

Donations to trusts trigger tax

In 1789, an American statesman Benjamin Franklin is famously quoted to say, 'in this life nothing is real as death and taxes.' With this reality, it's prudent to plan your financial affairs so as to pay the minimum possible tax. Many have mastered the art of forming trusts for this purpose and if possible, achieve both goals simultaneously. Therefore, the matter we wish to address in today's article is the tax implications of donating property to a trust. For the avoidance of doubt the term property includes corporeal movable and immovable goods.

A donation of movable or immovable property generally results in a relinquishment of a right in an asset from the transferor to the recipient. In this regard, a donation of shares or an immovable property like a house, any buildings or land to a trust is treated as a disposal subject to Capital Gains Tax (CGT) assessable in the hands of the donor. The prevailing market value of the property disposed will be deemed as the selling price and CGT will be determined thereon. In addition to CGT, donations of immovable property i.e., land, houses, or buildings trigger transfer duty that is assessable in the hands of the trust and usually, the obligation to pay the duty rests in the hands of the trustee.

On the other hand, a donation of immovable and movable property like vehicles, equipment technically triggers Capital Transfer Tax in the hands of the trust. This tax is commonly referred to as donations tax as the primary trigger is a gratuitous disposal i.e., a disposal for free or property given for free. Donations tax is paid by the beneficiary and the tax is determined on the market value of the property. You can read more tax articles on our website, www.aupracontax.co.bw under the 'Tax Articles' tab. **This article is of a general nature and is not meant to address particular matters of any person. Please contact us on +267 71815836 +267 3939435 or jhore@aupracontax.co.bw for tax consulting or to join our free Tax WhatsApp group or to know about our 9 Tax e-books**