

## LEARNING UNIT 2

### DONATIONS TAX



## LEARNING OUTCOMES AND ASSESSMENT CRITERIA

The content of this learning unit is based on the following learning outcomes and assessment criteria of the module:

Specific outcomes	Assessment criteria
Assess the tax profile of a taxpayer to determine the various taxes payable by a taxpayer	<ul style="list-style-type: none"> <li>• Conclude on the legal form, business structure and residence status of a taxpayer to determine and identify the types of taxes payable (e.g. value-added tax, donations tax, estate duty, normal tax (including capital gains tax), prepaid taxes, dividends tax, withholding tax).</li> <li>• Assess information needed to determine the various tax liabilities, including               <ul style="list-style-type: none"> <li>○ the role-players in the tax landscape,</li> <li>○ the types of taxes and their interaction and</li> <li>○ the underlying principles of a tax system.</li> </ul> </li> <li>• Determine the various tax liabilities and provide reasons for the inclusion or exclusion of amounts.)</li> <li>• Interpret the tax treatment of a transaction with reference to legislation, double tax agreements and case law.</li> </ul>
Advise taxpayers on the tax effect of transactions, operations, schemes, agreements or events and calculate the tax consequences thereof, taking into account the various taxes payable.	<ul style="list-style-type: none"> <li>• Detect the impact and amount of international expansion and international transactions. <b>(e.g., s56(1)(g) exemption)</b></li> </ul>
Advise on specific tax and financial planning opportunities for individuals in their own name as well as for business entities.	<ul style="list-style-type: none"> <li>• Interpret a taxpayer's tax profile to give ethical advice and provide an opinion on tax planning options available to limit the donations tax liability within the legal framework of the different tax acts, including relevant anti-avoidance legislation (e.g. <b>casual gifts/staggering of the R10 000 exemption for corporates and R100 000 exemption for individual taxpayers</b>)</li> <li>• Critique the available options for a specific decision-making situation to establish the most suitable option and compose a suitable response of the information to the taxpayer if within the field of speciality or refer to an appropriate expert if necessary <b>(e.g. casual gifts/staggering of the R10 000 exemption for corporates and R100 000 exemption for individual taxpayers, CGT and section 7C)</b></li> </ul>

## STUDY PROGRAMME AND TIME FRAME



Three (3) hours have been allocated to donations tax.

Your time should be divided between two aspects:

- Obtaining the required knowledge  
This entails working through this learning unit **and** the textbooks (SAICA Student Handbook and SILKE), underlining, making summaries and familiarising yourself with the donations tax.
- Application of knowledge  
This entails the completion of the activities included in this learning unit.

Time allocation for learning unit 2:

Paragraph 2.1 to paragraph 2.6.2 SILKE	120 minutes
Activity 2.1	30 minutes
Beancounter scenario	6 minutes
Activities 2.2 to 2.4	24 minutes
<b>Total</b>	<b>180 minutes</b>



Note that there is a lot of work to master in the allocated time, however most sections will have been covered in detail in your undergraduate studies. The time in this learning unit will be allocated to those sections that were not included in your prior studies. Where necessary, you will have to refresh your memory regarding sections you already covered in your prior studies **in your own time**.

## 2 DONATIONS TAX

### 2.1 BACKGROUND

Although donations tax is levied in terms of PART V of the Income Tax Act (sections 54 to 64), it is a **separate tax** from income tax. It is payable on the transfer of assets from one person (not necessarily a taxpayer) to another.

Take note that donations tax could also affect the calculation of capital gains tax, where an asset (as opposed to cash) is donated. You therefore also have to refer to the applicable paragraphs in the Eighth Schedule to the Income Tax Act.

#### 2.1.1 UNITED NATIONS GLOBAL COMPACT ( The Ten Principles | UN Global Compact )

Closely aligned with corporate sustainability and the King IV principles is the United Nations Global Compact (UNGC). The UNGC is a corporate sustainability initiative that encourages companies to align their strategies with the ten principles relating to human rights, labour, environment and anti-corruption. By incorporating the ten principles of the UNGC into strategies, policies and procedures, and establishing

a culture of integrity, companies are not only upholding their basic responsibilities to people and planet but also setting the stage for long-term success. UNGC link:

- <https://unglobalcompact.org/what-is-gc/mission/principles>

The following are the ten principles of the UNGC and have been, where applicable, incorporated into the study material content in the respective tutorial letters:

1. Businesses should support and respect the protection of internationally proclaimed human rights.
2. Make sure that they are not complicit in human rights abuses.
3. Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.
4. The elimination of all forms of forced and compulsory labour.
5. The effective abolition of child labour.
6. The elimination of discrimination in respect of employment and occupation.
7. Businesses should support a precautionary approach to environmental challenges.
8. Undertake initiatives to promote greater environmental responsibility.
9. Encourage the development and diffusion of environmentally friendly technologies.
10. Businesses should work against corruption in all its forms, including extortion and bribery.



Before you start studying the detailed provisions of donations tax, you should read the following scenario and/or watch the [video](#) relating to the Beancounter family. As you study the applicable sections in the Income Tax Act, identify areas of concern that should be brought to the attention of the Beancounter family.

## 2.2 BEANCOUNTER SCENARIO

### [Beancounter Episode 2](#)

Barry Beancounter is married in community of property to Bizzie Beancounter. Barry is a very charitable person and he made a number of donations during the year.

- He donated R40 000 cash to the Butterbean Family Trust, R20 000 cash to his lovely wife, Bizzie, and R20 000 cash to each of his children, Jelly and Soya Beancounter.
- He also donated R5 000 to the B.E.A.N. political party.
- Barry is **considering** whether to sell a property with a market value of R500 000 to the Butterbean Family Trust, funded by an interest-free loan account. This property is excluded from Barry and Bizzie's joint estate. The journal entry will be recorded as follows in the financial records of the trust:

Dr Property	R500 000
Cr Loan account: B Beancounter	R500 000

- He is also **considering** whether he should make another donation to the trust, utilising the rest of his R100 000 annual exemption. (Remember that there is an existing loan [see above] that the trust owes Barry.)
- All cash donations (except for the donation to Bizzie) were made (and, in future, will be made) from funds available in an investment account. This investment is included in Barry and Bizzie's joint estate.

Barry is, however, uncertain about the donations tax and capital gains tax implications (if any) that may arise from the above donations he made during the year, as well as those that he is considering to make, and he has therefore asked you to assist him.



Before attempting to assist Barry with his donations tax and capital gains tax query, you should work through and master the applicable sections in the Income Tax Act relating to donations tax.

## 2.3 CONTENT OF LEARNING UNIT 2

### 2.3.1 Study approach

We provide you with a table of reference below, which contains the references to all the sections that must be studied in this learning unit, together with a reference to the relevant paragraph in SILKE and a reference to additional notes provided (if any) in this learning unit, as well as an indication of whether a specific section is examinable or not. The table of reference is presented in such a way that you should use it to guide you through the content of learning unit 2. You should therefore work your way through the content by starting at the top of the table and working through the sections (paragraphs) that was not dealt with during your prior learning. In cases where you need to refresh your knowledge on sections or paragraphs that form part of your prior learning, you will have to work through during your own time.

**The ideal way to study tax is first to read the specific section in the Income Tax Act and then to study the relevant paragraph(s) in SILKE, together with any additional notes on that section included in this learning unit.** We recommend that you study any additional notes on the section **before** working through the paragraph(s) in SILKE. Also work through the examples in SILKE because they illustrate the application of the theory of a section.

We are not ignorant of the fact that most of you are studying part-time. We therefore realise that you may not always have the time available to follow the above study approach fully, with specific reference to our recommendation that you first read a section in the Income Tax Act. However, you still need to flag and underline your Income Tax Act in order to benefit from the limited open-book policy for the tests, the examination and the 2025 ITC (for TAX4862 students).

SILKE has a table of provisions towards the back (just before the subject index). This is a handy table to use if you have a specific section on which you need more information. The table provides the paragraphs in SILKE that contain information on a specific section.

## 2.3.2 Table of reference

Reference to Income Tax Act	Topics	Reference to SILKE	Reference to notes in the learning unit	Examinable	Prior year learning	New (not prior year learning)
<b>Sections 54 to 64</b>	<b>Donations tax</b>					
	Framework for the calculation of donations tax	26.1	2.5.1		Yes	No
s 54	Levy of donations tax	26.1 – 26.2		Yes	Yes	No
s 64	Rate of donations tax	26.2	2.4	Yes	Yes	No1
s 55(1)	Definitions for purposes of this part	26.3		Yes	Yes, excluding definition of property No	Definition of property  Yes
S 55(3)	When a donation takes effect	26.4		Yes		
s 58(1)	Property disposed of under certain transactions deemed to have been disposed of under a donation	26.5		Yes	Yes	No
s 58(2)		26.5		Yes	No	Yes
s 7C	Loan or credit advanced to a trust by a connected person (effective 1 March 2017)	26.11	2.4	Yes (also LU 19)	Yes	No
	<i>s 7C(5)(b)</i>			No	No	No
S 7D	Calculation of amount of interest	26.11		Yes (also LU 19)	Yes	No
s 56	Exemptions	26.6	2.5.2	Yes	Yes	No
s 57A	Donations by spouses married in community of property	26.7		Yes	Yes	No
S 57B	Disposal of the right to receive an asset which would otherwise have been acquired in consequence of services rendered or to be rendered	26.8		No	No	Yes

Reference to Income Tax Act	Topics	Reference to SILKE	Reference to notes in the learning unit	Examinable	Prior year learning	New (not prior year learning)
s 57	Disposals by companies under donations at the instance of any person	26.9		Yes	Yes	Yes
s 62	Value of property disposed of under donations	26.10 – 26.10.1		Yes	Yes	No
	s 62(1)(a)–(c): the value of limited interests in property and annuities will be given	26.10.2 – 26.10.4				
s 59	Persons liable for the tax	26.12		Yes	Yes	No
s 60	Payment and assessment of the tax	26.12		Yes	Yes	No
s 61	Extension of scope of certain provisions of Act for purposes of donations tax			No	No	Yes
	Other tax consequences of donations (refer below)	26.13				
<b>8th Sch</b>	<b>Donations and capital gains tax</b>					
	<b><i>Disposals and acquisitions</i></b>					
par 11(1)	Disposals	17.7.1		Yes	Yes	No
	<b><i>Base cost</i></b>					
par 20	Base cost of asset (only the basic principles)	17.8.1		Yes	Yes	No
par 22	Amount of donations tax to be included in base cost	17.8.7		Yes	Yes	No
	<b><i>Proceeds</i></b>					
par 38	Disposal by way of donation, consideration not measurable in money and transactions between connected persons not at an arm's length price	17.9.5		Yes	Yes	No
	<i>Par 38(2)(a), (b), (c) and (f) that link to s8A, 8B, 10(1)(nE) and 37D</i>			No	No	No
	<b><i>Exclusions</i></b>					
par 62	Donations and bequests to public benefit organisations and exempt persons	17.10.2		Yes	Yes	No
	<b><i>Roll-overs</i></b>					
S 9HB	Transfer of assets between spouses	17.10.3.3		Yes	Yes	No

## 2.4 LAW AMENDMENTS

The taxation laws are amended annually. These amendments are first published in the form of draft Bills and then as Bills. Only once the Bills have passed through Parliament and have then been assented to by the President are they published as Acts. It is normally expected that the Bills will be enacted early in the following year.

The publishing of the Bills coincides with the Medium-Term Budget Policy Statement (MTBPS) made by the Minister of Finance. The MTBPS was made on 1 November 2023 and the following Acts, relevant to your studies, were promulgated on 22 December 2023:

- Rates and Monetary Amounts and Amendment of Revenue Laws Act 19 of 2023;
- Taxation Laws Amendment Act 17 of 2023
- Tax Administration Laws Amendment Act 18 of 2023



Use the following link<sup>1</sup> to access to the newly published Acts:

<https://www.sars.gov.za/legal-counsel/primary-legislation/amendment-acts/>

The important proposed amendments, which are applicable to this LU, are summarised below. In some instances, we repeat – for your ease of reference – amendments from previous years, which were enacted.



### Relevant amendments contained in the Taxation Laws Amendment Act 17 of 2023 are as follows:

- Section 7C(3): The difference between interest incurred by the trust or company on the loan, advance or credit and interest on the loan, advance or credit calculated at the official interest rate will be treated as a donation made to the trust.
- Section 7C(3A) was inserted into the Act and states that if the amount of a donation in terms of subsection 3 is denominated in any currency other than that of the Republic the amount should be translated at the average rate for the year of assessment in respect of which the amount is treated as a donation.
- Section 7C(5)(d) exempts a loan, advance or credit to a trust to fund the acquisition of an asset from the application of sections 7C(2) and (3) if the natural person (or the spouse of that natural person) who provided the loan, advance or credit to a trust or at whose instant the company provided the loan, advance or credit to the trust used the asset as a primary residence throughout the period during the year of assessment during which that trust or company held that asset.

<sup>1</sup> 'image: Flaticon.com'. The weblink icon has been designed using resources from Flaticon.com



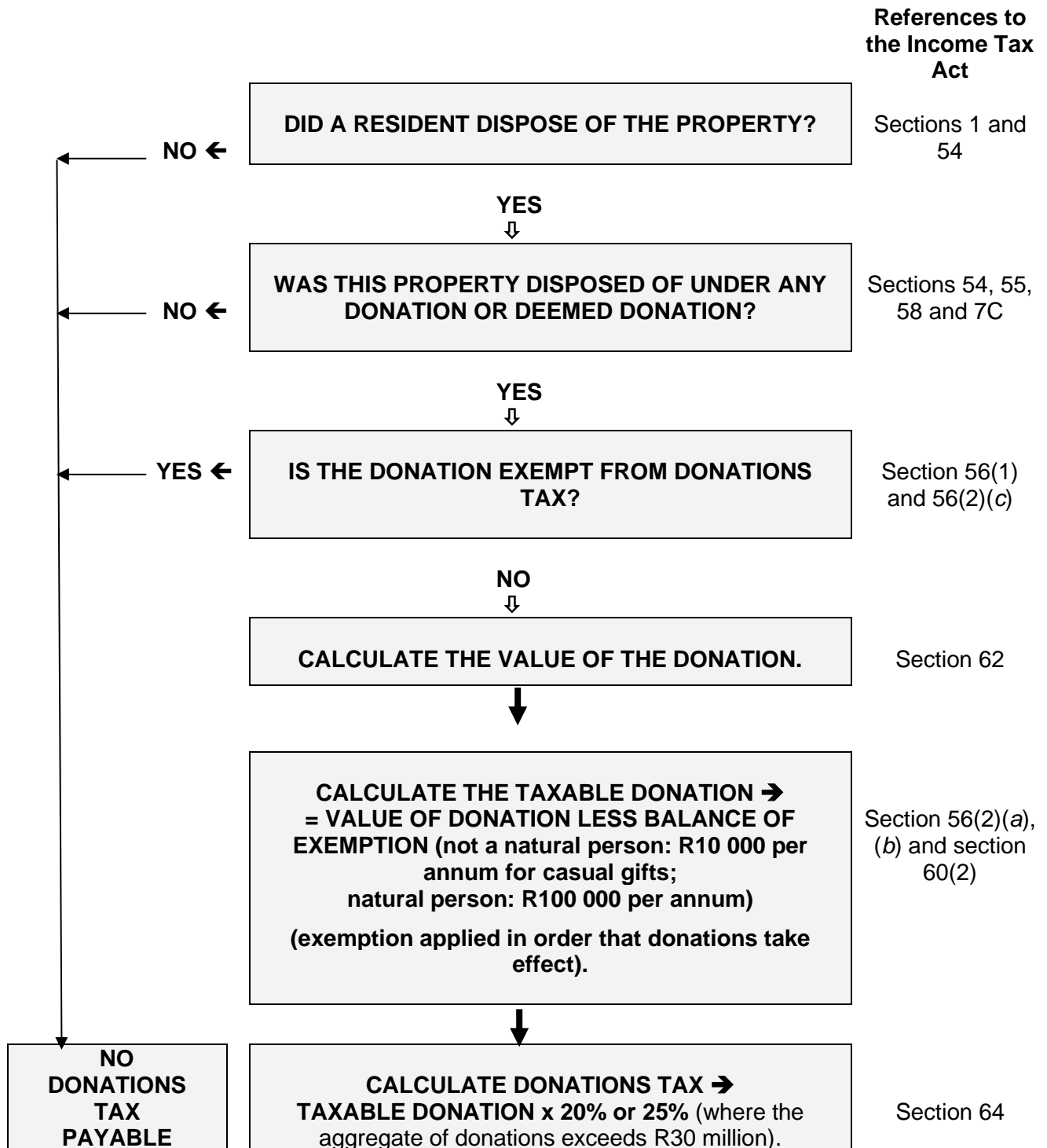
**Relevant amendments contained in the Taxation Laws Amendment Act 17 of 2023 are as follows:**

Section 7C(5)(d)(i) was amended to make it clear that the primary residence and the land on which it is situated (including unconsolidated adjacent land) should not exceed two hectares and should be used mainly for domestic or private purposes. Section 7C(5)(ii) was amended and now includes funds used for both the acquisition and the improvement of the primary residence.



## 2.5 ADDITIONAL NOTES

### 2.5.1 Framework for the calculation of donations tax



#### **Notes to the framework:**

1. Donations tax is payable on the fair market value of any property disposed of gratuitously or for less than the fair market value by a South African **resident**.

2. Donations tax must be calculated separately on each donation as and when the donation takes place and not at the end of the year of assessment (except for deemed donations in terms of section 7C). The R100 000 exemption applicable to natural persons and the R10 000 applicable to persons who are not natural persons must therefore be applied in the order that the donations take place.
3. The R100 000 exemption applicable to natural persons applies to all property donated and is not apportioned where the period of assessment is less than a full year. On the other hand, the R10 000 exemption applicable to a donor that is not a natural person applies only to casual gifts and it must be apportioned where the period in question exceeds or is less than 12 months.



Donations tax **does not apply** to **non-residents**, even if they donate South African assets.

Donations tax is payable by the **end of the month following the month** during which the donation takes effect (i.e. if a donation is made in January, the donations tax is payable by the end of February).



Do not confuse the section 18A deduction (deductible donations to certain organisations) from taxable income with the donations tax provisions. Even if no donations tax is payable on a specific donation, it does not mean that the specific donation may be deducted for normal tax purposes. Consider the provisions of section 18A to determine the deductibility for normal income tax purposes.

### 2.5.2 Impact of donations on other taxes

A donation may affect many more items than merely donations tax. You may be required to consider the capital gains tax or normal tax (including income tax and capital gains tax) implications of a donation.

Donations tax may therefore be combined/integrated with topics that will be addressed only in future tutorial letters, for example

- meaning of “resident” – LU 5
- capital gains tax – LU 6
- trusts (section 7) – LU 19
- income tax (section 18A – deduction of donations to certain organisations) – LU 7, LU 9 and LU 11.



With the amendment to the donations tax rate from 20% to 25% in the instance where a donation is made and the aggregate taxable value exceeds R30 million, the question in a test or the examination will contain the necessary information to determine whether the higher donations tax rate of 25% applies. If no such information is given, the assumption is that the aggregate value does not exceed R30 million and the 20% donations tax rate is applicable.

In the activities contained in this learning unit, the assumption is that the aggregate value of donations made does not exceed R30 million. However, please note that either of the rates can be tested in a test or the examination.



### ACTIVITY 2.1 (30 minutes)

Work through examples 26.16 and 26.17 in paragraph 26.14 in SILKE (2024).

## 2.6 SUGGESTED SOLUTION FOR THE BEANCOUNTER SCENARIO



Read the Beancounter scenario again and make a rough summary of what your solution would be, now that you have studied donations tax. You should be able to answer Barry Beancounter's query on donations tax. Share your solution in [Discussion Forum 2.1](#), then refer to the [solution](#) that will be made available on the Friday of your study week.

## 2.7 SUMMARY OF LEARNING UNIT 2

This learning unit introduced you to the content of the Income Tax Act that is relevant to donations tax. The table of reference under 1.2.1 was provided to guide you through the work. A framework for determining and calculating donations tax was provided to assist you in analysing donations tax scenarios. Remember to look at the additional resources available for this learning unit. Ensure that you do not study donations tax in isolation; always consider the impact of every donation on other taxes. Now you are ready to apply your donations tax knowledge by doing the following activities. The time provided for each question is calculated as 6 minutes of reading time for each activity, 1.5 minutes for every mark: and then 6 minutes per page of the solution for you to review your answer against the solution provided:

### ACTIVITY 2.2 (9 marks / 26 minutes)

During the period 1 March 2023 to 31 March 2024, John Dow was involved in the following transactions in his personal capacity:

#### March 2023 to February 2024:

John's monthly contributions to the local church (a public benefit organisation approved in terms of section 30(3) of the Income Tax Act) was R1 000 per month.

#### June 2023

He donated R8 000 to Sandy, his niece, as a gift on her wedding day.

**February 2024:**

John sold a sectional title unit which he owned to his mother. The market value of the unit was R1 400 000 on the date of the sale. The selling price of the unit he sold to his mother was R1 250 000. His mother is financially independent, and John does not have to provide his mother with any maintenance. The payment terms were as follows:

His mother took over the balance of R1 150 000 that he (John) still owed on the unit. For the balance of R100 000 he granted an unsecured interest-free loan to his mother. The loan has to be repaid on the death of his mother (a claim against her estate).

**March 2024:**

After John received the free use of a Toyota Fortuner from JD Incorporated (ignore for purposes of (a) of the required above) he donated his Honda Civic to his wife Erica to whom he is married out of community of property. The market value of the Honda Civic was R142 000 on the date of the donation.

Some years ago John inherited original paintings from his grandmother (at that stage the market value of the paintings, for estate duty purposes, was R150 000). John donated the paintings (the market value at the date of the donation was R180 000) to JD Incorporated.

<b>REQUIRED</b>	<b>Marks</b>
Determine the Donations Tax that John should pay on each of the above transactions. Provide reasons if no Donations Tax is payable on any of the transactions. You can assume that the donations mentioned above are the only donations that John Dow had made during his lifetime.	9

**ACTIVITY 2.2: – SUGGESTED SOLUTION**

	R Total amount	R Exempt	R Taxable	R Donations tax @ 20%	
<b>2024 Year of assessment</b>					
<b>March 2023 – February 2024</b>					
Contributions to church (R1000 x 12) – exempt i.t.o. section 56(1)(h)	12 000	(12 000)	-	-	(1)
<b>June 2023</b>					
Wedding gift to Sandy – use part of section 56(2)(b) exemption of R100 000 per annum	8 000	(8 000)	-	-	(1)
<b>February 2024</b>					
Sale of house to mother (R1 400 000 – R1 250 000) - use section 56(2)(b) exemption (R100 000 – R8 000)	150 000	(92 000)	58 000	11 600	(3)
R100 000 interest-free loan not a donation for donations tax (only for section 7) (interest-free loan not to a trust)	-	-	-	-	(1)
<b>2025 Year of assessment</b>					
<b>March 2024</b>					
Donation to wife (exempt in terms of section 56(1)(b))	142 000	(142 000)	-	-	(1)
Paintings (first R100 000 per annum exempt – section 56(2)(b)) ( <i>Note 1</i> )	180 000	(100 000)	80 000	16 000	<u>(2)</u>
					<u>9</u>

**Note 1:**

Both the donations in March 2024 fall into the following (2025) year of assessment and the annual R100 000 section 56(2)(b) exemption is therefore once again available.

**ACTIVITY 2.3 (3 marks / 11 minutes)**

On 20 January 2024, Fabulous Fashions (Pty) Ltd donated stock with a market value of R120 000 (cost price was R100 000) to its foreign subsidiary, Fashionable Trends Plc. Fashionable Trends Plc is wholly owned by Fabulous Fashions (Pty) Ltd and registered in the United Kingdom.

REQUIRED	Marks
Determine Fabulous Fashions (Pty) Ltd's donations tax liability, if any, in respect of the donation made to its wholly owned foreign subsidiary. Substantiate your calculation with reasons. Furthermore, if donations tax is payable, indicate when the donations tax is due to SARS. Assume that this was the only donation made by Fabulous Fashions (Pty) Ltd in respect of its 2024 year of assessment and that the total amount of previous donations made amounts to R2 000 000. Ignore VAT and assume that section 31 is not applicable.	3

**Source: Unisa TAX4862 Test 1 2014**

**ACTIVITY 2.3: - SUGGESTED SOLUTION**

Donation to foreign subsidiary (valued at market value – section 62(1)(d))	R 120 000	(1)
<i>No specific exemption applies (section 56(1)(r) cannot apply, as donee is a non-resident), general exemption under section 56(2)(a) also not available, as not a casual gift</i>		(1)
Donations tax at 20% (section 64)	24 000	(1)
Payable by the end of the month following the month during which the donation takes effect (section 60), thus not later than 28 February 2024.		(1)
	4	
Max	3	

**ACTIVITY 2.4 (3 marks / 11 minutes)**

James Sekele provided the family trust (the Sekele Trust) with an interest free loan of R1 100 000 on 1 February 2024, to fund the trust's acquisition of an investment property. A market related interest rate is 10%. Assume an official interest rate of 8.75%.

	Marks
	<b>Total</b>
Calculate the donations tax consequences for James Sekele for the 2024 year of assessment.	
Assume that the value of James Sekele's prior year donations <b>exceeded</b> R30 million and that no other donations arose other than mentioned in the question.	3
<b>Total</b>	3

**(Part of Test 1/2019)**

**ACTIVITY 4 – SUGGESTED SOLUTION****Calculate the donations tax for James Sekele**

<b>Date</b>		<b>Taxable amount</b>	<b>Donations tax @ 25%</b>	
29-02-2024	Interest free loan to trust on 1 Feb 2024 – deemed ongoing donation @ year end	Donation amount $R1\,100\,000 \times 8.75\% \times 29/366 = R7\,626$ – $R7\,626 = 0$ (annual exemption of R100 000 (s 56(2)(b) but limited to the donation of R7 626)	0	(3)
			<b>Total</b>	<b>3</b>

**2.8 LIST OF REFERENCES FOR LEARNING UNIT 2**

- SAICA 2024. *SAICA Student Handbook 2023/2024 Volume 3*. Durban, LexisNexis.
- Stiglingh, et al. 2024a. 'Chapter 17: Capital gains tax (CGT)', *Silke: South African Income Tax 2024*, Durban, LexisNexis.
- Stiglingh, et al. 2024b. 'Chapter 27: Donations tax', *Silke: South African Income Tax 2024*, Durban, LexisNexis.

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 END OF LEARNING UNIT 2