

blow. However, these concerns turn out to be unjustified when various fixed property ownership options are analysed from an integrated, multi-disciplinary point of view.

Optimal ownership of investment property

Consider the example of an investment property, fully paid, currently worth R 1 000 000 (use this as base cost for CGT) with a projected annual capital growth rate of 10% and a current annual rental income of R 72 000 (net of cost). The following comparative tax and cost analysis of various ownership options shows a trust to be the optimal ownership choice:

Personal ownership: Property owned by Joe Bloggs, successful business person and subject to an income tax rate of 40%, married out of community of property to Jill, an unemployed housewife, with two children approaching their teens and Jill's mother financially dependent on the Bloggs'. (Even without this investment property, the net value of Joe and Jill's combined estate and life assurance already exceeds R7 000 000.)

Private company: Property owned by a private company, the shares of which are held by Joe.

Family trust: Property owned by a fully-discretionary family trust with a personalised beneficiary base.

Analysis of the three options

In suitable circumstances and from a tax and cost point of view (see table alongside), a properly-structured and professionally-used discretionary trust without doubt still provides the optimal ownership solution for an investment property.

Remember, however, that tax benefits should never be the primary reason for establishing and using a trust. Tax legislation may change for the worse; and personal circumstances may change and

Tax & Cost	Investment property ownership options		
	Personal ownership	Private company	Family trust
Scenario one: Situation at Joe's death 10 years later, property then worth R2 593 700			
Capital gains tax			
Maximum effective rate	13.3%	18.6%	N/A
Capital gains tax	R211 962	R296 428	R0
Executor's fee @ 3.5% + VAT			
Gross value in estate	R2 593 700	R2 297 272	R0
Executor's fee	R103 489	R91 661	
Estate duty @ 20%			
Dutiable amount	R2 278 249	R2 205 611	N/A
Estate duty	R455 650	R441 122	R0
Total tax & cost	R771 101	R829 211	R0
<i>Clearly, Joe's dependents would have been much better off with the investment property in a trust.</i>			
Scenario two: Joe bequeaths the property / private company to a trust after 10 years			
Transfer duty	R124 496	R124 496	N/A
Transfer fee	R24 000	N/A	N/A
Secondary transfer tax @ 0.25%	N/A	R5 432	N/A
Total tax & cost	R148 496	R129 928	R0
<i>Original ownership in trust would have prevented these costs associated with a bequest to a trust.</i>			
Scenario three: Income tax during the 10 year period			
Income tax rate	40%	28%	0%
Income tax liability	R288 000	R201 600	R0
Dividend withholding tax @ 15%	N/A	R77 760	N/A
Total tax liability	R288 000	R279 360	R0
<i>Using the conduit principle, trust gross income is distributed to two non-income earning Bloggs family members resulting in no income tax having to be paid. A trust is the best option again.</i>			
Scenario four: Liquidation of property after 10 years during Joe's lifetime			
Capital gains tax	R207 972	R296 428	R42 573
Dividend tax @ 15%	NA	R344 591	NA
Total expense	R207 972	R641 019	R42 573
<i>Again, using the conduit principle with trust gross income distributed to four non-income earning Bloggs family members, there is a total CGT liability of only R42 573. A trust, yet again, proves the best option. (The effects on the personal estates of the beneficiaries need to be carefully considered and managed.)</i>			

neutralise potential tax benefits.

Remember too that the planning, drafting and upgrading of trust deeds, as well as the management and administration of trusts, all require multi-disciplinary professional skills. Members of the public are advised to seek out a practitioner who is a member of the

Fiduciary Institute of South Africa (FISA), who are bound by a code of ethics to adhere to a high professional standard.

Gerrie Vosser is from IPMG Trust & Fiduciary Services, and is a FISA member.