provisions of s80A do not apply. As stated in *SIR v Geustyn, Forsyth and Joubert*[2], *'unless all four factors are present at the same time, it is impossible to attempt to invoke these anti-avoidance provisions.'*

As far as the income retained in the trust reinvested for the *'possible'* benefit of Mr X's daughter is concerned, the provisions of s7(5) of the Act will apply. This section provides that the income retained in a trust cannot be taxed in the hands of the beneficiaries or trustees, but tax will be levied on the person who made the donation to the trust. Where multiple donors exist, each donor will be taxed on the pro-rata income retained in the trust, which is attributable to the donation made by that donor to the trust.[3]

It follows that Mr X will be liable for tax on the income retained by the trust as the income is accumulated for the beneficiary but will be paid to her only on the occurrence of an event – at this point in time the daughter does not have a vested right to the capital or the accumulated interest.

Persons contemplating donations of interest-earning investments to a trust are well advised to contact a FISA registered – Fiduciary Specialist for appropriate estate planning to avoid the legal and tax pitfalls of poor trust structuring. ◆

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1 1949 (4) SA 1022 (T), 16 SATC 312

2 1971 (3) SA 567 (A), 33 SATC 113 at 120

3 Silke on South African Income Tax, 2010