TAX FLASH

Dust off your trust or pay the price:
What every trustee needs to know about the new SARS penalty regime

Introduction

Most trustees assume that a trust with no income is a trust with no tax problem. That assumption will soon become an expensive mistake. As of 4 May 2026, every South African trust with an outstanding income tax return faces fixed monthly administrative penalties of between R250 and R16,000 for up to 35 months, regardless of whether the trust has earned any income, made any distributions or conducted any activity at all.

Notice 7314, gazetted by the Commissioner for SARS on 27 March 2026 in Government Gazette 54417, formally lists the failure by a trust to submit an income tax return as an incidence of non-compliance subject to a fixed-amount penalty under sections 210 and 211 of the Tax Administration Act, 28 of 2011 ('**TAA**').

Historically, SARS lacked the comprehensive visibility required to enforce trust compliance efficiently, which allowed the myth of the 'dormant trust' to persist. However, this period of administrative leniency has definitively ended. A recent convergence of enhanced third-party data capabilities and international regulatory pressures has fundamentally altered SARS's enforcement posture, providing the revenue authority with both the means and the motive to act. This article unpacks the mechanics of the new automated penalty regime coming into effect on 4 May 2026, outlines the severe personal financial risks for trustees under the TAA, and provides the urgent, practical steps required to regularise trust tax affairs before this final compliance window closes.

Why now?

This change in posture results from the convergence of two developments. The first is SARS's substantially expanded use of third-party data, particularly the introduction of the IT3(t) third-party return for trusts. With effect from the 2024 year of assessment, resident trusts are obliged to submit an IT3(t) return to SARS reporting, for each beneficiary, the amounts of income, capital gains and capital vested in or distributed to that beneficiary during the year. As a critical priority, trustees must ensure these IT3(t) third-party data returns (which capture granular details of distributions and vesting information) are submitted by the annual deadline of 30 September for the preceding year of assessment. The return is an annual third-party submission separate from the trust's own ITR12T, and it places the trust in the same reporting category as banks, medical schemes and retirement funds under section 26 of the TAA. The practical consequence is that SARS now receives, year by year, a structured dataset that pairs trust-level distributions with beneficiary-level tax numbers and pre-populates beneficiary returns accordingly. Discrepancies between what a beneficiary declares and what the trust has reported are flagged automatically. The Master of the High Court adds a second layer of data through the beneficial ownership register maintained since 1 April 2023, following the amendments to the Trust Property Control Act introduced by the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 22 of 2022. The combined effect is that SARS has visibility over trust structures, distributions and beneficiaries that was simply unavailable only a few years ago.

The second development is South Africa's exit from the Financial Action Task Force ('**FATF**') greylist, which took effect on 24 October 2025 after roughly 32 months of sustained reform. The FATF action plan identified the opacity of trust structures as a specific weakness in South Africa's anti-money laundering framework, and trust transparency reforms were a material component of the response. Delisting is not the end of the line. The Commissioner has expressly stated that SARS's compliance and enforcement posture will be maintained ahead of the next FATF review, which is expected to commence in the first half of 2026. Trust compliance is part of that sustained posture, not a measure now being wound down.

Finally, the timing of this enforcement is highly significant. The 4 May 2026 penalty activation falls on the first business day of the newly appointed SARS Commissioner, Dr. Johnstone Makhubu, who formally takes office on 1 May 2026. Having actively worked to formulate and implement the SARS 'Vision 2024' strategic direction, his arrival signals a continuation of aggressive, data-driven compliance enforcement.

No trust left behind

There are no exceptions to the new rule, nor is the type of trust of any relevance. If a trust is registered with the Master, it remains a taxpayer and must submit an annual ITR12T, regardless of whether it has earned income, held assets, made distributions or conducted any economic activity. The return must be submitted even if it is a 'nil return' as the submission itself is the compliance act. As noted, trustees sometimes assume that if there is nothing to tax, there is nothing to file. Notice 7314 now formally disproves that position.

Personal liability of trustees

Section 153 of the TAA defines a 'representative taxpayer' and, read with the Income Tax Act, 58 of 1962, places trustees within that definition in respect of the trust's tax affairs. Section 154 then deems the trustee, in that representative capacity, to be subject to the same duties, responsibilities and liabilities as the trust in relation to income, moneys and transactions within the trustee's management or control, and to be liable for the amount of tax specified by a tax Act. That liability extends to the submission of the ITR12T and to the payment of administrative penalties imposed under section 211 read with Notice 7314.

Section 155 of the TAA imposes personal liability. Where tax (which, for TAA purposes, includes an administrative penalty) remains unpaid, a representative taxpayer who has alienated, charged or disposed of money received or accruing in their representative capacity, or who has disposed of funds under their possession or control that could legally have been used to settle the debt, is personally liable for the amount.

Where a trust has more than one trustee, the position hardens. Trustees are jointly and severally liable for the trust's tax obligations, which means SARS may pursue any one of them for the full amount without first exhausting its remedies against the trust or the other trustees. A co-trustee who signed on years ago and has since lost touch with the administration is, for purposes of the TAA, as exposed as the trustee who runs the trust day to day. This draconian application of joint and several liability makes it imperative for all co-trustees to urgently review the indemnity clauses within their trust deeds and establish robust internal tax governance protocols. 'Silent' trustees who are unwilling or unable to exercise active oversight over the trust's tax affairs should strongly consider formally stepping down.

How the penalty works in practice

The machinery operates in three stages.

<u>Stage one: The final demand</u>

SARS issues a final demand, referencing Notice 7314, to the trust. The demand identifies the outstanding ITR12T return or returns and requires their submission. It is sent to the contact details on SARS's file. Trustees should be aware that if SARS does not hold a current address of the person, the maximum penalty period extends from 35 to 47 months under section 211(2). Updating the trust's registered particulars is therefore not merely a housekeeping matter.

<u>Stage two: The 21-business-day window</u>

The trust has 21 business days from the date of the final demand to submit the outstanding returns.

<u>Stage three: Automatic monthly penalties</u>

If the return is not submitted within the 21-business-day window, a fixed-amount penalty is imposed. A fresh penalty is then imposed for every subsequent month, or part of a month, that the non-compliance continues, for a maximum of 35 months (or 47 months where SARS lacks a current address). The monthly amount is determined by the trust's taxable income or assessed loss for the preceding year of assessment, using the section 211 table, and ranges from R250 to R16,000 per month (as illustrated in the table below). Penalties are notified on an AP34 penalty assessment notice issued from 4 May 2026 onwards.

Item	Assessed loss or taxable income for 'preceding year'	Penalty
(i)	Assessed loss	R250
(ii)	R0 – R250 000	R250
(iii)	R250 001 – R500 000	R500
(iv)	R500 001 – R1 000 000	R1 000
(v)	R1 000 001 – R5 000 000	R2 000
(vi)	R5 000 001 – R10 000 000	R4 000
(vii)	R10 000 001 – R50 000 000	R8 000
(viii)	Above R50 000 000	R16 000

Taxpayers are not entirely without recourse once an AP34 notice is issued. Under section 218 of the TAA, SARS possesses the discretion to remit a penalty in cases of a 'first incidence' of non-compliance, defined as a situation where no penalty assessment was issued during the preceding 36 months. However, there is a strict prerequisite: SARS will only entertain a request for remission after the underlying non-compliance has been fully remedied. Submitting the outstanding ITR12T is the non-negotiable first step.

Relief under exceptional circumstances

If a trust does not qualify for the 'first incidence' remedy, SARS may still remit the penalty in whole or in part under Section 217 of the TAA if the non-compliance was directly caused by 'exceptional circumstances'. These are strictly interpreted and generally limited to severe events outside the trustee's control that rendered the taxpayer incapable of complying, such as natural or human-made disasters or significant civil disturbances and service disruptions.

From what year of assessment does this apply?

Notice 7314 applies to ITR12T returns for years of assessment commencing on or after 1 March 2023. For a standard trust with a February year-end, that is the 2024 year of assessment onwards. It is worth noting that the notice does not retrospectively apply fixed-amount penalties to returns that were outstanding before the 2024 year of assessment. Pre-2024 non-submissions are still non-compliance and still enforceable through other means.

Actionable measures

The practical response is narrow and urgent. Confirm that every trust for which you act as trustee is correctly registered with SARS and that its registered particulars are current. Identify every outstanding ITR12T from the 2024 year of assessment onwards and file it. Where a trust has outlived its purpose, trustees must first establish and regularise the trust's tax affairs with SARS, then formally terminate the trust with the Master of the High Court, and only thereafter request deregistration for income tax purposes with SARS. This strict sequence is crucial to avoid a perilous administrative trap. Once a trust has been terminated by the Master of the High Court, it legally ceases to exist, as does the Office of Trusteeship. If this termination occurs before the trust's tax affairs are fully finalised, SARS is legally unable to lawfully process or pay out any tax refunds that may still be owed to the trust. If a final demand has already been received, diarise the 21-business-day deadline and ensure compliance before expiry thereof. If there is any doubt about where a trust stands, do not wait for a penalty assessment to find out.

Concluding remarks and key takeaways

Notice 7314 marks the moment trust compliance stops being aspirational and becomes a necessity. From 4 May 2026, the penalty regime is fixed, the enforcement is automated, and every outstanding ITR12T for tax periods from 2024 onwards is in scope.

The key takeaways for trustees are the following:

- A trust that is registered with the Master is a taxpayer, irrespective of whether it holds assets, earns income or does anything at all, and the duty to file rests with the trustees personally.
- SARS has the data to identify non-compliance, drawn from the IT3(t) third-party return, the Master's beneficial ownership register and the broader section 26 reporting regime, and the enforcement posture that produced Notice 7314 will be maintained ahead of the next FATF review.
- The penalty clock starts with a final demand, runs for 21 business days, and thereafter accrues automatically at between R250 and R16,000 per month, for up to 35 months (or 47 months where SARS does not hold a current address for the trust). Submitting the return is what stops the meter; paying the penalty alone does not.
- Personal liability under sections 154 and 155 of the TAA means that trustees do not stand behind the trust in respect of its tax obligations, and joint and several liability means that an uninvolved co-trustee is as exposed as the one who runs the administration.

Disclaimer

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