

# TRUST BENEFICIARIES ACROSS BORDERS

UNTANGLING TAX AND EXCHANGE  
CONTROL



SENTINEL  
INTERNATIONAL

# Introduction

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## Michelle Tickner

### Head of Department: Legal and Consulting

Michelle brings extensive expertise in individual and local trust tax compliance, the Tax Administration Act, and drafting objections and appeals, including dispute resolution with SARS. Her proficiency also extends to ceasing tax residency, SARS voluntary disclosure programme applications, and cross-border asset planning.

A registered General Tax Practitioner with SAIT, Michelle has been practicing tax since 1994. Prior to joining Sentinel, she served in KPMG's tax department, further honing her skills in complex tax matters.

Michelle holds a Post Graduate Diploma Advanced Taxation (UNISA), Post Graduate Diploma International Tax (NWU), Post Graduate Diploma in Advanced Value-Added Tax (UNISA), a Professional Certificate in Tax Dispute Resolution (Tax Faculty) and an Advanced Diploma in Estate and Trust Administration (UFS).

## Anna Heydenrych

### Cross Border Tax Consultant

Anna joined Sentinel in 2021 with a strong multidisciplinary background. She holds a BAccLLB degree (US) and a Master of Laws specialising in International Taxation (UCT). This blend of legal and accounting knowledge allows her to take a practical, well-rounded approach to solving tax challenges.

Her focus area is private client services, including cross-border beneficiary planning, tax emigration as well as relocation to South Africa, and multi-jurisdictional estate planning. She works closely with individuals and families to navigate their tax and estate planning needs.

She is currently furthering her qualifications by studying towards the Advanced Diploma in Trust and Estate Administration (UFS). This will allow her to obtain the TEP (Trust and Estate Practitioner) designation through STEP and FPSA (Fiduciary Practitioner of South Africa) status through FISA.

# Today's Agenda

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## **Part 1: Tax considerations – trust distributions to beneficiaries**

- Section 25B and para 80 and it's changes
- Discussion of tax computations

## **Part 2: Complexities - What if a beneficiary moves abroad?**

## **Part 3: Exchange control requirements**

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# Part 1: Tax considerations

## **Trust distributions to beneficiaries**

# Trust distributions to beneficiaries

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**There have been significant changes to the tax treatment of Trust distribution to non-resident beneficiaries with effect 1 March 2024.**

- Section 25B of the Income Tax Act (“ITA”)
- Para 80 of the Eighth Schedule to the ITA

Let’s consider these changes and later look at an example.

Please note that we will **NOT** discuss the section 7 deeming provisions today!

We are only considering Section 25B and para 80.

# S25B(2) – PRIOR to the amendment of 1 March 2024

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<b>Criteria</b>	<b>Details</b>
<b>Applies to</b>	Discretionary trusts only
<b>Beneficiary's Right</b>	Where a <b>beneficiary</b> has acquired a vested right to any amount
<b>Trustee's Discretion</b>	In consequence of the exercise by the Trustee of a discretion vested in them by the trust deed
<b>Income Deemed</b>	Such amount is deemed to be derived for the benefit of that <b>beneficiary</b>
<b>Taxation</b>	Accordingly taxed in the hands of the <b>beneficiary</b> in terms of S25B(1)
<b>Vesting of Income</b>	Must happen during the same tax year

# Para 80 of the Eighth Schedule **pre** AND **post** 1 March 2024

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Paragraph	Details
Para 80(1)	If a trust asset is vested in a <b>beneficiary who is a resident</b> , the gain made on that disposal is taxable in the beneficiary's hands and not in the trust.
Para 80(2)	If a South African trust sells an asset and makes a capital gain, it is not taxed on the gain if it vests the gain in a <b>beneficiary who is a resident</b> in that same tax year. The beneficiary is taxed on the gain instead. Note that the gain must be vested in the same tax year that it arises.

# Application of OLD Section 25B(2) – Tax Resident v Non-Tax Resident

<p><b>Interest and Dividend Income Distributions</b></p>	<p>Normal rules. Include in taxable income. DWT 20% Annual interest exemption of R23 800 available for individual under 65. Tax rate: between 0% and 45%. Conduit principle is applicable.</p>	<p>If distributed to a non-tax resident, <b>no disclosure to SARS is needed</b>, provided the non-tax resident has not spent more than 183 days in aggregate in RSA during the 12 month period preceding the date on which the interest is received or accrued.  Remember to consider the DTA – likely that the country of residence would be allocated a taxing right.  Conduit principle is applicable.</p>
<p><b>Rental / Royalties / REIT Distributions</b></p>	<p>Normal rules. Include in taxable income. Tax rate: between 0% and 45%. Conduit principle is applicable.</p>	<p>If distributed to the non-tax resident, the non-tax resident should register for tax in RSA and disclose the income in their RSA tax return. These types of income are taxed at source. If tax is paid in RSA, tax relief can be claimed in the country of residence.  Tax rate: between 0% and 45%.  Conduit principle is applicable.</p>
<p><b>Capital Gains Distributions</b></p>	<p>Normal rules. Include in taxable income. Tax rate: between 0% and 18%. Conduit principle applicable.</p>	<p>Para 80(2) states that a distribution can only be made to a <b>beneficiary who is a resident</b>.  If a capital gain is distributed to a beneficiary who is a non-resident, the trust pays capital gains tax at 36% before making a capital distribution.  Trust tax rate: 36%  <u>Possible outcome in the foreign jurisdiction:</u>  The non-tax resident will pay tax in country of residence on worldwide income and cannot claim tax relief in that country for taxes paid by the trust in South Africa. The trust and the non-tax resident are not the same taxpayer.</p>

# S25B(2) – **POST** the amendment of 1 March 2024

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<b>Criteria</b>	<b>Details</b>
<b>Applies to</b>	Discretionary trusts only
<b>Beneficiary's Right</b>	Where a <b>beneficiary who is a resident</b> has acquired a vested right to income
<b>Trustee's Discretion</b>	In consequence of the exercise by the trustee of a discretion vested in them by the trust deed
<b>Income Deemed</b>	Such income is deemed to be derived for the benefit of that <b>beneficiary who is a resident</b>
<b>Taxation</b>	Accordingly taxed in the hands of the <b>beneficiary who is a resident</b> in terms of S25B(1)
<b>Vesting of Income</b>	Must happen during the same tax year

**Section 25B is aligning with para 80 of the Eighth Schedule**

# Para 80 of the Eighth Schedule **pre** AND **post** 1 March 2024

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Paragraph	Details
Para 80(1)	If a trust asset is vested in a <b>beneficiary who is a resident</b> , the gain made on that disposal is taxable in the beneficiary's hands and not in the trust.
Para 80(2)	If a South African trust sells an asset and makes a capital gain, it is not taxed on the gain if it vests the gain in a <b>beneficiary who is a resident</b> in that same tax year. The beneficiary is taxed on the gain instead. Note that the gain must be vested in the same tax year that it arises.

# Application of OLD versus NEW Section 25B(2)

<p><b>Interest and Dividend Income Distributions</b></p>	<p>Normal rules. Include in taxable income.</p> <p>DWT 20%</p> <p>Tax rate: between 0% and 45%.</p> <p>Conduit principle applicable.</p>	<p>If distributed to a non-tax resident, no disclosure to SARS is needed, provided the non-tax resident has not spent more than 183 days in aggregate in RSA during the 12 month period preceding the date on which the interest is received or accrued.</p> <p>Remember to consider the DTA – likely that the country of residence would be allocated a taxing right.</p> <p>Conduit principle applicable.</p>	<p>Interest income - Must be taxed in the RSA trust at 45% before a capital distribution may be made to a non-tax resident.</p> <p>Dividend income – Is subject to 20% withholding tax. The beneficial owner pays the withholding taxes. The trust is the beneficial owner. The non-tax resident will receive a capital distribution from the trust.</p>
<p><b>Rental/Royalties /REIT Distributions</b></p>	<p>Normal rules. Include in taxable income.</p> <p>Tax rate: between 0% and 45%.</p> <p>Conduit principle applicable.</p>	<p>If distributed to the non-tax resident, the non-tax resident should register for tax in RSA and disclose the income in its RSA tax return. These types of income are taxed at source. If tax is paid in RSA, tax relief can be claimed in the country of residence.</p> <p>Tax rate: between 0% and 45%.</p> <p>Conduit principle applicable.</p> <p>Please note – this does not consider the tax consequences in the country of residence!</p>	<p>Must be taxed in the RSA trust at 45% before a capital distribution may be made to a non-tax resident.</p>

LIKELY outcome in the foreign jurisdiction: The non-tax resident will pay tax in country of residence on worldwide income and cannot claim tax relief in that country for taxes paid by the Trust in South Africa. The Trust and the non-tax resident are not the same taxpayer.

# Application of OLD versus NEW Section 25B(2)

<p><b>Capital Gains Distributions</b></p>	<p>Normal rules. Include in taxable income.</p> <p>Tax rate: between 0% and 18%.</p> <p>Conduit principle applicable.</p>	<p>Para 80(2) states that the conduit principle only applies to a <b>beneficiary who is a resident.</b></p> <p>If a capital gain is distributed to a beneficiary who is a non-resident, the trust pays capital gains tax at 36% before making the distribution.</p> <p>Trust tax rate: 36%</p> <p>Please note – this does not consider the tax consequences in the country of residence!</p>	<p>Unchanged.</p> <p>Trust taxed at 36%</p>
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**LIKELY outcome in the foreign jurisdiction:** The non-tax resident will pay tax in country of residence on worldwide income and cannot claim tax relief in that country for taxes paid by the trust in South Africa. The trust and the non-tax resident are not the same taxpayer.

# Let's look at an example: The Rich Family

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Mr Rich set up a SA discretionary Trust, namely, The Riches Family Trust ('Family Trust'), in March 2010. The Family Trust consists of the following beneficial owners:

Trustee/Donor	Mr Rich	RSA tax resident
Trustee	Mrs Rich	RSA tax resident
Trustee	Sentinel International	Independent Trustee
Beneficiary 1	Mr Rich	RSA tax resident
Beneficiary 2	Mrs Rich	RSA tax resident
Beneficiary 3	Richie (Son)	RSA tax resident
Beneficiary 4	Penny (Daughter)	RSA tax resident
Beneficiary 5	Ticky (Daughter)	<b>Moved to the UK in 2024 tax year</b>
Beneficiary 6	Cash (Son)	Australian tax resident, since 2020 tax year

# Trust Taxable Income

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The following income was available for distribution at the end of February –

Local interest income	R100 000
Local dividend income	R1 000 000
Local royalty income	R300 000
Local capital gain	R500 000
REIT	R10 000
Rental profits	R200 000

# Tax Computation: Application of OLD rules – 2024 tax year and prior years

**The Riches Family Trust**

**Ref. nr.: IT 1234/2010**

**2024 Tax year**

**Option 1: IF - Taxed in the Trust**

	Local interest	Rental income	Royalty income	REIT income	Capital gain/(loss)	Net Local Dividend income	Total
	ZAR	ZAR	ZAR	ZAR	ZAR	After 20% WHT	ZAR
Taxable income	100 000	200 000	300 000	10 000	500 000	1 000 000	<b>2 110 000</b>
Tax rate	45%	45%	45%	45%	36%		<b>454</b>
<b>Tax payable</b>	<b>45 000</b>	<b>90 000</b>	<b>135 000</b>	<b>4 500</b>	<b>180 000</b>	<b>-</b>	<b>500</b>

# Tax Computation: Application of OLD rules

## Option 2: IF - Distributed to beneficiaries

Assuming all income and capital gains must be distributed equally

	Local interest ZAR	Rental income ZAR	Royalty income ZAR	REIT income ZAR	Capital gain/(loss) ZAR	Gross Local Dividend income ZAR	Total ZAR
Taxable income	100 000	200 000	300 000	10 000	500 000	1 000 000	2 110 000
<b>Amounts distributed</b>	100 000	200 000	300 000	10 000	416 667	- 667	1 026
Mr Rich	16 667	33 333	50 000	1 667	83 333	- 000	185
Mrs Rich	16 667	33 333	50 000	1 667	83 333	- 000	185
Richie - RSA tax resident	16 667	33 333	50 000	1 667	83 333	- 000	185
Penny - RSA tax resident	16 667	33 333	50 000	1 667	83 333	- 000	185
Cash - Australian tax resident	16 667	33 333	50 000	1 667	N/A	- 667	101
<b>Ticky - UK/RSA unclear (but assume she is a RSA tax resident)</b>	16 667	33 333	50 000	1 667	83 333	- 000	185
Remains in trust	- -	-	-	-	83 333	1 000 000 333	1 083
<b>Taxed at 36%</b>					<b>30 000</b>		
Non-taxable amount available for distribution to Cash					<b>53 333</b>		

# Tax Computation: Application of OLD rules

	Assumed tax rate - Income	Assumed tax rate - CGT	Assumed total tax ZAR	Nett after tax receipt
Mr Rich	30%	12%	40 500	144 500
Mrs Rich	30%	12%	40 500	144 500
Richie - RSA tax resident	40%	16%	54 000	131 000
Penny - RSA tax resident	25%	10%	33 750	151 250
Cash - Australian tax resident	18%	-	18 300	83 367
<b>Ticky - UK/RSA unclear (but assume she is a RSA tax resident)</b>	18%	7%	24 300	160 700
			<b>211 350</b>	-
			<b>211 350</b>	871 983
<b>Taxed in the Trust</b>			<b>30 000</b>	

## Total tax - Trust and Individuals

	Trust	Individuals	Total
Option 1	454 500		454 500
Option 2	30 000	211 350	241 350
<b>Difference: Tax saved by using Option 2</b>			<b>R213 150</b>

# Tax Computation: Application of OLD rules

**Non-resident disclosure of South African sourced income**

	Local interest	Rental income	Royalty income	REIT income	Capital non-taxable income	Total
	ZAR	ZAR	ZAR	ZAR	ZAR	ZAR
Cash will have to submit a RSA tax return disclosing	16 667	33 333	50 000	1 667	53 333 000	155

Notes:

The net distribution before tax is already not equal to the SA beneficiary distributions - other beneficiaries received R185 000 before tax, Cash only received R101 667 before tax and a capital distribution of R53 333.

Cash is likely to pay tax in Australia on the income and capital distributions from the "offshore trust."

Cash has paid tax in his personal name in RSA on the income and might be able to claim tax relief in Australia of taxes paid in RSA. **It is the same taxpayer who is taxed by SARS and by the ATO excluding the amount that relates to the capital distribution.**

# Tax Computation: Application of **NEW** rules – 2025 tax year and thereafter

**The Riches Family Trust**

**Ref. nr.: IT 1234/2010**

**2025 Tax year**

**Option 1: IF - Taxed in the Trust**

	Local interest	Rental income	Royalty income	REIT income	Capital gain/(loss)	Net Local Dividend income	Total
	ZAR	ZAR	ZAR	ZAR	ZAR	After 20% WHT	ZAR
Taxable income	100 000	200 000	300 000	10 000	500 000	1 000 000	<b>2 110 000</b>
Tax rate	45%	45%	45%	45%	36%		
<b>Tax payable</b>	<b>45 000</b>	<b>90 000</b>	<b>135 000</b>	<b>4 500</b>	<b>180 000</b>	<b>-</b>	<b>500</b>

**454**

The tax consequences in Option 1 is the same as the old rules

# Tax Computation: Application of NEW rules

## Option 2: IF - Distributed to beneficiaries

Assuming all income and capital gains must be distributed equally

	Local interest ZAR	Rental income ZAR	Royalty income ZAR	REIT income ZAR	Capital gain/(loss) ZAR	Gross Local Dividend income ZAR	Total ZAR
Taxable income	100 000	200 000 000	300	10	500 000	1 000 000	2 110 000
<b>Amounts distributed</b>	83 333	166 667 000	250	8	416 667	-	925 000
Mr Rich	16 667	33 333 000	50	1	83 333	-	185 000
Mrs Rich	16 667	33 333 000	50	1	83 333	-	185 000
Richie - RSA tax resident	16 667	33 333 000	50	1	83 333	-	185 000
Penny - RSA tax resident	16 667	33 333 000	50	1	83 333	-	185 000
Cash - Australian tax resident	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Ticky - UK/RSA unclear (but assume she is a RSA tax resident)</b>	16 667	33 333 000	50	1	83 333	-	185 000
Remains in the Trust - and taxed at Trust tax rates income (45%) and CGT (36%)	16 667	33 333 000	50	1	83 333	1 000 000	1 185 000

Taxed in trust

Income at 45% and capital gain at 36%



7 500	15 000 500	22	750	30 000	-	75 750
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# Tax Computation: Application of **NEW** rules

	Assumed tax rate - Income	Assumed tax rate - CGT	Assumed total tax ZAR	Nett after tax receipt
Mr Rich	30%	12%	40 500	144 500
Mrs Rich	30%	12%	40 500	144 500
Richie - RSA tax resident	40%	16%	54 000	131 000
Penny - RSA tax resident	25%	10%	33 750	151 250
Cash - Australian tax resident	N/A	N/A	N/A	N/A
<b>Ticky - UK/RSA unclear (but assume she is a RSA tax resident)</b>	18%	7%	24 300	160 700
			<b>193 050</b>	
<b>Taxed in Trust</b>			<b>75 750</b>	

## Total tax - Trust and Individuals

	Trust	Individuals	Total
Option 1	454 500		454 500
Option 2	75 750	193 050	268 800
<b>Difference: Tax saved by using Option 2</b>			<b>R185 700</b>

# Tax Computation: Application of **NEW** rules

## **Non-resident disclosure of SA sourced income = NOT APPLICABLE**

All taxes have been paid by the Trust

**Cash will receive a capital distribution of** **R109 250**

Notes:

The distribution to Cash before tax is already not equal to the SA beneficiary distributions - other beneficiaries received R185 000 before tax.

And Cash is likely to pay tax in Australia on the distributions from the "offshore trust."

Remember Cash and the Trust are not the same taxpayer and he is not likely to be able to claim any tax relief in Australia for the taxes paid by the Trust.

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## Part 2: Complexities

**What if a beneficiary moves abroad?**

# WHAT ABOUT TICKY?

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## Ticky's Tax Residency Dilemma

- Remember, she moved to the UK during the 2024 tax year.
- She is unsure if she intends to return to South Africa.
- She may still be **ordinarily resident** and thus tax resident in SA.
- However, she could also become a **UK tax resident** if she meets UK residency criteria (e.g., 183 days in the UK tax year).

## So where is she exclusively tax resident?

### The role of the DTA:

- If Ticky qualifies as a tax resident in both SA and the UK, the **SA-UK DTA** determines her exclusive tax residency.
- The **tie-breaker rules** must be applied **in strict order** – each test is only considered if the previous one is inconclusive.

# What about Ticky: Tie-Breaker Tests (Applied in Order)

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## Article 4 of the South Africa – UK DTA

1. **Permanent Home** – Where does Ticky have a permanent home available?
  - **Emphasis on “available”**- does not require ownership or rental.
  - If homes exist in both countries, move to the next test.
2. **Centre of Vital Interests** – Where are her strongest **personal and economic ties**?
  - Family, employment, business, social connections.
3. **Habitual Abode** – Where does she **habitually live**?
  - Frequency, length, and regularity of stays.
4. **Nationality** – If previous tests are inconclusive, where is she a citizen?
5. **Mutual Agreement Procedure (MAP)** – If still unclear, **tax authorities negotiate**.

# What about Ticky: The Effect of the DTA Determination

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✓ **DTA rules override SA's domestic residency tests.**

Definition of resident in Section 1(1)

“resident” means any

- (a) Natural person who is
  - (i) Ordinarily resident in the Republic; or
  - (ii) Not at any time during the relevant year of assessment ordinarily resident in the Republic, if that person was physically present in the Republic –

...

But **does NOT include** any person who is deemed to be **exclusively a resident of another country** for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation.

✓ If the DTA determines Ticky is a **UK tax resident**, she is **excluded from SA tax residency**.

✓ **Any Trust distributions to her will be considered payments to a non-resident.**

# What about Ticky: Trustee considerations

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## ⚠ BE CAREFUL!

- Don't assume a beneficiary's tax residency based on last year's resolutions.
- **Trustees should confirm the tax residency of beneficiaries at every meeting.**
- Don't rely on beneficiaries' answers – they may not fully understand what “tax resident” means.

## Ask the right questions:

- “Where are you living?”
- If not in SA, **engage a tax consultant** to confirm their tax residency.

## How we can assist:

- **We provide tax residency analysis** for individuals in complex situations.
- **We assist with the SARS tax emigration process.**
- **Let's ensure compliance before distributions are made.**

# Other considerations

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- Taxing income in the Trust if the beneficiaries' tax rate is also 45%
- Capital gains should ideally be distributed – 18% v 36% (only tax residents)
- Consider real time distributions going forward – resolve before end of February every year
- Comply with the new SARS IT3(t) requirements and deadlines
- Review the overall Trust and Estate plan – inheritance v trust distribution – your non-resident beneficiary is adding complexity. Review and provide for them.

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# Part 3: Exchange Control Provisions

**When receiving a distribution from a Trust**

# Non-tax resident who was never an RSA tax resident

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## The AIT process is only relevant for:

1. South African tax residents who wishes to transfer amounts exceeding R1 million out of the country within a calendar year; and
2. For taxpayers who have terminated their tax residency in South Africa.

For those taxpayers who never were tax residents in SA – no South African ID, no South African bank account and no South African tax number – the **TRUST** will need to obtain a **Tax Compliance Status (TCS) PIN** to freely transfer the funds abroad.

**BUT Does this work in real life?**

# Non-tax resident who was previously an RSA tax resident: Income funds

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- Any **income** generated from your **capital assets** once you have ceased tax residency are **freely transferable abroad** –
  - With the requirement that the authorised dealer verifies your SARS tax compliance status once a year by the provision of a Good Standing TCS PIN.
- Funds classified as income in nature are
  - Fixed property rentals
  - Dividends
  - Payout from life annuities
  - Interest earned on cash in bank or loan accounts
  - Remaining salaries earned in South Africa from an unrelated party
  - Distributions from Trusts emanating from an income nature source.

□ **Income distributions from South African inter vivos Trusts require an AIT PIN and further SARB approval.**

# Non-tax resident who was previously an RSA tax resident: Capital funds

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- Capital transfers are **subject to exchange control** allowances and SARS clearance certificates,
  - I.e., a taxpayer is afforded a R1-million once-off discretionary allowance in the calendar year that an individual ceases to be tax resident.
- Should additional funds require transfer:
  - A SARS Approval of International Transfer (AIT) Tax Compliance Status (TCS) PIN for the desired amount will need to be obtained.

# Tax resident and a non-tax resident who was previously an RSA tax resident

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## Need to follow AIT process

- Include letter from SARS confirming status as non-resident – **only non-res**
  - Remember: The non-resident no longer has access to the single discretionary allowance of R1 million p.a.
- Relevant source documents
- Statement of A/L for previous three years

## Specific requirements / supporting documentation for the distributions from a Trust:

- Copy of Trust deed / instrument.
- Copy of the latest Letters of Authority (LoA) – As issued by the Master of the High Court
- Resolutions by the Trustees of the resident Trust making the distributions.
- Details of the source(s) of funds distributed by the Trust.
- Bank statements of the applicant, relating to the AIT application (issued no longer than 14 days before the date that the AIT application is submitted).
- The most recent share portfolio statement of the Trust (not older than a month). This statement must include a description, the number of and current market value of the shares.
- Most recent Financial Statements/ Annual Financial Statements of the Trust.

# Questions?

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## Contact us

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