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MOODYS GARTNER TAX LAW LLP
Barristers + Solicitors

Owner-Manager Tax Practice

Is There a Best Corporate Structure?

Agenda

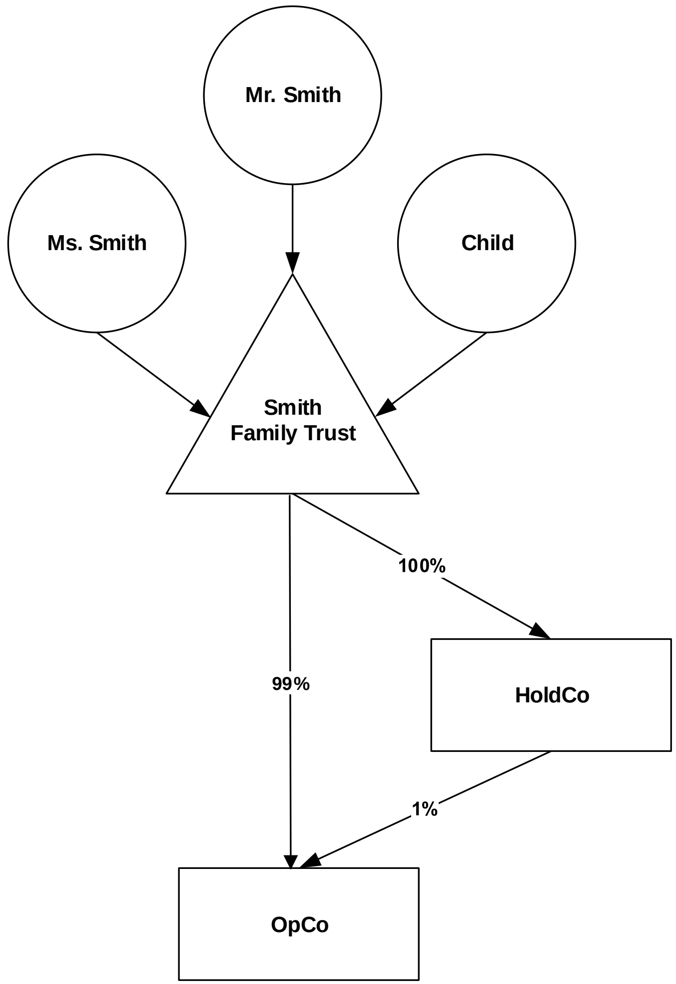
- Pre-TOSI
  - Considerations driving corporate reorgs.
  - Structures used to meet these objectives.
- Post-TOSI
  - Considerations driving corporate reorgs.
  - Structures used to meet these objectives.
- The “Best” Structure(?)

Pre-TOSI

Pre-TOSI: General Structure Considerations

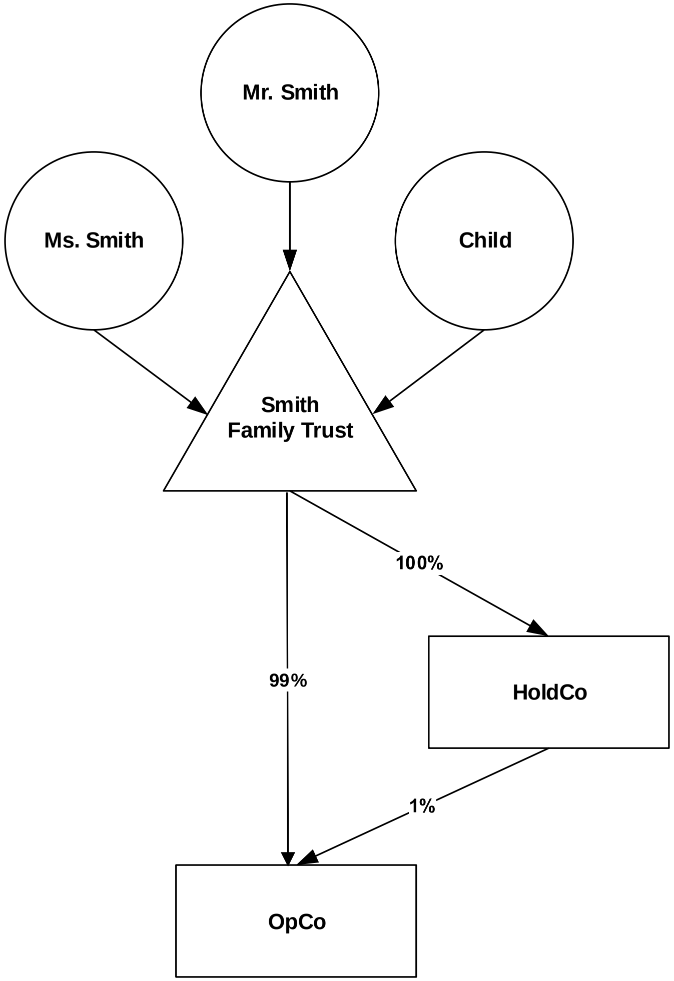
- Preserving the capital gain deduction.
- Purification tool.
- Multiplying the capital gain deduction.
- Creditor protection.
- Avoiding subsection 55(2).
- Income splitting.
- Maintaining “connected” status.
- Avoiding direct shareholding of family members.
- Maintaining corporate tax deferral.
- Maintaining confidentiality.

Option 1: Trust Triangle/Sandwich Structure

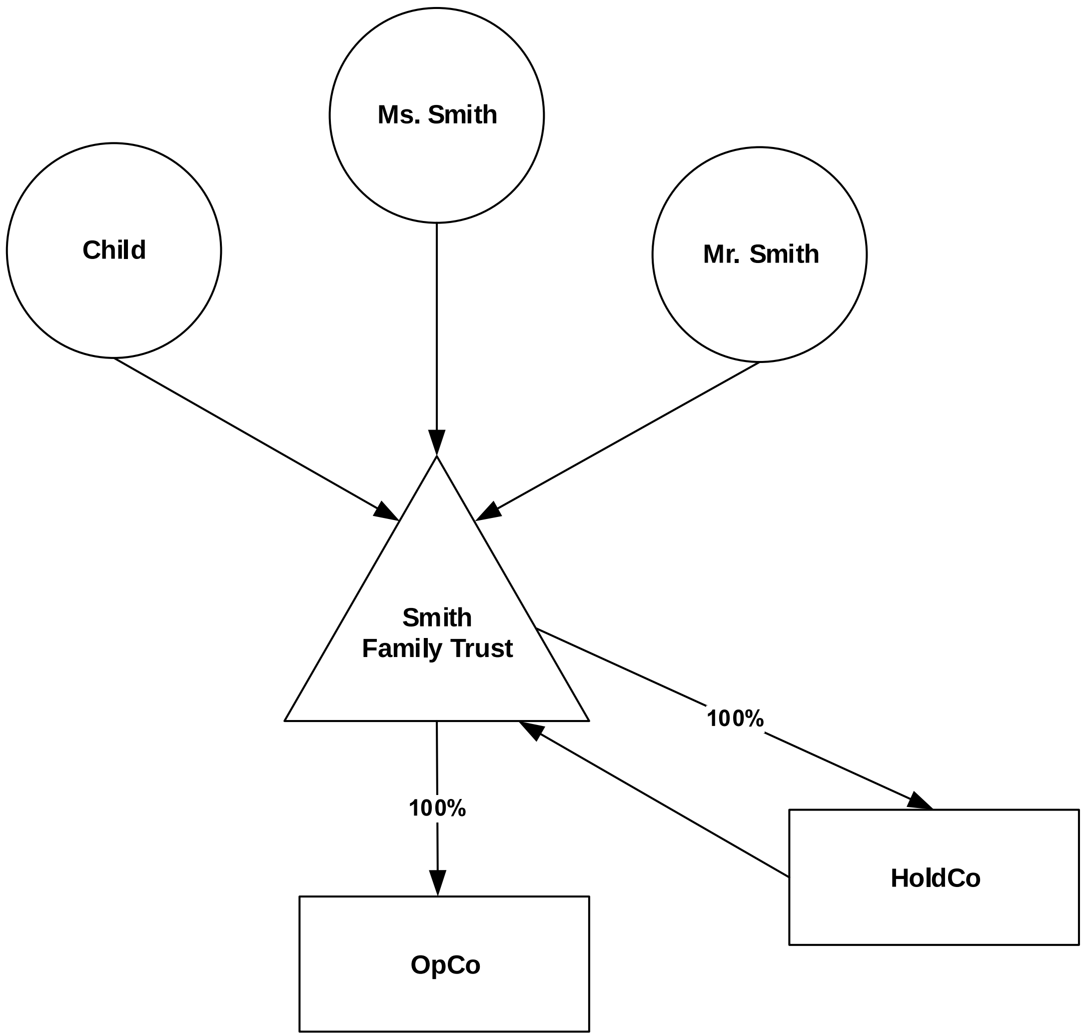


Option 1: Objectives Met?

- ✓ Preserving the capital gain deduction.
- ✓ Purification tool.
- ✓ Multiplying the capital gain deduction.
- ✓ Creditor protection.
- ~ Avoiding subsection 55(2) (still potential risk after April 2015).
- ✓ Income splitting.
- ✓ Maintaining "connected" status.
- ✓ Avoiding direct shareholding of family members.
- ✓ Maintaining corporate tax deferral.
- ✓ Maintaining confidentiality.



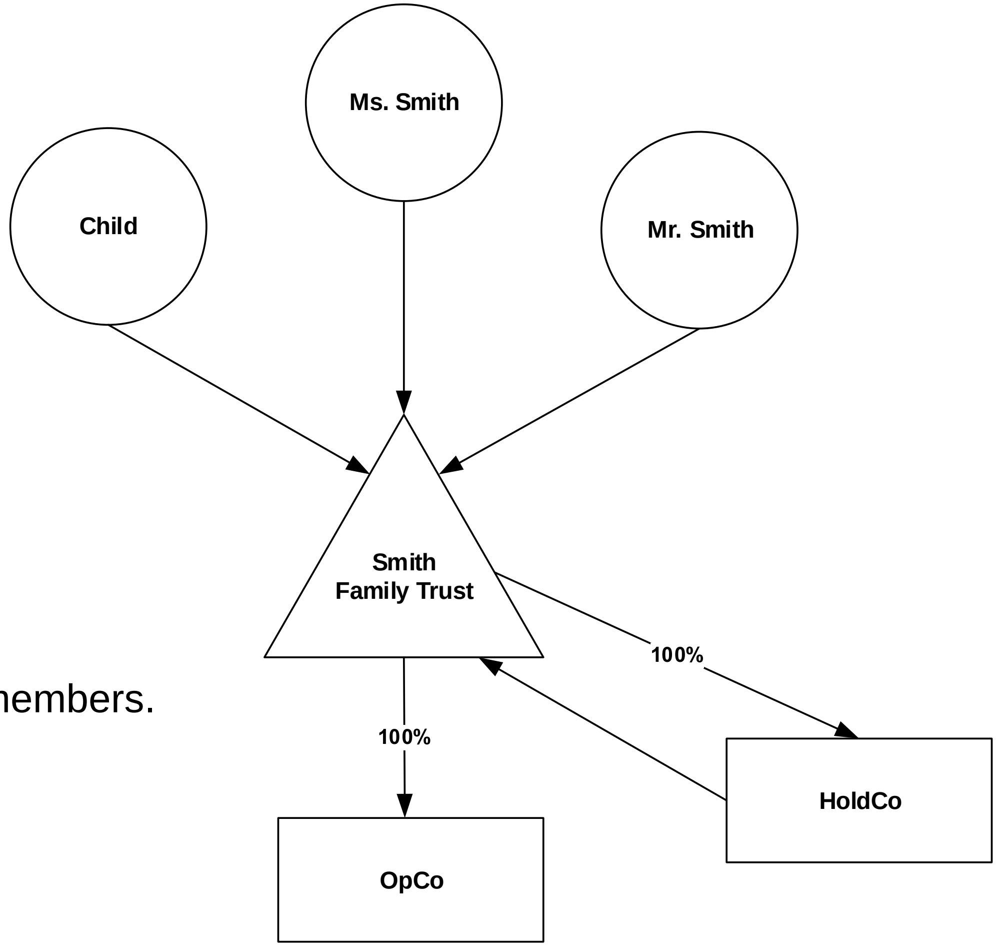
Option 2:



Ms. Smith
Child
Mr. Smith
Smith Family Trust
100%
100%
HoldCo
OpCo

Option 2: Objectives Met?

- ✓ Preserving the capital gain deduction.
- ✓ Purification tool.
- ✓ Multiplying the capital gain deduction.
- ✓ Creditor protection.
- ✓ Avoiding subsection 55(2).
- ✓ Income splitting.
- ✓ Maintaining "connected" status.
- ✓ Avoiding direct shareholding of family members.
- ✓ Maintaining corporate tax deferral.
- ✓ Maintaining confidentiality.



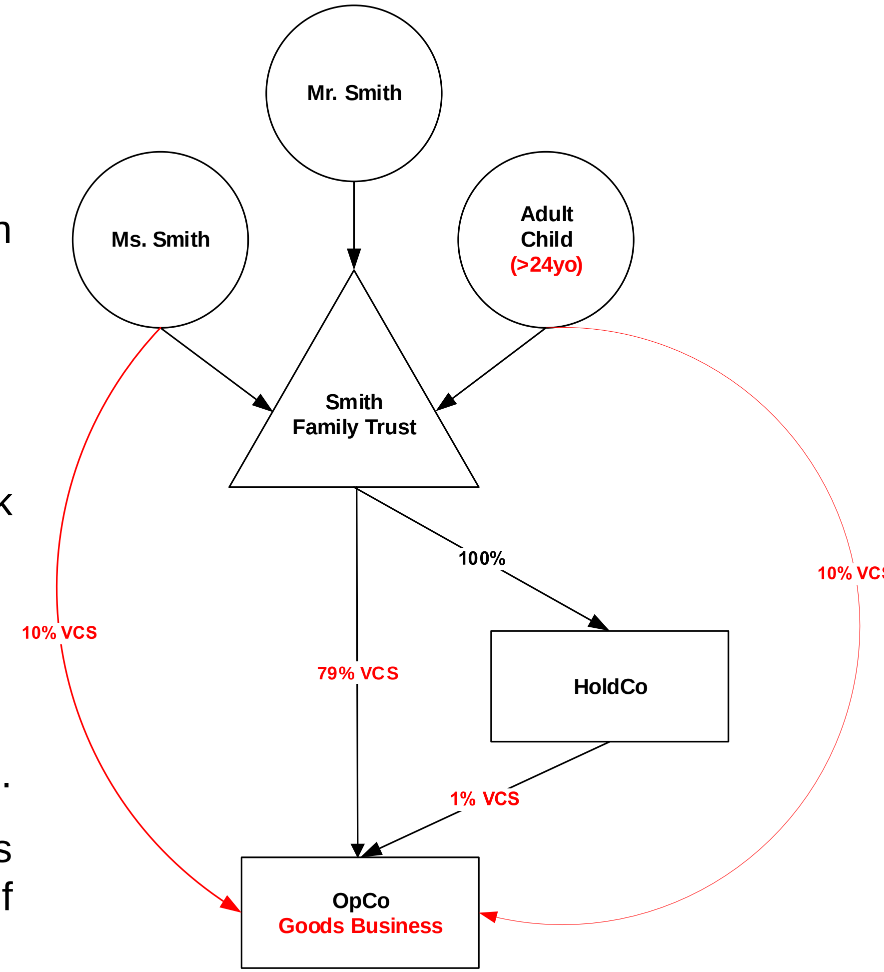
Post-TOSI

Post-TOSI: Corporate Reorg Considerations

- Generally the considerations driving corporate structures haven't changed.
- To meet the excluded share exemption for TOSI (only for individuals aged 24 years or older), to maintain the "income splitting objective", individuals are more often holding shares directly.
  - This, of course, creates issues in meeting the other corporate reorg objectives.
- For example…

Option 1:

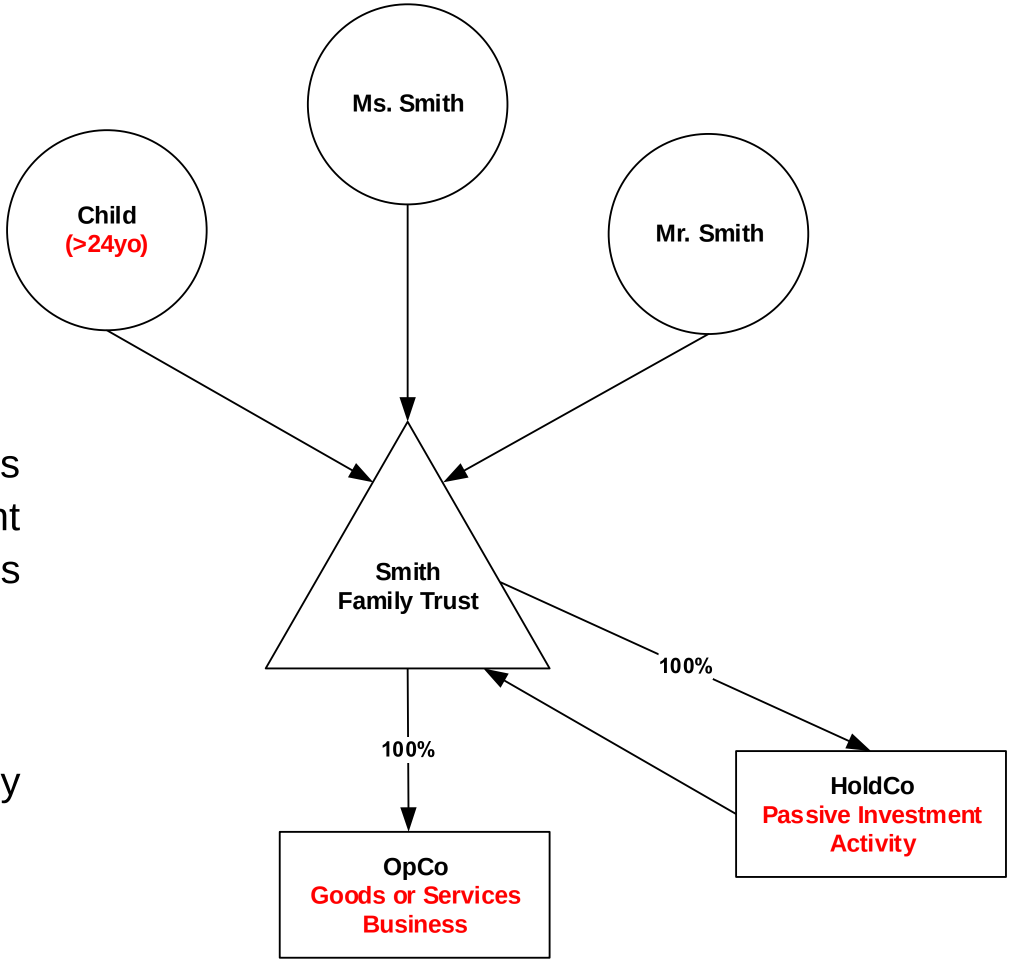
- ✓ Preserving the capital gain deduction.
- x Purification tool (unless the shareholders own different classes of shares).
- ✓ Multiplying the capital gain deduction.
- x Creditor protection.
- ~ Avoiding subsection 55(2) (still potential risk after April 2015).
- ✓ Income splitting.
- ✓ Maintaining “connected” status.
- x Avoiding direct shareholding of family members.
- x Maintaining corporate tax deferral (unless the shareholders own different classes of shares).
- x Maintaining confidentiality.



VCS are all the same share class to support 10% value test

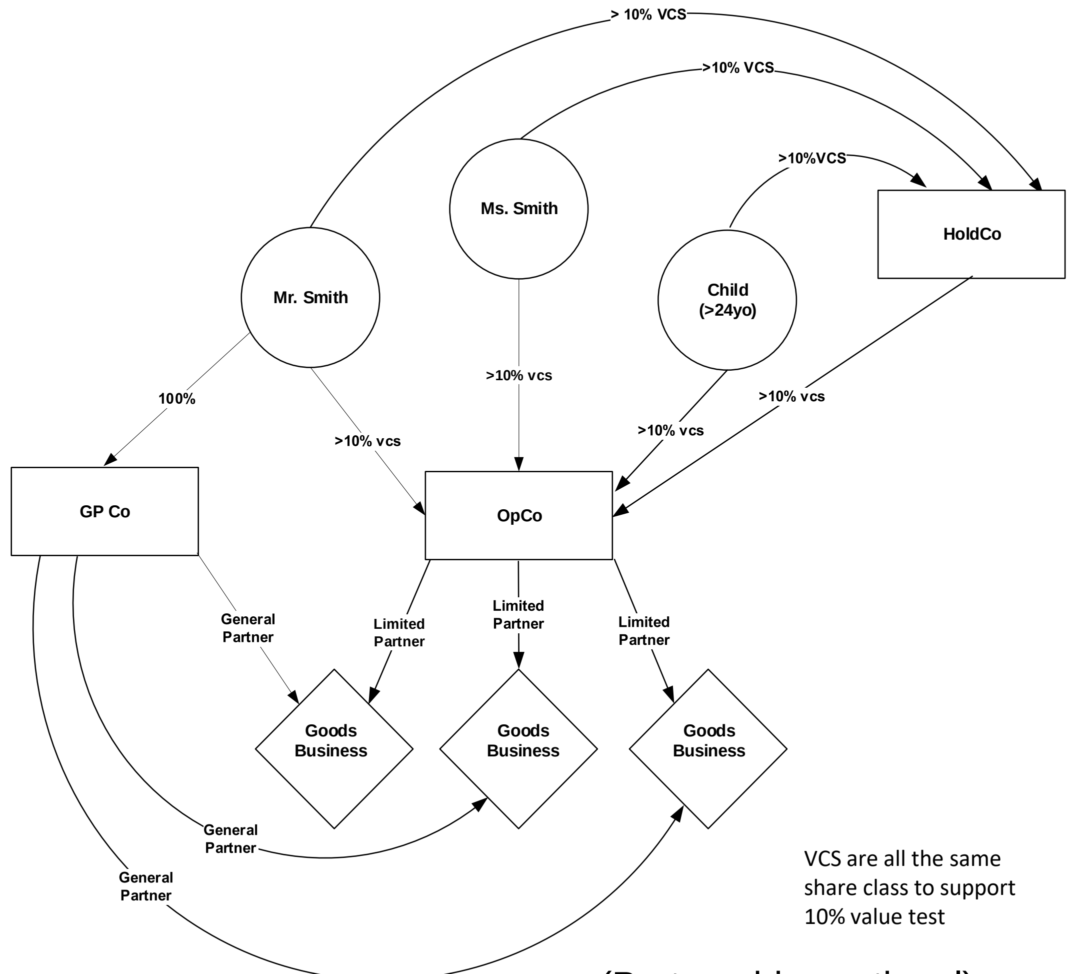
Option 2:

- ✓ Preserving the capital gain deduction.
- ✓ Purification tool.
- ✓ Multiplying the capital gain deduction.
- ✓ Creditor protection.
- ✓ Avoiding subsection 55(2).
- ✓ Income splitting (can only split dividends traced to HoldCo's after-tax investment income. The "no-business" position is subject to CRA scrutiny).
- ✓ Maintaining "connected" status.
- ✓ Avoiding direct shareholding of family members.
- ✓ Maintaining corporate tax deferral.
- ✓ Maintaining confidentiality.



Option 3: Direct Shareholding in Opco, no Trust

- ✓ Preserving the capital gain deduction.
- ~ Purification tool (only if different classes of shares).
- ✓ Multiplying the capital gain deduction.
- x Creditor protection.
- ✓ Avoiding subsection 55(2).
- ✓ Income splitting.
- ✓ Maintaining “connected” status.
- x Avoiding direct shareholding of family members.
- ~ Maintaining corporate tax deferral (only if different classes of shares).
- ~ Maintaining confidentiality.

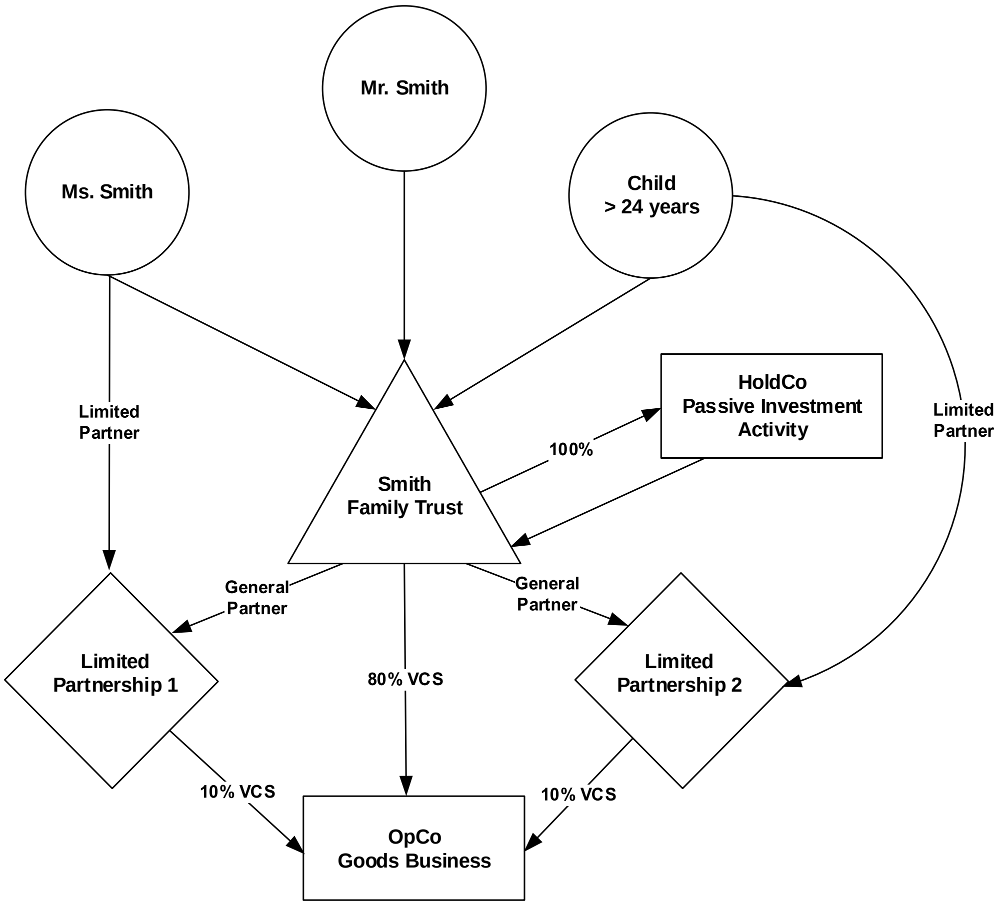


VCS are all the same share class to support 10% value test

(Partnerships optional)

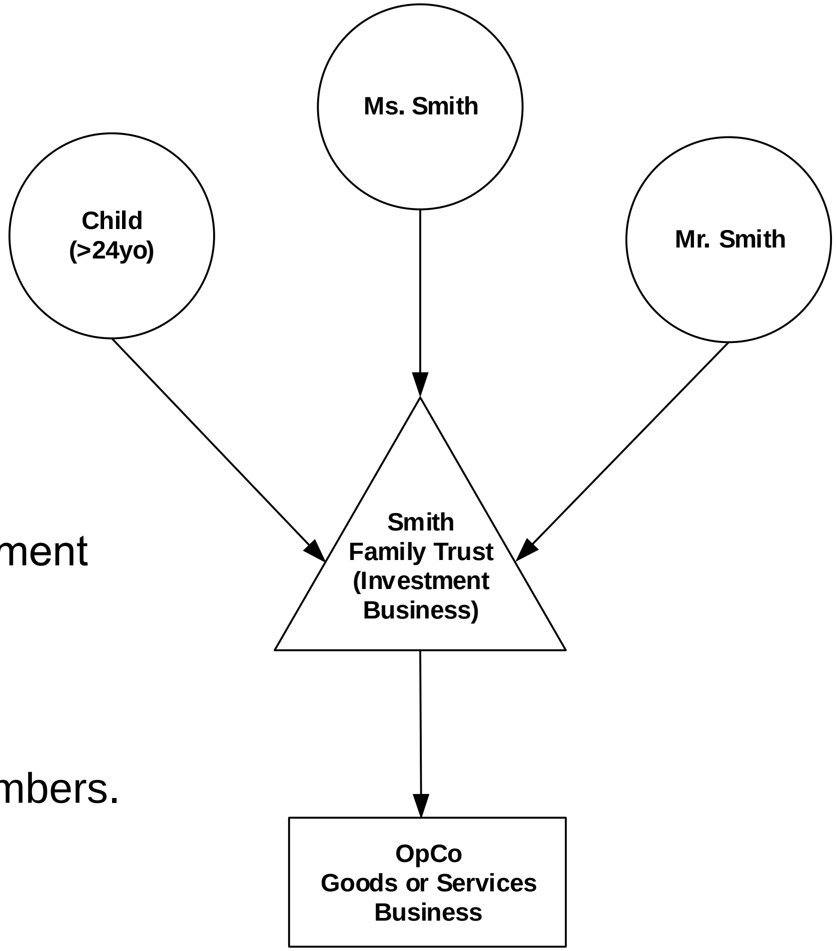
Option 4: Interpose LP on Direct Shareholding To Maintain Control

- ✓ Preserving the capital gain deduction.
- ~ Purification tool.
- ~ Creditor protection (the limited partnership agreement would have to include a “buy-out” clause).
- ✓ Avoiding subsection 55(2).
- ✓ Income splitting.
- ✓ Maintaining “connected” status.
- ✓ Multiplying the capital gain deduction.
- ✓ Avoiding direct shareholding of family members.
- ~ Maintaining corporate tax deferral.
- ~ Maintaining confidentiality.



Option 5: No Deferral With Trust Investing

- ✓ Preserving the capital gain deduction.
- x Purification tool.
- ✓ Multiplying the capital gain deduction.
- ✓ Creditor protection.
- ✓ Avoiding subsection 55(2).
- ✓ Income splitting (only on the trust's investment income).
- ✓ Maintaining "connected" status (N/A).
- ✓ Avoiding direct shareholding of family members.
- x Maintaining corporate tax deferral.
- ✓ Maintaining confidentiality.



So, What is the “Best” Structure?

- Well, it depends
- While the TOSI rules were introduced to prevent income splitting, the criteria for determining what the “best” structure has not changed:
  - What are the owner-manager’s objectives?
  - Which are most important?
  - Which are they willing to sacrifice?
- Don’t overlook the value of simplification.

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