REVOCABLE LIVING TRUSTS REGISTRATION AND TAXES IN TANZANIA

Revocable living trusts are often promoted as an effective alternative to probate. This is a quicker and easier mechanism for transferring the assets of a deceased person to the beneficiaries of that person.

**What is a revocable living trust?**

A revocable living trust is a legal device that can be used to manage your property during your lifetime and to distribute your property after your death.

A revocable living trust is established by a written agreement or declaration, which appoints a "trustee" to administer the property transferred to the trust, and which gives detailed instructions on how the property is to be managed and eventually distributed. If you want your trust to substitute for a probate proceeding (court administration of property after death), you should legally transfer substantially all of your property to the trustee, and you should provide instructions to the trustee regarding how to distribute trust assets after your death. A revocable living trust agreement or declaration is usually longer and more complicated than a will, and transfer of assets to the trustee can be time-consuming and expensive.

**Who can be the trustee?**

In Tanzania any competent adult can be the trustee, including the person setting up the trust. You can appoint more than one trustee, delegating different duties to each trustee if you wish, and you can retain the power to remove the trustee and appoint a new one. Appointing a successor trustee is essential if you are the first trustee and the trust will carry on after you die or become incapacitated.

**How is a revocable living trust established?**

If a revocable living trust is appropriate for you, you will need a written agreement or declaration of trust/Trust Deed, which sets out your plan for the management and distribution of your assets. Then you must legally transfer most trust assets to the trustee. Deeds, stock transfers, new bank accounts, and other legal documents may be necessary.

Some assets, need not be transferred to the trust. Assets not formally transferred to the trustee may not be considered part of the trust and might still be subject to probate.

**Requirements**

- Application Form (TI.1) and Annexure  (A) accompanied by Trust Deed Constitution of the bodies seeking incorporation.(*The form and Annexure are attached herein*)
- Passport size photo of proposed trustees.
- Recommendation Letter from District Commissioner Office of the District in which the intended body corporate has its offices.
- Incorporation Fee (Tshs 200,000/= currently).

**NB:** All copies submitted should be in duplicate except for Letter of Recommendation. And once incorporated the body corporate has the following obligations:

- Not allowed to acquire an interest in land without first obtaining consent in writing from the Administrator General of Trustees.
- To notify the Administrator-General on any change, change of trustees, name of the body corporate, postal address, constitution within one month.
- To file returns of Trustees after the expiry of twelve months.

I am of the view that the incorporation is done physically as their (RITA) website has no online registration services.

Please see also the attached draft Deed, there also parts that are yet to be incorporated in the draft deed as follows;-

1. The Trust Properties
2. Offices of the Trust
3. Succession Plan

**Probate and Revocable Living Trusts**

Probate is a legal process for transferring your property when you die. It is supervised by a court.
Probate usually involves validation of your will, appointment of a personal representative, collection of your assets, notification of and payment to your creditors, and transfer of your property to the beneficiaries under your will. Probate creates a public record for the administration of your estate. This public record includes all of your assets that are subject

to probate and their value at the time of your death.

A revocable living trust avoids the public process of probate, because you collect your assets and transfer them to the trustee before you die. The trustee then transfers your assets to your beneficiaries after your death. If you establish a trust but fail to transfer your assets to your trustee, it is unlikely that you will avoid probate.

Sometimes it is not a good idea to avoid probate.

For instance, in a probate proceeding, your personal representative has special powers to deal with your creditors and can force them to file claims with the court or lose their claims. The trustee of a revocable living trust now has similar, optional powers to deal with creditors; however, using these powers may require some additional expense and delay, as in probate.

Even if you want to avoid probate, there may be better ways to do it. With regard to real property, you can execute a transfer-on-death deed which allows the death beneficiary named on the deed to automatically assume ownership of the property upon your death, with no need for probate. Joint tenancy ownership of specific assets, with the right of survivorship, can be a cost-effective way to avoid probate on the death of the first joint owner. There are several ways to pass bank accounts at death without probate, including joint accounts with right of survivorship, trust bank accounts, and so-called "payable on death" accounts. Most pension plans and life insurance policy proceeds pass under beneficiary designations that avoid probate without the use of a revocable living trust. Depending on the nature and amount of property, one or more of these non-probate devices could be a less expensive way for you to avoid probate. Be aware though, that some of these non-probate devices can result in consequences relating to creditors, taxes, eligibility for publicly provided long-term care, and loss of independent control over an asset.

**Does a revocable living trust avoid taxes?**

By itself, a revocable living trust does not avoid income or estate. Your trust may have income from business and income from the investment. You can calculate your chargeable income with the guidance of the income from business page and the income from investment page. You must add together income from business and income from an investment to calculate the trust's total income. To find out about offsetting losses against positive income, see the offsetting losses page.

If your trust is a charity, there are some special rules for calculating income – see the charity page.

For special notes on foreign source income see the foreign source income page.

The total income of the trust will be taxed at a rate of 30%.

A trust may account for its business income on either a cash basis (accounting when payment changes hands) or an accruals basis (generally, accounting when the right to payment is created), depending on which basis most correctly reflects the trust's profits or gains.

See also timetable of returns and tax payments.

All trusts are under the self-assessment system. For details see the self asseessment page.

The trust may also have obligations to withhold tax from those it pays – see withholding obligations.

**How are beneficiaries of trusts treated in the Income Tax Act?**

If the trust is resident in Tanzania, the distributions of the trust to its beneficiaries are exempt from tax, that is, the beneficiary does not have to include the distribution in their income. However, if the trust is not resident in Tanzania, the beneficiary must include the distribution of the trust as part of his/her/its income.

**Advantages of a Revocable Living Trust**

- **Avoidance of probate**. In particular, a revocable living trust can avoid expensive multiple probate proceedings when you own real estate, as well as the publication of the otherwise private financial details of your estate.

- **Avoidance of conservatorship**. A revocable trust can avoid the additional cost of a conservatorship in the event of your incapacity.

- **Efficient distribution**. A revocable trust can reduce delays in distributing your property after you die, although delays caused by filing an estate tax return cannot be avoided.

- **Confidentiality.** Generally the terms of your living trust are confidential, with only your named beneficiaries and trustee having access to that information.

- **Continuity.** A trust can provide continuity of management of your property after your death or incapacity.

**Disadvantages of a Revocable Living Trust**

- **Expenses of planning**. A revocable living trust is more complicated than a will to draft, and asset transfers can take time and can result in additional costs.

- **Expenses of administration.** If you appoint a bank or trust the company as trustee, you will have fees to pay (though these may take the place of investment advisory fees and other fees you are already paying). Setting up a revocable living trust will not eliminate the need for professional services of attorneys and accountants in the future.

- **Inconvenience.** Once the trust is established, you must be sure that trust books are maintained and that all assets continue to be registered to the trustee. Persons dealing with the trustee (such as banks and title insurance companies) may want to review the trust as an instrument to check on the trustee’s powers and duties.

- **Unforeseen problems.** Revocable living trusts can raise a variety of new problems regarding the ability to borrow against property, title insurance coverage, real estate in other countries, certain pension distributions, and many other issues. Only a skilled attorney familiar with estate planning can tell you whether, on the whole, a revocable living trust is right for you, your family, and your assets.

- **Complexity.** Revocable living trusts often are more complicated than wills and can leave you confused about an estate plan that will require your attention and management for an indefinite period of time.