



### Corporate Reorganisation

This week's Tax Talk focuses on Corporate Reorganisation. This article is a continuation of series of articles on Reorganisation. Last week we focused on Individual Reorganisation.

A corporation may undergo restructuring or re-organisation for various strategic reasons such as merger, consolidation, corporate divisions, asset or share acquisition or to meet changing regulatory requirements.

#### Corporate Reorganisation

Section 88 of the Income Tax Act 2015 provides that the deferral rules for corporate reorganization are met when the following conditions are satisfied:

- a) a resident company transfers an asset to another resident company; and
- b) the transferor company is a group company in relation to the transferee company.

To qualify for deferral under individual reorganisation, the Fiji Revenue and Customs Service (FRCS) will consider the following factors:

#### 1. Consideration

- For the transfer of an asset, the consideration should not exceed its cost (inclusive of incidental and improvement cost)
- If an individual has acquired an asset for \$1000 (including incidental and improvement costs), the transfer to the transferee company must not exceed \$1000. The transfer may be at nil consideration but in order to qualify for the deferral, the transfer should not exceed the cost.
- For transfer of depreciable assets, the consideration should not exceed the written down value of the asset. This is to ensure that the depreciation deductions are not claimed repeatedly by the transferor and transferee on the same asset.
- If the disposal or transfer is for consideration exceeding the cost, the fair market value must be used for transactions between associates. The normal income tax rules would apply in such cases.

## **Deferral of Gain on disposal of asset.**

A deferral of a gain on disposal of an asset provides that **no gain or loss** is recognised on the part of the supplier on the disposal but the gain is deferred to the recipient of the asset.

For example, A had purchased an asset for \$100 which has a current market value of \$500. The asset is transferred to B (a related party) at cost. Under normal rules, the transfer would be deemed to be provided at fair market value and A would have made a gain of \$400 (\$500 - \$100) and B would be deemed to have acquired the asset at \$500.

The transaction, if deferred would mean that B is treated to have acquired the asset for \$100 and not at the market value of \$500.

## **2. Resident Company**

In order to qualify under corporate reorganisation, the transaction must be between a resident company to another resident company. A resident company refers to a company that is incorporated, formed or settled in Fiji or has any part of its central management and control located in Fiji. A branch of a foreign company does not qualify as a resident company.

The deferral rules do not apply for asset disposals between a resident company and a non-resident company. This ensures that the deferral rules are not used to transfer an asset tax-free outside the Fiji tax base.

## **3. Group Company**

In order to qualify for the deferral under section 88, it is a requirement that the supplier and the recipient are group companies as per the definition under section 88(3) of the ITA 2015.

Under section 88(3), two companies are group companies if:

- a. one company owns, directly or through one or more interposed persons, 100% of the issued shares in the other company; or
- b. another company owns, directly or through one or more interposed persons, 100% of the issued shares in both companies.

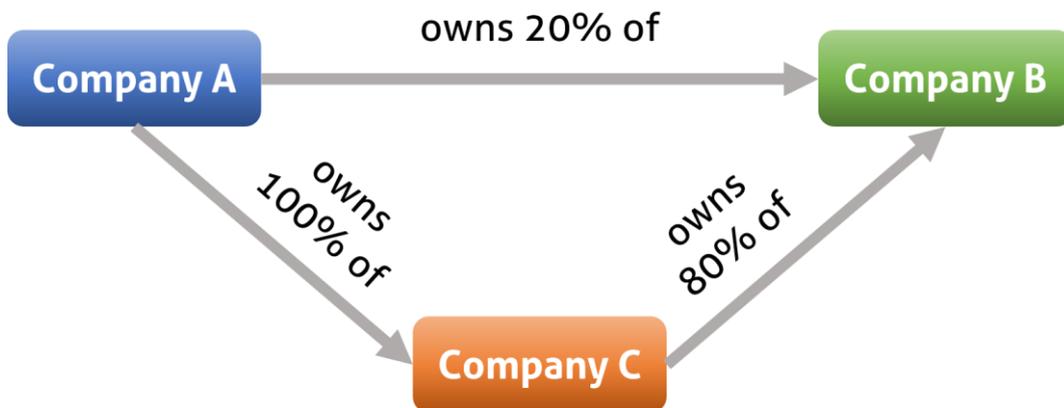
Section 88(3)(a) provides that two companies (company A and company B) are group companies under the following scenarios:

### Scenario One – Direct Ownership



Company A owns 100% of the shares in company B

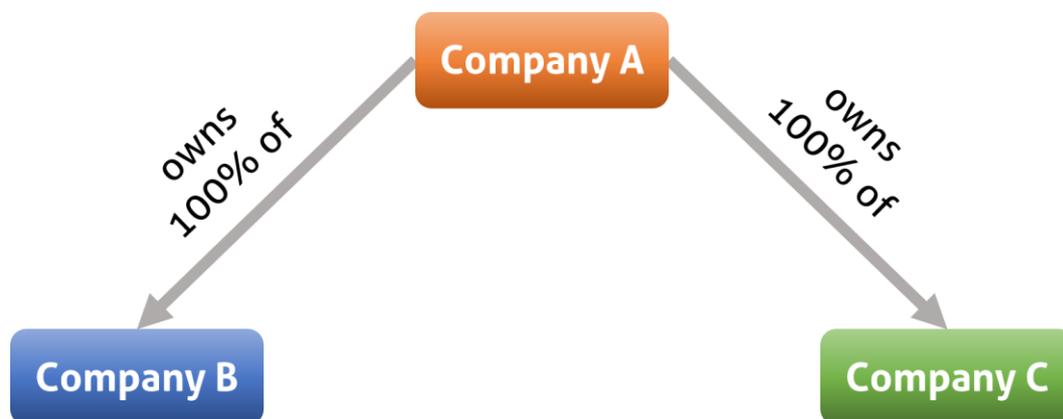
### Scenario Two - Indirect Ownership



Company A owns 20% of the shares in Company B directly and the remaining 80% is owned indirectly through an interposed person.

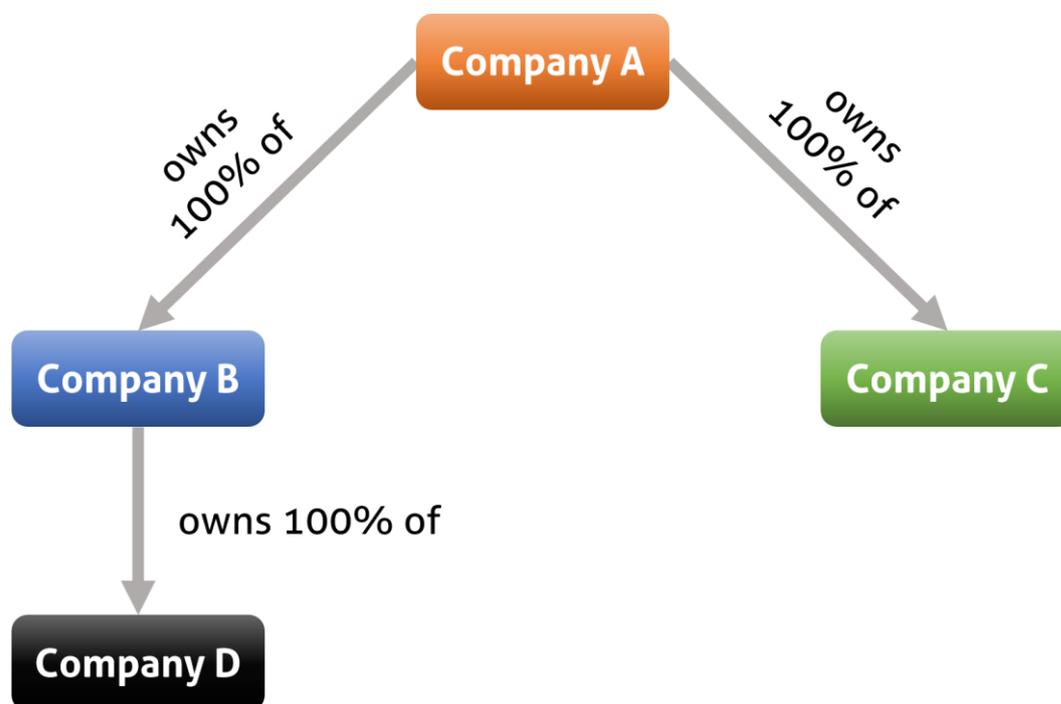
Moreover, section 88(3)(b) provides that companies are group companies under the following scenarios:

### Scenario One – Direct Ownership



Under scenario one, company A, B and C are considered as group companies as company A wholly owns company B and company C.

## Scenario Two – Indirect Ownership



Under scenario two, companies A, B, C and D would be regarded as group companies. Therefore, if A disposes an asset to company D, the disposal would be between group companies. (any combination)

Therefore, if a resident company disposes an asset to another resident group company the gain arising out of the disposal is deferred under section 88 of the Income Tax Act 2015.

### **EXCEPTION – Exempt Transferee Companies**

The deferral rule under section 88 of the Income Tax Act 2015 does not apply if the income of the transferee company or the recipient company is exempt income.

For instance, if the transferee company has been granted tax free status as they are operating within the tax free region, or the transferee company is an approved NPO, the disposal of the asset to the transferee company would not qualify for the deferral rule under section 88 of the ITA 2015.

The rationale for the exception is to ensure that the deferral rules are not misused by disposing the asset to a company which would subsequently dispose the asset with no tax implications.

You may also refer to the Standard Interpretation Guidelines (SIG) 2020-26 <https://www.frcs.org.fj/wp-content/uploads/2020/08/SIG-2020-32-Re-organisation-Section-88-of-ITA-2015.pdf> for further details on Reorganisation.

For more information and feedback please email us on [info@frcs.org.fj](mailto:info@frcs.org.fj).

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