GROWTH IN *INTER VIVOS TRUSTS* – FOR NOW

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If anyone is wondering whether trusts are still being used as a vehicle to protect assets, the latest statistics received from the Chief Master's office confirm that 13% more trusts were registered during 2012 than 2011 compared to only a 4% growth in the previous year (see graph).

Growth in the use of trusts appears to be the trend not only in South Africa, but also in some offshore jurisdictions. Private bank US Trust found that more than one third of high and ultra-high-net-worth parents agreed 'strongly' that their children would not be able to handle their inheritance. A survey by Barclays bank also revealed that more than 25% of individuals in the USA with investable assets of at least $1,5m do not trust their children and step-children to protect their inheritance.

This may be why, despite all the tax implications, a trust still remain a popular vehicle to protect assets. Many individuals prefer setting up a trust during their life time (inter vivos) opposed to having one set up in the event of their death (mortis causa or testamentary) as it allows them to donate assets to the trusts during their lifetime. The benefit is that the donated assets do not form part of their personal estate anymore and will be protected from personal creditors or business creditors if they have provided surety for their businesses.

The increase in the number of trusts could also be the result of more charitable trusts that have been registered as many South Africans wish to give back to society in order to make a difference. What better legacy can one leave?

The proposed tax changes announced in the 2013 Budget Review may, however, have an effect on the future growth trend for discretionary inter vivos trusts set up for the purpose of preserving assets for future generations. This is because the so-called conduit principle, which allows funds to 'flow' to beneficiaries without being taxed in the trust, will no longer apply as the taxable income will be calculated in the trust with distributions acting as deductible payments to the extent of current taxable income in the hands of beneficiaries.

Although the proposed tax changes would not apply to tax exempt charitable trusts or special trusts, they may, if implemented, discourage many people to use trusts as a mechanism to save for the future, a problem that South Africa already is trying to address.

FISA will therefore be making input on the tax proposals.