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Budget Snapshots

Taxation of Non-Resident Beneficiaries of Trusts

The Budget Review states as follows:

“The gradual relaxation of exchange control regulations has led to an increase in applications to SARS for confirmation of tax compliance status of a person for purposes of transferring funds offshore via authorised dealers. Government is concerned about the difference between the rules covering the normal tax treatment of income attributed to beneficiaries of trusts in section 25B of the act and the rules covering the tax treatment of capital gains in relation to beneficiaries in paragraph 80 of the Eighth Schedule to the act. Paragraph 80 makes provision for capital gains to be attributed only to beneficiaries who are South African tax residents. The paragraph does not allow for capital gains to flow through to non-resident beneficiaries. Those capital gains for non-resident beneficiaries are taxed in the trusts and the trust is liable for the payment of the tax. Thereafter, distributions can be made to non-resident beneficiaries. In contrast, section 25B does not distinguish between beneficiaries who are and are not South African tax residents. The flow through of amounts from South African tax resident trusts to non-resident beneficiaries makes it difficult for SARS to collect income tax from those non-resident beneficiaries as it is more complicated to enforce recovery actions against non-residents. To address this, it is proposed that changes be made to section 25B to align it with the provisions of paragraph 80.”

It is not yet clear as to the effective date of this proposed change. The implications however could be extremely costly.

The Income Tax Act effectively provides that awards of capital gains from a local trust to a non-resident beneficiary is taxed in the trust itself at the flat rate of 36%. Other income awarded to non-resident beneficiaries is taxable in the hands of the natural person beneficiaries at their own tax rates. It is now proposed that such income awards (other than capital gains) should be taxed in the hands of the trust itself at the flat rate of 45%.

As an example, a local trust derives local bank interest. If it awards that income to a non-resident, there would currently be no tax to pay as a non-resident is not taxed on South African financial institution interest. The proposal could now make such an income award taxable in the trust itself at a flat rate of 45%.

This could lead to a further difficulty. The non-resident may be taxed on that income in his home country but may not be eligible for relief for the South African tax paid as the tax was paid in the name of the trust as opposed to the name of the individual taxpayer.

It is hoped that this proposal is not implemented as currently envisaged. We will need to wait for further developments.





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