

DRAFT INTERPRETATION NOTE

DATE:

ACT : INCOME TAX ACT 58 OF 1962

SECTION : SECTION 7C

**SUBJECT : LOAN, ADVANCE, OR CREDIT GRANTED TO A TRUST BY A
CONNECTED NATURAL PERSON**

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Preamble

In this Note unless the context indicates otherwise –

- **“beneficiary”** in relation to a trust means a person who has a vested or contingent interest in all or a portion of the receipts and accruals or assets of that trust;
- **“Companies Act”** means the Companies Act 71 of 2008;
- **“company”** means “company” as defined in section 1(1);
- **“connected person”** means “connected person” as defined in section 1(1);
- **“person”** means a natural person;
- **“schedule”** means a schedule to the Act;
- **“section”** means a section of the Act;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“the Commissioner”** means the Commissioner for the South African Revenue Service and includes any employee of SARS who has the delegated power to exercise and perform certain duties;
- **“trust”** means “trust” as defined in section 1(1); and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides, interpretation notes, forms, returns and tables referred to in this Note are available on the SARS website at www.sars.gov.za. Unless indicated otherwise, the latest version of these documents should be consulted.

1. Purpose

This Note provides guidance on the interpretation and application of section 7C, which targets interest-free or low-interest loans, advances, or credit granted by a connected person to a trust (with certain exclusions). It deems the interest forgone by the lender to be a continuous donation for as long as the interest-free or low-interest loan remains outstanding.

2. Background

Wealth transfer through trusts can occur in several ways. For example:¹

- A person may donate assets to a trust, triggering donations tax at a rate of 20%.²

¹ See *Explanatory Memorandum on the Taxation Laws Amendment Bill, 17B of 2016*.

² Under section 64 the rate of donations tax is 20% of taxable donation that does not exceed R30 million and 25% of the value exceeding that amount.

- A person may sell assets to a trust on loan account, subject to interest at a market-related rate. In this case, the person is liable for normal tax on the interest portion of the loan repayments made by the trust.
- A person may sell assets to a trust on loan account with interest below the official rate or no interest at all. Donations tax will not be triggered since this transaction is classified as a sale rather than a donation. Consequently, the income tax provisions are not applicable to the forgone interest due to not charging interest at market-related rates.
- A person may advance an interest-free loan or a loan with interest below market-related rates to a trust, enabling the trust to acquire assets or retain the advance, thereby avoiding donations tax and income tax on the forgone interest.

In certain cases, the lender may also reduce or waive the loan capital owed, either as settlement for an outstanding consideration for an asset disposal or to settle loan funding advanced to a trust. This action also circumvents estate duty by reducing or waiving the lender's asset base concerning the loan capital.³

To restrict taxpayers' ability to transfer wealth to a trust without incurring tax, section 7C was introduced, effective from 1 March 2017.⁴ This section applies to any loan, advance, or credit provided under specific circumstances to a trust by a connected person who must be a resident. It covers loans made to the trust on or after 1 March 2017, including those made before the effective date.

Following the introduction of these rules, some taxpayers sought to avoid section 7C by providing interest-free or low-interest loans to companies whose shares are held by trusts. By advancing the loan to the company instead of the trust, the original anti-avoidance measures of section 7C did not apply, as the rules only targeted loans made directly to trusts. To address this, the Taxation Laws Amendment Act 17 of 2017 amended section 7C(1) to include interest-free or low-interest loans, advances, or credit provided by a person or a company (at the instance of a person) to a company whose shares are held by a trust that is a connected person in relation to that individual or a beneficiary of that trust.⁵ This amendment took effect from 19 July 2017 and applies to any amount owed by a trust or company for a loan provided before, on, or after that date.

Further amendments were made by the Taxation Laws Amendment Act 23 of 2020 to counter new structures used to bypass the anti-avoidance rules under section 7C. These involved persons subscribing for preference shares with little or no return in companies owned by trusts connected to those individuals. The amendment introduced section 7C(1B), addressing subscriptions for preference shares by

³ See *Explanatory Memorandum on the Taxation Laws Amendment Bill, 17B of 2016*.

⁴ Inserted by section 12(1) of the Taxation Laws Amendment Act 15 of 2016 and applied in respect of any amount owed by a trust in respect of a loan, advance or credit, on or after 1 March 2017. Section 7C initially applied only to a loan, advance or credit provided to a trust but was expanded to apply to a company as well by section 5(1)(a) of the Taxation Laws Amendment Act 17 of 2017 and applied to a loan, advance or credit provided to a trust or company before, on or after 19 July 2017.

⁵ See *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2017*.

individuals or companies at the request of a person, as a method to circumvent section 7C's anti-avoidance rules. Section 7C(1B) deems such subscriptions to be loans liable to donations tax⁶ under specific circumstances. Any dividend or foreign dividend accrued regarding these preference shares is deemed to be interest concerning the loan, and this amendment applies to any dividend or foreign dividend accruing during any year of assessment commencing on or after 1 January 2021.

The anti-avoidance provisions under section 7C impose an ongoing, annual donations tax liability on the individual, reversing the affected transfer of wealth while the loan, advance, or credit remains outstanding. If a trust or company incurs no interest on a loan, advance, or credit, or incurs interest below the official rate, the difference between the interest incurred during the year of assessment and what would have been incurred at the official rate is deemed a donation to the trust or company.⁷ Donations tax in these circumstances is determined on the last day of the year of assessment of the trust or company, after deducting any applicable annual donations tax exemption.⁸

For the purposes of section 7C, interest is calculated as simple interest on the outstanding balance of the loan, advance, or credit⁹ based on the official rate of interest as it is adjusted periodically.¹⁰

Further consequences of loans, advances, or credit made to connected persons that fall outside the scope of section 7C are not addressed in this Note (for instance, loans made by a trust to a beneficiary).

3. The law

The relevant sections of the Act are quoted in **Annexure A**.

4. Application of the law

Section 7C applies to any loan, advance, or credit that –

- a person; or
- at the instance of a person, a company in relation to which that person is a connected person under paragraph (d) (iv) of the definition of connected person,

directly or indirectly provides to –

- a trust in relation to which that person or company, or any person who is a connected person in relation to that person or company, is a connected person [section 7C(1)(i)]; or

⁶ See *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2020*.

⁷ Section 7C(3).

⁸ Section 7C(3) read with section 56(2).

⁹ Section 7D(b).

¹⁰ See definition of “official rate of interest” in section 1(1).

- a company if at least 20% of –
 - the equity shares in that company are held, directly or indirectly; or
 - the voting rights in that company can be exercised,

by a trust referred to in section 7C(1)(i) whether alone or together with any person who is a beneficiary of that trust, their spouse, or any person related to that beneficiary or their spouse within the second degree of consanguinity [section 7C(ii)].

4.1 Key words and terms used in section 7C

Some critical words and terms essential for interpreting and applying section 7C are not defined in the Act. Therefore, they should be interpreted according to their ordinary meanings in relation to the relevant subject matter.¹¹

4.1.1 Loan, advance or credit

The *Merriam-Webster Dictionary* defines the word “loan” as –¹²

“money lent at interest; something lent usually for the borrower’s temporary use”.

The *CollinsDictionary.com* describes “advance” by means of an example as follows: ¹³

“If you advance someone a sum of money, you lend it to them, or pay it to them earlier than arranged.”.

The *Cambridge English Dictionary*¹⁴ defines the word “credit” as:

“a method of paying for goods or services at a later time, usually paying interest as well as the original money”.

The phrase “any loan, advance or credit” used in section 7C must be interpreted in light of the meanings of the words, their context, and the purpose of the section. The *ejusdem generis* rule, which is sometimes expressed by the *maxim noscitur a sociis*, suggests that the meaning of a word may be determined by reference to associated terms. In other words, when two or more words with analogous meanings are grouped together, they are understood to be used in a related sense, taking their meaning from each other.

From this, it can be concluded that section 7C may apply broadly to any form of financial assistance provided by a connected person to a trust on an interest-free or low-interest basis. Whether it constitutes an interest-free or low-interest loan, advance, or credit is determined objectively based on the official interest rate. The lender’s subjective motivation for providing assistance is irrelevant.

¹¹ Kellaway, E. A. (1995). *Principles of Legal Interpretation of Statutes, Contracts and Wills*. Butterworths. Also, see Steyn, L. C. (1981). *Die Uitleg van Wette* 5th ed (paragraph 4 to 7). Juta and Company (Pty) Ltd.

¹² www.merriam-webster.com/dictionary/loan [Accessed 26 November 2025].

¹³ <https://collinsdictionary.com/dictionary/english/advance> [Accessed 26 November 2025].

¹⁴ <https://dictionary.cambridge.org/dictionary/english/credit?q=Credit> [Accessed 26 November 2025].

4.1.2 Natural person

According to *LAWSA*, “modern law distinguishes between two classes of persons, namely natural persons and juristic or artificial persons. All human beings, irrespective of their age, mental condition or intellectual ability, are recognised as legal subjects. To distinguish them from other juristic persons, humans are referred to as ‘natural persons’ ”.¹⁵

4.1.3 “At the instance of”

Section 7C also applies to a loan, advance, or credit provided by a company “at the instance of” a person who is considered a connected person under paragraph (d)(iv) of the definition of “connected person”.

The Act does not define “at the instance of”. However, it is defined in the *CollinsDictionary.com* as meaning –¹⁶

“at the suggestion of or instigation of”.

The phrase “at the instance of” is a broad concept. However, it must be interpreted and applied with consideration for the section’s purpose and the mischief it aims to address.

The loan, advance, or credit from the company to the trust must be made at the request or under the influence of the person. Furthermore, it must result in a transfer of wealth from that person to the trust.

The company must also qualify as a connected person in relation to that individual under paragraph (d)(iv) of the definition of “connected person” for section 7C to be triggered.

According to paragraph (d)(iv) of the definition of “connected person,” a person is connected to a company if they, either alone or in conjunction with another connected person, hold, directly or indirectly, at least 20% of the equity shares or voting rights in the company.

The term “equity share” is defined as any share in a company, excluding any share that, neither as respects dividends nor as respects returns of capital, does not carry any right to participate in a distribution beyond a specified amount.¹⁷

The Act does not define “voting rights”. However, section 1 of the Companies Act defines the term with respect to any matter decided by a company to mean –

- in the case of a profit company, the rights of any holder of the company’s securities *to vote on that matter*; or

¹⁵ Cronje, D.S.P. updated by Carnelley, M (31 November 2009). Persons. in *Law of South Africa (LAWSA)* 20(1) (Second Edition) in paragraph 439. My LexisNexis [online].

¹⁶ <https://collinsdictionary.com/dictionary/english/at-the-instance-of> [Accessed 26 November 2025].

¹⁷ Section 1(1).

- in the case of a non-profit company, the rights of a member to vote in connection with the matter.

Under section 37(2) of the Companies Act, each issued share of a company, regardless of its class, carries one general voting right, except as provided otherwise by –

- the Companies Act; or
- the preferences, rights, limitations, and other terms determined by the company's memorandum of incorporation in accordance with section 36 of the Companies Act.

Section 37(3) of the Companies Act states that, notwithstanding any contrary provision in a company's memorandum of incorporation –

- every share issued by that company carries an irrevocable right for the shareholder to vote on any proposal to amend the preferences, rights, limitations, and other terms associated with that share; and
- if the company has only one class of shares –
 - those shares have a right to vote on every matter that may be decided by shareholders of the company; and
 - the holders of that class of shares are entitled to receive the net assets of the company upon liquidation.

4.1.4 Directly or indirectly

The words “directly” and “indirectly” are not defined in the Act. *Dictionary.com* defines “directly” as “in a direct line, way, or manner; straight”¹⁸ and “indirectly” as “by a connection that is not immediate”.¹⁹

Direct lending occurs when the lender provides a loan directly to the borrower, while indirect lending happens when funds are routed through an intermediary. For example, the lender could loan money to a third party, such as a bank, with the condition that the funds are subsequently lent to the borrower. See **Example 4**, which illustrates the process of making an indirect loan.²⁰

The reference “indirectly” ensures that not only loans, advances, or credits provided directly to trusts may trigger the anti-avoidance measure. The specifics of each case must be considered.

4.1.5 Provide

The word “provide” is not defined in the Act. The *Cambridge English Dictionary* defines “provide” as –²¹

“to give someone the things they need, such as money, food, or clothes”

¹⁸ www.dictionary.com/browse/directly [Accessed 26 November 2025].

¹⁹ www.dictionary.com/browse/indirectly [Accessed 26 November 2025].

²⁰ See also the *Comprehensive Guide to Capital Gains Tax* (Issue 9) in paragraph 12.5A.4.2.

²¹ <https://dictionary.cambridge.org/dictionary/english/provide> [Accessed 26 November 2025].

To "provide" implies a conscious decision rather than mere acquiescence. Trustees frequently exercise discretion under a trust deed to vest certain income or capital in a beneficiary. Instead of distributing this income or capital to the beneficiary, the trustee may credit the amount to a loan account in the beneficiary's name without their knowledge. After the vesting, the beneficiary obtains a personal right against the trustees for the delivery, transfer, or payment of the vested benefit, and no one other than the beneficiary can receive that vested benefit. Therefore, it cannot be argued that the beneficiary has directly or indirectly "provided" any loan to the trust under these circumstances.

An amount vested by a trust in a beneficiary that is not distributed to that beneficiary will be considered a loan, advance, or credit provided by that beneficiary to the trust, if –²²

- the non-distribution results from an election made by that beneficiary, or
- the beneficiary requests that the amount not be distributed or paid out. For instance, if the beneficiary has reached the age at which a vested amount must be paid or distributed to them, and –
 - the trustee agrees to the beneficiary's request to withhold the distribution, or
 - the beneficiary enters into an agreement with the trustee regarding retention of the amount in a separate account within the trust.

4.1.6 The connected person requirement

The definition of "connected person" concerning a natural person²³ includes any relative and any trust (excluding a portfolio of a collective investment scheme) of which that person or their relative is a beneficiary.

The term "relative" is defined in section 1(1) as, in relation to any person, –²⁴

"the spouse of that person or anybody related to that person or that person's spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child referred to in the definition of 'child' in this section and any other person, that child shall be deemed to be related to the adoptive parent of that child within the first degree of consanguinity".

The term "spouse" in relation to any person means a partner of that person who is –

- in a marriage or customary union recognised under South African laws;
- in a union recognised as a marriage according to the tenets of any religion; or
- in a same-sex or heterosexual union intended to be permanent.

²² See *Explanatory Memorandum on the Taxation Laws Amendment Bill, 17B 2016*.

²³ See definition of "connected person" in section 1(1).

²⁴ For further consideration of "relative", see Interpretation Note 67 "Connected Persons". See also Annexure B containing a diagram illustrating the rule for determining persons who are related within the first, second and third degree of consanguinity.

While the definition of “relative” refers to the third degree of consanguinity, section 7C(1) restricts the relationship to the second degree. The word “consanguinity” is not defined in the Act. According to the *Cambridge English Dictionary* “consanguinity” refers to – ²⁵

“the condition of being blood relations (related to someone by birth, not marriage)”.

The degree of relationship between two people is determined by counting the number of steps up to a common ancestor and, if necessary, the number of steps down to the person in question. For example, a cousin is related in the fourth degree (person [up to] parent (1) [up to] grandparent (2) [down to] uncle or aunt (3) [down to] cousin (4)).²⁶ Persons related to someone within the second degree of consanguinity include –

- a father or mother (first degree);
- a child (first degree);
- a grandparent (second degree); and
- a brother or sister (second degree).

An uncle or aunt, great-grandparent, or nephew or niece are related within the third degree of consanguinity and are excluded from this definition. A cousin, being in the fourth degree, is also excluded.²⁷

4.1.7 Meaning of “trust”

The term “trust” is defined in section 1(1) as –

“any trust fund consisting of cash or other assets, which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person...”.

Under South African law, there are three types of trusts:

- The founder transfers ownership of assets to a trustee for the benefit of beneficiaries (ownership trust).
- The founder transfers ownership of assets to beneficiaries, but control remains with the trustees (bebind trust).
- The trustee administers the affairs of another, for example, a mental patient, in the capacity of a curator.

The Trust Property Control Act 57 of 1988, which also defines “trust”, does not differentiate between ownership trusts and bewind trusts, recognising both types.

Trusts can be described in various ways, for example, concerning –

- their method of formation [*inter vivos* (living trust) and testamentary trusts (*mortis causa* trust or will trust)];

²⁵ <https://dictionary.cambridge.org/dictionary/english/consanguinity> [Accessed 26 November 2025].

²⁶ For more information, see Interpretation Note 67 “Connected Persons”.

²⁷ See the *Comprehensive Guide to Capital Gains Tax* (Issue 9) in paragraph 12.5A.4.3.

- the rights they confer on beneficiaries (vesting and discretionary trusts); or
- their purpose (trading, asset-protection trusts, special trusts, and charitable trusts).

These classifications are not mutually exclusive. For instance, an *inter vivos* trust can be both a trading trust and a discretionary trust.²⁸

Inter vivos trusts are established during an individual's lifetime, while testamentary trusts are created upon an individual's death under their last will and testament. A trust can be classified as a vesting or discretionary trust (see **4.1.8**).

According to the definition of "special trust" in section 1(1), a special trust is created solely for persons with a "disability" as defined in section 6B(1), which incapacitates them from earning sufficient income for their maintenance or managing their own financial affairs, as well as testamentary trusts for minors (see **5.7**).²⁹

A charitable trust requires approval from the Commissioner as a public benefit organisation (PBO) under section 30. To qualify for tax exemption, such a trust must also conduct an approved public benefit activity as outlined in Part I of the Ninth Schedule.

Offshore trusts are typically established in tax-haven countries, International Financial Centres, and Offshore Financial Centres that impose low or no taxes on trusts and adhere to English common law of trusts. A blind trust (also referred to as a limping trust or black hole trust) is a highly secretive vehicle often created to conceal assets from tax or exchange control authorities. It is impossible to identify the settlor, the purpose of the trust, or the true beneficiaries from the trust deed. A dummy settlor establishes the trust by donating a nominal sum to a trustee. The trust deed names a discretionary beneficiary (for example, the Red Cross), but this beneficiary is usually not informed of their status. The trustees have the discretion to add or change beneficiaries, while the actual beneficiaries are identified in a "letter of wishes" provided to the trustee. After the trust is established, additional assets and beneficiaries can be added.

Under a bare trust (or simple trust), which is particularly common in the United Kingdom, beneficiaries hold immediate and absolute entitlement to both the income and capital of the trust and have the right to take actual possession of trust property. The bare trustee has no active duties to perform and essentially acts as a nominee.

4.1.8 Beneficiary of a trust

Under section 1(1), a "beneficiary" in relation to a trust is defined as –

"a person who has a vested or contingent interest in all or a portion of the receipts, accruals, or assets of that trust".

²⁸ See Chapter 14 on trusts and trust beneficiaries in the *Comprehensive Guide to Capital Gains Tax* for a detailed consideration of trusts.

²⁹ For a detailed consideration of special trusts, see the *Guide to the Taxation of Special Trusts*.

In a vesting trust, the assets and/or income are vested in the beneficiaries, who have vested rights to the income and/or capital. In contrast, a discretionary trust allows trustees to decide whether and how much of the income and/or capital to distribute to beneficiaries. In this case, beneficiaries only possess contingent rights to the trust's income and/or capital. A contingent interest can be described as a hope or *spes* of receiving a benefit.

5. The provider of any loan, advance or credit [section 7C(1)]

Section 7C is activated when any loan, advance, or credit is provided by a person – or, at the instance of a person, by a company – to certain connected trusts.³⁰ The application of section 7C results in a deemed donation for the purposes of Part V of Chapter II of the Act, which deals with donations tax.³¹ According to section 54, donations tax is levied when a donation is made by a *resident*.

Under the definition of “resident” in section 1(1), the term, in relation to a natural person, refers to someone who is –

- ordinarily resident in South Africa;³² or
- not ordinarily resident in South Africa at any time during the relevant year of assessment, provided that the person was physically present in South Africa –³³
 - for period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the five years of assessment preceding that year; and
 - for a period or periods exceeding 915 days in aggregate during those five preceding years of assessment,

in which case that person will be considered a resident from the first day of the relevant year of assessment: Provided that –

- a day shall include part of a day but shall not include any day during which a person is in transit through South Africa between two locations outside South Africa, provided that the person does not formally enter South Africa through a “port of entry” as specified in section 9(1) of the Immigration Act 13 of 2002, or at any other location permitted by the Director-General of the Department of Home Affairs or the Minister of Home Affairs under that Act; and

³⁰ Section 7C(1)(a) and (b).

³¹ Sections 54 to 64.

³² See Interpretation Note 3 “Resident: Definition in Relation to a Natural Person – Ordinarily Resident”.

³³ See Interpretation Note 4 “Resident: Definition in Relation to a Natural Person – Physical Presence Test”.

- if a “resident” as defined in this subparagraph is physically outside South Africa for a continuous period of at least 330 full days immediately after ceasing to be physically present in South Africa, that person will be deemed not to have been a resident from the day on which he or she ceased to be physically present in South Africa.

Therefore, the deemed donation under section 7C only applies to a loan, advance, or credit provided by a resident person or made by a company at the behest of a resident person. If a company provides a loan, advance, or credit at the instance of a resident person, it does not need to be a resident in South Africa for tax purposes for section 7C to apply.

Section 7C focuses on the lender, not the borrower.

5.1 The recipient of the loan, advance or credit

A trust or company referred to in section 7C(1)(i) and (ii) includes both domestic and foreign trusts and companies, as the law does not stipulate that these entities must be resident in South Africa.

5.1.1 Any loan, advance or credit made to a trust [section 7C(1)(i)]

Any loan, advance, or credit made to the following trusts falls within the scope of section 7C(1):

- A trust that is a connected person to the person or company that provided the loan (see **4.1.6** and **Example 1**). A person is a connected person to a trust if the person or a relative to the person is a beneficiary of the trust.³⁴ A company is a connected person to a trust if it is a beneficiary of the trust³⁵ or if it is a connected person to a beneficiary of the trust.³⁶
- All connected persons in relation to a trust are connected persons in relation to one another.³⁷ A trust to which any person who is a connected person to the person or company described above is a connected person (see **Example 2**).

Example 1 – Loan made to a trust by a person who is a connected person to the trust

Facts:

Person A made a loan to Trust B. A is a beneficiary of Trust B.

Result:

The loan made by A to Trust B falls within the ambit of section 7C(1)(i) since A is a connected person to Trust B (paragraph (a)(ii) of the definition of “connected person”).

³⁴ Paragraphs (a) and (b) of the definition of “connected person”.

³⁵ Paragraph (b)(i) of the definition of “connected person”.

³⁶ Paragraph (b)(ii) of the definition of “connected person”.

³⁷ Paragraph (bA) of the definition of “connected person” and paragraph 3.3.2 of Interpretation Note 67 (Issue 4) “Connected Persons”.

Example 2 – Loan made to a trust by a person who is a connected person to a connected person of the trust

Facts:

Person C made a loan to Trust D. C is married to E, who is a beneficiary of Trust D.

Result:

The loan made by C to Trust D falls within the ambit of section 7C(1)(i) since C, being a connected person to E, is also a connected person to Trust D (paragraph (a) of the definition of “connected person”).

Example 3 – Loan advanced by a company at the instance of a person

Facts:

Person F holds 25% of the equity shares in Company G. F is a beneficiary of the HH Trust. Company G made a loan to the HH Trust at the instance of F.

Result:

F is a connected person to Company G since F holds 25% of the equity shares (paragraph (d)(iv)(aa) of the definition of “connected person”). The loan to the HH Trust was made by Company G at the instance of F, and therefore, the loan falls within the ambit of section 7C(1)(b).

Example 4 – Indirectly provided loan

Facts:

J's spouse is a beneficiary of the K Trust, which is the only beneficiary of the L Trust. J advances a loan of R5 million to a business associate, Company M, which is not a connected person in relation to any of the trusts. The loan is non-interest bearing, payable on demand, and is subject to the condition that Company M will, in turn, advance an interest-free loan of R5 million that is payable on demand to the L Trust and cede the claim for repayment thereof to J as security for the repayment of the amount owed by Company M. The L Trust utilises those funds to acquire a range of shares and interest-bearing assets.

Result:

Since J's spouse is a connected person to J and is a beneficiary of the K Trust, J is also a connected person to the K Trust [paragraphs (a) and (b) of the definition of “connected person” and the definition of “relative” in section 1(1)]. The loan used by the L Trust was advanced indirectly by J and therefore falls within the ambit of section 7C(1).

5.1.2 Any loan, advance or credit made to a company [section 7C(1)(ii)]

Any loan, advance, or credit made to a company by a person or a company at the instance of a person who is connected to the company under paragraph (d)(iv) of the definition of “connected person” falls within the ambit of section 7C(1) if at least 20% of –

- the equity shares in that company are held, directly or indirectly; or
- the voting rights in that company can be exercised

by a trust referred to in section 7C(1)(i), whether alone or together with any person who is a beneficiary of that trust, or the spouse of a beneficiary, or any person related to that beneficiary or their spouse within the second degree of consanguinity (see 4.1.6). This section applies even if the trust holds only a negligible percentage of the shares.

For section 7C(1)(ii) to apply, a person or company, at the instance of a person, must make the loan, advance, or credit to the company. However, a trust in relation to which such a person or company is a connected person must be a shareholder of the company to which the loan, advance, or credit was made. If the trust alone holds less than 20%, the requirement can be satisfied if the equity shareholding of other persons connected to the trust, as described, raises the shareholding or voting rights to 20% in that company.

Example 5 – Loan provided by a person to a company

Facts:

N is married to P, and both are beneficiaries of the Q Trust. N, P, and the Q Trust each hold 5% equity shares in Company R. N provided a loan to Company R.

Result:

N is a connected person to the Q Trust as a beneficiary of the trust (see paragraph (a)(ii) of the definition of “connected person”). Consequently, the Q Trust qualifies as a trust referred to in section 7C(1)(i). Together with two of its beneficiaries, the Q Trust holds 15% of the equity shares in Company R. The credit extended by N to Company R does not fall within section 7C(1)(ii) since the combined shareholding of the Q Trust, N, and P is less than 20% of the equity shares in Company R. Therefore, section 7C does not apply.

5.2 Acquiring a claim to an amount owing by a trust [section 7C(1A)]

Section 7C(1A) comes into effect when a person acquires a claim to an amount owed by a trust or a company mentioned in section 7(1) in relation to a loan, advance, or credit. This person is deemed to have provided a loan, advance, or credit equal to the amount of the claim acquired on the date the claim was obtained [section 7C(1A)(a)]. If the person was not a connected person on that date in relation to the trust or the entity providing the loan, advance, or credit, the relevant date is when the person becomes a connected person to that trust or entity [section 7C(1A)(b)].

Example 6 – A portion of a loan acquired*Facts:*

Person S is a beneficiary of the TT Trust. On 1 March 2023, S lent R2 million to the trust. On 1 September 2023, S sold 40% of the loan account to S's sibling, X, for R800 000.

Result:

S is a connected person to the TT Trust under paragraph (b)(i) of the definition of "connected person". Therefore, the loan falls within the scope of section 7C(1). X is a connected person to S under paragraph (a)(i) of the definition of "connected person", making X a connected person to the TT Trust as well (paragraph (b)(ii) of the definition of "connected person"). Under section 7C(1A), X is treated as having made a loan of R800 000 to the TT Trust on 1 September 2023, and the provisions of section 7C will apply to R concerning this amount.

Example 7 – Cession of claim for a loan*Facts*

Person Z is a beneficiary of the AA Trust. On 1 March 2023, Z advanced an interest-free loan of R2 million to the trust. On 1 September 2023, Z ceded the claim against the trust to a friend, B, as consideration for property purchased from B. On 1 December 2023, Z married B.

Result

Z is a connected person to the AA Trust under paragraph (b)(i) of the definition of "connected person". The interest-free loan from Z falls within the scope of section 7C. On 1 September 2023, when the claim to the loan was ceded to B, the parties were not connected persons. However, on 1 December 2023, Z and B became connected persons under paragraph (a) of the definition of "connected person", and from that date, B is treated under section 7C(1A)(b) as having provided the loan to the trust.

5.3 Deemed loan and deemed interest on preference shares [section 7C(1B)]

Generally, funding for preference shares falls outside the scope of section 7C since it does not constitute a loan, advance, or credit provided. However, section 7C(1B) specifies that under certain circumstances, the acquisition of preference shares falls within the ambit of section 7C, thereby nullifying any attempts to use arrangements involving preference share funding to circumvent the application of section 7C.³⁸

³⁸ Section 7C(1B) was inserted by section 3(1)(a) of the Taxation Laws Amendment Act 23 of 2020 with effect from 1 January 2021 and is applicable in respect of any dividend or foreign dividend accruing during any year of assessment commencing on or after that date.

Section 7C(1B) applies if –

- a person; or
- at the instance of a person, a company that is a connected person in relation to that person under paragraph (d)(iv) of the definition of “connected person”

subscribes for preference shares in a company in which 20% or more of the equity shares are held directly or indirectly, or where the voting rights can be exercised by a trust that is a connected person to that person or company, either alone or together with a beneficiary of that trust.

The consideration received by or accrued to the company for the issuance of the preference shares is deemed to be a loan for the purpose of section 7C(3).³⁹ Any dividend or foreign dividend derived from those preference shares is deemed to be interest on the amount deemed to be a loan.⁴⁰

For the purposes of section 7C, “preference share” means a preference share as defined in section 8EA(1). The latter section defines the term as any share –

- other than an equity share; or
- that is an equity share, if any dividend or foreign dividend in respect of that share is based on or determined with reference to a specified rate of interest or the time value of money.

If the preference dividend is less than interest calculated at the official rate, there will be a deemed donation. The deemed donations tax liability would then arise on the difference between the official rate of interest and the preference dividend rate.

Example 8 – Person subscribes to preference shares in company in which more than 20% equity shares are held

Facts:

A South African resident, C, is a beneficiary of the DD Trust, a local trust. C and the DD Trust hold 11% and 10% respectively of the equity share capital of Company E. On 1 March 2023, C subscribed for 100 cumulative preference shares in Company E at R6 000 per share, which confer a preferential right to dividends equal to 5%. The financial year of Company E ends on the last day of February.

Result:

C and the DD Trust are connected persons under paragraphs (a)(ii) and (b)(i) of the definition of “connected person”. Since C subscribed for preference shares in Company E in which C and the DD Trust together hold more than 20% (11% + 10% = 21%) of the equity shares, section 7C(1B) applies.

As a result, the proceeds of R600 000 (100 shares × R6 000) from C’s subscription for the preference shares are deemed to be a loan for the purposes of section 7(3).

³⁹ Section 7C(1B)(i).

⁴⁰ Section 7C(1B)(ii).

Since holders of cumulative preference shares are guaranteed to receive the preference dividend, a preference dividend of R30 000 (R600 000 x 5%) has accrued to C for the year of assessment ending 28 February 2024. This amount is deemed to be interest on the deemed loan. If this amount is less than the interest calculated at the official rate, section 7C(3) will apply and a deemed donation will be triggered equal to the difference between the dividend and the calculated interest.

5.4 Prohibition on deduction, loss, allowance or capital loss [section 7C(2)]

Section 7C(2) prohibits a claim by the lender for a deduction, loss, allowance, or capital loss relating to a loan, advance, or credit as contemplated in section 7(1) in two scenarios, namely –

- concerning the disposal, including by way of reduction or waiver of any amount owed regarding the loan, advance, or credit; or
- if there is a complete or partial failure of a claim for payment, which occurs if the lender fails to claim payment from the borrower.

For a deduction, loss, allowance, or capital loss to be disallowed under section 7C(2), the loan, advance, or credit must fall within the ambit of section 7C(1). A loan, advance, or credit is typically disposed of through a reduction or waiver,⁴¹ resulting in a capital loss. Section 7C(2) stipulates that under such circumstances, the capital loss must be disregarded. The disposal of a debt through cession is included in section 7C(2), as is the waiver of a debt in whole or in part. A failure of a claim for payment could include the extinction of a claim by prescription or the sequestration or liquidation of the debtor.

Section 7C(2) does not reference section 7C(3), which deals with the rate of interest. Therefore, it is irrelevant whether the loan, advance, or credit bears interest at a rate at least equal to the official rate. Consequently, individuals who utilise the annual donations tax exemption of R100 000 in section 56(2)(b) to waive part of their loans will be unable to claim a capital loss on that portion, even if the loan bears interest at least equal to the official rate.

This rule will not apply if the loan, advance, or credit was advanced subject to interest at an official rate or a higher rate, as there would be no deemed donation under section 7C(3).⁴²

5.5 Deemed donation [sections 7C(3) and 7C(3A)]

Section 7C(3) addresses the consequences of providing a loan, advance, or credit at no interest or at a rate lower than the official rate under the circumstances outlined in sections 7C(1), (1A), or (1B).

The term “official rate of interest” is defined in section 1(1) as –

- in the case of a debt denominated in the currency of South Africa, a rate of interest equal to the South African repurchase rate (“repo rate”) plus 100 basis points; or

⁴¹ See Interpretation Note 91 “Concession or Compromise of a Debt” for a detailed consideration.

⁴² See *Comprehensive Guide to Capital Gains Tax* (issue 9) in paragraph 12.5A.3.

- in the case of a debt denominated in any other currency, a rate of interest equivalent to the South African repo rate applicable in that currency plus 100 basis points:

Provided that when a new repo rate or equivalent rate is determined, the new rate of interest applies for the purposes of this definition from the first day of the month following the date on which the new repo rate or equivalent rate came into operation.

The repo rate is set by the South African Reserve Bank and is adjusted at the beginning of the month following the month in which the Reserve Bank changes the repo rate.⁴³

Section 7C(3) considers the difference between the actual interest incurred by a trust or company during a year of assessment in respect of a loan, advance, or credit made by the person referred to in section 7C(1)(a), (1A), or (1B), and the amount that would have been incurred if the loan, advance, or credit was charged at the official rate of interest, to be a donation made to that trust or company.⁴⁴

Section 7D(b) stipulates that when determining the amount that would have accrued or been incurred as interest on any loan, debt, advance, or credit for the purposes of the Act, the calculation must be based on simple interest calculated daily. Furthermore, under section 7D(a), the *in duplum* rule must not be considered. This rule states that interest on a debt will stop accumulating once the total amount of accrued interest equals the outstanding principal debt.

The total of the difference in daily interest⁴⁵ calculated during the year of assessment is deemed to be a donation on the last day of the year of assessment for the trust or company.

Example 9 – Interest free loan advanced by a connected person to a trust

Facts:

F, a connected person to the G Trust, advanced an interest-free loan of R1 million to the trust on 1 April 2024. On 1 June 2024, the G Trust repaid R250 000 of the loan. On 1 July 2024, F advanced another loan of R10 million to the G Trust. On 1 January 2025, the G Trust repaid a further R4,5 million. According to Table 3 – Rates at which Interest-free or Low Interest Loans are subject to Income Tax, the rates from 1 April 2024 to 28 February 2025 were as follows:

- 1 April 2024 to 30 September 2024: 9,25%
- 1 October 2024 to 30 November 2024: 9%
- 1 December 2024 to 31 January 2025: 8,75%
- 1 February 2025 to 28 February 2025: 8,5%

⁴³ www.sars.gov.za/legal-counsel/legal-counsel-publications/tables-of-interest-rates/

⁴⁴ This is for purposes of Part V of Chapter II of the Act (Donations Tax).

⁴⁵ See Interest Rates – Table 3.

Result:

The interest-free loan made by F to the G Trust falls under section 7C(1). According to section 7C(3), the difference between the interest incurred by the G Trust and what would have been incurred at the official rate of interest is deemed to be a donation by F.

According to section 7D(b), the interest that would have been paid at the official rate must be calculated as simple interest on a daily basis. The calculations are as follows:

	R
• 1/4/2024 to 30/4/2024: $R1\,000\,000 \times 9,25\% \times 30/365 =$	7 602,74
• 1/5/2024 to 31/5/2024: $R1\,000\,000 \times 9,25\% \times 31/365 =$	7 856,16
• 1/6/2024 to 30/6/2024: $R750\,000 \times 9,25\% \times 30/365 =$	5 702,05
• 1/7/2024 to 31/7/2024: $R10\,750\,000 \times 9,25\% \times 31/365 =$	84 453,77
• 1/8/2024 to 31/8/2024: $R10\,750\,000 \times 9,25\% \times 31/365 =$	84 453,77
• 1/9/2024 to 30/9/2024: $R10\,750\,000 \times 9,25\% \times 30/365 =$	81 729,45
• 1/10/2024 to 31/10/2024: $R10\,750\,000 \times 9\% \times 31/365 =$	82 172,23
• 1/11/2024 to 30/11/2024: $R10\,750\,000 \times 9\% \times 30/365 =$	79 520,55
• 1/12/2024 to 31/12/2024: $R10\,750\,000 \times 8,75\% \times 31/365 =$	79 888,70
• 1/1/2025 to 31/1/2025: $R6\,250\,000 \times 8,75\% \times 31/365 =$	46 446,92
• 1/2/2025 to 28/2/2025: $R6\,250\,000 \times 8,5\% \times 28/365 =$	40 753,42

The total interest forgone was R600 579,76 and is deemed to be a donation by F on 28 February 2025.

Section 7C(3A)⁴⁶ provides that the amount of the deemed donation under section 7C(3), if it pertains to a foreign-denominated loan, must be converted to South African Rand using the average exchange rate for the year of assessment⁴⁷ in which the amount is treated as a donation.⁴⁸

A person making a donation (the donor) is liable for donations tax under section 54. Donations tax is payable at a rate of 20% if the donation does not exceed R30 million and 25% if it exceeds that amount.⁴⁹ Payment of donations tax must be made by the end of the month following the month during which the donation was made or such longer period as SARS may permit.⁵⁰ Payment of donations tax can only be made via

⁴⁶ Section 3(1)(a) of the Taxation Laws Amendment Act 17 of 2023 inserted section 7C(3A).

⁴⁷ See Table A "Average Exchange Rates for a Year of Assessment".

⁴⁸ Section 7C(3A) was inserted by section 3(2) of the Taxation Laws Amendment Act 17 of 2023 with effect from 1 January 2024 and applicable in respect of years of assessment commencing on or after that date.

⁴⁹ Section 64(1)(a).

⁵⁰ Section 60(1).

eFiling by 31 March. If the donor fails to pay the donations tax, both the donor and the donee are jointly and severally liable for the tax.⁵¹

The Act provides a R100 000 annual donation tax exemption for donations made by a person.⁵² Consequently, if the taxpayer has not utilised the annual donations tax exemption, it can be applied to reduce the amount of deemed donations under section 7C(3).

After making a donation, a donation tax declaration form (IT144) must be submitted to SARS. Proof of payment of the donations tax must accompany the form upon submission. The IT144 can be submitted to the nearest SARS contact centre along with proof of payment. Alternatively, it can be submitted via the email address **lbcenquiries@sars.gov.za** for Large Business clients or **hnwqueries@sars.gov.za** for high net worth (HNW) clients. For clients who are not large businesses, the IT144 and any supporting documents can be sent to **contactus@sars.gov.za** for taxpayers or **PCC@sars.gov.za** for Tax Practitioners. For more information, see the **SARS website**.⁵³

Example 10 – Interest-free loan made by a person to a company

Facts:

Person H is a beneficiary of the K Trust, which holds 25% of the equity shares in Company L. H made a loan of R500 000 on 1 January 2024. Company L's year of assessment ends on the last day of February. The loan was made on an interest-free basis. The official rate of interest for January and February 2024 was 9,25%. The full loan amount was outstanding on 29 February 2024. H made other donations during the 2024 year of assessment and utilised the R100 000 exemption for these donations.

Result:

The loan made by H to Company L falls within the scope of section 7C(1). Section 7C(3) applies to the loan since no interest was payable. H is deemed to have made a donation for donations tax purposes of $R500\,000 \times 9,25\% \times 60/365 = R7\,602,74$. Donations tax of R1 520,55 is payable on this amount ($R7\,602,74 \times 20\%$).

H should declare and pay the donations tax by 31 March 2024 (by the end of the month following the donation, which is deemed to have occurred on 29 February 2024, the last day of Company L's year of assessment).

⁵¹ Section 59.

⁵² Section 56(2)(b). Donations tax shall not be payable in respect of so much of the sum of the values of all property disposed of under donations by a donor who is a natural person as does not during any year of assessment exceed R100 000.

⁵³ www.sars.gov.za/types-of-tax/donations-tax/

Example 11 – A portion of low-Interest loan acquired/transferred at a rate less than the official interest rate

Facts:

Person M is a resident and a beneficiary of the NN Trust, a foreign trust established in the United States of America. M advanced a loan of USD100 000 to the trust on 1 March 2023. On 1 September 2023, M sold 50% of the loan account to a sibling, P, for USD50 000. The loan must be repaid by the NN Trust to M at an interest rate of 3% per year. The official rate of interest was 9,25% at the end of the 2024 year of assessment. The average exchange rate for the 2024 year of assessment was R18,68 to the USD. Both M and P made other donations and utilised the R100 000 exemption against those donations.

Result:

M is considered a connected person to the NN Trust under paragraph (b)(i) of the definition of “connected person”. Therefore, the loan falls under the scope of section 7C(1). P is a connected person to M under paragraph (a)(i) of the definition of “connected person” and is thus also a connected person to the NN Trust (paragraph (b)(ii) of the definition of “connected person”). According to section 7C(1A), P is regarded as having made a loan of USD50 000 to the NN Trust on 1 September 2023, and the provisions of section 7C will apply to P regarding this amount.

The is calculated as the interest forgone during the year of assessment under section 7C(3) in conjunction with section 7C(3A). M's deemed donation in USD must be converted to ZAR at the average exchange rate of R18,68 for the 2024 year of assessment.

The deemed donation consequences for M for the 2024 year of assessment are calculated as follows:

	R
Interest forgone from 1 March to 31 August 2023:	
$(\text{USD}100\,000 \times 18,68) \times (9,25\% - 3\%) \times 6/12 =$	58 375
Interest forgone from 1 September 2023 to 29 February 2024:	
$(\text{USD}50\,000 \times 18,68) \times (9,25\% - 3\%) \times 6/12 =$	<u>29 187,50</u>
Total	<u>87 562,50</u>
Donations tax @ 20% =	17 512,50

M should submit an IT144 declaration and pay R17 512,50 to SARS by 31 March 2024.

The deemed donation consequences for P for the 2024 year of assessment are calculated as follows:

	R
$(\text{USD}50\,000 \times 18,68) \times (9,25\% - 3\%) \times 6/12 =$	29 187,50
Donations tax @ 20% =	5 837,50

P should submit an IT144 declaration and make payment of R5 837,50 to SARS by 31 March 2024.

Example 12 – Trust – Deemed loan and deemed interest on preference shares acquired

Facts:

Q, a South African resident, is a beneficiary of the RR Trust, a local trust. Q and the RR Trust hold 11% and 10%, respectively, of the equity share capital of Company S. On 1 March 2023, Q subscribed for 100 cumulative preference shares in Company S at R6 000 per share, which confers a preferential right in respect of dividends equal to 5%. The financial year of Company S ends on the last day of February. The official rate of interest remained unchanged throughout the 2024 year of assessment at 9,25%.

Result:

Q and the RR Trust are connected persons under paragraphs (a)(ii) and (b)(i) of the definition of “connected person”. Since Q and the RR Trust subscribed for preference shares in Company S in which they together hold more than 20% (11% + 10% = 21%) of the equity shares, section 7C(1B) applies.

Consequently, the proceeds of R600 000 (100 shares × R6 000) from Q’s subscription for the preference shares are deemed to be a loan for the purposes of section 7(3).

Since the holders of the cumulative preference shares are guaranteed to receive the preference dividend, a preference dividend of R30 000 (R600 000 × 5%) has accrued to Q for the year of assessment ending 29 February 2024. This amount is deemed to be interest on the deemed loan.

Interest at the official rate from 1 March 2023 to 29 February 2024 was 9,25% and therefore interest on R600 000 is R55 500. The difference between this amount and the preference dividend of R30 000, namely R25 500 is deemed to be a donation under section 7C(3). Donations tax of R5 100 (R25 500 × 20%) is payable by Q by 31 March 2024.

5.6 Multiple connected persons [section 7C(4)]

Section 7C(4) applies if a loan, advance, or credit is provided by a company to a trust or another company at the instance of more than one person. These persons must be connected persons in relation to that company as referred to in section 7C(1)(b). Each of these persons is treated as having donated to that trust or company the portion of the amount that corresponds to the ratio of the equity shares or voting rights in that company held by that person during that year of assessment, compared to the total equity shares or voting rights held by those persons in that company during that year of assessment.

Example 13 – Company advanced a loan to a trust at the instance of multiple persons

Facts:

Person AB and AB's three adult children, X, Y, and Z, are the shareholders of DEF (Pty) Ltd, holding 40%, 20%, 20%, and 20%, respectively, of the equity shares. At the instance of AB, X, Y, and Z, DEF (Pty) Ltd made a loan of R2 million to the CC Trust on 1 March 2023. AB's three children are the beneficiaries of the CC Trust. The CC Trust must repay this loan at an interest rate of 5%. The official interest rate throughout the 2024 year of assessment was 9,25%. Assume that AB, X, Y, and Z made other donations each of more than R100 000 during the 2024 year of assessment.

Result:

AB, X, Y, and Z are connected persons under paragraph (a)(i) of the definition of "connected person." AB, X, Y, and Z collectively hold 100% of the equity shares in DEF (Pty) Ltd, making them connected persons to DEF (Pty) Ltd under paragraph (d)(iv) of the definition of "connected person". X, Y, and Z are beneficiaries of the CC Trust and therefore connected persons in relation to the Trust (paragraph (b)(i) of the definition of "connected person"). The loan made by DEF (Pty) Ltd falls within the ambit of section 7C(1)(i)(bb).

AB, X, Y, and Z will be deemed to have made a donation to the CC Trust on 29 February 2024 equal to the portion of the equity shares held by them in DEF (Pty) Ltd applied to the loan amount of R2 million.

The donation is calculated as interest forgone during the 2024 year of assessment as follows for each individual:

Person AB:

$R2 \text{ million} \times 40\% \times (9,25\% - 5\%) = R34 \text{ 000}$. Since AB has already utilised the R100 000 donations tax exemption, donations tax of R6 800 ($20\% \times R34 \text{ 000}$) is payable by 31 March 2024.

Persons X, Y and Z:

X, Y, and Z will each be deemed to have donated to the CC Trust on 29 February 2024, 20% of the loan amount of R2 million. The amount of the donation will be calculated as follows: $R2 \text{ million} \times 20\% \times (9,25\% - 5\%) = R17 \text{ 000}$. Each individual must pay donations tax of $R17 \text{ 000} \times 20\% = R3 \text{ 400}$ by 31 March 2024.

5.7 Exclusions from application of section 7C [section 7C(5)]

Section 7C(5) provides that section 7C does not apply to any amount owed by a trust or company during any year of assessment in respect of a loan, advance, or credit referred to in subsection (1) under the circumstances listed below.

Public benefit organisation or small business funding entity

The trust or company is a PBO approved by the Commissioner under section 30(3) or a small business funding entity approved under section 30C.⁵⁴

A “public benefit organisation” is defined in section 30(1) as any organisation –

- that is –
 - a “non-profit company” as defined in section 1 of the Companies Act, or a trust, or an association of persons that has been incorporated, formed, or established in South Africa; or
 - any branch within South Africa of any company, association, or trust incorporated, formed, or established in any country other than South Africa that is exempt from tax on income in that other country;
- of which the sole or principal object is carrying on one or more public benefit activities listed in Part I of the Ninth Schedule, provided that –
 - all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;
 - no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, other than by way of reasonable remuneration payable to that fiduciary or employee; and
- if each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).

The term “small business funding entity” is defined in section 1(1) as any entity approved by the Commissioner under section 30C. Section 30C sets out the prescribed requirements an entity must comply with to qualify for and retain approval as a small business funding entity so as to enjoy partial taxation. Section 10(1)(cQ) provides for the exemption from income tax of certain receipts and accruals of small business funding entities and the taxation of receipts and accruals falling outside the permissible business undertakings or trading activities provided in that section. An entity will enjoy preferential tax treatment under section 10(1)(cQ) only after it has been granted approval by the Commissioner under section 30C(1) and continues to comply with the relevant prescribed requirements as set out in the Act.

⁵⁴ Section 7C(5)(a). See the *Tax Exemption Guide for Public Benefit Organisations* and the *Tax Exemption Guide to Small Business Funding Entities* for a detailed consideration of public benefit organisations and small business funding entities.

Vesting interest in the receipts or accruals and assets of the trust

A loan, advance, or credit provided to that trust by a person is by reason of or in return for a vested interest held by that person in the receipts, accruals, and assets of such a trust.⁵⁵ To qualify for this exclusion, all of the following requirements must be met:

- Beneficiaries of that trust must hold, in aggregate, a vested interest in all receipts, accruals, and assets of that trust.⁵⁶ All beneficiaries must hold a vested interest in the trust.
- The deed of the trust must not permit any beneficiary of the trust to hold or acquire an interest in the trust, except the vested interest in the receipts, accruals, and assets of that trust.⁵⁷
- Each beneficiary's interest in the trust is determined solely on and in proportion to the assets, services, or funding contributed by the beneficiary to that trust.⁵⁸
- No person may have a discretionary power to vary or revoke those vested interests.⁵⁹

Special trust

A loan, advance, or credit to a "special trust" as defined in paragraph (a) of the definition of "special trust" in section 1(1).⁶⁰ A "special trust" is defined as a trust created –

- solely for the benefit of one or more persons who are persons with a "disability" as defined in section 6B (1) if such disability incapacitates such person or persons from earning sufficient income for their maintenance or from managing their own financial affairs: Provided that –
 - such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after the date on which all such persons are deceased; and
 - if such trust is created for the benefit of more than one person, all persons for whose benefit the trust is created must be relatives in relation to each other; or
- in accordance with the will and testament of a deceased individual, solely for the benefit of beneficiaries who are living relatives of that individual as of the date of death (including any beneficiary who has been conceived but not yet born on that date), if the youngest of these beneficiaries is under 18 years old on the last day of the year of assessment for that trust.

⁵⁵ Section 7C(5)(a). See the *Tax Exemption Guide for Public Benefit Organisations* and the *Tax Exemption Guide to Small Business Funding Entities* for a detailed consideration of public benefit organisations and small business funding entities.

⁵⁶ Section 7C(5)(b)(i).

⁵⁷ Section 7C(5)(b)(ii).

⁵⁸ Section 7C(5)(b)(iii).

⁵⁹ Section 7C(5)(b)(iv).

⁶⁰ Section 7C(5)(c). The term "special trust" is defined in section 1(1). For a detailed consideration on special trusts, see *Guide on the Taxation of Special Trusts*.

Acquisition or improvement of primary residence

A loan utilised by the trust or company, either wholly or partially, to fund the acquisition or improvement of an asset, where the person or their spouse uses that asset as a primary residence, as outlined in paragraph (b) of the definition of “primary residence” in paragraph 44 of the Eighth Schedule. It is also necessary that the primary residence and the land on which it is situated do not exceed two hectares (including unconsolidated adjacent land) and are primarily used for domestic or private purposes throughout the year of assessment during which the trust or company held that asset.⁶¹ The amount owed must correspond to the portion of the loan, advance, or credit that funded the acquisition or improvement of that asset.

The term “primary residence” is defined in paragraph 44 of the Eighth Schedule. Under paragraph (b) of this definition, “primary residence” means a residence where the person, a beneficiary of that special trust, or the spouse of either –

- ordinarily resides or resided in as his or her main residence; and
- uses or used mainly for domestic purposes.

For further details on “primary residence”, see the *Comprehensive Guide to Capital Gains Tax*.

If the loan, advance, or credit is partly used to fund the acquisition or improvement of a primary residence as described above, only that portion will be exempt from the provisions of section 7C.

Therefore, for a loan, advance, or credit to be exempt from the provisions of section 7C, the primary residence and the land on which it is situated must be primarily used for domestic or private purposes. The assessment of whether the primary residence and the land are mainly used for domestic or private purposes is a matter of fact. The term “mainly” is not defined in the Act. The Cambridge English Dictionary defines “mainly” as –⁶²

“usually, or to a large degree”.

In *SBI v Lourens Erasmus (Edms) Bpk*,⁶³ Botha JA determined that, in the context of an exemption for the previously applicable undistributed profits tax, the term “mainly” prescribed a purely quantitative standard of more than 50%.

In the *ITC 1897*,⁶⁴ Boqwana J, held that the normal usage of the word “mainly” implies a quantitative measure of more than 50%.

⁶¹ Section 7C(5)(d). The inclusion of the reference to an “improvement” as well as the requirement relating to the size of primary residence and the land, were inserted by section 3(1)(b) of the Taxation Laws Amendment Act, 2023 and come into operation on 1 January 2024 and applies in respect of the years commencing on or after that date.

⁶² <https://dictionary.cambridge.org/dictionary/english/mainly> [Accessed 26 November 2025].

⁶³ 28 SATC 233.

⁶⁴ 79 SATC 224.

In the context of section 7C(5), “mainly” is similarly interpreted to mean “more than 50%.” Consequently, more than 50% of the primary residence and unconsolidated adjacent land must be used for domestic or private purposes throughout the year of assessment for it to qualify for the exclusion.

Example 14 – Loan granted by a person to a trust

Facts:

D is the sole beneficiary of the EF Family Trust. On 1 March 2023, D made an interest-free loan of R5 million to the EF Trust. The trust used R3 million of these funds to acquire a house where D and D’s spouse have resided as their primary residence ever since. The remaining R2 million was allocated to the acquisition of other assets. The official rate of interest for the 2024 year of assessment was 9,25%. During this year, D made additional donations and utilised the R100 000 donations tax exemption for these contributions.

Result:

D is considered a connected person to the EF Family Trust (as per paragraph (b) of the definition of “connected person”). The loan falls within the scope of section 7C(1).

Section 7C(5)(d) applies since the EF Family Trust utilised part of the loan for the acquisition of an asset, which was used by the sole beneficiary, D, and D’s spouse as a primary residence, as outlined in paragraph (b) of the definition of “primary residence” in paragraph 44 of the Eighth Schedule throughout the year of assessment during which the EF Family Trust held that asset. Therefore, the portion of the loan, specifically R3 million, used to acquire the house is not subject to sections 7(2) and 7(3).

The remaining R2 million will be subject to section 7(3). Since the loan was interest-free while the official interest rate was 9.25%, D will incur a donations tax of R37 000 ($R2 \text{ million} \times 9,25\% \times 20\%$).

Note: The exemption applies only to the portion of the loan used by the trust to acquire the building designated as the primary residence. Other expenses, such as rates and taxes, utilities, general maintenance, insurance, body corporate fees, and other management levies, do not qualify for the exemption.

Affected transaction under section 31

A loan, advance, or credit that constitutes an “affected transaction” as defined in section 31(1), which refers to a loan to a non-resident trust by a South African person or company, is subject to the provisions of section 31.⁶⁵

⁶⁵ Section 7C(5)(e).

Broadly, section 31 governs the taxation of international transactions between connected persons not conducted at arm's length if any party to that transaction derives a tax benefit from it. Section 31 requires taxpayers to –

- assess whether the actual terms and conditions of any transaction, operation, scheme, agreement, or understanding that meets paragraph (a) of the definition of “affected transaction” differ from the terms and conditions that would have existed if the parties were independent entities dealing at arm's length; and
- calculate their taxable income based on the arm's length terms and conditions of the affected transaction if a difference results in a tax benefit for one of the parties involved.

Section 7C(5)(e) explicitly excludes a loan, advance, or credit that constitutes an “affected transaction” as defined in section 31(1), to the extent of an adjustment made under section 31(2).⁶⁶ Thus, any loan arrangement that meets the criteria of an “affected transaction” as defined in section 31 will be addressed under section 31.

If section 31 is applicable to a transaction, the donations tax provisions in section 31(3) will apply.⁶⁷ Interest deemed to be earned under section 31 is considered a donation by the lender to the trust for that year of assessment. However, if section 31 does not apply, section 7C will treat that amount as a donation.⁶⁸

Sharia-compliant financing arrangement

The loan, advance, or credit was provided to the trust or company under an arrangement that would qualify as a sharia-compliant financing arrangement, as outlined in section 24JA, had the trust or company been a “bank” as defined in that section.⁶⁹

The term “sharia arrangement” is defined in section 24JA(1) as an arrangement that is –

- open for participation by members of the general public; and
- presented as compliant with sharia law when inviting the general public to participate.

Typically, these arrangements do not involve interest.

⁶⁶ Taxation Laws Amendment Act, 2024.

⁶⁷ The donations tax consequences under section 31(1) apply only to a resident person other than a company.

⁶⁸ See *Explanatory Memorandum on the Revenue Laws Amendment Bill, 2005*.

⁶⁹ Section 7C(5)(f).

A deemed dividend under section 64E(4)

The loan, advance, or credit is subject to the anti-value extraction provisions of section 64E(4).⁷⁰ Under section 64E(4)(a), if during any year of assessment, any amount is owed to a company by –

- a person who is –
 - not a company;
 - a resident; and
 - a connected person in relation to that company; or
- a person who is –
 - not a company;
 - a resident; and
 - a connected person in relation to a person contemplated in subparagraph (i),

in respect of a debt, that company must, for the purposes of this Part, be deemed to have paid a dividend if that debt arises from any share held in that company by a person contemplated in subparagraph (i).

If the above applies, the amount of the deemed dividend under section 64E(4)(b) must –

- be considered as a distribution of an asset *in specie*; and
- for the purposes of subsection (1), be deemed equal to the greater of –
 - the market-related interest on that debt, less the amount of interest payable to the company for that year of assessment; or
 - nil.

If a company is deemed to have paid a dividend under section 64E(4)(a), that dividend must be considered to have been paid on the last day of that year of assessment.

For the purposes of section 64E(4), “market-related interest” refers to the interest amount that would be payable to a company on the outstanding debt during a year of assessment, assuming the debt had been owed at the official rate of interest [section 64E(4)(d)].

Section 64E(4) does not apply to the extent that the amount owed to a company regarding a debt under section 64E(4)(a) is deemed a dividend that is subject to secondary tax on companies [section 64E(4)(e)].

For more information on anti-value extraction provisions, see the *Comprehensive Guide to Dividends Tax*.

⁷⁰ Section 7C(5)(g).

Employee share incentive scheme

The trust must be established solely to implement an employee share incentive scheme, under which –

- a loan, advance, or credit is provided by a company to that trust,⁷¹ or for the purpose of funding the acquisition of shares by that trust in the company or any company within the same group of companies (a “scheme company”).⁷²

The term “group of companies” is defined in section 1(1) as two or more companies in which one company (the “controlling group company”) directly or indirectly holds shares in at least one other company (the “controlled group company”) to the extent that –

- at least 70% of the equity shares in each controlled group company are directly held by the controlling group company, one or more other controlled group companies, or any combination thereof; and
 - the controlling group company directly holds at least 70% of the equity shares in at least one controlled group company.
- “equity instruments”, as defined in section 8C, that relate to or derive their value from shares in a scheme company may be offered by that trust to a person solely by virtue of their status as a full-time employee⁷³ or a director of that company.⁷⁴ The term “equity instrument” is defined in section 8C(7) as a share or a member’s interest in a company and includes –
 - an option to acquire such a share, part of a share, or member’s interest;
 - any financial instrument convertible to a share or member’s interest; and
 - any contractual right or obligation whose value is determined directly or indirectly with reference to a share or member’s interest.
 - connected persons of the company (that is, persons holding 20% or more of the equity shares or voting rights of the company, as contemplated in paragraph (d)(iv) of the definition of a “connected person”) are not entitled to participate in the scheme.⁷⁵

6. Conclusion

Section 7C applies to any loan, advance, or credit that a person, or at the request of a person, a company to which that person is a connected person under paragraph (d)(iv) of the definition of connected person, directly or indirectly provides to certain connected trusts or companies.

⁷¹ Section 7C(5)(h)(i)(aa).

⁷² Section 7C(5)(h)(i)(bb).

⁷³ Section 7C(5)(h)(ii)(aa).

⁷⁴ Section 7C(5)(h)(ii)(bb).

⁷⁵ Section 7C(5)(h)(iii).

If the loan, advance, or credit was provided under these prescribed circumstances interest-free or at a low interest rate relative to the official rate of interest, donations tax consequences are triggered based on the daily calculation of simple interest. This calculation is performed for each year of assessment of the trust or company based on the outstanding amount of the loan, advance, or credit during that year.

Certain amounts owed by a trust or company in respect of a loan, advance, or credit are not subject to section 7C.

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Annexure A – The law

Section 7C

7C Loan granted to trust by connected person —(1) This section applies in respect of any loan that —

- (a) a natural person; or
- (b) at the instance of a natural person, a company in relation to which that person is a connected person in terms of paragraph (d) (iv) of the definition of connected person,

directly or indirectly provides to—

- (i) a trust in relation to which —

- (aa) that person or company; or

- (bb) any person that is a connected person in relation to the person or company referred to in item (aa),

is a connected person; or

- (ii) a company if at least 20 per cent of—

- (aa) the equity shares in that company are held, directly or indirectly; or

- (bb) the voting rights in that company can be exercised,

by a trust referred to in paragraph (i) whether alone or together with any person who is a beneficiary of that trust or the spouse of a beneficiary of that trust or any person related to that beneficiary or that spouse within the second degree of consanguinity.

(1A) If person acquires a claim to an amount owing by a trust or a company in respect of a loan referred to in subsection (1), that person must for purposes of this section be treated as having provided a loan to that trust or company—

- (a) on the date on which that person acquired that claim; or

- (b) if that person was not a connected person on that date in relation to—

- (i) that trust; or

- (ii) the person who provided that loan to that trust or company, on the date on which that person became a connected person in relation to that trust or person, that is equal to the amount of the claim so acquired.

(1B) Where—

- (a) a natural person; or

- (b) at the instance of a natural person, a company that is a connected person in relation to that natural person in terms of paragraph (d) (iv) of the definition of “connected person”, subscribes for a preference share in a company in which 20 per cent or more of the equity shares are held (whether directly or indirectly) or the voting rights can be exercised by a trust that is a connected person in relation to that natural person or to that company, whether alone or together with any person who is a beneficiary of that trust—

- (i) consideration received by or accrued to that company for the issue of that preference share shall be deemed to be a loan for the purposes of subsection (3); and

- (ii) any dividend or foreign dividend accrued in respect of that preference share shall be deemed to be interest in respect of the loan contemplated in paragraph (i);

(2) No deduction, loss, allowance or capital loss may be claimed in respect of—

- (a) a disposal, including by way of a reduction or waiver; or
- (b) the failure, wholly or partly, of a claim for the payment, of any amount owing in respect of a loan referred to in subsection (1).

(3) If a trust or company incurs—

- (a) no interest in respect of a loan referred to in subsection (1), (1A) or (1B); or
- (b) interest at a rate lower than the official rate of interest, an amount equal to the difference between the amount incurred by that trust or company during a year of assessment as interest in respect of that loan and the amount that would have been incurred by that trust or company at the official rate of interest must, for purposes of Part V of Chapter II, be treated as a donation made to that trust or company by the person referred to in subsection (1)(a), (1A) or (1B) on the last day of that year of assessment of that trust or company.

(3A) Where the amount to be treated as a donation in terms of subsection (3) is denominated in any currency other than that of the Republic, the person referred to in subsection (1), (1A) or (1B) must, for purposes of that subsection, translate that amount to the currency of the Republic by applying the average exchange rate for the year of assessment in respect of which that amount is treated as a donation.

(4) If a loan was provided by a company to a trust or another company at the instance of more than one person that is a connected person in relation to that company as referred to in paragraph (b) of subsection (1), each of those persons must be treated as having donated, to that trust or company, the part of that amount that bears to that amount the same ratio as the equity shares or voting rights in that company that were held by that person during that year of assessment bears to the equity shares or voting rights in that company held in aggregate by those persons during that year of assessment.

(5) Subsections (2) and (3) do not apply in respect of any amount owing by a trust or company during a year of assessment in respect of a loan referred to in subsection (1) if—

- (a) that trust or company is a public benefit organisation approved by the Commissioner in terms of section 30(3) or a small business funding entity approved by the Commissioner in terms of section 30C.
- (b) that loan was provided to that trust by a person by reason of or in return for a vested interest held by that person in the receipts and accruals and assets of that trust and—
 - (i) the beneficiaries of that trust hold, in aggregate, a vested interest in all the receipts and accruals and assets of that trust;
 - (ii) no beneficiary of that trust can, in terms of the trust deed governing that trust, hold or acquire an interest in that trust other than a vested interest in the receipts and accruals and assets of that trust;
 - (iii) the vested interest of each beneficiary of that trust is determined solely with reference and in proportion to the assets, services or funding contributed by that beneficiary to that trust; and
 - (iv) none of the vested interests held by the beneficiaries of that trust is subject to a discretionary power conferred on any person in terms of which that interest can be varied or revoked;
- (c) that trust is a special trust as defined in paragraph (a) of the definition of a special trust;

- (d) that trust or company used that loan wholly or partly for purposes of funding the acquisition of an asset and—
 - (i) the natural person referred to in subsection (1)(a) or (b) or the spouse of that person used that asset as a primary residence as contemplated in paragraph (b) of the definition of “primary residence” in paragraph 44 of the Eighth Schedule throughout the period during that year of assessment during which that trust, or company held that asset; and
 - (ii) amount owed relates to the part of that loan that funded the acquisition of that asset;
- (e) that loan constitutes an affected transaction as defined in section 31 (1) to the extent of an adjustment made in terms of section 31(2);
- (f) that loan was provided to that trust or company in terms of an arrangement that would have qualified as a sharia compliant financing arrangement as contemplated in section 24JA, had that trust or company been a bank as defined in that section;
- (g) that loan, or credit is subject to the provisions of section 64E(4); or (h) that trust was created solely for purposes of giving effect to an employee share incentive scheme in terms of which—
 - (i) that loan, or credit was provided—
 - (aa) by a company to that trust; or
 - (bb) for purposes of funding the acquisition, by that trust, of shares in that company or in any other company forming part of the same group of companies as that company (hereinafter referred to as a “scheme company”);
 - (ii) equity instruments, as defined in section 8C, that relate to or derive their value from shares in a scheme company may be offered by that trust to a person solely by virtue of that person—
 - (aa) being in employment on a full-time basis with; or
 - (bb) holding the office of director of a scheme company; and
 - (iii) a person that is a connected person in terms of paragraph (d)(iv) of the definition of connected person in relation to any scheme company is not entitled to participate in that scheme.

(6) For the purposes of this section “preference share” means a preference share as defined in section 8EA(1).

Section 31(1)

“Affected transaction” means any transaction, operation, scheme, agreement or understanding where—

- (a) that transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected between or for the benefit of either or both —
 - (i) (aa) a person that is a resident; and
 - (bb) any other person that is not a resident;
 - (ii) (aa) a person that is not a resident; and
 - (bb) any other person that is not a resident that has a permanent establishment in the Republic to which the transaction, operation, scheme, agreement or understanding relates;
 - (iii) (aa) a person that is a resident; and
 - (bb) any other person that is a resident that has a permanent establishment outside the Republic to which the transaction, operation, scheme, agreement or understanding relates; or
 - (iv) (aa) a person that is not a resident; and
 - (bb) any other person that is a controlled foreign company in relation to any resident, and those persons are connected persons or associated enterprises in relation to one another; and
- (b) any term or condition of that transaction, operation, scheme, agreement or understanding is different from any term or condition that would have existed had those persons been independent persons dealing at arm's length;

Annexure B – Diagram illustrating the rule for determining persons who are related within the first, second and third degree of consanguinity

