TRUST THIRD PARTY REPORTING (IT3(T)): GUIDANCE
UPDATED 18 SEPTEMBER 2024

This guidance incorporates responses through engagement with SARS and tax tips identified via engagements with members during the process of submitting the IT3(t) return.

For more information on the Trust annual income tax return and other general matters, please read the original feedback summary.

1. Successfully activated the IT3 tax type, but the IT3 is not available to request

   Some members have noted that despite successfully activating the IT3 tax type, they are unable to request the IT3 on eFiling – i.e. there is no such option available under the Third Party Data menu.

   If you are experiencing this, ensure that you have the correct Access Rights and thereafter, the IT3 should be available to request. Details on how to do this is set out in the SARS Guide for the Submission and Declaration of IT3 Third-Party Data via eFiling, at **6.1. Access Rights.**

2. Distribution vs Donation (specific facts)

   An example was provided of a public benefit organisation (PBO) that has as its object to further education and the trust deed provides that any beneficiaries of the PBO must be related to that object, for example schools.

   The question asked was if the PBO then gives R100 000 to a school to purchase computers, is that a donation, or a distribution because it is a school and schools are in general mentioned as the beneficiaries of the PBO's activities?

   SARS Response:

   Based on the scenario provided below, for the purpose of responding, the facts are understood to be as follows:

   - The PBO is formed and governed by a Trust deed.
   - The object of the trust as described in its Trust deed is to further education.
   - The beneficiaries in the trust deed relate to the object of the trust, namely, the beneficiaries must further education, for example, educational institutions.
   - The trust makes distributions to its identifiable beneficiaries (a class of beneficiaries) in accordance with the object for which the trust was created.
   - The trust is a discretionary trust since the trustees appear to have discretion to whom they can make distributions in accordance with the trust deed.

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If the above facts are correct, the amount of R100 000 provided by the trust to a school to purchase computers is therefore a distribution made to a trust beneficiary in accordance with the trust deed. A distribution by the trust to a recipient falling outside the scope of the beneficiaries as defined in the trust deed will constitute a donation – provided the requirements of the definition of "donation" in section 55 is met, which, amongst other things, includes being motivated by pure liberality or disinterest benevolence.

The Trust instrument should also make provision (in one form or the other) for the Trust to be able to make donations outside of the amounts vested to their beneficiaries. Otherwise, these amounts may be *ultra vires*.

3. <u>Completion of vesting details on the IT3-01</u>

The IT3-01 form on eFiling requires one to enter details of the Reporting Institution multiple times – equal to the number of beneficiaries to whom distributions were made. For example, if there are 20 beneficiaries to whom distributions were made in the reporting period, the taxpayer will have to indicate that 20 certificates are being reported. eFiling then creates 20 fields for the reporting entity details to be completed – even though it's all in respect of the same trust.

<u>SARS Response</u>:

SARS anticipate that a fix will be implemented shortly. In essence, the team has added a button that will duplicate the information populated by the reporting entity for a specific beneficiary. This will then allow for the population of all the information of the beneficiary with only the source codes and other financial information to be populated by the submitting entity. This will save the submitting entity (person) to have to re-enter all the information multiple times.

4. <u>Submission platforms</u>

As is the case with other third-party reporting, the submission platforms are:

- Connect Direct for bulk data,
- HTTPS for medium sized data, or
- eFiling for IT3-01 form (max of 20 Certificates)

Concerns were raised that the HTTPS platform presents challenges for smaller trusts due to technical requirements for the file to be uploaded and the need for three separate users before the portal can be used.

SARS advised that for more than 20 records, the eFiling platform can still be used. The user may submit 20 records for each of the 12 tax periods (i.e. totalling 240 records over the 12 periods) and once the submissions have been successful, the same periods will open up again for submission of additional records each period. If any submissions are incomplete, those periods will be blocked until the submissions are finalised. Only then will one be able to submit another 20 records for the relevant period.

SAICA noted that this would be a very manual, time-consuming process, but for now, it seems to be the only feasible alternative to the HTTPS channel, until SARS finds a solution.

5. Form IT3-01 (specific to the IT3(t)) has a section IT3(t): Financial flows

SARS was asked what information is required in the following containers:

- Total expenses incurred – is it just the total expenses incurred by the trust for the year?
- Total contributions to trust (as distinct from donations to trust) – are these transactions on loan account?
- Total contributions refunded by trust – are these repayments on loan account or something else?
- Total contributions received from trust – received by whom and is this not the same thing as "total contributions refunded by the trust"?

It seems there is no guidance on the above in the SARS Guide for the Submission and Declaration of IT3 Third Party Data via e-Filing (dated 18 September 2023).

SARS Response:

The IT3(t) was designed based on the "old" pages 29 and 30 of the Income Tax Return for Trusts (ITR12T). The questions mentioned above has been a requirement to be submitted over the past decade. However, SARS will provide guidance on these matters in the FAQ section for Trusts on the SARS webpage. This information will be updated and published shortly.

Refer to the SARS Comprehensive Guide to the Income Tax Return for Trusts for more information.

Further guidance provided from a member is noted below:

Members to consider if this is applicable in relevant circumstances.

With respect to total expenses incurred – this is applicable when one has ticked 'Yes' to: "Had granted the right of use of asset(s) retained in this Trust".

If right of use was granted, consider how much expenses were paid by the trust for that asset for that year.

- This was standard with the trust income tax return, but the IT3(t) layout may have confused those who have never ticked 'yes' to the right of use statement.

With respect to <u>contributions</u>, the tax return guide gives more detail on this, and relevant extracts are below.

b) The following definitions are guidelines in respect of declaring contribution, distribution, or donations in the context of Trusts:

i) A contribution (donation, settlement or other disposition) to a Trust is normally made by the donor/founder/settlor of the Trust (may be thought of as akin to a capital contribution to a company by a shareholder). A contribution can take the form of a donation, but not all donations are contributions. Where a donation is made by the founder/settlor/donor of the Trust it should be treated as a contribution. In the context of a trading Trust an amount contributed to the Trust in exchange for the right to future benefits from the Trust must also be treated as a contribution.

ii) A distribution by a Trust refers to amounts vested in the Trust beneficiaries. It is important to understand that *vesting* (of a benefit in a beneficiary) is an indispensable prerequisite for the *distribution* to occur.

iii) A donation to a Trust refers to amounts paid to the Trust by any person in a manner that is gratuitous/with disinterested benevolence (i.e., not in exchange for a right to future benefits).

6. <u>NIL return requirement for 2024 and 2025</u>

The notice to submit returns indicates that a return is to be submitted where an amount vests in a beneficiary – which seems to indicate that if there is no vesting, no return is required.

However, based on the Business Requirements Specification (BRS) (see extract below), it seems that beneficiary details will still be required, with the financial record amount being R0.00 – therefore a NIL return is effectively required – i.e. if beneficiaries have to be reported on, then an IT3(t) has to be submitted.

<table>
<tr><th rowspan="2">No</th><th rowspan="2">Field Name</th><th rowspan="2">Description</th><th colspan="2">Required</th><th rowspan="2">Bulk (B) or real time (R)</th><th rowspan="2">Data Type</th><th rowspan="2">Length Type</th><th rowspan="2">Length (Min:Max)</th><th rowspan="2">Data Validations</th><th rowspan="2">Logic Validations</th></tr>
<tr><th>Type</th><th>Condition Rule</th></tr>
<tr><td colspan="11">6.5.4 DETAILS OF PERSON / BENEFICIARY (Mandatory Record 1:∞) Provide all Persons / Beneficiaries existing or past of this Reporting Institution throughout reporting period. If there was no reportable financial information to / from the Reporting Institution for the reporting period, then financial records will contain R 0.00 values for the Mandatory fields (e.g. The Trust Financial Flow (TFF) section will contain R 0.00 values etc.).

Note: NULL return Field 332 was removed – Provide ALL Persons / Beneficiaries.</td></tr>
</table>

SARS advised that for the 2024 Year of Assessment (YOA), they will accept only those amounts that have been vested and therefore NIL returns are not required. However, for the 2025 YOA, all amounts, including R0 should be disclosed.

Members noted that at SARS regional meetings, the regional lead provides a different view – e.g. at the SARS Free State meeting, attendees were told that NIL returns should be submitted. SARS responded that this was a misunderstanding and would be clarified.

SAICA advised that if a NIL return will be required from 2025, the notice to submit third party returns would need to incorporate this requirement.

SARS Response:

SARS advised that despite there being no requirement to file a NIL return for 2024, it may be helpful to file anyway. For now, the IT3(t) will be used for two main purposes:

- Risk purposes; and
- To provide SARS with an opportunity to assess the quality of information provided in the return with a view to improve in the subsequent year.

From 2025, SARS hopes to use the information to prepopulate the returns of trusts and beneficiaries.

In future, if the IT3(t) is submitted as required, the distribution portion in the relevant returns will not need to be completed. If the IT3(t) is not submitted, the distribution schedules will have to be completed, in the interim. Eventually the plan is for the distribution schedules to be removed completely.

The future disclosure requirement will be finalised during the SARS internal discussions and will be communicated with the issuance of the third-party annual notice.

7. Error when trying to activate the IT3 tax type

SARS is aware of the below error and has investigated:

"The details captured for this taxpayer do not match SARS records. Please review the registration details and recreate this taxpayer"

SAICA requested an update in terms of the solution that SARS is working on to address this, as there are many members who have raised concerns and some of them have multiple clients affected by this.

In some cases, the trust registration number has mysteriously changed. There are also apparently trusts where the information is correct under Organisation, Change Details, but on the RAV01 the registration number is reflected only as ‘TT’. Appointments are required to address these issues, but there is a long waiting period, and for the trusts that reflect no registration number, it is not possible to upload documents or make an appointment.

SARS was requested to consider a faster method to appoint the main trustee and a quicker way to activate the third-party tax type. Whilst SARS did not specifically address expediting appointment of the main trustee, members have noted that initiating this via the SARS Online Query System has recently produced results within 1 – 5 days of submission, so turnaround has improved for now.

<u>SARS Response</u>:

The SARS trust segment noted that they had engaged with SARS' technical team, and they were advised that the error will be resolved soon. SARS is working on a fix which is imminent, although no timeline was provided.

SARS subsequently confirmed that this matter is a high priority escalation within the organisation. The Trust Product Owner is currently investigating various options to rectify the error message. The current workaround would be for tax practitioners to submit returns on behalf of their Trust clients as a submitting entity – submitting on behalf of the reporting entity. This thus requires of the tax practitioner to register as a third-party data submitter and then to submit the IT3(t) data on behalf of their Trust clients.

SAICA requested that SARS consider a concession for taxpayers impacted by this error. A specific request was made that SARS identify those taxpayers that are affected and to create a channel to address any consequences flowing from non-compliance due to the SARS system not working correctly. It is understood that a blanket concession cannot be allowed given that some taxpayers may be intentionally non-compliant, but this should not negatively impact those that are working on ensuring timely submission but are hindered due to systemic issues.

8. <u>Penalties for non-compliance</u>

SAICA questioned whether there would be penalties or an impact on the compliance status where these issues are present, and the taxpayer is unable to remedy it on time to submit by the due date.

<u>SARS Response</u>:

The administrative penalty regime has not yet been implemented for trusts. SARS is currently looking at implementing this via a public notice to be issued in December 2024. However, this will only be after consulting constituencies, including those at the 17 July workshop.

It was agreed with the SARS legal team that the required notice will only be published after consultation – a draft will be shared, engagement will take place, and the notice will then be published. The penalties will apply for the ITR12T and IT3(t). It is likely that this notice will have retrospective application for the ITR12T and apply prospectively for the IT3(t). However, we will need to wait for the public notice to confirm.

The details of the consultation will be communicated shortly. Tax practitioners and trustees must still work towards complying with the current deadline.

9. Update of registered representative (main trustee)

With respect to the update of registered representative details, where the letter of authority from the Masters Office is delayed, SARS was asked if concessions would be applied. If not, SARS were asked how they propose addressing this to ensure that the tax type can be activated, and the taxpayer becomes compliant.

It was requested that SARS consider proof of submitting updated details to the Masters Office timeously, as sufficient evidence.

SAICA requested that this too be considered in light of any penalties or non-compliance that may arise due to late submission in these circumstances.

SARS Response:

SARS is aware of the problems experienced with the Masters Office in effecting amendments and new registrations. However, following internal deliberations and consultation, SARS will, unfortunately, not be able to amend their processes to accommodate these shortcomings. SARS is in discussions with relevant inter-Governmental role players in an attempt to highlight the impact of these shortcomings and the impact that it has on Trust tax compliance.

10. Non-profit trust providing consumer financial education

An example was provided of a Foundation that is a non-profit organisation (trust), providing consumer financial education to many people within South Africa and further meets the requirements of the BEE code. The organisation offers this education to about 10 000 beneficiaries per annum.

Is this type of Foundation obligated to submit an IT3(t)?

SARS Response:

The Foundation will not be required to report where its core business is the provision of consumer financial education, in an IT3(t). An IT3(t) is required for amounts distributed to specified beneficiaries. When compiling their financial statements, the expenditure related to the core business will be reflected in the Income Statement and there will be no monetary value distributed to specified beneficiaries. Should the Trust, however, decide to vest specific amounts to specified beneficiaries (should be in accordance with the Trust instrument) the Trust will be required to submit an IT3(t) for the 2024 year of assessment.

11. Recommended treatment for charitable trusts where the donee is ‘unknown’

SARS was requested to advise as to the recommended treatment for trusts whose distribution to a beneficiary constitutes charitable activities where the beneficiary/ies cannot be identified (e.g. charitable activity extending to disaster relief and the purchase of emergency supplies, including in the below scenarios):

- The recipient of the emergency supplies is not able to supply an ID number and/or address when they receive the emergency supplies; OR
- At the point of distribution to record demographic details before handing out the emergency supplies would be an inhumane course of action; OR
- Contacting the beneficiary after they receive the emergency supplies is problematic as they may become homeless, have lost or changed their cell/telephone number or are unable to access their email address.

SARS Response:

See the answer above. The expenditure of the Trust is reflected in the Income Statement and not as a vesting to its beneficiaries.

12. Beneficial ownership section of trust tax return requires Employee Share Incentive Schemes to participate

SARS was asked if it is possible to consider exempting these trusts in a similar way to that in which the Collective Investment Schemes were excluded.

SARS Response:

An Employee Share Incentive Scheme in a trust form is a "trust" as defined in the Trust Property Control Act, 1988 ("TPC Act"), as amended by the General Laws (AML/CTF) Amendment Act, 2022 ("the GLA Act"), and accordingly subject to the registration requirements under the TPC Act as well as the recording and reporting requirements of beneficial ownership of the trust. The beneficiaries of these trusts, i.e. the employees, are also beneficiaries referred to by name as contemplated in the definition of "beneficial owner" of a trust in the TPC Act.

The Financial Action Task Force Mutual Evaluation Report (FATF MER) of South Africa adopted in October 2021, identified a wide range of technical deficiencies in South Africa's Anti-Money Laundering, Countering Terrorism Financing and Countering the Financing of Proliferation ("AML/CTF/CFP") regime and adopted an action plan for South Africa to address deficiencies. In order to give effect to the National Strategy on AML/CTF/CFP ("the National Strategy"), developed by Cabinet as a response to the 2021 FATF MER and give effect to the action plan, Parliament adopted the legislative changes in the GLA Act, which inter alia amended the TPC Act to require disclosure of beneficial ownership ("BO") information from registered trusts.

In line with the National Strategy, SARS is committed to the implementation of new beneficial owner transparency requirements for trusts, which will be kept in a repository. This repository will function as a Tier 2 replicator BO registry within the envisaged National

BO registry framework, the Tier 1 repository on trust being the Master of the High Court ("MotHC"). For this purpose, a definition of "beneficial owner" of a trust was inserted in the Tax Administration Act (commencing on 22 December 2023) (cf par 2.25 of the Memorandum of Objects to the Tax Administration Laws Amendment Act, 18 of 2023 and p. 82 - 84 of the Final response document to the latter Act).

It is thus not within SARS' discretion to ignore the law and to "elect" the trusts that should submit the BO information but rather to execute its mandate to align with the National Strategy in developing a national integrated, interoperable and harmonised BO framework, comprising of BO registries and other sources to provide timely access to law enforcement and other competent authorities, including SARS, to reliable BO information on trusts in line with the FATF BO standards and Immediate Outcome 5 of the FATF MER action plan.

In considering this request, the Inter-Departmental Committee Beneficial Ownership and Transparency (IDC-BOT) indicated that all Trusts that are formed in terms of the requirements of the TPC Act, and thus meets the criteria (definition) of a Trust, will be subject to the BO requirements in this Act. Although SARS is a tier 2 collector of BO information, the mandate of the IDC-BOT to SARS is to collect the BO information as per the Financial Action Task Force standards. It is thus not within SARS' discretion to elect the entities that should submit the BO information but rather to execute the mandate issued by the Cabinet, through the IDC-BOT to ensure South Africa's removal from the FATF grey list.

13. Trusts who are deregistering at the Masters office

Due to delays experienced in completing this process, deregistration at SARS is prevented. Further distributions of income will not be possible at this point. It was questioned as to whether these trusts could be excluded from the IT3(t) SARS submission requirement.

SARS Response:

SARS is aware of the issues being experienced at the Masters Office. However, for the 2024 year of assessment, SARS will not issue penalties for the late- or non-submission of an IT3(t) return. These trusts will thus not be prejudiced during the final deregistration process at SARS, provided that the Trust is deregistered for tax purposes prior to the 2025 year of assessment filing date. Also note that SARS will be engaging the Masters Office in an effort to find a solution for the ongoing delays in their processes.

There is also a plan for an interface between SARS and the Masters office to address this. However, due to organisational issues at the Masters office (currently noted in the media), this has resulted in delays, and it is not clear when this interface will materialise.

Given that these trusts would have no distributions, for 2024, it may well be that no return would have been required in any event.

14. Trust with foreign beneficiaries and withholding tax (WHT) obligation

Clarity is sought regarding the below scenario:

- A South African trust distributes a portion of the net local SA interest received in the 2024 tax year to a non-resident beneficiary.
- The non-resident lives in the UK and in terms of Article 11 of the DTA between SA and the UK, the taxing rights on this income are reserved for the UK, resulting in withholding tax at 0%.
- The section 26 Notice for third parties to submit returns seems to indicate that the trust has an obligation to issue an IT3(b), in terms of Provision 2.12: "*A person liable to pay withholding tax on interest in terms of section 50F(2) of the Income Tax Act*." There is also a requirement for the trust to submit an IT3(t) on amounts vested in beneficiaries. There is therefore a concern that SARS may require reporting on both, potentially resulting in duplication.
- In our view, if WHT applies at 0%, there should be no need to submit an IT3(b) and only a requirement for an IT3(t). We request clarity from SARS in this regard to communicate the SARS position to members.
- What would the response be if the WHT is not 0% - i.e. is there a requirement to submit both returns and therefore the possibility of duplication.

SARS Response:

Section 26 of the Tax Administration Act (TAA), read with the relevant Public Notice, specifies who the appropriate persons are to submit third party data.

The Public Notice dated 30 June 2023 for periods commencing on or after 1 March 2023 provides that the following persons are required to submit a return as specified in paragraph 3:

- 2.12 "A person liable to pay withholding tax on interest in terms of section 50F(2) of the Income Tax Act" Information to be included in the IT3(b) is the following:

  "(a) Amounts incurred or paid in respect of, or by way of any investment, interest or royalty;
  (b) transactions that are recorded in an account maintained for another person (i.e. transactional accounts); and
  (c) any tax withheld."

- 2.15 "A "trust" as defined in section 1 of the Income Tax Act, that is a "resident" as defined in that section, or a non-resident that is required to submit an annual Income Tax return, excluding "Exclusions not relevant for current purposes".

Information to be included in the IT3(t) is:

- "Any amount vested in a beneficiary including income (nett of expenditure), capital

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gains and capital amounts."

The "BUSINESS REQUIREMENTS SPECIFICATION (BRS): IT3 Data Submissions" document dated 7 October 2022 states the following in paragraph 4.2:

- "4.2 Information required to be submitted

The data that must be included in the submission may be as a result of the following:

- 4.2.1 IT3(b)
  - Interest due to or accrued to the taxpayer as at the end date of the reporting period;
    i. Interest paid or accrued to individuals, trusts or companies as a result of a loan to a business;
    ii. Interest on loans and mortgage bonds (except loans or bonds due to banks);
    iii. Interest on funds invested with you;
    iv. Interest on debentures; and
    v. Interest on current savings accounts.
  - Profit payable as a result of the redemption of bearer instruments;
  - Income paid or accrued to property owners as rent, either by a tenant or collected by an agent;
  - Royalties or fees paid out in respect of the use of patents, design, trademarks or copyright or the imparting of knowledge connected with the use of a patent in the Republic;
  - Foreign dividends paid out or accrued to shareholders;
  - Monthly debit and credit movement of transactional accounts. For the purposes of IT3b reporting, a transactional account is defined as an account held at a bank or other financial institution, for the purpose of securely and quickly providing frequent access to funds on demand, through a variety of different channels. The debits and credits must be reported as it is reflected on the account holder's statement;
  - If withholding tax on interest is applicable."

Section 50B is applicable to any interest paid by any person to for the benefit of a foreign person. Section 50E(2)(b)(i) of the Income Tax Act provides that: "A person must not withhold any amount from any payment contemplated in section 500(1)" if a Double Taxation Agreement (DTA) exemption applies and the necessary declaration has been submitted. Section 50E(3) has a similar provision if the DTA provides for a reduced rate.

Under section 50F(2) a person must submit a return (i.e. an IT3(b) if that person withholds withholding tax on interest. If no withholding tax is withheld, no such return has to be submitted. It is thus a factual question whether an IT3(b) has to be submitted.

It is clear from the information quoted above that the purpose of an IT3(b) and IT3(t) differs. It might thus, depending on the facts of the case, be necessary for a Trust to submit both certificates.

In the abovementioned scenario, where the DTA provides for the taxing rights to the other state (UK) and there is thus no tax to be withheld (50E(2)(b)(i)), there will be no responsibility on the Trust to issue an IT3(b) (50F(2)).

15. Has SARS considered exempting PBOs from the IT3T data submission event?

As explained in point 9 above, all trusts that are formed and registered under the requirements of the TPC Act, and thus meet the criteria (definition) of a trust, will be subject to the BO requirements in both the TPC Act and the TAA. For the reasons stated above, it is thus not within SARS' discretion to elect the entities that should submit the BO information.

An IT3(t) is required for amounts distributed to specified beneficiaries of a Trust that is a Public Benefit Organisation Trust or Small Business Funding Entity (SBFE Trust). This will affect any PBO or SBFE Trust that decide to vest specific amounts to specified beneficiaries (should be in accordance with the Trust instrument). The intention is to enable the proper taxation of certain distributions in the hands of the beneficiaries e.g. amounts derived from business undertakings or trading activities that fall outside of the exemption scope of such Trusts. Following this consideration, SARS decided to include the PBO and SBFE Trusts in the IT3(t) submissions.

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