

SARS 2024 TRUST FILING SEASON
16 September 2024 – 20 January 2025

COMPLIANCE REQUIREMENTS FOR TRUSTS



14 November 2024



Registration

General Overview of Trusts

What is a Trust

- A Trust is a legal arrangement where one party (the trustee) holds and manages assets for the benefit of another party (the beneficiary)

Types of Trusts

- *Inter vivos* - Created during the lifetime of the founder through an agreement between the founder and trustees
- Testamentary/*Mortis Causa* - Set up in terms of a Will and comes into effect after the founder's death
- Special Trust (a) - For the benefit of individuals with disabilities
- Special Trust (b) - For the benefit of relatives of a deceased person, with specific age criteria
- Collective Investment Schemes
- Foreign Trust

Trust created as a result of Road Accident Fund claims

Obligation to register a Trust



☐ Requirements

- Stems from a requirement to file a return

☐ Public Notice

- No threshold for submission
- All Trusts, operational or not, must submit an annual tax return

☐ Legal Basis

- Section 22 and Section 25 of the Tax Administration Act (TAA), No. 28 of 2011
- Registration with SARS within 21 days of becoming obliged

☐ Non-resident Trust registration requirement

- Non-resident Trusts must register if they:
 - (i) Carried on a trade through a permanent establishment in the Republic
 - (ii) Derived income from a source in the Republic
 - (iii) Derived a capital gain or loss from a disposal of an asset under the Eighth Schedule to the Income Tax Act, No. 58 of 1962

Information required for registration and channels available to register

☐ Essential Documentation

- Letters of Authority
- Copy of the Trust Deed or Will
- Identification documents and contact details of the trustees, beneficiaries and Tax Practitioner where applicable.
- A detailed list documentation is available on the Trust page of the SARS website (www.sars.gov.za).

☐ Beneficial Ownership Details:

- The founder, donor, trustees
- Beneficiaries and any other persons that may exercise effective control over the Trust

☐ Registration Process

- Register *via* SARS Online Query System on the SARS website

☐ Book an online appointment *via* the SARS website for help with registration

Who is the representative taxpayer of a Trust

❑ S153 of the Tax Administration Act (TAA)

A representative taxpayer is responsible for paying the tax liability of another person as an agent, excluding withholding agents, includes:

- Representative taxpayer in terms of the Income Tax Act
- Representative taxpayer in terms of the Fourth Schedule of the Income Tax Act
- Representative taxpayer in terms of S46 of the Value-Added Tax (VAT) Act, No.89 of 1991

❑ The representative taxpayer of a Trust is a trustee

❑ A representative taxpayer needs to have a valid Power of Attorney that confirms authority to act as such

Tax Practitioners: Do's and Don'ts



Tax Practitioner

- Registered with a controlling body and SARS
- Assigned a unique identification number

First-Time Registration

- A tax practitioner is not allowed to represent an entity (Trust) for initial registration at the entity and product level

Power of Attorney

- A tax practitioner with a Power of Attorney can only perform additional tax product registration/subscription once the first-time entity and product registration has been processed

General: Operational Policy Update



Tax Practitioner Authority

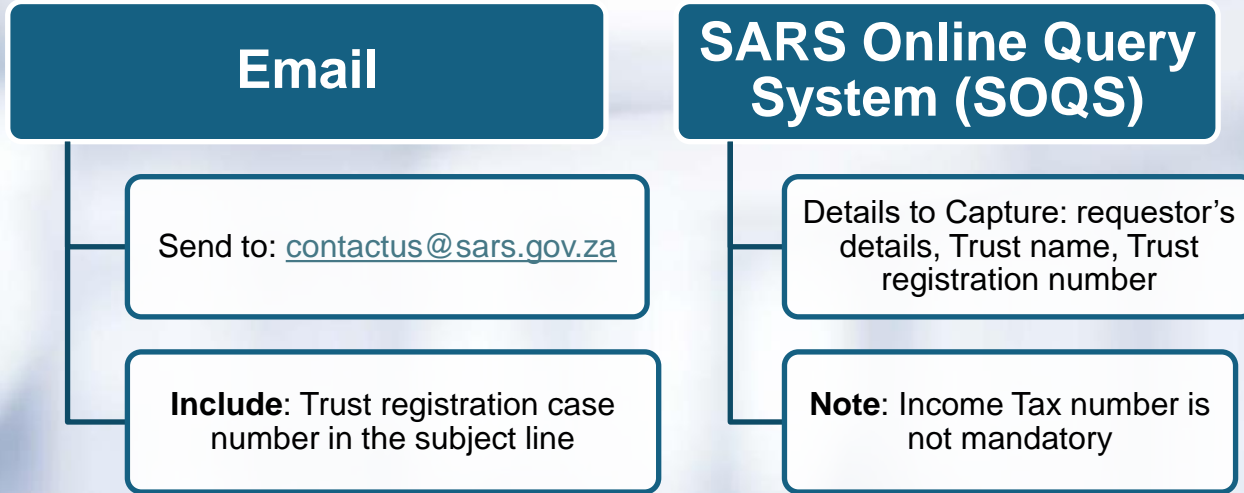
With Power of Attorney and Letters of Authority, tax practitioners can correct or change the Trust reference number on behalf of trustees

Validity Period of Documents

Documents accepted by SARS as proof of residential address or any supporting documents are valid from the date they are issued and submitted, not from the date they are first reviewed

Outstanding Supporting Documents for Trust Registration

Submission Methods



Maintain Registered Details



- **Section 23 of the Tax Administration Act (TAA)**
 - ✓ Taxpayers must inform SARS of any changes to their registered details within 21 business days

- **eFiling Functionality**
 - ✓ Use the “Maintain SARS Registered Details” feature to view and edit specific information
 - ✓ Guide to Complete the Registration, Amendments and Verification Form (RAV01) is available on the SARS website

- **Trust Registration Number**
 - ✓ Can only be updated at a SARS branch



Filing

Filing a Trust Tax Return

Filing Requirements

- S66 of the Income Tax Act and S25 of the Tax Administration Act provides that the Commissioner annually issues a Public Notice of persons who are required to submit returns

Filing Dates

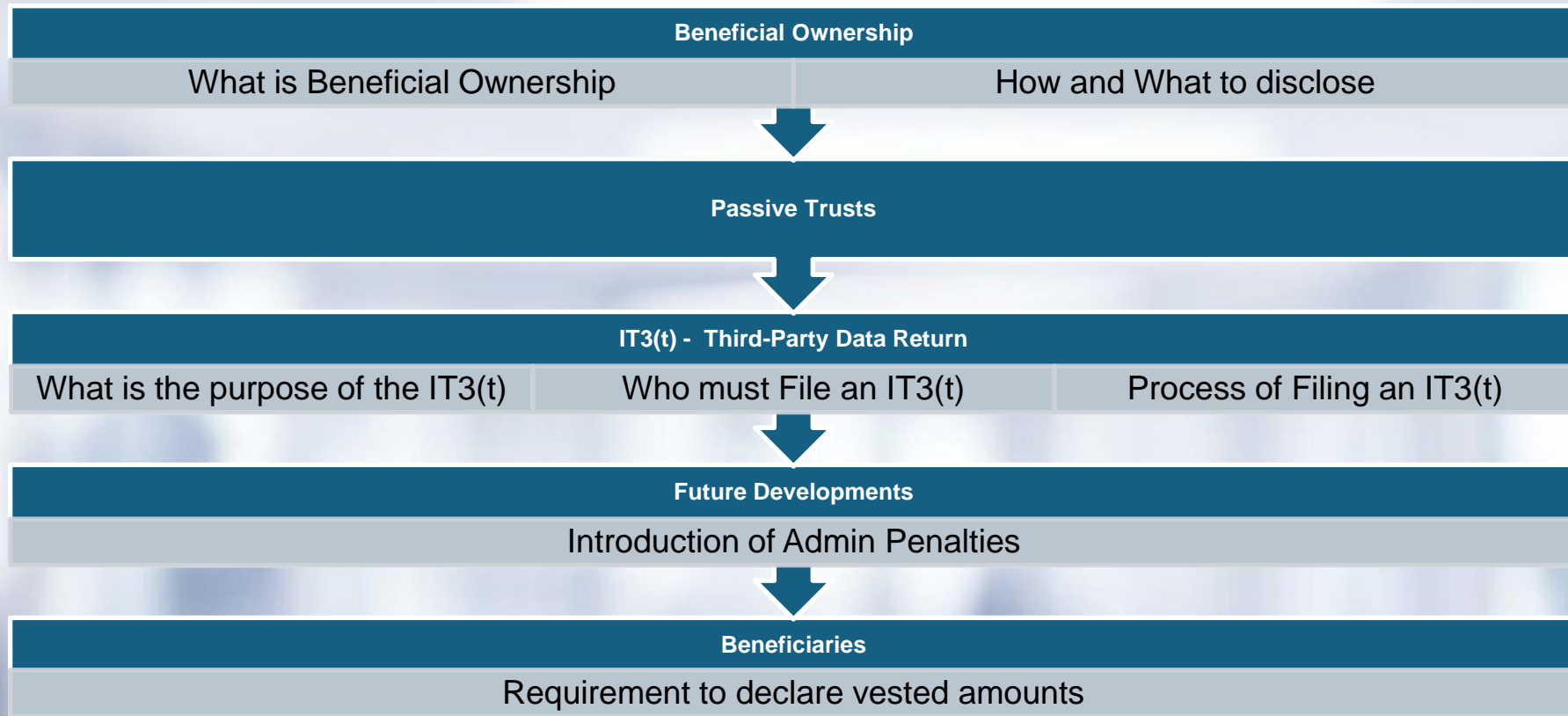
For the 2024 year of assessment:

- Income Tax Return for Trusts (ITR12T): 20 January 2025 for both Provisional and non-Provisional taxpayers
- Third-Party Data Return for Trusts (IT3(t)): 30 September 2024

How to File

- eFiling – all Trust taxpayers are encouraged to make use of eFiling
- At a branch – restrictions and requirements

Filing a Trust Tax Return





Declaration

The legal responsibilities of a Trustee

The Trust Property Control Act No. 57 of 1988

- Trustees must act with care, diligence and skill in managing Trust affairs
- Trustees cannot be exempt from liabilities, exemption clause in a Trust deed is void
- *Joint action rule* – trustees are collectively responsible and liable

The Tax Administration Act and Income Tax Act

- Trustee is a representative taxpayer
- A representative taxpayer may be held personally and officially liable for a Trust's tax debts
- SARS may hold all trustees, jointly and severally liable for Trust tax non-compliance

Full and accurate disclosure/reporting

☐ Why full disclosure is important

- Legal requirements

☐ What to disclose/report

- All income, expenses and distributions
- Beneficial ownership full details
- Relevant material (resolutions, Trust deed, Letter of Authority (LoA), financials etc)

☐ Understatement penalties

☐ Distributions made to unidentified beneficiaries

☐ Conduit principle or flow-through principle – Trust income retains its nature when distributed

☐ What is a nil return



Full and accurate disclosure/reporting cont..

☐ **Accurate reporting of Third-party data (IT3)**

- Third-party data reporting requirements
- Reconciliation of records
- Timely submission
- SARS cross reference Third-party data (IT3)



☐ **There are no “dormant” Trusts** – all Trust must file returns, regardless of activity

☐ **Thin line between tax avoidance and tax evasion**

- General Anti-Avoidance Rule
- Specific anti-avoidance provisions

☐ **Countries are collaborating to tackle cross-border tax avoidance**

Voluntary Disclosure Programme to regularise a Trust's Tax Matters

☐ What is the Voluntary Disclosure Programme (VDP)

- A program to disclose previously undeclared tax liabilities

☐ What are some of the requirements for a valid VDP application

- Disclosure must be voluntary
- It must be full and complete in all material respect
- It must involve a default which has not occurred within five years of the disclosure of a similar default by the applicant or a person referred to in section 226(3) of the Tax Administration Act No. 28 of 2011

☐ What are the benefits of the VDP

- Reduced penalties
- Avoidance of criminal prosecution

☐ How to apply for VDP

- eFiling – the application form can only be accessed *via* the SARS eFiling system

Modernisation of Trust processes

New dispute resolution process can be done *via* eFiling (20 April). Disputes lodged prior to 20 April should be concluded through the old manual process

Section 95(1)(c) automated assessment if non-submission of risk specific documents (16th Sept)



Payment

Payment

☐ The Notice of Assessment

- Due date and grace period for making payment

☐ Payment Method

- eFiling
- Payment arrangement

☐ Penalties and Interest

- Late payment

☐ Disputing an Assessment

- Lodge a new dispute on eFiling
- Old disputes initiated *via* manual process will be concluded *via* the manual process

☐ Suspension of Payment

- Temporarily suspend payment pending outcome of the dispute
- Submission of suspension request: visit a branch or upload a formal request letter with the dispute application as supporting document





Resident Trust to Non-resident beneficiary

Resident Trust to Non-Resident Trust

- ❑ 1 August 2023 – The South African Reserve Bank (SARB) and SARS relaxed Exchange Control rules regarding distributions from onshore Trusts to offshore Trusts
- ❑ SARS will consider approval for the release of funds/amounts vested (distributed) to non-resident beneficiary Trusts
- ❑ The process to obtain approval is to apply for a Manual Letter of Compliance *via* email to:
MLCA@sars.gov.za
- ❑ The non-resident Trust must be a beneficiary of the resident Trust, and the distribution will only be considered by SARS if it complies with the terms and conditions of the resident Trust deed
- ❑ SARS will only allow such distributions if the resident Trust demonstrates that all tax liabilities in respect of the distribution were or will be settled and the Trust is fully tax compliant at date of application
- ❑ Application must be supported by documentary evidence

Trust to non-resident natural person

- ☐ Resident Trusts may have non-resident beneficiaries that are natural persons who are no longer on register with SARS, example: children who emigrated with their parents, children born abroad, etc
- ☐ These beneficiaries are seen as non-residents
- ☐ Where these non-resident beneficiaries receive vested benefits, they do not have to register for tax with SARS
- ☐ A Manual Letter of Compliance will be issued to the Trust to authorise distribution of the vested benefit
- ☐ The non-resident beneficiary must send certain information to SARS *via* the dedicated e-mail address such as:
 - ☐ Documentary proof of non-resident as well as the amount requested
 - ☐ Copy of passport
 - ☐ Copy of tax residency certificate (if available)
 - ☐ Information that will prove non-residency status
 - ☐ Resident Trust details (Name, Letters of Authority, Trust deed, Annual Financial Statements, etc)






Remember our Digital Channels

- **We've made it easier for you**

Go Digital!

- Download the SARS MobiApp *via* your app store
- Register for eFiling
- SARS Online Query System (SOQS)

- **Visit us on our Social Media platforms**

- LinkedIn  The South African Revenue Service
- Facebook  facebook.com/sarstax
- Twitter  X (Twitter) @sarstax
- WhatsApp  0800 11 7277
- YouTube  www.youtube.com/sarstax



- ❑ SARS website at sars.gov.za (click on Trust webpage)
- ❑ SARS website www.sars.gov.za



TRUSTS



by **20 January 2025**

 **FILING #YourTaxMatters**



Thank you

Rea leboha

Re a leboga

Ndza Khenza

Dankie

Ndi a livhuwa

Ngiyabonga

Enkosi

Ngiyabonga



South African Revenue Service