CONCEPTS OF DONATION AND DONOR’S TAX

Nature of Donation
Donation is a gratuitous transfer of property or right motivated by the liberty of the giver (donor) in favor of the receiver (donee) who accepts it.

Generally, a donation or a gift is a voluntary transfer of property or right from one person to another for free or without any payment for the value of the property or right being transferred.

The transfer of property or rights includes not only the transfer of ownership or title but also the passage of control over the economic benefits of the property.

It is to be observed that the act of donation is perfected at the moment the donor knows the acceptance of the donee and that he deprives himself from all beneficial interest in the property transferred. Hence, the donor has no intention to once again obtain interest or control over the given property.

Kinds of Donation
There are two kinds of donations, namely:
A. Donation inter-vivos
B. Donation mortis causa

Requisites of a valid donation
For purposes of the donor’s tax, the requisites of a donation are:
1. capacity of the donor
2. donative intent
3. delivery of the subject matter of the gift
4. acceptance of the gift by the donee

All persons who may contract and dispose of their property may make a donation. The donor’s capacity shall be determined as of the time of the making of donation. Donative intent is required only in direct gift. Thus, in transfers for insufficient consideration, donative intent is not necessary.

Delivery may be actual or constructive. There is delivery if the subject matter is within the control of the donee.

The donation is perfected from the moment the donor knows of the acceptance by the donee. Perfection takes place when the acceptance by the donee is made known to the donor.

The acceptance is necessary because nobody is obliged to receive a gift against his will. And once the acceptance is made known to the donor, the will of the donor and donee concur, and the donation, as a mode of transferring ownership, becomes perfect.

That is why acceptance must be made during the lifetime of the donor and the donee. If the donor dies before he learns of the acceptance, the donation does not take effect. Hence, even if the acceptance is made during the lifetime of the donor but if is not communicated to him before his death, the donation is not perfected.

The donee must accept the donation personally, or through an authorized person with special power for the purpose, or with a general and sufficient power; otherwise, the donation shall be void.

Minors and others who cannot enter into contract may become donees but acceptance shall be done through their parents or legal representatives.

Donations made to conceived and unborn children may be accepted by those persons who would legally represent them if they were already born.

Formalities of a Donation
The formalities of a donation will depend on whether the property is movable or immovable, thus the following rules shall apply:
1. Movable-the donation of movable property may be made orally or in writing. An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.

If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing, otherwise the donation shall be void.

2. Immovable-In order that the donation of an immovable may be valid, it must be made in public instrument, specifying therein the property donated and the value of the charges which the donee must satisfy.

GROSS GIFT
The first step in the computation of the donor’s tax is the determination of the gross gift. The composition of the gross gift depends upon the kind of donor.
**Donor's Classified**

Donors are generally classified into:

a. Citizen or resident of the Philippines
b. Non-resident alien

**IP 1.** Mr. Gibb donated all his properties to his relatives in the Philippines as follows:

- Property A in Baguio to Mr. Angkin: P1,500,000
- Property B in Canada to Mr. Amin: P2,500,000
- **Total:** P4,000,000

In case Mr. Gibb is a Filipino, the gross taxable donation is P4,000,000.

However, if Mr. Gibb is non-resident alien, the gross taxable

Determine the gross gifts in the Philippines if (a) there is reciprocity, and (b) there is no reciprocity.

The gross gifts in the Philippines if there is no reciprocity is:

- Motorcycle in the Philippines: P140,000
- Shares of stock in the Philippines: P100,000
- Savings deposit in the Philippines: P60,000
- **Gross gifts in the Philippines:** P300,000

The gross gifts in the Philippines if there is reciprocity is:

- Tricycle in the Philippines: P140,000
- **Gross gifts in the Philippines:** P140,000

**Notes:**

1. Donations made by non-resident aliens are taxable only when located within the Philippines.
2. If there is reciprocity, personal intangible property located in the Philippines and donated by non-resident alien shall not be subject to donor's tax.

**IP 3:**

Mica donated the following properties on July 18, 1999:

- House and lot in the New York, U.S.A.: P1,000,000
- Land in Pasig City, Philippines: P450,000
- Car in New York: P600,000
- Jewelry in the Philippines: P400,000
- Shares of stock in Maritatas Corporation, A domestic corporation: P90,000
- A foreign corporation, 40% of business is in the Philippines: P50,000
- Shares of stock in Mortogo Corporation, A foreign corporation, operating and with Office in Makati: P550,000

**Required:** Compute the gross gift of Mica if she is a:

1. Resident citizen
2. Resident alien
3. Nonresident citizen
4. Nonresident alien (without reciprocity)
5. Nonresident alien (with reciprocity)

**Solution:**

1. Donor is resident, resident alien, or nonresident citizen
2. Donor is a nonresident alien (without reciprocity)

3. Donor is a nonresident alien (with reciprocity)

**Conjugal Donation**

Articles 98 and 125 of the Family Code state that neither spouse may alienate or encumber any common property without the consent of the other. This provision of the law means that husband and wife cannot transfer by virtue of sale or donation any conjugal or community property without consent of the other, except in cases where there is moderate donations for charity or on the occasion of family rejoicing or family distress.

In accordance with the law, spouses who make donation out of conjugal property shall be considered a separate donor of his/her interest in the conjugal property. Hence, 1/2 of the conjugal property shall be considered donation of the husband and the other half a donation of the wife.

Illustration 1. Mr. Budoy and Mrs. Casla Galante, spouses and citizens of the Philippines, donated to their legitimate daughter the following properties:

<table>
<thead>
<tr>
<th>Fair Market Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vacation house (conjugal property) in Hongkong</td>
</tr>
<tr>
<td>Car in the Philippines (conjugal property)</td>
</tr>
<tr>
<td>Jewelry (exclusive property of Mrs. Galante)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

The gross gift of the spouses shall be computed as follows:

<table>
<thead>
<tr>
<th>Mr. Galante</th>
<th>Mrs. Galante</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Galante</td>
<td>Mrs. Galante</td>
</tr>
</tbody>
</table>

Illustration 2. Mr. & Mrs. Tinitigan donated the following property to their child, Pungay:

<table>
<thead>
<tr>
<th>Required: Compute the gross gift of each</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community property</td>
</tr>
<tr>
<td>Capital property of Mr. Tinitigan</td>
</tr>
<tr>
<td>Paraphernal property of Mrs. Tinitigan</td>
</tr>
</tbody>
</table>

Mr. Tinitigan | Mrs. Tinitigan
A paraphernal property refers to the exclusive property of the wife, while capital property refers to the exclusive property of the husband.

**Valuation of gifts made in property**

The valuation of the property donated shall be made at the time of gift. If the gift is made in property, the fair market value thereof at the time of the gift shall be considered the amount of the gift. In case of real property, the value shall be whichever is higher between:

1. The fair market value as determined by the Commissioner or;
2. The fair market value as shown in the schedule of value fixed by the provincial and city assessors.

Fair market value is defined as the price at which any seller will sell and any buyer will buy, both willingly without any force or intimidation.

In the case of stocks, bonds or other securities, the following rules shall apply:

1. If traded in the stock exchange, the fair market value shall be the mean between the highest and the lowest quoted selling prices of the securities on the valuation data.
2. If not traded in the stock exchange, the fair market value shall be the book value of the security on the valuation date or on the date nearest the valuation date.

**DEDUCTIONS FROM GROSS GIFTS**

Deductions from gross gifts are items to be subtracted from the gross value of the property donated to arrive at the value of net taxable gift. The net taxable gift is the basis in the computation of the donor’s tax.

The following items are allowed by the law to be deducted from the gross gift:

1. Dowries
2. Encumbrance assumed by the donee.
3. Diminution of gift provided by the donor
4. Donations to the national government, and the like
5. Donation to non-profit organization such as educational, charitable, religious, cultural, social welfare, accredited non-government org.,trust/philantrophic org., or research institutions.

**Dowries**

The law allowed gifts given by natural or adopting parents on account of marriage of the legitimate, recognized natural, or adopted children a deduction of 10,000 provided that the giving of the gift is made before the celebration of marriage or one year thereafter.

**Illustration**

On January 1, 199, Mr. & Mrs. Mayaman donated a house and lot, a conjugal property, at fair marker value of 620,000 to their legitimate son on account of marriage which shall be observed on January 15, 1998.

The net gift of each spouse is computed as follows:

| Mr. Yaman | Mrs. Yaman |

**Notes:**

1. In accordance with the law, spouses who make donation out of conjugal property shall be considered a separate donor of his/her interest in the conjugal property. Hence, ¼ of the conjugal property shall be considered donation of the husband and the other half a donation of the wife.
2. Accordingly, the law allows a dowry of 10,000 for each spouse.

**Illustration.**
Mr. Pundi Dona, donated the following gifts to his recognized natural daughter on account of marriage to be held on December 25, 1998

<table>
<thead>
<tr>
<th>Date of Donation</th>
<th>Donated property</th>
<th>FMV of Donation</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 1, 1998</td>
<td>Cash</td>
<td>8,000</td>
</tr>
<tr>
<td>December 25, 1998</td>
<td>Jewelry</td>
<td>110,000</td>
</tr>
<tr>
<td>June 20, 1999</td>
<td>House and Lot</td>
<td>500,000</td>
</tr>
</tbody>
</table>

The computation of the net taxable gift of Mr. Dona for 1998 would be:

Notes:
1. It is to be observed that the total dowry exemption of a parent donor should not exceed of 10,000 if two or more gifts are given to the same donee child on account of marriage.
2. A computation of donor’s tax is made for gifts given for each succeeding year

**Encumbrance Assumed by Donee**
An encumbrance is a claim or liability attached to a property. Examples of encumbrance are mortgage, security interest, costs of rights, accrued and unpaid taxes.

The law allows an encumbrance as a deduction from the gross gift if assumed by the donee.

Illustration.
Miss Tapia donated to Mr. Gomez, her boyfriend, a car amounting to 400,000. The car has an unpaid mortgage of 180,000. Mr. Gomez agreed to assume payment for the mortgage.
The net gift of Miss Tapia should be:

**Diminution of Gift provided by the Donor**
Diminution of gift refers to the decrease in the value of property donated as a result of condition made by the donor to the donee.

Illustration
Miss Rista donated 300,000 to Mr. Huthut on condition that the latter will give 60,000 to charity.

To compute net gift of Miss Rita:

**Donations to the national gov’t and the like**
The NIRC Code provides that gifts made to or for the use of the National government, or any entity created by any of its agencies which is not conducted for profit, or to any political subdivisions thereof shall be exempt from the donor’s tax.

It must be observed that the law allows the full exemption of the fair market value or amount of the gifts given to the national government or its non-profit entities.

**Donation to non-profit organizations**
Donations made to non-profit organization such as educational, charitable, religious, cultural, social welfare, accredited non-government org., trust/philanthropic org. or research institutions are allowed by law as exemption provided that not more than 30% of the said donation shall be used for administrative purposes.
**Tax Exempt Donations**

Under special laws, donations given to the following organizations are exempt from donor’s tax:

1. Ramon Magsaysay Award Foundation
2. Philippine Inventors Commission
3. Philippine-American Cultural Foundation
4. International Rice Research Institute
5. Integrated Bar of the Philippines
6. Development Academy of the Philippines
7. National Social Action Council
8. Task Force on Human Settlement
9. Aqua-culture Department of the Southeast Asian Fisheries Development Center of the Philippines

**Tax payable by Donor if Donee is a Stranger**

When the donee or beneficiary is a stranger, the tax payable by the donor shall be 30% of the net gifts.

For purpose of donor’s tax, a stranger is a person who is not a:

a. Brother, sister (whether by whole or half-blood), spouse, ancestor or lineal descendants; or
b. Relative by consanguinity in the collateral line within the fourth degree of consanguinity.

**Illustration**

Mahadera donated a brand new car to her boyfriend, Mang HUHUthot, worth 550,000 on the occasion of his birthday.

How much is the donor’s tax payable on the above donation?

<table>
<thead>
<tr>
<th>If the net gift is</th>
<th>Rates of Donor’s Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over</td>
<td>But not over</td>
</tr>
<tr>
<td>100,000</td>
<td>Exempt</td>
</tr>
<tr>
<td>100,000</td>
<td>200,000</td>
</tr>
<tr>
<td>200,000</td>
<td>500,000</td>
</tr>
<tr>
<td>500,000</td>
<td>1,000,000</td>
</tr>
<tr>
<td>1,000,000</td>
<td>3,000,000</td>
</tr>
<tr>
<td>3,000,000</td>
<td>5,000,000</td>
</tr>
<tr>
<td>5,000,000</td>
<td>10,000,000</td>
</tr>
<tr>
<td>10,000,000</td>
<td></td>
</tr>
</tbody>
</table>

**Computation of Donor’s Tax**

Presidential Decree No. 1773 simplifies the procedure of computing the donor’s tax by applying it to the total net gifts made during the year without considering the net gifts made in the previous years. In other words, all donations made separately in one calendar year should be taxed at the same rate as if they had been made at one time. Therefore, a new computation of donor’s tax is made for gifts given to each succeeding year.

The following formula should be used in computing the donor’s tax within a calendar year.

1. On the first donation:
   
   Gross gifts \[ xxx \]
   
   Less: Exemptions(deductions), if applicable \[ xxx \]
Net taxable gifts
Multiply by applicable rates
Donor’s tax due

2. On subsequent donations within the same calendar year:
Gross gifts
Less: Exemptions(deductions), if applicable
Net taxable gifts
Add: All previous net gifts during the year
Aggregate net gifts

Donor’s tax on aggregate net gifts
Less: Donor’s Tax on all previous gifts during the year
Donor’s tax due, current gift

Illustration
Mr. Santiago Baldado donated the following during 1998:

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>FMV</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 5</td>
<td>House and lot to Francis, his legitimate son on account of marriage</td>
<td>1,000,000</td>
</tr>
<tr>
<td>March 15</td>
<td>Car to Maria, his legitimate daughter on account of her birthday</td>
<td>300,000</td>
</tr>
<tr>
<td>April 30</td>
<td>Cash to Susan, his secretary, on account of her birthday. On condition that 20,000 shall be given to charity</td>
<td>50,000</td>
</tr>
<tr>
<td>May 10</td>
<td>Antique to Tokmo, his uncle, on account of gratitude</td>
<td>100,000</td>
</tr>
</tbody>
</table>

Determine the donor’s tax.