

# TRUST YOU trust me

SCHALK REYNEKE CA(SA) FROM CAP

One cannot dispute the fact that a trust has substantial benefits. Some of the basic benefits include:

- Efficient structure to provide for minor children.
- Protecting business and personal growth assets.
- Saving estate duty for generations.
- Improving liquidity on death.

On a regular basis, however, we still come across trusts that do not achieve these benefits. The two main reasons for this are:

- Poor initial implementation on formation.
- General conduct with the trust.

If a trust does not achieve the above benefits it is not the trust, as a structure, that should be blamed, but rather how this vehicle or tool is initiated and subsequently used.

## ► Initial implementation

A trust is merely a financial planning tool and as such should not be looked at in isolation, but rather as part of the solution in conjunction with other financial planning tools. However, the trust would typically be the central point where most of the financial planning processes and tools will come together. This aspect makes it critical to ensure that when a trust is formed, all the other aspects are given attention at the same time.

► When forming a trust, you should have a checklist to ensure that at least the following is taken care of:

- Open bank account (options exist that will not attract banking charges).
- Redo last will and testament to address various related aspects



such as replacement trustee and which assets are left to the trust.

- Evaluate all insurance policies to determine possible changes in order to utilise the trust, for instance as owner or beneficiary of policies.
- Evaluate all assets currently held, including business interests, and determine which assets could cost-effectively be transferred to the trust already.
- Ensure that yearly donations to the trust take place by way of physical cash or asset transfer.
- Prepare general power of attorney resolution to enable one trustee to perform certain administrative tasks.
- Prepare master resolution that can be easily completed in the future and signed by all trustees to avoid this aspect to be seen as a major administrative issue.

► General conduct with a trust

The second aspect that needs attention in order to achieve the benefits offered by a trust relates to how the affairs of the trust are conducted. In order to ensure that trust assets are not deemed to be an individual's assets, one should ensure that the conduct of the trust meets the necessary standards.

Much media coverage has been given to this aspect, which has created the perception that a trust as a financial planning tool is perhaps not as effective as previously believed. This is no different from the perceptions created that SARS is attacking trusts.

A trust is a very effective legal financial planning tool, which, if conducted above board within the legal framework, should

give absolutely no reason for anybody – including SARS – to attack it.

If you park your SUV on the pavement because you think you are still in the Richtersveld, and you get a fine, then it is not because you are driving a SUV, it is because you broke the law. The same applies to a trust: if you use it the way it should be used, and not to evade tax or without any recognition of the fact that it is not your asset, then it remains the best tool for effective financial and estate planning.

► To ensure you conduct the affairs appropriately, you should do the following:

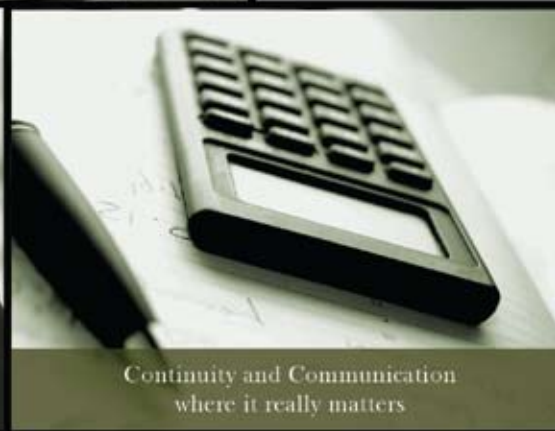
- Have at least three trustees, one of which is independent (must not be a beneficiary but does not have to be a professional person).
- Approve major transactions by way of a resolution.
- Ensure all trustees sign off the annual financial statements.
- Do not pay personal expenses through the trust (rather borrow money from the trust, approved by way of a resolution).
- Charge interest on loans between parties.
- Transactions with the trust should be at arms-length (for instance, reasonable values).

As can be seen from the above, the guidelines are simple to stick to. Just implement the basic disciplines and there will be no need or grounds for anybody to deem trust assets to be that of the individual.



**Our Services Include:**

- Financial management
- Accounting & payroll
- Trust formation
- Company formation
- Taxation
- Auditing



Continuity and Communication  
where it really matters



CAP Chartered Accountants  
Tel: 0861 777 CAP  
Fax: (021) 914 7789  
www.chartered.co.za  
info@chartered.co.za

