

Practice Note: No. 23 – 17 June 1994
Income Tax: Taxation of trusts and trust beneficiaries in terms of section 25b of the
Income Tax Act, 1962

1. As a result of the judgment handed down by the Witwatersrand Local Division of the Supreme Court in the case of *Trustees of the Phillip Frame Will Trust v Commissioner for Inland Revenue* ([53 SATC 166](#)), the definition of "person" in section 1 of the Income Tax Act (the Act) was amended to include a trust. Concurrent with this amendment, section 25B of the Act was introduced with a view to governing the assessment of trusts and trust beneficiaries, thereby *confirming the conduit principle* without affecting the Commissioner's taxing rights in terms of section 7 of the Act.
2. A measure of doubt exists as to whether it was the intention of the Legislature to grant losses to trusts and trust beneficiaries in terms of section 25B(3) of the Act. In certain instances the view was apparently held that the wording of section 25B(3) of the Act has a "ring-fencing" effect, ie that this section limits the allowable deductions and allowances to income (as defined) in the hands of trusts and trust beneficiaries.
3. Section 25B(1) provides (subject to the provisions of section 7) that the income received by or accrued to a trust is deemed to accrue to a beneficiary who has a vested right to it. To the extent to which there is no vested right to such income it is deemed to accrue to the trust. Section 25B(2) deems a vested right to arise if vesting takes place in consequence of the exercise by the trustee of a discretion vested in him with regard to the distribution of income.
4. Section 25B(3) further makes provision that "*Any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived by way of any income referred to in subsection (1) shall, to the extent to which such income is under the provisions of that subsection deemed to be income which has accrued to a beneficiary or to the trust, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by such beneficiary or trust, as the case may be.*"

The wording in section 25B(3) "to the extent to which" can, therefore, not be construed as meaning that deductions and allowances be limited to the income of a trust or a trust beneficiary. What it in fact means is that such deductions and allowances are to be allocated between a trust or trust beneficiary in the same proportion as the income has been allocated. Therefore, any deduction or allowance which would be available to a trust beneficiary in terms of section 25B in the determination of taxable income derived from trust income, will be deductible in full in the hands of such beneficiary.