
Donations Tax in South Africa:

What Professionals and Business Owners Need to Know

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1. Introduction

In South Africa, the transfer of assets or funds as gifts may appear to be a straightforward personal matter. However, under the Income Tax Act 58 of 1962, such transfers can give rise to a significant and often overlooked fiscal obligation: donations tax. For high-earning professionals including engineers, project managers, medical practitioners, legal practitioners and business owners, failing to account for donations tax can result in unexpected liabilities, penalties and compliance issues with the South African Revenue Service (SARS).

Whether you are assisting family members financially, restructuring assets within a family trust or contributing to a not-for-profit organisation, understanding the rules governing donations tax is an essential component of responsible wealth management and tax planning. This article provides a comprehensive overview of donations tax in South Africa, tailored specifically to the needs of professionals and small to medium business owners.

2. Overview of Donations Tax in South Africa

2.1 What Is Donations Tax?

Donations tax is a flat tax levied on the value of property disposed of by any person (the donor) for no consideration, or for a consideration that is inadequate relative to the fair market value of the property. The obligation to account for and pay donations tax rests primarily with the donor. In the event the donor fails to pay, the donee (the recipient) becomes jointly and severally liable.

The legal foundation for donations tax is contained in Part V (Sections 54 to 64) of the Income Tax Act. SARS administers donations tax in conjunction with income tax, and declarations are made using Form IT144, the Declaration by Donor.

2.2 What Constitutes a Donation?

A donation is broadly defined as any gratuitous disposal of property, including the following:

- Direct cash gifts or monetary transfers to individuals or entities.
- Transfer of immovable property such as land or residential property without adequate consideration.
- Waiver of a debt owed by another person.
- Interest-free or below-market loans to family members or associates.

- Disposal of shares or other financial instruments at a price below fair market value.

It is important to note that a disposal need not involve physical cash. Any transfer of economic value without adequate reciprocal consideration may be treated as a donation for tax purposes.

3. Annual Exemption Limits and Tax Rates

3.1 Annual Exemption Thresholds

The Income Tax Act provides annual exemptions that vary according to the type of taxpayer. These exemptions apply per donor per tax year and are not transferable between years.

| Taxpayer Type | Annual Exemption | Tax Rate |
|-----------------------------|----------------------|------------|
| Natural Person (Individual) | R100,000 | 20% / 25%* |
| Company or Trust | R10,000 | 20% / 25%* |
| Spouses (Inter-spousal) | Fully Exempt | N/A |
| Approved PBO Donations | Fully Exempt† | N/A |

* 20% applies to the first R30 million of cumulative taxable donations during a donor's lifetime; 25% applies to the portion exceeding R30 million. † Subject to the donee qualifying as an approved Public Benefit Organisation (PBO) under Section 18A of the Income Tax Act.

3.2 How the Exemption Works in Practice

The R100,000 annual exemption for natural persons is applied on a first in, first out basis across all donations made within a given tax year. Multiple small donations aggregate towards this threshold. For example, if a physician makes four separate cash gifts of R30,000 each to different family members in a single year, the total donation of R120,000 would result in R20,000 being subject to donations tax at 20%, creating a tax liability of R4,000.

Donations tax is due and payable to SARS within 30 days of the end of the month in which the donation takes effect. Late payment attracts interest under Section 89quat of the Income Tax Act, and penalties may also apply.

4. Common Scenarios That Trigger Donations Tax

Donations tax exposure arises across a wide range of everyday transactions that may not, on the surface, appear to be donations at all. The following scenarios are relevant to any taxpayer, regardless of occupation or industry, and represent the situations most frequently encountered in practice.

4.1 Personal and Family Transfers

Some of the most common donations tax triggers occur in the context of family wealth transfers and personal financial assistance:

- Cash gifts or asset transfers to a spouse, children or other family members that exceed the applicable annual exemption.
- Contributions towards a family member's property purchase where no formal loan agreement is in place.
- Payments made for the private living expenses of a dependent who is no longer legally obligated to be maintained, such as an adult child.
- Contributions to the education costs of a dependent that go beyond what a court or legal obligation would require.

4.2 Trust Arrangements and Section 7C

Trusts are commonly used in South Africa as estate planning and asset protection vehicles. However, they are also a significant source of unintended donations tax liability. Any person who advances a loan to a trust at below-market interest rates, or on an interest-free basis, must be aware of Section 7C of the Income Tax Act.

Section 7C deems the difference between the interest actually charged and the SARS official rate of interest to be a donation in the hands of the lender. This deemed donation is included in the lender's taxable donations for the year and is subject to donations tax to the extent it exceeds the applicable annual exemption.

Key Insight

Any loan advanced to a trust by a connected person should bear interest at or above the SARS official rate. Failing to do so creates a recurring annual deemed donation that accumulates towards the lender's lifetime donations tax exposure.

4.3 Business Asset Transfers and Below-Market Disposals

Transactions involving the disposal of business assets, shares or practice interests at prices below their fair market value are a further area of risk. This includes:

- Transfers of shares or business interests to family members, partners or associates at below-market consideration.
- Disposal of practice assets or professional goodwill without adequate compensation.
- Distributions from discretionary trusts that lack commercial substance and may be recharacterised by SARS as donations.

4.4 Estate Planning and the Interaction with Estate Duty

Donations tax and estate duty are closely linked under South African law. Donations made within three years prior to a donor's death are included in the dutiable estate under Section 3(3)(a) of

the Estate Duty Act. This means that assets donated during a taxpayer's lifetime with the intention of reducing the ultimate estate may still attract estate duty, in addition to any donations tax already paid.

Taxpayers engaged in lifetime giving as part of an estate planning strategy should ensure they obtain professional advice to properly sequence and document transfers, and to avoid inadvertent double taxation.

5. Donations Tax for Small to Medium Business Owners

For SME owners, including those operating in engineering consultancies, medical practices and legal firms, the intersection of personal and business finances creates several donations tax exposure points:

- Shareholders providing interest-free or below-market loans to their own companies where connected person rules apply.
- Informal capitalisation of entities without formal loan agreements.
- Payments made on behalf of a business by an owner without formal reimbursement arrangements.
- Asset sales between related entities at prices below open-market values.

Companies and trusts have a substantially lower annual exemption of only R10,000, making corporate-level donations significantly more likely to trigger a tax liability. SME owners who routinely inject funds into their businesses should ensure that all transfers are properly documented as loans or equity contributions rather than informal gifts.

Key Insight

All inter-entity transfers between business owners, trusts and companies should be governed by formal written agreements. Absent proper documentation, SARS may recharacterise transactions as donations, triggering an unexpected tax liability.

6. Common Exemptions to Be Aware Of

Beyond the annual exemption thresholds, the Income Tax Act recognises several categories of donations that are wholly exempt from donations tax:

- **Inter-spousal donations:** Donations between spouses in a valid marriage are fully exempt, regardless of the amount.
- **PBO contributions:** Donations to organisations approved under Section 18A are exempt, subject to confirmed SARS-approval status.
- **Maintenance obligations:** Reasonable amounts paid towards the maintenance of a dependent, as determined by a court or by legal obligation, are exempt.

- **Political party donations:** Bona fide donations to registered South African political parties are exempt.
- **Public interest donations:** Donations to the government or qualifying public institutions for use in the public interest are exempt.

Taxpayers should not assume that a donation is exempt without first confirming that all relevant conditions have been met. SARS may challenge the exempt status of a transaction if it does not align strictly with the statutory requirements.

7. Compliance: How and When to Declare

Donations tax is not automatically withheld or collected through payroll. The donor bears the obligation to proactively declare and pay the tax. The compliance process requires the following:

- Complete SARS Form IT144 (Declaration by Donor) within one month of the end of the month in which the donation was made.
- Calculate the taxable portion of the donation after applying the applicable annual exemption.
- Pay donations tax at the applicable rate (20% or 25%) by the due date.
- Retain supporting documentation, including proof of the donation, its value and the declaration submitted.

Non-compliance carries significant consequences. SARS may impose an understatement penalty of up to 200% of the tax shortfall, as well as interest at the prescribed rate for late payment. In serious cases involving intentional non-disclosure, criminal liability under the Tax Administration Act may arise.

8. Conclusion

Donations tax is a frequently misunderstood aspect of South African tax law with meaningful implications for professionals and business owners engaged in personal wealth transfer and estate planning. Whether gifting assets to family members, structuring trust loans or engaging in business transfers between connected persons, understanding the rules that govern donations tax is essential to avoiding unintended and potentially significant tax liabilities.

The annual exemptions of R100,000 for natural persons and R10,000 for companies and trusts provide limited relief. Beyond these thresholds, the 20% rate (rising to 25% on cumulative amounts exceeding R30 million) can impose a material cost on seemingly routine transactions. Proactive tax planning, supported by professional advice, remains the most effective strategy for managing donations tax exposure.



Unsure About Your Donations Tax Obligations?

Tax-X Advisory specialises in tax compliance and planning for regulated professionals across South Africa, including the medical, legal and engineering sectors. Our consultants can help you navigate donations tax obligations, structure wealth transfers efficiently and remain fully compliant with SARS requirements.

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