

TRUST-TO-TRUST

Donation as an option to move assets into a trust

PEOPLE are often unsure about ways in which assets can be moved into trusts as part of their estate plans.

Assets can be transferred into a trust by sale (via a loan granted to the trust), donation, or on death in terms of a will.

Assets can also be purchased directly in the trust, with the trust using its own funds.

Each of these options has to be considered carefully, and professional advice from a practitioner specialising in trusts should be sought, when considering moving assets into a trust.

The considerations applicable to donations to trusts are discussed in this article.

Assets can be donated to a trust in the form of money or goods, including property.

Do the trustees have the power to enter into the transaction?

Before the trustees can accept any donation, they must ensure that they have the power to do so in terms of the trust instrument.

Without a specific power, they are not allowed to do so, as trustees can only act within the confines of the trust instrument.

Donations Tax

A donation of money or goods will attract Donations Tax.

High net worth individuals with Estate Duty concerns may use their R100 000 annual Donations Tax exemption applicable to each South African resident individual (or R200 000 a couple) for Donations Tax purposes to move assets into an inter vivos trust, of which family members are the beneficiaries.

Such donations can be made in cash or in the form of other assets.

Any donation of more than R100 000 a year is subject to Donations Tax as follows:

It is taxed at 20 percent of the amount of the donation if the aggregate of that amount and all other



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donations during a person's lifetime (on or after March 1, 2018), excluding all exempt donations during the same period, is less than or equal to R30 million, or:

It is taxed at 25 percent of the amount of the donation if the aggregate of that amount and all previous donations during a person's lifetime (on or after March 1, 2018), excluding all exempt donations during the same period, exceeds R30m.

Take note that there is no sliding scale. The rate at which you pay tax literally jumps from 20 to 25 percent if you have made cumulative donations of R30 000 001 compared to R30 000 000.

Percent

Cumulative donations should therefore be monitored constantly as part of your estate plan.

As the same scale is applied upon your death for Estate Duty purposes, it may be cost-effective if you postpone donations when you reach this threshold and deal with those assets in your will rather.

Similarly, you may donate sufficient cumulative assets during your lifetime (up to this threshold) to keep the value of your estate – which will be subject to Estate Duty – below this threshold.

The person making the donation (donor) is liable for Donations Tax. Should the donor fail to pay the tax by the end of the month following the month in which the donation took effect, the donor and donee are jointly and severally liable for the tax – in other words, the SA Revenue Service (Sars) can recover the full tax payable from the donor and/or the donee.

If the donee pays the tax, the donee can then recover it from the donor.

If Donations Tax is paid late, interest will be payable, but there is no penalty for late payment.

Sars requires that the payment of Donations Tax is accompanied by a return (IT144) (Section 60(4) of the Income Tax Act).

This implies that no return needs to be submitted to Sars if a donation is exempt from Donations Tax.

Capital Gains Tax

When an asset is donated to a trust, Capital Gains Tax will be payable by the donor on the difference between the market value (a willing buyer and willing seller price between parties dealing with each other at arm's length in the open market) and the base cost of the asset.

The donor is deemed to have disposed of it for its market value, and the donee is deemed to have acquired it for the same market value (Paragraph 38 of the Eighth Schedule to the Income Tax Act).

The Donations Tax payable by the donor may be included in the base cost of the asset when calculating the Capital Gains Tax payable on the donation (Paragraph 22 of the Eighth Schedule to the Income Tax Act).

When it makes sense to donate assets to a trust during your life-

time, ensure that a properly drafted trust deed is in place, giving you the required access to these assets during your lifetime, and have the trust administered on a trusted, transparent trust system.

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TRUSTEEZE OFFERING

IF YOU are involved with a trust and want to have peace of mind that the trust's administration and affairs are in order, look no further. Our bespoke online solution has you covered. Our platform ensures the participation of, and transparency to, all role players – whether you are the founder, trustee, beneficiary, approved viewer, accountant or administrator. All happens on the same platform and therefore saves costs – trust CRM for administrators, Master processes, Master's documents, trust deed, will, resolutions, virtual meetings, asset register, accounting, financial statements specifically for trusts which includes connected person rules necessary for SARS and specific trust tax rules (and soon electronic submission of tax returns) and document storage. As our platform reduces risk substantially, trust administrators and accountants can access reduced cost PI insurance. Don't postpone getting trust administration in order and reduce the risk of being attacked by SARS or other creditors.