

INSIGHT INTO SOUTH AFRICAN ESTATE PLANNING FOR CROSS BORDER BENEFICIARIES



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DETERMINE THE COMPLEXITY

Offshore beneficiaries:

Pay out inheritance

Beneficiary tax residency

Company

Trust

Forced Heirship



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ESTATE PLANNING—

PAY OUT OF INHERITANCE/
DISTRIBUTIONS



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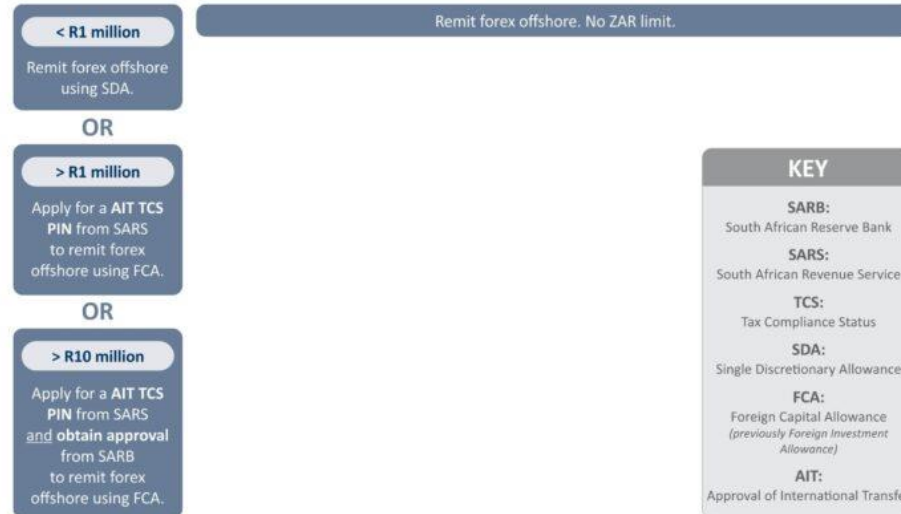
HOW TO TRANSFER INHERITANCES FROM SOUTH AFRICA

WHO QUALIFIES?



WHAT DO YOU NEED TO DO?

Inheritance must be paid to the **beneficiary's South African bank account.**



HOW TO TRANSFER INHERITANCES FROM SOUTH AFRICA

WHO QUALIFIES?



WHAT DO YOU NEED TO DO?

Inheritance must be paid to the **beneficiary's South African bank account**.

< R1 million

Remit forex offshore using SDA.

Remit forex offshore. No ZAR limit.

OR



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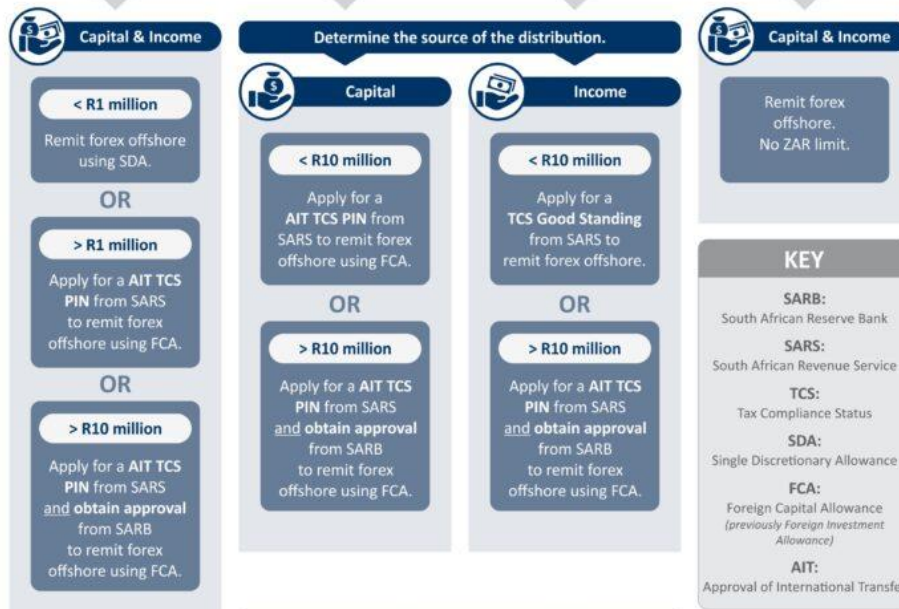
HOW TO TRANSFER MONEY FROM A SOUTH AFRICAN INTER VIVOS TRUST TO BENEFICIARIES OFFSHORE

WHO QUALIFIES?



WHAT DO YOU NEED TO DO?

Distributions must be paid to the **beneficiary's South African bank account.**



ESTATE PLANNING—

BENEFICIARY TAX STATUS



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BENEFICIARY HAS NOT CEASED TAX RESIDENCY BUT PERMANENTLY RESIDES OUTSIDE SOUTH AFRICA

- When do you cease your tax residency
- Steps required to inform SARS
- Mitigate tax implications



ESTATE PLANNING—

IMPACT ON COMPANIES



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COMPANY RESIDENT OF RSA

**Succession
planning**

Non-resident
beneficiary
receiving
shares

Non-resident
beneficiary
managing
company
(Director)



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PLACE OF EFFECTIVE MANAGEMENT

- PLACE WHERE KEY MANAGEMENT AND COMMERCIAL DECISIONS THAT ARE NECESSARY FOR THE CONDUCT OF ITS BUSINESS
- THE PLACE OF EFFECTIVE MANAGEMENT IS USED IN PARAGRAPH 3 OF ARTICLE 4 OF THE OECD'S MODEL TAX CONVENTION ON INCOME AND ON CAPITAL AS A TIE-BREAKER
- APPLICATION OF THE TIE-BREAKER RESULTS IN THE PERSON BEING DEEMED TO BE A RESIDENT ONLY OF THE STATE WHERE ITS PLACE OF EFFECTIVE MANAGEMENT IS LOCATED.

SUMMARY



A company may have more than one place of management, but it can only have one place of effective management at any one time.



The facts and circumstances must be examined on a case-by-case basis.



The place of effective management test is one of *substance over form*.



It therefore requires a determination of those persons in a company who actually “call the shots” and exercise “realistic positive management”.

IMPLICATIONS FOR CHANGE



Depending on the effective management the tax liability of the company may shift, or additional tax applicable.



Changes in legislative requirements for new jurisdiction.



Changes in the reporting requirements of the company.



Possible changes in additional compliance requirements – and cross border shareholders.

REDOMICILE THE COMPANY

The best is yet to
be... Keep moving
forward!

- A company can be redomiciled from SA
- Or Domesticating Foreign Company
- NB- endorsement of Non-resident shareholding through authorised dealer.
- Foreign Shareholders tax implications

ESTATE PLANNING— IMPACT ON A TRUST



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BENEFICIARIES IN DIFFERENT JURISDICTIONS



Does the Trust Deed allow for distributions to offshore beneficiaries.



Possible adverse tax consequences on trust- e.g. USA/ AUS



Possible additional tax consequences for beneficiaries receiving trust distributions.



Possibility to remove beneficiaries from Trust Deed



Conduit principal VS tax in trust



Exchange control rules



REDOMICILE A TRUST



Majority of the Trustees.



Does the Trust Deed allow for Trustees abroad.



Requirement to inform the Master of trustees address change.



Master may request security.



Implications when redomicile (also known as restate) a SA trust.



Does the new jurisdiction acknowledge the trust structure.



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LOCKED IN TRUST STRUCTURE



- Testamentary trust
- Special trust
- Trust established on court order



Last will and testament or court order can't be amended by Trustees.



Need to apply for a High Court application.



Risk assets not distributable



Change in Trust tax implications



ESTATE PLANNING—

FORCED HEIRSHIP



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FORCED HEIRSHIP



Mandates how a deceased person's estate should be distributed.



Generally civil-law legal systems that do not allow complete freedom of testation.



Common law jurisdictions generally grant greater freedom of testation.



Balancing testamentary freedom with protection for family members.

UNPACKING THE COMPLEXITY

Offshore Will

Will drafting options

Deemed Assets as estate planning
tool



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ESTATE PLANNING—

OFFSHORE WILL



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*Do I need
an offshore
will?*



WHERE DO I NEED A WILL?

- WHERE ARE YOU DOMICILED ?
- WHERE ARE YOUR ASSETS LOCATED?
- LAWS APPLICABLE IN RELEVANT JURISDICTION (INCLUDING FORCED HEIRSHIP)
- PROBATE REQUIREMENTS
- MULTIPLE WILLS REQUIRED- GET EXPERT ADVICE
- WHERE ARE THE GUARDIANS

WILLS DRAFTING OPTIONS



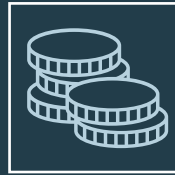
Equalization Clause

(can cater for assets outside
estate)

VS

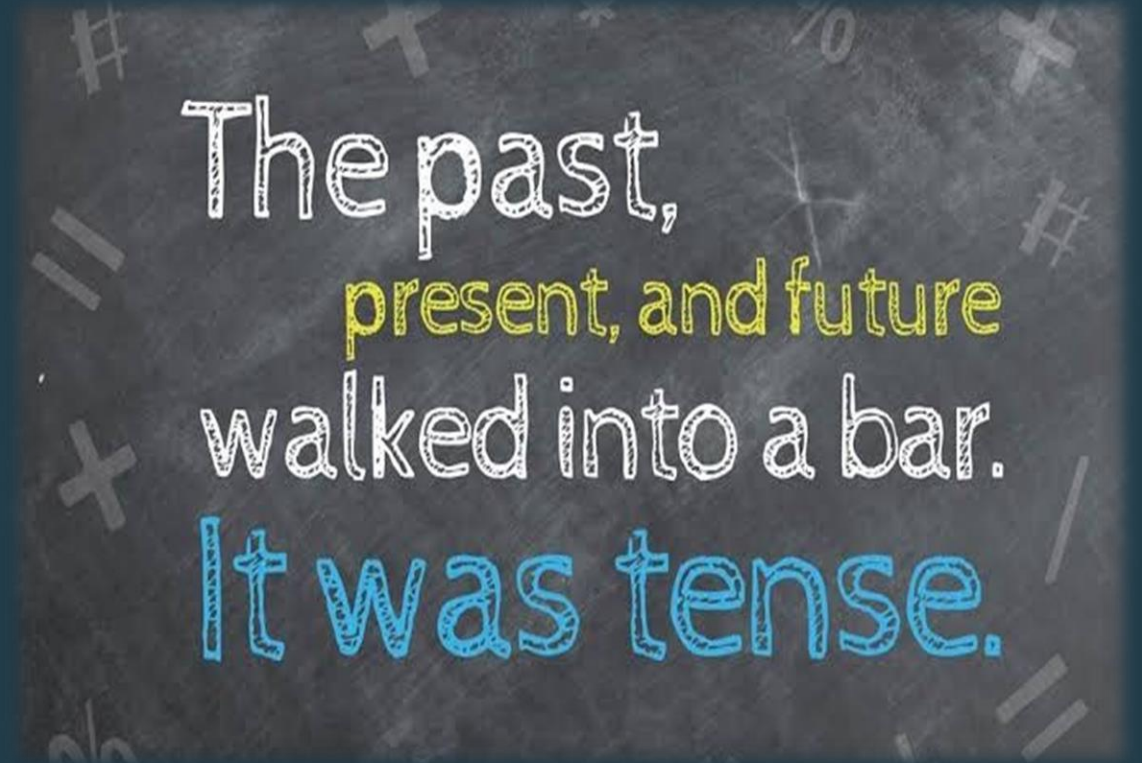
Redistribution agreement

(limited to assets inside
estate)



Doctrine of choice clause

Providing beneficiaries
with flexibility.



Examples



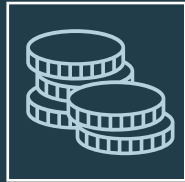
EQUALIZATION

SHOULD ANY OF MY CHILDREN BE SUSPENDED IN TERMS OF THE TRUST DEED OF THE XXX TRUST, OR BE SITUATED IN A JURISDICTION WITH ADVERSE TAX CONSEQUENCES ON BENEFICIARIES RECEIVING DISTRIBUTIONS FROM A SOUTH AFRICAN BASED TRUST, THEN I BEQUEATH AN AMOUNT EQUAL TO THE VALUE OF THE BENEFIT WHICH THE REMAINDER OF MY CHILDREN MAY RECEIVE FROM THE TRUSTEES OF THE XXX TRUST AT THE DATE OF MY DEATH TO SUCH CHILD(REN) THEN SUSPENDED, AND PROVIDED SUCH BENEFICIARY THEN BE REMOVED FROM THE SAID TRUST.

WILLS DRAFTING OPTIONS

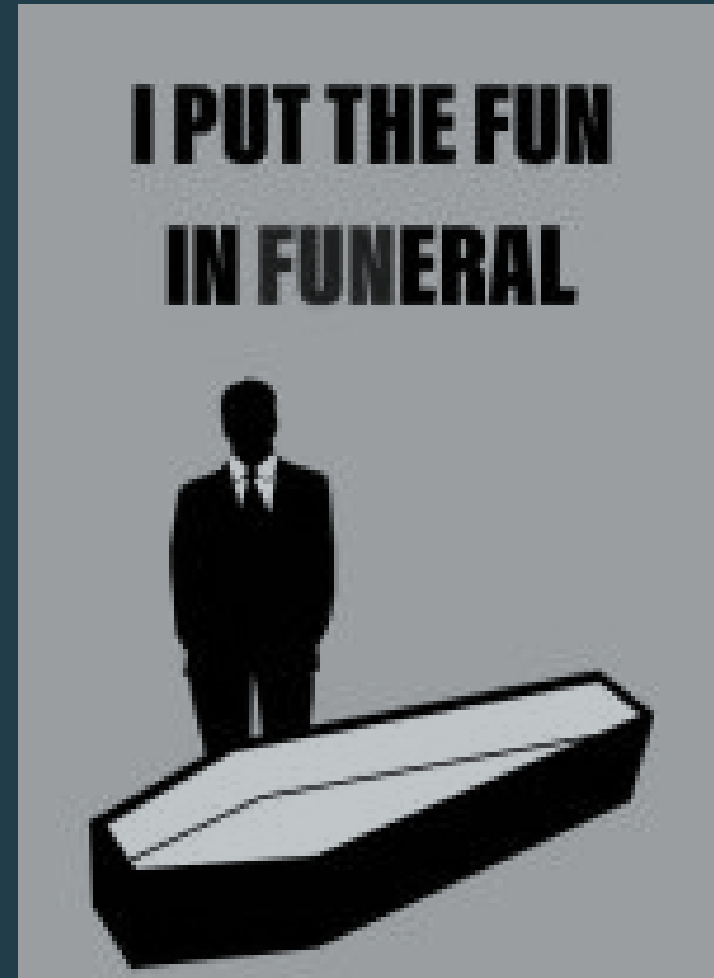


Where possible retaining offshore assets outside of the estate.



Electing for deemed assets to come into the estate.

(Consider Living L&D exercise)



Examples



RETAIN OFFSHORE

I DIRECT THAT MY EXECUTORS, SHALL BE ENTITLED TO RETAIN OFFSHORE, ANY ASSETS ALREADY SITUATED OFFSHORE AT THE DATE OF MY DEATH; AND

WHERE REASONABLY POSSIBLE, FIRST UTILIZE MY SOUTH AFRICAN ASSETS TO SETTLE ALL DEBTS, TAXES AND LIABILITIES, WHERESOEVER INCURRED, FOR WHICH MY ESTATE MAY BE OR BECOME LIABLE AND ONLY SHOULD MY SOUTH AFRICAN ASSETS BE INSUFFICIENT TO SETTLE ALL SUCH LIABILITIES, SHOULD THEY UTILIZE MY ASSETS SITUATED OFFSHORE FOR SUCH PURPOSES.

ESTATE PLANNING—

DEEMED ASSETS



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DEEMED ASSETS

CAN BE A HIGHLY EFFECTIVE ESTATE PLANNING TOOL



Could potentially directly be transferred to the beneficiary- outside of the estate.



More flexible planning tool, not as restricted by legislation.



Still included in L&D account, BUT not executor responsibility.



Can be used as an alternative to place multiple beneficiaries on equal footing via different channels.

ESTATE PLANNING

CONCLUSION

- THERE IS NO ONE SIZE FITS ALL SOLUTION
- PLAN AHEAD AND STAY INFORMED
- SEEK PROFESSIONAL ADVICE



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QUESTIONS?

CONTACT DETAILS:

CHANEL SCHOEMAN, FPSA[®], TEP

CHANELVR@SENTINELTRUST.CO.ZA

074 411 5312



THANK YOU

www.sentinelinternational.co.za