

Tax Alert

New Beneficial Ownership Tax Disclosure Requirements for Trusts

In brief

Trusts registered in South Africa are required to comply with the recent amendment to the Tax Administration Act No. 28 of 2011 ('TAA') whereby certain additional disclosures are required to be made to the South African Revenue Service ('SARS') in relation to a new term referred to as the 'beneficial owner' of the trust.

In detail

Introduction

The Tax Administration Laws Amendment Act No. 18 of 2023 ('TALA Act') amended the TAA to include a new definition for 'beneficial owner'. This new definition became effective on promulgation, 22 December 2023, when Government Gazette No. 49947 was released.

According to National Treasury, disclosing the beneficial owners of a trust will assist SARS to identify the actual owners of the assets and related income of trusts. SARS will be able to assess the accuracy of taxpayers' tax liabilities or further detect whether taxpayers are committing a tax offence.

National Treasury further highlighted that a driving factor is for SARS to align with South Africa's National Strategy regarding anti-money laundering and the combating of terrorism financing.

Concern was raised by the public for increasing the administrative burden on trusts. SARS responded that it is already the duty of the trustee to keep and maintain records of the beneficial owner under the Trust Property Control Act No. 57 of 1988 ('TPCA').

SARS is of the view that since this is already a requirement of another authority and consistent with international law, it should not create an additional administrative burden.

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Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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Beneficial Owner definition

Section 1 of the TAA has been amended to include the definition of 'beneficial owner', in so far as relevant to a trust, to have the meaning assigned to it by section 1 of the TPCA.

With effect from 1 April 2023, the TPCA was amended to improve disclosure transparency regarding the ownership of the trust assets before such assets, or income of such assets, are vested in the beneficiaries. The TPCA imposes an obligation on trustees to register the trust and to obtain and provide beneficial owner information.

The TPCA defines the term 'beneficial owner', in respect of the provisions of a trust instrument, to mean:

- a natural person who directly or indirectly ultimately owns the relevant trust property;
- a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument;
- each founder of the trust;
- each trustee of the trust; and
- each beneficiary referred to by name in the trust instrument or other founding instrument in terms of which the trust is created.

Additional rules apply where a founder, trustee or beneficiary referred to above is a legal person, a partnership or a person acting on behalf of a partnership or a person acting in pursuance of the provisions of a trust instrument. The definition of 'beneficial owner' per the TPCA then looks to the natural persons who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument.

The TPCA does not specifically provide a definition for 'beneficiary', which term is defined in the Income Tax Act No. 58 of 1962 ('ITA'). Differences may therefore potentially arise between the use of 'beneficiary' in the TPCA, when compared to the definition of a 'beneficiary' in the ITA.

Only those who are 'beneficial owners' as per the TPCA are therefore 'beneficial owners' for purposes of the TAA.

Additional tax disclosures to SARS

With effect from 23 June 2023, SARS introduced certain e-Filing enhancements to the income tax return for trusts.

These enhancements comprised additional questions included in the return such as the beneficial ownership declaration page to record all beneficial owners and additional mandatory supporting information that should be disclosed in the return.

In the event that there are more than 20 beneficial owners, the trust must also upload a supporting document that reflects the additional beneficial owner(s).

Takeaway

Legal advice should be sought to determine who qualifies as beneficial owners under the TPCA. This is because the term beneficial owner has, for tax purposes, the same meaning as in the TPCA.

The tax filings for trusts should then include complete and accurate disclosure of the beneficial owners of the trust, which disclosure should align with TPCA filings.



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