



# DAVEY'S Locker



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July 2017

## Donations tax exemption and the VDP/SVDP

### Section 56(1)(g) of the Income Tax Act

by Tony Davey

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#### Donation of foreign assets

In the course of regularizing their offshore tax affairs under the normal Voluntary Disclosure Programme or the Special Voluntary Disclosure Programme, many taxpayers need, amongst other things, to consider whether foreign assets donated by them to, say, an offshore trust needs to be addressed for relief from donations tax and for attendant income tax purposes.

#### The s 56(1)(g) exemption from donations tax

This exemption in the Income Tax Act applies to assets situated outside the RSA acquired by the taxpayer

- before becoming ordinarily resident for the first time;
- by inheritance from a non-resident; or
- by donation from a nonresident.

It follows that a donation by a resident taxpayer of foreign assets acquired in any of these circumstances to a third party, such as an offshore trust, will not attract donations tax.

Thus tax relief is not required.

#### Section 7(8) and para 72 of the Eighth Schedule

These provisions provide, respectively, that income and capital gains accruing to a nonresident (such as a foreign trust) resulting from a donation are deemed to be included in the resident donor taxpayer's income.

It follows that, notwithstanding the donations tax exemption, undeclared foreign investment taxable income, including realized capital gains, would still need to be regularized for income tax purposes.

The only exception, in my view arises if the taxpayer established the foreign trust and donated assets before immigrating to the RSA for the first time, since, in such circumstances, he or she would not have been a resident at the time of making the donation.

Sections 7(8) and para 72 refer to taxable income from 'a donation...made by any resident', so, presumably, at the time of making the donation, the donor must have been a resident.

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