

Money Matters

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Winding down or terminating a trust

Trusts

When creating a trust, the trust deed, in respect of Inter-Vivos trusts, and the Last Will and Testament, in respect of testamentary trusts, will always stipulate a date on which the trust or testamentary trust will terminate. In the case of an Inter-Vivos trust, the date may be a future event, namely a date determined by the trustees of the trust, alternatively an anniversary date (x number of years after the creation of the trust). In the case of a testamentary trust, the death of the testator/testatrix will bring about the termination of the trust. In terminating a trust, there is a set process to follow, as described below.

Inter-Vivos trusts

- Once a termination date has been determined, the trustees must pass a resolution to confirm the termination of the trust, and who will receive assets from the trust, in terms of the proposed distribution of assets.
- The trustees must arrange for a report reflecting a true and accurate valuation of the assets in the trust.
- The valuation report must be dated as at the date that the termination of the trust is confirmed.
- The trustees must then ensure that a distribution statement is prepared, reflecting the distribution of assets to the beneficiary(ies).
- An acquittance form, reflecting

the value of assets awarded to the beneficiary(ies), must be prepared once the distribution statement has been accepted as a true and accurate reflection of the distribution of assets.

- A copy of the distribution statement, as well as an acquittance form, must be sent to each beneficiary of the trust.
- The beneficiary(ies) must sign and return the acquittance form(s) to the administrative trustee, prior to the physical distribution of assets to them.
- Once all the assets have been physically distributed to the beneficiary(ies), the administrative trustee must prepare a final set of accounts for the trust, the financial statements to reflect the distribution of assets, as well as a nil balance in terms of the value of assets still held in trust.
- The financial statements need to be signed by all the duly appointed trustees of the trust.
- Once the financial statements have been signed, the following documents need to be presented to the office of the Master of the High Court where the trust was initially registered, with a request to deregister the trust in their records:
 - Original Letters of Authority
 - Original trustees' resolution giving effect to the termination of the trust, and the distribution of assets;
 - Copy of the distribution statement reflecting the distribution of assets;

- Original acquittance form(s), duly signed by the beneficiary(ies), and
- Copy of the final set of trust financials, duly signed by the trustees.

Once the Master's office is in receipt of these documents, they will officially confirm receipt by way of a formal communication. This communication will include reference to the request for the trust to be deregistered. Upon receipt of this communication, one can safely assume that the trust records at the Master's office have been updated to reflect the deregistration of the trust. However, there is one final matter that needs to be addressed before the deregistering of an Inter-Vivos trust can be considered complete. As the trust would have been registered as a taxpayer, SARS would also have to be notified of the termination of the trust, as well as the matter having been reported to the Master of the High Court. The following documents need to be submitted to SARS to request that the trust be deregistered for tax purposes :-

- Copy of the trustees' resolution giving effect to the termination of the trust, and the distribution of assets;
- Copy of the distribution statement reflecting the distribution of assets;
- Copy of the acquittance form(s), duly signed by the beneficiary(ies), and
- Copy of the final set of trust

Trustees must arrange for a report reflecting a true and accurate valuation of the assets in the trust

financial statements, duly signed by the trustees.

A last requirement is to advise the SARS office of the tax reference number(s) of the beneficiary(ies), so that they can cross-reference the transfer of assets from the trust to the beneficiary(ies).

Testamentary trusts

With regard to the termination of a testamentary trust, the process followed in terms of an Inter-Vivos trust termination is followed, with one additional requirement. A copy of the Last Will and Testament of the deceased is required to be sent to the offices of the Master of the High Court and SARS, with specific reference made to the clause of the Will effecting the termination of the trust.

Contributions to this column came from FISA Council member Aaron Roup, Trust Practitioner at BoE Private Clients. A list of FISA-registered practitioners available from secretariat@fidsa.org.za. Visit our website at www.fidsa.org.za FISA is a non-profit organisation that represents practitioners in the fiduciary industry and sets high minimum standards to protect the public's interests. Activities of FISA members include but are not restricted to the drafting of wills, administration of trusts and estates, tax and financial advice and the management of client funds. FISA has more than 600 individual members who collectively manage in excess of R200 billion. Membership is open to any professional who meets the membership criteria.