

Business structures and eligibility

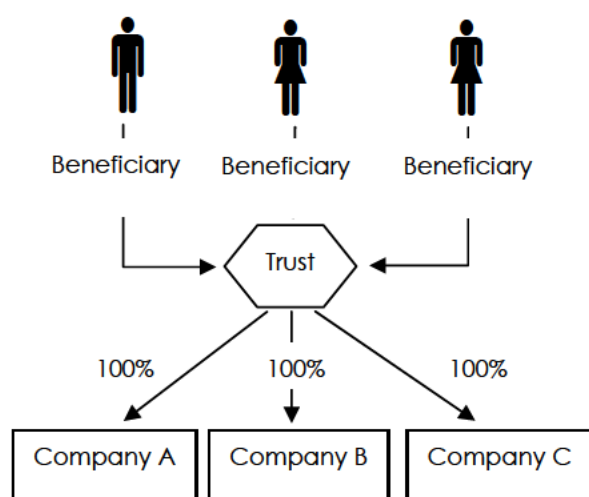
Structures that **cannot consolidate**

The following are examples of business structures that *cannot* consolidate under the general membership rules. → Division 703, ITAA 1997

Note that in these examples, unless otherwise indicated, all the entities are Australian residents and are not specifically excluded from being part of a consolidatable group.

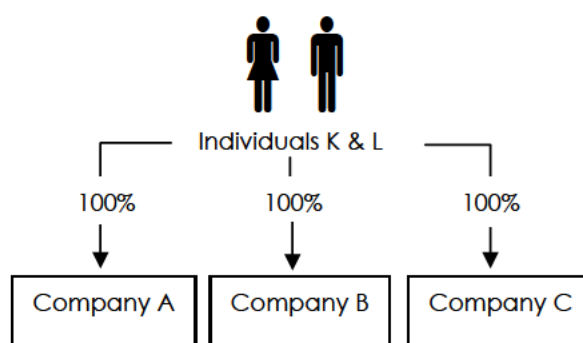
Example 1: Groups headed by a trust cannot consolidate

This is not a consolidatable group, as a trust is ineligible to be the head company of a consolidatable group.



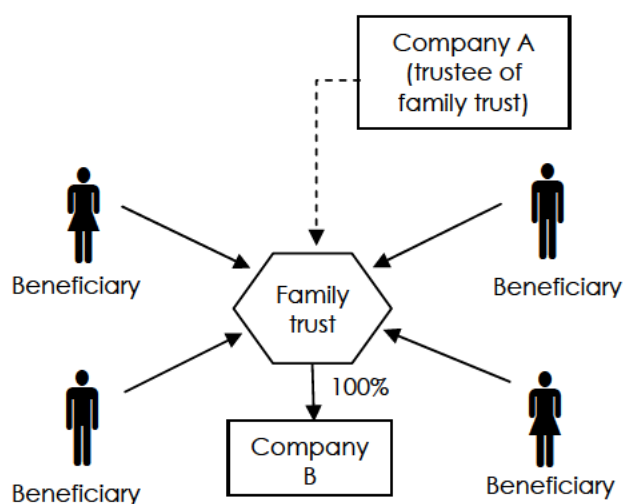
Example 2: Common ownership is not sufficient for consolidation

This is not a consolidatable group even though the same individuals beneficially own all three companies. Consolidation can only occur where one *company* (head company) beneficially owns all of the membership interests (e.g. shares and units) in at least one other company, trust or partnership.



Example 3: Corporate trustee is not the head company

In this example, the family trust owns company B. Company A is not the head company of a consolidatable group that includes this trust as A is merely the trustee. It does not beneficially own any membership interests in the trust.

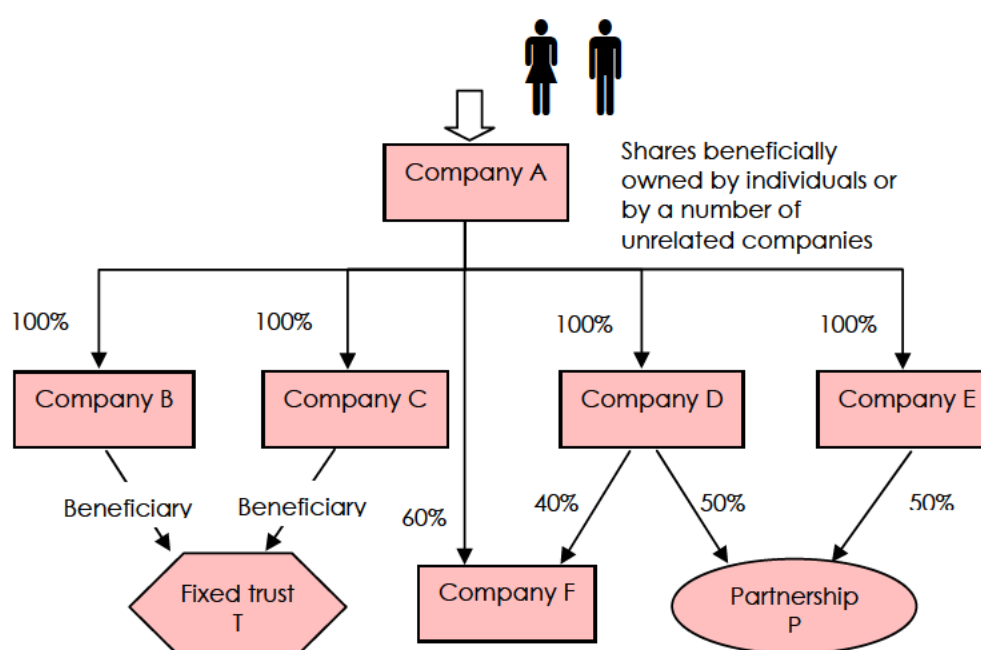


Structures that can consolidate

The following are examples of business structures that contain a consolidatable group under the general membership rules. → Division 703, ITAA 1997

Example 4: Consolidatable group containing all of the different entity types

- All entities are Australian residents and are eligible to be part of a consolidatable group.
- Company A beneficially owns 100% of companies B, C, D and E.
- The only beneficiaries of the fixed trust T are companies B and C.
- Company A also beneficially owns a 60% interest in company F. The remaining 40% is beneficially owned by company D.
- Companies D and E are the only partners in partnership P.

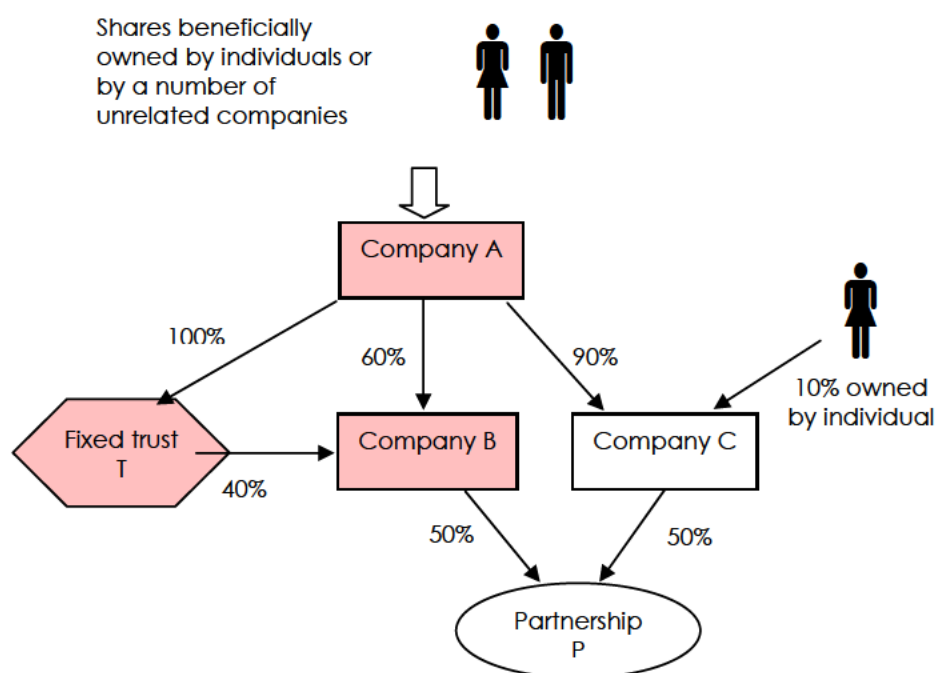


Comments

- Company A qualifies as a head company – see item 1 of section 703-15.
- Companies B, C, D & E are wholly-owned subsidiaries of company A and will qualify as subsidiary members because all the requirements in item 2 of section 703-15 are met.
- Company F is a wholly-owned subsidiary of company A as all of its membership interests are beneficially owned by company A and its wholly-owned subsidiary company D. It will qualify as a subsidiary member of the consolidatable group as all the other requirements of item 2 in section 703-15 have been met.
- Fixed trust T is a wholly-owned subsidiary of A as all of the membership interests (rights and interests of the beneficiaries) in the trust are beneficially owned by companies B and C, which are wholly-owned subsidiaries of company A. It qualifies as a subsidiary member of the consolidatable group as all the requirements of item 2 in section 703-15 have been met.
- Partnership P is a wholly-owned subsidiary of A as all of the membership interests (rights and interests of the partners) are beneficially owned by companies D and E, which are wholly-owned subsidiaries of A. Partnership P qualifies as a subsidiary member of the consolidatable group as all the other requirements of item 2 in section 703-15 are met.

Example 5: Minority holdings in the group

- All entities are Australian residents and are eligible to be part of a consolidatable group, except Co C, Partnership P and the individuals.
- Company A is the sole beneficiary of fixed trust T.
- Fixed trust T owns 40% of the issued ordinary shares in company B, with the remaining 60% being held by company A.
- Company A also holds 90% of the issued capital in company C, with the balance being held by an individual.

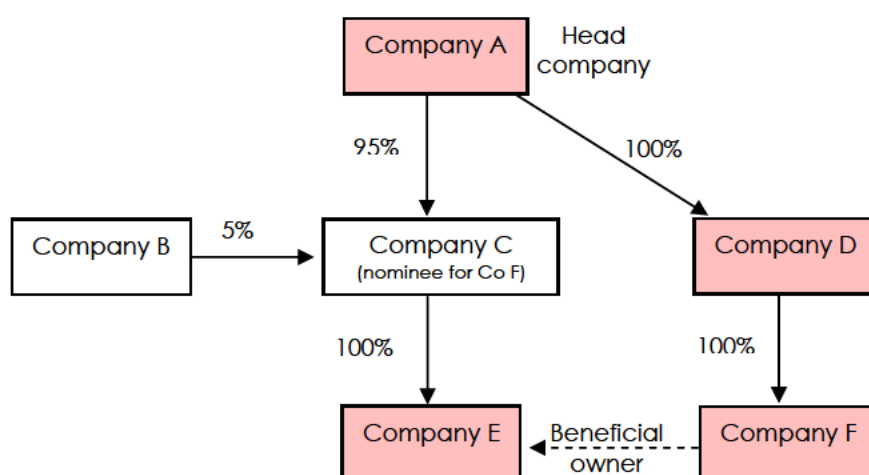


Comments

- Company A qualifies as a head company – see head company requirements in item 1 of section 703-15.
- Fixed trust T: All of the trust's membership interests are beneficially owned by company A, which is therefore the trust's sole beneficiary and sole member (section 960-130(1) ITAA 1997) that beneficially owns all of the trust's membership interests → section 960-135 (ITAA 1997). Accordingly, fixed trust T is a wholly-owned subsidiary of company A → section 703-30(1)(a). As it is also an Australian resident, is not a non-profit company, and is not specifically excluded from being a member of a consolidatable group, it qualifies as a subsidiary member.
- Company B is a wholly-owned subsidiary of company A, because all of the membership interests (that is, shares) in B are beneficially owned by A (60%) and its wholly-owned subsidiary, fixed trust T (40%) → section 703-30(1)(c). As it is also an Australian resident, an entity other than a non-profit company, and not specifically excluded from being a member of a consolidatable group, company B qualifies as a subsidiary member.
- Company C is not a wholly-owned subsidiary of company A because 10% of the membership interests (that is, shares) in C are beneficially owned by an individual. As it is not a wholly-owned subsidiary it cannot be a subsidiary member of the consolidatable group.
- Partnership P is not a wholly-owned subsidiary of company A as one of the partners (company C) is not a wholly-owned subsidiary of A. As it is not a wholly-owned subsidiary it cannot be a subsidiary member of the consolidatable group.

Example 6: Nominee company

- Companies A, D, E and F are members of a consolidatable group of which A is the head company.
- Company B is external to the group, but it has a 5% interest in company C which is 95% controlled by company A.
- Company C owns all of the shares in company E, but only as nominee for company F.



Comments

- Company C is not a subsidiary member of the group, as it is not a wholly-owned subsidiary of the head company – see column 4 of the table in section 703-15(2).
- Company E is a wholly-owned subsidiary of the head company under section 703-30(2)(b) – all of the membership interests in company E are *beneficially* owned by company F, which is a wholly-owned subsidiary of company A – see section 703-30(1)(b). As company E is a wholly-owned subsidiary of the head company, and there is an entity (company C) interposed between the head company and company E, the requirements of section 703-45(1) must be met. In this example, these requirements are met, even though the interposed entity is not a subsidiary member of the group, because the membership interests in company E are held by company C only as a nominee of company F – see section 703-45(2).

References

Income Tax Assessment Act 1997, Division 703; as amended by *New Business Tax System (Consolidation) Act (No. 1) 2002* (No. 68 of 2002), Schedule 1

Income Tax Assessment Act 1997, Subdivision 960-G; as amended by *New Business Tax System (Consolidation) Act (No. 1) 2002* (No. 68 of 2002), Schedule 5