

Tax and “disabilities” – how “special” are your trusts?

Introduction

Much has been written about the complex tax law changes that have been made in respect of the tax deductions for “qualifying medical expenses” where a “disability” exists within the family. These issues are becoming even more pertinent and pressing at this time of year as a consequence of “tax season”. Substantial refunds have already been received for current and prior-years as a result of specific specialist tax advice in this area.

Taxpayer’s/Parents are therefore urged to seek specialist tax law advice in this area so as to maximize their refunds for the 2010 tax year and prior year’s. For detailed information on this visit www.bendelsbendelsconsulting.co.za - “Press Box” and for specialist advice on this contact Eugene Bendel at ebendel@bendelsconsulting.co.za A further discussion on these benefits is beyond the scope of this article.

Special Trusts

This article deals with particular tax benefits for people with “disabilities”, which Parliament brought into our statute books approximately 10 years ago. The point for discussion here is the creation of a “special trust” as defined in section 1 of The Income Tax Act.

A “special trust” obtains beneficial tax treatment to “normal” inter vivos trusts and testamentary trusts, in particular lower income tax rates and capital gains tax benefits.

SARS issued an internal memorandum on “Special Trusts” on 5 March 2009 (such memorandum is publicly available on www.sars.gov.za). It is clear – because of the many complex tax changes that have taken place in our law in relation to “disabilities” over the past few years – the memorandum is outdated and/or contains errors. Caution should, therefore, be exercised when reading and reviewing the SARS document.

JOHANNESBURG

T +27 11 881 5749 **F** +27 11 881 5611
A 2nd Floor, West Tower Maude Street
Nelson Mandela Square, Sandton, 2196

CAPE TOWN

T +27 21 526 0444 **F** +27 21 526 0311
A 1st Floor Foyer 3 The Colosseum
Century Way, Century City, Cape Town, 7441

E ebendel@bendelsconsulting.co.za
W www.bendelsconsulting.co.za



A “special trust” as defined in our law in section 1 The Income Tax Act (as relates to “disabilities”) means a trust created –

- (a) solely for the benefit of a person who suffers from –
- (i) any “mental illness” as defined in section 1 of The Mental Health Care Act (Act. No.17 of 2002);
 - (ii) any serious physical disability, where such illness or disability incapacitates such person from earning sufficient income for the maintenance of such person, or from managing his or own financial affairs.....”

The above raises several questions:

- what is a mental illness as defined (what documentation/certification is required to confirm such illness). It is noted here that abovementioned section 1 of The Mental Health Care Act does not itself define any mental illnesses;
- what is a serious physical disability;
- what is sufficient income (i.e. what may be sufficient for one person may be wholly insufficient to another due their own particular facts and circumstances);
- how does the definition of disability mentioned above relate (if at all) to the new definition of “disability” as set out in section 18(3) of The Income Tax Act.

It is noted here that some recent drafts of “special trusts” use a term “MEDICALLY HANDICAPPED”. In our tax law, there is no such term. A review of existing trusts is thus recommended and specialist tax law advice should be sought, if considered appropriate.

Notwithstanding the fact that the above highlights complexities relating to “special trusts”, it should be emphasized that the tax benefits available (as laid out by Parliament) to taxpayers from having a special trust created can be substantial.

In summary, therefore, where “disabilities” exist within a family unit, it is recommended that detailed tax law consideration be given to reviewing existing trusts (special, or otherwise). For trusts not yet created, specialist tax law advice is similarly recommended so as to obtain the beneficial tax benefits in full accordance with our current tax laws.

JOHANNESBURG

T +27 11 881 5749 **F** +27 11 881 5611
A 2nd Floor, West Tower Maude Street
Nelson Mandela Square, Sandton, 2196

CAPE TOWN

T +27 21 526 0444 **F** +27 21 526 0311
A 1st Floor Foyer 3 The Colosseum
Century Way, Century City, Cape Town, 7441

E ebendel@bendelsconsulting.co.za
W www.bendelsconsulting.co.za



BENDELS
CONSULTING

Tax Consulting - Beyond Best Practice

Disclaimer

This article is intended to be used as a basis for further discussion and nothing herein constitutes any advice on the part of EB Financial Services CC, trading as Bendels Consulting, Eugene Bendel or any parties related thereto. None of the aforementioned parties shall accept any legal liability, or otherwise for any reliance or decisions based upon any of the information contained herein.

For further information and advice, please do not hesitate to contact Eugene Bendel on ebendel@bendelsconsulting.co.za

JOHANNESBURG

T +27 11 881 5749 **F** +27 11 881 5611
A 2nd Floor, West Tower Maude Street
Nelson Mandela Square, Sandton, 2196

CAPE TOWN

T +27 21 526 0444 **F** +27 21 526 0311
A 1st Floor Foyer 3 The Colosseum
Century Way, Century City, Cape Town, 7441

E ebendel@bendelsconsulting.co.za
W www.bendelsconsulting.co.za