Crowe

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Budget Snapshots

Estate Duty, Donations Tax and Tax Deductible Donations

Audit / Tax / Advisory / Human Capital

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Estate Duty

The rates of estate duty are **unchanged**.

The rate of 20% of the dutiable amount will apply to so much of that dutiable amount as does not exceed R30 million and 25% of the dutiable amount on the excess over R30 million.

The primary exemption from estate duty on the net value of an estate (i.e. after deduction of liabilities and costs as well as bequests to PBO's and surviving spouses) remains at R3,5 million. Donations to PBO's and spouses and bequests between spouses remain exempt from estate duty.

As both estate duty and CGT are payable on death, there is an element of double taxation. Estate duty is often substantially reduced by the use of trusts, etc. The rules relating to low interest loans to Trusts were introduced to combat this.

For the purpose of determining the dutiable value of an estate for estate duty purposes, certain assets (referred to as “property”) are included and certain property is excluded.

Currently excluded is so much of a benefit that is due and payable by, or in consequence of membership or past membership of, a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund. Preservation funds are funds not linked to employment.

Accordingly, retirement fund benefits are excluded from the dutiable estate for estate duty purposes when a member passes away although lump sum payments are subject to tax in the deceased's tax computation to date of death.

The effect of this exclusion was that some individuals transferred large amounts (beyond the tax deductibility limits) into a Retirement Annuity Fund before their death. To eliminate the potential to avoid estate duty on such contributions, the amount equal to the non-tax deductible contributions to retirement funds is included in the dutiable estate when a retirement fund member passes away.

Spouses have flexibility to use the R3,5 million deduction they are each entitled to. The surviving spouse's estate will automatically benefit from the unused deduction of the deceased spouse irrespective of the date of death of the first spouse.

As an example, if the estate of spouse “A” has a net value of R2 million and “A” dies first leaving all to the children, there will be no estate duty. On the death of the survivor, the estate will be entitled to a first deduction of R5 million, being R3,5 million for his estate plus R1,5 million (R3,5 million less utilised R2 million) unutilised from “A's” estate.

As death is an event which triggers CGT, a deceased estate will be liable for CGT on the net capital gains deemed to have been made and which will be based on the value of the assets in question at date of death. In other words estate duty would be computed on the gross value of such assets (less liabilities and expenses) and CGT on the deemed capital gain. Any CGT payable will be allowed as a deduction for estate duty purposes. Sufficient cash must be available in the estate to meet the liability for both Estate Duty and Capital Gains Tax.

The rates of donations tax are unchanged.

Donations Tax

In respect of Donations Tax, the rate of 20% of the value of the donation applies to so much of such value as does not exceed R30 million and 25% of the value on the excess over R30 million donated during the immediately preceeding 12 month period.

Although the higher rate applies to donations in excess of R30 million during the preceding 12 month period, the annual exemption of R100 000 applies for each tax year. See below.

Donations to PBO's and spouses and bequests between spouses remain exempt from donations tax.

The first R100 000 of all donations made by natural persons (husband and wife separately) during a year of assessment remains exempt from donations tax. For private companies (including close corporations) and trusts the exemption remains in respect of casual gifts not exceeding R10 000 p.a. in total.

Tax Deductible Donations

Tax deductible contributions (not fees) may be made to a wide range of approved Public Benefit Organisations, including -

- universities, colleges and approved education funds (as defined)
- pre-primary schools that offer an approved educare programme
- primary schools that are Public Benefit Organisations
- approved Public Benefit Organisations whose activities are directed towards the prevention of HIV infection or the provision of care to individuals whose livelihoods have been impoverished by AIDS
- children's homes, which are approved Public Benefit Organisations, providing care to abandoned, abused or orphaned children
- approved Public Benefit Organisations whose activities are mainly directed towards the care of destitute aged persons.

It is clear that “approval” is required in terms of section 18A of the Income Tax Act for all these organisations before tax deductible donations may be made to them.

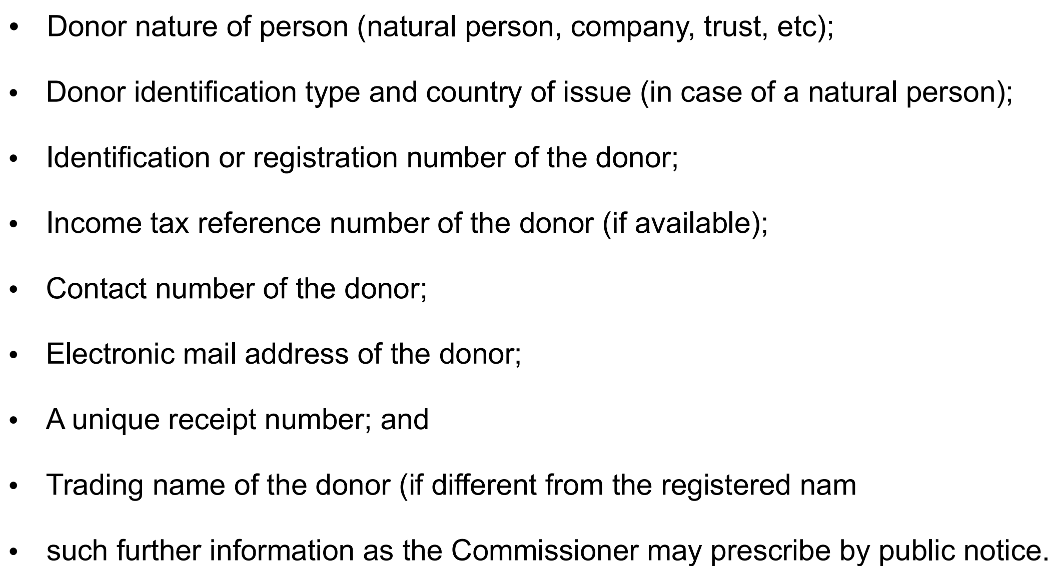
The Income Tax Act provides a definition of a “Public Benefit Organisation” and a comprehensive list of acceptable public benefit activities which are of a philanthropic or benevolent nature. The above organisations, once approved, will also themselves be exempt from income tax on their “non business” income subject to certain conditions.

The deduction limit for individuals and for companies is 10% of taxable income (including capital gains) but excluding retirement fund lump sums and severance benefits. If such donations are paid by your employer for you, your employer may take into account for PAYE purposes such donations up to 5% of your taxable remuneration. Donations in excess of 10% of taxable income in any given year will be rolled over and treated as donations to qualifying public benefit organisations in the following tax year.

SARS has now published the details which must in future appear on section 18A receipts. Both taxpayers and tax exempt organisations need to realise that, without all this information, the validity of the receipt may be in question.

The following basic information must be included on a receipt issued in terms of section 18A(2)*(a)* of the Income Tax Act -

- the reference number of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department;
- the date of the receipt of the donation;
- the name of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department which received the donation, together with an address to which enquiries may be directed in connection therewith;
- the name and address of the donor;
- the amount of the donation or the nature of the donation (if not made in cash);
- a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation concerned or, in the case of a department in carrying on the relevant public benefit activity;



- Donor nature of person (natural person, company, trust, etc);
- Donor identification type and country of issue (in case of a natural person);
- Identification or registration number of the donor;
- Income tax reference number of the donor (if available);
- Contact number of the donor;
- Electronic mail address of the donor;
- A unique receipt number; and
- Trading name of the donor (if different from the registered nam
- such further information as the Commissioner may prescribe by public notice.

It is also proposed that the relevant recipient organisation will be required to furnish regular returns to SARS with details of tax deductible receipts issued.

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