

Family Office and Private Client

November 2024

Developments pertaining to non-resident beneficiaries of local trusts

With the globalisation of South African families and their wealth, the relaxation of exchange control regulations for distributions by South African Trusts to non-South African beneficiaries, is welcomed. However, we do wish to caution that there are some important practical matters to consider, along with some additional South African tax consequences associated with the distributions by South African Trusts to non-South African beneficiaries.

Relaxation of exchange controls for offshore distributions

In the past it has been the practice of the South African Reserve Bank (**SARB**) and the South African Revenue Service (**SARS**) not to approve the release of funds when resident trusts make distributions to certain non-resident beneficiaries (e.g. trusts and natural persons).

On 23 May 2023, SARB issued Exchange Control Circular No. 3/2023, in accordance with which income and capital distributions from South African resident inter vivos trusts (i.e. a trust that was established by a settlor, who is still alive) may now be transferred abroad, subject to the Tax Compliance Status (**TCS**) process being successfully completed. A copy of the circular can be accessed via this [link](#).

In this regard, SARS issued guidance on 1 August 2023, which outlines the process to be followed in order to apply for a manual letter of compliance from SARS. The application (e.g., for a South African discretionary trust it would be the Trustee) is submitted to SARS via email. We caution that the verification process is strict, and approval will only be granted by SARS should:

- SARS be satisfied that the distribution complies with the terms and conditions of the relevant trust instrument (e.g the Trust Deed); and
- The resident trust demonstrates that all South African tax liabilities (please refer to the tax amendments discussed below) in respect of the distribution were or will be settled.

Extensive supporting documentation must also be submitted to SARS in support of the application. The guidance provided by SARS can be viewed via this [link](#).

Amendment to the taxation of non-resident beneficiaries of trusts

With effect from years of assessment commencing on or after 1 March 2024, the Income Tax Act No.58 of 1962 (as amended) (**the ITA**) was amended so as to narrow the application of the conduit principle to any South African resident beneficiary.

Consequently, as from this date, amounts received by or accrued to a South African resident trust, to which

non-resident (including non-resident trust) beneficiaries have a vested right, are now subject to normal (income) tax in the hands of the resident trust making the declaration. This amendment aligns with the position, where a capital gain determined in respect of a trust is vested in a beneficiary. For more information regarding this amendment please refer to the [KPMG Tax Alert](#) dated 21 September 2023.

Proposed anti-avoidance rules for cross-border low-interest loans to trusts

The ITA contains anti-avoidance measures aimed at curbing the tax-free transfer of wealth to trusts (both local and foreign trusts), using low-interest or interest-free loans. In terms of these measures, to the extent that interest incurred by a trust at an interest rate that is lower than the official rate of interest¹ in respect of a loan made by a natural person (or a company that is a connected person in relation to that natural person), the difference is deemed to be a donation made by that natural person to the trust (hereafter referred to as the “official rate of interest rule”). Similarly, transfer pricing rules also apply to counter the mispricing of cross-border transactions between connected persons. Thus, in terms of current legislation, where a loan to a trust is subject to the transfer pricing provisions, the “official rate of interest rule” does not apply.

National Treasury is of the view that the above exclusion does not effectively address the interaction between the trust anti-avoidance measures and transfer pricing rules in instances where the arm’s length interest rate is less than the official rate on these cross-border loan arrangements. As a consequence, the Draft Taxation Laws Amendment Bill, which was issued by SARS on 31 August 2024, proposes an amendment, which in effect stipulates that the effect that “official rate of interest rule” will, as from 1 January 2025, apply to the extent that the interest in respect of a loan (as determined after taking any transfer pricing adjustments into consideration) is less than the official rate of interest.

How can KPMG support?

As a trusted advisor to our clients, we welcome any opportunity to discuss the relevance of the above in respect of any trusts you may have.

For more information and assistance, please contact:

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¹ The “official rate of interest” is defined in the ITA to mean:

- in the case of a debt which is denominated in ZAR, a rate of interest equal to the South African repurchase rate plus 100 basis points; or
- in the case of a debt which is denominated in any other currency, a rate of interest that is the equivalent of the South African repurchase rate applicable in that currency plus 100 basis points.

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