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world of change

Offshore investing for South African tax residents: comparing structuring options



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Introduction

South African tax residents wishing to invest offshore have several structuring options, each with different tax, estate-planning, liquidity and cost implications. In this guide we compare five approaches.

Investing directly in your personal name through the:

- 1 Ninety One Global Investment Portfolio
- 2 Ninety One International Investment Portfolio
- 3 Ninety One Global Life Portfolio

Investing via a foreign trust funded by:

- 4 a loan from an individual, or
- 5 a capital distribution from a South African trust.

For all options, funds must be externalised through the appropriate channels with the necessary SARS and SARB approvals.

The right structure depends on the client's specific circumstances, including their asset and tax position, estate-planning objectives, liquidity requirements, time horizon and the quantum of offshore assets. Where the ultimate beneficiaries are resident can also impact the structuring solutions. The summary serves as a high level discussion document only. Professional tax and fiduciary advice should be obtained for each client's specific circumstances before implementing any offshore structure.

1 Personal name – Ninety One Global Investment Portfolio

The Ninety One Global Investment Portfolio is an offshore investment portfolio administered by Ninety One Investment Platform. A local nominee company, Grayston Nominees in South Africa, holds the investments on behalf of the beneficial owner (investor). There is no minimum investment term and full liquidity is available at all times.

Flexibility and access

The Ninety One Global Investment Portfolio provides access to a focused range of offshore funds across all asset classes and risk profiles. Investors can add funds, make withdrawals, or switch between funds at any time. Proceeds can be directed to a bank account in the investor's name anywhere in the world. No switching fee applies, although capital gains tax (CGT) may be triggered on a switch. The minimum initial investment is US\$25 000 and additional contributions are from US\$5 000.

Tax

All income and capital gains are taxed in the investor's hands at their applicable South African rates – up to 45% on income and an effective maximum of 18% on capital gains. Tax certificates are issued to assist with annual SA tax submissions.

Estate planning

The Ninety One Global Investment Portfolio forms part of the investor's estate on death. South African estate duty (20% on the first R30 million of dutiable estate and 25% above) and executor fees apply. Because the nominee company (rather than the investor directly) is the registered holder of the foreign assets, no offshore probate is required on the investor's death.

2 Personal name – Ninety One International Investment Portfolio

The Ninety One International Investment Portfolio is an offshore investment portfolio offered by Ninety One Guernsey Limited. A nominee company based in Guernsey holds the investments on behalf of the beneficial owner (investor). There is no minimum investment term and full liquidity is available at all times.

Flexibility and access

The Ninety One International Investment Portfolio provides access to a focused range of offshore funds across all asset classes and risk profiles. Investors can add funds, make withdrawals, or switch between funds at any time. Proceeds can be directed to a bank account in the investor's name anywhere in the world. No switching fee applies, although capital gains tax (CGT) may be triggered on a switch. The minimum initial investment is US\$25 000 and additional contributions are from US\$5 000.

Tax

All income and capital gains are taxed in the investor's hands at their applicable South African rates – up to 45% on income and an effective maximum of 18% on capital gains. No tax certificates are issued; instead, an online calculator assists with determining gains and losses for the annual tax return. Investors are responsible for their own tax reporting for this investment.

Estate planning

The Ninety One International Investment Portfolio forms part of the investor's estate on death. South African estate duty (20% on the first R30 million of dutiable estate and 25% above) and executor fees apply. A Guernsey grant of probate may be required to release the assets, although this may be waived if certain conditions are met.

3 Personal name – Ninety One Global Life Portfolio

The Ninety One Global Life Portfolio is an offshore sinking fund issued by Ninety One Assurance Limited (Guernsey Branch) and administered by Ninety One Investment Platform (Pty) Ltd. The policy wrapper delivers tax advantages and important estate-planning benefits not available through a direct unit trust investment.

Tax

Tax is paid within the policy at reduced flat rates: 30% on income and 12% on capital gains. The policyholder has no obligation to declare the income from their investment in their personal tax return as the life company is responsible for the deduction and payment of tax. For an investor paying the top marginal income tax rate (45%) and the maximum effective CGT rate (18%), the Ninety One Global Life Portfolio offers a material tax saving. As only roll-up funds are available to invest in within this product, only the CGT rate of 12% is practically applicable. No CGT is triggered when the policy is transferred to a nominated beneficiary on the investor's death.

Estate planning

Multiple primary and alternative beneficiaries may be nominated. Where a nominated beneficiary receives the benefit, no executor fees are levied. The beneficiary has the option to take ownership of the contract or receive the policy proceeds. The ownership or policy proceeds can be transferred directly to the beneficiary rather than being frozen with other estate assets. If the spouse is the nominated beneficiary, no estate duty is payable on the policy. No offshore grant of probate is required where a beneficiary is nominated who is able to receive the benefit. A foreign trust may be nominated as a beneficiary, provided all beneficiaries of that trust are natural persons. The Ninety One Global Life Portfolio is domiciled in Guernsey, where no foreign inheritance taxes currently apply; South African estate duty may still be payable.

Liquidity

The Ninety One Global Life Portfolio has a five-year investment term with restricted access during this period. During the first five years, one interest-free loan and one surrender are permitted, each capped at the amount invested plus 5% compound growth per annum. After five years, unrestricted ad hoc loans and/or withdrawals are permitted. If the original owner passes away, the remaining term falls away and the nominated beneficiaries inherit a fully liquid policy. Additional contributions are unrestricted in year one; the 120% rule applies thereafter (contributions in any year may not exceed 120% of the highest annual contribution in the previous two years).

4 Foreign trust — funded by a loan from an individual

A foreign discretionary trust funded by a loan from a South African resident is a well-established estate-planning mechanism. The individual transfers funds to the trust by way of a loan. The trust deploys the funds, for example, into the Ninety One International Investment Portfolio. The trust assets fall outside the individual's estate; only the outstanding loan claim remains an asset. As the trust's assets grow and the loan is potentially repaid, the individual's estate exposure on offshore assets diminishes over time.

Where the intention is to use the Ninety One International Investment Portfolio as the underlying investment vehicle, establishing the foreign trust in Guernsey may offer operational and cost efficiencies by having the trust jurisdiction and investments in the same jurisdiction.

Funding and exchange control

The lender must obtain the necessary SARS tax clearance and SARB approval to externalise the loan funds from South Africa. If interest is charged, it is taxable in the lender's hands at their marginal income tax rate. If no interest is charged or if the interest rate is below the SARS official rate of interest and/or below an arm's length rate, then Section 7C, Section 31 and the attribution provisions of the Income Tax Act must be considered. Expert tax advice is essential.

Control

Unlike a donation to a trust, the lender retains a contractual right to recall the loan in accordance with the terms of the loan agreement, preserving some ability to access the funds. The lender has no direct control over how the trust invests or distributes its assets because those powers belong to the trustees. Repayment of the loan capital by the trustees to the lender carries no South African tax implications for the lender.

Estate planning

The outstanding loan amount remains in the lender's estate for estate duty purposes. However, the growth on the trust's assets occurs entirely outside the personal estate. As the loan is repaid and trust assets continue to grow, the individual's estate duty exposure on offshore assets reduces progressively. On the lender's death, the loan claim is subject to estate duty, but the trust assets continue to be administered by the trustees without disruption, providing continuity across generations.

Suitability

A foreign trust is not a short-term solution. Excess funds, being funds not required by the family in South Africa over the short to medium term, should be used to fund the trust. The structure is most suitable for high-net-worth individuals with a long-term outlook.

5 Foreign trust — funded by a trust-to-trust distribution

Where liquid assets are currently held in a South African trust, the trustees may exercise their discretion to distribute a capital cash amount to the trustees of a foreign trust. This trust-to-trust distribution requires both SARS approval (with all applicable taxes settled in full) and SARB approval. The South African trust deed must expressly permit a distribution to a foreign trust, and all conditions must be met before the distribution can be effected.

Tax treatment of the distribution and subsequent distributions

An amount received by the foreign trust as a capital distribution from another trust constitutes capital for South African tax purposes. Distributions by the foreign trustees from such capital are accordingly not subject to income tax in South Africa. The trustees must maintain detailed accounting records to substantiate the source (capital, accumulated income, current year income, capital gains) of every distribution made. Distributions to South African tax resident beneficiaries must be transferred to South Africa.

Where the foreign trustees distribute current year income or capital gains to South African resident beneficiaries, those amounts are taxable in the beneficiaries' hands. Accumulated income and accumulated capital gains distributed retain their original nature and are taxed accordingly: dividends at 20%, interest and other income at the applicable marginal rate (up to 45%), and capital gains at an effective maximum of 18%.

A tax opinion should be obtained dealing with the tax implications post the distribution, specifically addressing the question whether the attribution provisions will apply.

Key distinction from loan funding

Unlike loan funding, a trust-to-trust distribution results in no loan claim remaining in any individual's personal estate. The assets are fully settled into the foreign trust as capital. Section 7C does not apply because there is no loan. The South African trust relinquishes all control – there is no right to recall or recover the distributed assets. This structure is therefore best suited to families with a long-term, multi-generational outlook who do not require access to the distributed assets and wish to migrate wealth from a South African trust structure to an offshore trust structure.

Estate duty and succession

Assets held in a properly administered foreign trust are not included in any individual beneficiary's personal estate for estate duty purposes. Once the assets have been distributed from the South African trust into the foreign trust, they are also removed from the South African trust's administration, eliminating estate duty exposure on those assets in subsequent generations. The trust continues to be managed by the trustees on the death of the settlor or any beneficiary, ensuring continuity and avoiding the disruption of a personal estate administration or winding-up of the South African trust.

Comparison at a glance

The table below summarises the key features, tax implications and estate-planning considerations of each of the discussed structures.

Consideration	Personal name Global Investment Portfolio	Personal name International Investment Portfolio	Personal name Global Life Portfolio	Foreign trust (loan funded)	Foreign trust (trust-to-trust distribution)
Legal nature	Direct offshore investment portfolio held by SA nominee company	Direct offshore investment portfolio held by GSY nominee company	Offshore sinking fund issued by Ninety One Assurance Ltd (GSY)	Discretionary foreign trust; individual is lender	Discretionary foreign trust; funded by SA trust capital distribution
Ownership of assets	Individual – assets form part of personal estate	Individual – assets form part of personal estate	Individual – policy forms part of personal estate	Trust owns assets; loan claim remains in individual's personal estate	Trust owns assets outright; no personal or SA trust estate inclusion
Control	Full control – invest, withdraw, switch at any time	Full control – invest, withdraw, switch at any time	Full control subject to 5-year term restrictions	Lender retains right to recall loan per loan agreement; no direct control of trust assets	No control – assets fully settled; trustees exercise discretion only
Investment term/liquidity	No minimum term; fully liquid; withdraw anytime	No minimum term; fully liquid; withdraw anytime	5-year term; limited access during first 5 years; unrestricted after year 5	No minimum term on underlying investment; loan recall subject to loan agreement	Long-term by nature
Access during first 5 years	Unrestricted withdrawals at any time	Unrestricted withdrawals at any time	One interest-free loan + one surrender (capped at amount invested + 5% p.a. compound growth)	Trustees may repay loan; additional trust distributions require trustee discretion	No right of recall; distributions at discretion of trustees only
Income tax (SA resident)	Taxed in investor's hands at marginal rate (up to 45%)	Taxed in investor's hands at marginal rate (up to 45%)	Paid within the policy at reduced rate of 30%; no personal declaration required	Interest on loan taxable if charged. Attribution rules may apply and possibly tax on distributions	No SA tax after initial distribution to foreign trust unless distributions made to SA tax resident beneficiaries or attribution provisions apply
Capital gains tax (SA resident)	Effective maximum rate of 18% in investor's hands; triggered on withdrawal or switch	Effective maximum rate of 18% in investor's hands; triggered on withdrawal or switch	12% paid within the policy; no CGT on transfer to beneficiary on death	Attribution rules may apply. Possible tax on distributions	Capital gains distributed to SA beneficiaries; effective max 18%; capital distributions tax-free
Tax administration	Tax certificates issued by Ninety One with capital gain and income information	No tax certificates issued; investor self-declares using online CGT calculator	All tax handled within the policy; no personal declaration, record-keeping, or tax certificate required	Include interest on loan. If no or low interest, administration may be complex considering s7C, attribution rules and transfer pricing provisions. Trustees must maintain detailed source-of-distribution records	Trustees must maintain detailed source-of-distribution records

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Consideration	Personal name Global Investment Portfolio	Personal name International Investment Portfolio	Personal name Global Life Portfolio	Foreign trust (loan funded)	Foreign trust (trust-to-trust distribution)
Section 7C/ donations tax	Not applicable	Not applicable	Not applicable	Applies if interest rate is below SARS official rate – deemed donation attracts donations tax at 20%/25%	Not applicable
Exchange control (SARB/ SARS)	Dependent on amount, SARS tax clearance and SARB approval may be required	Dependent on amount, SARS tax clearance and SARB approval may be required	Dependent on amount, SARS tax clearance and SARB approval may be required	Dependent on amount, SARS tax clearance and SARB approval may be required	Both SARS and SARB approval required
Estate duty on death (SA)	Investment fully included in estate; estate duty at 20% (up to R30m) or 25% (above) unless spouse nominated	Investment fully included in estate; estate duty at 20% (up to R30m) or 25% (above) unless spouse nominated	Policy included in estate and estate duty payable unless spouse nominated	Loan claim included in estate; trust assets excluded from estate	No estate duty on trust assets
Offshore probate	No offshore probate required – local nominee company is registered holder of foreign assets	Guernsey probate may be required; Ninety One may use discretion to release without probate where SA advisor introduces executor who signs indemnity	No offshore probate required if beneficiary nominated and able to receive benefit	No probate required on trust assets	No probate required on trust assets
Executor fees	Applicable on full value of investment	Applicable on full value of investment	Not applicable if beneficiary nominated	Applicable on loan claim in personal estate, not on trust assets	Not applicable (assets not in personal estate)
Asset protection	None – assets in personal name exposed to divorce, insolvency, creditors	None – assets in personal name exposed to divorce, insolvency, creditors	Limited – policy in personal name; beneficiary nomination provides some protection on death only	Discretionary trust can protect assets against divorce, insolvency, addiction, creditor claims and spendthrift behaviour. Loan remains exposed	Discretionary trust can protect assets against divorce, insolvency, addiction, creditor claims and spendthrift behaviour
Multi- generational planning	Assets subject to estate duty on each death; no continuity of mandate	Assets subject to estate duty on each death; no continuity of mandate	CGT-free transfer to beneficiaries on death; beneficiary nomination avoids probate and executor fees	Trust assets grow outside estate; loan reduces as repaid; no estate duty on trust assets in future generations	Assets fully removed from all personal and SA trust estates; trust continues across generations without estate duty
Suitable for	SA residents seeking simple, flexible offshore access with no offshore probate concerns	SA residents or those ceasing tax residency seeking simple, flexible offshore access; children based overseas	SA residents seeking tax- efficient offshore investing with estate-planning benefits and minimal personal tax admin	High-net-worth SA individuals with excess offshore funds	Families with an existing SA trust seeking to migrate capital offshore for long-term, multi- generational estate planning

“Ninety One” is omitted from product names in this table to preserve space.

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