

# Money Matters

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## The value of trusts when used as an estate planning tool

### Trusts

In recent years there has been much talk and speculation whether trusts, especially *inter vivos* trusts, have any further effective use as an estate planning tool.

The negative perception about the use of trusts is mainly as a result of a change and adaptation of income tax and related legislation so as to curtail what could generally have been described as the abuse of trusts to derive a tax benefit.

This immediately created the perception that there is a distinct attack on trusts by the fiscal authorities. However, on closer scrutiny and analysis it is clear that the changes in legislation were not aimed to be a wholesale attack on the use of trusts but merely to bring them into line with general tax compliance and related principles. By way of example, the income tax and capital gains tax attribution rules now contained in the Income Tax Act were regarded by many as the effective death knell for the use of trusts in estate planning. However closer scrutiny shows that these rules can in fact be applied to the benefit of the founder/funder of the trust and if anything, the founder/funder will be in a no worse off position (tax wise) to what he would have been had he retained such assets personally - but with all the other benefits that trusts have and continue to provide as an effective estate planning tool. It is also important to note that a trust should never be established or exist purely with the main aim to derive a tax benefit. Even before

the imposition of the attribution rules, a trust could have been attacked by The South African Revenue Services on these grounds. In other words, a trust will continue to play meaningful and important rule if it is established/maintained for any or all of the following purposes:

- Asset protection
- Generational holding vehicle for suitable assets
- Asset value pegging purposes for general estate planning
- Orderly transition of assets at determined intervals or at a specific time irrespective as to whether the founder/funder is still alive or not
- Suitable and cost effective holding vehicle for certain business and business related assets and to conduct a business
- Suitable holding vehicle for charitable and/or philanthropic purposes and objectives.

There are many other purposes where a trust can play a vital and valuable role to hold assets to enable the trustees to achieve certain objectives irrespective of a personal or a public nature.

Special mention must be made of an often forgotten trust known as a "special purpose trust".

A special purpose trust is a very useful tool to financially provide for say a parent or a child with either a physical or mental handicap. Special purpose trusts are taxed at the same favourable rates as a natural person and under appropriate circumstances could prevent the

need of ultimately being compelled to apply to have a person placed under curatorship.

A special purpose trust creates greater flexibility with the administration of trust assets as opposed to a curatorship which has many restrictions and could be to the detriment of the person under curatorship. What is also overlooked in many instances is that a person who has been diagnosed with say Alzheimer's can set up his or her own special purpose trust prior to the illness taking meaningful effect and donate to the special purpose trust financial assets to the value which would be required to reasonably maintain such a person for the remainder of his lifetime.

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Such a donation for "self maintenance" where the above circumstances apply would not attract any donations tax.

The balance of such a person's assets could then furthermore be sold to the special purpose trust or loan account with the result that the three main objectives are achieved, namely, (1) obviate the need to ultimately be placed under curatorship, (2) choose your trustees who will ultimately see to your needs and wellbeing when you are not capable of doing so, and (3), simplify the ultimate administration of the deceased estate and the orderly transition of the assets to the ultimate beneficiaries who could ultimately choose to even retain the trust which would revert to say an ordinary discretionary *inter vivos* trust which in turn could assist with the estate planning of the next generation.

Trusts (testamentary or *inter vivos*) must be constructed and drafted extremely carefully in order to be effective and achieve the intended objectives of the founder. Trust and related tax law has become highly specialised but notwithstanding its complexity, trusts remain a valuable tool for estate and related planning.

*Contributions to this column came from FISA Council member Alfred Bester, Fiduciary Practitioner with Citadel Fiduciary Limited. A list of FISA-registered practitioners available from [secretariat@fidsa.org.za](mailto:secretariat@fidsa.org.za). Visit our website at [www.fidsa.org.za](http://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.*