Family Investment Companies

Family Investment Companies (FICs) are corporate structures, that provide a tax efficient alternative to family trusts.

FICs can be useful for families with wealth to invest and are becoming a popular way to transfer wealth to family members, whilst also protecting and growing the assets in a structured way. With corporation tax currently at 19%, the company structure can be beneficial to many wealth holders.

Our tax experts can advise on whether a Family Investment Company is suitable to protect you and your family's wealth. We can work with you to create a structure that is tailored specifically to your needs and protects against future changes in your family.

Our tax team is highly specialised and has a wealth of experience representing high-net-worth clients across a wide range of backgrounds, both UK based and overseas.

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Setting up a Family Investment Company

A Family Investment Company is typically set up by a 'founder' creating at least two classes of shares:

- The founder's shares carry voting rights but no rights to capital growth
- The other class of shares are given to family members, who have a right to capital and income but limited or no control over the company

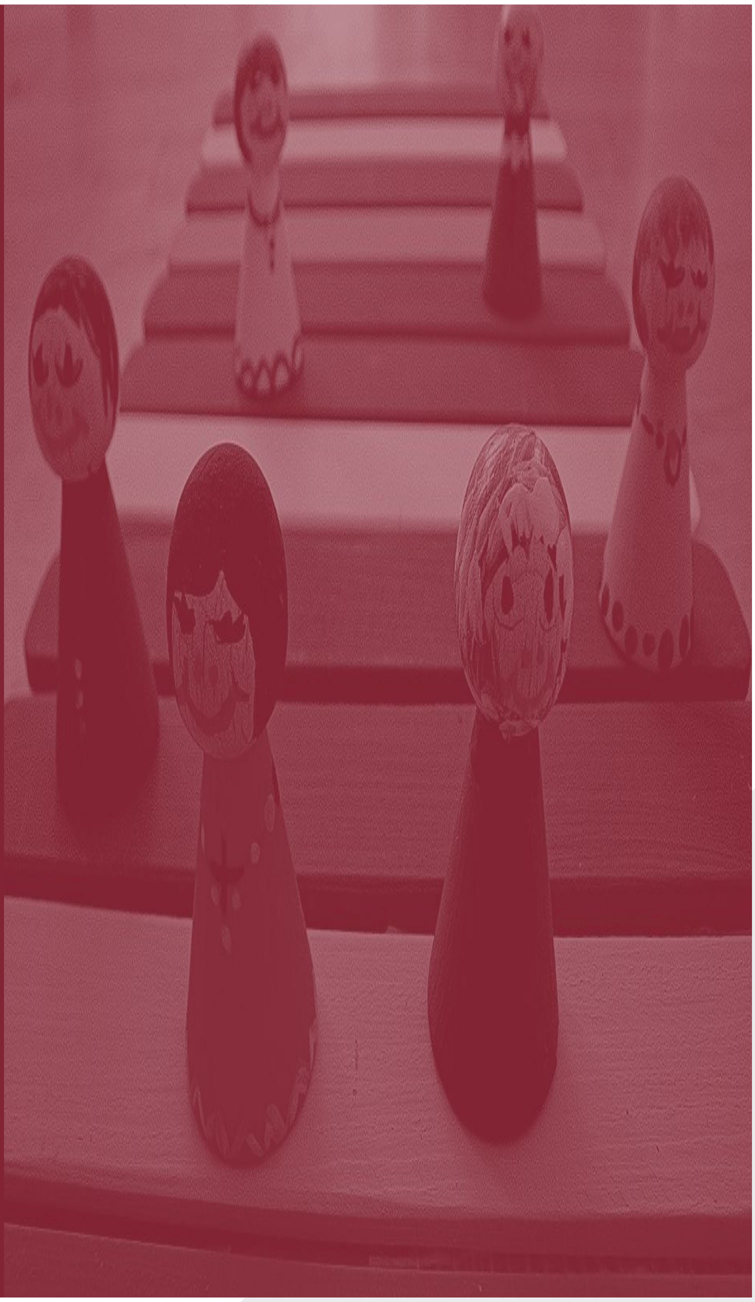
The founder is typically also a director of the Family Investment Company. The other shareholders cannot make decisions about investment strategy or the issue of dividends, but they are able to benefit financially. The growth in value of company assets can be removed from the founder's estate for inheritance tax purposes.

The structure is flexible and can be tailored to meet individual circumstances. It is important to draft bespoke articles of association and shareholders' agreements to regulate which family members can make decisions and what happens when the shareholders die or when other events occur.

The governing documents are specific to the company you are setting up and include provisions covering the distribution of profits, return of capital, directors' appointments and share transfer provisions.

Benefits of Family Investment Companies

- Profit from your investments will be subject to the lower corporation tax (currently 19%) rather than the higher rate income tax
- No upfront inheritance tax charges
- Tax efficient accumulation of profits
- Full control over investment decisions
- Preservation of wealth for future generations
- Greater control over how assets are distributed and what happens in the event of severance from the family (such as divorce)
- Flexibility in the types of assets that can be held



Family Investment Companies - aspects to consider:

Inheritance Tax With careful structuring appropriate to your personal circumstances and the assets held, Inheritance tax can be mitigated when using a Family Investment Company.

The precise mechanisms will depend upon whether it is existing assets or cash which will be held within the FIC.

A gift of shares is subject to the seven-year rule for inheritance tax purposes. If a founder keeps an interest in the company, the value of the shares will be considered on death and can potentially incur inheritance tax. The value of these shares can generally be reduced by applying a minority discount depending upon the precise portion.

Divorce and death of founders Because Family Investment Companies are just that, companies, there is a high level of control in how your wealth is protected.

Terms can be included in the company documents to restrict the onward transfer of shares. This has the benefit that shares may not be part of a divorce settlement, or subject to a financial claim against a shareholder's estate in the future. Terms can also be included to cover what would happen to you if a shareholder died. Family Investment Companies can offer a high level of control and be bespoke to meet the requirements of you and your family.

Divorce of junior family members It is possible to restrict onward transfer of shares in this scenario, if the rights were drafted accordingly from the outset. If this is not implemented, on the divorce of junior family members, it is generally unlikely a family court would intervene and order the transfer of Family Investment Company shares from a family member to a former spouse.

Where those shares form part of a couple's joint assets, a family court may take the Family Investment Company shares into account when considering divorce settlements, than an interest in a discretionary trust.

This may be dependent upon several factors, such as how easy it is for the family members themselves to exercise any rights of control over the FIC or realise their investment. A court could ascribe a value to the FIC shares, with the ownership remaining with the family member, but allowing the ex-spouse having the benefit of other assets in order to achieve an appropriate apportionment of the estate.

Adding new family members A company structure provides considerable flexibility. However, new members will need shares to be either transferred or allotted to them. As time moves on and the Family Investment Company gains value, issuing or transferring shares without incurring a tax charge becomes more complicated.

Minors Whilst it is lawful for minors to own shares in a company, care needs to be taken when considering distributing income to shares held by minors. There are special rules surrounding this and our tax team will be able to ensure that you do not fall foul of these tax rules. The company founder may be taxed on any dividends paid to their children if they are still minors.

Other points to consider A FIC may not be appropriate if income from the asset is required personally, as assets may be subject to both corporation tax (as company profit) and income tax (as dividends). Certain transfers may incur capital gains tax or stamp duty land tax and Information about the company and its owner must be made available publicly.

Finally, In early 2019, HMRC set up a unit to investigate the use of FICs, with a focus on Inheritance Tax. If an FIC is structured to be as 'future-proofed' as it can from the outset and is managed as a genuine investment vehicle to benefit the family members, it would be unlikely that HMRC will be able to take offence to such company structures.

In August 2021 the dedicated investigation unit was folded into another unit, after completing its review. HMRC concluded that the use of Family Investment Companies appear to be a planning strategy, often with the primary objective of generational wealth transfer and the mitigation of Inheritance Tax – it found no evidence to suggest that there is a correlation between those who establish Family Investment Trust Structures and non-compliance behaviour.

HMRC has not yet confirmed whether they will look to introduce specific legislation with regards to FICs and as such this cannot be ruled out in the future. therefore clearer direction on how HMRC views these arrangements and best practice guidelines for their use may still come forward. This highlights the importance of specialist advice regarding the setup and management of an FIC.

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Why Alexander & Co

Growing and running a family business presents unique challenges and requires a considered business approach and a different way of thinking. Many family businesses do not survive the transition to later generations which is why you need specialist advice and assistance. We have considerable experience working with high-net-worth individuals and families, both within the UK and overseas.

Alexander & Co's family business accountants are here to give you the specialist knowledge to help you utilise opportunities to protect against future changes for you and your family.

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