

Put your Trust in Cyprus International Trusts - Good news for South African residents**In General**

Even before the times of the Conquest, the device of the Trust enjoyed tremendous popularity as it enabled a landowner to evade some of the feudal dues that fell on the person seized of land. But while even from those early days the trust was utilized for reasons of tax mitigation, there are today other, possibly more compelling reasons for creating a trust. Tax mitigation can easily be achieved through the establishment of a limited liability company in a low tax or zero tax jurisdiction. But while a corporate structure may achieve some of the tax planning objectives of the owner, it is certainly not as "flexible" or as "tailored" a solution to the owner's objectives as a trust.

What is a Trust?

In simple terms, a Trust is something (property) held by one party (the trustee) for the benefit of another (the beneficiary). Under a trust, trustees, who get no benefit from the trust, are required to hold property of which they are the legal owners for the benefit of other persons, known as "the beneficiaries".

The Cyprus International Trust

Cyprus is relatively unknown for its trust industry and this has been a blessing in light of recent tax revisions during which Cyprus International Trusts have emerged unscathed. The Cyprus Income Tax Law, which came into effect on January 1, 2003 and represented the first large-scale amendment to the tax law since the inception of the original Income Tax Act, did not affect the juridical or tax status of Cyprus trusts. It merely reconfirmed the existing tax framework under which the income of a trust accruing to non-resident beneficiaries, which is derived from sources outside Cyprus, remains outside the realm of Cyprus income tax.

Trusts and South Africans

Recently there have been numerous circulars from financial service providers in South Africa suggesting that, post tax amnesty in South Africa, settlors of offshore trusts should appoint South African resident trustees and return the administration to South Africa. Costs savings and convenience, however, have only been cited in support of this.

Settlors interested in effective fiscal planning and asset protection would need rather more support than this before making such a sea change in their asset protection strategies. South African trustees of a trust when they are in the jurisdiction are susceptible to a government that is in a position to more easily impose additional taxes or impose strangling exchange restrictions. The history of resident trusts in the UK bears this out only too clearly. Therefore the Cyprus International Trust remains one of the most attractive methods of legitimate asset protection and prudent international tax planning, but one must be sure, of course, that the use is an effective and totally legitimate one.

For the South African resident there are two main areas that need to be borne in mind when considering the use of trust mechanisms in general and the Cyprus International Trust in particular:

- a. The establishment of a structure which can receive and hold assets for the benefit of a South African resident while remaining outside the scope of South African Exchange Control, and while not being a Controlled Foreign Entity (If 50% or more of a Foreign Entity is controlled/owned by five or less South African residents, then it is a CFE, and all income of the entity is attributable to the owners proportionately to their ownership interests. The CFE becomes transparent. But, an existing overseas *discretionary* trust is not a CFE, since the ownership interest is not a 'vested property interest'. A fixed interest trust, however, would be a CFE).
- b. Structuring the transfer of assets into the new structure so as not to give rise to any additional exchange control offences and not giving rise to any tax evasion.

It should be noted first that an overseas discretionary trust is not a Controlled Foreign Entity. However, any transfer into the trust may be liable to Donations Tax. The Donations Tax provisions state that "a 'donation' means any gratuitous disposal of property including any gratuitous waiver or renunciation of a right."

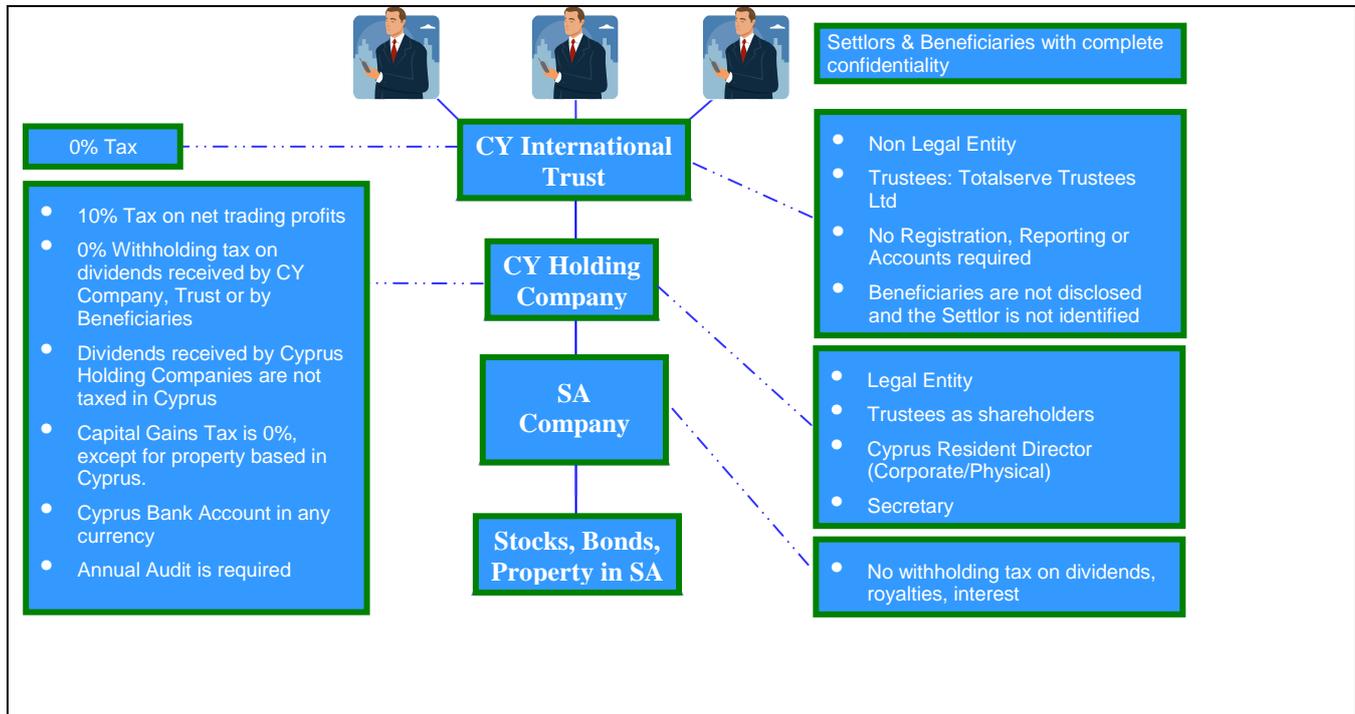
A transfer into a trust where the settlor is the sole beneficiary does not give rise to any 'disposal' as such, and would seem not to give rise to a donation. If the spouse of the settlor is also a beneficiary, since a donation to a wife is exempt under the statutory exemptions, the presence of the wife as a beneficiary does not give rise to a donation.

The definition of a donee under the law which is "any beneficiary under a donation and includes, where property has been disposed of under a donation to any trustee to be administered by him for the benefit of any beneficiary, such trustee." Since a donor cannot also be a donee, this clause seems to confirm the proposition that in the case of a trust established by a settlor where the settlor and/or his spouse is/are beneficiary(ies), no donation has occurred.

Where the trust is a discretionary trust, and there are additional beneficiaries, no 'disposal' can take place until it is clear that the settlor as donor has ceased to be a potential beneficiary. That can happen only where the settlor dies, or ceases to be a beneficiary, or where an actual distribution is made to another beneficiary.

Therefore it would seem that a transfer by South African person of overseas assets into a discretionary trust of which he is a beneficiary will not give rise to a donation. Nor is the trust a Controlled Foreign Entity. Therefore, the Cyprus International Trust can be used legitimately for asset protection and fiscal planning.

Below is an example of an effective trust structure for South Africans:



Put your trust in a Cyprus International Trust

These are good news for non-Cyprus resident settlors and beneficiaries who can continue to use Cyprus to accumulate trust income without liability to any tax whatsoever. The International Trusts Law 69/92, which regulates the creation and operation of Cyprus International Trusts, provides that the income and gains of an international trust derived from sources outside the Republic shall be exempted from all kinds of tax in Cyprus and no estate duty shall be chargeable in respect of assets belonging to an international trust. In fact the only charge payable to the Cypriot Inland Revenue in respect of an international trust is a one-off stamp duty of approximately CY£250 payable when the trust is created.

What's in a Trust?

A wide range of property can be held in trust. Such trust assets may comprise of cash, bank deposits, shares, jewelry and real estate. Segregated accounts are kept for each trust client in order to give an additional level of security to clients.

Why set up a Trust?

Trusts are created for a variety of reasons: to reduce tax liabilities, to avoid the inconvenience and publicity of probate, to protect assets from actual or potential creditors or to alter the devolution of assets on death. To take the alteration of the devolution of assets on death as an example, a Cyprus International Trust is a flexible way in which an individual can decide how their assets are to pass on death. Many countries, including Cyprus, have what we call "forced

heirship" laws which govern how assets pass to relatives on death. An individual may want to circumvent these laws and decide for himself the proportions in which his assets will pass, or the special provisions he will make for a needy or disabled relative, or a gift he may wish to pass to a friend or a charitable institution. A trust is a good way of overcoming forced heirship laws thus permitting the settlor to dispose of his assets in the way he chooses in utmost confidentiality.

In law we Trust

In Cyprus, provision is made in the 1992 International Trusts Law that the Inheritance Law of the Republic of Cyprus or of any other country shall in no way affect any transfer or disposition made to a Cyprus International Trust and the validity of such transfer shall not be challenged.

This can be read in conjunction with Section 1 of the 1976 Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters which has been ratified by Cyprus and which strengthens the position of immunity of Cyprus International Trusts from forced heirship claims. Specifically, this Section provides that the provisions of the Convention do not apply to decisions relating to the capacity of persons or questions of family law, including personal or financial rights and obligations between parents and children or between spouses and questions of succession. Read together, the provisions of the 1992 International Trusts Law and the 1976 Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters make a strong rebuttal of any potential forced heirship claim for assets held under Cyprus International Trusts.

The latest on Trusts

It has been announced by the Central Bank of Cyprus that trust and company service providers in Cyprus are, like their European counterparts, to be regulated. A draft bill on the Regulation of Trustees is under discussion by the island's relevant professional bodies and is expected to be passed by the House of Representatives before the end of the year.

The bill establishes minimum criteria for licensing, making sure that fiduciary services are administered by "fit and proper persons," and aims at mainly regulating the formation, management and administration of companies and trusts whether established under Cyprus or Foreign law.

The bill empowers the law's Supervisory Authority, the Central Bank of Cyprus (CBC), to investigate Fiduciary Services providers and report its findings to the newly-formed Financial Reporting Unit established under the "Complicity and Money Laundering Arising from Criminal Offences Law of 2007."

How can you set up a Trust?

In order to set up a Cyprus International Trust, the following prerequisites must be met:

- The settlor must not be a resident of Cyprus
- The beneficiary must likewise not be a resident of Cyprus (charitable institutions are an exception to this rule)

- The trust property must not include any immovable property in Cyprus
- A minimum of one trustee must be a Cyprus resident

Of course, setting up a trust is a committing decision and professional advice should be sought to ensure that the objectives of the settler will be met. In many cases, trusts can maximize the tax benefit of prudent investors who can organize their business matters in a way that best suits their particular circumstances and needs. Cyprus can compare favourably with most trust jurisdictions worldwide, and Cyprus International Trusts provide a very efficient means of organising and protecting the business and assets of settlors worldwide.

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