Asset ownership

Structuring the legal ownership of your South African and international assets.

What to consider and how to choose the best option for you.

May 2022

see money differently

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PRIVATE WEALTH

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Important

- This guide deals with structuring your personal wealth and excludes business succession planning and structuring or restructuring.
- The guide contains the relevant tax rates and information based on legislation at the date indicated on the cover.

In this guide

The starting point – factors to consider

	What it refers to	How relevant is it for you?
Continuity	The extent to which significant events such as incapacity, sequestration or death can disrupt the management of, or access to, your assets. For practical tips on how to make things easier for your loved ones if you become incapacitated or when you die, view our *Estate Planning Guide*. (Available on our website under News & insights > Market insights > Covid-19 updates > Covid-19 – Estate planning)	Is it important that you and/or your family retain access to and control over these assets if you become incapacitated, face sequestration or pass away?
Effective distribution of your assets after death	The process and time frame of how your assets will be distributed when you pass away, eg assets in your estate may be frozen for some time before your beneficiaries can access them, and there are costs involved in winding up your estate.	Do you have certain requirements and/or limits relating to access to your assets when you pass away, eg does your family need immediate access to your assets?
Protection of your dependants	The extent to which minors or those with disabilities are financially protected, and to which education planning and intergenerational wealth transfer is enabled or supported.	Do you have dependants who need your financial support, now and in future?
Protection of your assets from seizure	The legal ownership (structure) of your assets and the associated level of protection from say government and creditor risks.	Is it important to you to protect your assets from possible seizure by government or creditors in case you become insolvent?
Flexibility	The extent to which the ownership structure allows for changes in your circumstances, regulations and best practice over time.	Is it important to you that the structure can adapt to changes in your personal circumstances or to industry regulations over time?
Tax cost and administration implications	The applicable tax rates and associated tax risks that apply, and the tax administration requirements and responsibilities that stem from the assets you own.	Are you aware of the tax consequences of the ownership choices and which ones are most tax-efficient? Can you deal with complex tax administration, or do you have access to expertise and support?

Overview

Important

The tables below are a useful starting point, but it's important to consider the conditions and limitations in detail, since these can also affect your choice.

2.1 Legal ownership options for South African assets

	Sole name*	Multiple names/Co-ownership** (tangible assets, excluding bank accounts)	Trust	Company*	Trust and company
	Owning the asset in your name only.	Co-owning the asset with one or more other persons.	Setting up a trust and placing the asset in the trust.	Registering a company and holding shares in the company in your personal capacity.	Setting up a trust and using the trust to fund a company via a loan or issuance of shares, with the trust as the shareholder.
Continuity	✗ / ✓	✗ / ✓	✓	✗ / ✓	✓
Effective distribution of your assets after death	✗ / ✓	✗	✓	✗	✓
Protection of your dependants	✗ / ✓	✗ / ✓	✓	✗	✓
Protection of your assets from seizure	✗ / ✓	✗	✓	✗	✓
Flexibility	✓ / ✗	✗	✓	✓	✓
Tax cost and administration implications	• Taxes during (and after — if applicable) your lifetime apply. • Tax administration responsibilities apply.				

*** The ✓s indicated above under:**

- **sole name** will only apply under certain circumstances where assets held in sole name are held via an **endowment policy**; and
- **company** apply to the actual ongoing management of the assets held in the company.

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2.2 Legal ownership options for international assets

	Sole name*	Joint names**	Trust	Company*	Trust and company
	Owning the international asset in your name only.	Jointly owning the international asset with one or more other persons.	Setting up an international trust and placing international assets in the trust.	Incorporating an international investment holding company and holding shares in the company in your personal capacity.	Setting up an international trust and using the trust to fund an international investment holding company via a loan or issuing shares, with the trust as the shareholder (so-called two-tier structure).
Continuity	✗ / ✓	✓	✓	✗ / ✓	✓
Effective distribution of your assets after death	✗ / ✓	✓	✓	✗	✓
Protection of your dependants	✗ / ✓	✗	✓	✗	✓
Protection of your assets from seizure	✗ / ✓	✗	✓	✗	✓
Flexibility	✓ / ✗	✓	✓	✓	✓
Tax cost and administration	• Taxes during (and after — if applicable) your lifetime apply. • Tax administration responsibilities apply.				

*** The ✓s indicated above under:**

- **sole name** will only apply under certain circumstances where assets held in sole name are held via an **endowment policy**; and
- **company** apply to the actual ongoing management of the assets held in the company.

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**** Joint ownership versus co-ownership**

While the concepts of joint and co-ownership are often used interchangeably, they are different.

	Joint ownership	Co-ownership
Definition	A term best used to define the ownership of assets by multiple (two or more) joint holders in the international context. **Joint ownership of South African bank accounts is generally not recognised or allowed in South Africa.** (The exception is South African bank accounts belonging to couples married in community of property.) The most likely reason for this is that there is no legislation specifying what will happen to a bank account if one of the joint owners dies or becomes insolvent, which can lead to conflicting demands from the surviving joint owner(s) and the executor of an estate. A bank account in South Africa will therefore always have one main account holder, with any other parties (if applicable) only having signing rights.	A term best used to define ownership of assets (excluding bank accounts) by multiple (two or more) co-owners of assets in South Africa.
What it means in practice	• In the international context each joint holder is generally **entitled to 100% of the jointly owned property** (unless there is another arrangement in place that stipulates a different percentage ownership) and all joint holders have **equal rights and obligations**. • Any one of them may (during their lifetime) access or give instructions relating to the property without the consent of the other joint holder(s). • On death, ownership reverts to the surviving joint holder(s).	• In the South African context co-owners share ownership of an asset with another co-owner or other co-owners. Each co-owner **owns a percentage** of the asset (not 100%). • Generally, each co-owner is regarded as owning an equal share, but the actual ownership percentage may vary according to the ownership agreement. • The rights of each owner are typically defined in a written ownership agreement or contract.

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Legal ownership options for South African assets – detailed breakdown

3.1 Sole name

Continuity	✗ (No endowment) ✓ (Endowment)	Control over and access to the assets will be interrupted, unless you hold the investments in an endowment at death. For practical tips on how to make things easier for your loved ones if you become incapacitated or die, *see our Estate Planning Guide*. (Available on our website under News & insights > Market insights > Covid-19 updates > Covid-19 – Estate planning)
Effective distribution of your assets after death	✗ (No endowment) ✓ (Endowment)	• The assets will form part of your estate and ownership will be distributed according to your will, unless the investments are held in an endowment, in which case ownership will be transferred to your nominated beneficiary/beneficiaries after death. • Although this means your wishes will most likely be followed, it also means that the distribution of the assets will be subject to the time, liquidity and cost constraints of winding up an estate.
Protection of your dependants	✗ (No endowment) ✓ (Endowment)	No protection or provision for your dependants, unless you make provision for this in your will by: • establishing a testamentary trust; or • appointing a dormant inter vivos trust as heir; or • if you are using an endowment, nominating an inter vivos trust as a beneficiary on your endowment policy.
Protection of your assets from seizure	✗ (No endowment) ✓ (Endowment)	You are the legal owner of the assets, which means the assets can be seized if you become insolvent. But if you use an endowment that meets the following criteria (as set out in section 63 of the Long-term Insurance Act), the policy benefits will not form part of your insolvent estate during your lifetime, ie the entire value of the endowment will be protected against creditors: 1. You or your spouse is the life assured on the policy. 2. The policy (or the assets acquired exclusively with those policy benefits) has been in force for at least three years. 3. You did not take out the policy specifically to secure a debt. 4. You can prove on a balance of probabilities that the protection is given to you under this section. 5. When the assured person dies, the policy proceeds will not be available for payment of the person's debts if the person is survived by a spouse, child, step-child or parent.
Flexibility	✓ (No endowment) ✗ (Endowment during the first five years)	You can easily transact at your discretion. But if the investments are held in an endowment, certain limitations will apply during the first five years.
Tax cost and administration	**Taxes**	During your lifetime • The normal tax implications will apply, depending on the asset, circumstances and legislation at the time. • This can include income tax, capital gains tax (CGT), transfer duty, donations tax, and securities transfer tax. When you pass away The assets will be subject to estate duty and CGT, with certain exceptions.
	Tax admin	You are responsible for taking care of the tax administration, **unless** your investments are held in an endowment, in which case the tax is recovered within the policy on your behalf.

3.2 Multiple names/Co-ownership

Note

The percentage ownership of the co-owners does not have to be the same. The terms of ownership are usually set out in a co-ownership agreement.

Continuity	✗ / ✓	• In the case of fixed property, if the property has a bond, the co-owners will be both jointly and severally liable for the bond, which means that control and access to the property should not be interrupted. • The co-owners may be required to sell the property. The non-sequestrated or surviving co-owners usually have a first option to buy the percentage ownership held by them. If the co-owners make no market-related offers, the property may be required to be sold (as a whole) and the proceeds divided according to each co-owner's percentage of ownership. In the case of death, an executor may require the sale proceeds to settle a liquidity shortfall in the deceased co-owner's estate.	
Effective distribution of your assets after death	✗	• Your percentage ownership will form part of your estate and will be distributed according to your will. • Although this means your wishes will most likely be followed, it also means that the distribution of the assets will be subject to the time, liquidity and cost constraints of winding up an estate.	
Protection of your dependants	✗ / ✓	No protection for your dependants, **unless** you make provision for this in your will by establishing a testamentary trust or appointing a dormant inter vivos trust as heir.	
Protection of your assets from seizure	✗	You are the legal owner of a percentage of the asset, which means that the percentage you own can be seized if you become insolvent.	
Flexibility	✗	Your share of a fixed property may only be sold with the permission of the other co-owners. This will depend on the terms of the co-ownership agreement (if applicable).	
Tax cost and administration	**Taxes**	During your lifetime • The assets are taxed in the individuals' names according to percentage ownership. • The normal tax implications will apply, depending on the asset, circumstances and legislation at the time. • This can include income tax, capital gains tax (CGT), transfer duty, donations tax, and securities transfer tax.	When you pass away The assets will be subject to estate duty and CGT, with certain exceptions.
	Tax admin	You are responsible for taking care of the tax administration.	

3.3 Trust

Note

This section refers to an **inter vivos trust**, which is a trust that is created and becomes operational (ie is funded) during your lifetime (as opposed to a testamentary trust, which is only set up when you pass away, and a dormant inter vivos trust, which is fully funded after your death).

Continuity	✓	Certain trusts can exist in perpetuity, depending on the terms of the trust deed.
Effective distribution of your assets after death	✓	• You nominate beneficiaries during your lifetime according to the trust deed. The trustees will consider your wishes regarding the distribution of the trust assets when you pass away and will give effect to the termination clause(s) in the trust deed. • The assets won’t form part of your estate, which means there will be less of a delay in the distribution of the assets (since they won’t be subject to the time, liquidity and cost constraints of winding up an estate).
Protection of your dependants	✓	You nominate beneficiaries during your lifetime according to the trust deed and the trustees will consider your wishes regarding the distribution of the trust assets when you pass away.
Protection of your assets from seizure	✓	• The trust is the legal owner of the assets, if you fund the trust by way of a loan or a donation, ie legally transfer ownership of the assets and relinquish all control over the assets. This means that the assets cannot be seized if you become insolvent. • You as founder may still be a co-trustee as well as a beneficiary of the trust.
Flexibility	✓	Fully discretionary trust deeds generally allow the trustees to make decisions at their discretion, enabling flexibility.

Trust (continued)

<table>
<tr>
<td rowspan="2">Tax cost and administration</td>
<td>Taxes</td>
<td>
<p>Income tax and capital gains tax (CGT) rates for trusts</p>
<p>Income tax and CGT will apply to income and capital gains retained in the trust over the tax year end, or capital gains distributed in the same year of assessment to an exempt person.</p>

Income tax rate: 45%
Effective CGT rate: 36% (45% x 80% inclusion rate)

<p>Application of tax rates to distributions of amounts generated in the same tax year</p>
<table>
<tr><th>Scenario</th><th>Tax implication</th></tr>
<tr><td>The trust awards income and/or capital (including gains) to a South African resident beneficiary</td><td>The so-called conduit principle applies – if the award comprises taxable income (such as realised gains, interest, or property rental) the income will be taxed in the beneficiary's hands.</td></tr>
<tr><td>The trust distributes income to a non-resident beneficiary</td><td>The income may be taxed in the hands of the non-resident beneficiary in South Africa if the source of the income is South Africa.</td></tr>
<tr><td>The trust distributes a capital gain to an exempt person (eg a public benefit organisation or non-resident beneficiary)</td><td>The capital gain is taxed in the trust, not in the hands of the exempt person.</td></tr>
</table>
<p>A distribution vested in a beneficiary but not yet paid (also referred to as a 'withheld distribution') may be regarded as a loan, advance or credit advanced by the beneficiary to the trust for purposes of section 7C of the Income Tax Act, depending on the terms of the trust deed.</p>
<p>For more detail on this anti-avoidance rule, refer to <i>this article</i> on our website.
(Available on our website under Products & services > Fiduciary > Fiduciary Focus newsletter > 6th edition).</p>
<p>Estate duty</p>
<table>
<tr><th>Trust funded by a donation</th><th>Trust funded by a loan</th></tr>
<tr><td>Assets held by the trust are excluded from estate duty.</td><td>The value of the loan will be subject to estate duty in the hands of the lender.
The value of the assets (including any growth) held by the trust are excluded from estate duty.</td></tr>
</table>
<p>A loan by the trust to a beneficiary (if allowed according to the terms of the trust deed) does not have to be interest- bearing. It is also deductible for estate duty purposes but must be repaid on death.</p>
<p>See further detail on the taxes involved in setting up a trust below.</p>
</td>
</tr>
<tr>
<td>Tax admin</td>
<td>The trustees are responsible for keeping the appropriate records.</td>
</tr>
</table>

Trust (continued)

Taxes involved in setting up a trust

You can fund a South African discretionary inter vivos trust in one of two ways, with different tax implications:

1. Donation	2. Loan
Donations tax • Donations up to R30 million: flat tax rate of 20% on the value of the assets donated • Donations exceeding R30 million: taxed at a rate of 25% **Capital gains tax (CGT)** • CGT will be triggered whenever assets are disposed of or ownership changes. • A deferral of CGT may apply in certain cases, according to section 42 of the Income Tax Act, ie asset-for-share transactions. **Other** Depending on the actual assets transferred, other costs may also apply, such as transfer duty or securities transfer tax.	**Capital gains tax (CGT)** CGT will be triggered. **Estate duty** The value of the outstanding loan remains part of your estate for estate duty purposes. **Interest-free or low-interest loans** • The forgone interest is deemed to be a donation and donations tax will therefore be levied on the forgone interest portion, subject to the relevant exemptions under section 7C. • The attribution rules could also be triggered, limited to the extent of the interest foregone. For more detail on the impact of section 7C, view our article on *trusts and tax avoidance*. (Available on our website under Products & services > Fiduciary > Fiduciary Focus newsletter > 6th edition). **Interest-bearing loans** • The interest is fully taxable in the lender's hands. • If income is capitalised, the value of the loan will increase. **Other** Depending on the actual assets transferred, other costs may also apply, such as transfer duty or securities transfer tax.

Additional implications to be aware of

- Donations tax paid on the transfer of an asset to a trust will be taken into account when calculating the base cost of that asset for CGT purposes.
- Where a South African trust is funded by a South African resident and there is a gratuitous element (a donation or interest-free loan) linked to the funding of the trust, attribution provisions will apply. This will result in the income and/or gains earned in the trust being attributed (usually limited to the extent of the gratuitous element) to the funder (the person who created the trust), unless the income and/or gains are distributed to a beneficiary during the same year of assessment (as set out above).

3.4 Company

Note

The conditions and limitations below apply where the shareholder is an individual, ie holding the shares in their personal capacity, except for the comments on continuity, which also cater to assets held in the company.

Continuity	✕ Shareholding ✓ Ongoing management of assets held in the company	• If you own or co-own the shares in the company in your personal capacity, control over and access to the shares will be interrupted and the shares will be devolved according to your will. • If the assets are held in the company, eg an investment holding company, and are invested in a discretionary managed share portfolio, the management of this portfolio will continue within the company.
Effective distribution of your assets after death	✕	• The shares will form part of your estate and ownership will be distributed according to your will or in terms of the shareholders' agreement. This could mean that the surviving shareholders have first option to buy the shares from your estate. • Although this means your wishes will most likely be followed, it also means that the distribution of the assets will be subject to the time, liquidity and cost constraints of winding up an estate.
Protection of your dependants	✕	No protection or provision for your dependants, unless you make provision for this in your will by establishing a testamentary trust or appointing a dormant inter vivos trust as heir.
Protection of your assets from seizure	✕	Since you hold the shares in your personal capacity, the shares in the company are an asset in your estate, which means such an asset can be seized if you become insolvent.
Flexibility	✓	Shareholding can be changed easily.

Company (continued)

Tax cost and administration

Taxes

Company

Event	Tax	Tax rate
The company receives income, eg rental income.	Corporate tax, subject to any deductions.	Current rate: 28% (27% for years of assessment ending on or after 31 March 2023).
The company disposes of an asset.	Capital gains tax (CGT)	For companies with a financial year-end of 30 March 2023 or before = 22,4% (80% x 28%) and for companies with a financial year-end on or after 31 March 2023 = 21,6% (80% x 27%).
The company receives dividends from another South African registered company.	Dividends withholding tax does not apply.	

Shareholder – individual

Scenario	Tax implication
You make a loan to the company.	The loan will be an asset in your estate and subject to estate duty.
The company makes a loan to you.	The loan will be deductible for estate duty purposes but would have to be repaid on death. Section 64E(4)(a) of the Income Tax Act should apply during your lifetime.
You receive dividends from the company.	Dividends withholding tax at a rate of 20% will apply, subject to section 64E of the Income Tax Act.
You pass away.	Estate duty and CGT will apply (since the shares will be an asset in your estate).

Tax admin

The directors are responsible for keeping the appropriate company records.

3.5 Trust and company

Continuity	✓	The shareholder is a trust, and certain trusts can exist in perpetuity, depending on the terms of the trust deed.
Effective distribution of your assets after death	✓	Since the shareholder is a trust, the same treatment of the assets will apply: • You nominate beneficiaries during your lifetime according to the trust deed. The trustees will consider your wishes regarding the distribution of your assets when you pass away and will give effect to the termination clause(s) in the trust deed. • The assets won't form part of your estate, which means there will be less of a delay in the distribution of the assets (since they won't be subject to the time, liquidity and cost constraints of winding up an estate).
Protection of your dependants	✓	Since the shareholder is a trust, the same treatment of the assets will apply: you nominate beneficiaries during your lifetime according to the trust deed and the trustees will consider your wishes regarding the distribution of your assets when you pass away.
Protection of your assets from seizure	✓	• The trust is the legal owner of the assets, if you fund the trust by way of a loan, ie legally transfer ownership of the assets, and relinquish all control over the assets. • This means that the assets cannot be seized in case you become insolvent.
Flexibility	✓	• Shareholding can be changed easily. • Fully discretionary trust deeds generally allow the trustees to make decisions at their discretion, enabling flexibility.

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Trust and company (continued)

Tax cost and administration

Taxes

Company

Event	Tax	Tax rate
The company receives income, eg rental income.	Corporate tax, subject to any deductions.	Current rate: 28% (27% for years of assessment ending on or after 31 March 2023).
The company disposes of an asset.	Capital gains tax (CGT)	For companies with a financial year-end of 30 March 2023 or before = 22,4% (80% x 28%) and for companies with a financial year-end on or after 31 March 2023 = 21,6% (80% x 27%).
The company receives dividends from another South African registered company.	Dividends withholding tax does not apply.	

Shareholder – trust

Scenario	Tax implication
The trust receives dividends from the company.	Dividends withholding tax at a rate of 20% will apply, subject to section 64E of the Income Tax Act.
The company makes a loan to the trust.	Section 64E(4)(a) of the Income Tax Act should apply.
The trust is funded by a South African resident by way of a donation or interest- free loan (ie a gratuitous element).	The attribution rules will apply, which means the income and/or gains earned in the trust (usually limited to the extent of the gratuitous element) will be attributed to the funder.

A distribution vested in a beneficiary but not yet paid (also referred to as a ‘withheld distribution’) may be regarded as a loan, advance or credit advanced by the beneficiary to the trust for purposes of section 7C of the Income Tax Act, depending on the terms of the trust deed.

For more detail on this anti-avoidance rule, refer to *this article* on our website.
(Available on our website under Products & services > Fiduciary > Fiduciary Focus newsletter > 6th edition).

Tax admin

The trustees of the trust and directors of the company are responsible for keeping the appropriate records.

Legal ownership options for international assets – detailed breakdown

4.1 Sole name

Continuity	✗ (No endowment) ✓ (Endowment)	Control over and access to the assets will be interrupted, **unless** you hold the investments in an international endowment.	
Effective distribution of your assets after death	✗ (No endowment) ✓ (Endowment)	• The assets will form part of your estate and ownership will be distributed according to your will, unless the investments are held in an endowment, in which case ownership will be transferred to your nominated beneficiary/beneficiaries after death. • Although this means your wishes will most likely be followed, it also means that the distribution of the assets will be subject to the time, liquidity and cost constraints of winding up an estate as well as foreign probate procedures.	
Protection of your dependants	✗ (No endowment) ✓ (Endowment)	No protection or provision for your dependants, **unless** you make provision by: • establishing a ‘freezer trust’ (a dormant inter vivos international trust) during your lifetime and nominating this trust as an heir in your will; or • using an international endowment and nominating the freezer trust as a beneficiary on the policy; or • establishing a testamentary trust (in which case a separate will should be drafted in the jurisdiction in which the testamentary trust will be established).	
Protection of your assets from seizure	✗ (No endowment) ✓ (Endowment)	You are the legal owner of the assets, which means the assets can be seized if you become insolvent. Unlike South African endowments, which are linked to life cover, an international endowment is a sinking fund or pure endowment. As there is no life assured, the entire value of a sinking fund will not be protected against creditors.	
Flexibility	✓ (No endowment) ✗ (Endowment during the first five years)	You can easily transact at your discretion. But if the investments are held in an endowment, certain limitations will apply during the first five years.	
Tax cost and administration	Taxes	South African taxes • **During your lifetime**: income and capital gains tax will apply, since South Africa follows a residence-based system of taxation (ie you are taxed in South Africa on all income and gains, irrespective of where you earn these). • **When you pass away**: the assets will be subject to estate duty and donations tax.	Situs taxes (Taxes in the country where the asset is situated) • Income tax, capital gains tax and estate taxes may apply. • Tax relief may be possible in terms of double taxation agreements (DTAs) and applicable exemptions. (The purpose of DTAs is to provide relief to taxpayers who own assets in different jurisdictions by avoiding as far as possible a scenario where taxpayers pay tax twice on the same asset.)
	Tax admin	You are responsible for taking care of the tax administration and for keeping accurate records of your international assets.	

4.2 Joint names

Note

From a South African perspective, the percentage ownership of the joint owners is deemed to be equal, unless there is evidence of a different ownership split.

Continuity	✓	On the death of a joint owner, the surviving joint owners have continued access to the full value of the asset.	
Effective distribution of your assets after death	✓	The percentage ownership deemed to be owned by the deceased joint owner will transfer to the surviving joint owners in equal shares on death, without the account being frozen or the need to get probate in the relevant country.	
Protection of your dependants	✕	No protection or provision for your dependants. While there are surviving joint owners, the asset is dealt with outside of your estate.	
Protection of your assets from seizure	✕	You are the legal owner of a percentage of the asset, which means that the percentage you own can be seized if you become insolvent.	
Flexibility	✓	You can easily transact at your discretion. Any of the joint owners may (during their lifetime) access or provide instructions on the asset without the consent of the other joint owners, unless agreed otherwise.	
Tax cost and administration	**Taxes**	South African taxes • Estate duty and donations tax will apply, since South Africa follows a residence-based system of taxation (ie you are taxed in South Africa on all income and gains, irrespective of where you earn these). • Where the joint holder(s) is someone other than your spouse and that person did not contribute money to the account, the way that the ownership of the assets was transferred to them, ie loan or donation, will determine the taxes.	Situs taxes (Taxes in the country where the asset is situated) • Income tax, capital gains tax and estate taxes will apply. • Tax relief may be possible in terms of double taxation agreements (DTAs) and applicable exemptions. (The purpose of DTAs is to provide relief to taxpayers who own assets in different jurisdictions by avoiding as far as possible a scenario where taxpayers pay tax twice on the same asset.)
	Tax admin	You are responsible for taking care of the tax administration.	

4.3 Trust

Note

This section refers to an **inter vivos trust**, which is a trust that is created and becomes operational during your lifetime (as opposed to a testamentary trust, which is only set up when you pass away).

Continuity	✓	Certain trusts can exist in perpetuity, depending on the terms of the trust deed.
Effective distribution of your assets after death	✓	• You nominate beneficiaries during your lifetime in terms of the trust deed. The trustees will consider your wishes regarding the distribution of your assets when you pass away and will give effect to the termination clause(s) in the trust deed. • The assets won't form part of your estate, which means there will be less of a delay in the distribution of the assets (since they won't be subject to the time, liquidity and cost constraints of winding up an estate or probate formalities).
Protection of your dependants	✓	You nominate beneficiaries during your lifetime in terms of the trust deed and the trustees will consider your wishes regarding the distribution of your assets when you pass away.
Protection of your assets from seizure	✓	• The trust is the legal owner of the assets, if you fund the trust by way of a loan or donation, ie legally transfer ownership of the assets and relinquish all control over the assets. • This means that the assets are protected from seizure in case you become insolvent or from a potential sovereign attack.
Flexibility	✓	Fully discretionary trust deeds generally allow the trustees to make decisions at their discretion, enabling flexibility.

Trust (continued)

<table>
<tr>
<td rowspan="2">Tax cost and administration</td>
<td>Taxes</td>
<td>
Trust
<table>
<tr><th>Jurisdiction in which the trust was formed</th><th>South Africa</th><th>Country where the assets are situated (situs taxes)</th></tr>
<tr><td>(eg Guernsey or Jersey)
No taxes payable in that jurisdiction.</td><td>No tax payable in South Africa if the ‘place of effective management’ (POEM) is outside of South Africa.</td><td>Possible income tax, capital gains tax and estate taxes (UK and US) will apply.</td></tr>
</table>
Concerned parties (South African residents)
<table>
<tr><th>Settlor/Funder</th><th>Beneficiary</th><th>Amnestied trusts</th><th>Situs taxes</th></tr>
<tr><td>Settlement tax implications must be considered.</td><td>Income and gains will be taxed in the beneficiary’s hands on distribution.</td><td>Attribution and distribution rules should not apply (deemed to be an asset of donor that made the election).</td><td>In the UK, gift with reservation of benefit (GROB) rules may apply.</td></tr>
</table>
</td>
</tr>
<tr>
<td>Tax admin</td>
<td>The trustee(s) are responsible for keeping the appropriate records.</td>
</tr>
</table>

Taxes involved in setting up an international trust

For more detail on the tax consequences of international trusts, refer to our earlier article.
(Available on our website under News & insights > Newsletter > July 2020.) You can fund an international discretionary inter vivos trust in one of two ways, with different tax implications:

1. Donation	2. Loan
Donations tax A donations tax rate of either 20% or 25% will apply. **Attribution rules** Attribution rules could be triggered, resulting in the income and/or gains earned in the trust being attributed (usually limited to the extent of the gratuitous element) to the funder (the person who created the trust).	**Interest-free or low-interest loans** • The forgone interest is deemed to be a donation and donations tax of either 20% or 25% will therefore be levied on the forgone interest portion. • The attribution rules could also be triggered, limited to the extent of the interest foregone. • The loan could also be subject to transfer pricing provisions, if it constitutes an ‘affected transaction’ (as defined in section 31 of the Income Tax Act). *For more detail on what it means if the loan is subject to the transfer pricing provisions, refer to our article on the tax consequences of international trusts.* *(Available on our website under News & insights > Newsletter > July 2020.)* **Interest-bearing loans** • The interest is fully taxable in the lender’s hands. • If income is capitalised, the value of the loan will increase.

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4.4 Company

Note

The conditions and limitations below apply where the shareholder is an individual, ie holding the shares in their personal capacity, except for the comments on continuity, which also cater to assets held in the company.

Continuity	✗ Shareholding ✓ Ongoing management of assets held in the company	• If you own or co-own the shares in the company in your personal capacity, control over and access to the shares will be interrupted and the shares will be devolved according to your will. • If the assets are held in the company, eg an investment holding company and are invested in a discretionary managed portfolio, the management of this portfolio will continue within the company.
Effective distribution of your assets after death	✗	• The shares will form part of your estate and ownership will be distributed according to your will or in terms of the shareholders' agreement. This could mean that the surviving shareholders have first option to buy the shares from your estate. • Although this means your wishes will most likely be followed, it also means that the distribution of the assets will be subject to the time, liquidity and cost constraints of winding up an estate and may be subject to probate formalities.
Protection of your dependants	✗	Your dependants are not protected, unless you make provision for this by: • establishing an international 'freezer trust' and appointing such a trust as heir in terms of your will; or • making provision for the establishment of a testamentary trust in a separate will drafted in the jurisdiction in which such a trust will be established.
Protection of your assets from seizure	✗	The shares in the company are an asset in your estate, which means such an asset can be seized if you become insolvent or if there were to be a sovereign attack on international assets.
Flexibility	✓	Shareholding can be changed easily.

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Company (continued)

<table>
<tr>
<td rowspan="2">Tax cost and administration</td>
<td>Taxes</td>
<td>
Company
<table>
<tr><th>Jurisdiction in which the company was incorporated</th><th>South Africa</th><th>Country where the assets are situated (situs taxes)</th></tr>
<tr><td>(eg Isle of Man)
An annual exempt tax charge may apply.</td><td>No tax payable in South Africa if the ‘place of effective management’ (POEM) and permanent establishment is outside of South Africa.</td><td>Generally, situs taxes won’t apply, except if the company holds UK situs assets.</td></tr>
</table>
Shareholder – individual

All dividends and gains will be taxed in your hands, since South Africa follows a residence-based system of taxation (ie you are taxed in South Africa on all income and gains, irrespective of where you earn these).
If certain legislative requirements are met (section 10(B)(2A), (3) and par 64B of Eighth Schedule), exemptions will apply.
Where one or more South African resident(s) directly or indirectly holds or exercises more than 50% of the participation or voting rights, the net income of the company is attributed to this/these shareholder(s) in terms of the Controlled Foreign Company (CFC) rules.

</td>
</tr>
<tr>
<td>Tax admin</td>
<td>The directors of the company must keep the appropriate records.</td>
</tr>
</table>

4.5 Trust and company

Continuity	✓	The shareholder is a trust, and certain trusts can exist in perpetuity, depending on the terms of the trust deed.
Effective distribution of your assets after death	✓	Since the shareholder is a trust, the same treatment of the assets will apply:: • You nominate beneficiaries during your lifetime according to the trust deed. The trustees will consider your wishes regarding the distribution of your assets when you pass away and will give effect to the termination clause(s) in the trust deed. • The assets won't form part of your estate, which means there will be less of a delay in the distribution of the assets (since they won't be subject to the time, liquidity and cost constraints of winding up an estate or probate formalities).
Protection of your dependants	✓	Since the shareholder is a trust, the same treatment of the assets will apply: you nominate beneficiaries during your lifetime according to the trust deed and the trustees will consider your wishes regarding the distribution of your assets when you pass away.
Protection of your assets from seizure	✓	• The trust is the legal owner of the assets, if you fund the trust by way of a loan or a donation, ie legally transfer ownership of the assets and relinquish all control over the assets. • This means that the assets are protected from seizure in case you become insolvent or from a potential sovereign attack.
Flexibility	✓	• Shareholding can be changed easily. • Fully discretionary trust deeds generally allow the trustees to make decisions at their discretion, enabling flexibility.

Trust and company (continued)

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</table>
Shareholder – trust

Refer to the trust section.
In the UK, shares in a company held by a trust are deemed to be situated in the UK.
Where a trust holds more than 50% of participation rights in a foreign company, participation exemption for foreign dividends will be disregarded for purposes of attribution and distribution rules. Participation exemption for capital gains derived from the sale of foreign shares will also be disregarded.

</td>
</tr>
<tr>
<td>Tax admin</td>
<td>The trustee(s) of the international trust and director(s) of the international investment holding company are responsible for keeping the appropriate records.</td>
</tr>
</table>

International companies owning UK residential property

Various anti-tax-avoidance provisions have been introduced (particularly in the UK) that affect international companies owning UK residential property. These provisions require a careful review to determine the exact tax liability. Relevant taxes can include:

- stamp duty land tax;
- annual tax on enveloped dwellings; and
- non-resident capital gains tax.

In addition, remaining inheritance tax advantages no longer apply. It is critical to get professional advice in this instance.

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How to choose the best option for you

Before you get started, it may be helpful to recap each of the *factors you need to consider* and what they are about.

Important

While the questionnaire below is a helpful guideline to point you in the right direction, it does not replace the value and importance of personal advice based on your interactions and conversations with your wealth manager. As you go through the questions with your wealth manager, it is important that you flag and discuss any concerns or needs you have, whether these are directly addressed in the questions or not.

Questions – set 1

- Where the answer is 'no', circle the black dot.
- Where the answer is 'yes', circle the green dots.
- Where the answer is 'maybe', 'not necessarily' or 'it depends' (ie no strong view or preference), circle the grey dot.

	Sole name – no endowment	Sole name – endowment	Multiple names/Co-ownership – SA assets	Joint names – international assets	Inter vivos trust	Testamentary trust	Company	Trust and company	
									Maybe/Not necessarily /It depends
1. Continuity									
Question 1.1 Is there a risk that your death may result in a disruption of the ongoing management of your assets held in your name?	⚫	🟢	🟢 (fixed property)	🟢	🟢			🟢	⚪
Question 1.2 Do you own closely held stock (such as a family company or farm) or similar assets that should remain in your family for generations?	⚫	🟢			🟢			🟢	⚪

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	Sole name – no endowment	Sole name – endowment	Multiple names/Co-ownership – SA assets	Joint names – international assets	Inter vivos trust	Testamentary trust	Company	Trust and company	
Question 1.3 Is it important to you to avoid disruption of the ongoing management of your assets held in your name if you become incapacitated due to ill health and cannot manage your assets?	⚫	🟢			🟢			🟢	●
2. Effective distribution of assets									
Question 2.1 Is it important to you to minimise executor's fees and/or avoid probate when you pass away?	⚫	🟢		🟢	🟢			🟢	●
Question 2.2 Would your family need immediate access to your assets when you pass away?	⚫	🟢		🟢	🟢			🟢	●
3. Protection of your dependants									
Question 3.1 Do you have dependants who rely on your financial support, now and in the future?	⚫	🟢			🟢	🟢			●
Question 3.2 Do you have dependants who are vulnerable and may need protection if you pass away or become incapacitated?	⚫				🟢	🟢			●

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	Sole name – no endowment	Sole name – endowment	Multiple names/Co-ownership – SA assets	Joint names – international assets	Inter vivos trust	Testamentary trust	Company	Trust and company	
Question 3.3 Is it important to you to protect your assets for future generations?	⚫				🟢				⚪
4. Protection of your assets from seizure									
Question 4.1 Is it important to you to protect the assets that will be inherited by your heirs from the risk of their insolvency?	⚫				🟢	🟢			⚪
Question 4.2 Is it important to you to protect your assets from the risk of your own insolvency?	⚫	🟢			🟢				⚪
Question 4.3 Is it important to you to protect your assets from possible government seizure?	⚫				🟢				⚪
Question 4.4 Is it important to you to protect your assets from potential personal or delictual liability?	⚫				🟢				⚪

	Sole name – no endowment	Sole name – endowment	Multiple names/Co-ownership – SA assets	Joint names – international assets	Inter vivos trust	Testamentary trust	Company	Trust and company	
5. Tax cost and administration implications									
Question 5.1 Is it important to you that the ownership structure of your assets has minimal administrative and/or reporting requirements?	⚫	🟢							⚪
Question 5.2 Do you require the ownership structure to have some flexibility in terms of who is liable for tax?	⚫				🟢				⚪
6. Flexibilty									
Question 6.1 Is it important to you to have flexibility in terms of unbundling a chosen ownership structure?	🟢	⚫		🟢	🟢	🟢	🟢	🟢	⚪
Total									

Next steps

⚫ If you answered 'no' to most of the questions, holding your assets in your own name without the use of an endowment policy may be best for you.

🟢 If you answered 'yes' to most of the questions, an inter vivos trust may be a suitable option for you.

To determine if this is the case and if you are comfortable with the conditions and limitations relating to trusts, go to the second set of questions on the next page.

⚪ If you answered 'maybe' to some of the questions, continue to the second set of questions on the next page to clarify what may be a suitable option for you.

Questions – set 2

	Yes	No
Question 1 Are you willing to relinquish control over your assets?		
Question 2 Do you believe the benefits of a trust (such as the ongoing management of the trust assets after your death, providing your beneficiaries with immediate access to money, protection of your dependants, etc) outweigh the potentially higher income and capital gains tax (CGT) rates?		
Question 3 Do you believe the benefits of a trust justify the cost involved (eg upfront tax costs such as potential donations tax, CGT on the transfer of existing assets to the trust, transfer duty or securities transfer tax, and the ongoing running costs of a trust such as trustee fees and fees for the preparation of annual financials for the trust) and the administration (such as keeping appropriate records, maintaining a separate trust bank account, and adhering to regulatory requirements)?		
Question 4 Transferring an existing asset to a trust may lead to a potential tax liability now (as mentioned above). But there may be potential to 'peg' the value of growth assets for the purposes of estate duty and in terms of allocations of taxable income/gains going forward. Are you comfortable with the potential tax liability that could be triggered now?		
Question 5 Is it unlikely that the relationship between you (the donor to the trust) and the trust beneficiaries may sour?		
Question 6 If you own offshore assets in your own name, are your South African assets currently held in a trust?		
Total		

Next steps

● If you answered **'yes' to four or more** questions, holding your assets in an **inter vivos trust** may be a suitable ownership option for you.

Find out more:

- *Local trusts*
- *International trusts*

● If you answered **'no' to four or more** questions, holding your assets in an inter vivos trust may not be suitable for you. You should consider **other ownership structures** like a testamentary trust, holding assets in your sole name via an endowment policy, or joint accounts.

Consider your options:

- *Local ownership structures*
- *International ownership structures*

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