# No Tax Twists for Trusts: 2025 Budget Delivers Good News

With recent Trust amendments targeting the flow-through principle for resident beneficiaries, National Treasury is now turning its focus to the complexities involving non-residents. This year, trusts may find themselves at a crossroads, balancing between opportunity and challenge. Will the proposed reviews bring clarity or further complexity?

For years, trusts have long been a cornerstone of estate planning in South Africa, offering a mechanism to protect and manage assets for future generations. However, in recent years, the South African government has implemented a series of tax changes aimed at curbing perceived tax avoidance and ensuring compliance with global financial standards. This article examines the historical evolution of these tax changes, ultimately indicating why trusts have not been a focal point for the 2025 Budget.

## History of Tax amendments

The South African Revenue Service (**SARS**) has been increasingly vigilant in scrutinizing trust structures, specifically those whether there is a transfer of wealth between connected person individuals to Trusts, where the wealth is transferred to the Trust on low/interest-free loan account, credit, or advances. These arrangements were seen to be an effective mechanism for estate planning purposes.

It is SARS's scrutiny of these arrangements which brought about section 7C of the Income Tax Act (**the Act**) [1], in **2016**, as an anti-avoidance measure to curb these arrangements. The anti-avoidance measure creates an annual donations tax liability, which will be triggered in the hands of the individual making the low interest/interest-free loan, credit, or advances.

SARS' focus on Trusts did not stop there, as in 2017 and 2018, the following amendments were made to Section 7C of the Act –

- **2017**, section 7C of the Act was amended to encompass situations where a low-interest or interest free loan (credit or advance) was provided to a company, where at least 20% of the equity shares were owned, or voting rights could be exercised, directly or indirectly, by the Trust or a beneficiary of that Trust, then the provisions of section 7C will also apply. This scenario was essentially seen as a mechanism to still provide low/interest-free loan account, credit or advances to a company 'controlled' by the Trust, to transfer wealth into the Trust structure.
- **2018**, to broaden the scope of the 20% participation rule, section 7C of the Act was amended to clarify that at least 20% of the shares or voting rights in the company receiving the loan must be held, either individually or collectively, by the trust and any persons associated with the trust.

What is evident is that the Estate planning 'tweaks' were not robust, as with each adaptation to the mechanism to transfer the wealth into the trust, to mitigate the changes to Section 7C of the Act, they have been met by SARS identifying the 'tweaks' and tightened the screws regarding trust structures with each revision to the anti-avoidance provision.

[1] *Income Tax Act 58 of 1962*

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Although there was some reprieve for a few years, the following amendments were made to Section 7C of the Act in 2020 and 2021 –

- **2020**, National Treasury and SARS were made aware of situations where a natural person would subscribe for a preference share, with no or a very low rate of return, in a company owned by a Trust connected to that natural person, in exchange for the transfer of wealth into the Trust structure. This resulted in amendments to section 7C of the Act, where a deemed donation liability will be triggered on the difference between the official rate of interest and the preference share dividend rate.
- **2021**, a further amendment was made in terms of which a loan, credit or advance made between two connected person trusts would also fall within the ambit of section 7C.


Although one could possibly identify a trend in National Treasury and SARS provided trusts a reprieve from amendments to the tax legislation, two recent tax law updates were affected by SARS during **2023** –

- The first, effective from 1 March 2024, SARS introduced an amendment to the general '*conduit pipe*' (look through) principle for vested distributions from trusts, to align with (and possibly counterbalance) the relaxation of the South African Exchange Control regulations, where a South African Trust may now make distributions to non-South African resident Trusts. The amendment to the '*conduit pipe*' principle is effectively to tax that distribution (income or capital gain) to the non-South African beneficiary in the hands of the South African Trust. The purpose of the amendment, to limit the flow through principle for distributions to resident beneficiaries in respect of both vested and discretionary income rights, however, may inadvertently not achieve this due to the deeming rules in section 7 of the Act. In addition, it is evident that there are unintended challenges with the amendment, particularly concerning double taxation—where the same income is taxed both in the hands of the South African trust and again in the non-resident's home country.
- The second, relates to the interplay of Section 7C of the Act, as an anti-avoidance provision, with the transfer pricing provisions of the Act (section 31 of the Act), specifically where one is considering a financing arrangement where a South African Trust structure receives cross-border funding from a connected person, who is not a South African tax resident. Previously, this cross-border financing arrangement would be excluded from the anti-avoidance provisions of section 7C of the Act if the transfer pricing provisions had been applied. However, the most recent amendment effectively subjects the cross-border financing arrangement to both the transfer pricing provisions of the Act and Section 7C of the Act. This is where the official rate of interest differs from the arm's length rate of interest (in terms of the transfer pricing provisions of the Act) then the difference will still be subject to a deemed donation, in terms of section 7C of the Act.

In addition to the above, due to South Africa being placed on the grey list by the Financial Action Task Force (**FATF**), stricter compliance measures have been put in place to monitor Trust compliance. To comply with the FATF compliance measures, SARS currently collects all beneficial ownership information, and must be included in the ITR12T. These changes bring about stricter verification processes, from the **administration of trusts** becoming more transparent with increased reporting requirements.

## Post 2025 Budget Reflection

The 2025 budget has reaffirmed a commitment to refining the tax landscape for trusts, with a keen focus on the intricate dynamics involving non-resident beneficiaries. By proposing a review of the interaction between sections 7 and 25B of the Act, the aim is to address unintended consequences and bring greater clarity to trust taxation.

While the budget did not introduce new sweeping tax measures for trusts, the emphasis on revisiting existing provisions signals the need for trust managers and beneficiaries to remain vigilant and adaptable.

This evolving environment presents both challenges and opportunities, underscoring the importance of robust governance and proactive compliance.

Trusts continue to be indispensable tools for wealth management and asset protection, ensuring the longevity of these assets. However, navigating this shifting terrain requires staying informed and maintaining transparency to avoid potential pitfalls. As efforts strive to balance tax compliance with broader economic objectives, trust stakeholders must embrace agility and insight to thrive in this dynamic fiscal landscape.

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