



Trust Taxation and Non-resident Beneficiaries



In February/March 2023, in the Minister of Finance Budget presentation, a new regime was proposed for the taxation of trusts with non-resident beneficiaries.

It is now promulgated and part of our law that, with effect from 1 March 2024, any income and capital gains awarded to non-resident beneficiaries will not be taxed in South Africa in the hands of those beneficiaries but instead, in the hands of the Trust itself.

This regime has been in place for capital gains for a number of years. It is however new for normal taxable income such as interest income, rental income and other revenue income.

Whether a taxpayer is resident or not is a status for tax purposes and is not simply dependent on the individual's current residential address. This is not a simple analysis but needs to be carefully considered.

The effect of the new law includes the following:

- 1 Local financial institution interest income accruing to a South African trust and awarded to a non-resident beneficiary will no longer be tax exempt in South Africa but taxed at the flat rate of 45% in the hands of the trust.
- 2 Other South African source income awarded to a non-resident natural person beneficiary was previously taxed in the hands of the non-resident beneficiary at a sliding rate starting at 18% and rising to 45% for taxable income levels exceeding approximately R1.8 million per annum. This would apply to rents, interest, royalties and other income. All such income awards will be taxed in the hands of the trust at the flat rate of 45%.
- 3 It is important to realise that such beneficiaries may well be taxed on such income or capital awards in his or her own country of residence and may not be eligible for relief for the South African tax paid as the tax was paid in South Africa in the name of the trust as opposed to the name of the individual taxpayer.

Government has commented that the withholding tax on interest and/or royalties awarded to non-resident beneficiaries will not apply in respect of such awards which will be already taxable in the hands of the South African trust.

Trusts with non-resident beneficiaries will need to carefully consider their future planning.

Kent Karro
Crowe Taxation Cape (Pty) Ltd

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Contact

Crowe HZK

7th Floor, 5 St. Georges
St. Georges Mall
Cape Town, 8001
Main +27 21 481 7000
hzk@crowe.za.com

Crowe HZK

D8, Block D, Octo Place
Elektron Avenue, Techno Park
Stellenbosch, 7600
Main +27 21 8807940
bso@crowe.za.com

Crowe JHB

9 Autumn Street
Rivonia
Johannesburg, 2191
Main +27 11 217 8000
info@crowe.za.com

Crowe Winelands

17 Private Road
Somerset West, 7130
Main +27 21 855 2917
reception.winelands@crowe.za.com

Crowe DNA

Unit 201, 2nd Floor
Crossfire Place
15 Gardner Williams Avenue
Paardevelei, Somerset West, 7130
Main +27 87 0572613
infodna@crowe.za.com

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