

Is the tax practitioner the final verifier of trust compliance?



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3 June 2024 - Dates for the 2024 Filing Season

Individual taxpayers (non-provisional): 15 July 2024 to 21 October 2024

- Auto-assessment notices: 1 - 14 July 2024

Provisional taxpayers: 15 July 2024 to 20 January 2025

Trusts:

Annual tax returns: 16 September 2024 to 20 January 2025

IT3(t) - from 1 April 2024 to 30 September 2024

Who pays provisional tax on trust income and capital gains?

Taxable in Donor hands –
Prov tax + submit tax return Jan

Taxable in trust – Prov tax + submit tax return Jan

Taxable in Ben. hands –
Prov tax + submit tax return Jan

Donor

Trust

Beneficiary

Not taxable in trust – Not Prov tax + submit tax return Jan

THE MASTER - BENEFICIAL OWNERSHIP

I do not have the required
info to submit - ARE YOU
AN ACCOUNTABLE
INSTITUTION?????

Progress on BO

- Coverage for both companies and trusts was assessed to be too low by the FATF Africa Joint Group in September 2024.
- The Financial Action Task Force (FATF) Plenary on 25 October 2024 - One of the action items relates to timely access to beneficial ownership information concerning companies and trusts.
- National Treasury called upon all companies and professional trustee service providers to ensure registration by companies and trusts they engage (or involved) with before 30 November 2024, to significantly increase the coverage in beneficial ownership registries.
- The Department of Justice and Constitutional Development issued a Media Statement on 17 September 2024 titled *“Trustees not complying with the provisions of the amended Trust Property Control Act to face harsher punishment”*. In a drive to improve the chance to exit the greylist in early 2025, the media statement set a deadline for filing the beneficial ownership registers with the Master by 15 November 2024.

Reporting of terminated trusts

Trusts already confirmed by the Master as terminated previously, are exempted from providing BO information. If you were the trustee of a terminated trust, please send the following to the dedicated e-mail address, TerminatedTrust@justice.gov.za:

- A completed reporting a terminated trust declaration template
- Copy of the ID of the person making the declaration
- All relevant supporting documents to proof what you have declared

Reporting of “dormant” trusts

Trusts which are dormant, are exempted from providing BO information. If you are the trustee of a dormant trust, please send the following to the dedicated e-mail address, DormantTrust@justice.gov.za:

- A completed reporting a dormant trust declaration template
- Copy of the ID of the person making the declaration
- All relevant supporting documents to proof what you have declared

NOTE THAT, SHOULD THE TRUST NO LONGER BE DORMANT, THE TRUSTEE HAS A DUTY TO COMPLY WITH THE LODGEMENT OF BO INFORMATION WITH THE MASTER, AS PER THE TRUST PROPERTY CONTROL ACT 57 OF 1988 (as amended)

Getting stuck on the Masters Portal?

Should you experience any challenges with loading of the information and you are unable to get assistance by studying the FAQ's and the Step-by-step guide, please send an e-mail setting out you challenge to: GeneralBOTrust@justice.gov.za

Use this link -

<https://trustonline.justice.gov.za/Masters/Account/Login>


Take the 15 Nov 2024
deadline seriously!!!!

SARS - “SECONDARY” COLLECTOR OF BENEFICIAL OWNERSHIP INFORMATION

SARS Website - 14 February 2023

- In order to comply with the Financial Action Task Force (FATF) requirements, SARS aims to record all beneficial owners of newly registered Trusts. The Trust Registration query on SARS Online Query System has been enhanced to allow for the capturing of the beneficial owner's details.
- Definition of “Beneficial Owner” as extracted from the Tax Administration Act, 2011: (a) of a company, has the meaning assigned to it by section 1 of the Companies Act, 2008 (Act No. 71 of 2008). (c) of a trust, has the meaning assigned to it by section 1 of the Trust Property Control Act, 1988

Registration of trust as taxpayer - from 14 Feb 2023



Trust Registration

ADD INDIVIDUAL

INDIVIDUAL 1

Ownership Type* <div style="border: 1px solid #ccc; padding: 2px;"> Founder ▲ </div> <div style="border: 1px solid #ccc; padding: 2px; margin-top: 2px;"> Founder Trustee Beneficiary Donor Protector </div>	Name*	Surname*	Place of Birth* South Africa ▼	Country of Residence* South Africa ▼
	ID Number*	Tax Type* Income Tax ▼	Income Tax Number*	Tax Jurisdiction* South Africa ▼
	Mobile Number*	Email*		
Unit Number	Complex Name	Street	Suburb/District*	City/Town*
Postal Code*				

Registration of trust as taxpayer - from 14 Feb 2023

ADD ENTITY

ENTITY 1

Beneficial Ownership Type* Founder	Entity Type* Company	Registered Name*
Company Registration Number*	Tax Type* Income Tax	Income Tax Number*

ADD REPRESENTATIVE

REPRESENTATIVE REPRESENTATIVE 1

Name*	Surname*	Place of Birth* South Africa	Country of Residence* South Africa
ID Type* South African ID Number	ID Number*	Tax Type* Income Tax	Income Tax Number*
Tax Jurisdiction* South Africa	Mobile Code*	Mobile Number*	Email*

SARS's RENEWED FOCUS ON TRUSTS

The South African Revenue Service (SARS) webinar on 29 July 2021 - Trust and Tax obligations

- Objective 1 - Clarity and certainty
- Objective 2 - Make it easy to comply with obligations
- Objective 3 - Make non-compliance hard and costly
- Objective 4 - Strong workforce
- Objective 5 - Expand use of data
- Objective 6 - Modernise systems
- Objective 8 - Work with stakeholders
- Objective 9 - Build public trust and confidence in tax administration system

SARS “Trust and Tax Compliance” webinar 29 February 2024

4 pillars of compliance as they relate to trusts - registration, filing, declaration, and payment

- Increase in trust registrations from 4,000 in 2021 to 7,500 in 2023
 - Note - still about 10,000 to 12,000 trusts registered per year!
- 47% of newly registered trusts in 2023 were timeously registered as taxpayers with SARS
- Only about 380,000 trusts have been registered with SARS to date, leaving an estimated 60% to 65% of trusts unregistered
- SARS will use third-party data to register existing, unregistered trusts. SARS indicated that they would soon register trusts as taxpayers simultaneously with their registrations with Master, similar to new company registrations with CIPC

Trust types

Trust tax registration	Trust tax return from 2023	IT3(t)	Master
<p>Inter vivos Trust Testamentary Trust Foreign Trust (Non Residential Trust) Special Trust Type A Inter vivos Special Trust Type A Testamentary Special Trust Type B Testamentary Collective Investment Schemes in Securities</p>	<p>Inter vivos Trust Testamentary Trust Foreign Trust (Non Residential Trust) Special Trust Type A Inter vivos Special Trust Type A Testamentary Special Trust Type B Testamentary</p>	<p>Inter vivos Testamentary Non-resident Special Trust par. (a) Special Trust par. (b) Exempt institution Personal service provider</p>	<p>Nope</p>

Follow the rules

RULES:

- Firstly, did you donate or make loans to trust at below-market interest rates? → Attribute income/capital gains to you and you pay tax (Section 7 of the Income Tax Act for income and Par 68 to 73 of the Eighth Schedule to the Income Tax Act for capital gains)
- Then, did trustees use “Conduit Principle” to distribute income or capital gain to you as beneficiary (together with tax liability)? → You pay tax (Section 25B of the Income Tax Act for income and Par 80(2) of the Eighth Schedule to the Income Tax Act for capital gains (Armstrong and Rosen))
- Trust pays tax on the rest



IT3(t)

Mind the GAP

- Not a greylisting measure!!!
- In 2022 SARS performed a reconciliation between distributions by trustees to beneficiaries and those declared by beneficiaries in their returns - R 58 bn to R 65 bn not declared by beneficiaries 📍 low hanging fruit for SARS to collect what is due to it
- By making +- 620 000 boards of trustees third-party data providers to SARS, similar to banks, medical schemes, fund administrators, etc.
- Similar to other third-party data providers, SARS wants to use data to pre-populate taxpayer's tax returns
- Mindful - not only beneficiaries but also donor/funders

IT3(t) submission - SARS website

Who to submit:

- Representative taxpayers (trustees)
- Tax practitioners
- Trust representatives

What to submit:

- Amounts vested to beneficiaries of Trusts in a year of assessment (irrespective of whether the amount vested was paid or credited on loan account in favour of the beneficiary) OR
- Amounts vested to beneficiaries but where the amount is subject to a donation, settlement or other disposition and the donor is to be taxed on the amounts. ((irrespective of whether the amount vested was paid or credited on loan account in favour of the beneficiary)
- **How to submit:** eFiling, HTTPS or Connect Direct for data submission
- **When to submit:** Annually; as per the date in the annual notice

Government Gazette - 30 June 2023

Returns of information to be submitted by third parties in terms of section 26 of the Tax Administration Act, 2011 (Act no. 28 of 2011)

The following persons are required to submit a return as specified in paragraph 3:

- A “trust” as defined in section 1 of the Income Tax Act, that is:
 - a “resident” as defined in that section, or
 - a non-resident that is required to submit an annual income tax return,
- excluding—
- a Collective Investment Scheme as defined in the Collective Investment Schemes Control Act, 2002, a “portfolio of a collective investment scheme” and any “portfolio of a hedge fund collective investment scheme”
 - an Employment Share Incentive Scheme Trust

For which parties to submit?



Key to inform relevant taxpayers

SARS_External BRS_2022_IT3s_v4.0.0T-9 - Provide all Persons / Beneficiaries existing or past of this Reporting Institution throughout reporting period. If there was no reportable financial information to / from the Reporting Institution for the reporting period, then financial records will contain R 0.00 values for the Mandatory fields (e.g. The Trust Financial Flow (TFF) section will contain R 0.00 values etc.).

Therefore, for all beneficiaries, whether distributions were made or not
However, SARS communicated to some professional bodies that nil returns need not be submitted for this year only.

And of course for donors and funder to the trust at soft terms

Government Gazette - 30 June 2023

Returns of information to be submitted by third parties in terms of section 26 of the Tax Administration Act, 2011 (Act no. 28 of 2011)

Column 1: Person mentioned in paragraph	Column 2: Information concerning	Column 3: Form
2.15	Any amount vested in a beneficiary: <ul style="list-style-type: none"> • Income (nett of Expenditure) • Capital gains • Capital amounts 	IT3(t); or Data compiled in accordance with SARS' Business Requirement Specification: IT3 Data Submission

Purpose: distributions;
not risk info requested
in tax return

Do you keep accounting records in such a way to apply Attribution Rules?

- Sections 7(2) to 7(6) of the Income Tax Act
- Paragraphs 68 to 72 of the Eighth Schedule to the Income Tax Act



Attribution rules - why do accountants not know about this?



VDP?

- Anti-avoidance measures to prevent tax avoidance
- Not concerned with who formed or created trust but rather person who transferred assets into trust at favourable terms or provided loan to trust to acquire assets
- Not loan that is seen as gratuitous disposition (since a loan carries with it no inherent right to interest) but non-charging of interest or charging of interest at below-market rates. Therefore only income or capital gains attributable to charging of interest at less than market rates attributed to funder; not entire income and/or capital gains produced as result of loan
- If, as result of funding, actual income and capital gain is less than calculated benefit that trust received by not charging interest at at least a market-related rate 'unused' portion of 'benefit' carried over to following year - cumulative calculation performed annually until asset is disposed of or funding settled/death of funder
- If asset disposed of for less than market value, difference between selling price and market value deemed a donation for purposes of Section 7 (Section 7(9) of the Income Tax Act). Difference applied

SA trust with SA beneficiaries

Attribution rules first:

You made **donation/loan at below-market interest rate** to trust and trust:

- distributes related income/capital gain to spouse (OCOP) to avoid tax
(Section 7(2))
- distributes related income/capital gain to minor child (Section 7(3))
- retains income/capital gain in discretionary trust/SA company held by trust
(Section 7(5))

Trust distributes income/capital gain **BUT** you retain right to **revoke** the income or capital gain distribution, to **terminate** the trust, or to cancel or overrule **right** of beneficiary to receive distribution from trust (Section 7(6))

Then: distribution of income (Section 25B) and capital gains (Par 80(2) - taxed in hands of SA beneficiaries)

SA trusts distribute to foreign beneficiaries

- SA trust distributing income/capital gain resulting from a donation or loan at a below-market interest rate to a foreign beneficiary in the same year
→ SA donor/funder taxed
- For SA trusts: After Attribution rules applied, distribution of capital gains to foreign beneficiary - taxed in SA trust (Par 80(2))
- For SA trusts: After Attribution rules applied, distribution of income to foreign beneficiary - taxed in SA trust (Section 25B) (new from 1 March 2024 - aligned with existing Par 80(2))
 - NOTE: Then trust provisional taxpayer!!!

Requirements for distributions to flow through

- Clear from Section 7(1) - not a requirement that cash should flow - hence the reference to “vest”. A ‘vested right’ defined as “right accrued to a possessor with no conditions”, or legal definition being “a right belonging completely and unconditionally to a person as a property interest which cannot be impaired or taken away without the consent of the owner.” Vested right cannot be conditional - then it never existed in first place. Vested personal right to claim payment or transfer of benefit will form part of estate of beneficiary. It cannot just be taken away.
- Beneficiary with vested right has right to claim asset and/or income from trustees, depending on rights attaching to vested right.
- The conduit pipe remains open whole year and only closes at end of year if no vesting in beneficiary has taken place (*Trustees of the Hull Trust Fund v CIR* case of 1931 and *SIR v Rosen* case of 1971). It is, therefore, important for trustees to distribute income or capital gain before end of financial year (ending on last day of February each year) to take advantage of benefit.
- Income passing through trust retains identity (*Armstrong v CIR* case of 1938 and *SIR v Rosen* case of 1971), provided distributed in same tax year that trust received them; otherwise, taxable in trust.
- For income or capital gains to vest in beneficiary, ALL following must be present:
 - Right to claim income or capital gain.
 - Right should be determinable.
 - Right should not be contingent.

Deduction from income in trust

- Section 23(f) of Income Tax Act - “any expenses incurred in respect of any amounts received or accrued which do not constitute income as defined in section one” of Income Tax are not deductible.
- Section 11 of Income Tax Act permits deduction of expenses from income in calculation of tax, but Section 23(g) of Income Tax Act limits these expenses to amounts incurred for purpose of trade; in other words, for producing taxable income. Trustees are required to prove to SARS that expenditures are deducted from taxable income incurred during the production of such income.

Apportionment of expenses with distributions

- Where income of trust vests in beneficiary, any deduction or allowance relating to income also vests in beneficiary (Section 25B(3) of Income Tax Act)
- Any deduction is, however, limited to income accruing to beneficiary from trust. A trust is, therefore, prevented from distributing a loss. Any clause in trust instrument allowing trustees to distribute losses to beneficiaries therefore invalid.
- Deductions or allowances under Section 25B(3) must be apportioned between various amounts that accrue to trust or that are deemed to accrue to beneficiary under Section 25B(1) (beneficiary has a vested right in terms of trust instrument) and Section 25B(2) (beneficiary acquired vested right in consequence of trustees exercising their discretion in favour of beneficiary), unless deduction or allowance is incurred directly in production of specific amount, in which case deduction or allowance must be made against that specific amount that may have accrued to trust or be deemed to have accrued to beneficiary.

Apportionment of expenses with distributions (cont.)

- Although SARS not prescriptive as to how **expenses** should be **apportioned** between taxable income (for example, rental income) and exempt income (for example, income from dividends), **onus on trustees** to prove that they have applied their minds and that ultimate apportionments are fair and reasonable. Trustees to demonstrate sound basis for allocation and **not only attempt to achieve best tax position**. Judge confirmed in Local Investment Co v Commissioner of Taxes case of 2014 that “It does not seem possible to me to lay down any general rules as to how the apportionment should be made, other than saying that the apportionment must be fair and reasonable, having regard to all the circumstances of the case”. It does, however, appear that SARS favours apportionment on basis of **gross income** - expenses apportioned in the same proportion as taxable income to non-taxable income. The trustees to supply **proof** that the apportionment basis was fair and reasonable.
- Deductions and allowances must be allocated between trust and beneficiaries in **same proportion as amount**, which is received by trust, has been allocated. Should full deduction not be used by beneficiary, it **can be utilised by trust** but will be **limited to taxable income of trust before deduction of such expenditure** (so as to not create loss). If trust cannot absorb full deduction or allowance disallowed to beneficiary, **excess may be granted as deduction or allowance to beneficiary in next year of assessment**, subject to it being limited to income accruing to beneficiary from that trust (Section 25B(4) to (6) of Income Tax Act). Sections 25B(4) to (6) do not apply where the beneficiary is not subject to tax in South Africa on those distributions.

TRUST TAX RETURN

Starting point - check the trust deed

Who can benefit?

From what can they benefit?



Any restrictions?

Process to follow?

Where is your family and where are your structures?

All family in
SA; only SA
structures

SA
structures

Family in SA



International
family

International
structures

SA family trust with SA beneficiaries

Attribution rules

Attribution rules first: You made donation/loan at below-market interest rate to trust and trust:

- ✧ distributes related income/capital gain to **spouse** (OCOP) to avoid tax
- ✧ distributes related income/capital gain to **minor child**
- ✧ **retains** income/capital gain in discretionary trust/SA company held by trust
- ✧ distributes income/capital gain **BUT** you retain right to **revoke** the income or capital gain distribution, to **terminate** the trust, or to cancel or overrule **right** of beneficiary to receive distribution from trust

Then: distribution of income (Section 25B) and capital gains (Par 80(2)) - taxed in hands of SA beneficiaries

Foreign trust with SA beneficiaries

- ✧ A foreign trust distributing income or capital profit/gain in the **same** year to a SA beneficiary → SA beneficiary taxed (1 March 2019)
- ✧ A foreign trust distributing **prior** year capital gains to a SA beneficiary → SA beneficiary taxed

Foreign/SA trust with foreign beneficiaries

- ✧ Foreign/SA trust distributing income/capital gain resulting from a donation or loan at a below-market interest rate to a foreign beneficiary in the same year → SA donor/funder taxed
- ✧ For SA trusts: After Attribution rules applied, distribution of capital gains to foreign beneficiary - taxed in SA trust Par 80(2)
- ✧ For SA trusts: After Attribution rules applied, distribution of income to foreign beneficiary - taxed in SA trust (new from 1 March 2024 - aligned with existing Par 80(2))

“Trust Filing Season: Form and System Changes to be introduced from 23 June 2023”

- Information on donors/funders of the trust:
 - Additional questions added to the Income Tax Return Wizard to determine if amounts were **deemed to have accrued to a donor/funder** in terms of Section 7 during the relevant year of assessment.
 - Donors or funders (where deeming provisions of Section 7 apply) must declare trust income and capital gains attributed to them. A proper trust administration/accounting system will be required to keep track of this very complicated calculation.

“Trust Filing Season: Form and System Changes to be introduced from 23 June 2023” (cont.)

- A new requirement to upload mandatory supporting documents with the tax return.
- All mandatory supporting documents must be uploaded and submitted with the trust tax return, including the trust instrument, annual financial statements and resolutions/minutes of trustee meetings. The requirements will vary according to the trust type.
- Requires legally required documents to be complete, accurate and kept up to date in a real-time fashion. To perform this function manually, possibly relying on others to provide you with same will be a time-consuming, costly, risky approach.

“Trust Filing Season: Form and System Changes to be introduced from 23 June 2023” (cont.)

- Beneficiaries of the trust
 - Beneficiaries of a trust must declare income that was vested in them by the trust during the year of assessment in their respective income tax returns.
 - This information will have to balance back to the new IT3(t)'s which trustees have to annually submit to SARS, based on distributions made to beneficiaries.
- Government Gazette 30 June 2023 - IT3(t)
 - [Now September 2024 - SARS communication 10 November 2023]

Expanded tax reporting (ITR12T) from 2023 YOA - 20 June 2023

- With effect from 23 June 2023, SARS will introduce changes to the Income Tax Return for Trusts (ITR12T), eFiling enhancements, i.e. additional questions to the Income Tax Wizard to be completed, and mandatory supporting documents that must accompany the return.

Expanded tax reporting (ITR12T) from 2024 YOA

- Expanded Beneficial Ownership reporting - Reporting of unnamed beneficiaries
 - Comprehensive Guide to the Income Tax Return for Trusts (effective date 16 September 2024)
- d) To complete unnamed beneficiaries, select the "**Other**" option and provide the following information.
 - i) The description as per the Trust instrument of the unnamed beneficiaries
 - ii) A short description of what is meant with or detail of this category of beneficial owners
- Pre-populated Beneficial Ownership data - 2023 tax return - pre-populated in 2024 tax return
 - Capturer to verify the accuracy of pre-populated data

Representative Taxpayer

Does the Trust confirm that the person appointed as a trustee has not been disqualified i.t.o. s6 of the Trust Property Control Act? Y N



Please note that where the trustee has been disqualified in terms of s6 of the Trust Property Control Act, you are required to update the details of the trustee using the "Registration, Amendment and Verification (RAV01) form on eFiling."

Was this reported to
Master + BO Register
updated?

Section 246 of Tax Administration Act - Public Officer

2. Section 6 of the Trust Property Control Act, 1988, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) A person is disqualified from being authorized as a trustee if the person—

- (a) is an unrehabilitated insolvent;
- (b) has been prohibited by a court to be a director of a company, or declared by a court to be delinquent in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984);
- (c) is prohibited in terms of any law to be a director of a company;
- (d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty;
- (e) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount in terms of section 69 of the Companies Act, 2008, for theft, fraud, forgery, perjury or an offence—
 - (i) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
 - (ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or (5) of the Companies Act, 2008; or
 - (iii) under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011);
- (f) is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution; or
- (g) is an unemancipated minor, or is under a similar legal disability.

(1B) A disqualification in terms of subsection (1A)(d) or (e) ends at the later of

Section 246 of Tax Administration Act - Public Officer

- (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or
- (b) one or more extensions, as determined by a court from time to time, on application by the Master in terms of subsection (1C).

(1C) A disqualification in terms of subsection (1A)(f) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.

(1D) At any time before the expiry of a person's disqualification in terms of subsection (1A)(d) or (e)—

- (a) the Master may apply to a court for an extension contemplated in subsection (1B)(b); and
- (b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.

(1E) A court may exempt a person from the application of any provision of subsection (1A)(a), (c), (d) or (e).

(1F) The Registrar of the Court must, upon—

- (a) the issue of a sequestration order;
 - (b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or
 - (c) a conviction for an offence referred to in subsection (1A)(e),
- send a copy of the relevant order or particulars of the conviction, as the case may be, to the Master.

(1G) The Master must notify each trust which has as a trustee to whom the order or conviction relates, of the order or conviction.

(1H) (a) The Master must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as a trustee, in terms of an order of a court pursuant to this Act or any other law.

(b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).”.

Expanded tax reporting (ITR12T) from 2023 YOA - 20 June 2023

Beneficial Ownership

Trust Type

Trust Type Inter-vivos Trust Testamentary Trust Foreign Trust (Non-Residential Trust) Special Trust Type A – Inter-vivos Special Trust Type A – Testamentary Special Trust Type B – Testamentary

Beneficial Owner Details

Specify the number of Beneficial Owners

Entity Type

Entity Type Individual Company Trust Other

Particulars - Individual

Beneficial Owner Category Founder Trustee Beneficiary Donor Protector

Initials Surname Date of Birth ID No.

Is the individual registered for tax in South Africa? Y N

Taxpayer Ref No.*

Passport No.

Passport Country

Passport Issue Date

Place of Birth

Email

Cell No.

Physical Address

Unit No. Complex (if applicable)

Street No. Street / Farm Name

Suburb / District

City / Town

Country Code (e.g. South Africa = ZA)

Tax Jurisdiction

Postal Code

Expanded tax reporting (ITR12T) from 2023 YOA - 20 June 2023

Particulars – Company (CIPC registered) / Trust / Other ^ + -

Beneficial Owner Category Founder Trustee Beneficiary Donor Protector

Registered Name

Trading Name

Company / CC / Trust Reg No. Taxpayer Ref No.*

Physical Address ^

Unit No. Complex (if applicable)

Street No. Street / Farm Name

Suburb / District

City / Town

Country Code (e.g. South Africa = ZA) Tax Jurisdiction Postal Code

Trust / Legal Entity Representative details ^ + -

Initials Surname Date of Birth ID No.

Is the individual registered for tax in South Africa? Y N Taxpayer Ref No.*

Passport No. Passport Issue Date

Email Cell No.

Physical Address ^

Unit No. Complex (if applicable)

Street No. Street / Farm Name

Suburb / District

City / Town

Country Code (e.g. South Africa = ZA) Tax Jurisdiction Postal Code Place of Birth

SARS_2022_LookFeel_ITR12T_v2023-06-15 - Prototype

ITR12T – DECLARATION

- ✧ The representative taxpayer obliged to ensure that complete and accurate disclosure is made of all relevant information required on the Income Tax Return for Trusts.
- ✧ Misrepresentation, neglect, or omission to furnish such information or furnishing false information may result in penalties and/or additional tax assessments (together with interest) and/or prosecution.

After completion of the return, read the declaration on the front page of the return. I declare that:

- ✧ I am the duly appointed Representative of the Trust
- ✧ The information furnished in this return is to the best of my knowledge both true and correct
- ✧ I have disclosed the gross amounts of all income received and / or accrued to this Trust during the period covered by this return
- ✧ I have the necessary financial records and supporting schedules to support all declarations on this return which I will retain for audit purposes

TRUST VERIFICATION REQUESTS

SARS focus areas

- Foreign investments and foreign tax credits
- Rental Properties
- Assessment of:
 - Trade test (bona fide trade)
 - Losses
 - Trust expenses - direct expenses, careful about apportionment
 - Provisional tax overpayments or tax refund positions
 - Beneficiary information
 - Trust bank account information and transactions
 - Tax certificates (issued and received)
 - Detailed tax computation
 - Comprehensive detail of trust funding - loan agreements and resolutions - Attribution rules and Section 7C



Rental properties info

- Number of properties owned and let, rental income compared for years, how many months let
- Calculations of CGT for sold properties
- General ledger accounts - rental income and expenses
- Copies of rental agreements/lease agreements/rental statements per property
- Reasons for rental income decreasing with supporting documents
- Confirmation that rental charged was at market-related rates; if lower provide reasons
- Properties rented out to connected or related persons?
- Supporting documents for calculation for provision for bad debts
 - Resolutions and/or minutes relating to bad debt write-off decisions

Trust expenses

- General ledger accounts for 3 highest expenses (excluding purchases and employee costs) OR for expenses that exceed income by 50% or more
 - Invoices and any relevant supporting documentation of the largest three expenses claimed for tax purposes
- Confirmation that all expenses claimed were in the production of income and not of a capital nature

Bank account information and transactions

- List of bank accounts, including name of bank, and bank account numbers of trust.
 - Bank statements for the year

Section 10
TPCA

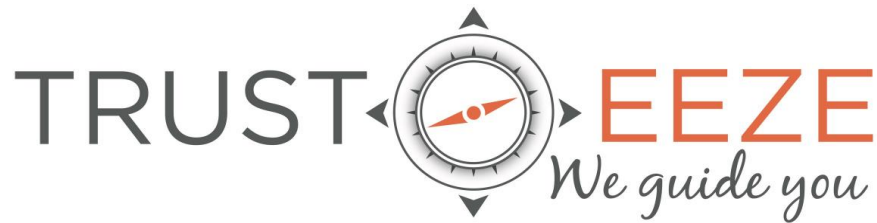
Which services do you (want you to) provide?

Statutory	Trust administration and compliance	Independent trustee	Accounting and tax
<ul style="list-style-type: none"> • New trust deed • Trust deed amendments • Trustee changes • Accountant changes 	<p>Active hand-holding of trustees:</p> <ul style="list-style-type: none"> • Trust deed execution • Meetings • Resolutions • “Beneficial Owner” registers • Accountable institution reports • Supporting documents/contracts • Audit trails • Master requirements <p>Demonstrate active participation</p>	<ul style="list-style-type: none"> • Ensures there adequate separation of control from enjoyment with proper realisation of responsibilities of trusteeship • Play active role in trust and ensure that trust functions properly and that provisions of trust instrument are observed (confirmed in Chief Master’s Directive of 2017) • Conduct of trustees who do not observe trust instrument should be scrutinised and checked by IT 	<ul style="list-style-type: none"> • Accounting is NOT compliance • Do trustees have Asset Register? • Audit trail backed up with resolutions and minutes • Does Asset Register , financials, IT3(t)’s, beneficial owner info and tax returns reconcile? • Real-time trust information • Verifications
Accountable institution	Accountable institution	Accountable institution	Accountable institution?
Charge	Extra compliance	Risk-based pricing; PI cover	Fees; PI cover

Separate Engagement Letter for each service - include indemnification for non-participative trustees and “beneficial owners”

Thank you!

For a free demo of our platform -
<https://lnkd.in/e4jvz2F3>



DEMYSIFYING
TRUSTS
IN SOUTH AFRICA



TRUSTS IN PRACTICE
A REFERENCE GUIDE

- ARE TRUSTS STILL RELEVANT?
- MYTHS ABOUT TRUSTS
- TRUSTS AS PART OF YOUR ESTATE PLAN
- STRUCTURING A TRUST
- REQUIREMENTS FOR A VALID TRUST
- HOW TO GET ASSETS INTO A TRUST
- ROLE OF THE FOUNDER
- TRUSTEES' DUTIES
- BENEFICIARIES' RIGHTS
- TRUST ADMINISTRATION
- DIVORCE AND TRUSTS
- TAXATION

SECOND EDITION

PHIA VAN DER SPUY