

TRUSTS – THE GOOD, THE BAD AND THE UGLY

This issue of Estate Planning Essentials is the second in a series of three on Trusts. In this issue we look at some of the negative perceptions around Trusts.

Income Tax

Perception: Trusts, which are taxed at a flat rate of 40%, don't qualify for the rebates applicable to individuals.

Reality: It's possible to include "tax-friendly" assets in the Trust, such as a share portfolio. The dividends earned are tax-free in the hands of the individual. There are also "admin-friendly" solutions, such as an endowment or sinking fund investment that don't generate income in the Trust.

Transfer duty

Perception: Trusts, which pay transfer duty at a flat rate of 8% as opposed to the sliding scale applicable to individuals, are not a good vehicle to hold one's property investment.

Reality: The transfer duty payable by an individual versus a Trust shows a marked saving on properties valued at R1m and above. The table below shows the potential estate duty saving on three properties valued at R1m, R3m and R9m respectively.

Property value	Transfer duty – Individual	Transfer duty – Trust	Difference	Potential estate duty
R1m	R25 000	R80 000	R55 000	R200 000
R3m	R185 000	R240 000	R55 000	R600 000
R9m	R665 000	R720 000	R55 000	R1 800 000

The table in the example above ignores the primary residence exclusion.

Capital gains tax

Perception: A trust pays capital gains tax (CGT) at an effective rate of 20% as opposed to the 10% paid by individuals, leading to the perception that a Trust is no longer a good investment vehicle because of the CGT payable.

Reality

The Attribution Rules in the Income Tax Act bring CGT back into the hands of the Trust beneficiaries or the donor to the Trust. When the Trust disposes of an asset, it vests the gain in each of the beneficiaries without actually distributing the money. Each beneficiary will then qualify for the R16 000 CGT exemption in his/her personal capacity and the gain will be taxed at the beneficiary's individual tax rate.

Next month's issue of Estate Planning Essentials will look at ongoing issues such as administration and control, related to Trusts.