



Is your business's legal structure no longer suitable?

Tuesday, 20 August 2024
10:30am – 11:30am (AEST)



David Montani
National Tax Director

Webinar will commence soon

Advisory. Tax. Audit.



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Introduction

- Businesses grow and evolve
- Next step?
- Legal structure might no longer be suitable
 - Discretionary trust
 - Unit trust
 - Partnership
 - Haphazard additions of entities
- Hindering your business getting to the next level

Introduction

- Change to new structure:
 - Income tax?
 - CGT?
 - GST?
 - Stamp duty?
 - Commercial issues
 - Ultimate exit
- Various roll-overs exist
 - Enable desirable restructures

- Here  Destination



Today's session

- Reasons to restructure
- Scenarios in need of a restructure
- When your business's legal structure is no longer fit for purpose
- Determining optimal structure that is right for you (and the pathway)
- Kinds of roll-overs available
- Firewalling assets from business risk
- Practical and commercial issues

Reasons to restructure

Talk to your trusted Nexia Advisor



Sean Urquhart

Partner
Taxation Consulting
Sydney

e surquhart@nexiasydney.com.au



Mel Nash

Associate Director
Tax Consulting
Melbourne

e mnash@nexiamelbourne.com.au



Dean Birch

Director
Taxation Consulting
Perth

e dean.birch@nexiaperth.com.au



Karen Gregor

Tax Director
Business Consulting and Taxation
Adelaide

e kgregor@nexiaem.com.au

Talk to your trusted Nexia Advisor



Rory O'Brien
Tax Consultant
Canberra

e robrien@nexiacanberra.com.au



Jason Prosser
Director
Business Advisory
Brisbane

e jprosser@nexiabrisbane.com.au



Sarah McEachern
Partner
Business Consulting and Taxation
Darwin

e smeachern@nexiaem.com.au

Reasons to restructure

Common examples

- Introduce new equity participant
- Merge two businesses
- Separate incompatible businesses
- Improve asset protection, firewalls
- Dispense with UPE/corporate beneficiary issues
- Pre-sale clean-up, packaging
- Streamlined corporate structure
- Commercial overrides tax



New legal structure

Our value contribution

- Determine optimum new structure
- Determine optimum pathway, which roll-overs, etc
 - Many qualifying conditions
 - Some have zero margin for error
 - Traps
- Risk management
- Get you safely from A to B
 - Or A ➡ B ➡ C ➡ D

Roll-overs

Transfer assets

- CGT, income tax
- GST
 - Often rely on going concern
 - Liability/credit symmetry
- Stamp duty
 - Limited
 - QLD/WA/NT still impose on business assets

Structure no longer suitable

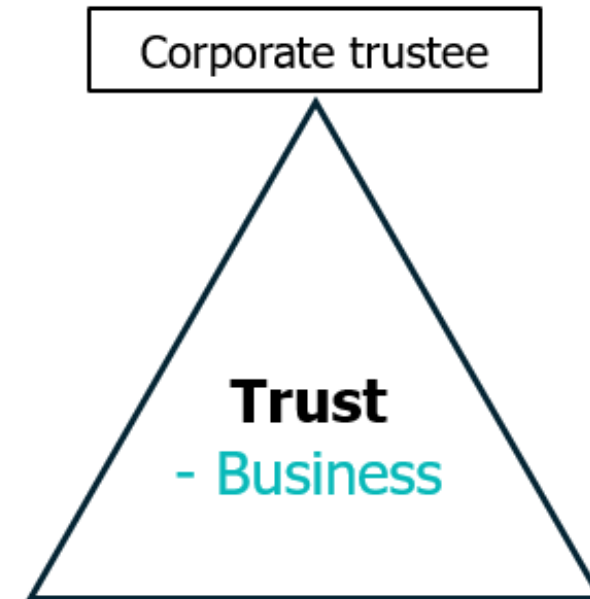
Structure no longer suitable

Discretionary trust

Discretionary trust

No longer suitable

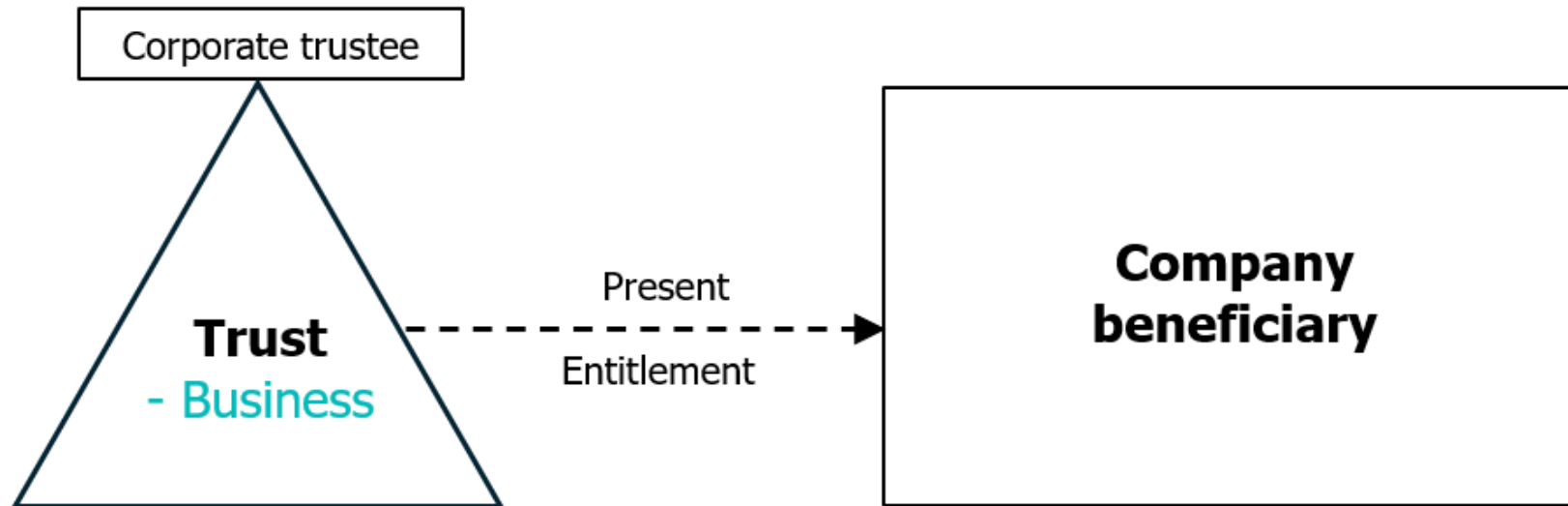
- Common structure for small and family businesses
- When no longer suitable? Eg:
 - Introduce new equity partner
 - Grow by acquisition, issue equity
 - Merge with another business
 - Increasing size of transactions; outside parties want to deal with an operating company, not a trustee
 - IPO



Discretionary trust

No longer suitable

- Corporate beneficiary/Division 7A compliance too costly
 - Triggers top-up tax on profits retained in the business

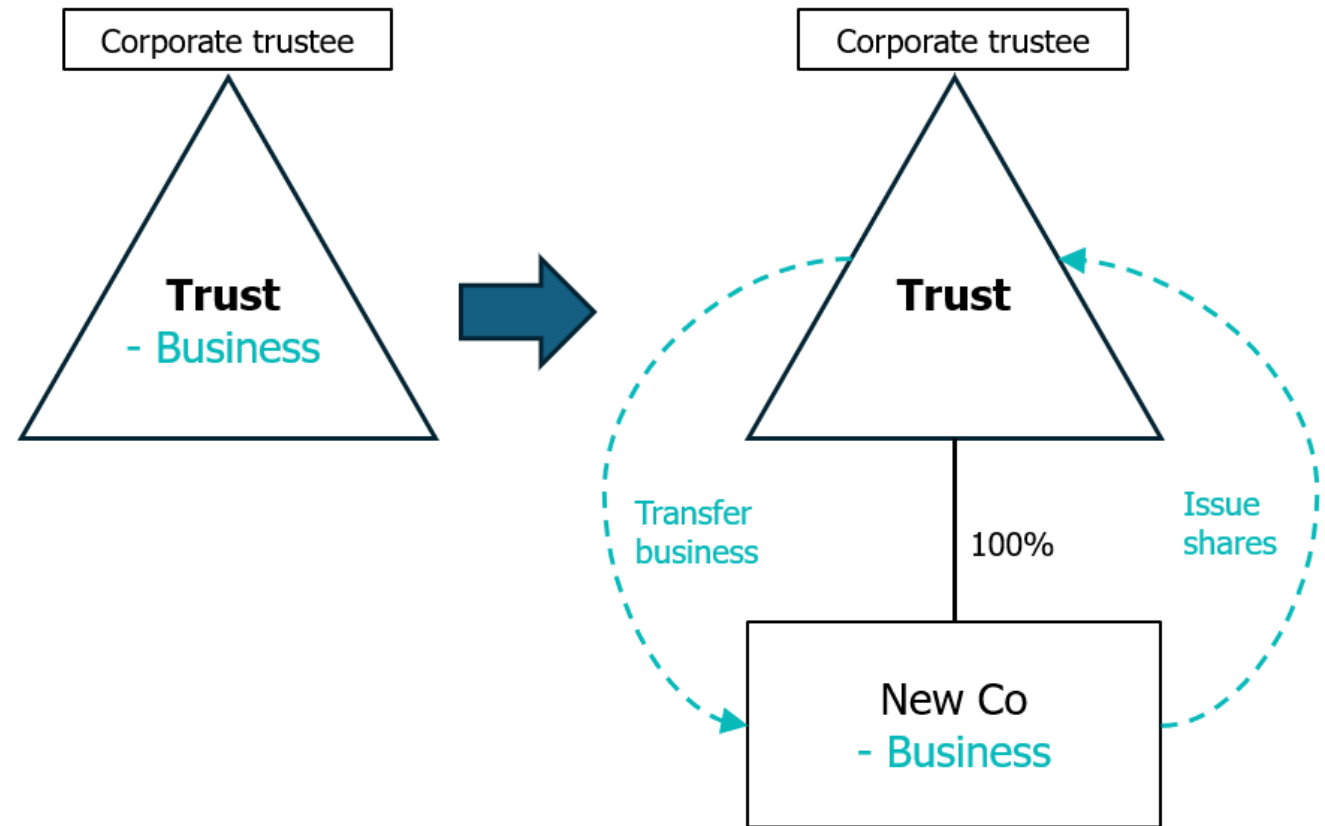


Discretionary trust

What is possible

- **Example 1:**

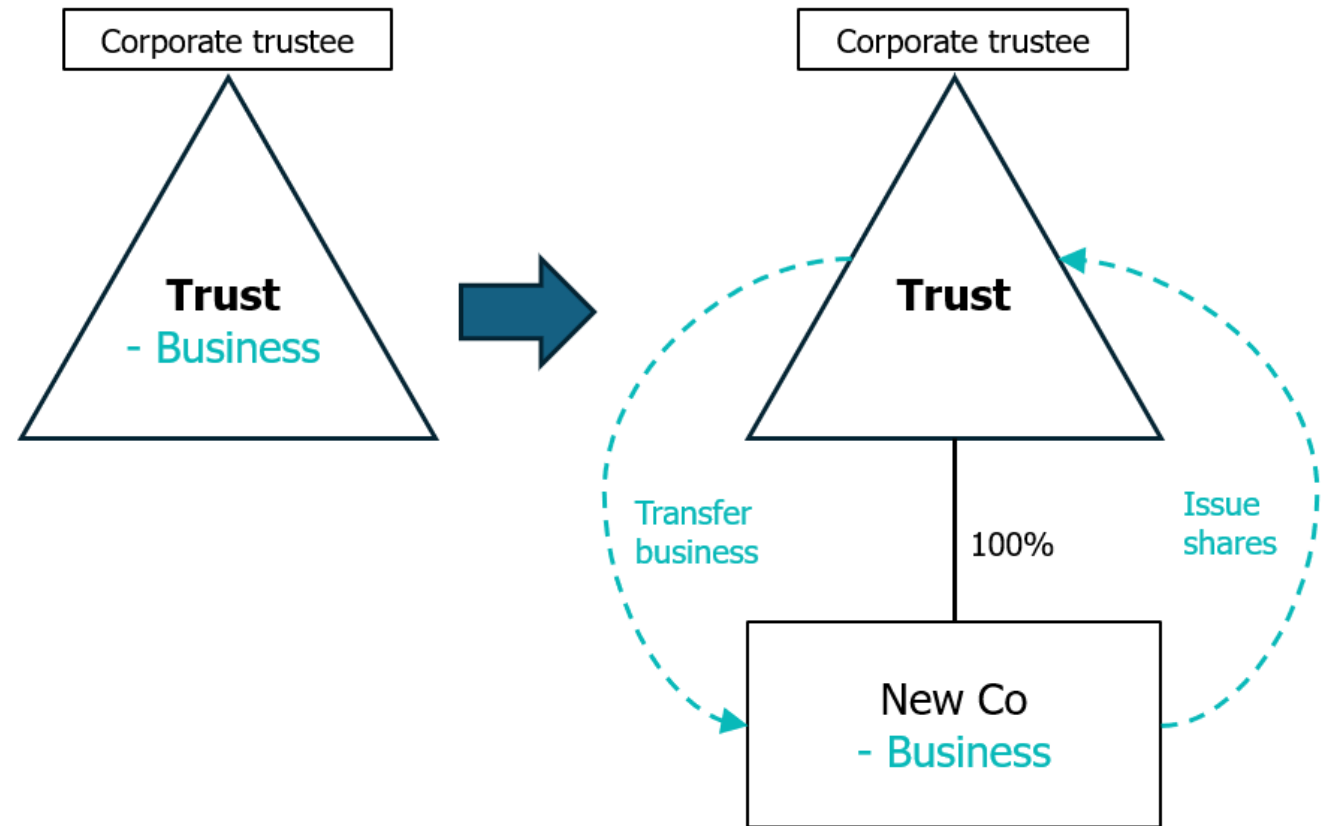
- Transfer business assets to a wholly owned company
- Also related liabilities, employees, etc
- Trust must receive only shares



Discretionary trust

Roll-over

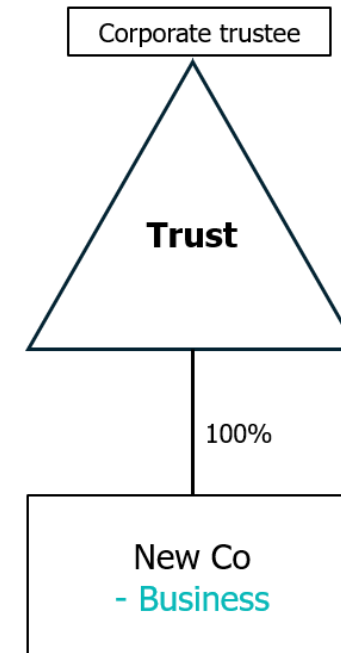
- Triggers market value capital gains, assessable gains on P&E
 - Roll-over:
 - Gains disregarded
 - New Co inherits original costs
- GST-free?
- Stamp duty – QLD/WA/NT



Now a company

Possibilities open up

- Can issue or sell shares to new equity partner
- Trust makes gain on sale of shares
 - Can preserve access to 50% CGT discount
- No longer need a corporate beneficiary
 - Shuts off future forced top-up tax liabilities
- Can achieve same overall annual tax impost as trust structure



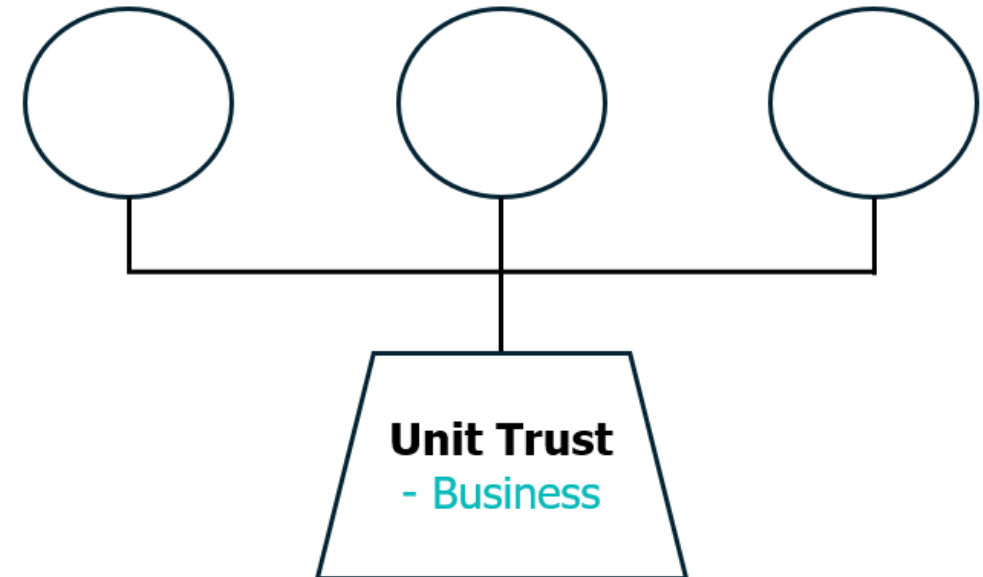
Structure no longer suitable

Unit trust

Unit trust

When no longer suitable

- Flow-through taxation:
 - Okay to extent owners draw profits
- Not quite the same limited liability as a company
- When no longer suitable:
 - Retain profits in the business
 - Often not workable for a merger, or acquisition by issuing equity



Unit trust

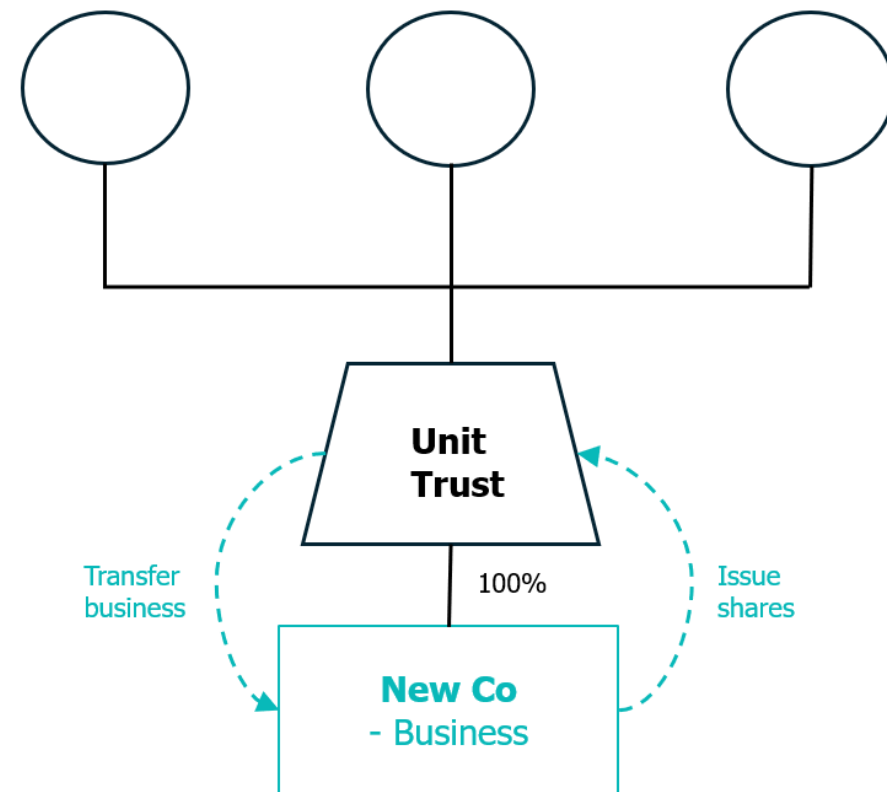
What is possible

- Corporatise
- Different corporatising pathways
 - **Eg 2:** Roll-over to a company
 - **Eg 3:** Company replaces unit trust
 - **Eg 4:** Insert a holding company
- One might be suitable for you, others not
 - Commercial issues
 - Tax issues

Corporatise a unit trust

Roll-over to company

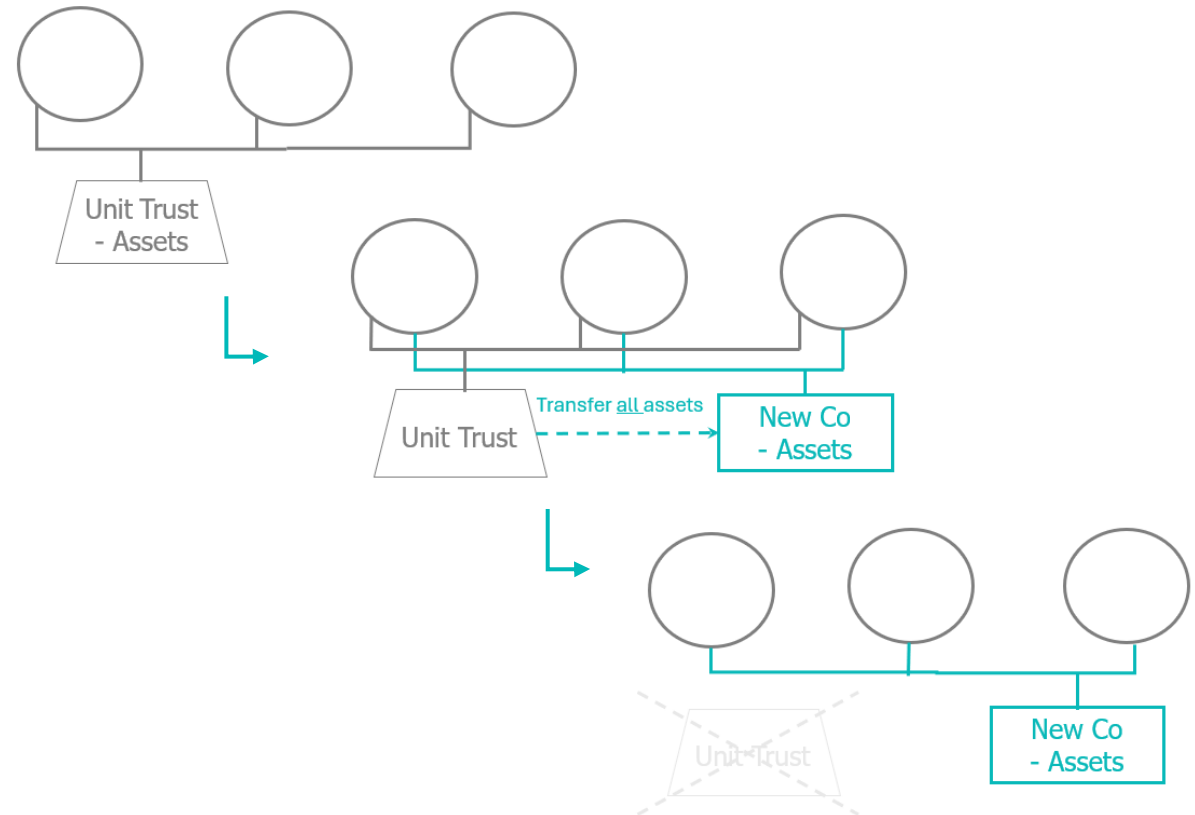
- **Example 2**
 - Same roll-over as Eg 1
- Pay company tax:
 - Reinvest profits at after-company tax rate
 - Pay franked dividends
- GST-free?
- Stamp duty (QLD/WA/NT)



Corporatise a unit trust

Company replaces

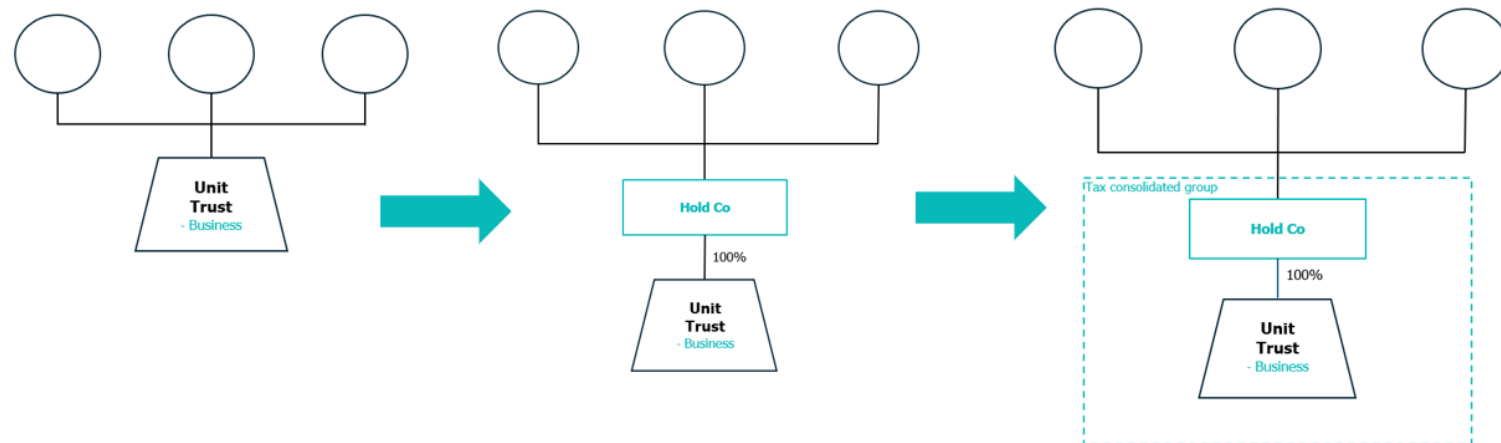
- **Example 3.** Steps:
 1. Set up cleanskin company
 2. Transfer everything
 3. Wind up unit trust within six months
- Roll-over disregards gains
 - New Co inherits original asset costs
- GST-free?
- Stamp duty (QLD/WA/NT)



Corporatise a unit trust

Insert holding company

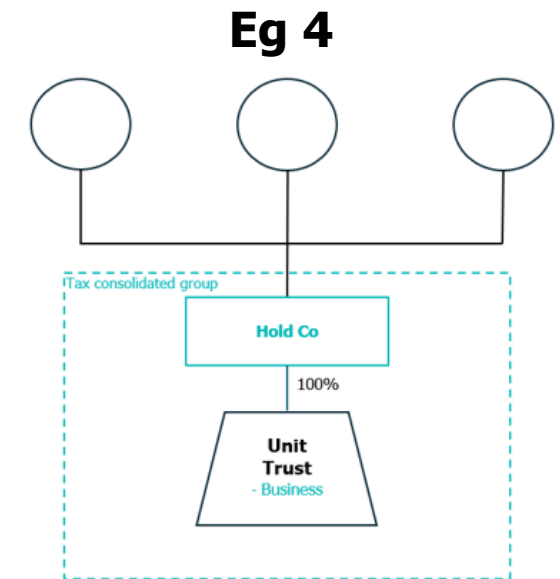
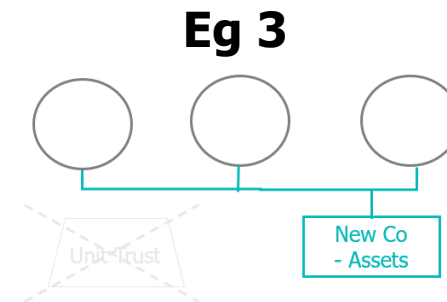
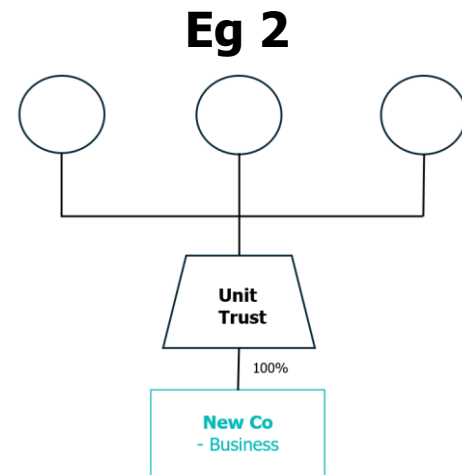
- **Example 4: “Top-hatting”**
 - Can also do with a company
- Transfer units:
 - Roll-over disregards capital gain
 - Issued shares inherit cost and acquisition date from units
- Tax consolidation
- GST N/A
- Possible stamp duty roll-over, landowners



Now a company

Possibilities open up

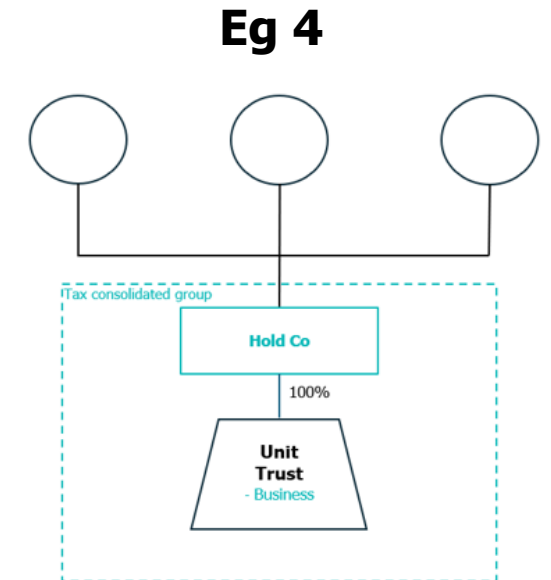
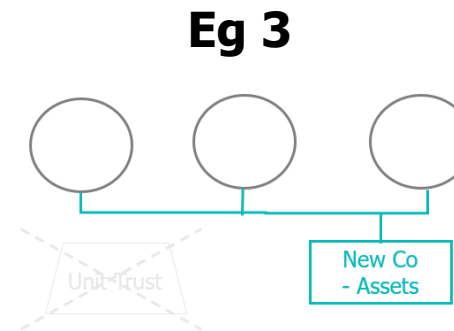
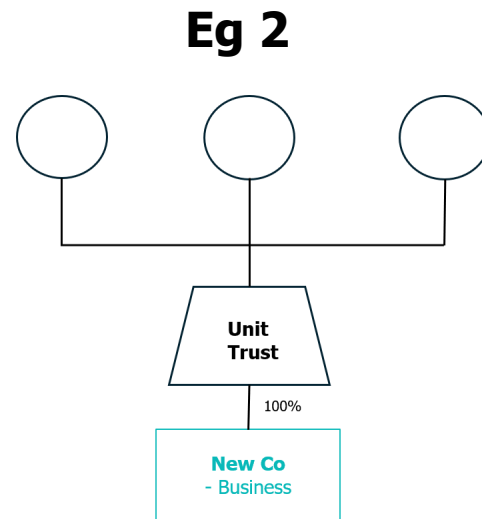
- Retain profits at after-company tax rate
- Equity-issuing mergers/acquisitions
- Sister subsidiaries
- Pre-IPO



Now a company

Which pathway?

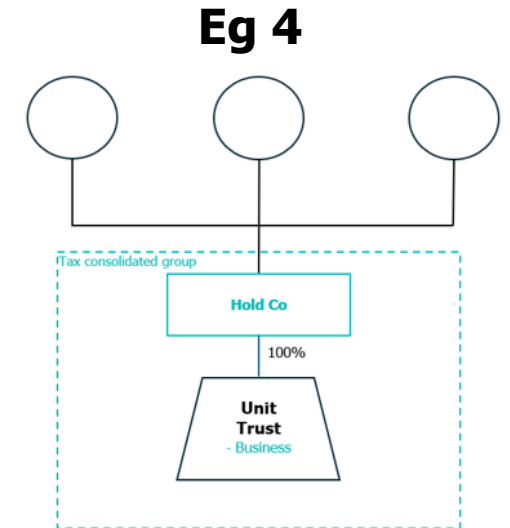
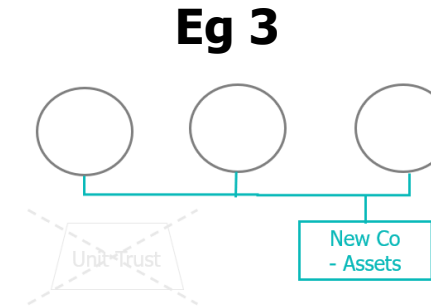
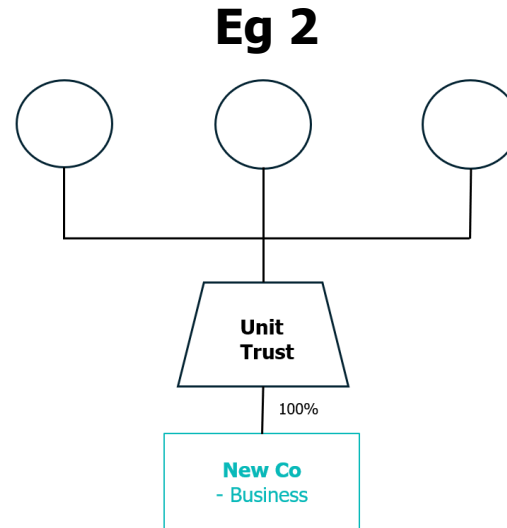
- Which pathway would you choose?
 - Example 2, 3 or 4?
- Driven by your commercial circumstances
 - Tax usually comes second



Now a company

Which pathway?

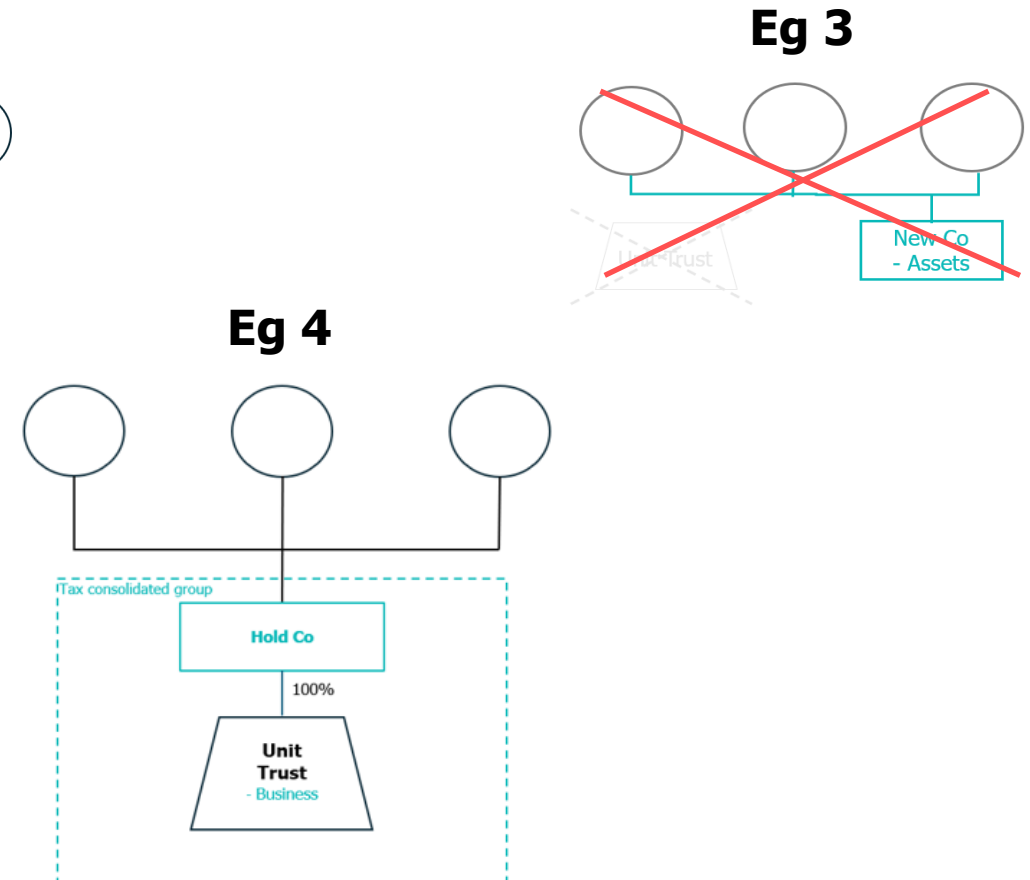
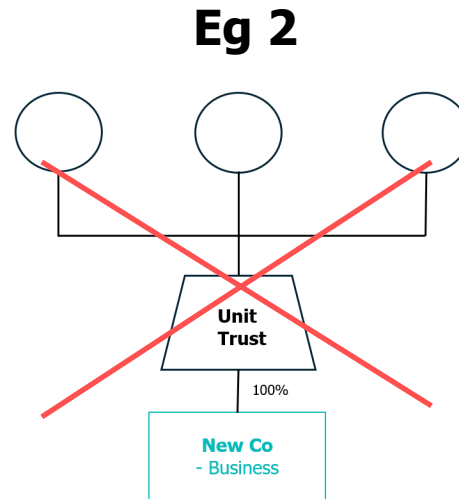
- Eg 3 is the “cleanest”
 - Must transfer absolutely everything
 - Any assets you want to stay in the trust?
- Eg 2 and 3 require transferring the business
 - Greater exercise, more costly
 - Stamp duty in QLD/WA/NT



Now a company

Which pathway?

- Business underpinned by contracts?
 - Not practicable to assign?
- Business too vast/complex?
 - Impractical to transfer assets
- Rules out Eg 2 and 3
- Eg 4, everything stays as is, in the trust
 - Transferring units only



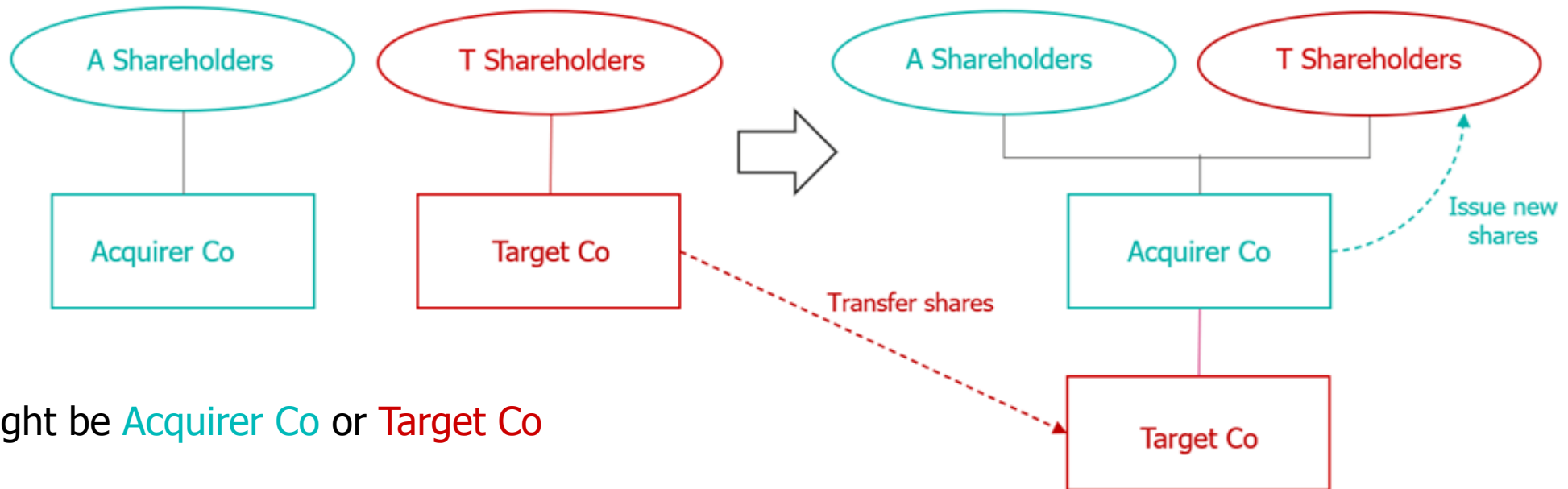
Other possibilities, now a company

Acquisitions/mergers

Scrip for scrip roll-over

- **Example 5**

- Acquirer Co acquires Target Co

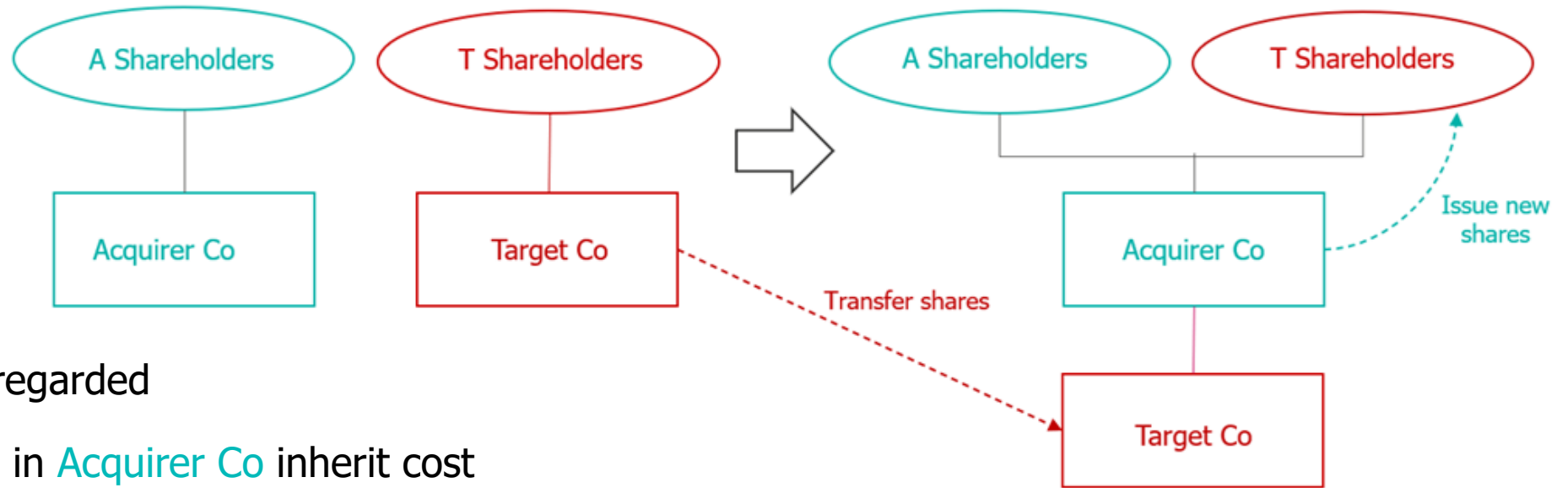


- You might be Acquirer Co or Target Co

Acquisitions/mergers

Scrip for scrip roll-over

- **Example 5**

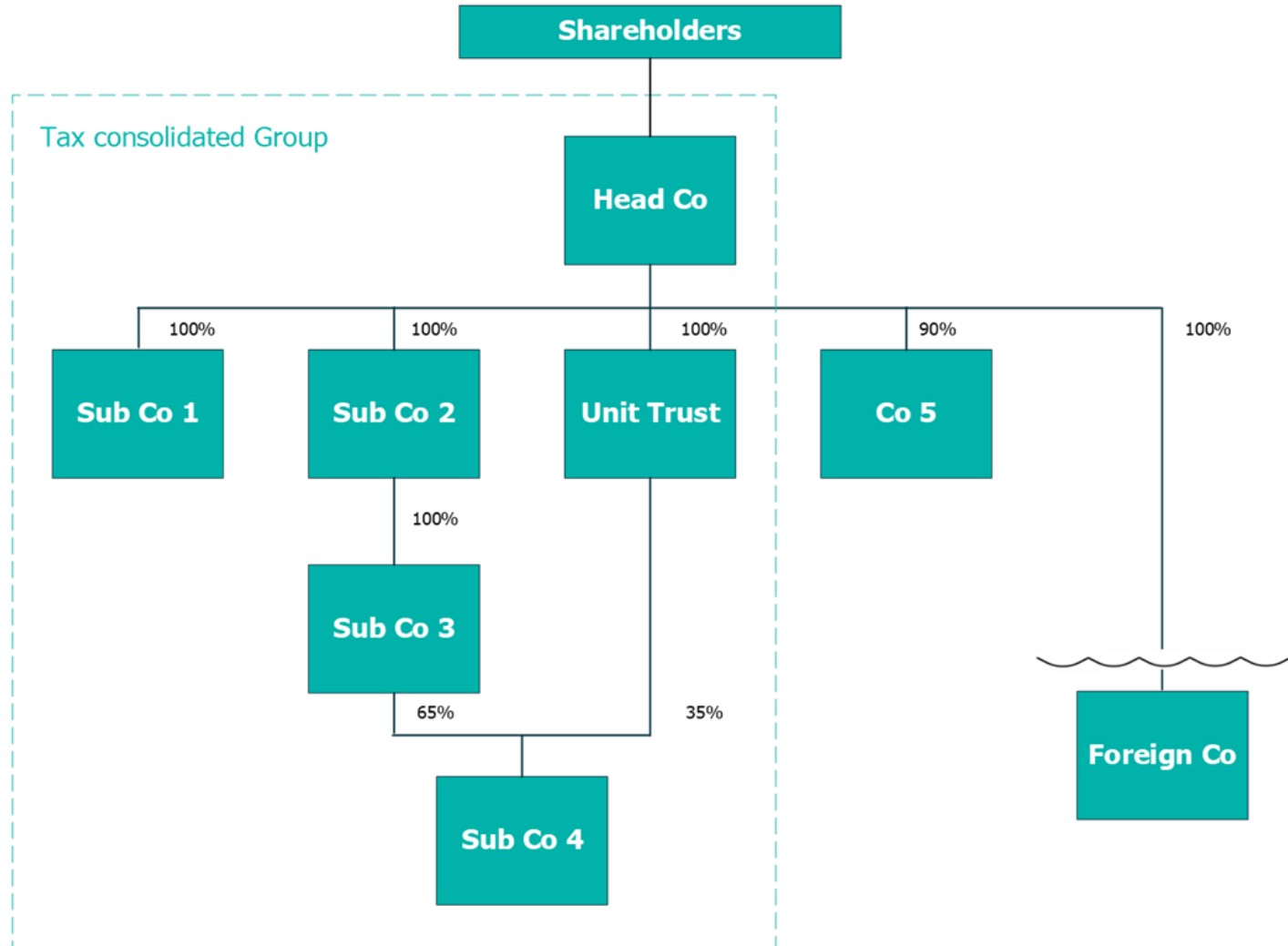


- **T Shareholders:**

- Capital gain disregarded
- Shares received in **Acquirer Co** inherit cost base, acquisition date
- Qualifying conditions
- Issues to address

Tax consolidated groups

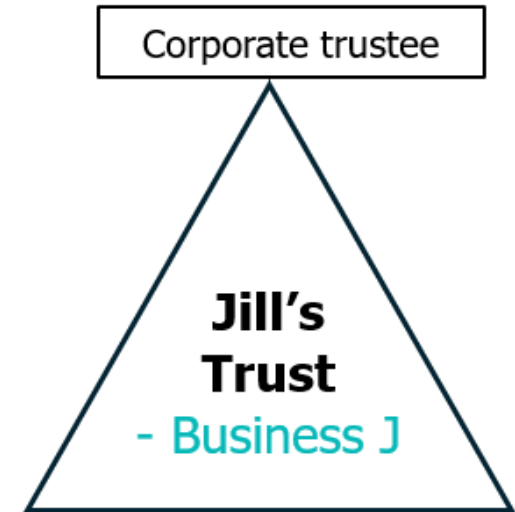
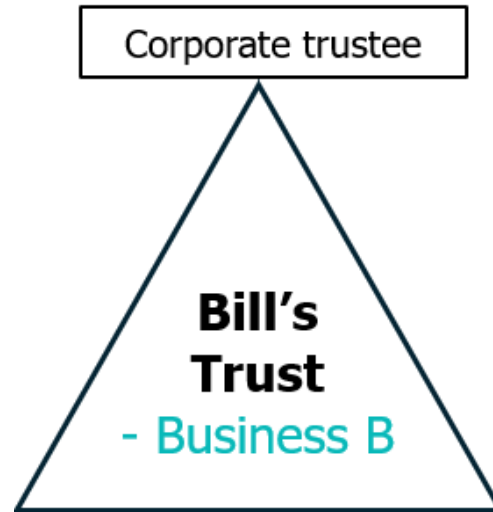
- Treated like a single entity
- Lodges a single, consolidated tax return
- Transactions between members ignored for income tax purposes
 - Convenient for transferring assets
- Firewall assets



Combinations of roll-overs

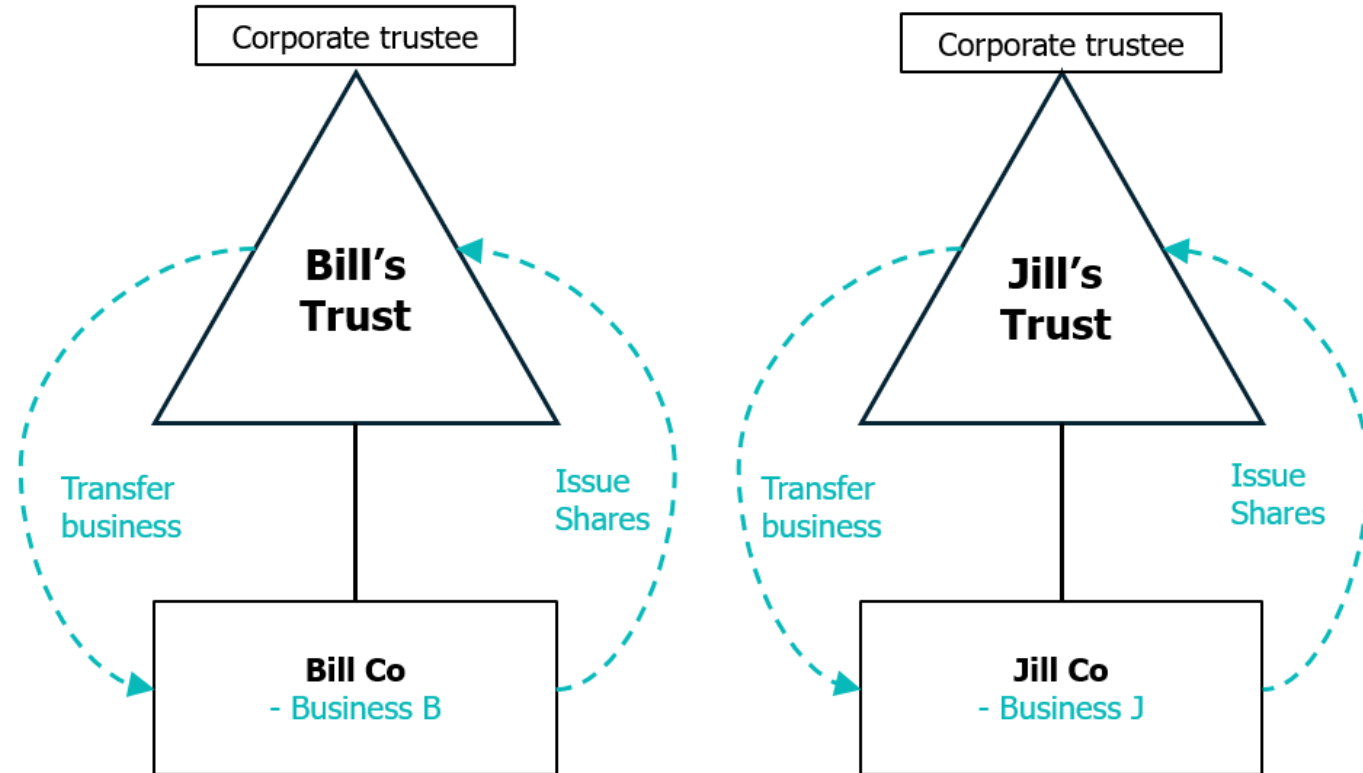
Merge two businesses

- **Example 6**
- Bill and Jill seek to merge their businesses
- Options we would discard:
 - Partnership
 - Joint venture
- Pathway using multiple roll-overs



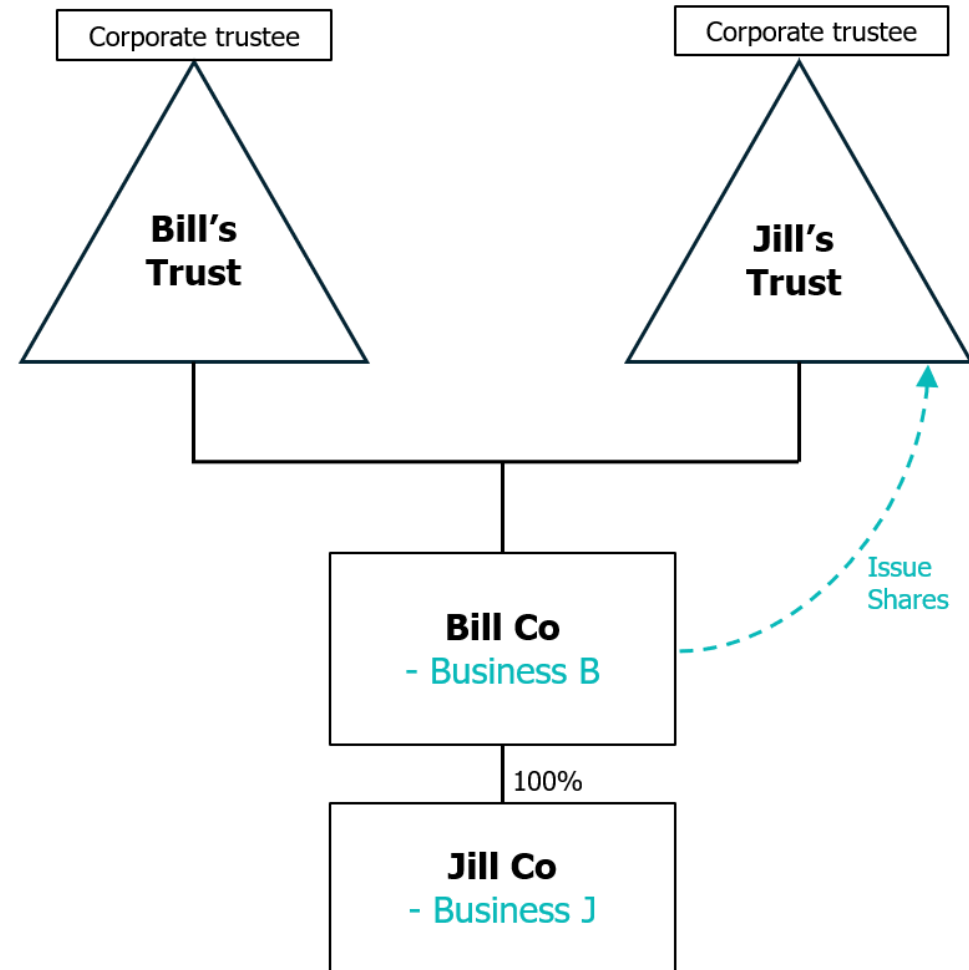
Merge two businesses

- **Example 6**
- Each transfer business to new company
 - Trust-to-company roll-over (Eg 1)



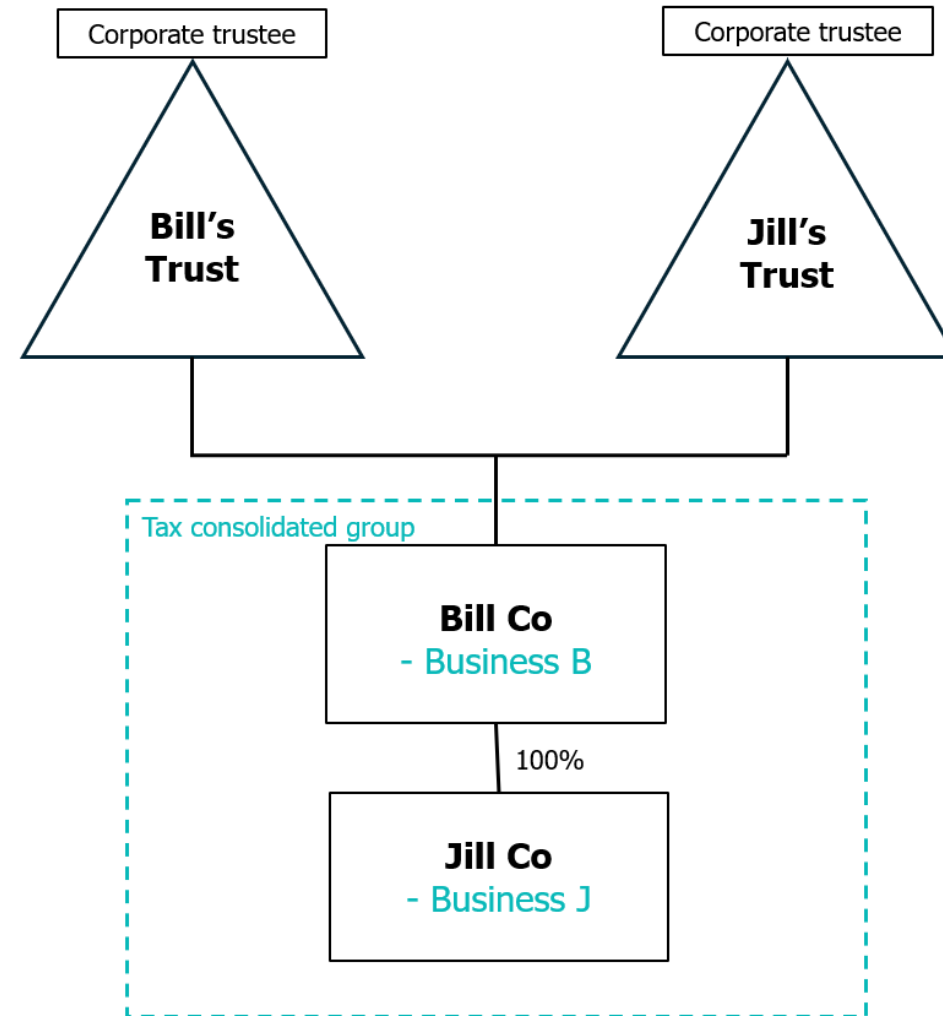
Merge two businesses

- **Example 6**
- Bill Co acquires Jill Co (could be other way around)
 - Scrip for scrip roll-over (Eg 5)
- Back-to-back roll-overs



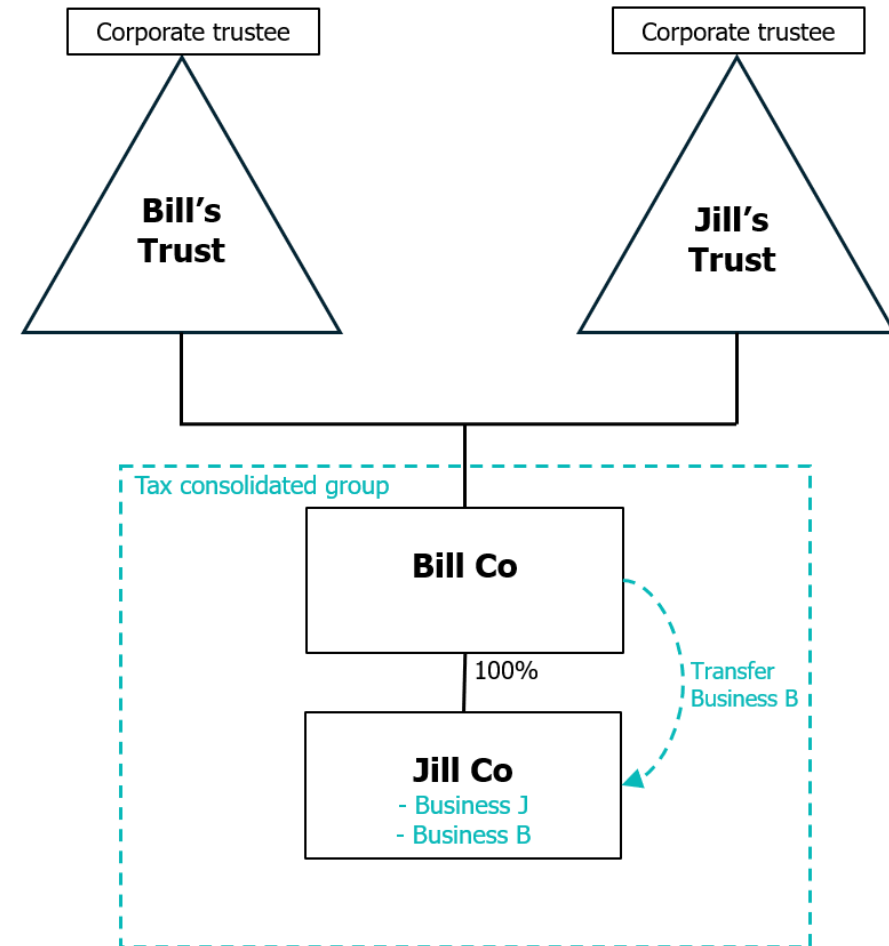
Merge two businesses

- **Example 6**
- Elect to form a tax consolidated group
 - Treated like a single entity



Merge two businesses

- **Example 6**
- Transfer Business B to Jill Co
 - Ignored for income tax/CGT purposes
- Now we have a parent company, operating subsidiary
- Conditions to satisfy; issue to address
- Other possibilities



Other roll-overs

Other roll-overs

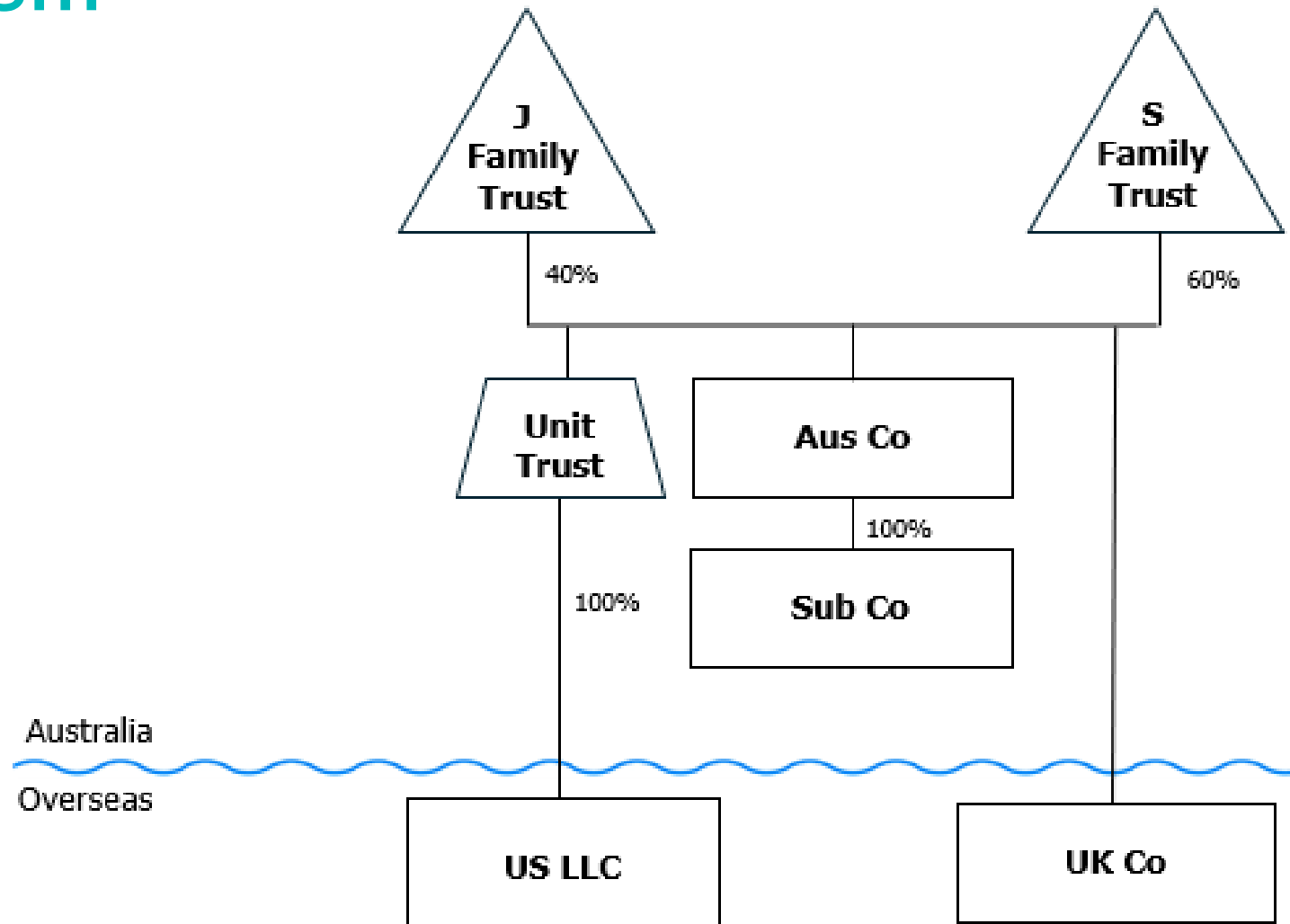
Sample

- Small business restructure roll-over
- Split/merge shares or units
- Compulsory acquisitions
- Demerger relief
- Relationship breakdown

Real-life examples

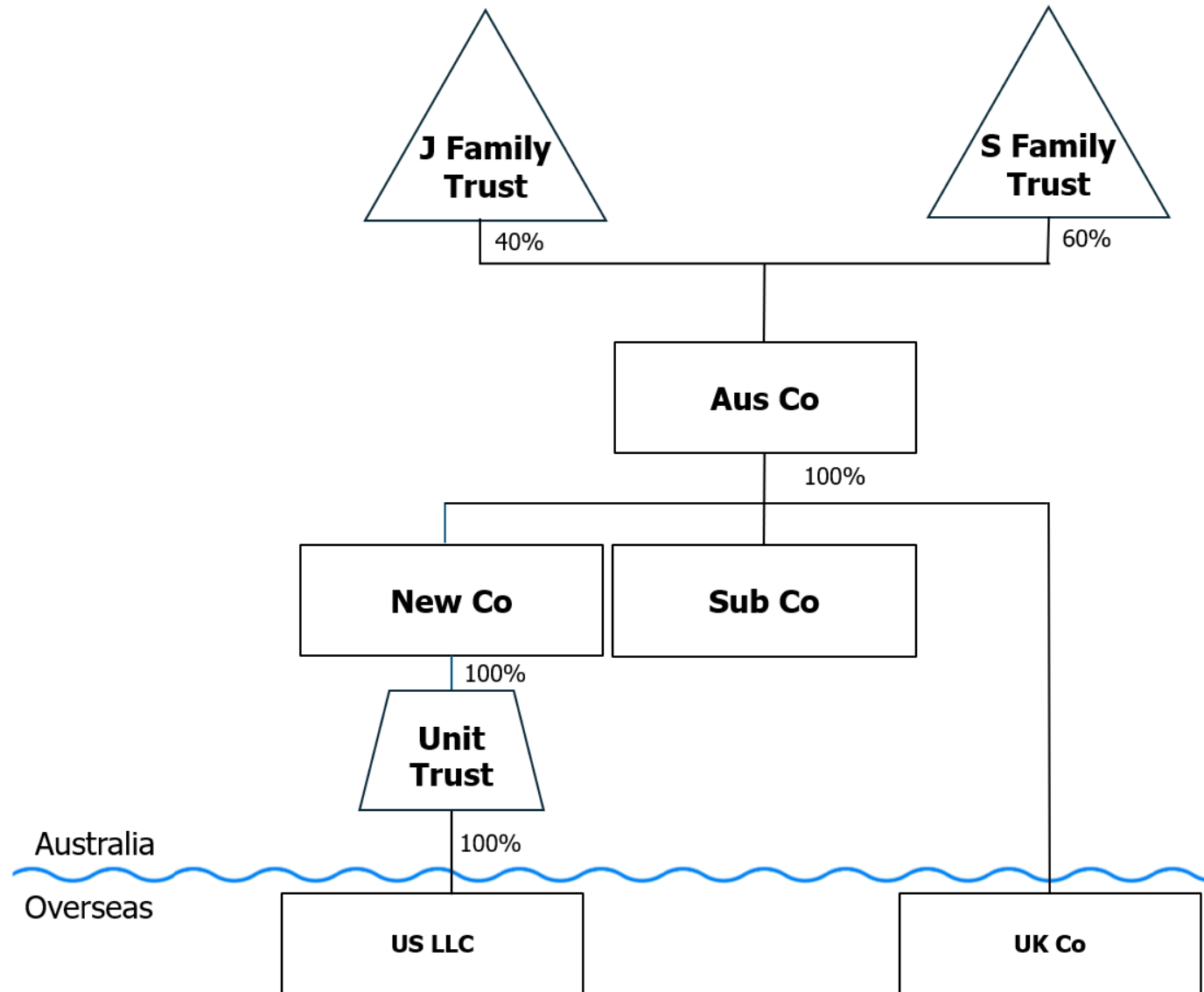
From this...

Eg 7



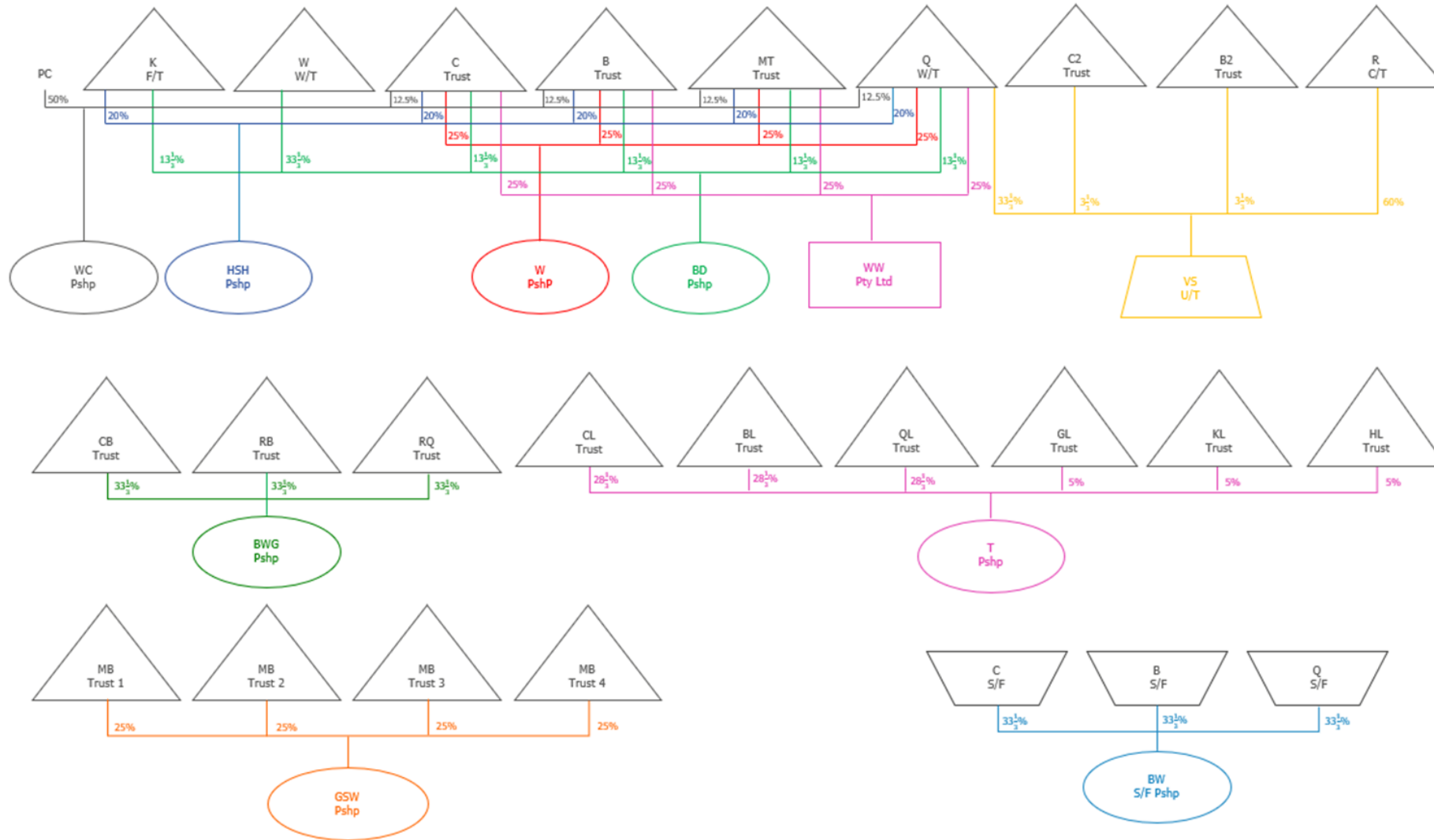
To this

Eg 7



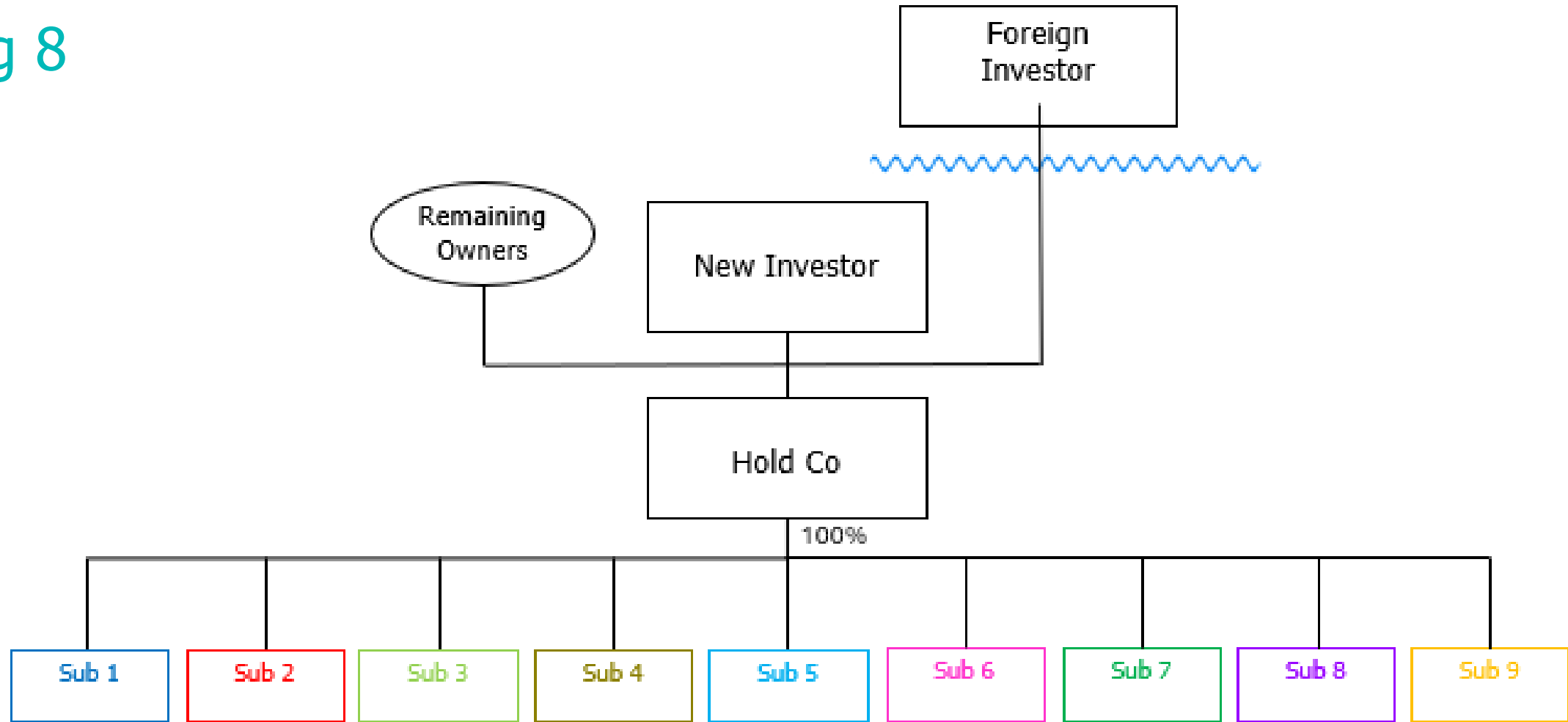
From this...

Eg 8



To this

Eg 8



Alternative approach

Don't choose roll-over

Don't choose a roll-over

- Allow market-value capital gain to stand
- Reduce/eliminate capital gain through concessions:
 - General 50% discount
 - Small business relief concessions
- Market value cost base on acquiring side

- Why might you do this?

Implementing a restructure

Transferring a business

Sample list

- Legal agreements
- Assign contracts, leases, HPs
- New banking/debt facilities
- Notify customers, suppliers
- Insurance policies
- Tax registrations
- Employment agreements

Transferring shares

Sample list

- Director/shareholder resolutions
- Contracts for sale of shares
- Share transfer forms
- ASIC notifications
- Update shareholder register
- New share certificates, cancel old ones
- Charges registered with ASIC
- Any contractual obligations to notify of change in shareholders

Different skillsets

- Specialist tax advice
- Valuations
- Corporate advisory
- Driver/coordinator

Conclusion

- Businesses grow and evolve
- Current structure hindering getting to the next phase?
- Roll-overs available to enable restructuring
- Qualifying conditions, issues to manage
- Risk management
- Get you from where you are, to where you need to be, with confidence

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Sean Urquhart

Partner
Taxation Consulting
Sydney

e surquhart@nexiasydney.com.au



Mel Nash

Associate Director
Tax Consulting
Melbourne

e mnash@nexiamelbourne.com.au



Dean Birch

Director
Taxation Consulting
Perth

e dean.birch@nexiaperth.com.au



Karen Gregor

Tax Director
Business Consulting and Taxation
Adelaide

e kgregor@nexiaem.com.au

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Rory O'Brien
Tax Consultant
Canberra

e robrien@nexiacanberra.com.au



Jason Prosser
Director
Business Advisory
Brisbane

e jprosser@nexiabrisbane.com.au



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Partner
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