



# DAVEY'S Locker



Davey's Locker

July 2013

## Trust tax issues

### A reprieve for trusts

by Tony Davey

© 2013 A H Davey (tonyd@harding.co.za www.tonydavey.com)

In 120 *TSH* 2013 I commented on the Budget proposal that the tax treatment of trusts be reviewed, the Treasury's perception being that trusts were being used for tax-avoidance purposes, a view I consider to be superficial, given the 1 000-year pedigree of trusts. Yet the 2013 Taxation Laws Amendment Bill contains no amendments to the taxation of trusts.

I understand from a meeting between the Treasury, SARS and various professional bodies that any amendments to trust taxation in the future will be holistic, as distinct from *ad hoc*, and undertaken in the context of a review of estate duty, the CGT and other taxes to be undertaken by the recently appointed Tax Commission.

#### Amnestied offshore trusts

This year marks the tenth anniversary of the 2003 tax and forex amnesty, which included relief on foreign assets held by offshore trusts. A condition for amnesty was that income and capital gains of such trusts are attributable to resident amnesty applicants but not estate duty.

The UK tax authorities have a

birthday surprise for some of these trusts—those directly holding qualifying UK '*situs*' assets. Such assets, which include cash in a UK bank and shares in UK registered companies (but excluding wrapper-structures, for example, endowment policies and collective investment schemes) are subject to UK inheritance tax every ten years.

In essence, the nil-band amount (exempt threshold) is £325 000, while the balance attracts inheritance tax at the rate of 30% of the lifetime gift rate (20%).

Limited exemptions apply, which may be viewed on the UK Tax Authority website [www.hmrc.gov.uk/inheritancetax](http://www.hmrc.gov.uk/inheritancetax).

A band-aid solution is for the trust to realize the foreign assets before the tenth anniversary of the holding and to reinvest in an exempt wrapper.

One consequence will be that a CGT disposal will be triggered, and the SA tax authorities will then take their slice of the birthday cake from the resident, on the basis of the amnestied foreign trust attribution rules.

*tsh*