



LAND AND ASSET PROTECTION

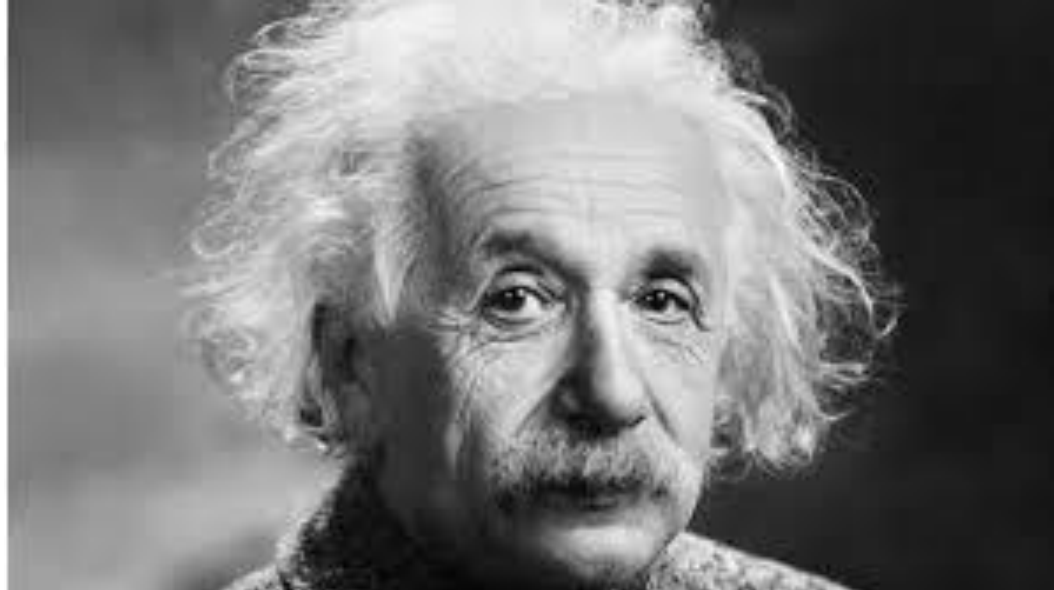
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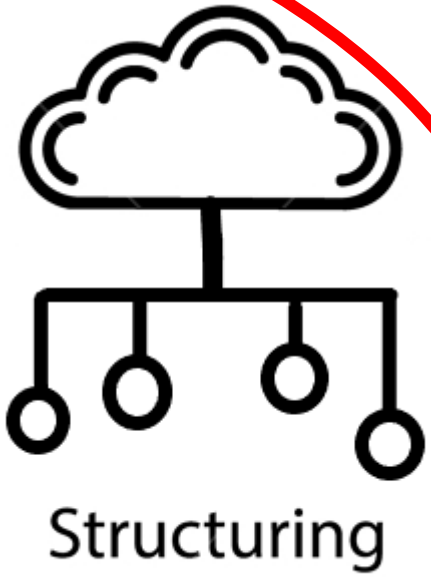
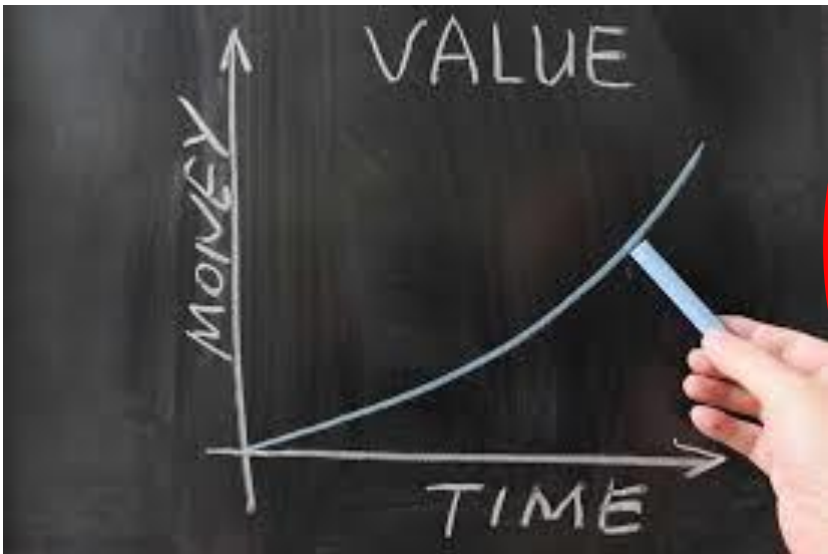


INTRODUCTION

If you can't explain it simply, you don't understand it well enough." –
Albert Einstein



FACTORS DETERIORATING WEALTH



LEGISLATION

- **Legal certainty**: citizens' ability to organise their affairs in such a way that does not break the law.
- Part of the **Rule of Law** principle: At its most basic level the **rule of law** is the concept that both the government and citizens know the **law** and obey it.
- SA part of **global community** – therefore international law applies

TAXES

- South Africa carries some of the **highest tax rates in the world**
- South Africa has the 7th highest total tax to GDP ratio
- Countries that have some of the **lowest tax rates**:
 - **Mauritius** (companies 0% - 3%)
 - Singapore
 - Hong Kong
- **Wealth Taxes: Estate Duty, Capital Gains Tax**
- Duke of Westminster case

STRUCTURES

- Wrong business structures will cost you in the long run
- Always plan for substantial time in the future
- The right structure can protect your land and assets against future legislation and taxes
- Structures that can be used:
 - Private SA companies
 - Off-shore companies (e.g. Mauritius)
 - Local Trusts
 - Off-shore Trusts
 - Loan redemption plans
 - Partnership insurance
 - Usufruct /bare dominium transactions

CASE STUDY

Assets and liabilities of Bill Cash

ASSETS

Farm R12m

Farming company R2m

Furniture & household goods R500 000

Motor vehicles R 750 000

Cash bank account R 1 500 000

TOTAL R 16 750 000

DEEMED ASSETS

Life insurance policies **R 3 500 000**

LIABILITIES

Mortgage bond Farm R2m

Funeral costs R15 000

Income tax R 200 000

Master's fee R600

Executor's fee R 815 062

TOTAL R 1 030 662

TAX CALCULATIONS

- Estate Duty: based on value of estate of R 20 250 000, estate duty = R 2 743 867
- Capital Gains Tax: appr. R 2 960 000
- Total taxes: **R 5 703 867**
(= about 28% of his wealth)

LIQUIDITY ANALYSIS

- LIQUIDITY REQUIRED

Estate duty R 2 743 867

CGT R 2 960 000

Estate liabilities R 1 030 662

TOTAL R 6 734 529

- LIQUIDITY AVAILABLE

Proceeds life insurance R 3 500 000

Assets that can be converted to cash
R 1 500 000

TOTAL R 5 000 000

LIQUIDITY SHORTFALL:

R 1 734 529

RAP

RADICAL ASSET PROTECTION

- Become a “*Foreign Investor*”
- Protect your land and assets
- Turn the tables around: get your hands on Government property
- If expropriated without compensation, how to get compensation eventually
- How to save taxes now and in the future



THE FARM

- Possible restructuring:

1. Form off-shore Trust in Mauritius and GBL1 company in Mauritius. All shares held by the Trust
2. Form Property Holding Company in SA. Shareholding:
80% Mauritius Company OR 100% if Bill Cash will be full time engaged in the Business of the Prop Holding Company (otherwise 20% Bill Cash)
3. Bill Cash sells farm to Prop Holding Co, as an **asset for share transaction** . He gets service position in company for the property. Utilise section 42 ITA roll over relief for Company Reconstructions.

NO CGT FOR BILL CASH (would have been R2 160 000 = FIRST TAX SAVING)

THE FARM

- Sell farm as going concern, i.e. rental earning enterprise
- Bill Cash and Prop Holding Co registered for VAT
- NO VAT, NO TRANSFER DUTY (would have been **R 1 565 217 VAT = SECOND TAX SAVING**)



- Estate duty saving on R12m Farm less mortgage bond= **R 2 000 000[^] - THIRD TAX SAVING**

THE RESULT

- **TAX SAVINGS:** R 5 725 217
- **ASSET PROTECTION:**
 - Bilateral Investment Treaty between SA and Mauritius
 - No expropriation without compensation
 - If expropriated, institute claim at ICSID (International Centre for Settlement of Investment Disputes (Washington))
 - Enforce claim against Government property or sell in execution



FARMING COMPANY

- There are more than one possible structure
- Bill Cash donates 4% share in Company to his Trust, and 1% to his son = R100 000 (CGT = R18 000)
- Son & Trust takes out life cover to buy 95% share of Bill Cash out when he dies = R1.9m.
In terms of policy Son buys 5% and Trust 90%
- Upon death of Bill Cash: proceeds of life policy (as partnership insurance) is exempt from Estate Duty. **SAVING = 20% X R1.9m = R380 000.**
- The R1.9m from the Insurance proceeds can be used to cover the liquidity shortfall in estate of Bill Cash

CONCLUSION

- With the use of legislation such as the Income Tax Act, Bilateral Treaties and the International Law, and design of the right structures, you can protect your land and assets
- If your land is expropriated, you CAN get compensation for it, even GOVERNMENT LAND!
- While you implement structures to protect your assets, you can do it in such a way that you save large amounts in taxes, and many more taxes in future
- BUT THEN YOU MUST ACT **NOW**....

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