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TAX SPECIALISTS SA



UNICUS TAX UPDATE

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BPR 430 - Distribution of a loan claim

Transaction, ruling and tax insights

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HELLO & **WELCOME!**

NICO THERON

BCom Law (cum laude) | LLM (Tax Law) | BCom Honours Taxation | MCom Taxation (SA and International Tax)

MANAGING DIRECTOR



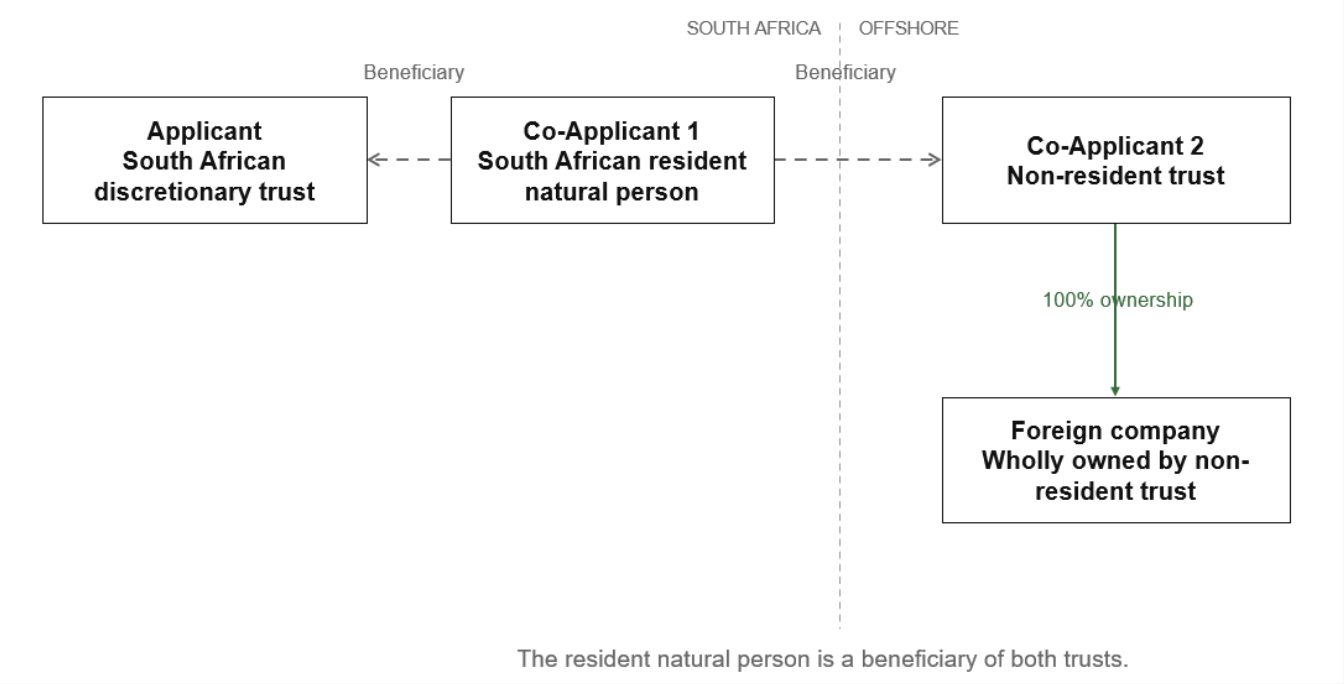
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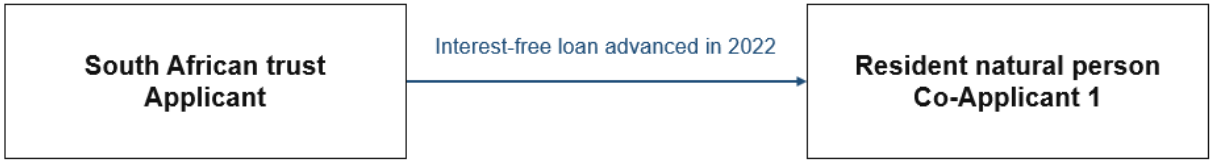
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THE TRANSACTION INVOLVES THREE APPLICANTS AND AN OFFSHORE INVESTMENT COMPANY



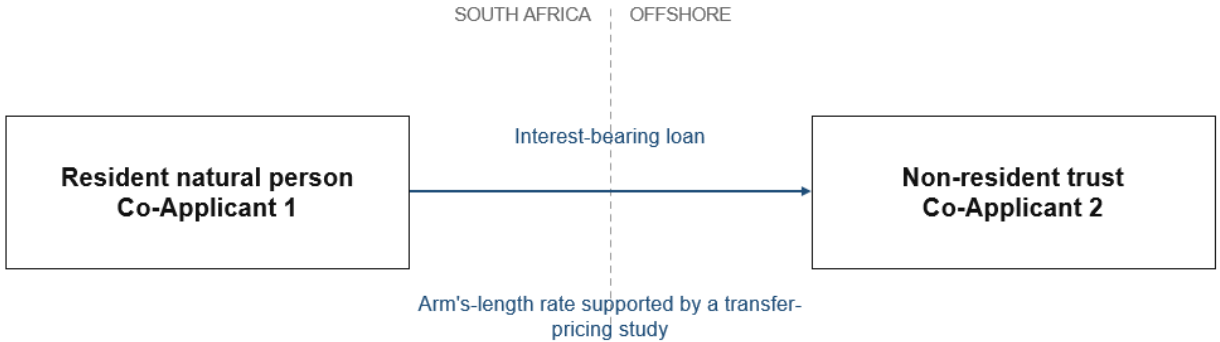
The resident natural person is a beneficiary of both trusts.

STEP 1: THE TRUST LENDS INTEREST-FREE TO THE RESIDENT BENEFICIARY



- The trust became the creditor and the resident beneficiary became the debtor.
- Section 7C is not ordinarily directed at this leg: it is a loan by a trust to an individual.

STEP 2: THE BENEFICIARY LENDS OFFSHORE AT INTEREST



- SARB approved the foreign direct investment in May 2024.
- The loan agreement became effective later in 2024.
- The beneficiary has included all accrued interest in South African income under section 24J.

THE OFFSHORE TRUST ON-LENDS INTO AN INVESTMENT COMPANY



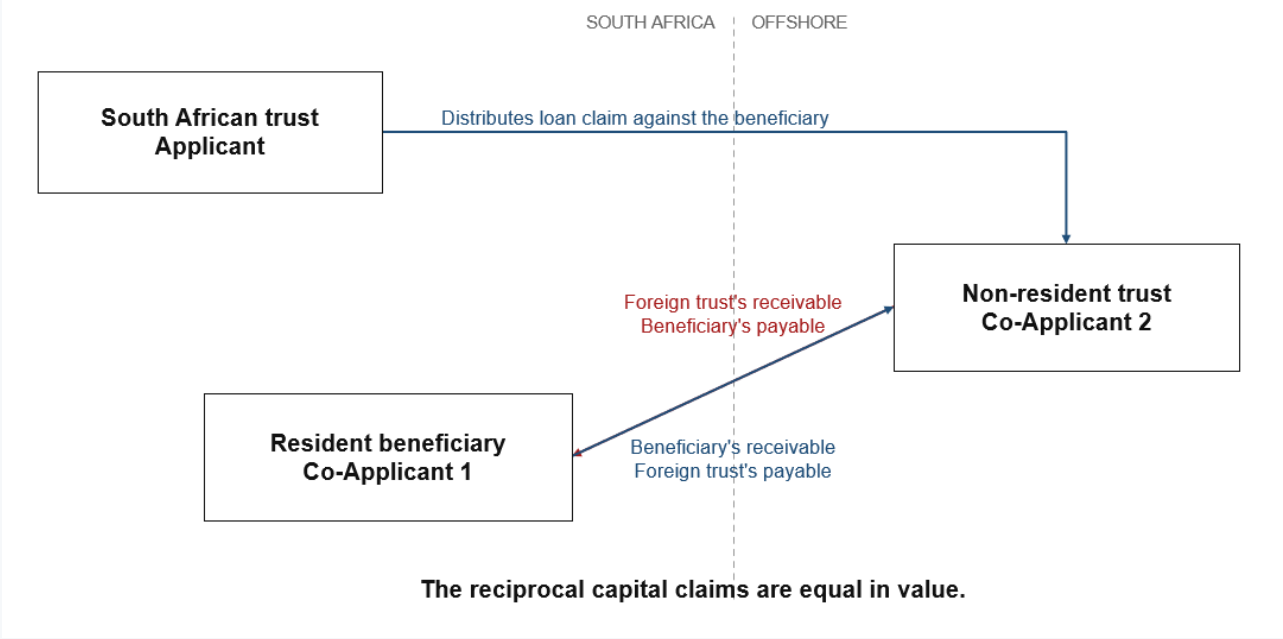
- The company invested in traditional assets, venture capital, private equity and private credit.
- The assets generate both capital appreciation and interest income.
- The offshore investments remain in place throughout the proposed unwind.

THE ORIGINAL STRUCTURE CREATED CONTINUING SOUTH AFRICAN TAX EXPOSURE

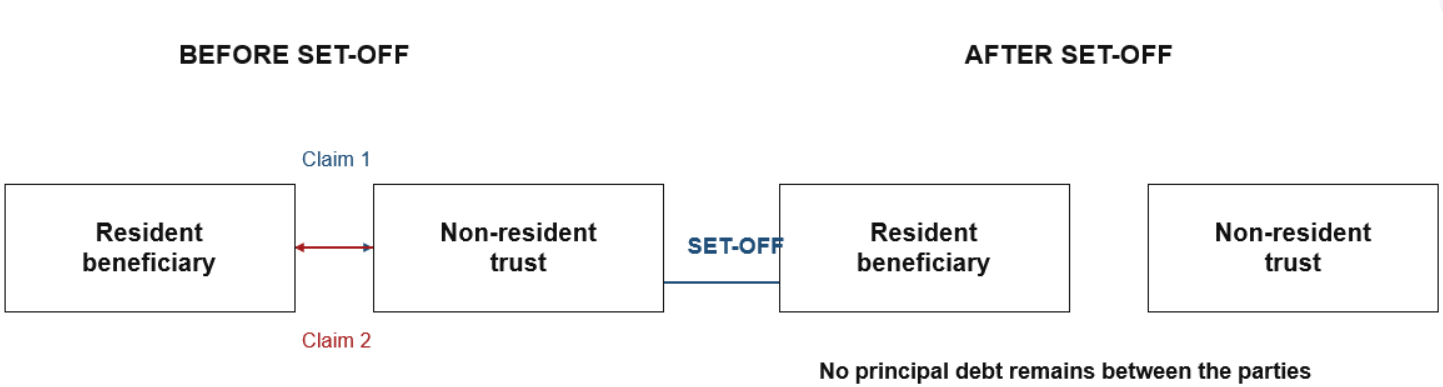
- Section 24J: contractual interest continues to accrue to the resident beneficiary

  and is taxable in South Africa.
- Section 31: the cross-border connected-person loan must remain supportable on arm's-length terms; the ruling records a transfer-pricing benchmark study.
- Section 7C: from 2025, the foreign-loan exclusion applies only to the extent of an actual section 31(2) adjustment.
- If the actual arm's-length rate is below the official rate, the shortfall can be treated as an annual deemed donation under section 7C(3).
- The ruling does not disclose the rate or quantify any section 7C exposure.

PROPOSED STEP 1: DISTRIBUTE THE LOCAL LOAN CLAIM OFFSHORE



PROPOSED STEP 2: SET OFF THE EQUAL PRINCIPAL CLAIMS



- The parties will agree to the set-off in writing.
- Only the equal capital portions are extinguished.
- Previously accrued and capitalised interest remains payable to the beneficiary.

SARS RULED ONLY ON THE DISTRIBUTION OF THE LOAN CLAIM

- The distribution is a 'donation, settlement or other disposition' for section 7(8) and paragraph 72.
- Section 7(8) does not apply because no amount would have constituted income of the non-resident trust, if resident, by reason of or in consequence of the distribution.
- Paragraph 72 does not apply because no capital gain is attributable to the distribution of the loan claim.
- The distribution is exempt from donations tax under section 56(1)(l).

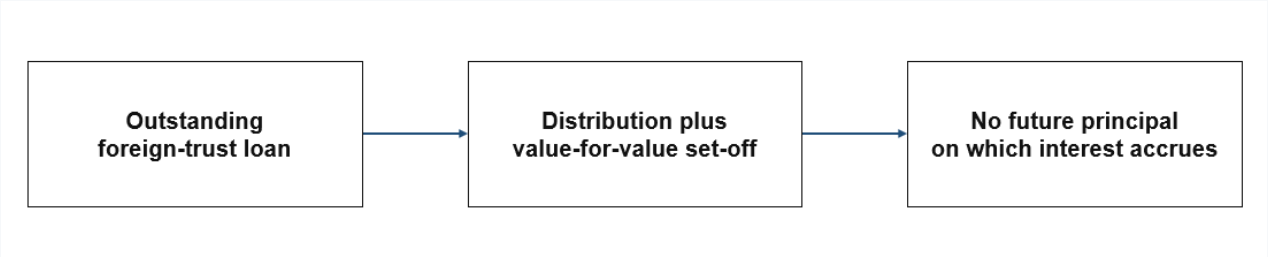
Result: the claim can be distributed and used for the set-off without the specified attribution or donations-tax consequences.

THE RULING IS DELIBERATELY NARROW

- No view is expressed on the general anti-avoidance provisions or anti-avoidance doctrine.
- No view is expressed on exchange-control permissibility.
- The ruling does not determine section 31, section 7C, section 19, paragraph 12A or the future section 24J consequences.
- The existing loan arrangements and prior interest accruals are facts; the proposed distribution and set-off are the transaction being ruled upon.
- A BPR binds SARS and the applicants only on the matters actually ruled upon.

A favourable ruling on the stated provisions is not a general approval of the structure.

THE UNWIND STOPS TWO POSSIBLE ANNUAL TAX EXPOSURES



- Section 24J / section 31: extinguishing principal stops future contractual interest and removes the ongoing need to support the cross-border loan pricing.
- Section 7C: if the arm's-length rate was below the official rate, extinguishing the principal stops future deemed donations on that difference.
- The transaction does not reverse accrued interest or any section 7C amount that arose before the set-off.
- This is a strong inference from the mechanics, not an express finding in BPR 430.

THE SET-OFF IS PRESENTED AS SETTLEMENT AT FULL VALUE, NOT A WRITE-OFF

If the loan were waived

- The lender gives up the claim for no or inadequate value.
- Section 7C(2) can deny the lender's deduction, loss or capital loss.
- A gratuitous waiver may also be an actual donation.
- Section 19 / paragraph 12A may become relevant if the debtor obtains a debt benefit.

What BPR 430 proposes

- Each party discharges an equal reciprocal capital claim.
- The ruling describes settlement in full on a value-for-value basis.
- The beneficiary receives value: release from an equal debt.
- On the stated facts, there is no lender loss and no debtor debt benefit to recognise.

The labelling is not decisive; equality of value and the legal effectiveness of set-off remain factual assumptions to verify.

SARS'S ANTI-AVOIDANCE SELECTIVITY IS NOTEWORTHY

- Section 80(1)(c) of the Tax Administration Act says SARS may reject a ruling application involving a general or specific anti-avoidance provision or doctrine.
- Section 7(8) and paragraph 72 are specific attribution / anti-avoidance provisions, yet SARS elected to rule on them.
- SARS reserved GAAR and doctrine, which are broader and more fact-intensive; its guide says serious expected anti-avoidance concerns will cause rejection.
- Section 7C may have been omitted because it was not requested, because it concerns the already-concluded loan, or because SARS declined to entertain it.
- The published ruling does not reveal which explanation is correct.

Fair criticism:
SARS gives narrow comfort on the cure while withholding a holistic view of the avoidance risk.

OVERALL TAKEAWAYS AND QUESTIONS FOR DISCUSSION

- The transaction converts the non-resident trust's debt-funded position into capital held without the corresponding principal debt to the resident beneficiary.
- Its likely practical objective is to stop future taxable interest and any section 7C shortfall between the arm's-length and official rates.
- The reciprocal claims and value-for-value set-off are central: they distinguish settlement from waiver or write-off.
- BPR 430 confirms only the specified section 7(8), paragraph 72 and donations-tax consequences.
- The unresolved questions are section 7C history, GAAR, exchange control, valuation and whether the set-off is legally effective exactly as described.

Discussion question **Was the original structure driven by exchange control, or did the 2024 section 7C amendment make the later unwind necessary?**

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unicustax.co.za

info@unicustax.co.za

+27 12 944 8888

Irene Link Commercial