2016 Planning for High Net Worth Individuals

Presented by

Cheryl Howard

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Cheryl qualified as a Chartered Accountant at Deloitte & Touche where she was appointed as a tax manager in 1989 in their personal financial planning department. In 1991, Cheryl joined Grant Thornton, Kessel Feinstein to establish the personal financial planning department for their high net worth clients. In 1994, she joined BoE Private Bank as the general manager responsible for the Gauteng personal financial planning; taxation; fiduciary services; and wills and estates departments. In 2000 Cheryl left BoE to set up her own practice and has practiced as such since then.
Programme:

08:15 – 08:55  Registration
09:00 – 10:30  2016 Planning for High Net worth Individuals
10:30 – 10:50  Tea Break (20 mins)
10:50 – 13:00  2016 Planning for high Net worth Individuals
13:00         Conclusion
Welcome
Planning for High Net Worth Individuals
Presented by Cheryl Howard

Upcoming CPD Events
Upcoming CPD Events
Refer to our website for all upcoming events

April
• Tax Issues on SMME

May
• Customs Seminar
• Employees Tax, Payroll and e@asyfile
The meaning of HNWI

• “... People who have a net worth of US$1 million or more ...”
  South Africa 2016 Wealth Report – New World Wealth

• “... R7 million or more in gross income and/or gross wealth of R75 million or more ...”
  SARS spokesperson Adrian Lackay – 2014

• Nedbank/BOE revenue threshold in a 2010 survey of HNWI included individuals with gross income of R1.5 million upwards.

  The Giving Report 2010 - A survey on the philanthropy practices of High Net Worth Individuals in South Africa
The meaning of HNWI

• While there are many factors (outside of wealth) that help identify the HNWI, three key factors are:
  – complexity of the needs of the client
    Individuals falling within this category of client are often serviced by a number of advisors – accountants, tax advisors, attorneys, asset managers.
  – investment access
    Access to sophisticated investment advice and type of investment programme is directly correlated to the value of investable assets.
  – service model
    As clients enter the HNWI they will initially be better served by a single source full service private bank. Increasing wealth may necessitate engaging a commercial family office.

Ethical obligations of HNW advisors

What do we mean by "ethics"?

• Ethics as it pertains to the individual addresses the moral principles and behaviour by which human actions may be judged.

• Business ethics applies to all aspects of business practices from how organisations develop, produce and deliver products and services, to interactions with customers, suppliers, employees and society.

International Federation of Accountants
Ethical obligations of HNWI advisors

Why is ethics important?

- Corporate failure as evidenced by Enron, WorldCom, Arthur Andersen as well as more recent examples in the banking and finance sector illustrate the consequences of unethical business practices as well amoral management.
- Ethics goes beyond avoiding fines and penalties, and instead leads to sustainable value creation – it makes good business sense.
- The application of business ethics will differ depending on the country, culture and traditions, as well as the level of maturity present in the regulatory environment.

Ethics and the advisor to HNWI’s

- The nature of the advice required by the HNWI will dictate that the advisor is professionally qualified in one or more of the disciplines from which advice is drawn.
- The modern regulatory environment requires that the professional bodies it entrusts with the oversight of the conduct of its members provide a code of conduct to which the member adhere.
- Many of the older professional bodies such as those regulating accountants in public practice, attorneys have a well developed and clear code of ethics.
Ethical obligations of HNWI advisors

Ethics and the advisor to HNWI’s continued

• Professional bodies with a shorter pedigree may draw upon the various international frameworks, standards and principles to inform the development of their own code of ethics. There is no shortage of guidance.

• It is therefore to the professional code of conduct of the professional body of which the advisor is a member that one must first look to for guidance when confronted with an ethical dilemma (as opposed to a strict interpretation and application of the law) in business.

Ethical obligations of HNWI advisors

Ethics and the advisor to HNWI’s continued

• Whatever the professional code the advisor belongs to certain principles will be common to all

  – integrity
    This is about being truthful, straightforward and honest, dealing fairly with people and situations; it rules out making misleading or false statements, whether by omission or inclusion of information, either knowingly or without taking care to find out.

  – objectivity
    The avoidance of bias, whether for personal self-interest, or because of pressure from another, and closely allied to independence.

  – professional competence and due care
    This is about acquiring and maintaining appropriate technical and other relevant skills and competence to perform one's work, doing it thoroughly and correctly, on a timely basis, and ensuring that users of one's output understand its context and limitations.
Ethical obligations of HNWI advisors

Ethics and the advisor to HNWI’s continued

• Whatever the professional code the advisor belongs to certain principles will be common to all
  – confidentiality
    Information about organisations and people encountered in the course of one’s engagement with the client should not be disclosed, inside or outside the work environment, to anyone who does not have a legal or professional right to it, and especially not to secure a personal advantage for anyone. This principle is overridden only by the force of law.
  – professional behaviour
    This is about complying with standards and laws, and avoiding actions that might bring the profession into disrepute, such as making unsubstantiated criticisms of a fellow professional, or exaggerating one’s experience.

A Guide to the CIPFA Standard of Professional Practice on Ethics

Ethical dilemmas

• The law vs ethics. Tax planning, tax avoidance and tax evasion. What’s the difference?
  “Every man is entitled to order his affairs so that the tax attaching under the appropriate Act is less than it otherwise would be.”

  Lord Tomlin: IRC v Duke of Westminster [1936] 19 TC 490 at page 520

• Trustee, vs Accountant, vs Asset Manager …
  In many instances this hat is worn by the same person or organisation.
The role of the regulators: the SARS and the SARB

Know each regulators requirements

- Essentially there is a tick off list for each transactional item;
- How do you access these tick off list:
  - SARB – website is comprehensive and the forms are available;
  - SARS – varies from time to time and from office to office;
- Make sure you tick off all the blocks;
- By way of example - If section 11 and section 13 require the same information in response –don’t use "see above" rather duplicate the information and answer each question specifically;

Provide honest, factual, transparent, open but limited information

- Provide detail and content that can be substantiated by supporting documentation;
- Put yourself in the shoes of the regulator and see whether the content makes sense, and whether there is an audit trail of the transactions;
- Rather field potential queries upfront than waiting for the regulator to ask the question;
- Err on the side of caution and conservatism. In a recent emigration, we opted to create and settle a tax charge via VDP rather than explain a flow of transactions that had been initially recorded incorrectly, rectified in subsequent years but where there was no supporting documentation.
The role of the regulators: the SARS and the SARB continued

South African Revenue Services:

Objectives in terms of SARS Strategic Plan 2015/16 as presented to select committee on finance

- Implement SARS compliance programme in seven areas:
  - Large business and transfer pricing
  - HNWI / Trusts
- Continue to work with other tax jurisdictions, such as FACTA (October 2014)
- Maximise tax payer revenue and compliance - HNWI profiling and VDP campaign

The role of the regulators: the SARS and the SARB continued

South African Revenue Services:

SARS Annual Performance 2015/16:

<table>
<thead>
<tr>
<th>The risks we need to manage</th>
<th>How do we manage these risks</th>
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<tbody>
<tr>
<td>Low compliance of High Net-Worth Individuals (HNWIs): A significant number of HNWI do not timeously pay the correct amount of taxes due to non-declaration of income sources, overstating expenses and splitting of income through trusts.</td>
<td>Develop capability to effectively tackle HNWIs in terms of increasing capacity developing core expertise especially in dealing with trusts and re-defining taxpayers in this segment</td>
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</tbody>
</table>
The role of the regulators: the SARS and the SARB continued

South African Revenue Services:

SARS Annual Performance 2015/16:
A number of High-Net Worth Individuals choose to remain under the SARS radar and continue to either under-declare, not file or underpay/not pay their fair share of taxes. We will continue to build and improve our database for HNWIs, to bring those that are still outside into the tax net. The modernisation of our systems, specifically the trust system will improve our efforts in dealing with and addressing the risks posed by this segment. We will also deploy more audit resources to tackle tax avoidance and evasion by wealthy individuals with complex tax arrangements such as trusts and offshore accounts.

South African Revenue Services:

SARS High Net Worth Unit

– Dedicated unit announced in 2012 Budget Review, based at Megawatt Park, LBC
– Profile of HNWI:
  • Earning more than R7m or has assets in excess of R75million – apparently only 2 300 on the HNWI data bases, but estimated to more than 9 300 taxpayers
– Recent case – Mark Krok case reflecting higher collaboration between governments for the mutual collection of taxes and attempts to conceal or dissipate assets, especially by high net worth individuals
The role of the regulators: the SARS and the SARB continued

South African Revenue Services:

SARS VDP unit

- The SARS Voluntary Disclosure Programme (VDP) is administered under the Tax Administration Act, 2011 with effect from 1 October 2012
- Fair but there to collect taxes
- In our experience they are very thorough and have sight across the taxpayer’s personal structures and entities and corporate directorships

Other engagements with SARS:

- Private binding rulings:
  - section 42 transactions – length and costly but worth the money and time if the transaction is substantial
- Self-assessment:
  - Self-assessment is really only for the taxpayer with an IRP5 and maybe an IT3b for interest
  - In our experience HNWI’s are subject to supporting documentation verification and in at least 50% of cases subject to audit selection
- Audits:
  - Life style audits:
    - Analysis of household expenditure including staff wages
    - Holidays locally and abroad
    - Asset purchases
The role of the regulators: the SARS and the SARB continued

South African Revenue Services:

Other engagement with SARS:

• Review of statement of assets and liabilities and sources of income audit:
  – Reconciliation of a detailed statement of assets and liabilities for five years
  – Summary of all immovable fixed property held over the last five years including date of purchase, purchase price and details of all capital improvements thereon and if sold, when and selling price
  – Detailed schedule of all listed shares, number held and base cost per year for three years
  – Detailed schedule of all debtors, creditors and loan accounts, including loan agreements, interest charge, if any, repayment terms, relationship to taxpayer

The role of the regulators: the SARS and the SARB continued

South African Revenue Services:

Other engagement with SARS:

• Review of statement of assets and liabilities and sources of income audit (continued):
  – Summary of all bank and cash account balances per year for three years
  – Detailed summary of all local and foreign capital gains per year for three years, reflecting base cost, proceeds, purchase date and selling date
  – Detailed summary of dividends received, local and foreign per investment for three years
  – Detailed summary of all share options, including option date, price, number of shares, vesting date, exercise date and exercise price, plus a copy of the share option agreement
  – Details of all section 18A documentation plus supporting tax certificates
The role of the regulators: the SARS and the SARB continued

South African Revenue Services:
Practically how are SARS gathering information or ensuing taxpayer registration?
• FICA and KYC - Try opening a bank account or investment account without a tax number
• Transfer duty - Property transactions
• Foreign Investment Allowance applications – proof of source of funds
• SENS announcements – example a taxpayer sold his share options in a listed company in August, but did not disclose the capital gain in the P012016 – we had a request from SARS to substantiate the basic amount. SARS queried the non-disclosure of the capital gain?
• Media – bonuses, sale of private companies to listed entities, contracts awarded

The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv)
The Financial Surveillance Department is responsible for the administration of exchange control in terms of the authority delegated by the Minister of Finance. Policy decisions on exchange controls rest with the Minister of Finance. The responsibility of the Financial Surveillance Department entails:
• implementing exchange control policy and administering the Exchange Control Regulations;
• gathering, analysing and disseminating information on cross-border flows;
• appointing Authorised Dealers in foreign exchange with limited authority; and
• ensuring compliance by Authorised Dealers in foreign exchange with limited authority with anti-money laundering control measures in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).
The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv) continued

When does one engage FinSurv:

- Permission to remit foreign capital allowances
- Permission to remit legacies and distributions from SA resident deceased estates
- Permission to remit legacies and distributions of SA assets from non-resident deceased estates
- Permission to remit death benefits from SA policies
- Permission to remit income and capital distributions from SA resident testamentary trusts
- Permission to remit income and capital distributions from SA resident inter vivos trusts
- Emigrations

Permission to remit foreign capital allowances:

For all intents and purposes, exchange control does not exist but:

- Timing of application plays an important role as approval is determined by the balance of payments and the cash available within the current of account and
- The use of the funds

“Diversify family asset base and investments across different currencies and jurisdictions and with the objective to protect and enhance the capital of his investments, the applicant wishes to remit abroad an amount of R…….”
The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv) continued

Permission to remit foreign capital allowances:

• **Discretionary allowance:**
  - It is an allowance within an overall limit of R1 million per calendar year which a South African resident over the age of 18 years may avail of.
  - The single discretionary allowance may used for any legal purpose abroad (including for investment purposes). This dispensation may be utilised solely at the discretion of the resident without any documentary evidence having to be produced to the Authorised Dealer except for travel purposes outside the Common Monetary Area where a passenger ticket needs to be produced. The resident individual must produce a valid green bar-coded South African Identity Document or Smart ID card for identification purposes and the identity number is mandatory when reporting the transaction in terms of the Reporting System.

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The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv) continued

Permission to remit foreign capital allowances:

• **Resident’s travelling abroad:**
  - (i) Residents over the age of 18 years may avail of a travel allowance within the single discretionary allowance limit of R1 million
  - (ii) Residents under the age of 18 years may only be accorded a travel allowance of up to R200 000 per calendar year
  - (iii) Foreign exchange, in respect of a travel allowance may be provided in any authorised form. The travel allowance may also be transferred abroad to the traveller’s own bank account, but not to an account of a third party
  - (iv) Foreign currency for travel purposes may not be bought more than 60 days prior to the departure of the traveller
  - (v) You may not use the foreign currency you purchase for any purpose other than stated/ declared when you purchased it
The role of the regulators: the SARS and the SARB continued

Permission to remit foreign capital allowances:

- **Resident’s travelling abroad (continued):**
  - (vi) Travellers must convert unused foreign exchange to Rand within 30 days of returning to South Africa
  - (vii) In the case of a travel allowance, if you do not spend all the funds on holiday expenditure you may not keep the funds offshore or buy offshore assets
  - (viii) The cost of land arrangements (hotels, cruises, tours, etc.) forms part of your travel allowance, but payment locally of airfares do not
  - (ix) A Form N.E.P must be attested by your bank when the insurance value of goods taken out exceeds R50 000. When the value of the goods exceeds R200 000 prior approval of the Financial Surveillance Department of the South African Reserve Bank must be obtained before the Form N.E.P is attested by the bank and
  - (x) Travellers may also take up to a total value of R25 000 per person in the form of Rand notes

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The role of the regulators: the SARS and the SARB continued

Permission to remit foreign capital allowances:

- **Foreign Investment Allowance:**
  - A tax-payer in good standing and over the age of 18 years, can invest up to R10 million in his/her name outside the Common Monetary Area (CMA-Lesotho, Swaziland and Namibia), per calendar year. A Tax Clearance Certificate (in respect of foreign investments) must be obtained. These funds may not be reinvested into the CMA countries thereby creating a loop structure or be re-introduced as a loan to a CMA resident;
  - (ii) In addition, up to R1 million, within the single discretionary allowance facility, can be transferred abroad, without the requirement to obtain a Tax Clearance Certificate.
The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv)
Permission to remit foreign capital allowances:

Can an individual invest more than R10m per calendar year?

These are for applications in excess of the limits laid down in terms of section B.2(B)(i) of the Exchange Control Rulings.

Your bank must submit an application to the Financial Surveillance Department of the South African Reserve Bank for approval. A Tax Clearance Certificate, in the prescribed format, must always accompany the aforementioned application.

- FinSurv conditions:
  - Duly reported in accordance with the FinSurv Reporting system;
  - Applicant is permitted to disinvest and re-invest into different asset classes provided that he at all times fully complies with any disclosure requirements pertaining to his foreign assets and income, in accordance with SARS and FICA;

Income generated from the foreign investments may be retained abroad, i.e. exemption from the provisions of Regulation 6;

Should the application decide to formally emigrate, the investments or the full proceeds thereof will form part of the emigrants assets in SA;

The applicant must submit a portfolio status report to FinSurv on an annual basis reflecting asset classes and the value thereof;

No recourse to SA will be allowed where potential borrowing abroad is utilised;

The authority to remit funds abroad is valid for a twelve month period; and

The asset classes now approved may not be placed at the disposal of any other South African resident.
The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv)
Permission to remit legacies and distributions from SA resident deceased estates:

- Cash legacy – on approval, no restrictions on limit, provided L&D account with Master of the High Court’s reference number has been viewed;
- Jewellery and personal effects – Form N.E.P attesting that items bequeathed are done so i.t.o. the will and or L&D account;
- Other assets – apply for approval, on a case by case basis with reasonable values, normally permitted

South African Reserve Bank (FinSurv)
Permission to remit legacies and distributions of SA assets from non-resident deceased estates:

- Cash legacy – on approval, no restrictions on limit provide L&D account with Master of the High Court’s reference number and foreign legal requirements such as a Resealed Grant of Probate, has been viewed
- Jewellery and personal effects – Form N.E.P attesting that items bequeathed are done so i.t.o the will and or L&D account
- Other assets – apply for approval, on a case by case basis with reasonable values, normally permitted
The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv)
Permission to remit death benefits from SA policies;
• Proceeds from:
  – SA pension, retirement and provident funds
  – Insurance policies, including annuity, endowment and life policies
• Emigrant / non-resident must be the nominated beneficiary on the policy document
• Provide Death Certificate and documentary evidence from institution of beneficiary’s details and amount of award
• Onus is placed on the Authorised Dealer (Bank) to ensure that an emigrant has formally emigrated and coded as non-resident. If no record can be substantiated, then the matter is to be referred to FinSurv

South African Reserve Bank (FinSurv)
Permission to remit capital distributions from SA testamentary trusts:
• Capital distributions may be remitted abroad to non-resident beneficiaries and emigrants, provided Trustees’ resolution and Will have been viewed
• Onus is placed on the Authorised Dealer (Bank) to ensure that an emigrant has formally emigrated and coded as non-resident. If no record can be substantiated, then the matter is to be referred to FinSurv
• Where a beneficiary renounces his rights in favour of a testamentary trust, then the matter is to be referred to FinSurv
The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv)
Permission to remit income and capital distributions from SA resident inter vivos trusts:

This section is covered fully under

The tax consequences of emigration

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The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv)
Emigrations

*If I emigrate do I relinquish my SA citizenship?*

No. Emigrating from South Africa formalises your exit from South Africa for exchange control purposes. It does not mean that you have to relinquish your South African citizenship. You can retain your South African passport.
I have been living abroad for a number of years, how do I formalise my emigration?

Your emigration should be formalised through a local bank of your choice as follows:

- (i) Complete a Form M.P.336(b) – Emigration: Application for foreign capital allowance. The form is available from the South African Reserve Bank website www.reservebank.co.za by following the links:
  - (iii) Obtain an Emigration Tax Clearance Certificate (IT21 (a)) from the South African Revenue Service (SARS). The Tax Clearance Certificate is based on the Form M.P.336(b), therefore, you will also have to provide SARS with a certified copy of the completed Form M.P.336(b).

- (iv) If you have resided permanently outside South Africa for a period longer than five years and you do not possess any assets other than an inheritance or insurance policies, it would not be necessary to obtain a Tax Clearance Certificate.

- (v) Submit the Form M.P.336(b) and the Tax Clearance Certificate, if applicable, to your bankers. You will also have to submit any other documentation as required on the Form M.P.336(b), which includes a copy of the permanent residence permit, if you have been granted permanent residence abroad.

What facilities will I qualify for when I emigrate?

- Emigrants qualify for the following facilities:
  - (i) Foreign Capital Allowance – R10 million per adult per calendar year or R20 million per family unit per calendar year.
  - (ii) A travel allowance of up to R1 million per adult and R200 000 per child under the age of 18 years. The travel allowance may not be accorded more than 60 days prior to departure and
  - (iii) export of household and personal effects, motor vehicles, caravans, trailers, motorcycles, stamps, coins and minted gold bars (excluding coins that are legal tender in South Africa) within an overall insured value of R2 million.
The role of the regulators: the SARS and the SARB continued

South African Reserve Bank (FinSurv) Emigrations

What will happen to my remaining South African assets?

- (i) The remaining South African assets of the emigrant must be brought under the physical control of the bank who finalised the emigration to ensure that all capital accruing after date of emigration and the proceeds of any asset subsequently sold are placed to the credit of a blocked account.
- (ii) Such funds may be utilised locally for any purpose and
- (iii) The Financial Surveillance Department of the South African Reserve Bank will, on application, consider requests to transfer the emigrants’ remaining liquid assets or the export of quoted securities in lieu of cash, exceeding the foreign capital allowance limits.

The tax consequences of emigration

- Understanding resident versus non-resident
- Ceasing to be a resident
- The requirements for ceasing to be a SA tax resident (individual)
- The requirements for ceasing to be a SA tax resident (trusts)
  - Own-asset trusts
  - Third-party funded trusts
- Detailed emigration example
### The tax consequences of emigration

#### continued

**Understanding resident versus non-resident**

<table>
<thead>
<tr>
<th>Resident / Citizenship (Department of Home Affairs)</th>
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<tbody>
<tr>
<td>Citizenship by birth - any person who is born in South Africa or who has at least one parent who was a South African citizen or permanent resident</td>
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<tr>
<td>Any person who was adopted by a South African citizen or permanent resident in terms of the Children’s Act, 2005</td>
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<tr>
<td>Citizenship by naturalization - one year’s ordinary residence immediately prior to the application for naturalisation and after acquiring permanent residency have had an additional 4 years of physical (actual) residence in the RSA during the eight years before the application for naturalisation (excluding the year of ordinary residence)</td>
<td></td>
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<tr>
<td>Citizenship by registration: this category of citizenship only applies to British citizens who lived in South Africa for at least two years immediately prior to 2 September 1949</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Resident (South African Reserve Bank)</th>
<th>Means any person who has taken up permanent residence or is domiciled in SA</th>
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<tbody>
<tr>
<td></td>
<td>This includes a person who moved and has lived abroad for a number of years, but never formally emigrated. Such person is a resident for SARB purposes and subject to Exchange Control Regulations, no matter how long he has resided abroad</td>
</tr>
<tr>
<td></td>
<td>Includes any person who has been issued with a bar-coded identity document</td>
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| Non-resident (South African Reserve Bank) | Means any person whose normal place of residence or is domiciled outside of the CMA |
### The tax consequences of emigration

**continued**

- **Understanding resident versus non-resident**

| Resident (South African Revenue Services) | • A person will be considered to be ordinarily resident in South Africa, if South Africa is the country to which that person will naturally and as a matter of course return to after his or her wanderings. It could be described as that person’s usual or principal residence, or his or her real home.
  
  • Any natural person who is not ordinarily resident (common law concept) in South Africa during the year of assessment but meets with all three requirements of the physical presence test, will be treated as being a resident.

| Non-Resident (South African Revenue Services) | If the person is not ordinarily resident, or does not meet the requirements of the physical presence test, that person will be seen as a non-resident.
  
  To meet the requirements of the physical presence test that person must be physically present in South Africa for a period or periods exceeding –

  • 91 days in total during the year of assessment under consideration as well as
  
  • 91 days in total during each of the five years of assessment preceding the year of assessment and
  
  • 915 days in total during those five preceding years of assessment

  • An individual who fails to meet any one of these three requirements will not satisfy the physical presence test. |
The tax consequences of emigration

continued

• **Ceasing to be a resident**
  – Section 9H (extensively amended in June 2015) deals with the tax effects of a person ceasing to be tax resident in SA;
  – Section 9H(2) (individuals and trusts):
    • The year of assessment is deemed to end on the date immediately before the day on which the taxpayer ceases to be a resident
    • The taxpayer is deemed to disposed of his assets to a resident on the date immediately before the day on which the taxpayer ceases to be a resident. The disposal is deemed to be at market value on that date. The taxpayer then "acquires" the assets back on the day after ceasing to be a non-resident for the market value. (South African fixed property and assets of a permanent establishment are excluded from the deemed disposal. Equity shares of a company holding SA property is included in the deemed disposal)

Example:
Mr B emigrated to Australia on 8 May 2015. He will have the following tax years of assessment:
• 12 months to February 2015 – taxed on his world wide income;
• 2 months and 7 days to 7 May 2015 – taxed on his world wide income plus the capital gain, if any, on the deemed disposal of assets held on 7 May 2015;
• 9 months and 24 days to 29 February 2016 – taxed on SA sourced income only, earned during this period.
The tax consequences of emigration
continued

• The requirements for ceasing to be a SA tax resident (individual)
  – Formally emigrating and submitting MP336 form to SARB
  – Change of intention and physical presence test – moving abroad to establish a new permanent residence with no intention of returning to SA
• Formally emigration permits the free flow of capital aboard, with no exit charge
• While change of intention, with no SARB formalities restricts the flow of capital abroad to the prevailing Exchange Control Regulations for that of SA residents

The tax consequences of emigration
continued

• The requirements for ceasing to be a SA tax resident (trusts)
  – Trustees move the place of effective management from SA to a foreign country
• To prevent change in residence status for a trust:
  – The majority of trustees should be SA residents (SARB purposes and not SARS purposes)
  – Note - In terms of the old Acceptance of Trustee forms a trustee is obliged to advise the Master of the High Court should he no longer be a SA resident. The current form is silent on this obligation
The tax consequences of emigration

continued

- The requirements for ceasing to be a SA tax resident (trusts):
- SARB distinguish between own-asset trusts and third-party funded trusts (section N of the Exchange Control Regulations)
- Since December 1985, all income and capital distributions from a SA resident trust to beneficiaries permanently resident outside of SA have to be approved via FinSurv:
  - i.t.o. current policy to ensure that the non-resident is entitled to the distribution and
  - to prevent the export of capital disguised as income

The tax consequences of emigration

continued

Own-asset trusts

Established prior to emigration:
- Income distributions earned prior to emigration are credited to the emigrant’s blocked account
- Income distributions earned subsequent to emigration are transferable
- Capital distributions are credited to the emigrant’s blocked account
- Emigrant may avail himself of unutilised foreign capital allowance, i.e. R10m
- Emigrant may apply for transfer of blocked account in excess of foreign capital allowance
The tax consequences of emigration

continued

Own-asset trusts

- Established subsequent to emigration:
  - Can only be established with prior approval of FinSurv
  - Usually submit the request with the submission of the MP336
  - Approval will not be permitted if the emigrant would be in a better
    off position and have higher access to income and capital than if
    the asset had remained in the emigrant's own hands
  - Income distributions are transferable
  - Capital distributions are credited to the emigrant's blocked account
  - Emigrant may avail himself of unutilised foreign capital allowance,
    i.e. R10m
  - Emigrant may apply for transfer of blocked account in excess of
    foreign capital allowance

Third-party funded trusts

- Rules differ between non-residents and emigrants
- Trusts created after emigration:
  - Income distributions credited to emigrant’s blocked account only
  - Capital distributions credited to emigrant’s blocked account only
  - Interest earned on blocked account must be capitalised
  - On death of donor (person who funds the trust) income and capital on application, may be transferable, with no restriction on limits
The tax consequences of emigration
continued

Third-party funded trusts

Trusts created within three years of emigration:
– Income distributions credited to emigrant’s blocked account only
– Capital distributions credited to emigrant’s blocked account only
– Interest earned on blocked account must be capitalised
– On death of donor (person who funds the trust) income and capital on application may be transferable, with no limitations

Third-party funded trusts:
Trusts created more than three years prior to emigration:
– Income distributions are transferable
– Capital distributions as follows:
  • Where donor (person who funds the trust) is alive then to emigrant’s blocked account
  • Where donor (person who funds the trust) died prior to emigrant’s emigration then to emigrant’s blocked account
  • Where donor (person who funds the trust) died subsequent to emigrant’s emigration then to emigrant’s blocked account subject to approval on application, may be transferable, with no restriction on limits
The tax consequences of emigration continued

Third-party funded trusts

Trusts created for non-resident beneficiaries:

- Income distributions credited to emigrant’s blocked account only
- Capital distributions credited to emigrant’s blocked account only
- Interest earned on blocked account must be capitalised
- On death of donor (person who funds the trust) income and capital, on application, may be transferable, with no restriction on limits

Emigration example: The B family

<table>
<thead>
<tr>
<th>Mr B</th>
<th>Trust and companies</th>
<th>Mr B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash (local &amp; foreign) R11.0m</td>
<td>Trust Co</td>
<td>Cash (local &amp; foreign) R 3.0m</td>
</tr>
<tr>
<td>Insurance policies R11.5m</td>
<td>7%</td>
<td>Insurance policies R 2.9m</td>
</tr>
<tr>
<td>Australian property A$3.5m</td>
<td>Foreign private company R 8.7m</td>
<td>Local property R 7.5m</td>
</tr>
<tr>
<td>Share in foreign private company</td>
<td>50%</td>
<td>Share in foreign private company R11.0m</td>
</tr>
<tr>
<td>Property Co 1</td>
<td>100%</td>
<td>Listed Co 1</td>
</tr>
<tr>
<td>NAV R36m</td>
<td>NAV - R106m</td>
<td>NAV R1.3m</td>
</tr>
<tr>
<td>Hold Co</td>
<td>Invest Co</td>
<td></td>
</tr>
<tr>
<td>NAV R156m</td>
<td>NAV R1.3m</td>
<td></td>
</tr>
</tbody>
</table>
Emigration example: The B family

Identified pitfalls

- The Australian Income Tax Assessment Act has regulations specifically dealing with income earned by foreign trusts and companies;
- Because of these regulations all offshore trust structures needed to be dissolved prior to emigration;
- Hold Co was partially owned by a failed employee share trust, Section 8C of the Income Tax Act deems the value of equity instruments vested to directors and employees as taxable income and not taxable capital gain in the hands of the individual;
- The above estate plan structure was constructed during 1997 on the premise that Mr B would remain a South African resident. In 2014 he decided to formally emigrate.

Emigration example: The B family

continued

Other pitfalls

- Mr B and foreign bank accounts:
  - Over the years Mr B opened various interest bearing bank accounts around the world
    - A VDP application had to be submitted to SARS for the interest earned and deposits for which the source of funds could not be established;
    - The bank accounts were opened in the joint names of Mr and Mrs B therefore a separate VDP application had to be submitted to SARS for Mrs B in terms her undivided half share of interest earned;
    - An additional regularisation application had to be submitted to the Financial Surveillance Department where such capital funds were not allowances for which approval to keep offshore had been obtained.
Emigration example: The B family

continued

The emigration process

- A date needs to be obtained for the formal emigration application, supported by proof of exit on that date;
- MP336(b) Emigration: Application for foreign capital allowance and supporting documentation is submitted to SARB via the Authorised dealer;
- IT21(a) Application for tax clearance certificate is submitted to SARS with all supporting documentation including the stamped MP336(b);
  - SARS issues the Tax Clearance Certificate – Emigrant;
  - SARS commences the compliance audit;
  - SARS issues the letter of compliance directly to SARB.

Emigration actions

- Holding Company
  - Mr B purchased a portion of the listed shares allocated to his shareholding in Holding Company, and the remainder was distributed as a dividend-in-specie to The Family Trust and on to Mr B as a capital distribution;
    - All taxes relating to this transactions were paid by Hold Co;
  - The properties held in the subsidiaries of Hold Co viz Property Co and Property Co 2, were independently valued by a Professional Associated Valuer;
  - Holding Company was valued by a firm of independent auditors establish the value in the trust;
  - The failed employee share trust was terminated as no value had accrued to the shares held in the company.
Emigration example: The B family

Emigration actions

• The Family Trust
  – A funding analysis was prepared from the inception of the trusts and companies to confirm and support the claim that the trust was an own asset trust;
  – All assets were distributed to Mr B, with the exception of Mrs B’s loan account that was distributed to her;
    • The capital gain and income associated with the assets distributed to Mr B, were included in the personal return of income for Mr B;
  – Listed shares was transferred at the quoted price, with the exception of certain listed shares with a zero cost collar attached thereto;
    • Special permission was obtained from the JSE to transfer the shares at the collar price, as the consideration for these shares exceeded the collar.

Emigration example: The B family

Emigration actions

• The taxes
  – Section 9H of the Income Tax Act deemed Mr and Mrs B’s emigration date as the date specified on the MP336(b) form;
  – As per SARS the efiling system does not support two returns for the same period, therefore the tax calculation for year ended 29 February 2016 would combine two calculations;
    • All world wide income received by Mr and Mrs B was included in the taxable income calculation performed on 1 June 2015;
    • South African source income from 1 June 2015 to 29 February 2016, in this specific case the source income would include South African source interest as Mr and Mrs B was present for 183 days in the 12 month period before the interest was received;
  – All capital appreciating assets were included in the 1 June 2015 calculation and tax was paid on the capital gain arising upon the deemed disposal.
Offshore trusts and the Davis Tax Committee

- 2002 SARS VDP Exchange Control Relief
- 2016 SARS VDP Exchange Control Relief
- Automatic exchange of information (AEOI), Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FACTCA)
- Use of foreign trusts
- Taxation of foreign trusts
- Davis Tax Commission on foreign trusts

Offshore trusts and the Davis Tax Committee
continued

- **2002 SARS VDP Exchange Control Relief**
  - First amnesty in respect of foreign assets held illegally abroad for SARB purposes and SARS purposes as from February 2001, taxpayers taxed on residence based income and there worldwide income
  - Foreign assets held in own name:
    - taxed on income and capital gains received by or accrued to the assets
    - subject to SA estate duty
  - Foreign assets held in name of a foreign trust:
    - taxed on the donation to the trust – declared and paid within the amnesty application
    - taxed on income and capital gains received by or accrued to the assets held in trust; however when the asset was sold the attribution principles ceased
    - not subject to SA estate duty
Offshore trusts and the Davis Tax Committee

Legislative Timeline

- **2016 SARS VDP Exchange Control Relief**
  - **From when** – the window opportunity to apply is from 1 October 2016 to 31 March 2017
  - **Who may apply** – individuals, companies but not trusts, beneficiaries and or donors of offshore trusts if they elect to have the assets and income deemed to be theirs
  - **What is the penalty** – 5% if repatriate the assets back to SA, or 10% if retain the assets abroad, it must be paid from foreign sourced funds or an additional 2% levied for illiquid foreign assets, may not use the R10m FIA to reduce the capital transgression amount
  - **For what tax periods** – offshore assets and income from March 2010, and 50% of the total seed money to fund the acquisition of offshore assets before 1 March 2015
  - **Will interest be charged on tax debt** – interest on tax debts will commence from 1 March 2010
  - **What is the relief** – no understatement penalties will apply and exemption of criminal prosecution
  - **When will the provisions and regulations be issued** – provisions and regulations will be made available in the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2016
Offshore trusts and the Davis Tax Committee
continued

• Automatic exchange of information (AEIO), Common Reporting Standards (CRS) and Foreign Account Tax Compliance Act (FATCA):
  – Strongly advise clients to make use of the amnesty – there is nowhere to hide
  – CRS will become effective in 2017

What is included in the reporting?
The financial information with respect to reportable accounts includes–
• Interest
• Dividends
• Account balances
• Income from certain insurance products
• Sales proceeds from financial assets and other income generated with respect to assets

Offshore trusts and the Davis Tax Committee
continued

• Automatic exchange of information (AEIO), Common Reporting Standards (CRS) and Foreign Account Tax Compliance Act (FATCA):
  Reportable accounts include accounts held by–
  • Individuals
  • Entities (which includes trusts, partnerships and foundations)
  • Passive entities

Who must report?
• Includes South African banks and custodians, brokers, asset managers, private equity funds, certain investment vehicles, long-term insurers and other participants in the financial system
Offshore trusts and the Davis Tax Committee

continued

• Use of foreign trusts
  – Protection of assets
  – Wealth preservation and a consolidated investment vehicle
  – Pegging of estate duty for planning purposes
  – Capitalising the trust via loan versus donation
    • Rand denominated loan versus foreign denominated loan
    • Interest bearing or not?
    • Rand denominated interest rate – currently using the SARS fringe benefit rate;
    • Foreign denominated interest rate – LIBOR + 2 basis points (up to 7 basis points)
  – Cost versus benefit
    • Set up costs of between GBP2 500 to GBP5 000
    • Annual on-going costs – minimum of GBP2 500 for administration and from GBP1 500 trustee fees

Offshore trusts and the Davis Tax Committee

continued

• Taxation of foreign trusts
  – The taxation of income earned by foreign trusts is regulated mainly by the provisions of section 7(8) and section 25B(2A)
  – The taxation of capital gains is regulated by paragraphs 72 (attribution of a capital gain to a resident funder of the trust) and 80 of the Eighth Schedule (distribution of a capital gain to a resident beneficiary of the trust)
  – Note – section 6quat rebate may be claimed in respect of any foreign tax paid by the trust
Offshore trusts and the Davis Tax Committee
continued

• Davis Tax Commission on foreign trusts

  What was initially said:
  – The deeming provisions of section 7 and 25B should be
    retained, insofar as they apply to foreign trusts
  – Applying the transfer pricing adjustments to the use of interest
    free loans, insofar as it applies to foreign trusts
  – Owing to the difficulties of identifying the components of
    income distributed to a beneficiary, it is recommended that all
    distributions of foreign trusts be taxed as income. This will
    discourage offshore trust formation and can be justified on the
    grounds of the deferral of the tax that a beneficiary obtains
    through the use of an offshore trust

Offshore trusts and the Davis Tax Committee
continued

• Davis Tax Commission on foreign trusts

  What was said in the first interim report:
  – the deeming provisions of section 7 and 25B will be retained
  – the transfer pricing adjustments will be retained while
  – the DTC needs to re-visit the taxing of all distributions from
    offshore trusts as income and review the paragraph 80 of the
    Eighth Schedule – capital gain attributions to benenfairies
Taxation and Tax Planning Strategies

Basics

• **Timing**
  - Postponing the recognition of income into subsequent years of assessment.
  - Bringing forward of expenses into the current year of assessment.

• **Income splitting**
  - Vesting of income from the family trust into the hands of beneficiaries with lesser marginal rates.

• **Deferral**
  - Tax will ultimately be paid, but “rollover relief” in the domain of capital gains is granted on certain transactions deferring the payment of tax.

Taxation and Tax Planning Strategies

continued

Basics

• **Residency / Tax Jurisdiction**
  - Residency for tax purposes (SARS), residency for exchange control purposes (SARB).
  - Acquisition of foreign passport and establishing tax residency outside of South Africa
    • Ordinarily resident
    • Physical Presence test
    • Consequences of a change in tax residency
  - Employment outside South Africa
    • 183 days, 60 consecutive days, on behalf of an employer,
Taxation and Tax Planning Strategies

continued

Strategies specific to year end
• RA contributions – s11(k) Income Tax Act
  – Subject to a R350 000 limit
• Venture Capital Company – s12J Income Tax Act
  – Upfront deduction of investment, no recoupment if share is sold after five years
  – No limit (subject to at risk rule)
• Donations – s18A Income Tax Act
  – Subject to a 10% limit on taxable income (adjusted)
• “Wash sales” – para 42 8th Schedule, Income Tax Act
  – Threshold of 45 days after which shares may be repurchased and disposal not deemed to have taken place at base cost

Strategies specific to year end
• Directors’ remuneration, bonuses, dividends and the 4th Schedule
  – Many HNWI are also directors and employees of the family business. The payment of large bonuses at year end is a common occurrence. What is often ignored are the provisions of paragraph 11C of the 4th Schedule of the Income Tax Act deeming a director to have received certain remuneration based on a formula that takes into account the monthly remuneration as well as ad hoc bonus payments that may or may not occur in future. PAYE is then calculated on a higher base.
  – Consider a dividend payment, even after dividends tax, as an alternative to having PAYE determined on an artificially high base.
Taxation and Tax Planning Strategies

Common structures

- Family trust interposes investment holding company between itself and underlying investments.
  - Dividend flows from underlying investments to the investment holding company received free of dividends tax.
- Share portfolio transferred from individual utilising s42 Asset-for-share transactions, of the Income Tax Act to an investment holding company or a collective investment scheme ("CIS") such as a unit trust, held by the family trust.
  - Taxation of capital gain arising on transfer of share portfolio deferred in terms of s42
  - Use of a CIS facilitates diversification of the share portfolio

A final word

- While the basic principles applicable to tax planning have not changed much, the risk pertaining to the detection of acts of non-disclosure and the ability of SARS to ascertain the true intention of the taxpayer behind a series of transactions has increased dramatically.
- The Tax Administration Act specifically targets the realm of the tax planner imposing understatement penalties, interest charges and criminal charges.
- The chances of successfully defending an aggressive tax position have diminished somewhat while the consequences of failure are clear for all to see.
**Inter vivos trusts and planning**

- Reason for setting up an *inter vivos* trust
- Compliance platform
- Structures within the *inter vivos* trust pyramid

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**Inter vivos trusts and planning continued**

- **Reason for setting up an *inter vivos* trust**
  - Protection of assets against oneself
  - Limited liability from creditors
  - Consolidated investment strategy for family wealth
  - Ease of administration and continuity of management for either the too young or the too old
  - Estate planning and pegging of asset base and
  - Tax planning, if any
Inter vivos trusts and planning continued

• Compliance platform
  – Appointment of an independent trustee
  – Divesting one’s self of control of the assets to be administered in trust
  – Drafting of a letter of wishes
  – For mature pyramid trust structures, drafting of a family constitution such as:
    • family governance
    • investment committees
    • family bank
    • philanthropic plan

Inter vivos trusts and planning continued

• Structures within the inter vivos trust pyramid
  – Wealth preservation trusts versus wealth creation trusts
  – Wealth preservation trust may be free of debt and security
  – Wealth creation trusts may be used as security and geared
  – The use of companies within the structure:
    • Holding company – facilitates the dividend flow from trade and operating companies
    • Passive investment company
    • Property owning – residential (non-vatable) versus commercial (vatable)
Wills and estate planning

• Assets held in multiple jurisdictions
  – South African will and a foreign will
  – Where there is foreign immovable property, then have a will in the jurisdiction of the immovable property, such as Spain, Portugal or Greece as there are differing laws governing the inheritance of immovable properties
  – USA assets – seek local advice for both estate duty and income tax as the laws differ from State to State

• Bequeathing of foreign assets to an offshore trust
  – The trust must already be established
  – If there is a loan account (owing to the planner by either a foreign or local trust), this can be bequeathed to the foreign trust

Wills and estate planning continued

• Resealing for foreign probate
  – If there is no foreign will, often the Letters of Executorship as issued by the Master of the High Court are not recognised by the asset holder (investment company) or the Land Registry in foreign jurisdictions
  – In this instance the Executor applies for "Resealing"
  – Documents required:
    • The Will and Letters of Executorship – Master of the High Court certified
    • Power of Attorney if Executor appointing a local agent
    • Inheritance tax return or account – whether or not foreign estate duty is applicable or not
    • Court fee – (UK - assets over £5000 fee is £155)
Wills and estate planning continued

- **Situs assets**
  - Assets held in foreign jurisdictions may be subject to estate duty in that jurisdiction
  - In terms of a Double Taxation Agreement, credits may be obtained for estate or inheritance tax paid in that jurisdiction, however if the rate is higher than the current 20% in South Africa, no additional credit will be allowed
  - A situs asset is one that is either registered, incorporated or located in another jurisdiction, such as the register for unit trusts, the place of incorporation for private companies, the main stock exchange listing or place of incorporation for listed equities and the physical location of immovable property

<table>
<thead>
<tr>
<th>Situs assets</th>
<th>SA (Estate duty)</th>
<th>UK (Inheritance tax)</th>
<th>USA (Federal estate tax)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate</td>
<td>20%</td>
<td>40%</td>
<td>40%</td>
</tr>
<tr>
<td>Threshold</td>
<td>R3.5m</td>
<td>£325 000</td>
<td>$60 000</td>
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<tr>
<td>Spousal roll over relief</td>
<td>Yes</td>
<td>Yes</td>
<td>No unless a USA citizen</td>
</tr>
<tr>
<td>Immovable property</td>
<td>Subject to ED</td>
<td>Subject to IHT</td>
<td>Subject to FET</td>
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<tr>
<td>Equites and unit trusts</td>
<td>SA incorporated and register held</td>
<td>UK incorporated and register held</td>
<td>USA incorporated and register held</td>
</tr>
<tr>
<td>Assets held in trust</td>
<td>N/A unless alter ego</td>
<td>10 year charge</td>
<td>N/A unless USA beneficiaries</td>
</tr>
</tbody>
</table>
Wills and estate planning continued

- Other will drafting and estate planning considerations
  - Joint signatories on foreign bank accounts or multiple owner investments – beware though as this has its own issues
  - Bequeathing of R3.5m in cash and or assets as the executor shall decide to the inter vivos family trust, a testamentary trust or someone else other the surviving spouse

Business Succession Planning

“If you don’t know where you’re going then you’re liable to end up someplace else”

Yogi Berra

Business Succession Planning is a material component of a broader initiative focused upon the preservation of family wealth and well being of family members beyond the first generation, and is often addressed in isolation of the context within which it takes place.

Family business succession is a process designed to transition both the ownership and management of the family business to the next generation of family members.
Placing the family business in context

Three-Circle Model of the Family Business System

- **Ownership**
  - Owners who work in the business but who are not family members
  - Family members who own shares in the business but who are not employees
- **Family**
  - Owners who are also family members and employees of the business
- **Business**
  - Family members who work in the business but are not owners

Three-Circle Model of the Family Business System – Renato Tagiuri and John Davis
Business Succession Planning continued

At a minimum, and in the absence of a formal governance structure the following policies / Family Business rules should be agreed to:

• Business participation and employment of family members
• Internship and mentoring
• Compensation and benefits
• Dividends and distributions
• Valuation
• Sale, mergers and acquisitions
• Liquidity and redemption
• Exit strategy (incapacity, death, voluntary exit)
• Conflicts of interest and disclosure
• Management of minority shareholder expectations

The Dilemmas of Succession

• Appoint a member of the family
• Appoint a professional manager
• Appoint an interim manager
• Sell the family business
• Wind up the family business
• Do nothing!
Overcoming Resistance to Change

• **The Founder**
  – I don’t want to retire
  – How can I choose from amongst my children?
  – I’ll lose my purpose in life
  – What’s this planning thing?
  – No one can run the business as well as I do
  – I’m not going to die

• **The Family**
  – Spouse’s resistance to change
  – Cultural norms against such discussions
  – My mother / father is not going to die

• **Employees and Key Customer / Supplier Relationships**
  – While continuity of the business is in the best interests of the employees, many employees may view the change as a possible threat given that their close personal relationship with the founder constitutes an advantage of working in the family business.
  – Similarly customers and suppliers alike may prove to be resistant to change.
Business Succession Planning continued

A Suggested High Level Process

Conduct interviews with family members to evaluate family member expectations

Set up forum for family communications for family members active in the family business

Set up forum for family communications for the wider family

Establish policies / business rules addressing inter alia
- Employment of family members
- Compensation and benefits
- Exit strategy
- Dividends
- Sales, M&A
- Liquidity and redemption
- Conflict of interest
- Management of minority expectations

Management Succession
- Identify existing and potential successors
- Establish a succession time line
- Establish current and desired skill sets
- Establish plan to close the skills gap
- Assess performance against desired standard

Ownership Succession
- Identify existing and potential ownership successors
- Establish an ownership transfer time line
- If not already established but required determine ownership criteria
- Valuation, structure and funding
- Compensation for owners

Planning Wealth for Generations

“Shirt sleeves to shirt sleeves in three generations” a proverb – anonymous

What’s it all about?
Continuity of the family, and the preservation of its wealth beyond four generations

For what purpose?
Enhancement of the individual’s pursuit of happiness

“Successful long-term wealth preservation requires the creation and maintenance of a system of governance or joint decision making, to the end of making slightly more positive decisions than negative ones over a period of at least one hundred years”

Family Wealth – Keeping It in the Family – James E Hughes Jr
Planning Wealth for Generations continued

What do we mean by wealth – The Four Capital Accounts

**Human Capital**
- Effective parenting and grand parenting
- Communication
- Consensus building
- Team building
- Conflict resolution
- Leadership training
- Values, Morals Ethics
- Goal setting

**Intellectual Capital**
- Education
- Career choice
- Coaching and mentoring
- Governance
- Rights and roles of trustees

**Financial Capital**
- Creating wealth
- Managing / investing wealth
- Effective transfer strategies
- Financial parenting
- Family business issues
- Understanding the psychology of money

**Social Capital**
- Family Foundation
- Donor advised funds
- Volunteer time
- Public service

Planning Wealth for Generations continued

Governance - The Start of a Plan

"Would you tell me, please, which way I ought to go from here?"
"That depends a good deal on where you want to get to," said the Cat.
"I don't much care where –" said Alice.
"Then it doesn't matter which way you go," said the Cat.

Lewis Carroll, *Alice’s Adventures in Wonderland*
Phases in the development of a family governance system

### Phase: "Chaos"

- **Characteristic:**
  - Uncordinated
  - Short term focus
  - Respond to immediate needs
  - Independent actions by family members
  - Older generation may dominate

- **Action:**
  - Create basic estate plans
  - Select advisors

- **Goal:**
  - "Sleep at night"
  - Cover emergencies
  - Minimize tax

### Phase: Coordination

- **Characteristic:**
  - Family members begin to view the big picture
  - Need for family meetings
  - One or more leaders emerge

- **Action:**
  - Define / clarify family goals
  - Identify and begin integrational tax planning
  - Commence education programmes
  - Work with advisors
  - Convene family meetings for specific issues

- **Goal:**
  - Create a coordinated system
  - Choose leader(s)
  - Begin succession planning
Planning Wealth for Generations continued

Phases in the development of a family governance system continued

<table>
<thead>
<tr>
<th>Phase</th>
<th>Characteristic</th>
<th>Action</th>
<th>Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cohesion</td>
<td>- Actions viewed per long term goals &lt;br&gt;- Open and regular communication &lt;br&gt;- Leaders change over time</td>
<td>- Choose family leader &lt;br&gt;- Choose lead advisors &lt;br&gt;- Create family office to manage affairs &lt;br&gt;- Establish and keep regular meetings</td>
<td>- Sustainability &lt;br&gt;- Integration of family members &lt;br&gt;- Clarity between joint and individual needs / wants</td>
</tr>
</tbody>
</table>

The Family Governance Pyramid: From Principles to Practice – Patricia M Angus

Planning Wealth for Generations continued

Vision, Mission, Values

Nothing truly extraordinary happens without an overriding vision or set of unifying beliefs.

- It’s all about asking the right questions:
  - Why do we want to stay together as a family?
  - What do we want to pass on to our children and grandchildren?
  - How would I describe the legacy I seek? What would success look like in my eyes and the eyes of my family members 100 years from now?
  - What are our shared beliefs?
  - What distinguishes us from other families?
  - What is our common vision?
  - How do we wish the family to be seen?
  - How do we measure success?
Planning Wealth for Generations continued

Governance and Leadership

“Successful long-term wealth preservation requires the creation and maintenance of a system of governance or joint decision making, to the end of making slightly more positive decisions than negative ones over a period of at least one hundred years.”

James E Hughes Jr. Family Wealth – Keeping It in the Family

• It’s all about asking the right questions:
  - How will we preserve our family and its wealth?
  - How will we address family and wealth dynamics?
  - How do we address conflict?
  - How will we make decisions together?
  - How, what and to whom will we communicate?
  - How and when will we meet as a family?
  - How will we encourage stewardship and discourage entitlement?
  - How will we develop future leaders?
  - How will we transition control of our wealth from one generation to the next?
  - How will we develop our Human, Intellectual and Social capital?
  - How will individual family members interact with the family business?

Family Constitution – Basic Structure

• Vision, Mission and Values
• Principle of consensus
• Code of Conduct
• Communication
  - Family Assembly
  - Family Council
    - Family Office
    - Family Foundation
    - Family Bank
    - Family Trusts and Investment Entities
Planning Wealth for Generations continued

Family Constitution – Basic Structure

- Policies
  - Investment
  - Succession
  - Use of joint assets
  - Employment in the family business
  - Distributions
  - Education
  - Philanthropy
- Conflict resolution
- Amendment

Business Succession Planning continued

Governance
Proposed changes 2016 Budget Review

Budget Review

Increase in capital gain inclusion rate for trusts:

- Conduit principle still in tact for now but where assets or capital gains are distributed or vested to beneficiaries, it defeats the main objective for creating the trust, being the protection of capital and limited liability
- Consider the tax cost versus estate duty benefit as well as the other reasons for creating a trust
- Maybe the threshold of the value of assets for adopting the use of a trust needs to be re-considered

Budget Review continued

Proposed changes 2016 Budget Review

Budget Review

- Trusts capitalised via an interest free loan from the funder may be included in the deceased’s estate
- Interest-free loans to a trust may be treated as donations

We will need to wait for clarity on these matters before making any decisions or taking any action
Proposed changes 2016 Budget Review
continued

Review of CGT and tax rates 2016 : 2017

<table>
<thead>
<tr>
<th></th>
<th>Individuals &amp; special trusts</th>
<th>Trusts</th>
<th>Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>CGT inclusion rate</td>
<td>33.3</td>
<td>40</td>
<td>66.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>80</td>
<td>66.6</td>
</tr>
<tr>
<td></td>
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<td>80</td>
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<tr>
<td>Effective CGT rate</td>
<td>13.65</td>
<td>16.4</td>
<td>27.3</td>
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</table>

Sources

Cheryl Howard acknowledges the following works of reference drawn upon in this presentation.

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