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THE TAX IMPLICATIONS OF INTEREST-FREE LOAN ACCOUNT CLAIMS AGAINST TRUSTS AND THE NEW INCOME TAX RETURN FOR TRUSTS

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Introduction

If the number of enquiries received is anything to go by, the tax treatment of interest-free loan account claims against trusts has many professionals concerned at the moment. And while it is obviously important for practitioners to know the rules pertaining to the tax implications of such interest-free loan accounts, in order to be able to apply them correctly, a thorough understanding of some basic principles of trust and contract law is also required. Unfortunately many practitioners seem to be unaware of these principles. This often results in flawed accounting records and an increased risk of personal liability for trustees, which could result in a greater tax liability. The purpose of this article is to endeavour to explain these basic principles and their potential to bring about an inflated tax liability.

Types of trust

These concerns as to the tax implications of 'loan accounts', interest-free or otherwise, are usually encountered in relation to discretionary *inter vivos* trusts where the trusts are used as a tool in estate planning.

A trust is defined in section 1 of the Trust Property Control Act, 57 of 1988, as follows:

> '... the arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed –
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> (*a*) to ... the trustee ... to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument; or
>
> (*b*) to the beneficiaries designated in the trust instrument, which property is placed under the control of ... the trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument ...'.

A trust, then, can be said to be a contract whereby the donor/settlor of the trust transfers an asset or assets to a group of persons, the trustees, with the instruction that they (the trustees) administer and manage those assets, not for their own benefit, but for the benefit of another person or group of persons, the beneficiaries.

There are various ways in which trusts can be distinguished from one another, but the definition in section 1 of the Trust Property Control Act differentiates between only two types of trust. The difference between trusts referred to in paragraphs (*a*) and (*b*) is based on where ownership of the assets under the administration of the trustees rests. A discretionary *inter vivos* trust, as it is most frequently utilised in estate planning, is a paragraph (*a*) trust, whereby ownership of the trust assets vests in the trustees and they have a discretion to use it for any one or more of the trust beneficiaries. A paragraph (*b*) trust places the trustees in administrative control of the assets, ownership of which was in fact given to a beneficiary, with instructions to administer the assets on behalf of the beneficiary. The important thing here is that the administration of the trustees is done on behalf of the beneficiary. Unlike in the case

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of a paragraph (*a*) trust, the trustees in a paragraph (*b*) trust have no discretion as to whom they wish to benefit, and they have to administer the assets in their care for the benefit of the persons to whom they belong.

The birth of loan accounts

Once a person has decided that a trust is the correct tool for estate planning purposes, there are in essence only three ways in which assets can be transferred into the trust:

1. The assets can be bequeathed to the trustees in the person's will to be administered in trust on behalf of the beneficiaries. Although frequently used, this is of limited use to the person involved in an estate planning exercise who wishes to reduce the size of his or her estate in order to effect a saving in estate duty and executor's fees on death. Nor does it assist the person engaging in some or other risky activity who wishes to use the trust form to protect the identified assets from creditors.
2. An alternative method is to donate the assets to the trust. However, as donations are subject to donations tax at the rate of 20 per cent, this method is generally too expensive to be of much use to estate planners. Certainly, nobody who wishes to save estate duty of 20 per cent at some uncertain future time is likely to incur a present donations tax liability of 20 per cent. This method, then, is probably only useful in respect of small amounts covered by a donations tax exemption.
3. The third method is to lend the money to the trust. This can be done either by selling an asset to the trust with the purchase price left owing on loan account, or by providing the trust with actual cash in the form of a cash loan. However, like the other two, this method has its limitations. It does not effect a saving in either estate duty or executor's fees in respect of the amount lent, as the outstanding loan is still an asset in the lender's estate, subject to estate duty and executor's fees. Similarly, it provides only limited immediate protection of the assets. Should the estate owner, as debtor to a third party, be held liable for such debt, the loan account owed to him by the trust would be an asset which would be attachable by creditors. Such a situation could even jeopardise the continued existence of the trust.

What the third method of transfer *does* achieve is to peg the value of the estate owner's estate. The estate duty saving here is in respect of the duty that would have been payable on the increase in value of the assets that have been placed in trust from the time that they were transferred to the trust until the time of the estate owner's death. It is important to note that the use of a trust in this manner gives rise to a genuine loan, as legally defined. The reflection of this loan or debt in the trust's books of account is the 'loan account'. This is a loan in the strict sense.

However, the writer's experience is that the term 'loan account' is often used in a wider, more general sense to refer to all those interests that can be measured and expressed in monetary terms, which are reflected in the trust's accounting records and that, for accounting purposes, can be said to be owing to an individual that is in some way associated with the trust – whatever its origin. One frequently encounters so-called loan accounts in favour of trust beneficiaries that, on enquiry, turn out to have originated in a manner that is entirely different from that of a loan in the strict sense mentioned above. These loan accounts are usually the result of the trustees exercising their discretion and deciding to vest trust income or capital in one or more of the beneficiaries but, instead of transferring the cash or the assets to the beneficiary, the trustees decide to retain control of the assets and to continue their administration thereof on behalf of such beneficiaries. Such a vesting of income or capital results in a debt (in the broader sense) owed to the relevant beneficiaries which has to be reflected as owing to them in the trust's books of account. These amounts are then included in the trust's books of account as a loan account. And if the person who has income or capital vested in him in such a manner happens to have a loan (in the strict sense) owing to him, these two amounts are frequently added together to form a consolidated loan account. But the source of the obligation in this instance is not a loan. A loan, as a form of contract, has certain legal characteristics that are absent in this situation.

The contract of loan

The first characteristic of a loan is the requirement for the parties involved to reach agreement on the terms of the loan. For a loan to come into existence there must be some form of offer in respect of the terms of the loan and some form of acceptance of that offer. However, this offer and acceptance alone are not sufficient. The offer and the acceptance thereof must also be made with the intention of bringing about a legally binding loan agreement.

It is usual for a contract of loan to provide for a specific term (period) applicable to the loan, on the expiration of which the amount lent would be repayable. But a fixed term is not a necessity for the existence of a valid loan agreement. A loan, by its very nature, has to be repaid at some time, and the time of repayment cannot simply be left to the whim of the borrower. Where no term for the loan has been agreed upon, the creditor is able to demand repayment thereof at will, although fairness demands that the borrower be given a reasonable time before he can be compelled to repay the money or return the borrowed goods. The amount involved will determine the reasonableness of the period for repayment or return of the loaned goods. Should the debtor consider a claim for repayment to be premature or unreasonable, the *onus* is on the debtor to raise the question and to advance reasons as to why he should be given further time to pay.

Vesting in beneficiaries by trustees

To return to the murky waters of beneficiaries' loan accounts, when trustees decide to vest trust income or capital in a beneficiary but to retain control thereof, this is not a case of the beneficiary acquiring and then lending the money, or asset, back to the trust. Instead it is a unilateral exercise by the trustees of their discretionary powers as trustees. There is no offer and acceptance between the trustees as borrower and the beneficiary as lender, and as such there can be no question of consensus having been reached between parties as to a loan.

What, however, is the position as to the obligations towards the beneficiaries thus created? In exercising their discretion and deciding to vest income or capital in a beneficiary, while simultaneously continuing to administer it, the trustees have simply changed the form of trust that exists in regard to that beneficiary in respect of that asset. They have changed the trust from a paragraph (*a*) trust to a paragraph (*b*) trust, as contemplated in the definition of 'trust' in the Trust Property Control Act *supra*. After all, nothing has changed in respect of their contract with the donor/settlor. The trustees simply decide to settle some of the property entrusted to their care by the donor, for the benefit of the beneficiaries as a group, on a specific beneficiary in accordance with the provisions of their contract with the donor, embodied in the trust deed. But they also decide, in terms of that same contract, to continue, in their capacity as trustees, to administer that property for the specific beneficiary's benefit. The trust in respect of the asset has therefore not ended. The trust, in respect of the (now) vested asset, will only end once they have either paid over the vested amount or delivered the asset to the beneficiary, should the trust deed provide therefor, or once they have utilised and expended such amount on the beneficiary's behalf. Until such time as either of these events has occurred, they will continue to hold, in terms of the contract embodied in the trust deed, an asset entrusted to them by the donor, but now on behalf of the beneficiary. It matters not whether ownership vests in them as trustees with the asset to be used as they see fit on behalf of any or all the beneficiaries as they deem fit, or whether it is now owned by a specific beneficiary and held by them to be administered on such beneficiary's behalf.

Loan versus holding in trust

Having distinguished between the two sources of beneficiaries' loan accounts, it remains to determine

[2] *Honoré's South African Law of Trusts*, 5 ed, §57.

why this distinction is important, and what to do about it. Commencing with the latter, ie 'what to do about it', it is considered that trust accountants should – and trustees and affected beneficiaries should see to it that this is done – in the trust's books of account, reflect those obligations that are due to beneficiaries and that have their origins in vesting separately from those that have their origin in an actual loan. Typically, however, this is not done, and the two are lumped together as if they had the same origin.

There are however a number of important reasons to distinguish between a trust holding and a debt.[2] *Inter alia*, the trustees' responsibilities differ from those of a debtor in that the trustees, in terms of the trust deed, are generally obligated to pay the 'debt' to the beneficiary when it becomes due, while an ordinary debtor is obliged to pay only once payment is demanded. More importantly perhaps, trustees who fraudulently appropriate money or other trust property are guilty of theft, while an ordinary debtor who fails to repay a debt, even should he be liable to pay, is guilty of no crime and can only be held to account by means of a civil suit.

Duties and liabilities of trustees

Trustees have a variety of duties originating from a variety of sources. First, the trustees' duties originate from their contract with the donor/settlor and the beneficiary (once the latter becomes a party to the agreement). Secondly, there are a number of duties imposed on trustees that have their origin in the common law. Finally there are duties imposed on trustees by statute. When dealing with *inter vivos* trusts, the relevant statute is the Trust Property Control Act. As trust deeds differ, it is proposed to deal only with selected duties of trustees that originate either from common law or statute.

At the heart of all of trustees' duties, no matter their origin, lies the concept of the fiduciary duty that is owed to the beneficiary. All the other duties of trustees are encompassed in this one concept, which can be summarised as follows: a trustee must at all times act with the utmost good faith in regard to, and act in the best interests of, the beneficiaries. All other duties that originate in common law and those that arise from a statute are aimed at ensuring that effect is given to this concept. It is even embodied in the definition of 'trust' *supra* which refers to '... for the benefit of ...' and therefore, by necessary implication, it also forms the basis of the trustees' contract with the donor/settlor of all trusts. Compare the following two quotes by the Appellate Division (as it then was) in 1915 and the Supreme Court of Appeal in 2005.

In *Estate Kemp and Others v Mcdonald's Trustee* 1915 AD 491, Solomon JA said at 508:

> 'The underlying conception in these and other cases is that while the legal *dominium* of property is vested in the trustees, they have no beneficial interest in it but are bound to hold and apply it for the benefit of some person or persons or for the accomplishment of some special purpose.'

And in *Land and Agricultural Development Bank of SA v Parker and Others* 2005 (2) SA 77 (SCA), Cameron JA said at 87C, para [22]:

> 'The essential notion of trust law, from which the further development of the trust form must proceed, is that enjoyment and control should be functionally separate. The duties imposed on trustees, and the standard of care exacted of them, derive from this principle.'

Section 9(1) of the Trust Property Control Act entrenches the principles of care, diligence and skill that are required of trustees in the exercise of their duties, and section 9(2) declares void any provision in a trust instrument to the extent that it would have the effect of exempting trustees from or indemnifying them against liability for breach of trust where they fail to show the degree of care, diligence and skill required in terms of subsection (1).

Vesting while postponing enjoyment, along with the ongoing duty to act in the beneficiaries' best interests while administering assets, brings about some interesting administrative obligations for trustees if they are to meet their obligations. While there is no legal obligation in terms of a loan agreement to pay interest unless interest was stipulated as one of the terms of the agreement,[3] there are several trust cases in which it has been held that it is the duty of trustees to protect the trust fund, including protecting it against the effects of inflation.[4] This would generally require some form of investment of the trust fund or utilisation of the trust assets. The need to split the two types of debt in the trust's financial records is once more manifested here. Utilising the funds held on behalf of a beneficiary necessarily requires some form of recompense for its use, while loan capital does not. It is suggested that a failure to distinguish in the trust's accounting records between loans to the trust by beneficiaries and their vested interests in assets makes it impossible for the trustees to meet their obligations as detailed above. For example, having a loan that does not attract interest may be in the best interests of the beneficiaries as a group, but it is in the interests of the individual in whom an asset is vested to obtain a return on the use of such asset.

Taxing trusts and the impact of interest-free loan accounts

It was held in *Commissioner for Inland Revenue v Friedman & Others NNO* 1993 (1) SA 353 (A) that a trust was not a 'person' as defined in section 1 of the Income Tax Act, 58 of 1962, as amended, ('the Act') and that as such it could not be subjected to tax. Thereafter the Act was amended with retrospective effect to the 1987 year of assessment, to include trusts in the definition of 'person', and section 25B, which is subject to section 7, was enacted to govern the taxation of trust income. Trusts were thus included in the tax net.

A similar conduit provision to that embodied in section 25B has been included in paragraph 80 of the Eighth Schedule to the Act, which in turn has been made subject to the attribution rules contained in paragraphs 68 to 72. These attribution rules are similar in nature to the deeming provisions contained in section 7 of the Act.[5] These are anti-avoidance provisions aimed at taxing, in the hands of a 'donor', any income or capital gains which resulted from a 'donation, settlement or other disposition' by such 'donor'.

It is clear that the return received on loan capital (a loan in the strict sense) that is invested is available, using the conduits provided by section 25B and paragraph 80, to be divided between beneficiaries as far as recognition for tax purposes is concerned. In this way funds can be allocated to beneficiaries with a low marginal rate of tax while skipping those with a higher marginal rate of tax, thereby reducing the overall tax liability in respect of the income or gains made – so-called income splitting. This is, of course, provided that the various deeming provisions mentioned above, which would result in the amounts being taxed in the hands of the deemed recipient thereof, are not applicable. It should also be remembered that, in order for these conduit provisions to apply, it is necessary for the relevant income or gain has to be vested in the beneficiary in the year it was received by or accrued (initially) to the trust. This requires the trustees to reach any decision as to the distribution or allocation of the relevant funds prior to the end of the tax year.

On the other hand, income generated on amounts or assets that vest in a beneficiary (a 'loan' in the broader sense) have to be credited in the accounting records to that beneficiary. Such gains or income will, by virtue of the same conduit provisions, be taxed in the hands of the beneficiary with a vested right thereto. This, too, is subject to none of the deeming provisions being applicable. Regardless of whether the deeming provisions do or do not apply, gains on assets which vest in a beneficiary will at no stage be taxable in the hands of the trust.

These deeming provisions are a convenient place to continue our discussion of the tax implications

[3] *Baliol Investment Co v Jacobs* 1946 TPD 269 at 272.

[4] *Administrators, Estate Richards v Nichol* 1999 (1) SA 551 (SCA) at 556F.

[5] Para 68 similar to s 7(2); para 69 similar to ss 7(3) and (4); para 70 similar to s 7(5); para 71 similar to s 7(6); and para 72 similar to s 7(8).

of interest-free loan accounts. Interest-free loan accounts were first addressed by the Court in *Commissioner for Inland Revenue v Berold* 1962 (3) SA 748 (A) in which, in respect of the then equivalent of the present section 7(3), it was decided that as long as the capital remains unpaid, the failure to charge interest on a loan constitutes a continuing donation of the interest to the debtor. Following on this, it was decided in *Ovenstone v Secretary for Inland Revenue* 1980 (2) SA 721 (A) that in determining the rate of interest that should be charged on a loan, regard must be had to what the trust would have paid had it borrowed the funds on normal commercial terms. The rate that the 'donor' would have paid is irrelevant. It was further decided in the case of *Commissioner, South African Revenue Service v Woulidge* 2002 (1) SA 68 (SCA) that the *in duplum* rule does not apply in determining the amount of interest to be attributed to a donor under the attribution rules. (In terms of the *in duplum* rule, arrear interest ceases to run once the sum of unpaid interest equals the outstanding capital.) According to *Woulidge*, the *in duplum* rule can only be applied in the real world of commerce and economic activity where it serves considerations of public policy in the protection of borrowers against exploitation by lenders.[6] In *Woulidge* this was not the case, as no interest had in fact been charged and no arrear interest had in fact accumulated – what was involved was a hypothetical inquiry.

The tax implications of interest-free loans generated considerable public interest after the judgment of the Supreme Court of Appeal in *Commissioner, South African Revenue Service v Brummeria Rennaisance (Pty) Ltd* 2007 (6) SA 601 (SCA). That case concerned a group of companies that developed retirement villages. In order to finance the construction of units, the company entered into agreements with potential occupants of units still to be constructed. In terms of these agreements the company obtained an interest-free loan from a potential occupant in exchange for which the lender received a lifelong right to occupy the unit.

While the companies were initially not taxed on the right to use the loan capital interest-free, the Commissioner later issued revised assessments on the basis that the right to the interest-free loans had a monetary value which formed part of their gross income. The companies objected to these revised assessments on the basis that the right to use the loan capital could not be turned into money, which objection was upheld by the Tax Court.

On appeal the Supreme Court of Appeal found in favour of the Commissioner *inter alia* on the basis that, as was held at para [15] of the judgment:

> '… the question whether a receipt or accrual in a form other than money has a money value is the primary question and the question whether such receipt or accrual can be turned into money is but one of the ways in which it can be determined whether or not this is the case; in other words, it does not follow that if a receipt or accrual cannot be turned into money, it has no money value. The test is objective, not subjective.'

Accordingly the Court held that the value of a legally enforceable right to the interest-free use of loan capital had to be included in the companies' gross income for the years in which such rights accrued.

An interesting aspect of *Brummeria* concerns the Court's refusal to consider whether or not the accrual was of a capital nature, as the issue had not been raised by the companies in their statement of the grounds of appeal. Davis *et al*[7] suggest that it is conceivably possible to argue in a future case that an interest-free component of a loan is of a capital nature. They give the following example as an illustration. A sells his factory to B for a loan which is interest-free for 20 years. B can argue that the right to use the money loaned for 20 years constitutes the consideration for the sale of a capital asset.

Brummeria was decided on general principles, without regard to any of the specific inclusions

[6] See however *Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd* 2015 *Taxpayer* 35 for other public policy justifications for the *in duplum* rule.

[7] *Estate Planning* at 13.6.

in gross income. These specific inclusions could potentially foil the above argument. If we accept that the right to use loan capital interest-free qualifies as an 'amount' for the purposes of deciding whether or not there was a receipt or accrual of gross income, there seems to be no reason why such a right would not also qualify as an 'amount received or accrued by way of an annuity', and thus a specific inclusion in gross income in terms of paragraph (*a*) of that definition. Admittedly though, an annuity was defined in *Secretary for Inland Revenue v Watermeyer* 1965 (4) SA 431 (A) at 437A-B as consisting of a right to regularly recurring 'payments' chargeable against some person. It can be argued that a right to the interest-free use of loan capital, although an 'amount in cash or otherwise', is not a payment.

In *Brummeria* the interest-free use of money was a *quid pro quo* for what could otherwise have been charged for the right of use of the units, ie a substitute for rent, which would not ordinarily be the case where an interest-free loan is made to a trust. Indeed, in paragraph 10 of Interpretation Note No 58 (Issue 2) dated 4 October 2012, the South African Revenue Service ('SARS') said the following:

> 'The *Brummeria* case is clearly not authority for the general conclusion that the value of the right to use an interest-free loan should in each and every case be included in the borrower's gross income. The value of a receipt or accrual in a form other than money would usually not have to be included in gross income if the receipt or accrual did not take place in exchange for goods supplied or services rendered. The reason for this is that such a receipt or accrual would probably be of a capital nature. However, each and every transaction will have to be evaluated on its own merits and against the background of its own facts and the intentions of the parties.'

A further question that could arise is whether the arrangement could conceivably give rise to liability for donations tax. There are two aspects to such a transaction that could potentially attract donations tax: (*a*) the sale of assets to a trust; and (*b*) allowing the purchase price to remain owing on interest-free loan account. As far as the first aspect is concerned, as long as the assets are sold at full market value, the disposal cannot be gratuitous as there is no appreciable element of liberality or generosity. In deciding whether or not the second aspect, namely the interest-free loan, gives rise to liability for donations tax, regard should be had to the case of *Berold*. In *Berold* the Court held that, for so long as the taxpayer (*a*) failed to claim payment of the loan amount due to him in respect of assets sold to the company and (*b*) also failed to charge interest on the loan, he was making a continuing donation to the company and the Court consequently upheld the Commissioner's invocation of section 9(3) – now section 7(3) – of the Act.

Davis *et al*[8] point out that one should distinguish between 'a loan where no interest is charged and the lender cannot alter the interest conditions and a loan where no interest is charged but he is entitled to charge interest'. The idea is that if the lender can charge interest but refrains from doing so, there is then a donation as a donation includes any 'gratuitous waiver or renunciation of a right'. On this basis, it could be that A in the above example has donated an amount to the trust.

The problem, according to Davis *et al*, is that the donation, in terms of section 62(1)(*d*) of the Act, has to be valued at the date when it took effect. On this basis they contend that if the transaction is a loan repayable on demand, and repayment can be demanded at any time, the value of the donation of interest cannot be valued at the date it took effect because it can be terminated at any time.

However, in those instances where the borrower does indeed have a right to an interest-free loan, ie the parties in fact agree to an interest-free loan, there seems to be nothing to distinguish such a loan from a quasi-usufruct over consumables. The question then arises as to whether section 62(1)(*d*) is in fact the correct valuation provision to apply to such a loan. On the basis that the borrower, until such time as repayment is demanded or the loan period expires, has all the rights

[8] *Estate Planning* at 13.6.

in the loan capital including the rights to all fruits, is the right to an interest-free loan not in fact an 'other like interest in property' for the purposes of section 62(1)(*a*), which refers to 'fiduciary, usufructuary and other like interests in property'? If so, then, in terms of that section, the interest-free loan should be valued at an annual value of 12 per cent. A similar argument could conceivably be made that the interest not charged constitutes an annuity for the purposes of section 62(1)(*b*). The value of such an annuity, based on the *dictum* in *Ovenstone*, would be determined on the basis of what the trust, as borrower, would have paid had it borrowed the funds on normal commercial terms. If either of these approaches were accepted, then the donation – if it is a loan repayable on demand – should be valued over the life expectancy of the donor as per the provisions of the aforementioned sections.

Conclusion on interest-free loans and vested rights to trust property

This article sets out to illustrate that a frequently encountered error in accounting records could conceivably lead to an increased liability for income tax. To establish this, loans are distinguished from trust capital that is vested in one or more beneficiaries. Although the debtor in terms of the loan and the beneficiary with a vested right to trust capital are frequently the same people, it is suggested that these amounts should be accounted for separately in the trust's books of account.

Having distinguished loans from vested trust capital, the taxation of trusts and interest-free loan accounts was discussed in an attempt to show that there is a possibility that interest-free loans, as they are frequently used with trusts in estate planning exercises, could attract unexpected liability for donations tax or income tax. If this were indeed so, it is suggested that a failure to account for interest-free loans and vested trust capital separately is likely to lead to trustees incorrectly accounting to beneficiaries for trust income and capital gains, resulting in incorrect tax returns. Such errors would be compounded should SARS at any stage dispute one of the trusts' tax returns.

The danger exists that SARS could, without evidence to the contrary, treat vested rights to trust capital and income, on the one hand, and interest-free loans, on the other hand, as one and the same thing. Needless to say, it would be time-consuming and expensive at that stage to amend the trust's books of account to reflect the true situation, leaving aside the question of trustees' personal liability resulting from a failure to sufficiently differentiate between interest-free loan capital and trust capital in which beneficiaries have a vested right.

Moreover, this could adversely affect the application of the attribution rules embodied in section 7 of the Act.

New trust tax returns

It should be borne in mind that, with the new ITR12T 'Modernised Income Tax Return for Trusts', SARS has implemented new reporting requirements for trusts. The new form now requires various transactional details to be provided in respect of the relevant year of assessment. The new form requires *inter alia* details of:

- Capital or revenue distributed or vested in beneficiaries;
- Distributions or vesting of non-taxable income;
- Distributions or vesting of capital or assets; and
- Loan(s) granted and received.

This suggests that in future SARS intends keeping a closer watch on loan accounts and vested rights to trust assets.

At the very least, SARS is likely to ensure that loans due to deceased beneficiaries and their vested interests in trust assets are reported for estate duty purposes. But one must also be alive to the possibility that, by keeping track of loans and requiring a declaration of the rates of interest payable on such loans, SARS may be readying itself to commence levying tax on 'deemed interest' in appropriate circumstances.

It is moreover submitted that the failure to distinguish in a trust's books of account between interest-free loans owing to beneficiaries, on the one hand, and beneficiaries' vested rights to trust capital, on the other hand, could in future result in incorrect reporting in the new ITR12T income tax return applicable to trusts.