

# TRUST PRACTICE MODERNISATION

**South African Revenue Service**



17 May 2023 – FISA Gauteng Regional Meeting

# RESTORE INSTITUTIONAL INTEGRITY

SARS has embarked on a path to rebuild its organisational capability and restore institutional integrity. In line with SARS' Vision 2024 and beyond, we highlight the following:

- *Higher Purpose:*
  - enabling government to build a capable State, to foster sustainable economic and social development that serves the wellbeing of all South Africans
- *Vision 2024:*
  - a smart, modern SARS, with unquestionable integrity that can be trusted and admired
- *Strategic Intent:*
  - to develop a tax and customs system based on Voluntary Compliance

# RESTORE INSTITUTIONAL INTEGRITY

## 9 Strategic Objectives

To give effect to our Strategic Intent, SARS has developed *9 Strategic Objectives* (“SOs”). We would like to highlight the following three SOs -

- SO 2:
  - make it easy for taxpayers and traders to comply with their obligations*
- SO 3:
  - detect taxpayers and traders who do not comply, and make non-compliance hard and costly*
- SO 8:
  - work with and through stakeholders to improve the tax ecosystem*

# REGISTRATION

- Practice Note 21 (1 June 1994):
  - All Trusts must be registered for Tax
- Withdrawn on 16 July 2004:
  - New process
- Section 66 of the ITA:
  - Commissioner must annually give public notice of the persons who are required to furnish returns for the assessment of normal tax within the period prescribed in that notice
- Section 67(1) of the ITA:
  - Every person who at any time becomes liable for any normal tax; or
  - Becomes liable to submit any return contemplated in section 66 must apply to the Commissioner to be registered as a taxpayer in accordance with Chapter 3 of the TAA

# REGISTRATION

- With reference to the **2022 year of assessment**, section 2 of the Schedule of Government Gazette Volume 684, No. 46471 dated 3 June 2022 deals with persons who must submit income tax returns
- Section 2(b) requires every Trust that was a resident during the 2022 year of assessment to submit a return
- Section 2(c) requires every company, Trust or other juristic person, which was not a resident during the 2022 year of assessment, that:
  - Carried on a trade through a Permanent Establishment (PE)
  - Derived income from a source in SA
  - Derived any capital gain or capital loss

# REGISTRATION

## Important Definitions

- *Connected Person* –
  - ❑ in relation to a *natural person* –
    - ❖ *any Trust* of which such natural person or such relative is a *beneficiary*
  - ❑ in relation to a *Trust* –
    - ❖ *any beneficiary* of such Trust and *any connected person* in relation to such beneficiary
  - ❑ in relation to a *connected person in relation to a Trust* –
    - ❖ *any other person who is a connected person* in relation to such Trust
  - ❑ in relation to *any person who is a connected person* in relation to any other person in terms of the foregoing provisions of this definition –
    - ❖ *such other person*

# REGISTRATION

## Important Definitions

- *Relative* in relation to any person –
  - his/her spouse
  - anybody related to that person or that person's spouse within the third degree of consanguinity
  - any spouse of anybody so related
- *Person* includes a *Trust*
- *Trustee* –
  - includes an administrator having the administration or control of any property subject to a Trust or acting in any fiduciary capacity

# REGISTRATION

## Important Definitions

- *Beneficiary* in relation to a Trust –
  - means a person who has a *vested or contingent interest* in all or a portion of the receipts or accruals or the assets of that Trust
- *Representative taxpayer* means a natural person who resides in SA and
  - in respect of income which is the subject of any Trust, the *trustee*
  - income includes capital gains as per the 8<sup>th</sup> Schedule



# REGISTRATION

## The Registration Process

- Mainly virtual appointment (versus physical appointment)
- SOQS (SARS Online Query System)
  - ❑ [www.sars.gov.za](http://www.sars.gov.za)
  - ❑ Click on **Online Services**
  - ❑ **Use our Digital Channels**
    - ❖ Click on **Trust Registration**
    - ❖ Complete and submit
- VDP (have to register first, non-submission)
- Necessity for beneficiaries to register and declare
- Consider section 7 deeming provisions
- Consider para 68 – 72 (8<sup>th</sup> Schedule) attribution rules
- Consider section 7C

# DEREGISTRATION

## The Deregistration Process

- Currently still a manual process – branch visits = no online
- Deregistration cannot be effected in the following circumstances:
  - If there is a balance (debit or credit)
  - If the Trust was identified for an audit
  - If the Trust lodged an objection or appeal –
    - ❖ deregistration can only be effected once the objection or appeal has been finalised
  - If there are any outstanding follow-ups on the Trust's record
  - Where all requirements have not been met (e.g. information / documentation still outstanding, *etc.*)
  - If the Trust renders services outside the RSA

# NEW REQUIREMENTS

## Filing and Declaration

- IT3(t)

- Beneficial Ownership

([www.sars.gov.za](http://www.sars.gov.za) → Business and employers → Trusts → What's New  
14 February 2023 – Trust Registration Beneficial Owners Details  
click on link: [Guide for the SARS Online Query System](#)

- Founder (Settlor or Donor)
- Trustee
- Beneficiary
- Donor (in relation to a donation made to the Trust – not the Founder)
- Protector

# OBJECTION AND APPEAL

## The Current Process

- ❑ Currently submit manually to:
  - ❖ If the Taxpayer-
    - [contactus@sars.gov.za](mailto:contactus@sars.gov.za)
  - ❖ If the Tax Practitioner-
    - [pcc@sars.gov.za](mailto:pcc@sars.gov.za)
  
- ❑ Refer to Public Notice 3135 promulgated on 10 March 2023 and SARS Website (<https://www.sars.gov.za/legal-counsel/secondary-legislation/public-notices/>)  
(SARS Website ➡ Contact Us ➡ Contact SARS by e-mail/online)
  
- ❑ 2024 – planned digital submissions

# FUTURE DEVELOPMENTS

- Possibility of Trust knowledge sharing / podcasts planned on specific topics
- Designing and implementing an automated assessment, dispute and verification process
  - ❑ Trust disputes will in future be lodged through electronic channels (versus the current manual process)- 2024 – planned digital submissions
  - ❑ An automated outcome letter will be issued on the outcome of the disputes (Request for remission, Notice of objection, Notice of Assessment), as well as for the suspension of payment of Trust debt
- Auto assessments - SARS has the authority to raise estimate assessments due to non-submission of requested information according to Section 95(1)(c) of the TAA
- Risk specific letters will be issued to taxpayers based on specific risks that were identified
- Administrative penalties will be implemented in future to be levied on non-submission of ITR12T, IT3(t) and late payment of Trust debt

# FUTURE DEVELOPMENTS

- SARS is in the process of implementing a one taxpayer account – third party data will populate the account in near real time. Taxpayers can use a device including a smart tax application, through a digital platform
- SARS will increase the reliance on third party data to improve declaration compliance
- Legal amendments will take place to current legislation where required to close tax gaps
- Master of the High Court – automatic registration

# Q&A

Thank you  
Re a leboha  
Re a leboga  
Ndza Khensa  
Dankie  
Ndi a livhuwa  
Ngiyabonga  
Enkosi  
Ngiyathokoza