



**Case Study:**  
**Growth and Liquidity through a  
Cross-Border Rollup  
(Consolidation)**

## Case Study:

### Growth and Liquidity through a Cross-Border Rollup (Consolidation)

**The Challenge.** What do you do, as a mature business, to grow your product business when you have high unit costs of goods sold, you want to retire in 10 years and your multinational customers are looking to buy from bigger suppliers?

**The Solution.** This case study explains a business “rollup” (or “consolidation”) of three operating companies (in the U.S., the U.K. and Canada) under one new foreign (U.K.) holding company to achieve more rapid growth in a very competitive environment by:

- *Centralized Financial Planning:* increased leverage for purchasing of materials and capacity to borrow funds; lower borrowing costs;
- *Cost Management:* development of a low-cost captive manufacturer to serve as captive supplier for supply chain efficiency; standardization of a catalog of goods and services across multiple territories; reduction of overhead by eliminating duplication in administrative functions and adoption of common IT systems;
- *Improved Focus on Quality and Sales:* reducing each operating company’s managerial responsibilities so their owner-managers can focus their energy on sales, marketing, customer service and new product development;
- *Risk Management:* centralized risk management planning for business continuity; and
- *Exit Strategies:* planning for incentivizing younger professional managers and paying off founders who want to retire; building shareholder value with an eventual goal of a sale of the enterprise to a strategic acquirer.

#### Background.

*The Operating Companies.* Three private operating companies, originally owned by common acquaintances, had some overlapping clientele and products. These companies operated independently in three different countries (the UK, the US and Canada) under three different names. The oldest and largest operating company (“UK OpCo”) proposed a corporate restructuring in order to maximize the economic benefits for each company under a consolidation strategy - a new UK holding company (“UK HoldCo”), to own the three subsidiaries (“UK OpCo,” “US OpCo” and “Can OpCo”). Once the rollup consolidation took place, the companies would be governed by a common shareholder’s agreement in the holding company, and operations would be governed by various intercompany agreements for integration of operations.

**Our Role.** Bierce & Kenerson, P.C.’s role was to advise on, structure and document the U.S. transactions as well as identify and define the sequencing of related foreign documentation needed to support the U.S. transactions. We represented the new U.K. holding company in establishing its newly formed subsidiary in the U.S.

#### Situation/Scope.

*Ownership Before and After the Consolidation.* The deal structure started out simple: the relative percentages of ownership of the new holding company would be based on a valuation of each company. Shares in the new UK HoldCo would be issued and exchanged for “equivalent” shares in each OpCo. UK OpCo would be the largest contributor (67%) of assets, then Can OpCo (19%) and US OpCo (14%).

However, as in any endeavor that augurs growth and opportunity, the deal structure proved to be a bit more complex than originally considered. Each company had its own unique share structure, requiring cash-based or valuation adjustments and local tax laws had to be accounted for so that the companies and their owner-managers would not realize taxable gains upon the sale, exchange or transfer of each OpCo's shares to UK HoldCo.

## **Approach.**

*Project Management.* The professional advisory team included law firms from each country and an international accounting firm coordinating tax planning. Each law firm mapped out its applicable local documentation and timing necessary to accomplish the scope of the project. The timing and sequence were critical to success, since the legal requirements for tax-free restructuring transactions were different in each country.

*Relationship management.* We consulted, reviewed and, together with an accounting firm, assisted on U.S. tax matters. To provide guidance, Bierce & Kenerson, P.C. structured and prepared a "Coordination Agreement," which established the detailed multi-step sequence of events to be followed. A checklist of over 100 documents was devised jointly and refined by each law firm relative to local laws. Our organizational diagrams showed the "before" and "after" status of the parties.

*Executional Tools.* Going into the transactions, non-disclosure agreements were signed to maintain confidentiality. In executing the contracts, the parties used both physical and electronic signatures and e-records.

## **Strategies.**

### 1. United Kingdom

The UK OpCo restructuring needed to occur first in order to:

- buy out several retiring founders;
- issue new incentive compensation shares to a new professional manager;
- avoid disturbing the post-rollup allocation of ownership in UK HoldCo; and
- create the UK HoldCo and to create the platforms for the Canadian and US restructurings.

UK OpCo simplified its share structure from three classes to two classes and became a subsidiary ("UK Co") of UK HoldCo. UK OpCo's shares were exchanged for UK HoldCo's shares in a tax-free transfer.

### 2. Canada

Because of local tax laws, the Canadian restructuring was more complicated. Unlike the U.S. and the U.K., Canada imposes gains taxes upon any sale or disposition of shares to a foreign company, even if no money changes hands. However, a Canadian company could exchange its shares with another Canadian corporation as part of a tax-free reorganization under Canadian tax laws. By creating a new Canadian "exchange" company to hold the shares of the Can OpCo, the Canadian owner-founders could acquire Can OpCo in a tax-free transaction. Then the Canadian "exchange" company could acquire put options to require UK HoldCo to acquire the Canadian exchange company's shares. Concomitantly, UK HoldCo acquired call options to trigger a future acquisition of the Canadian shares. The Canadian founders got a vote in UK HoldCo's operations by holding a special class of voting shares that had no economic asset value. Thus, by using special classes of shares and options, the Canadian founders

acquired the economic equivalent of a merger, but deferred taxation till a future liquidity event such as a future sale of UK HoldCo to a strategic acquirer.

### 3. United States

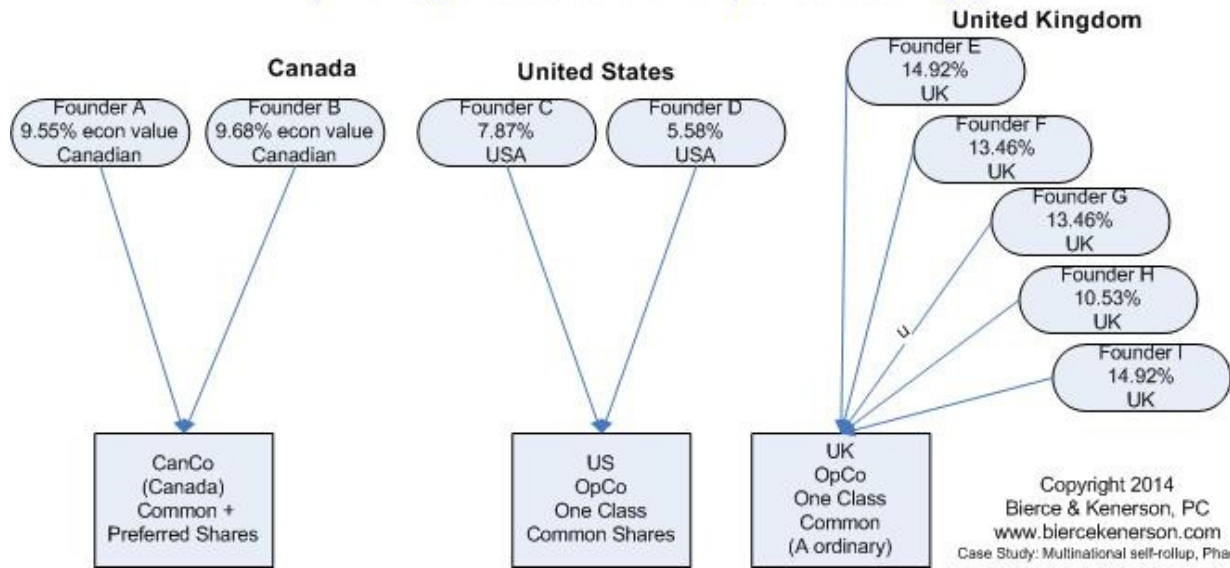
A review of local tax laws turned up some complications in the U.S. restructuring but for different reasons. In order to simplify and solidify the tax plan in the U.S. restructuring, the strategy of reverse triangular merger was utilized. A separate corporation, "MergerSub" was created by UK HoldCo as a wholly owned subsidiary in the United States, with the objective of merging with US OpCo. Once the merger was completed, MergerSub would cease to have a separate existence. This transaction was structured as a statutory merger and share exchange. Upon the filing of the certificate of merger, US OpCo shareholders received UK HoldCo "A" shares in exchange for cancellation of their US OpCo shares. US OpCo was the surviving corporation and MergerSub ceased to exist and its shares cancelled.

*Surprises.* Some roadblocks and "surprises" were encountered:

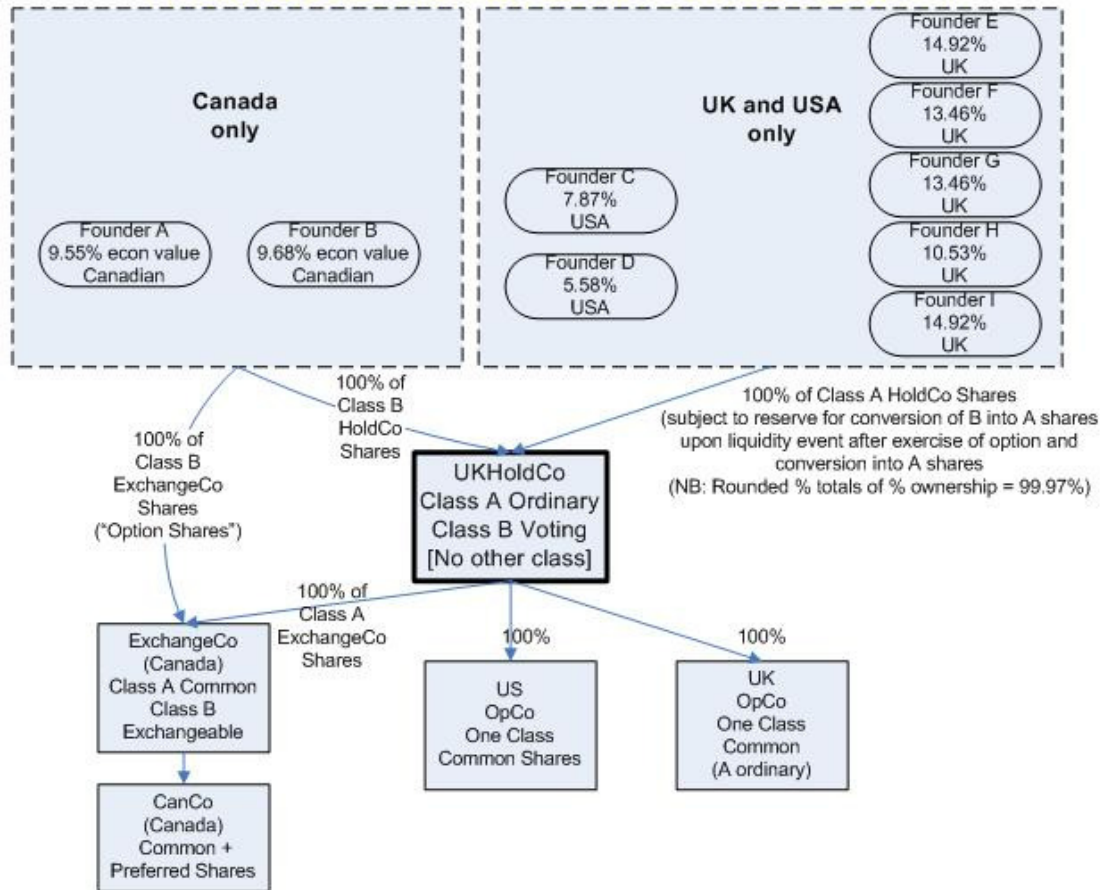
- *Impact of "Change of Control" on Business Relationships.* When a "change of control" happens, certain key contracts may require the consent of a third party. In this case, the US OpCo's current bank was replaced by a more international bank because it would not consent to extend its line of credit to a U.S. subsidiary of a foreign holding company without personal guarantees from the US OpCo's managers.
- *Untidy Corporate Housekeeping.* Our due diligence turned up missing resolutions from the US OpCo's minute book cancelling shares issued by the original founder to his children. A certificate from the current owners attesting to the history of the share register was needed to shut the door on this past history.
- *Impact of Tax-Free Merger on U.S. "S Corporation" Tax Status.* A merger and change of control to a foreign holding company automatically terminates the S-Corp tax-transparent "pass-through entity" status of a U.S. S-Corp. We took this into account by analyzing the impact of such termination on pre-tax income, on actual distributions to shareholders and on accrued liabilities. This analysis helped minimize the impact on the U.S. founders of the US OpCo.
- *New Technologies for Integrated Global Supply Chain Management.* Under a new intercompany supply agreement, the UK HoldCo was to supervise all supply-chain purchasing worldwide. This would require new IT systems. The rollup required all OpCo's to let go of certain existing IT systems and adopt the same ERP software. This re-opened legal, technical and HR inputs.
- *Funding and Allocation of Professional Fees.* The parties had to allocate and pay professional fees and other expenses incurred during the restructuring phase. The UK HoldCo had no meaningful capital and initially was just a shell. Each operating company was thus responsible for its own professional fees as well as an agreed allocation of the HoldCo's direct fees. This required some intercompany accounting.

**Outcome.** The scenario for this complex multijurisdictional case study unfolded over a period of 6 weeks, during the year-end holiday season. After completion of the rollup, the parties began working together toward future growth, revenue and eventual liquidity. As in post-merger consolidation, new roles and responsibilities need to be implemented promptly to achieve the desired synergies.

### Self-Managed Multinational Consolidation and Succession Plan under New Holding Company: (Initial Organization before Multiple Restructurings)



**Self-Managed Multinational Consolidation and Succession Plan  
under New Holding Company:  
(Projected Organization after Multiple Restructurings of OpCo's)**



**Completed transactions:**

1. UKCo share buyback for some exiting shareholders
2. UKCo share exchange (UKCo shares exchanged for UK HoldCo shares)
3. Canadian subscription to UK HoldCo B shares at nominal value for cash
4. Canadian cross-option agreement (puts and calls relating to HoldCo B shares)
5. US reverse triangular merger (resulting in UK HoldCo holding US OpCo)
6. Global Shareholders' Agreement (at UK HoldCo level)
7. HoldCo Intragroup Supply Agreement