~ Written by Phia van der Spuy ~ CEO Trusteeze

People often ask this question. Trusts do cost money to set up, but using the cost of setting up a trust as an excuse to not set one up may be penny wise and pound foolish. It may cost you more by not having a trust. The cost of Income Tax, Capital Gains Tax, Estate Duty and Executor's Fees, during your life and upon your death, can be expensive if you do not take advantage of setting up a trust timeously. It can be a costly exercise to move assets, acquired by you, into a trust at a later stage, so the perfect time to establish a trust, as part of your estate plan, is when you start building wealth, in order to avoid unnecessary costs – now or in future.

Establishing a trust generates additional administration costs and complexity in one's affairs. It is important to demonstrate the active management of the trust as a separate entity from oneself. The costs of setting up a trust typically include legal fees for drafting the trust deed and for registering the trust. One can pay as little as R 2 000, or as much as R 20 000 to have a trust registered. The Master's fee to register a trust with the Master of the High Court is R 250. Although paying a lot of money does not always guarantee quality, one should avoid bargain hunting, as the trust deed may be one of your most important contracts you may draw up in your lifetime. The services of a professional, specialising in trusts, should be sought and the trust deed should be tailored to your specific needs and requirements; do not accept a cheap, vanilla, "copy-and-paste" trust deed. This may 'cost' you a lot later and prevent you from achieving your estate planning objectives.

Ongoing costs will be incurred during the existence of the trust and may include:

· costs to employ the services of a trust administrator. Trust service providers typically either charge a fixed amount per month or fees based on a percentage of assets. Be mindful of the amount that may be payable if valuable assets are held in the trust. The fee charged may become excessive if one applies a percentage of assets.

· costs to maintain a separate bank account for all the trust's affairs.

· costs to have annual financial statements prepared. A trust does not require an audit, unless the Master of the High Court or the beneficiaries request it, or should the trust instrument stipulate that it must be audited.

· costs to prepare and submit tax returns. The South African Revenue Service views a trust as a separate person for which separate Income Tax returns and Provisional Income Tax returns are required to be submitted.

· costs to employ the services of an independent trustee. It is now a requirement of the Master of the High Court to appoint an independent trustee for every new family business trust. Independent trustees usually charge a monthly fee for this service – normally a range between R 500 and R 2 000 per month. If the trustee performs trust administration services, a combined fee is normally charged.

Be mindful if the trust administrator, who may also be the sole trustee, acts in a way to maximise the trustee fee (especially if charged on a percentage of assets basis), rather than acting in the best interests of the beneficiaries.

It is important to demonstrate that the trust is managed as a separate entity to the founder and its beneficiaries. If there are no resolutions, minutes of meetings, or a separate bank account, the South African Revenue Service and creditors, including a soon-to-be-ex-spouse, may request that the Court declares the trust your alter ego (an extension of yourself), resulting in the disregard of the trust. This 'cost' may be significantly higher than the effort required to administer the trust.

It is important that one weighs up whether the costs of establishing and managing a trust exceed any savings in terms of death costs, such as Estate Duty, Capital Gains Tax and Executor’s fees, which could be in excess of 30% of an estate. The purpose of setting up a trust may, however, rather be the determining factor in terms of whether one registers a trust or not. It is not simply about the tax savings, which should not be the main motivation for setting up a trust in the first place. If a trust is set up to protect your assets, the benefits of a trust may far outweigh the costs of setting up and maintaining a trust. If you are sequestrated, you will lose all of your assets. Setting up and maintaining a trust may be a small price to pay when compared to losing all your assets in the event of your sequestration.