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SARS PROVIDES CLARITY ON DONATIONS TAX

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On 1 October 2001, the rate of donations tax levied on donations made by residents dropped from 25% to 20% and remained as such for almost 16 years.

With effect from 1 March 2018, a dual rate of donations tax was introduced. Donations tax is now levied at a rate of either 20% or 25%, based on the cumulative value of property donated by the donor. This dual rate was introduced to align with the progressive rate introduced for estate duty, as recommended by the Davis Tax Committee.

Since 1 March 2018, section 64(1)(a) of the Income Tax Act, 1962 provides that the rate is:

- 20% of the value of donations made up to a total value of R30 million; and
- 25% thereafter.

The provision gives no indication over what period the value of donations must be aggregated to arrive at the R30 million threshold. A prudent taxpayer may, therefore, aggregate the value of all donations made over his or her entire life. Further, it appears to apply to the value of all donations made, regardless of whether exempt from donations tax or not (e.g. donations between spouses or charitable donations).

SARS has taken heed of the call for clarity and published a draft Binding General Ruling for public comment. A Binding General Ruling is not legislation, but rather an explanation of how SARS will interpret a provision in the legislation when assessing a taxpayer. However, it does bind SARS legally to treat the taxpayer in that manner, but it does not bind the taxpayer.

The draft ruling acknowledges that if a taxpayer is required to aggregate the value of all donations made during his or her entire life, the amendment would be retrospective and that there is a general presumption against amendments having retrospective effect. As there is no indication that the amendment should apply retrospectively, the draft ruling states that only donations made after 1 March 2018 should be taken into consideration when calculating the R30 million threshold.

When considering the value of the donations that must be aggregated from 1 March 2018, the draft ruling also states that the value of donations that were exempt from donations tax must not be included.

The result is, in our view, a sensible and practical approach to the interpretation of the new section 64(1)(a) of the Act: the donations tax rate increases to 25% on all future donations, once the cumulative value of all donations made after 1 March 2018 that were not exempt from donations tax reaches R30 million.

As mentioned above, this is in line with the amendment to the estate duty rate, which increases from 20% to 25% on the value of the deceased's estate that exceeds R30 million. There is, therefore, no tax saving if residents donate property in order to reduce the value of their estates.

While a Binding General Ruling is not legislation, section 82 of the Tax Administration Act, 2011 stipulates that SARS must interpret a tax Act in accordance with a Binding General Ruling and that a Binding General Ruling may be cited by a taxpayer or SARS in any proceedings, including court.

Until the draft ruling is published in final form, it cannot be conclusively relied upon. The closing date for comments on the draft is 30 November 2019 and hopefully the final ruling will be issued shortly thereafter in final form without any material changes.

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