18 November 2022

DONATION TAX EXCLUSIONS IN PROPERTY TRANSACTIONS

Donations tax is tax payable to SARS when property is donated to another person in absence of a sale or any other operation of law. Currently this tax is levied at 20% on the value of the property donated which is less than R30 million and 25% on the value more than R30 million. Donations tax is paid to SARS by the donor, and if the value of the property is more than R 1 000 000.00 transfer duty will also be payable by the donee (receiver of the donation).

There are a few exemptions where Donations Tax cannot be levied in terms of Section 56(1) of the Income Tax Act in the following instances:

1. Property donated to a spouse of the donor.
2. Personal property donated by a donor where the donation only takes effect after the donor passes away.
3. A donation to a person for bona fide maintenance
4. The property is donated to a Public Benefit Organization such as institutions of advancement of art, sciences, education, charity organizations etc.
5. A donation made by a person who is a non – resident in the Republic or a foreign company.
6. Donation made to an approved government institution.

Every natural person is allowed to donate an amount of R100 000.00 per year free of donations tax. The recipient of a donation has a duty to declare the duty in their annual tax return as "an amount considered not taxable". If the donor fails to pay donations tax, the donor and the recipient of the donation will become jointly and severally liable for payment of the tax. It is highly advisable to first consult with an attorney for proper assistance and adherence to the regulations for the drafting of a donation agreement.