

Donations Tax Deadline: 31 March

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A registered South African trust can be used as a risk management tool. As such it is common for a trust to enter into a transaction whereby assets are acquired from a connected person to the trust. Often the Trust does not have the cash to pay for the asset outright, the asset is then purchased by the trust by way of a loan account.

These loans are often not repaid and carry low or no interest rates. This creates a taxable event (low or no interest being paid on the loan account), whereby the deemed interest on those loans payable by a trust to a connected natural person should be taxed as a donation (difference between actual interest charged and SARS published interest rates).

As from 1 March 2017 section 7C was implemented which applies to any loan, advance or credit directly or indirectly provided to a related trust by a connected natural person or by a company connected to that natural person.

As from 19 July 2017, loans provided by natural persons to companies held by trusts or to loans ceded to connected natural persons such as trust beneficiaries are included.

As from 1 January 2021, where a natural person or a company that is a connected person in relation to that natural person, subscribes for a preference share in a company in which 20 per cent or more of the equity shares are held (whether directly or indirectly) or the voting rights can be exercised by a trust that is a connected person in relation to that natural person or to that company, whether alone or together with any person who is a beneficiary of that trust the consideration received by or accrued to that company for the issue of that preference share shall be deemed to be a loan and any dividend or foreign dividend accrued in respect of that preference share shall be deemed to be interest in respect of the loan.

This section has the effect that should no interest or low interest be incurred on this loan the difference between market related interest (at the official rate) and the rate of interest that has been charged will be treated as a donation.

This deemed donation applies to new and existing loans, excluding:

- Loans to certain vesting and certain share incentive trusts;
- Loans to special trusts created solely for the benefit of a person with a disability;
- Loans to approved public benefit organisations;
- Loans funding the primary residence of that person or their spouse;
- Loans to small business funding entities;
- Loans where transfer pricing rules apply;
- Loans provided in terms of a Sharia compliant financing arrangement;
- Loans subject to Dividends Tax;
- Unpaid beneficiary distributions, subject to certain provisions which may include a requirement that: - the trust deed stipulates (or the trustees have the sole discretion to determine) the time and extent of payment of such vested amount - the beneficiary has not entered into an agreement with the trustee to retain such amount in the trust;
- All donations in excess of the R100 000 annual donations tax exemption will be taxed at a rate of 20%. Donations exceeding R30 million are taxed at a rate of 25%.

Example:

An interest free loan of R2,5 million provided to a trust on 1 March 2020 and the loan remained constant during the year, the calculation is:

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Loan	2 500 000.00
Interest 1 March 2020 to 31 March 2020 (31/365 days) at 7,25%	15 393.84
Interest 1 April 2020 to 30 April 2020 (30/365 days) at 6,25%	12 842.47
Interest 1 May 2020 to 31 May 2020 (31/365 days) at 5,25%	11 147.26
Interest 1 June 2020 to 31 July 2020 (61/365 days) at 4,75%	19 845.89
Interest 1 August 2020 to 28 February 2021 (212/365 days) at 4,50%	65 342.47
Deemed donation	124 571.93
Less annual exemption	100 000.00
Net deemed donation at 28 February 2021	24 571.93
Donations tax at 20% (due 31 March 2021)	4 914.39

As trusts have a February year end, the Donations Tax will be due and payable on 31 March 2021. It is therefore important that these loans be considered now to ensure no penalties or interest arise due to late payment of donations tax.

Author:

Lindi Penning
Partner, PKF VGA
lindi@vg-a.co.za