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When Transferring Wealth Between Spouses May Come At A Tax Cost

GODWIN MAGOSHA
Fiduciary Specialist at
Private Clients by Old Mutual

A proposed restriction on the interspousal donations tax exemption may have wider implications for families whose wealth and tax affairs extend across jurisdictions.

For internationally connected families, transferring assets between spouses can form part of a carefully considered financial or estate plan. However, a proposed amendment to South Africa's donations tax rules may change the tax treatment of these transfers where one spouse is no longer a South African tax resident.

The proposal highlights an important planning principle: where a family's wealth extends across jurisdictions, the tax residence of each family member can be as important as the location of the assets.

HOW TRANSFERS BETWEEN SPOUSES ARE CURRENTLY TREATED

South African tax law generally provides relief when assets are transferred between spouses. However, the capital gains tax and donations tax provisions work differently.

For CGT purposes, the spouse transferring the asset generally disregards any capital gain or loss. The receiving spouse takes over relevant aspects of the asset's tax history, including its base cost. The tax consequence is therefore usually deferred until the receiving spouse later disposes of the asset outside the matrimonial unit.

This relief is limited where the receiving spouse is not a South African tax resident and the asset could move beyond South Africa's CGT reach.

For donations tax purposes, qualifying transfers between spouses are currently exempt. Unlike the CGT relief, the exemption has not required the receiving spouse to be a South African tax resident.

As a result, a South African resident may currently be able to donate an asset to a non-resident spouse without donations tax, although CGT may still arise depending on the nature of the asset.

WHAT IS CHANGING?

The 2026 Draft Taxation Laws Amendment Bill proposes limiting the interspousal donations tax exemption to transfers where the receiving spouse is a South African tax resident.

If enacted in its current form, a donation by a resident spouse to a non-resident spouse would no longer qualify for the exemption. It would instead be subject to donations tax in the ordinary course.

National Treasury has indicated that the proposal is intended to address arrangements in which spouses cease their South African tax residence at different times and transfer assets between them to reduce donations tax and capital gains tax.

The amendment is proposed to be deemed effective from 25 February 2026 and would apply to donations made on or after that date. As the legislation remains in draft form, the wording and effective date may change before it is enacted.

IMPLICATIONS FOR CROSS-BORDER FAMILIES

The proposed amendment is particularly relevant to families where one spouse remains a South African tax resident while the other has established tax residence elsewhere.

This is not unusual among internationally mobile families. A spouse may relocate for business, establish a primary home abroad or spend an extended period working outside South Africa, while the family continues to hold investments, business interests or property in more than one country.

In these circumstances, a transfer of cash, marketable securities or other assets to the non-resident spouse could create an immediate donations tax liability. The fact that the asset is held offshore would not, on its own, remove that risk.

The proposal may also change the assumptions underlying existing estate plans. A strategy involving the transfer of offshore cash or investments to a non-resident spouse may have been appropriate under the current exemption but could carry a material tax cost under the proposed rules.

ASSET TYPE REMAINS IMPORTANT

The nature and location of the asset also require careful consideration.

A transfer may have different consequences depending on whether it involves cash, a share portfolio, an interest in a private company, South African property or an offshore asset. CGT and donations tax must therefore be considered separately rather than assuming that the interspousal relationship makes the transaction tax neutral.

For families with assets across several jurisdictions, the South African position should also be considered alongside the tax and legal treatment in the receiving spouse's country of residence.

COULD THE MAINTENANCE EXEMPTION APPLY?

A separate exemption applies to a genuine contribution towards another person's maintenance, to the extent that the South African Revenue Service Commissioner considers the contribution reasonable.

This may remain relevant where a resident spouse contributes towards the genuine living needs of a non-resident spouse. However, it should not be treated as an alternative route for transferring capital or investments.

Whether the exemption applies will depend on the purpose and amount of the contribution, the recipient's needs and the donor's financial means. The substance of the arrangement will be more important than the description attached to the payment.

A MORE CONNECTED PLANNING CONVERSATION

The proposed amendment does not prevent spouses from transferring assets. It does, however, reinforce the need to consider tax residence, asset ownership, liquidity and succession planning together.

For cross-border families, these decisions seldom sit neatly within one jurisdiction or one area of advice. A transfer may affect a family's South African donations tax position, future CGT exposure, offshore estate and broader succession arrangements.

Before transferring assets to a non-resident spouse, families should review the purpose of the transaction, its immediate tax implications and whether it remains aligned with their long-term estate plan.

Thoughtful, coordinated advice is especially important where family members, assets and tax obligations extend across borders.

This article is based on draft legislation published for comment. The final legislation and effective date may differ. This information is general and does not constitute tax, legal or financial advice. Clients should obtain professional advice based on their circumstances.

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Old Mutual Wealth, Mutualpark, Jan Smuts Drive, Pinelands, 7405 | Tel: +27 (0)21 524 4678 | Email: privateclients@omwealth.co.za

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