TRUSTS: AS IMPORTANT AS EVER

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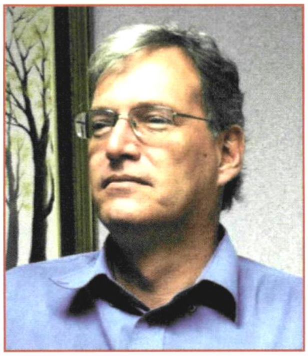
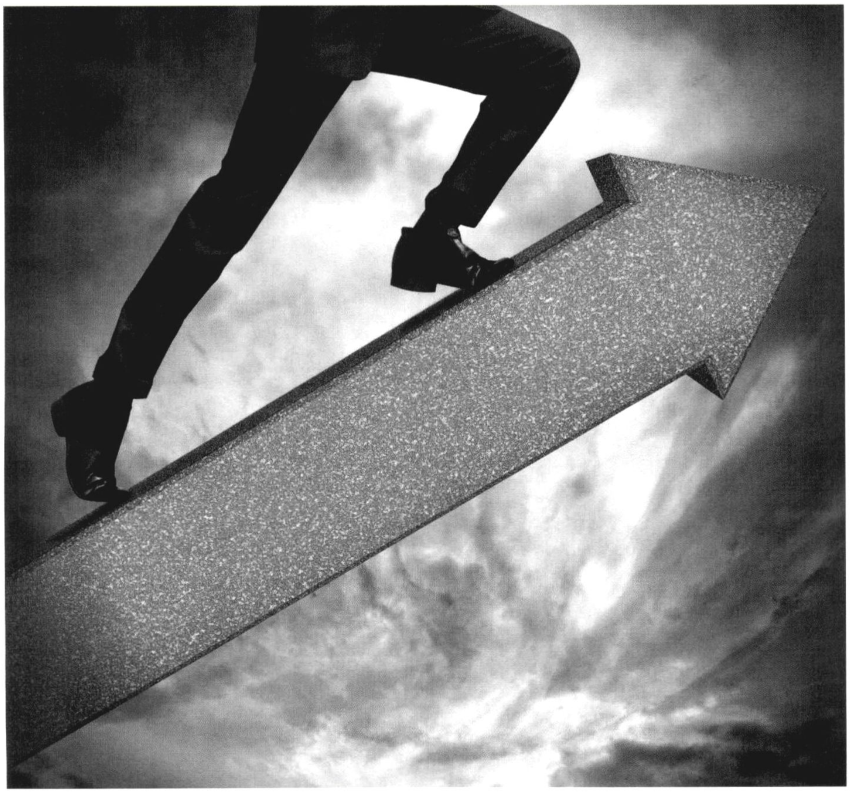
A trust is considered an essential tool that plays a meaningful role in a variety of estate planning disciplines. In addition to asset protection, a trust can function as an asset value pegging mechanism for estate duty, a means to support and maintain families and as a vehicle to house business interests.



In recent years, a negative perception has formed around the use of trusts. This perception came about partly as a result of legislation that was fuelled by a trust feeding frenzy. Seemingly, interest was only placed in the instant gratification of having a trust and saving tax. Popularity instead of relevance characterised the reasons behind setting up a trust. Subsequently, the feeding frenzy raised the interest of the fiscal authorities whose response included increased regulation aimed at aligning trusts with general tax compliance.

This frenzy also attracted the attention of Finance Minister, Pravin Gordhan, who highlighted the improper use of trusts in both his 2012 and 2013 Budget Speech. In 2012, he issued a warning to trustees, advisors and tax practitioners, stating that he was aware of the poor tax compliance in the use of trusts. He re-visited the warning in February of this year, suggesting that several legislative measures would be proposed during 2013 and 2014 to address the improper use of trusts.



Despite the negative perception, trusts are still recognised for its many benefits.

Fiscal benefits combined with asset protection

If a trust is set up for the right reasons and is used correctly, it is able to unlock specific benefits for the estate owner. In essence, a trust combines fiscal benefits with asset protection. Whether in a personal or business capacity, it is a useful vehicle that offers total asset protection as well as asset continuation. This is achieved by virtue of the fact that a trust is not owned by anyone and the death of a natural person will not influence or affect the continuation thereof.

Additional advantages of using a trust vehicle in estate and financial planning include savings on Estate Duty and Executor's fees due to the so-called "pinning" or "freezing" of the value of estate assets. They are also essential for minor children, financially challenged heirs or squandering individuals. With the use of a trust, inheritances and benefits can be protected, which is beneficial to surviving spouses who are unable to manage their own financial affairs.

A holistic approach to trusts

Due to increased legislation and vigilance, the trust arena has become a highly specialist playing ground. Ideally, advisors should be equipped to deal with this area of the law and similarly, be aware of the latest regulatory and legislative trends concerning trusts.

A trust as an estate and financial planning tool is as relevant and as important as ever. Having said that, if the primary goal is to receive instant gratification from the estate planning exercise or to save tax and estate duty over the short term, then a trust is not suitable.

The primary objective of any estate planning structure should be based on the specific personal circumstances of the estate owner. It therefore makes sense to suggest that financial planners should adopt a holistic approach when they administer clients' estate and financial planning. Advisors acting in the best interest of their clients will ensure that a trust is never created for the wrong reasons.

Financial planners who need advice on trust matters should contact the Fiduciary Institute of Southern Africa, where the planner can be assured of receiving the best professional advice.