Offshore Structuring for South African Residents
There are many potential benefits for both the settlor and his or her chosen beneficiaries in setting up a trust. These include estate and succession planning, asset protection and certain tax benefits. An offshore trust has the additional benefits of low or no tax in the offshore jurisdiction, and the ability to diversify investments in a hard currency.

This document is intended to provide insight into some of the issues that South African tax residents will need to consider before setting up an offshore trust, as well as the advantages of doing so.

Advantages of Offshore Trusts

Exchange Control

Under current exchange control regulations, South African tax residents will be required to fund the trust (or company) using their annual Foreign Investment Allowance ("FIA") (currently R10 million), or funds which have been retained abroad with exchange control approval, such as foreign earnings or a foreign inheritance.

It is important to note that these funds cannot be used to reinvest back into South Africa or any Common Monetary Area* country as under current exchange control regulations this would constitute a prohibited “loop” investment.

Estate & Succession Planning

Estate duty in South Africa is levied at the rate of 20% on the net value of estates exceeding R3.5 million. There are certain exemptions, such as the value of any amount passing to a surviving spouse, and when a South African resident inherits assets from a non-resident; or assets that were acquired before becoming resident in South Africa, provided the assets never come back to South Africa.

There are two ways to fund an offshore structure, by way of donation or by contributing funds or assets on loan account. If a South African resident contributes his or her FIA to the offshore trust or company, donations tax at a rate of 20% will become payable on the funds donated (the first R100,000 in any tax year is exempt from donations tax). However, the value of the funds donated will no longer form part of the South African resident’s estate for estate duty purposes.

There is also an exemption on donations tax if a South African resident inherits assets from a non-resident or acquires the assets before becoming resident. Such assets can be donated to any one (including a trust) without triggering the 20% donations tax.

Alternatively, the South African resident can either loan funds to the trust or company, or sell assets on a loan account. If this option is chosen there will be no donations tax to pay, but if the loan remains outstanding, it will constitute an asset in the South African resident’s dutiable estate. For tax reasons, it is usually advocated that the loan bear interest at a market related rate.

Asset Protection

Provided the trust is properly drafted and timeously established, the assets held by the trust cannot be claimed by the settlor’s creditors and should not be available to the settlor’s spouse in the event of divorce.

Investment Flexibility

Under current exchange control regulations, South Africans are not permitted to hold any foreign currency in South Africa. The ability to diversify investments in a hard currency is often a strong motivating factor for South Africans who wish to hedge against the risks associated with holding Rand investments.

A number of jurisdictions, such as France and the UK, have introduced legislation which seeks to tax offshore trusts holding assets situated in those countries directly. It makes increasing sense, from a tax perspective, for such assets to be held via an underlying offshore company. An additional benefit of the two tier structure is that it can also add significant tax advantages for South African resident beneficiaries receiving distributions from the trust.

* Common Monetary Area (CMA - Lesotho, Swaziland and Namibia)
Advantages of Using Mauritius

An Ideal Investment Platform

Mauritius is increasingly viewed as the number one jurisdiction for South Africans wishing to establish an offshore structure. Mauritius has a regional focus on the South African market, is geographically convenient with a strategic time zone, being just two hours ahead of South Africa. Mauritius also provides comparably lower fee scales than its northern hemisphere counterparts.

Mauritius combines the traditional advantages of an offshore financial centre (no capital gains tax, no withholding tax, no exchange controls and free repatriation of profits and capital etc.) with the distinct advantages of an extensive network of treaties and double taxation avoidance agreements. For more information on these advantages please refer to our fact sheet “Mauritius as a Gateway for Investment into Africa”.

In addition to the fiscal advantages which Mauritius has to offer, there are a number of additional non-fiscal advantages which should be taken into account. Mauritius is a well regulated business jurisdiction which has a good record of adherence to international standards of best practice. Mauritius also enjoys an abundance of professional service providers at a relatively low cost, an educated and multilingual workforce, with English and French being the main business languages, as well as economic and political stability. Mauritius has a hybrid legal system consisting of English and French law, and the Privy Council in England is still the final court of appeal.

The Group

Salamanca Group is a privately-held Merchant Banking business, which integrates traditional investment and advisory services with a dedicated Private Office.

We build highly valued, long-term relationships with individuals, corporates, institutions and governments, offering strategic advice and specialist know-how through our four divisions; Special Situations, Corporate Advisory, Real Estate and Trust & Fiduciary.

Each division tailors its services as well as draws on the wider Group’s expertise to deliver integrated, consistent advice, always with the client at the centre.

We ensure a collaborative approach with our clients, in order to enable their business, protect their assets and grow their capital.

Professional Advice

This note is for general information purposes only and provides a brief overview of the relevant issues as at May 2016. Whilst all reasonable care has been taken to ensure the accuracy of its contents, this note should not be regarded as comprehensive or as a substitute for specific professional advice. Salamanca Group Trust (Mauritius) Ltd’s services do not include the provision of legal or tax advice. It is important to note that there are almost always tax implications to consider when a structure is established. We work closely with an international network of expert legal and tax professionals who are able to provide the required advice for the establishment of compliant structures.

The Trust & Fiduciary team provides extensive fiduciary, corporate and family office services from Jersey, Geneva and Mauritius.

The team works with international high net worth families to enable them to administer, grow and protect their wealth for future generations. We often work with the second and third generation beneficiaries. These long-term relationships, and a deep level of involvement, enable us to fully understand and enhance a family’s personal, business and financial circumstances.

We provide trustee, fiduciary, administration and other professional services to an array of structures including all forms of trusts, private trust companies, family offices and escrow arrangements. These structures hold a variety of assets such as investment portfolios, real estate, private equity investments, private company shares, intellectual property, yachts, aircraft, artwork, antiques and bloodstock.

We also provide a comprehensive administration service to a portfolio of international corporate clients operating across a wide range of sectors including energy, retail groups, wealth managers, financial services, engineering and infrastructure support.

We enable families to administer, grow and protect their wealth for future generations.