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Umbrella Trusts Helping to ease the burden

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Trusts – a useful estate planning tool

Trusts continue to be an effective estate-planning structure if used correctly.

However, a stand-alone trust is sometimes beyond the reach of the middle market in terms of the costs involved.

Smaller trusts are also not necessarily where practitioners wish to focus given the administrative and management requirements.

This presentation looks at the pros and cons of standalone trusts versus an umbrella trusts.



Stand-alone trusts

What is required

- Drafting of the trust deed
- Appointment of trustees
- Registration with the Master of the High Court
- Registration with SARS

In addition

- Administration of the trust
- Increasing regulatory and reporting requirements eg beneficial ownership
- Accounting and governance functions
- Skillful investing





Background on umbrella trusts

- Umbrella trusts were established to receive and hold death benefits came about in the late 1980s
- They are regulated by the Trust Property Control Act
- Their use expanded throughout 1990s
- The Fidentia saga in early 2000s led to close scrutiny
- However, when properly managed an umbrella trust is a safe and cost-effective estate planning tool



Umbrella trusts

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Advantages of umbrella trusts

- An umbrella trust, founded by a reputable provider, has a professional and experienced board of trustees in place to oversee the best use of the benefits
- There is no need to register a new trust deed, enabling instant liquidity so that settlement can occur quickly, and money can flow to the beneficiary
- The costs are low compared to a stand-alone trust, because of pooling of assets (these costs are shared by all the beneficiaries of the trust)
- In best practice, investments are handled at arms-length by best-of-breed asset managers, with the board of trustees working together with an investment consultant.



Sources of funds for umbrella trusts

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. Income sources include:

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



How does it work

- An umbrella trust is set up under a trust deed which is a document that sets out the purpose of the trust, who the beneficiaries are and how the property is to be administered.
- There is a professional board of trustees, ideally with 50% independent trustees
- The umbrella trust deed may provide for the trust to be audited annually.
- It is registered with the Master of the High Court and with the South African Revenue Service (SARS) as a taxpayer.
- The trustees are not required to submit any reports to the Master of the High Court.



How does it work (cont.)

- A beneficiary's settlement (a beneficiary's investment in the trust) is administered according to the terms of the trust deed and the deed of settlement relating to that settlement.
- Each settlement for a particular beneficiary held in the umbrella trust is administered separately for that beneficiary.
- A settlement will come to an end when the settlement deed provides for it to come to an end (e.g. when beneficiaries reach the age set out in the trust deed and any remaining benefit is paid out).



What are the costs?

Some of the costs include:

- Capital introduction fees
- Governance fees, e.g. trustee and audit fees
- Fund expenses
- Administration fees
- Investment fees.
- For example, the Effective Annual Cost* (EAC) for a 3-year-old child terminating at age 18 is:
 - R100 000 – 2.61% pa
 - R500 000 – 2.48% pa
- Assuming no advice fees are paid



How is the benefit taxed?

- An umbrella trust may receive benefits from a variety of sources and may or may not be taxed.
- In a vesting trust all income and gains automatically vest in the beneficiaries for tax purposes and the benefits are not subject to tax in the trust.
- Income and gains that vest in beneficiaries may be taxable in their hands.



The case for umbrella trusts

- Not a preservation fund.
- The primary purpose is to protect benefits held on behalf of beneficiaries and ensure money is used in their best interest.
- Money is held in the name of the beneficiary (bewind trust); it does not fall in the estate of the guardian or caregiver (providing protection against creditors).
- Used to meet education and other daily living expenses, or as stipulated in the Deed of Settlement.
- Some additional benefits are:
 - Institutional fees
 - Professional fiduciary service
 - Easy and fast to participate





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Thank you!

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