

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 242 [NW325E]
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242. Mrs A Steyn (DA) to ask the Minister of Finance:

What will be the tax benefit to persons who donate land in terms of the proposed Draft National Policy for Beneficiary Selection and Land Allocation?

NW325E

REPLY:

The precise nature of the tax benefits available to persons who donate land in terms of the proposed Draft National Policy for Beneficiary Selection and Land Allocation will depend on the final form the policy takes, as well as the implementation of the policy. The benefits that may be available are an exemption from donations tax on donations of land, the disregarding of capital gains and losses on donations of land and a deduction of the lower of the fair market value or cost of the land on the date of donation. The potentially applicable provisions are summarised below.

Section 54 of the Income Tax Act, 1962, (the Act) stipulates that donations tax is payable on the value of any property disposed of under any donation by any resident. Section 56(1), however, provides for the exemption of the payment of donations tax in certain circumstances. For purposes of this reply, the following paragraphs are relevant.

- Paragraph (h) exempts from donations tax, any donation of property by or to persons listed in sections 10(1)(a), (cA), (cE), (cN), (cO), (d) or (e). This includes, among others, the national, provincial or local sphere of government, certain institutions, boards or bodies and qualifying public benefit organisations (PBOs).
- Paragraph (o) exempts from donations tax, a donation of property consisting of the full ownership in immovable property and meeting the following requirements:
 - the immovable property must be acquired by any beneficiary entitled to any grant or services in terms of the Land Reform Programme, as contemplated in the White Paper on South African Land Policy, 1997, in terms of a project that has been approved by the Minister of Land Affairs or a duly designated person; or
 - the donation of immovable property must have been made under land reform initiatives by virtue of the measures contemplated in Chapter 6 of the National Development Plan: Vision 2030 of 11 November 2011, released by the National Planning Commission, Presidency of the Republic of South Africa.

Paragraph 62(a) of the Eighth Schedule to the Act provides that a person must disregard a capital gain or capital loss determined in respect of the donation or bequest of any asset by that person to the government in the national, provincial or local sphere. Paragraph 64D of the Eighth

Schedule provides that a person must disregard any capital gain or capital loss in respect of a donation of land or right to land under a land reform initiative contemplated in Chapter 6 of the National Development Plan: Vision 2030 of 11 November 2011.

A *bona fide* donation of land made may qualify as an income tax deduction under section 18A of the Act if all the legislated requirements are met and, in particular:

- if the donation is made to a PBO, the PBO has been approved under sections 18A and 30;
- if the donation is made to a department of government in the national, provincial or local sphere, the department has been approved under section 18A; and
- the recipient of the donation actively carries on a listed public benefit activity (PBA) and applies such donations solely for the purposes of the PBA.

Part II of the Ninth Schedule to the Act lists a PBA under the heading “Land and Housing” in paragraph 5(e) that reads as follows.

“The promotion, facilitation and support of access to land and use of land, housing infrastructural development for promoting official land reform programmes.”

This PBA is broader and more multifaceted than the donation of land resulting from an official land reform programme.