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Trustees must submit accurate trust **tax returns** by January 20

TRUSTWORTHY

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TRUSTEES must ensure accurate and honest submission of trust tax returns by 20 January 2025, as Sars intensifies scrutiny on compliance and beneficial ownership. | HENK KRUGER Independent Newspapers

THE South African Revenue Service (Sars) sent a loud and clear message to trustees about a month ago on social media – "Remember to submit your accurate and honest Trust tax returns (ITR12T) via eFiling by 20 January 2025". Do not underestimate this warning.

Trustees often abdicate their responsibilities to their accountants or tax practitioners, leaving them to manage the trusts' tax affairs.

Some tax practitioners ignore trusts' unique tax rules (where other parties to the trust may be taxed on trust income and capital gains instead of the trusts), which may get their clients (and even themselves) in trouble.

With the ever-increasing focus of Sars on trusts, as is evident from the extent of information requested on the respective tax returns (e.g. the trust, beneficiaries, donors, and funders), taxpayers should heed the warning made by Sars on their website that "While voluntary compliance is our first preference, Sars is refining its capability to detect and make it hard and costly for non-compliant taxpayers."

With trustees being the representative taxpayers of trusts, they cannot claim ignorance for incorrect or even fraudulent tax returns submitted to Sars.

Trustees and service providers often underestimate the effort that should go into ensuring a correct trust tax return is submitted and that the necessary cross-checking has been done.

The following pointers will assist trustees and trust service providers in remaining out of the claws of Sars.

Beneficial ownership

Sars fondly refers to themselves as "secondary collectors" of beneficial ownership information. That is because the laws that were amended with the introduction of the Financial Action Task Force (FATF) measures in early 2023, did not include the Income Tax Act. Sars decided to collect similar information to that collected by the Master of the High Court but with a focus on money laundering, as highlighted in their tax administration. Already in February 2023, Sars started requiring the listing of beneficial owners for trusts registering with Sars.

Effective 22 December 2023, Sars introduced a definition of "beneficial owner" in the Tax Administration Act and decided to use the exact definition as used in the Trust Property Control Act. However, in subsequent form changes, Sars introduced further parties as "beneficial owners" such as "donors".

Sars clarified in a recent webinar that "donors" include anyone who, from a tax perspective, is regarded as a donor, including anyone who provides funding to a trust at non-arms-length terms, such as interest-free loans and those who made physical donations to trusts. Trustees must remember that they must keep all the beneficial owner information as required in the Regulations and that the beneficial ownership register that must be submitted to the Master is only an extract of this required information, which trustees have to keep up to date.

Furthermore, Sars has started cooperating with the Master, and they will compare information.

Sars will identify and pursue all those trusts that were never registered as taxpayers, including the so-called 'dormant trusts'. Trustees/tax practitioners should reconcile the information submitted to the Master with that submitted to Sars.

They must keep in mind that there may be a mismatch as the information submitted to Sars is at the end of the tax year for which a trust tax return is submitted, whereas the information that should be provided to the Master is on a real-time basis.

Effective 1 September 2024, Sars clarified their expectation around unnamed beneficiaries in the trust instrument. Even though some trustees (unnecessarily) offer information about persons in classes of beneficiaries to the Master on its beneficial ownership registers, Sars does not require full detail (similar to beneficial owners) for such persons, but rather a description as per the trust instrument of the unnamed beneficiaries and a short description of what is meant with or detail of this category of beneficial owners.

Sars introduced the requirement for beneficial ownership information in their 2023 tax return.

For the 2024 tax year, Sars prepopulates the tax return with the 2023 information provided. It remains the responsibility of trustees to ensure that any changes are made before the 2024 tax return is submitted.

Disqualified trustees

On 16 September 2024, Sars introduced a requirement for trustees to confirm that the person appointed as a trustee has not been disqualified in terms of Section 6 of the Trust Property Control Act. Sars wants to ensure that trustees comply with the law and can legally perform their duties. Where a trustee has been disqualified, Sars wants trustees to update the Registration, Amendment, and Verification (RAV01) form on efiling. Section 6 is quite a complex section that trustees need to study. Such a disqualification also has to be reported to the Master, and the Master has to remove the trustee. The beneficial ownership register also had to be updated.

Expanded reporting

Since the 2023 tax year, Sars introduced an (uncomfortable) requirement for trustees to submit the latest trust instrument, the Letters of Authority, financial statements/administration accounts, a beneficial ownership document, and all trust resolutions and minutes of meetings with the annual trust tax return. Even though some trustees argue that they could selectively provide trust resolutions, Sars clarified that they require all resolutions relating to trust transactions.

This requirement is supported by the principle established by the courts that a trust is run by resolution, which means no transaction could be entered into unless approved by the trustees in terms of minutes of meetings or a resolution. Although historically, standard practice was for accountants to prepare a pack of resolutions with the trust financial statements to support trust transactions, such backdating will now be flagged by Sars through the use of 'AI'. Trustees will, therefore, have to become disciplined to manage the trust as a separate entity on an ongoing basis and demonstrate that through their paperwork. Trustees and service providers should no longer 'back-date' trust paperwork to demonstrate compliance.

Is there evidence of "vesting"?

Although most trustees and tax practitioners use the terms 'distribution' and 'vesting' interchangeably, Sars made it clear in a recent webinar that, for them, 'vesting' and 'distribution' can happen in two different tax periods and that a tax liability arises the earliest of a receipt/accrual of an amount. They confirmed that 'vesting' is acquiring a beneficiary's personal right, which translates into an accrual even if a distribution occurs in a later year. To avoid disallowance of a 'distribution' to a beneficiary for tax purposes, trustees should become accustomed to using the term 'vest' instead of 'distribute'.

In many instances, trustees ignored the requirement that Sars would only recognise these 'vestings' if they were made in the same tax year that they were generated. Trustees are not allowed to prepare distribution resolutions after the end of the tax year (end of February each year), even if the trust deed allows for that.

Does everything reconcile?

Trustees must reconcile amounts generated in the trust with those reported on the new IT3(t) and amounts reported by donors/funders, beneficiaries, and the trust in their respective provisional tax returns, annual tax returns, and donations tax returns. They also have to reconcile the Section 7C donations tax calculation with loans made to the trust. Sars is closing the net, preventing a leak in its revenue, and will compare all the relevant parties' tax return submissions to ensure the correct persons are taxed and that it collects taxes due to it.

Trusts that made donations to qualifying "public benefit organisations" and want tax deductions in terms of Section 18A of the Income Tax Act, can only do so if they have Section 18A receipts on hand. Over time, these amounts will be pre-populated by Sars from the newly introduced IT3(d) returns.

Be mindful of verification letters from Sars after submission

On 16 September 2024, Sars introduced enhancements to trust tax return verifications. Several trustees and tax practitioners started receiving very uncomfortable letters from Sars requesting additional information, including loan agreements, rental agreements, foreign transactions, rental properties, the trust's largest expenses, bank statements, detailed tax computations, etc. Many people use their personal bank accounts to receive trust income and make trust payments. This is against the law as Section 10 of the Trust Property Control Act requires trustees to open a bank account and deposit all money received in their capacities as trustees in such a separate trust bank account to protect trust assets. If you cannot produce the trust's bank statements, your only option is to submit your personal bank statements, which is not wise, as Sars will have access to all your personal transactions.

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