



ST&T

EXECUTORS & TRUSTEES

**TRUST TERMINATIONS**

# CAUSA FOR TERMINATION

- Event requiring termination arrives in terms of the Trust Instrument
- Trustees exercise their discretion, for whatever reason, to terminate based on powers in terms of Trust Deed
- Retention of Trust no longer feasible due to available capital becoming inadequate
- Retention of Trust no longer feasible due to adverse taxation e.g. S7C
- Circumstances of beneficiaries changed as such requiring termination
- Court Ruling requiring termination
- Declaration that the Trust is a sham Trust

Note: Whatever the reason the Trust Instrument must allow for early termination, unless a Court rules that it should be terminated, or it is declared a sham Trust.

# IS TERMINATION FINITE?

- No-what about the tax registration with S A Revenue Services?
- SA Revenue Services will not de-register unless:
  - ❖ All taxes have been paid
  - ❖ All returns are up to date
  - ❖ All compliance matters have been attended to; and
  - ❖ **The Master has confirmed that the Trust has been terminated and the file closed**
  - ❖ Until then you would have to lodge nil returns and pay your tax practitioner
- No provision in Trust Property Control Act, 1988 that requires the deregistration of Trusts
- Refer Chief Masters Directive 2 of 2017-par 3.4

# CHIEF MASTERS DIRECTIVE 2 OF 2007

- Reasons for termination or original signed resolution terminating the Trust:
  - ❖ State whether the Trust was dormant or active
  - ❖ Whether a bank account was opened in the name of the Trust and if so, that it has been closed
  - ❖ The original Letters of Authority, failing which an affidavit by the trustees that it is missing
  - ❖ Bank statements reflecting a nil balance or the final statement or a letter from the bank confirming that the account has been closed
  - ❖ Proof that the beneficiaries have received their benefits
  - ❖ Affidavit

Note: Bear in mind section 17 of the Trust Property Control Act

# PROBLEM WITH ORIGINAL DOCUMENTS

- Directive was signed after the Electronic Communications Act 36 of 2005
- What about non-resident trustees who sign in counter parts?
- Or Trustees who reside in remote areas far from the Trust's main address?
- You may have to certify that the document was received electronically, why and refer to ECA of 2005
- It is our experience that systems and rules often override the thinking processes of human beings!
- If possible, arrange for originals to be couriered to avoid unnecessary delays due to officials insisting on originals

# WHAT IS THE NEXT STEP?

Submit the Letter confirming termination to S A Revenue Services and apply for de-registration

# THE COVID-19 UNINTENDED OPPORTUNITY

- Business environment severely affected. If your Trust owns a trading company:
  - ❖ Request auditor for a net asset valuation. If the base cost and the valuation is close, now is the time to distribute the shares to a beneficiary (-ies)
- If the Trust owns a residential property, especially if it represents a family residence, compare the base cost and municipal valuation. If the numbers are close distribute it back to you or your wife provided you are beneficiaries
  - ❖ Regain your family residence rebate of R 2m for Capital Gains Tax purposes
  - ❖ Pay no transfer duty as this distribution will be exempt from such duty (section 9(4)(b) of Transfer Duty Act, 40 of 1949 as amended)
  - ❖ You only pay for the cost of conveyancing

# THE COVID-19 UNINTENDED OPPORTUNITY

- The pandemic has affected immovable property values. Many children have moved back into their parents' home as a result of losing their jobs and there is currently an oversupply of rental property and property for sale
- Whilst stock markets have somewhat recovered since the end of March 2020 when prices dropped materially, there are still many variables and markets may collapse again. If they do, your base cost and market value may be close and potential CGT may be negligible. Use the opportunity to distribute the listed equities back to you or your beneficiaries provided they are Trust beneficiaries.
- The same would apply to a company held by your Trust that owns a managed equity portfolio



# ESTATE PLANNING REVIEW

Once your Trust has been properly terminated, review your will and estate planning



# QUESTIONS

Nico Botha

[nico@stellentrust.co.za](mailto:nico@stellentrust.co.za)

082 901 0831

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