What is an Umbrella Trust?

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An umbrella trust, as the name implies, is a legal arrangement under which many separate settlements can be held on behalf of unrelated beneficiaries under a single deed, without compromising on their entitlement. Each beneficiary has their own sub-account structure which is separately accounted for and invested according to their own unique needs.

All trusts in South Africa, including umbrella trusts, are governed by the Trust Property Control Act, and must be registered with the Master of the High Court and with the South African Revenue Service (SARS). The Board of Trustees is not required to submit any reports to the Master of the High Court, but the trust deed may provide for the trust to be audited annually.

The tax environment for an umbrella trust will depend on whether it is a vesting or non-vesting trust. In a vesting trust, where ownership of the assets vest in the beneficiary, income and gains will be taxed in the hands of the beneficiary.

Some of the advantages of an umbrella trust

As it is an umbrella arrangement, a new deed does not need to be registered for each sub-trust. This means that the trust is available to receive money immediately which is very useful given the backlog of trust deed registration at the Master's Office. And because the deed is shared amongst many beneficiaries there are economies of scale achieved from sharing the costs of running the trust.

The umbrella vehicle is particularly advantageous for professionals entrusted with setting up a stand-alone trust as they can be absolved of the administrative burden, as well as the need to arrange or manage investment of the trust assets.

An umbrella trust can receive money from sources other than employment-related benefits and may or may not be taxed depending on the source of the income. Sources of income include:

- Deceased estates
- Inter vivos trusts
- Testamentary bequests
- Road Accident Fund (RAF)
- Medical malpractice payments
- Life insurance payments
- Disability policies
- Retirement funds
- Private trusts
- Discretionary savings for education or any other purpose

Not all umbrella trusts are created equal

When selecting an umbrella trust, the Settlor (the founder of the trust) should take care to select one which has a solid track record of managing money in trust, is independent from the investment manager and has an impeccable governance regime, including policies and procedures. The Board of Trustees plays a critical role and therefore should be fit and proper, professional stewards.

So how does it work?

A Deed of Settlement is required for each settlement (the beneficiary's investment in the trust) which outlines the date when the beneficiary will become entitled to receive their benefit (the termination date), as well as any other instructions which apply to the benefit. Each settlement is separately accounted for and Investments are allocated according to the beneficiary's individual needs.

The umbrella trust allows for capital to be distributed by way of regular income paid to the guardian or caregiver, adhoc capital requests to pay for educational and other related services, or final termination payment when the child reaches their termination age.

A regular income can be paid to the guardian or caregiver to cover the daily living needs of the member. If the regular income is not required, it will be reinvested, and the capital will grow.

Priority is given to paying education costs of the member. These include school fees, stationery, transport or uniform costs. Importantly, there must be a mechanism to ensure that capital is not over-distributed so that the money lasts until the member has completed their education.

When the member reaches their termination date, the benefit is paid to them if they so choose, or they can opt to leave the money in the umbrella trust until they need it.

This information was provided by David Hurford, CEO of Fairheads Benefit Services