



## TRUSTS

A trust can be used to arrange your personal affairs. The most common reasons for forming a trust are:

- Estate planning
- To protect your assets from creditors
- To reduce your income tax liability

Your accountant can help you form a trust to suit your personal circumstances.

### What is a Trust?

A trust is a legal relationship which is created when asset is placed under the control of a trustee to be administered for the benefit of specified beneficiaries. The objectives of the trust and the rights and obligations of the trustees are set out in a Trust Deed.

### Who acts as a Trustee?

The person creating the trust usually appoints himself as well as his accountant or attorney to act as trustees. It is important to appoint responsible persons as trustees as they are responsible for the administration of the trust and the trust assets.

### Who benefits from a Trust?

The trust deed would stipulate who the beneficiaries of the trust are to be. You are therefore able to decide who should benefit from the trust. The beneficiaries or classes of beneficiaries would be specifically named in the trust deed.

### Types of Trust

There are two types of trust:

- Inter vivos trust
- Testamentary trust

An inter vivos trust is created whilst the person forming the trust is still alive, whereas a testamentary trust is created in terms of a person's will. The most common type of inter vivos trust is the "family trust". This is usually formed to achieve any one of the following objectives:

- Estate planning
- Income tax planning
- Protect assets from creditors.

As a testamentary trust is created in terms of a person's will it only comes into existence on his death. It enables a parent to provide for the welfare and maintenance of his heirs and to protect assets for their benefit.

### Estate Planning

A trust is used in estate planning to reduce the amount of estate duty payable. This is done by selling or donating assets to the trust. Those assets are then included in your estate at their transfer value. For estate duty purposes any growth after the sale or donation accrues to the trust and your personal estate will be pegged.

### Income Tax Planning

A trust may be used to reduce your personal income tax liability. You can do this by placing income generating assets and investments into the trust. Any income which is then generated accrues to the trust and not to yourself personally. The trustees are required to deal with income as stated in the trust deed. If given adequate discretion the trustees are able to determine the beneficiaries to whom income should be distributed. The most tax effective way of doing this would be to either:

- Distribute the income to the beneficiary with the lowest average tax rate, or
- Retain the income in the trust

### Example

The trustees may be able to distribute income to your minor children. These funds could then be used to pay their school fees.

### Income Tax Payable

Any taxable income which is not distributed to a beneficiary is taxed on a sliding scale which currently ranges from 18% to 40%.

### Trading Trusts

It is also possible to use a trust to conduct your business affairs. This may have certain advantages:

- Limited liability
- As the trust is governed by the trust deed many of the restrictive clauses contained in the Companies Act do not apply.
- Capital profits can be distributed to beneficiaries without attracting STC (Secondary Tax on Companies).