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see money differently

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INTRODUCTION

Welcome to the 7th edition of our Fiduciary Focus newsletter.

We hope you find these articles informative – enjoy the read.

Is a new wealth tax feasible in South Africa? Read the Davis Tax Committee's view.
Under estate planning, we discuss the recently published findings of the Davis Tax Committee's final report on the feasibility of introducing a proposed new wealth tax in South Africa. The report proposes that several issues should be addressed before a new wealth tax can be implemented, including collating more comprehensive data on wealth ownership.

Practical tips to ensure your wealth is a benefit – not a burden – for your loved ones.
Trusts can help you protect and grow wealth for your beneficiaries during and after your lifetime. In this edition under the trusts section, we explain the difference between an inter vivos and testamentary trust by highlighting the purpose and benefits of each type of trust. In the wills section, we look at what will happen to all your online accounts and other 'digital assets' when you die and provide practical tips to ease the burden on your loved ones.

We encourage you to take advantage of our expertise and advice.
Everyone's family situation and needs are different. This means the practical tips we provide in this edition may apply differently to your circumstances, and depending on any other wealth structures you already have in place. Expert personal advice is critical. We therefore encourage you to contact your relationship manager or regional fiduciary specialist to get advice about how best to structure and protect your wealth.

Fiduciary specialist team.

Tracy Muller	**Ronel Williams**	**Devs Moodley**	**Priscilla Reddhi**	**Elana Oosthuizen**
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Is an additional wealth tax feasible in South Africa?

The Davis Tax Committee (DTC) recently published its final report on the feasibility of introducing a proposed new wealth tax in South Africa.
This article provides a summary of the DTC key findings and recommendations.

The report had four main objectives:

1. Provide an empirical review of the global literature on wealth taxation.
2. Describe the current state of wealth inequality in South Africa.
3. Evaluate the feasibility of increasing the share of wealth taxes in the overall tax mix in South Africa to achieve the goal of reducing wealth inequality in a way that is economically and administratively efficient.
4. Examine the potential contribution of wealth taxes to South Africa's revenue streams.

The DTC is advisory in nature and makes recommendations to the Minister of Finance. The Minister will take into account the report and recommendations and will make any appropriate announcements as part of the normal budget and legislative processes. As with all tax policy proposals, the proposals will be subject to the normal consultative processes and parliamentary oversight once announced by the Minister of Finance.

THE RATIONALE FOR A WEALTH TAX.

Wealth inequality in South Africa is a threat to social stability and inclusive growth.
Empirical evidence suggests that in South Africa, wealth inequality (with a Gini coefficient above 0.9) is extremely high and is, in fact, not just higher than income inequality (which has a Gini coefficient of 0.67) but also higher than global wealth inequality. The Gini coefficient is a measure of income inequality, ranging from 0 to 1. A value of 0 represents a perfectly equal society and a value of 1 represents a perfectly unequal society. It is therefore timely for South Africa to consider a range of ways in which wealth inequality can be reduced.

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ESTATE PLANNING

THE CONSIDERATIONS THAT ARISE FROM AN ASSESSMENT OF THE EXISTING TAX BASE.

We need to take stock of recent developments and the current tax base.

The adverse consequences of wealth taxation such as capital migration, disincentives to save, and the effect on entrepreneurship and employment must be thoroughly considered. Income streams arising from wealth are today taxed on a far wider base than 20 years ago, so it is necessary to take stock of recent developments and the existing tax base. Below is a summary of the DTC's key findings.

1. **Cash and savings.**
   The after-tax interest rate earned on savings is already below the inflation rate. If subjected to a wealth tax, the real growth rate of savings will fall even further below the inflation rate and will aggravate our already poor savings culture. A wealth tax may result in more retired individuals, who are living on savings, being unable to sustain themselves without exhausting their savings before they die, thereby becoming reliant on the State or others.

2. **Listed investments and collective investment schemes.**
   The combined emphasis on Capital Gains Tax (CGT) and dividends tax since 2001 causes some concern about imposing a wealth tax on investments.

3. **Retirement funds.**
   A substantial proportion of South Africa's wealth is held in retirement funds, and these represent a major component of lower income earners' wealth. It can be argued that any form of wealth taxation will be largely ineffective if retirement funds are granted complete exemption, but the imposition of wealth tax on retirement funds has every potential to create enormous administrative complexity unless imposed at a flat rate on the gross assets. This, however, would make no distinction between rich and poor retirement fund members. The imposition of wealth tax on retirement funds will have far-reaching implications in the long term, but concessions (like the dividend tax exemption in 2012) granted to retirement funds in recent years are perhaps overly generous.

4. **Immovable property.**
   Any suggestion about a land tax needs to be considered with an awareness of, and sensitivity to, current debates relating to land ownership, as well as concerns about the vast disparities in wealth in South African society. Taxes are already levied on property, such as Transfer Duty, VAT, CGT and municipal rates.

   The reasons to implement a land tax include:

   a. It is generally considered to be the least distortive of all taxes and least harmful to economic growth.
   b. Ownership of land is generally easy to establish, making it possible to identify who is liable for the tax.
   c. It is a 'presumptive tax' (in other words, the tax is levied irrespective of whether the owner of the land is in fact extracting the 'economic rent' from the land). This promotes and encourages efficient use of land and discourages unproductive use, such as simply leaving land vacant.
   d. Taxing land reduces the likelihood of land price bubbles.

However, policy regarding any land tax would need to consider:

a. Liquidity and the ability to pay.
b. Singling out one asset class would disproportionately affect those who hold relatively more of their wealth in property. This would also likely affect middle-income families (who tend to hold a greater proportion of their wealth in immovable property) more than the very wealthy. The top 10 percent of the population of South Africa own more than 90 percent of the total wealth in the country. It therefore comes as no surprise that, when using wealth as a measure of living standards, the so-called 'middle class' is a very small group.
c. Valuation problems, because different municipalities use inconsistent approaches to determine property values. The administration of the current system needs to be improved first.
d. Transfer duty is a significant impediment to buying and selling property, which causes property owners to continue to hold property that no longer serves their needs, rather than sell and buy a different property.
e. The total tax on the gains from the transfer of high-end residential property can be as much as 31% if Transfer Duty and CGT are combined, which may cause stagnation in the residential property market. This reduces related capital and revenue income tax collections. Given the current state of South Africa's tax collection, it is unrealistic to propose the unilateral or immediate withdrawal of Transfer Duty. It is equally unwise to propose a further tax of residential property through a wealth tax, at least until the adverse impact of the Transfer Duty rate can be reduced.

5. **Rates and taxes on land and improvements.**
   There is technically an argument for a wealth tax to be imposed on land and buildings. This would have the advantage of collecting tax on a monthly or annual basis over the holding period of the property as opposed to delaying taxation through the transfer duty system until sale or transfer.

   However, the following issues would need to be addressed:
   - The Transfer Duty issue mentioned in section 4, above.
   - The effect of double taxation at local government and national level.
   - Possible inconsistency between local government rating policies and a wealth tax at national level.
   - Complexity about business property, farming land and tribal land.
   - The basis of valuation.
   - The impact on recipients of a land redistribution programme.

6. **A recurrent tax on net wealth.**
   A net wealth tax is a tax imposed on the difference between the sum of all wealth and the sum of all liabilities. Measuring net wealth is a complex process and requires a clear understanding of what constitutes assets and liabilities. Most submissions were not in favour of a net wealth tax. The following questions would need to be considered regarding a net wealth tax:
   - Should all wealth and retirement savings be included?
   - Which liabilities should be included?
   - Is the individual the most appropriate tax unit or should the tax apply to households or couples?
   - How should one treat residents versus non-residents?

ESTATE PLANNING

THE DTC RECOMMENDATIONS.

We need to address specific challenges before implementing any further wealth tax.

The DTC suggested that while a recurrent net wealth tax may be an admirable and desirable form of wealth tax, we need to first address the challenges and unintended consequences of further wealth taxes before implementing them. This is essential to ensure that any such tax is well-designed and will yield more revenue than the cost of administration. The legislative and administrative processes required for both SARS and the taxpayer will be significant and must not be underestimated.

To create a wealth tax, we must consider the current tax base and have better data and admin.

The process of creating a wealth tax needs to start with the consideration of a very simple form of annual net wealth tax. The decision however cannot be made without:

- Further consideration as to the appropriate tax base, in other words, which forms of wealth should be included – specifically, should retirement funds be included?
- Comprehensive data on patterns of wealth ownership.
- An evaluation as to whether revenue generated by the wealth tax would exceed the administrative and economic burden on taxpayers and revenue authorities.
- The quality of existing data on wealth must be significantly improved. The DTC suggested:
  - All taxpayers and beneficial owners of wealth (which includes control of trusts and beneficiaries thereof) that are required to submit an income tax return must be required to include the market value of all readily ascertainable wealth in a revised tax return for the 2020 year of assessment. Taxpayers should also be required to disclose the existence of other forms of wealth where the market value is not readily available (such as membership of defined benefit retirement funds, shares in private companies, intellectual property, and personal assets above a basic threshold).
  - The non-disclosure penalty provisions of the Tax Administration Act should be revised to make provision for implementation of substantial penalties where taxpayers fail to disclose the existence of their wealth.

The DTC recommends that the focus should initially be on increasing estate duty collections.

Their view is that their previous reports and recommendations about Estate Duty have not been implemented fully, even though the administrative capacity already exists.

While we have existing wealth taxes, there are other tools to address inequality.

South Africa has existing wealth taxes in the form of Transfer Duty, Estate Duty and Donations Tax. These currently raise very small amounts of tax revenue. A wealth tax is not, however, the only available instrument to address income and wealth inequalities. Other ways to address inequality include land reform, programmes on the expenditure side of the fiscal budget such as increased access to quality health and education, and the provision of infrastructure and effective government to improve growth and employment. A decrease in unauthorised and wasteful government expenditure and enhanced tax morality will also help.

TRUSTS

Choosing the right trust – inter vivos or testamentary trust?

It's important to get professional advice when deciding which trust structure to use.
This article highlights some of the key differences between a testamentary trust and an inter vivos trust. It also highlights some of the complexities associated with trusts and why it is so important that you seek professional advice to help you decide which type of trust will be best for your circumstances.

Trusts are tools to protect and grow wealth for your beneficiaries during and after your lifetime.
A trust is an important financial and estate planning tool that, together with your will and other structures, can help protect your personal and business assets during and after your lifetime for your intended beneficiaries. It is critical to get expert advice so that you choose the right trust for your needs and circumstances, because different trusts have different purposes, benefits and limitations.

There are two basic types of trusts, designed to meet specific needs:

01 TESTAMENTARY TRUSTS

The terms of this trust are written into your will and only come into existence after your death. Your will therefore forms the basis of the trust document. In many instances this type of trust seeks to **protect the interests and inheritance of minors** or vulnerable members of the family (such as elderly parents or spendthrift major children) following their parents death, or the death of the financial provider, and is therefore appropriate in these circumstances. Since the trust is only established on your death, it **does not provide any protection for your assets during your lifetime.**

02 INTER VIVOS TRUSTS (ALSO CALLED A LIVING OR FAMILY TRUST)

You can set up this type of trust at any time. The trust document will be a trust deed which will contain the terms of the trust. It is a wealth structuring tool that is used for various purposes and this type of trust protects assets across generations if you want to leave an **inter-generational legacy** and can enable you to **support beneficiaries financially** during and after your lifetime.

Please speak to your wealth manager if you would like to arrange a meeting to discuss your unique situation with your regionally located fiduciary specialist.

TRUSTS

01 Testamentary trusts

This is for parents with minor children or people with vulnerable members in the family.

A TESTAMENTARY TRUST MAY BE SUITABLE FOR YOU IF YOU:

- have children below the age of 18 who are still financially dependent on you; and/or
- have vulnerable members in your family such as elderly parents, spendthrift major children, children suffering with substance abuse; and
- want peace of mind that your children/family members will be taken care of when you are no longer able to do so yourself through the safeguarding and optimal use of their inheritance.

Purpose – this trust helps you to protect and manage the inheritance of a minor child or a vulnerable member of your family.

According to South African law, an inheritance cannot be paid to minor children. This means that, in the absence of a testamentary trust or any other specific testamentary provision, assets left to minor children will be sold, and either placed in the Guardian's Fund or in an account in the name of the child's legal guardian. In the Guardian's Fund the money is either paid to the child when they reach the age of majority (18 years) or paid directly to the legal guardian of the child. In the case of vulnerable family members, a testamentary trust can be useful as you can direct how and when funds should be paid to such members of the family. A testamentary trust therefore facilitates the sound management and control of assets allocated to minor children and vulnerable members of your family, thereby protecting their interests.

In addition to the above, a testamentary trust or an inter vivos trust can also be used to protect the interests of a disabled or mentally challenged child or family member who will not be able to earn an income or provide for their needs. Provided that the terms of the trust comply with the necessary requirements, the trust may be registered as a special trust with the South African Revenue Service resulting in all income and gains in this type of trust being taxed at the individual tax rates and not the tax rates for trusts.

TRUSTS

How a testamentary trust works.

- The trust is created upon your death, based on a specific stipulation in your will that a trust be set up, who the trustees will be and what powers they will have.
- If, for any reason, your will is invalid, the trust will be invalid and will not come into effect. It's therefore important to ensure that your will meets the specific, basic requirements to be deemed valid.

What you should consider when appointing a trustee.

- The trustee is the person who will decide how the inheritance set aside for your children and/or vulnerable members of your family will be managed, and how much money should be spent on their care and maintenance until, as for example in the case of minor children, they reach a specific age.
- The person you nominate as a trustee should therefore have the necessary skills and experience to manage your children's inheritance.
- Although you can nominate the same person to be both trustee and guardian of your child, this can cause a conflict of interest. It is therefore advisable to appoint an independent person as a trustee.

Taxes – your assets will still be liable for estate duty.

A testamentary trust only comes into existence after your death. At the time of death, your assets still belong to you and will therefore form part of your estate. This means estate duty (if applicable) will first be subtracted from your estate, before being transferred into the trust.

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02
Inter vivos trusts

This is for those who want to protect their assets for future generations during and after their lifetime.

AN INTER VIVOS TRUST MAY BE SUITABLE FOR YOU IF:

- you have growth assets that you want to remain in your family for future generations and that you want to protect from poor decision-making by beneficiaries;
- you want to support beneficiaries during your lifetime and after your death by providing for them financially;
- you want to ensure that your death has minimal impact on your assets by providing for seamless continuity of these assets on your death;
- you want to protect your assets both during and after your lifetime; and
- you want to limit the impact of costs, such as executor's fees and estate duty on your death.

How it works.

- An inter vivos trust is established during your lifetime to manage assets for you and your beneficiaries.
- You transfer assets and/or cash into the trust during your lifetime either by way of a loan or donation (cognisance however needs to be taken of the tax consequences linked to both loans and donations made to trusts which are outside the scope of this article).
- You have a say in how the trust deed is drafted to ensure it reflects your wishes as to how the trustees should manage the trust assets. The trustees are bound by the deed and trust legislation and can only act within the powers this gives them.
- You can determine which beneficiaries may receive an income from the trust and which may receive capital.

TRUSTS

Key benefits.

- **Overcome challenges related to dividing up assets between beneficiaries.**
  A trust deals with the problems of dividing up assets between beneficiaries, such as a primary home or holiday house, by providing a vehicle for the joint ownership of these assets. Because there is no limit on the life of a trust, the holiday house will be managed by the trustees for current and future generations.
- **Peg the value of your estate to limit estate duty.**
  By transferring assets that are likely to increase in value (such as shares) to a trust, you can reduce or eliminate the estate duty payable on them over time. This is because the growth in the value of the shares will occur in the trust, not in your estate. The asset also won't form part your beneficiaries' estates when they die, since the asset remains the property of the trust and thus would not be subject to estate duty in their estates. You can also save on an executor's fees and other estate costs.
- **Protect your personal assets against the risk of your business failing.**
  If you have a business in your name, the trust may provide protection of your personal assets in the case of your business becoming bankrupt. If you become insolvent, it makes it more difficult for your creditors to claim against the assets held in the trust, even if you are one of the trustees.
- **Protect your assets if you become incapacitated and aren't able to manage your affairs.**
  If you have an existing trust, it won't be necessary to appoint a legal representative to manage your financial affairs if you become mentally incapacitated.
- **To 'house' your international assets.**
  An international trust set up in a properly regulated offshore financial centre such as Guernsey, is an ideal vehicle for housing your international assets. It offers all the traditional benefits of a trust and can help you avoid the complexity and costs of winding up your estate in foreign jurisdictions.

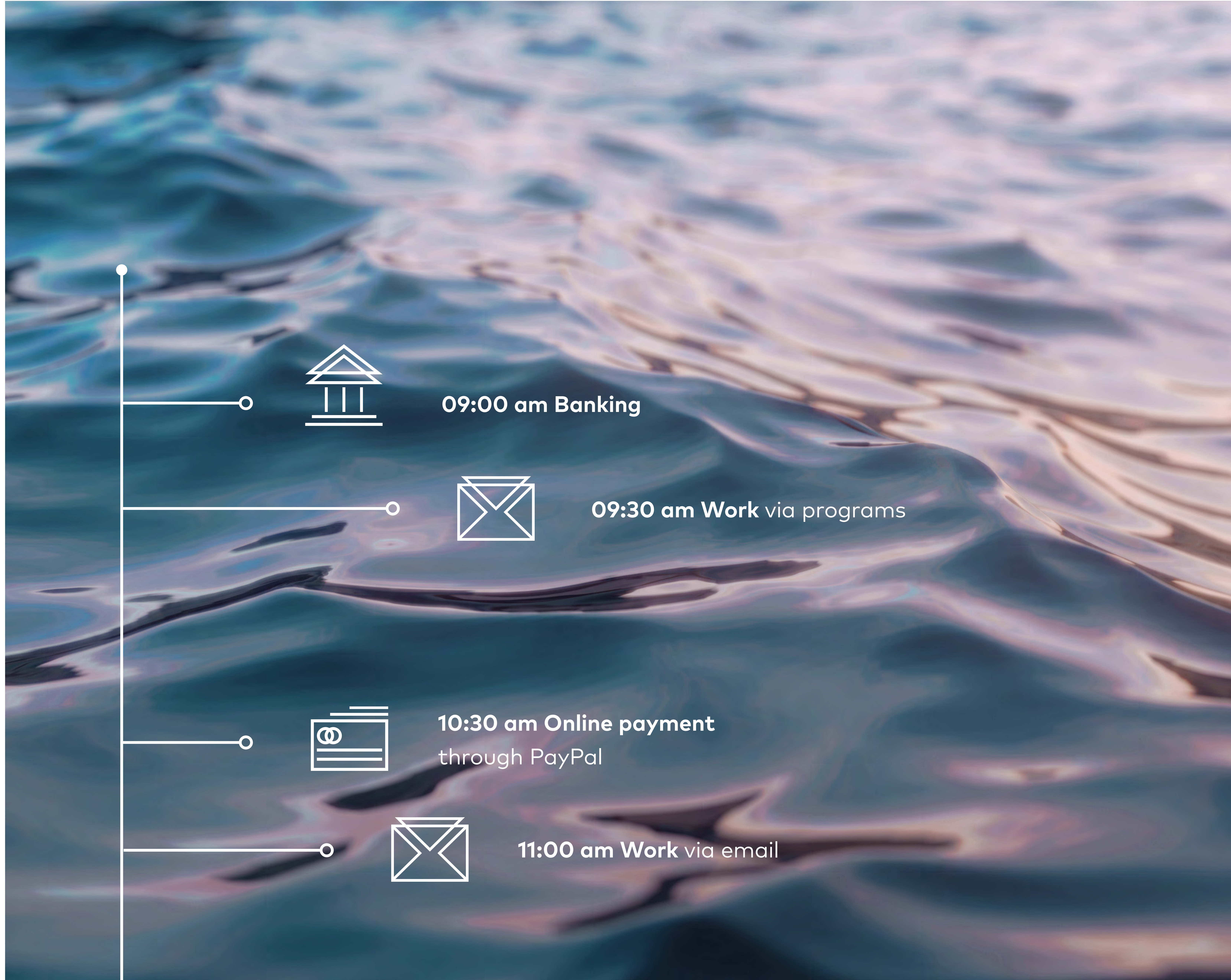
Disadvantages.

- **You no longer own or control the assets in the trust.**
  Although you may have a say in the drafting of the trust deed (as discussed above), the assets you have transferred to the trust will no longer be under you control. If you continue to treat the trust's assets as your own, SARS and creditors will see it as a 'sham' trust, which can lead to an investigation. If found to be the case, the assets in the trust may be taxed as if held in your name when you pass away.
- **Higher taxes.**
  All income retained by the trust will be taxed at a flat rate of 45%. All capital gains made and retained by the trust will be taxed at an effective rate of 36%.
- **The costs of transferring assets into a trust can be high.**
  You will need to seek appropriate advice in terms of the costs associated with establishing a trust and transferring assets to the trust. As an example, there are costs associated with establishing the trust, capital gains tax when you dispose of assets to the trust, transfer duty on transferring immovable property to the trust, donations tax if you donate the assets to the trust and other tax considerations if you were to consider selling assets on loan account instead of donating them to the trust.
- **Finding suitably independent and reliable trustees is critical.**
  It is essential to have independent, third-party trustees who are committed to the interests of the beneficiaries of the trust. Otherwise your loved ones may not benefit from the trust the way you intended them to.

WILLS

The consequence of digital assets on death.

Increasingly, many of us conduct and manage a lot of day to day activities online.
If this sounds strange to you, consider the total time you spend online doing and managing your personal and business matters.



So what will happen to all your online accounts and other 'digital assets' when you die?

WILLS

There are very few areas of our lives that we don't or can't conduct online.

Recent statistics[1] show that at the end of December 2017 there were 4.1 billion worldwide internet users, and it is estimated that 70% of weekly activities are spent on the internet. As you will be aware, you can do most of your banking and shopping online.

What will happen to all your online accounts and other 'digital assets' when you die?
Have you given some thought to what would happen to your online presence, accounts and other digital assets when you pass on? An executor can deal with your assets in terms of your will, but what happens to your digital assets? There is no official definition of a digital asset, however case law links it to any information stored electronically. Digital assets are those which exist in a solely electronic and non-tangible manner such as email, online photos, and online accounts ranging from PayPal to Facebook, LinkedIn, and YouTube and the content posted on them. Most are protected by usernames, passwords, and security questions, which for obvious reasons are not widely shared, often not even with loved ones. There is generally an absence of legislation governing how digital assets should be dealt with on death. Until legislation is promulgated to deal with these types of assets, loved ones face a challenge especially in the event of an unexpected death in obtaining access to those passwords and the content they access. Also bear in mind, many people no longer receive paper bank statements, tax returns, or bills, so there may not even be a paper trail for the family to follow to determine what accounts may exist and at which institutions.

How do you value digital assets, and can they be transferred or sold?
Certain digital assets – as one example, crypto currencies such as Bitcoin – carry a monetary value, typically market-related (in terms of supply and demand). But, there is also often a sentimental value associated with digital assets, like online photo collections. Good steward value is the value that comes from having a roadmap of the digital assets that makes them easy to navigate, access and manage. Another consideration is whether digital assets can be transferred or sold to another individual. How often do you read the terms and conditions before registering for a new online account? You should, as some companies restrict transferability whilst others don't.

[1]www.internetworldstats.com

WILLS

You can ease the emotional and financial burden on your loved ones when you die.
Without knowledge of specific access credentials, family members may face substantial issues when trying to access your online accounts. The reason for this is that an account user typically accepts a provider's terms and conditions when creating an account. These terms usually prohibit the user from permitting anyone to access their account except for themselves. As such, many providers are in a tricky situation if your loved one tries to access or shut down an account, especially if they can't provide the specific access credentials associated with the account.

Requirements to access or close a service vary.
As practical examples, Facebook requires a copy of the deceased's death certificate and prevents unauthorised users from logging on, though they will typically honour requests from family or an executor to permanently close an account. Some other service providers' requirements are a lot harder to comply with, as many don't guarantee that they will grant access to the deceased's email account. In many cases, an individual must provide a name, address, email and a copy of a driver's license or ID, and a copy of the death certificate. LinkedIn requires a 'verification of death' form that includes the deceased's email address, LinkedIn profile URL and a death certificate. Twitter is probably the more reasonable (given the limited scope of what you can do on twitter) requiring only a name, contact information and relationship to the deceased, as well as a link to a public announcement as an objective verification of a death. For online accounts such as email and payment methods, and digital assets (like Bitcoin) the ability to obtain access may be critical to resolve a loved one's affairs but may be much harder to do without having access and knowledge about where to even look for this. A will is a public document that expresses how your assets are distributed to your beneficiaries. In the absence of a proper legislative framework to regulate how digital assets should be dealt with on death, we advise you to ensure that your loved ones and executor are aware of your digital assets (particularly those that have a monetary value such as crypto currencies) by mentioning them in your will.

Practical steps you can take today to help your loved ones.
Administering estates with digital assets is a relatively new concept which is further complicated by the lack of relevant legislation. To avoid unnecessary admin and the associated head and heart aches for your loved ones, below are some practical ways to help them.
We suggest that you:

01 **Prepare an inventory**
Prepare an inventory of all your digital assets and accounts and highlight those that have a monetary value.

02 **Document the access details**
Indicate on the above inventory how they can all be accessed. In other words, list the passwords and usernames (use your discretion), not forgetting how to access any crypto currencies you may own, such as Bitcoin.

03 **Share with a loved one**
Store the above in a secure place and provide access to a family member, trusted friend or loved one.

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