



Be wary of the implications of Section 7C of the Income Tax Act.

Implementation of Section 7C entails that a person may (in certain instances) be liable for donation tax if such person provided a loan, advance or credit to a discretionary trust. This section was implemented to limit tax avoidance through estate duty and donations tax savings techniques in trusts.

In this case donations tax is used as a tool to combat this form of tax avoidance. For purposes of this article, the author only focuses on loans to a personal trust.

Section 7C stipulates that a person / company or a connected person in relation to the person / company, making a loan to a discretionary trust (in which the person / company has an interest) can be held liable for donations tax.

Section 7C(3) specifically states that the “person” providing a loan to a trust:

- at a lower interest rate than the prescribed interest rate, prescribed by SARS, shall be deemed to make a donation to the trust, equal to the difference of the interest rate charged on the loan and the interest rate as prescribed by SARS; or
- at a 0% interest rate, will be deemed to make a donation equal to the prescribed interest rate as prescribed by SARS (currently 7.75%).

The donation will be deemed to be made on the last day of the tax year and therefore be subject to donations tax for that year of assessment (currently 20% for donations below R30m and 25% above R30m).

In terms of Section 7C(5) there are certain instances where the loan will not be subject to donation tax, however, should these provisions find application, it is important to note that if the deemed donation (as explained above) amounts to R100 000 or less, a natural person, will enjoy exemption in terms of the Income Tax Act (R10 000 for related companies).

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