



## Can You Really Operate Your Business as a Trust?

Can you really operate your business as a trust? What about the high tax rate? Won't the receiver come after you? These are some of the questions most business owners will ask you if you tell them you run their business as a trust.

A trust is mostly set up by people to protect their personal assets against the risk of the business failing, to ensure the continuity of a business and to limit estate duty and other taxes.

But choosing to run your business as a trust is the best thing you can do. Very few people realise that you can trade out of a business trust, just as easily as you would trade out of a CC, Company, Sole Proprietor or Partnership. A Business Trust is a legal vehicle to do business in and when you understand the advantages of a business trust, you'll never ever trade out of any other business vehicle unless there are some obscure reasons why you can not trade out of a trust.

Some reasons why it's a good idea to register a business as a trust.

- A trust offers **increased protection against liability from your personal capacity**. Unlike in the case of a business owner who runs a company or CC, the court cannot come after a business owner who runs a trust if they commit a wrong-doing in their personal capacity. The owner of a CC holds the membership in his name, which becomes part of his personal assets. Now when the owner does something wrong in his personal capacity, the creditor can decide to attach, his house, car, furniture or membership from his CC.

[WWW.VODACOMBUSINESSTOURISM.CO.ZA](http://WWW.VODACOMBUSINESSTOURISM.CO.ZA)

New customers can call **082 1930\*** and existing customers can call **082 1940\***

\* Calls free from your Vodacom cellphone



Thus the business owner puts his business (CC) at risk when doing anything in his personal capacity. When it is a business trust the business owner does not hold any right of this business in his personal name and thus is not putting his business at any risk.

- A trust offers **increased protection against liability which you may incur in your business capacity**. Should your CC or Company fail for non compliance of any of the many requirements in the company / close corporation acts, you, the member of the CC could be held personally liable for the debts of the CC. This means that the creditors of your business could in the event of non compliance in terms of the acts or mismanagement legally attach your personal assets (and in certain scenarios your spouse's assets) for the failure of the CC. That is how easy it is to pierce the corporate veil. In a business trust scenario, should your business fail for whatever reason in the trust, the business creditors can not come to you (or your spouse) personally to attach your assets. Legally they are only allowed to attempt to attach the assets in the business trust.
- A trust is **not subject to estate duties, value added tax (VAT) or capital gains tax** when the estate is wound up. Let us assume that the value of your business increases from R1 when you started to a value of R2 million when you pass away. When this business is run as a CC and you pass away, your membership that is held in your personal capacity becomes part of your asset column in your estate when it gets wound up. Playing this scenario out you could pay 20% estate duty on the R2 million, which is R400,000, an additional 10% capital gains tax of R200,000 and possibly VAT (as it was a business). If the business traded via a business trust, you would have saved the R600,000 in taxes and the VAT implications. Now this is something to think about when you have your own business and how this will impact on the value of the business you are leaving your heirs especially if they are to carry on

[WWW.VODACOMBUSINESSTOURISM.CO.ZA](http://WWW.VODACOMBUSINESSTOURISM.CO.ZA)

New customers can call **082 1930\*** and existing customers can call **082 1940\***

\* Calls free from your Vodacom cellphone



trading in the business. Most businesses implode in one generation due to these death taxes, which is one of the most destructive taxes you could get.

- A trust **provides flexibility when moving money**. In your trust it is possible to move money to other business vehicles (e.g. your other businesses), any specified individuals (e.g. children, spouse, parents, grandparents etc), or any charitable organisations, without any adverse accounting or tax effects. Actually this should even, when correctly planned, reduce your tax liability. Now how do you move money around like this in a CC or Company? You cannot do this without an adverse effect on your companies' tax liability or doing something illegal.
- Trusts are also **flexible as business owners, new partners and beneficiaries can be added or removed** according to what the trust deed specifies. Trusts can also be set up to be the owner of shares.
- A business trust **does not need to be audited**. An audit function on a company is time consuming and expensive and most of the time unnecessary – BUT always a compulsory statutory requirement. Should you decide to audit a business trust (which you don't need to), the audit fees are drastically reduced, due to the smaller amount of work that is required when you decide to audit a business trust.
- A trust **does not have to comply with the Companies Act**. This is another time consuming factor when trading through a company. I see new and old, small and big businessmen spending most of their time trying to comply with the stringent articles and prescribed administration of the Companies act and then have very little time left to spend time on their core business and income producing activities. Why not try your hand at a business trust and see how much more time you have for your business without breaking the law by not complying with the Companies act.

[WWW.VODACOMBUSINESSTOURISM.CO.ZA](http://WWW.VODACOMBUSINESSTOURISM.CO.ZA)

New customers can call **082 1930\*** and existing customers can call **082 1940\***

\* Calls free from your Vodacom cellphone



- With a Business Trust **continuity and generation skipping is possible.** Continuity becomes more difficult when it comes to other forms of business vehicles, while a trust could exist in perpetuity.
- The tax rate for **trusts, at 40%, might be high,** but business owners who run companies or CCs, which are both taxed at 28%, will be subject to more or less the same rate if they declare dividends because the Secondary Tax on Companies (STC) of 10% will kick in. Also if the business owner declares a salary out of his company to himself, he will also pay 40% tax in his individual hands, if he falls into the highest tax margin.
- However, I have consistently over the last couple of years **been able to reduce the 40% tax rate levied** on trusts to even as low as 8% for one particular client. Lowering the tax rate depends on numerous variables in your business and how you structure the trust, but an average tax rate you can work on if done correctly is between 15% - 22%.
- Business trusts **have to be registered with the Master of the High Court.** Registration fees range from R3 500 to R7 000, which is a lot higher than those for companies and CCs, which are about R450 and up-wards. The big BUT is that as mentioned earlier - a trust does not need to have a chartered accountant or be audited, which cuts your annual accounting cost by at least R2500 to R8000 per year. This saving alone justifies the once off initial cost.

Business owners can be both a trustee and a beneficiary in the trust. The South African Receiver of Revenue (SARS) announced recently that it would be scrutinizing trusts, but this doesn't represent a threat to business owners who have been operating trusts properly. The more honestly you run your trust, the more it would protect you.

[WWW.VODACOMBUSINESSTOURISM.CO.ZA](http://WWW.VODACOMBUSINESSTOURISM.CO.ZA)

New customers can call **082 1930\*** and existing customers can call **082 1940\***

\* Calls free from your Vodacom cellphone



Let's look at one example of how you could use your trust structures.....

You buy a vehicle into an asset trust. The asset trust then leases it to your business trust. In this scenario you are protected, as your assets (e.g. your vehicle) are in a separate trust from your business. Should your business trust fail, your assets are protected from your business creditors. Also the lease between your asset trust and business trust makes it very advantageous for serious tax savings when done correctly and staying within the tax law (doing everything legally).

Here is something to make your life a bit easier when choosing a structure to do business in. There are basically only three vehicles you could trade through: 1) Your own name, 2) A CC/Company or 3) A Trust. By way of elimination, you'll never ever do business in your own name. And when you understand a trust and its numerous benefits and all the drawbacks of a company (e.g. Companies Act, Audit fees, annual renewal fees, inflexible, very little protection, continuity issues etc), you'll eliminate a company as well. This leaves you with a business trust.

## Conclusion

I would like to conclude with the following story I frequently use in my seminars. "Pilots have a saying: "flying is 99% boring, punctuated with a few moments of intense fear". They gear all their effort to eliminating those few moments of intense fear. When you are 10,000 metres above ground any small failure in the aircraft could mean death, so pilots are very particular about checking and re-checking every aspect of their airplane before they leave the ground. There are only two types of pilots -- good pilots and dead pilots. And there are very, very few dead pilots".

[WWW.VODACOMBUSINESSTOURISM.CO.ZA](http://WWW.VODACOMBUSINESSTOURISM.CO.ZA)

New customers can call **082 1930\*** and existing customers can call **082 1940\***

\* Calls free from your Vodacom cellphone



In contrast, entrepreneurs take to the entrepreneurial skies without checking the vehicles in which they fly their businesses. As a result they fly in intense fear. Ninety-six per cent of all new businesses fail in their first five years of existence. These are not my statistics, but those of STATS SA. So why put all your personal assets and belongings (and even your spouse's assets) at risk when you start your own business, when you can ring fence that risk? Putting your assets in separate and correct trust vehicles that will act as a fortress around your current and future wealth is a good idea.

**To “Trust” or not to “Trust”? That is the question.**

**Philip Viviers (Managing Director of ONEtax Business Trust)**  
**[www.onetax.co.za](http://www.onetax.co.za)**  
**012 661 6796**

**[WWW.VODACOMBUSINESSTOURISM.CO.ZA](http://WWW.VODACOMBUSINESSTOURISM.CO.ZA)**

New customers can call **082 1930\*** and existing customers can call **082 1940\***

\* Calls free from your Vodacom cellphone