

Income Tax Public Ruling No. 2/2019

Director's liability 董事责任



Director, did you know that although you only own 20% of the company's shares, the tax bureau has the right to hold you responsible for the company's tax debt ?

Director, 您知不知道，虽然您只拥有20%公司股权，但是税务局却有权要求您为公司欠税负责？



On 14 March 2019, the Inland Revenue Board of Malaysia issued Public Ruling No. 2/2019, which explains the liabilities of a company director in respect of the company's tax, including:

马来西亚税务局于2019年3月14日发布了第2/2019号公共裁定，其中解释了公司董事在公司税款方面的责任，包括：

- Any tax that is due and payable by a company; and
- Any debt that is due and payable by the company as an employer in relation to tax deductions from emoluments and pensions under the Monthly Tax Deduction (MTD).



For this purpose, the ruling provides that a liable director is any person who is:

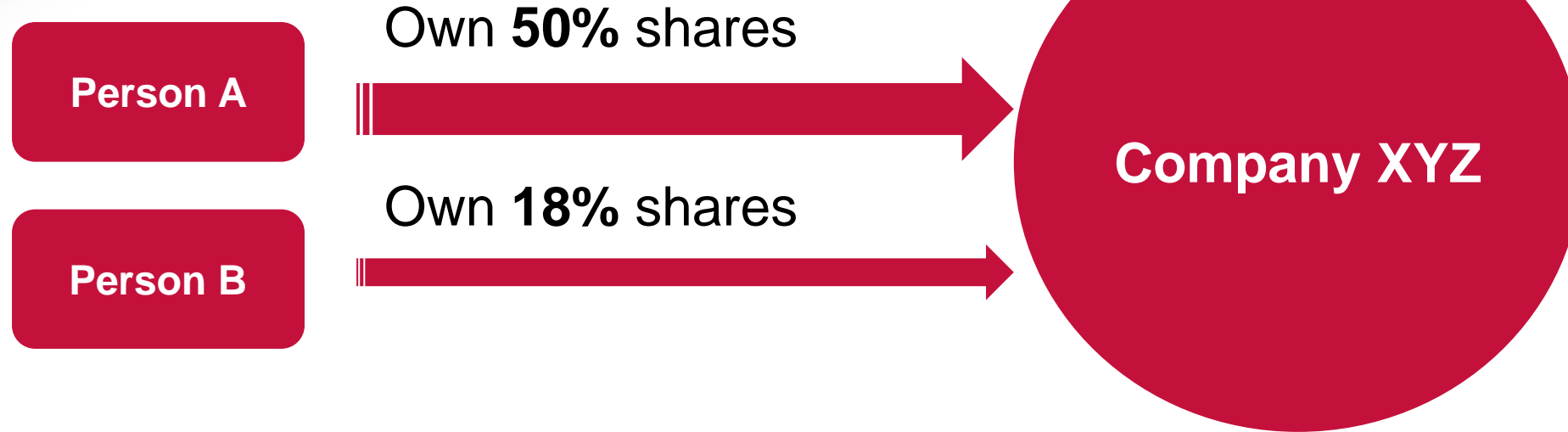
- ✓ Occupying the position of director, (by whatever name it is called) including any person who is concerned in the management of the company's business; and

Either:

- ✓ On their own, the owner of, in control of not less than 20% of the ordinary share capital of the company; or
- ✓ With one or more associates, able directly or through the medium of other companies or by any other indirect means to control, not less than 20% of the ordinary share capital of the company.



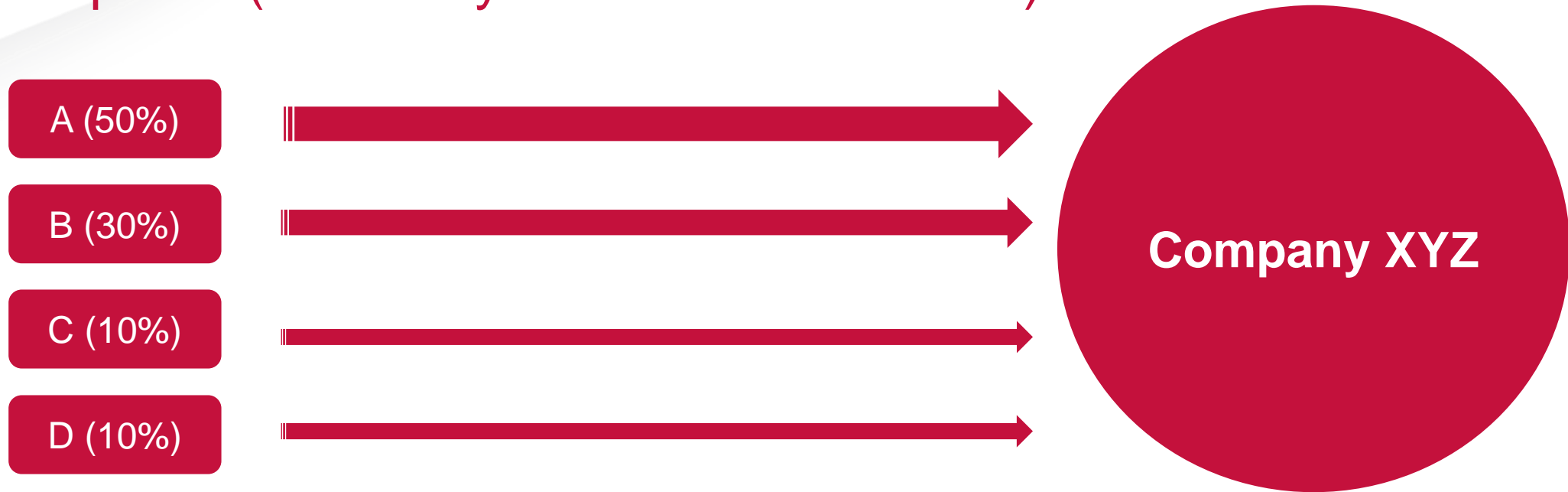
For example 1:



Conclusion:

Person B is not a director for the purposes of section 75A of the Income Tax Act 1967 as the ordinary share capital owned which is less than 20% while Person A is a director as the ordinary share capital owned which is not less than 20%.

For example 2: (No family ties with each other.)



Conclusion:

Person C & D are not directors for the purposes of section 75A of the Income Tax Act 1967 as the ordinary share capital owned by each of them are less than 20% while Person A & B are directors as the ordinary share capital owned by each of them are more than 20%.

For example 3:

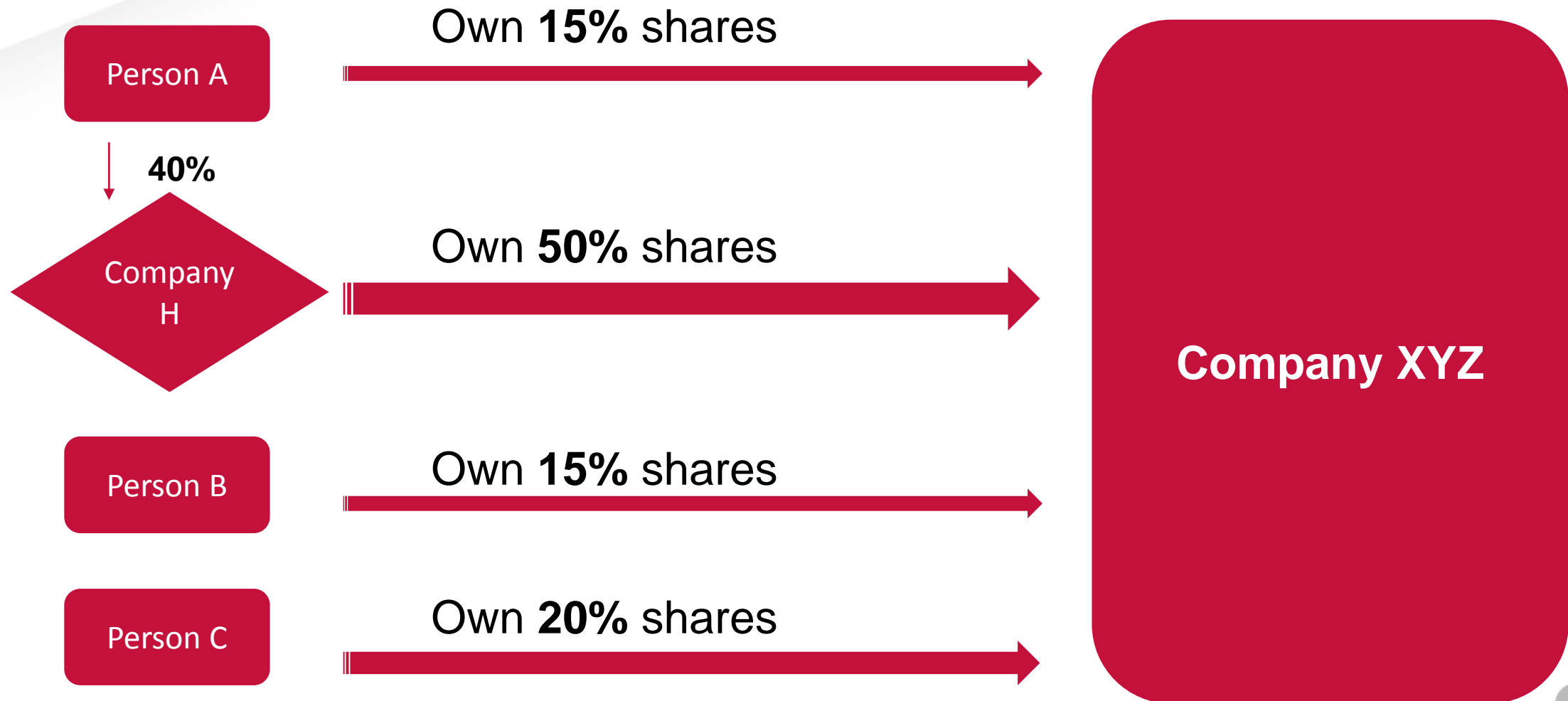
Same facts as in Example 2 except that
Person C & D are a married couple.

Conclusion:

Person C and his associate Person D have ordinary share capital amounting to 20%. Therefore, Person C & D are the directors of Company XYZ for the purpose of section 75A of the Income Tax Act 1967 as they jointly hold not less than 20% of the ordinary share capital in Company XYZ.



For example 4: (Indirect shareholdings)



Conclusion:

- **Person B** is not a director for the purposes of section 75A of the Income Tax Act 1967 as he does not fulfill the condition of owning "not less than 20% of the ordinary share capital".
- **Person C** is a director for the purposes of section 75A of the Income Tax Act 1967 as he owns 20% of ordinary share capital on his own.
- **Person A** is also a director for the purposes of section 75A of the Income Tax Act 1967 as he owns 35% of ordinary share capital computed as follows:

Shares owned on his own behalf - directly	15%
<u>Add:</u>	+
Shares owned through an intermediary, Company H (40% X 50%) – indirectly	<u>20%</u>
Shares owned directly and indirectly	<u>35%</u>



A director who holds 20% or more of ordinary share capital in a company will be held liable for –

(a) the payment of corporate income tax; and

(b) Monthly Tax Deduction (MTD).

The Director is jointly and severally liable in respect of the company's tax and any debt that is due and payable.

For more information, kindly refer to official website
http://lampiran1.hasil.gov.my/pdf/pdfam/PR_02_2019.pdf

