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28 November 2025

To: The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS,
299 Bronkhorst Street
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0181

VIA EMAIL:	National Treasury	(2026AnnexCProp@treasury.gov.za)
	SARS	(2026LegislationComments@sars.gov.za)

Dear Colleagues,

ANNEXURE C PROPOSALS FOR BUDGET 2026: WEALTH & FAMILY BUSINESS TAX TECHNICAL WORK GROUP

At the outset and over and above the technical proposal made below, we wish to reiterate our commitment to engage and participate with National Treasury in investigating and finding solutions that may have unintended consequences within the wealth and family business tax industry before such amendments are made to subsequent tax legislative cycles.

We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate.

Please do not hesitate to contact us should you need further information.

Yours sincerely,

Wealth & Family Business Tax Technical Work Group

Unless otherwise indicated all references to legislation are to the Income Tax Act. No 58 of 1962 (the Act).

1. Double Taxation Arising from Trust Distributions

1.1 Background

1.1.1 It is common practice that many trustees are advised to distribute all trust income and capital gains to beneficiaries to escape the high tax rates in trusts. Even though a trust carries the highest income tax rate (a flat rate of 45%) and capital gains tax rate (a flat rate of 36%), when trust distributions are considered, cognisance is not taken of the 'knock-on' effect of potential further taxes that may be triggered.

1.2 Legal nature of the problem

1.2.1 Section 7C Donations Tax (often considered a 'prepayment' of Estate Duty)

1.2.1.1 One of the major changes, to date, in trust tax law – in terms of combatting the postponement or avoidance of Estate Duty – was the introduction of Section 7C of the Income Tax Act (the Act). Section 7C seeks to tax loans with interest below the variable official rate of interest (repo rate plus one percent – currently 6,75%) as a 'deemed donation'.

1.2.1.2 Donations tax is payable on the interest that should have been charged on the loan. This is taxed in the hands of the funder at a rate of 20% of the amount of the 'donation' if the aggregate of that amount and all other donations during a person's lifetime (on or after 1 March 2018), excluding all exempt donations during the same period, is less than or equal to R 30 million. The rate is increased to 25% of the amount of the 'donation' if the aggregate of that amount and all previous donations during a person's lifetime (on or after 1 March 2018), excluding all exempt donations during the same period, exceeds R 30 million. The rationale is that donations tax and estate duty are both charged on a gratuitous disposition (during your life and at death) at the same rates.

1.2.1.3 At current, the issue with the application of donations tax and estate duty is that no apportionment is allowed between the two tax brackets (20% or 25% explained above). Therefore, if the aggregate donations/estate is pushed above the R30 million threshold, the entire donation/estate will be taxed at 25%, and no portion will be taxed at 20%.

1.2.1.4 Through this provision, it appears that SARS is reconsidering the traditional approach, where individuals would choose to transfer their assets to 'their' trusts through interest-free loan accounts, which remained unpaid. The effect of this arrangement was that the individual's estate got 'pegged', and all the growth happened in the trust. No estate duty would therefore be paid on the growth of the asset upon a person's death. Section 7C of the Act now ensures that a person pays tax during their life to make up for this 'loss' to the fiscus by assuming a growth rate on trust assets. For example, if an individual sold a building to the trust for R3 million on an interest-free loan account, that individual would pay tax as follows (R3 million x 6,75% (current official rate of interest) – R 100 000 (the annual Donations Tax exemption applicable to each South African resident individual)) x 20% (Donations Tax; if cumulative donations did not exceed R 30 million)} annually, subject to changes in the variable official rate of interest and the cumulative amount of donations after 1 March 2018.

1.2.2 *Distributions*

1.2.2.1 A trust has unique tax treatment in that others may pay tax on income and capital gains generated in the trust rather than the trust itself. Most commonly, the 'Conduit Principle' allows trustees to shift the tax burden from a trust to its beneficiaries, thereby paying tax at the individual's marginal tax rate. In many cases, this may be lower than the trust's tax rates listed above. Therefore, one can legally use this mechanism as part of one's tax planning and achieve better tax efficiency.

1.2.2.2 One can also apply the 'income splitting' (and capital gain splitting) principle to reduce the effective tax rate on income or capital gains generated in a trust, by distributing income and capital gains to multiple beneficiaries who pay tax at low rates. This, in many instances is the sole reason for trustees to move all the net income and capital gains generated in the trust during a year to beneficiaries.

1.2.2.3 This is frequently done in an 'automatic' manner, simply to reduce taxes, that the compulsory application of the 'attribution rules' of the Act (whereby all or some of the trust income and capital gains are to be attributed to the donor or funder for them to pay tax on income and capital gains generated as a result of their donation or soft funding) are overlooked. Given SARS renewed focus on the 'attribution' rules, such behaviour may trigger penalties and interest on the incorrect treatment of trust income and capital gains.

1.2.2.4 Due to the introduction of Section 7C (explained below), transferring assets into a trust has become quite challenging, often resulting in individuals not deeming it be wise to 'bleed' growth out of a trust that was set up as a generational wealth transfer trust through making distributions to reduce tax that year. Resultantly, if the trustees sell the building (asset) after 10 years and make a capital gain of R5 million, they may distribute it to a beneficiary to make a tax saving of R 900 000 [R5 million x [36% (CGT rate for a trust) - 18% (maximum CGT rate for an individual)], which is often regarded as an incentive for trustees to distribute the amount to a beneficiary. Often this is perceived as the preferred outcome sought by the revenue authority, as it would result in the amount being included in the beneficiary's estate, which could be subject to estate duty.

1.2.3 Estate Duty

1.2.3.1 Estate planners and trustees are mindful that once distributions are made to beneficiaries, such amounts or assets have to be unconditionally vested in those beneficiaries to qualify for the more favourable tax treatment discussed above. It is common cause that distributions are either physically paid to beneficiaries or left in the trust as amounts payable to beneficiaries. In both instances, these amounts are included in and inflate beneficiaries' estates. These amounts may even push a beneficiary's estate over the R30 million mark, which in turn triggers an additional 5% estate duty upon the person's death, as discussed above.

1.2.3.2 Additionally, any future income and growth on these amounts (whether the amounts are physically paid out to the beneficiary concerned or retained in the trust for them) also vest in these beneficiaries' hands, which will in turn inflate their estates.

1.2.4 Potential double tax

1.2.4.1 Following the introduction of Section 7C (which is often considered as a 'prepayment' of estate duty on assumed growth) no provision has been made for any rebates on amounts already paid annually (since 31 March 2018) on the assumed growth explained above, against the calculated estate duty upon the deaths of beneficiaries who have received distributions during their lifetimes. Following the example above, applying the current rates, double taxation (Estate Duty and Section 7C Donations Tax) will be paid on R 265 000 (10 years x R 26 500).

1.3 Recommendations and Conclusion

1.3.1 When trustees consider distributions, detailed calculations are performed to understand the total tax consequences resulting from distributions. Each beneficiary's estate is taken into consideration, as one would want to avoid the additional 5% donations tax and/or estate duty because of any transaction or distribution.

1.3.2 If trustees blindly distribute trust income and capital gains to avoid paying higher taxes only for that year, they may trigger other unintended tax consequences. When free cash is available after a trust asset has been sold, it may be wiser to rather repay a loan attracting Section 7C Donations Tax, as it will forever attract Section 7C Donations Tax, even if it is bequeathed to a family member after the death of the original funder.

1.3.3 The purpose of this submission is to bring to your attention the instances of potential and actual double taxation that have arisen in the above-described instances and to request legislative amendments be made to rectify this occurrence.

2. REQUEST FOR A TECHNICAL AMENDMENT TO THE ACT AS THIS PERTAINS TO THE UNITED NATIONS, ITS FUNDS AND PROGRAMMES AND THE SPECIALISED AGENCIES IN SOUTH AFRICA

2.1 Background

2.1.1 We set out below the following submission on behalf of our workgroup as it pertains to the above referred matter as these pertain to matters that affect the United Nations Country Team (UNCT) in South Africa. We wish to note that this matter has been brought to your attention previously, and we are raising it again for further consideration.

2.1.2 We also note the recent draft Interpretation Note issued by SARS on this subject. However, with respect, the draft does not address the core issue—namely, that the United Nations and its agencies cannot relinquish their diplomatic privileges and immunities.

2.1.3 Please refer to the background information provided below, as well as the supporting documents that will be sent under separate cover.

2.1.4 The UNCT includes all the UN entities working on sustainable development, emergency, recovery and transition in programme countries. The UNCT is led by the UN Resident Coordinator, who is the representative of the UN Secretary-General at country level. The Resident Coordinator promotes a more united United Nations presence at the country level and encompasses all organisations of the United Nations, its funds and programmes and specialised agencies system dealing with operational activities for development.

2.1.5 In previous discussions and submissions made to the Treasury, the United Nations secretariat, funds and programmes, specialised agencies, and other entities and bodies have requested amendments to section 18A of the Act. Some of these as indicated further below have been granted.

2.2 Legal nature of the problem

2.2.1 However, for the United Nations system to avail themselves of the section 18A exemption, the United Nations secretariat, funds and programmes, specialized agencies, and other entities and bodies were required by the South African Revenues Services (SARS) to sign "a written undertaking", which in terms of section 18A(bA)(bb) of the Act has now resulted in the United Nations system's inability to sign such an undertaking for reasons that are set out below. In light of the foregoing, this request is being made for an amendment to the legislation.

2.2.2 As set out in this document, it is specifically requested that section 18A(bA)(bb) and 18A(bA)(cc) of the ITA be amended and/or deleted to bring this in line with current legislative instruments and resolutions, bi-lateral agreements, and conventions, between the Government of the Republic of South Africa and the United Nations system, which in our view overrides section 18A(bA)(bb) of the ITA due to existing regulations, policies and processes already in place which stem from the existing international agreements.

2.3 Proposal

2.3.1 Currently, there are inconsistencies between the international agreements that the Republic of South Africa has acceded to, and the Act. Therefore, we strongly recommend that the Act be amended to enable the United Nations secretariat, funds and programmes, specialised agencies, and other entities and bodies operating in South Africa to be able to avail themselves in the practice of the section 18A status of the Act whereby the general public can make voluntary and unconditional donations to the United Nations secretariat, funds and programmes, specialised agencies, and other entities and bodies.

2.3.2 In accordance with the United Nations Charter on the purposes and principles of the United Nations, its funds, programmes and specialised agencies as well as relevant constitutions, the activities of the United Nations secretariat, funds and programmes, specialised agencies, and other entities and bodies in South Africa is to the benefit of all South Africans and without donations from the general public and private sector entities, the activities of the United Nations system in South Africa will be serious impacted due to financial constraints they will have without the donations.

2.3.3 We kindly and strongly urge you to please consider the documents that will be annexed hereto as these set out further clarification in greater detail.

End.