

## TRUST 2022 FILING SEASON – PROVISIONAL VS NON-PROVISIONAL TRUST TAXPAYERS

In terms of [public notice 2130](#) which specifies the persons to submit income tax returns for the 2022 tax year and the periods for submission, the filing periods for Trusts are as follows:

- Trusts that *are not registered for Provisional Tax - 1 July 2022 to 24 October 2022*,<sup>1</sup> and
- Trusts that *are registered for Provisional Tax - 1 July 2022 to 23 January 2023*.

We have received a number of questions from members regarding whether a Trust can be a non-provisional taxpayer.

As a point of departure, it is important to note that all trusts are not provisional taxpayers (i.e. they may have been “registered as” such before 2010). It must be remembered that the requirement to register as a provisional taxpayer was removed from the Income Tax Act when paragraph 17(8) of the Fourth Schedule was deleted.

The fact that SARS reflects that the person (i.e. trust) is a registered provisional taxpayer is irrelevant. It is determined on assessment whether or not the person (i.e. trust) should have made provisional tax payments. This was covered by SAICA in our March tax in practice session.<sup>2</sup>

That then means that trusts, being vested trusts or bewind trusts, can never be a provisional taxpayer. Discretionary trust/(s) where not all the income was vested in beneficiaries during the year of assessment but retained in the trust, will then be provisional taxpayers. In SAICA's view, if the trustees of a discretionary trust vest all the accruals in a year of assessment, the trust will also not be a provisional taxpayer for that year, due to section 25B(2) of the Income Tax Act. Further, a trust with an assessed loss, trading because an assessed loss cannot arise otherwise, will be a provisional taxpayer.

The main problem with this is that these trusts must submit their ITR12T's by 24 October. There is no penalty risk yet for trusts. The penalty risk lies with beneficiaries of these trusts, who do not submit their returns before then or, if they are provisional taxpayers themselves, during January 2023.

SAICA raised this with SARS as it places an additional burden on tax practitioners to get the financial statements of these trusts done earlier. We will update members once more information is available.

**6 July 2022**

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<sup>1</sup> Please note that SARS has noted on [its website](#) and in [recent correspondence](#) that the filing period for trusts that are not registered for Provisional Tax runs from 1 July 2022 to **23 November 2022** (and not 24 October 2022 as stated in the paragraph 4(b)(ii) of public notice 2130). We have engaged with SARS to provide clarity on the correct due date and will update members once more information is available.

<sup>2</sup> The recording for the March tax in practice session can be accessed [here](#) or on [Click2Start](#).