries, then their interests are taken to be held equally

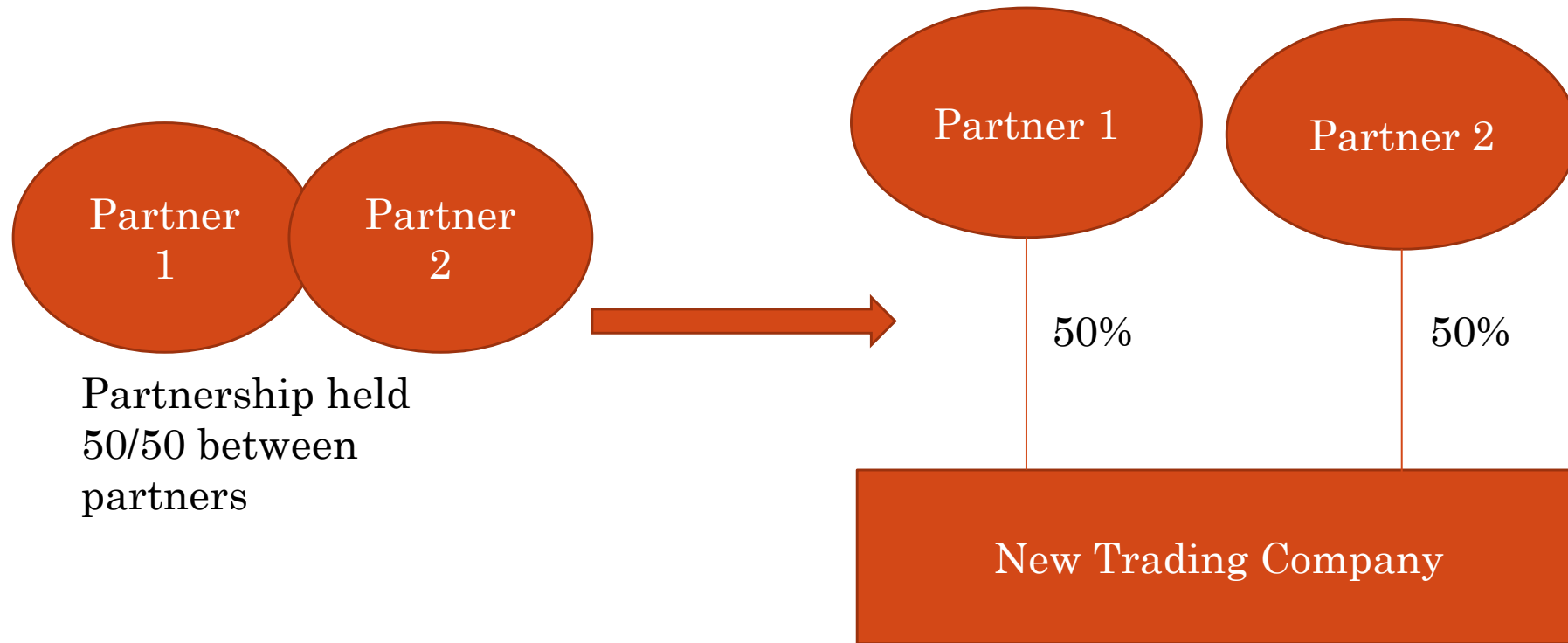


Stamp duty business exemption



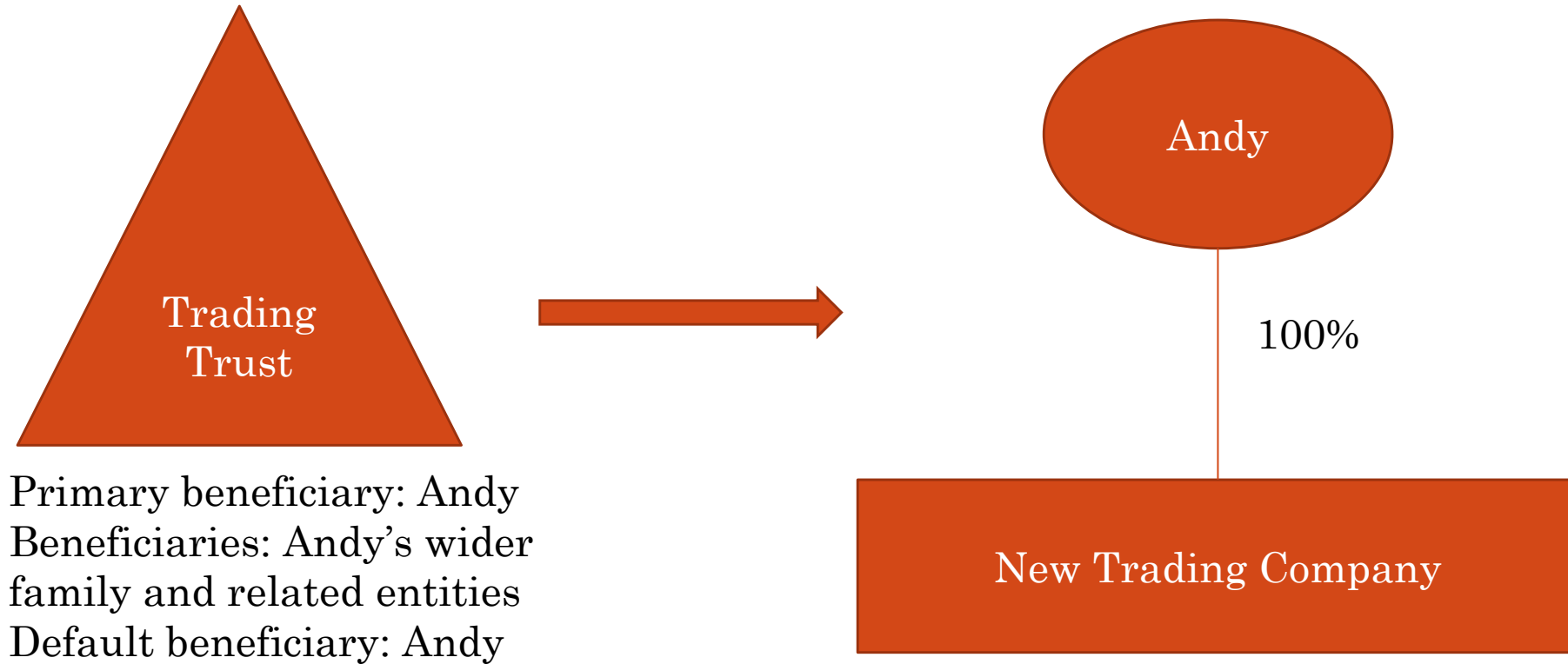


Stamp duty business exemption



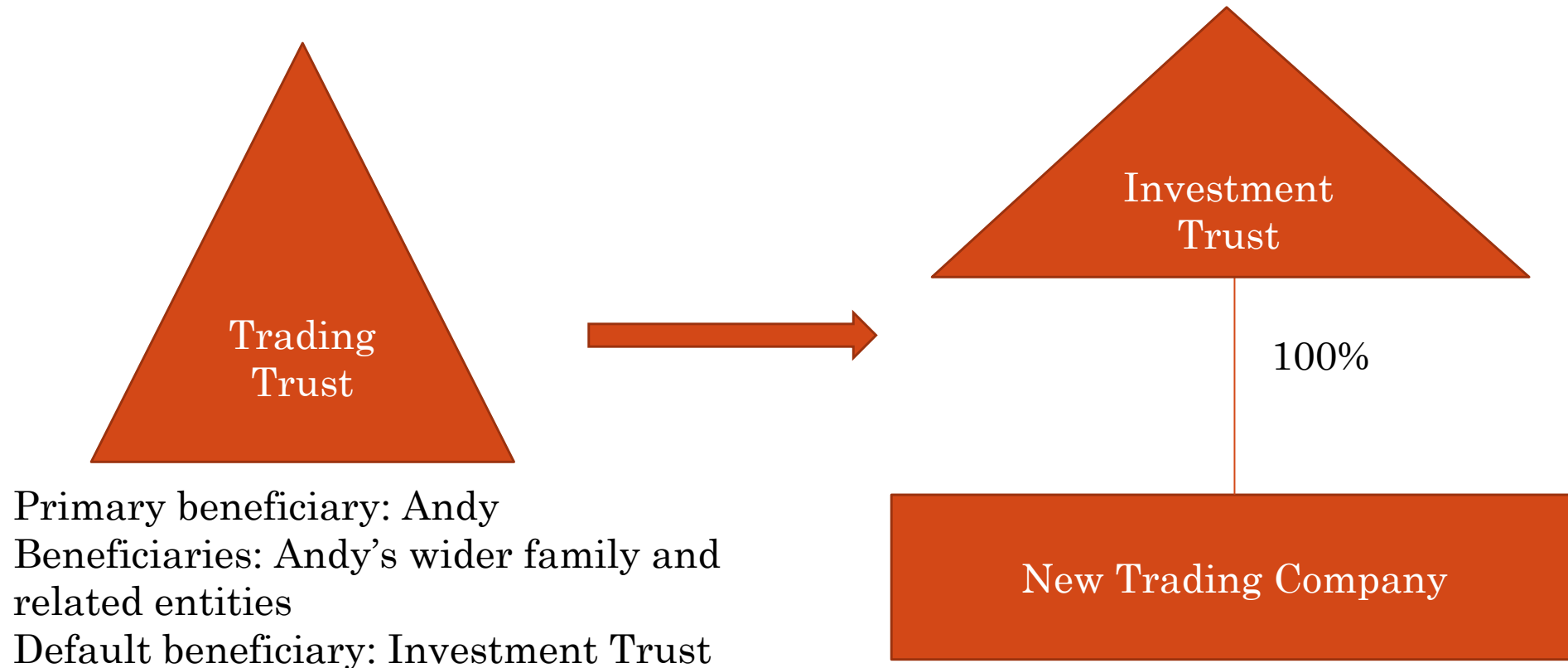


Stamp duty business exemption





Stamp duty business exemption



Primary beneficiary: Andy
Beneficiaries: Andy's wider family and related entities
Default beneficiary: Investment Trust

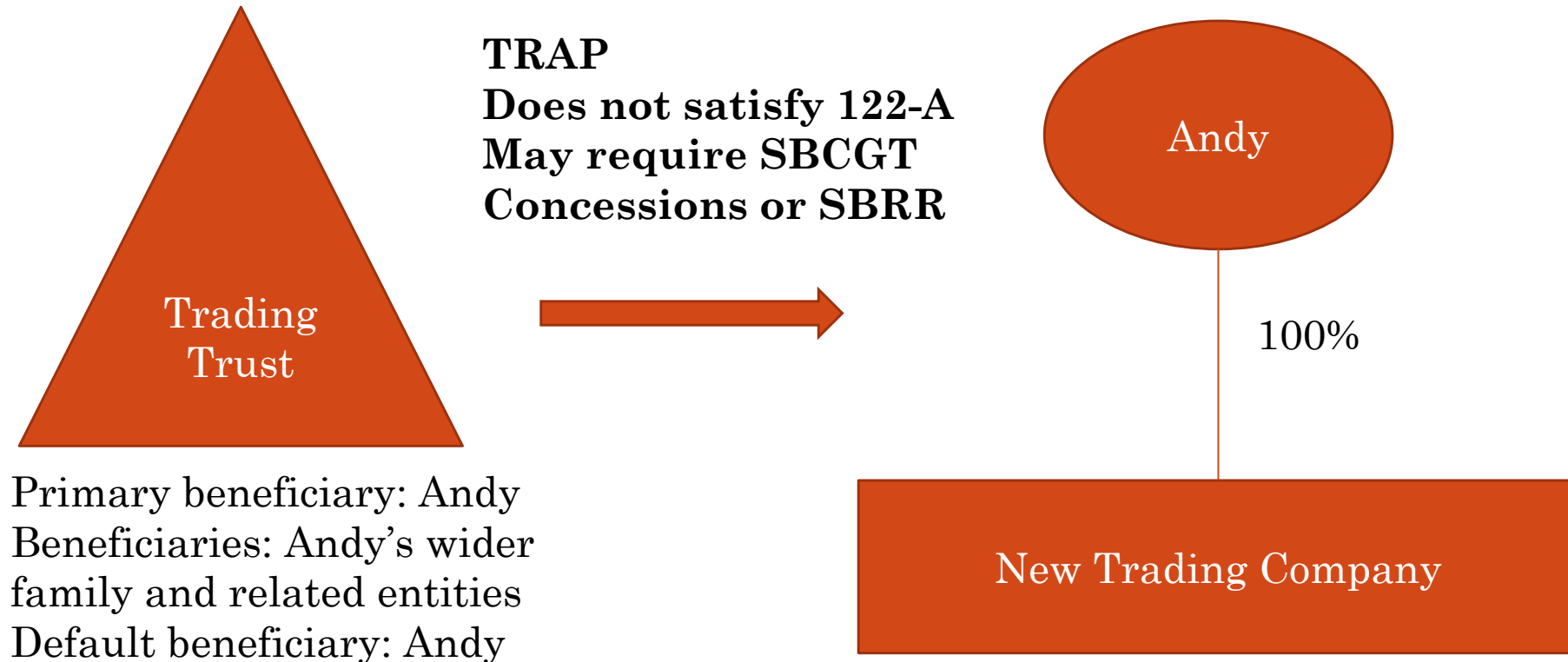


Stamp duty business exemption

- Stamp duty not in a vacuum
- Capital gains tax and goods and services tax
- CGT:
 - Rollovers
 - Concessions
- GST:
 - Going concern



Stamp duty business exemption





Stamp duty business exemption

- Not perfect
- Lacks tax planning
- Potential to transfer shares (?); CGT implications (?)
- Clawback provisions for stamp duty exemption (?)





Aggregation of transactions

- Multiple property transfers:
 - Property development
 - Land tax restructures
 - Succession planning
- Splitting business transfers:
 - Transferring IP without other property does not trigger duty
 - Transferring personal property without other property does not trigger duty
- Think again
- **TRAP Multiple simultaneous dutiable transactions could be grouped together**



Aggregation of transactions

- Section 30 Duties Act 2001 (Qld)
- Multiple transactions aggregated based on consideration of the following:
 - whether the transactions are contained in a single agreement;
 - whether the transactions are conditional on the other;
 - whether the parties to the transactions are the same;
 - whether any party to the transaction is a related person of another party to any of the other transactions;
 - the time over which the transactions take place;
 - whether, before the transactions take place, the dutiable property the subject of the transaction was used together or dependently with one another by the transferor or transferors;
 - whether, before the transactions take place, the dutiable property the subject of the transaction was used together or dependently with one another by the transferee or transferee.



Aggregation of transactions

- *Sorensen & Ors v Commissioner of State Revenue* [2020] QCAT 7
 - 7 Holberton Street Pty Ltd (the Developer) built a townhouse complex of five townhouses in 2016.
 - The shareholders of the Developer at the relevant times were Mr Sorensen, Mr Walsh and Mr Rados.
 - Following the development:
 - 2 townhouses were transferred to Mr Sorensen;
 - 1 townhouse was transferred to Mr Walsh; and
 - 2 townhouses were transferred to Mr Rados.
 - The above five transfers were executed on the same day.
 - Further to the above transfers of the townhouses, steps were taken to try and obtain a stamp duty exemption under section 113 of the QLD Duties Act. Such steps were, however, held not to satisfy the relevant requirements for the exemption.
 - In review of an objection decision dated 2 August 2018, the Commissioner confirmed the decision to aggregate the above transfers.



Aggregation of transactions

- Notwithstanding transfers were made to separate unrelated parties (other than jointly being involved with the property development) based on separate documents, the 5 transactions were aggregated
- Factors supporting this conclusion:
 - Property used for a common purpose of property development
 - Contracts were executed as required under a company's constitution
 - The seller in each instance was the same entity
 - All contracts were executed on the same date
 - The same solicitor was used by the seller and purchaser
 - The contracts all contained similar conditions, including having identical settlement dates
 - Transfers were all executed on the same date



Land tax and foreign surcharges

- 2% surcharge on land tax payable if foreigner holds land in Queensland
- Absentee v 'foreigner'
- Absentee can only be an individual who does not ordinarily reside in Australia. Exceptions include:
 - Public officers of the Commonwealth or of a State;
 - Employed individuals by an Australian employer for a period of 1 year before not being resident
 - Australian citizen
 - Permanent visa holder under section 30 *Migration Act 1958*
- Different land tax rates apply for 'absentee'
- 'Foreigner' for surcharge purposes only applies to a 'foreign company' or a 'trustee of a foreign trust'



Land tax and foreign surcharges

- Foreign company:
 - A company incorporated outside Australia
 - A company in which **foreign persons** have a controlling interest
- Foreign person includes:
 - An individual who is not an Australian citizen or permanent resident;
 - A foreign company;
 - The trustee of a foreign trust
- Provisions also linked related persons to a foreign person:
 - Same family members
 - Mutual beneficiaries
 - Related bodies corporate

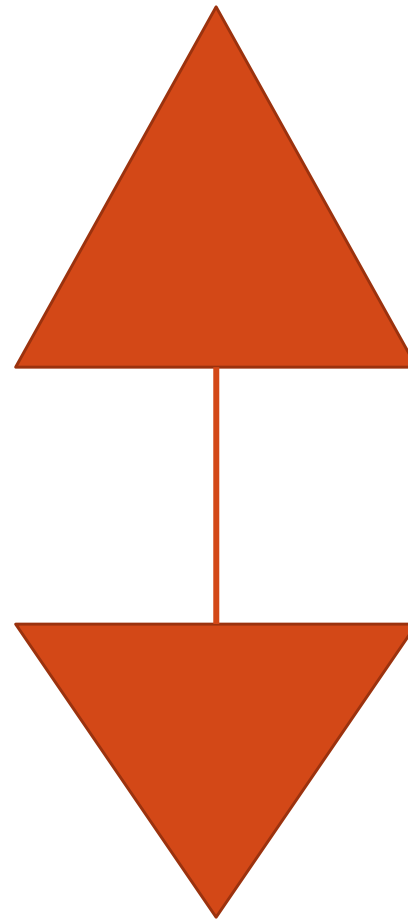


Land tax and foreign surcharges

- Trustee of a foreign trust arises where at least 50% of the trust interests in the trust are foreign interests (which includes a trust interest held by a related person to a foreign person)
- Trust interest for discretionary trust purposes looks at the default beneficiaries
- **TRAP** Foreign person named as a default beneficiary with various Australian based beneficiaries



Land tax and foreign surcharges



Trustee – Foreign citizen
Default beneficiary – Foreign citizen

*Identified by seeing the trustee's
address on the trust deed*

Unit Trust bought a golf
course



Land tax and foreign surcharges

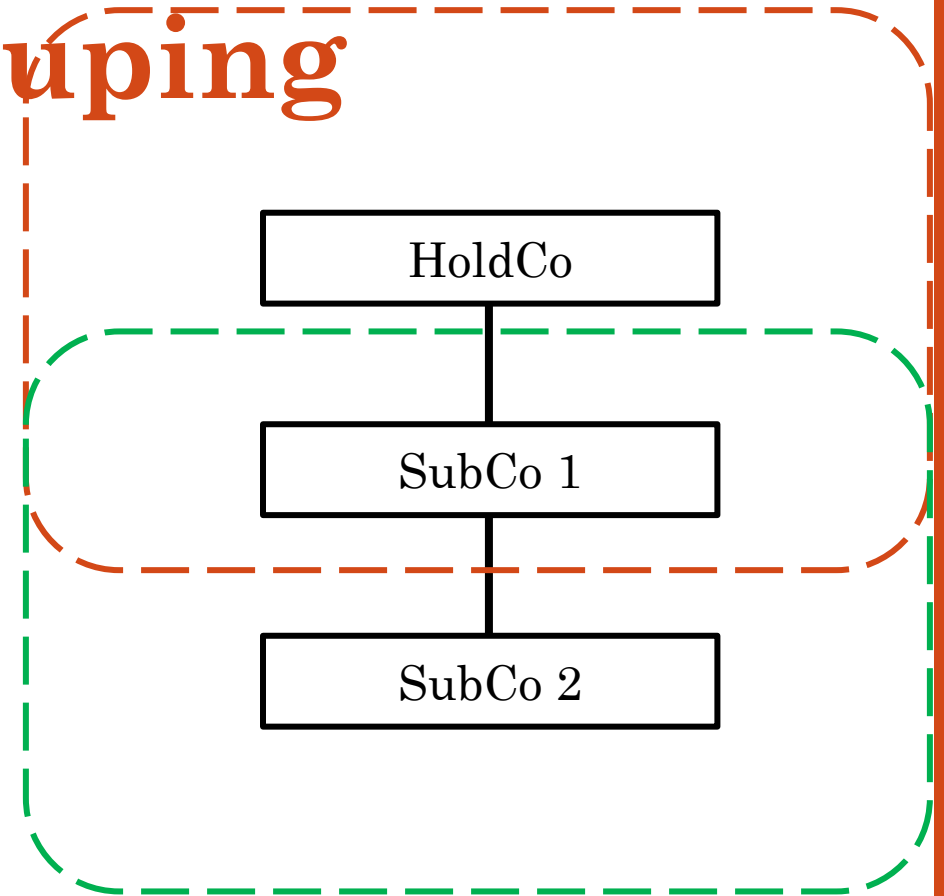
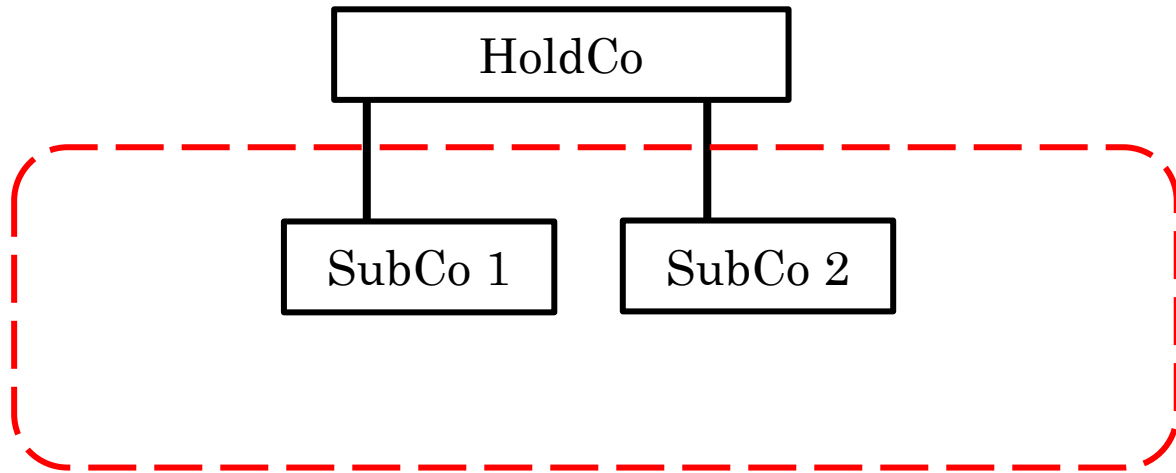
	Resident/foreign	Tenant in common %
Family trust	Foreign	12.5%
Dad, brother and sister	Foreign	18%
Client and mother	Residents	12%
Second family trust	Unsure	32.5%
Third family trust	Unsure	10%
Fourth family trust	Unsure	10%
Fifth family trust	Unsure	5%



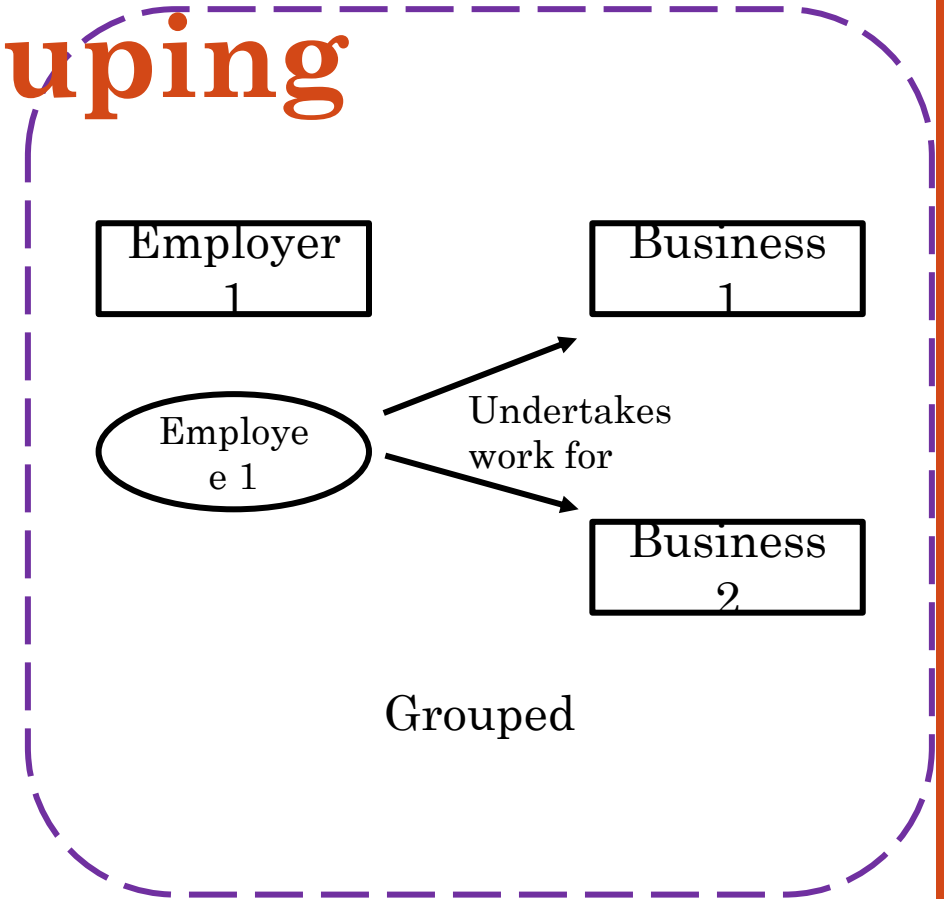
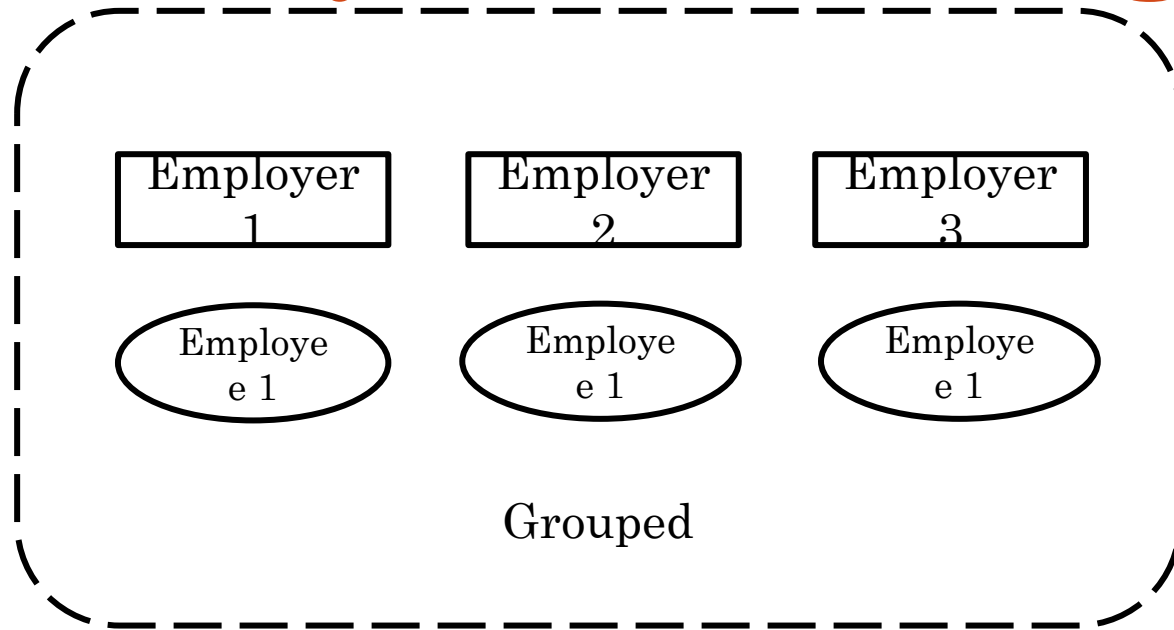
Payroll tax and grouping

- 'Grouping of Corporations'
- 'Common Employees'
- 'Common Controllers'
- 'Tracing of Interests'
- 'Common Group Member'

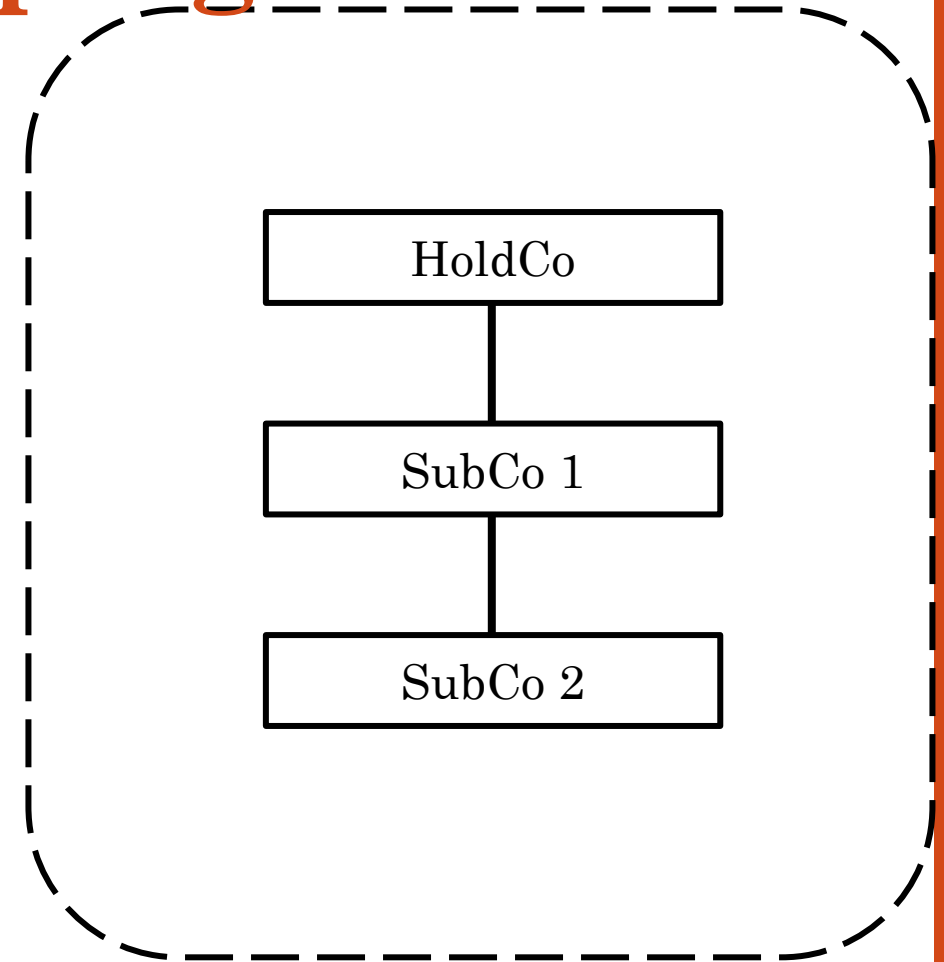
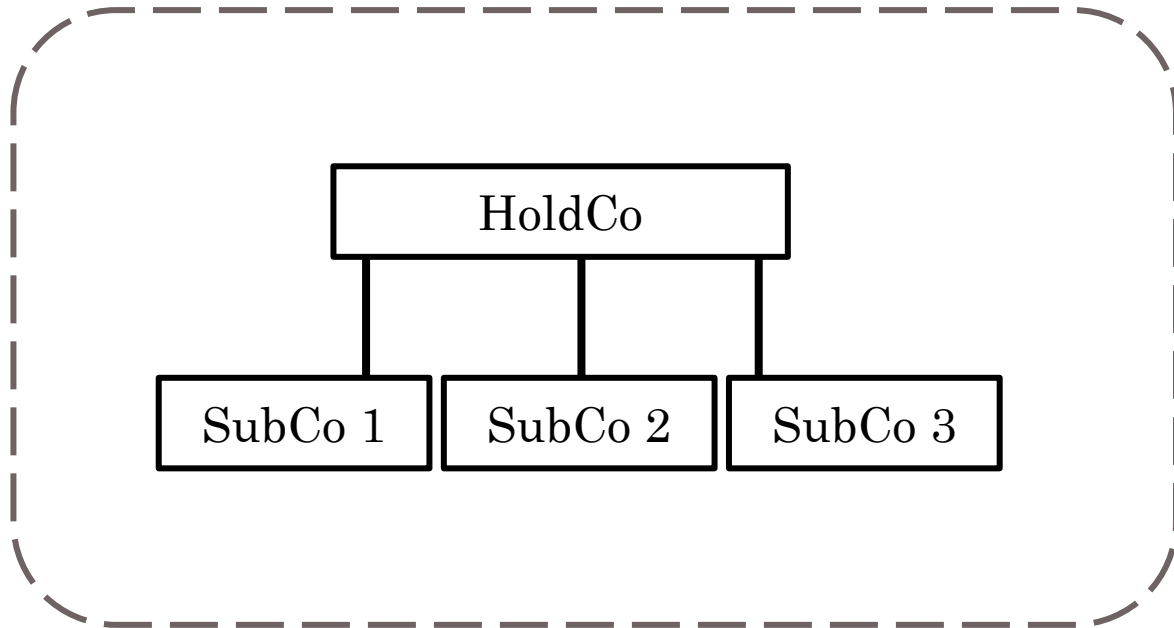
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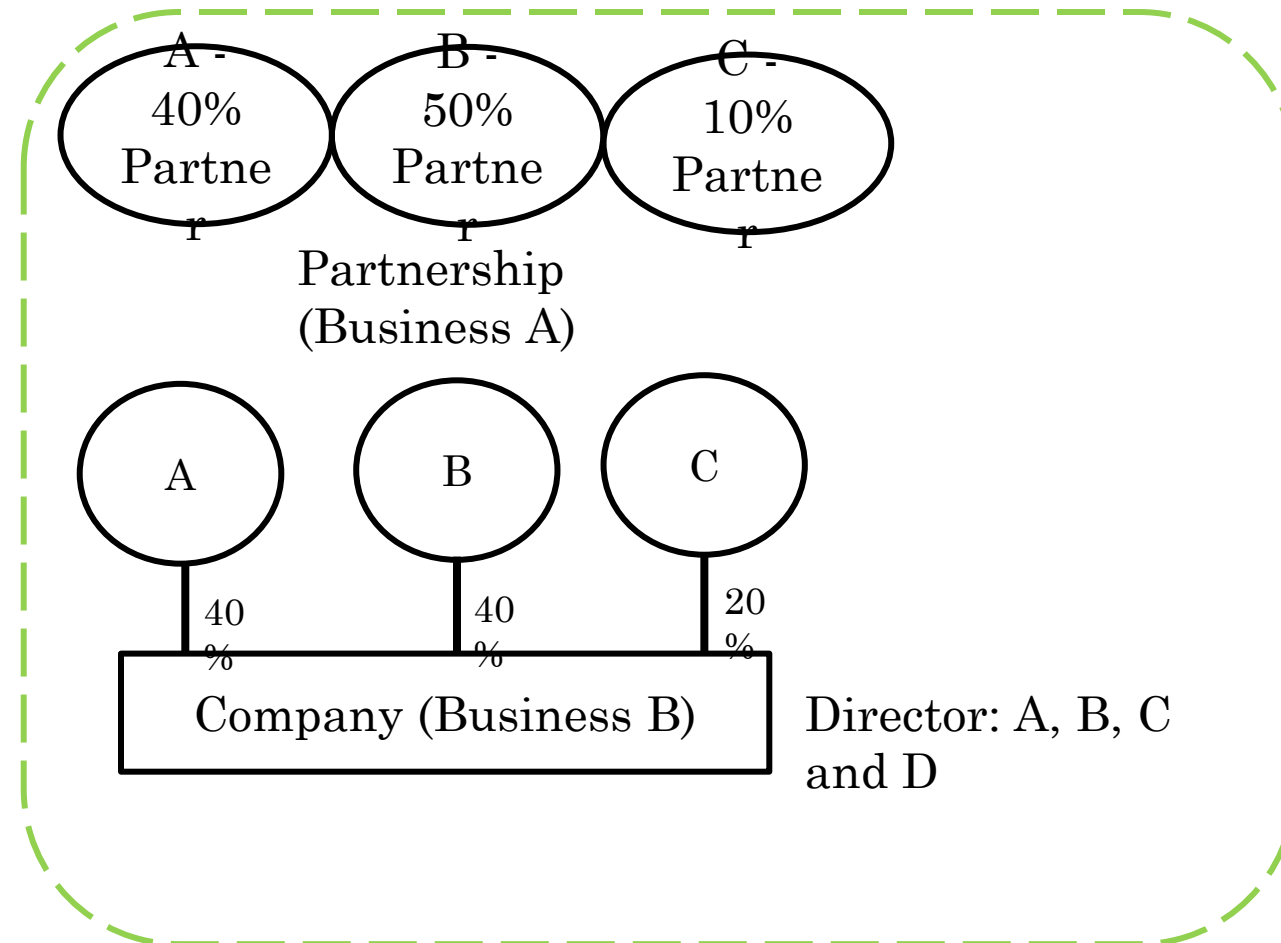
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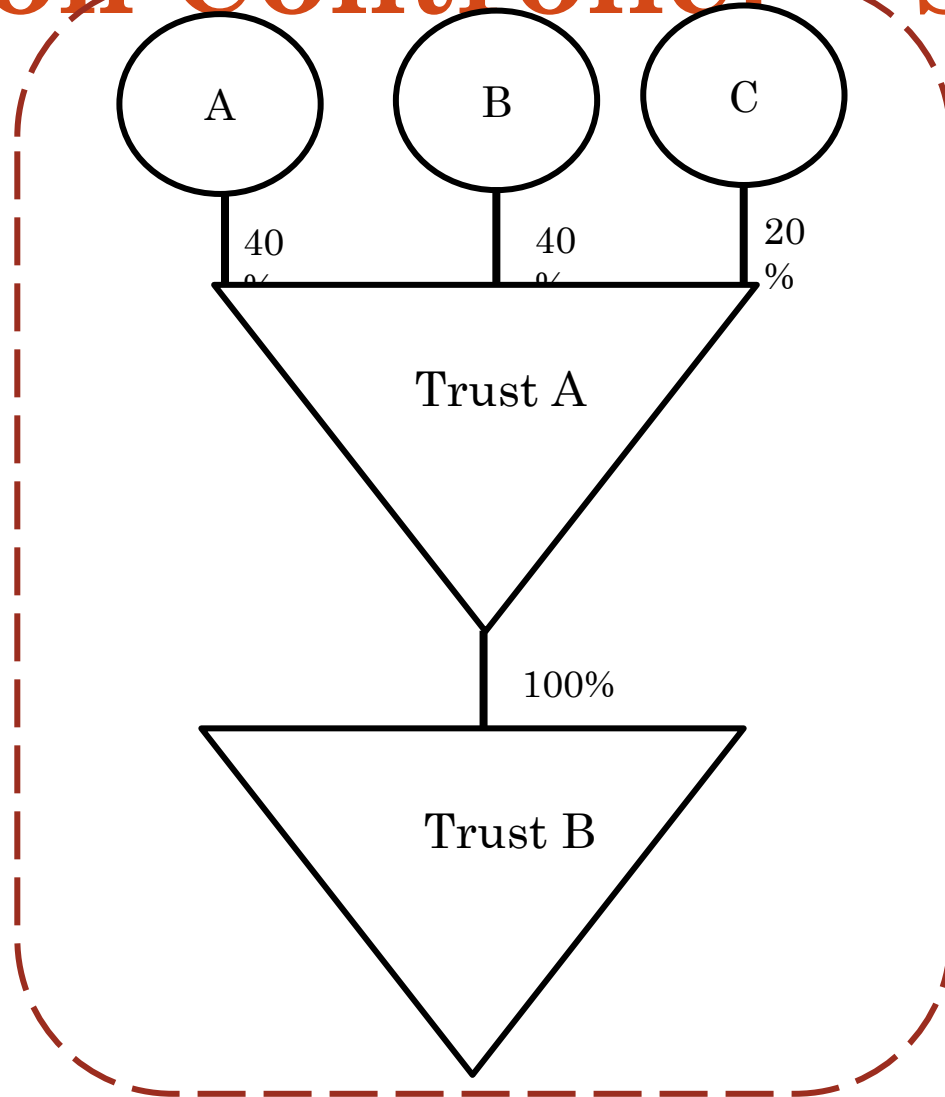
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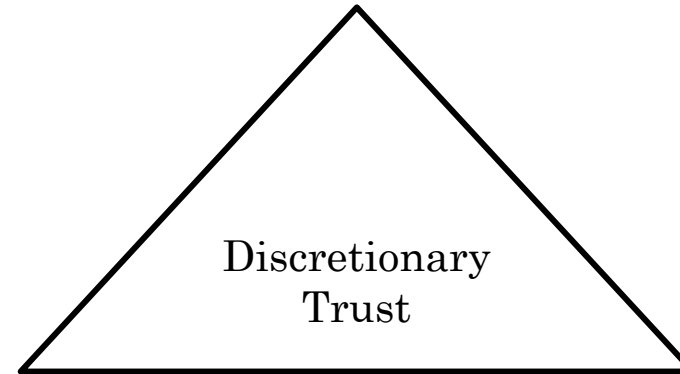
Payroll tax and grouping



Common Controller – s71(5) PTA



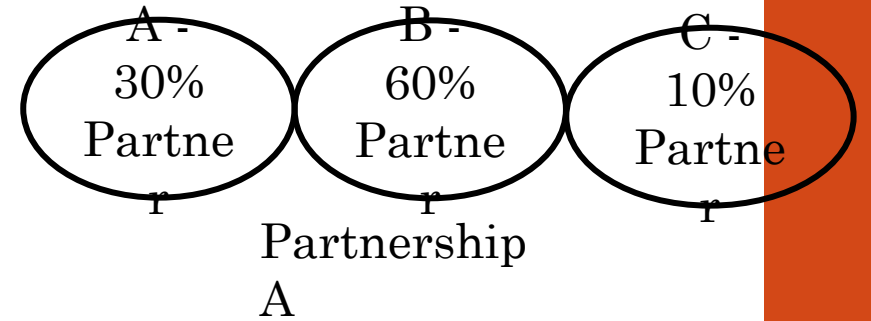
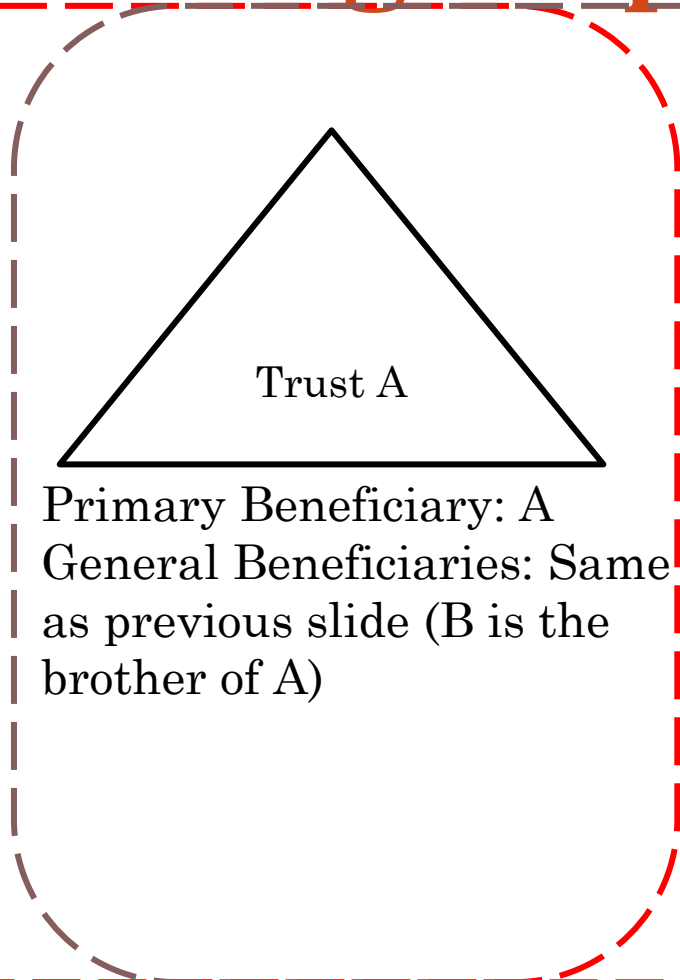
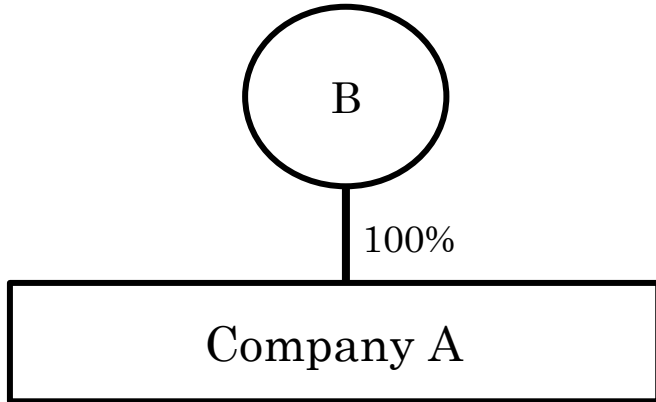
Payroll tax and grouping



Primary Beneficiary: A
General Beneficiaries:

1. Spouse of Primary Beneficiary
2. Lineal descendants of Primary Beneficiary
3. Parents and grandparents of Primary Beneficiary
4. Siblings, uncles, aunts, cousins of Primary Beneficiary
5. Spouse of all of the above
6. Companies that any beneficiary is a director of or has a share or interest in
7. The trustee of any trust that any beneficiary has an interest in

Payroll tax and grouping



Payroll tax and grouping

- One payroll tax tax-free threshold
- One set of deductions available to reduce payroll tax
- All group members jointly and **severally** liable to the debt
 - Asset protection
 - Risk issues

Payroll tax and grouping

- Asking the Commissioner to exercise a **discretion*** to exclude an entity from being a member of the group – section 74 PTA
- Cannot exclude related bodies corporate
- Test is if the Commissioner is satisfied the business carried on by the entity asking to be excluded from the group, is carried on independently and not connected with the business carried on by any other member of the group

*Not easy where businesses can be seen as working together

Payroll tax and grouping

- Nature and degree of ownership and control of the businesses carried on by the entity and the other members of the group
- The nature of the businesses
- Any other matters the Commissioner considers relevant

Payroll tax and grouping

- Commercial transactions between members (and whether significant)
- Shared resources, facilities or services (including employees)
- Managerial and day to day administration
- Financial interdependencies such as loans, guarantees and common banking facilities
- Connection between members when purchasing or selling goods and services
- Nature of the business
- Connection between the ultimate owners



Payroll tax and grouping

- 'Grouping of Corporations'
- 'Common Employees'
- 'Common Controllers'
- 'Tracing of Interests'
- 'Common Group Member'



Payroll tax and grouping

- *Salemade v Commissioner of State Revenue* [2021] QSC 19
- *Latitude North Hotels Pty Ltd v Commissioner of State Revenue* [2021] QCAT 16
- *Beaumont Constructions Pty Ltd & Ors v Commissioner of State Revenue* [2020] QCAT 52
- *Cessnock Tyres Pty Ltd v Chief Commissioner of State Revenue* [2018] NSWCATAP 147

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