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Just like you hear in the news about rumors going around, you more often than not hear people spreading rumors about trusts not having a place in modern estate planning. But, just like the rumors in the news, the rumors about trusts also have a skewed element of truth in it.

It is no secret that SARS has its eyes set on curbing the misuse of trusts to avoid taxes related to estate planning. One common tax avoidance measure implemented by accountants have been dealt a huge blow with inclusion of the new section 7C to the Income Tax Act. This section's main purpose is to curb the use of interest-free loans as means to transfer assets into a trust, where tax is paid on the portion of the loan which do not bear a market-related interest rate (currently 8%). This means that the accounting principles most commonly used suddenly have a major and immediate tax effect on the personal finances of a person to which this legislation applies.

Just like every person has the right to interpret the law and enter into commercial transactions in a way that is most tax efficient, SARS needs to put measures in place to curb losses linked to tax avoidance schemes. The question is: what tax avoidance schemes will be curbed next?Just as the promulgation of section 7C loomed closer, accountants and learned specialists advised on moving loan accounts to a company in the family structure – which is also an avoidance measure. These measures were stopped as swiftly as it was conjured up when an interpretation note issued in July 2017 stated that section 7C is also applicable to loans to companies owned by a trust.

One of the reasons why government seeks to enforce more stringent rules on trusts is because a discretionary trust is the only estate planning instrument where the death of a connected person in optimal circumstances creates no taxable event. This protection afforded to the trust safeguards assets managed by the trustees on behalf of the beneficiaries and proves effective in instances such as insolvency, divorce and death. For estate planning purposes, assets in a trust which would normally have been owned by a person will now be free from estate duty, capital gains tax, value added tax and income tax at death of that person. Multi-generational planning ensures that assets destined for future generations are managed effectively to the benefit of the beneficiaries- the catch is that the beneficiaries should have no vested rights in the trust assets. Here lies the rebuttal of the fake news.

In future, focus may shift from making use of commercial law to making use of corporate law to move assets to a trust. Where goods were previously sold to a trust or company owned by a trust on loan account, practitioners will most probably now make use of the Corporate Rules (more specifically section 42 of the Income Tax Act) to move assets to a company owned by a trust. How long government will allow this, is an open question.

Be wary of fake news when it comes to the benefit of trusts. The use of a trust is not a question of cost, but a question of value. If a trust adds ultimate value to a family structure, the cost to operate it or to get the structure in place should not be the deciding factor.

We couldn't agree more!