



SOUTH AFRICA



THE GLOBAL
FOOD DONATION
POLICY ATLAS

SOUTH AFRICA **RECOMMENDATIONS** FOOD DONATION LAW AND POLICY

APRIL 2021

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About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe in order to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network. To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

FLPC serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit www.chlpi.org/FLPC.



About The Global FoodBanking Network

GFN is an international non-profit organization that nourishes the world's hungry through uniting and advancing food banks in more than 40 countries. GFN focuses on combating hunger and preventing food waste by providing expertise, directing resources, sharing knowledge and developing connections that increase efficiency, ensure food safety, and help food banks reach more people facing hunger. For more information visit www.foodbanking.org.



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ABOUT THESE RECOMMENDATIONS

This document is a product of The Global Food Donation Policy Atlas project, a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). The Atlas project is an innovative partnership designed to map the laws and policies affecting food donation in countries around the world and to provide a comparative legal analysis based on these findings. For each of these countries, The Global Food Donation Policy Atlas project produces a Legal Guide to identify the laws relevant to food donation in that country. While the landscape differs across geopolitical borders, the Legal Guides recognize universal issues that impact efforts to reduce food loss and waste and increase food recovery. These issues include food safety, date labeling, liability, taxes, and government grants or funding programs.

In-country stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the content of the Legal Guide and revealed priority actions for law and policy change. Based on these findings, FLPC has developed specific recommendations for each country. These recommendations are intended to serve as a companion to the Legal Guides, though both documents may stand alone. The purpose of these recommendations is to highlight select actions for improving upon laws, policies, and programs relevant to food loss, waste, and donation.

This document sets forth recommendations focused on South Africa, where an estimated 10 million tons of food goes to waste annually,¹ and approximately 20% of households live below the “food poverty line.”² The discussion below provides a brief overview of the legal issues most pertinent to food donation, which are explained in more detail in the South Africa Legal Guide. The recommendations included in this report are not exhaustive, but offer select best practices and policy solutions to reduce food loss and waste and combat food insecurity through stronger food donation laws and policies in South Africa.



SUMMARY OF RECOMMENDATIONS

The recommendations contained in this document provide a starting point for stakeholders in South Africa to strengthen the legal and policy framework relevant to food donation. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as “food recovery organizations”), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste.

To ensure that food is donated safely and does not pose risks to recipients and to provide clarity to encourage food donors, the government should:

- Amend South Africa’s Foodstuffs, Cosmetics, and Disinfectants Act (FCDA) to feature a donation-specific chapter.
- Draft regulations related to the FCDA that elaborate on food safety for donations.
- Produce and disseminate clarifying guidance on food safety requirements relevant to donation.

To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption and donation, the government should:

- Amend the Regulations Relating to the Labeling and Advertising of Foodstuffs to provide for a quality-based and safety-based food label only, consistent with a dual date labeling scheme.
- Amend the Regulations Relating to the Labeling and Advertising of Foodstuffs to explicitly permit food donation after the quality-based date (i.e., the “date of minimum durability”).
- Promote consumer education and awareness on the meaning of date labels.

To ensure that liability concerns related to donating food do not deter potential donors, the government should:

- Enact national legislation that establishes clear and comprehensive liability protection for food donors and food recovery organizations.
- Produce and disseminate clarifying guidance on whether the Consumer Protection Act applies to free food donations.

To ensure businesses (both donors and distributors) receive proper tax incentives and sufficient information to participate in food donation, the government should:

- Exempt free food donation from the activities for which the value-added tax credit must be reimbursed.
- Provide an enhanced benefit for food donation or tiered tax benefits consistent with the food utilization hierarchy in the South Africa Food Loss and Waste Voluntary Agreement.
- Offer tax credits for food donations made to South African food banks and other intermediaries receiving food donations.
- Provide an increased tax deduction for activities associated with the storage, transportation, and delivery of donated food.

To ensure that food donors and food recovery organizations are sufficiently incentivized and know how to engage in food donation, the government should:

- Further expand government grant opportunities for food donation infrastructure.

INTRODUCTION

Widespread economic inequality in South Africa has left far too many people without sufficient access to nutritious food and other basic necessities. While the wealthiest 10% of the population owns approximately 70% of the nation's assets,³ nearly half of all adults (49.2%) live in poverty.⁴ Recognizing that households faced with poverty also face the burden of inadequate access to food,⁵ South Africa established a distinct "food poverty line," the level below which an individual cannot afford a safe and nutritious diet.⁶ From 2014 to 2015, 20.6% of adults lived below the food poverty line.⁷ In 2020 the food poverty line was set at R585 (equivalent to US\$38) per person per month.⁸ While the most recent hunger statistics show a decrease in hunger from 29.3% in 2002 to 11.3% in 2018,⁹ the COVID-19 pandemic may have negatively impacted this trend and exacerbated food insecurity.¹⁰ At the height of the pandemic, about 47% of adults reported having inadequate access to food, mainly due to loss of household income.¹¹

Prior to the pandemic, the South African government demonstrated a commitment to reducing hunger and food security and promoting more sustainable, less wasteful food systems. The National Policy on Food and Nutrition Security for South Africa,¹² for example, recognizes food waste as one of the greatest challenges to food availability.¹³ Evidence suggests that the country wastes approximately 10 million tons of food,¹⁴ or about a third of the food produced each year.¹⁵ Despite the potential for surplus food to help alleviate widespread hunger and food insecurity, the country lacks comprehensive legislation to prevent food waste or promote greater recovery and donation to those who need it most.¹⁶

IN 2020 THE DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION, THE DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES, AND THE CONSUMER GOODS COUNCIL OF SOUTH AFRICA DEVELOPED A FOOD LOSS AND WASTE VOLUNTARY AGREEMENT. THIS PUBLIC-PRIVATE INITIATIVE ENCOURAGES A MORE EFFICIENT AND EFFECTIVE REDUCTION IN FOOD WASTE.

Even without national legislation to prevent food loss and waste or promote food donation, the government has established voluntary partnerships and initiatives to further these goals. In 2020 the Department of Trade, Industry and Competition (DTIC), the Department of Environment, Forestry and Fisheries (DEFF), and the Consumer Goods Council of South Africa (CGCSA) developed a Food Loss And Waste Voluntary Agreement.¹⁷ This public-private initiative encourages a more efficient and effective reduction in food waste.¹⁸ Implementing the Voluntary Agreement will require the active involvement of private-sector food system actors, including FoodForward South Africa (FFSA)¹⁹ and other organizations that play a significant role in promoting food recovery and donation. While the Voluntary Agreement is still in the early stages of implementation at the time of this writing, it signifies momentum for national solutions to food loss, waste, and hunger.

Such solutions may involve adopting new legal or policy frameworks and amending those that already exist. Thus, as South Africa seeks to reduce food loss and waste and mitigate food insecurity, it is critical that various stakeholders, including the private sector and nonprofit organizations, recognize and understand the laws that currently apply to food donation. The following sections briefly summarize some of the most common legal issues relevant to food donation, as identified and described in more detail in the Legal Guide, and offer policy recommendations to address these challenges.

LEGAL CHALLENGES AND POLICY RECOMMENDATIONS

Food Safety for Donations

Issue Overview

A key barrier to food donation in many countries is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food as opposed to purchased food as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills.

In South Africa most food safety requirements are set forth in the Foodstuffs, Cosmetics, and Disinfectants Act (FCDA) and its accompanying regulations.²⁰ The FCDA prohibits the sale of food containing any prohibited substance that is contaminated, impure, decayed, or deemed harmful to human health.²¹ It defines “sale” broadly to include the conveyance or disposal of food to any person “whether for consideration or otherwise.”²² This broad definition of sale suggests that the FCDA would indeed apply to donated food because the Act applies even when there is no payment for foodstuffs. However, the FCDA does not explicitly reference food donation or feature a donation-specific provision or chapter.

The FCDA’s regulations also fail to elaborate on the food safety requirements that apply to donated food. The FCDA gives the Minister of Health the power to develop regulations that elaborate and further explain the provisions of the Act to facilitate its effective implementation.²³ Pursuant to this delegated authority, the Department of Health (DOH) promulgated Regulations Governing General Hygiene Requirements for Food Premises, the Transport of Food and Related Matters (No. R. 638 of 2018), which set forth standards governing general hygiene requirements for food premises and the transport of food and give power to local authorities to inspect premises where food is handled.²⁴ Like the FCDA, these Regulations apply broadly so that donated food falls within the scope of application. However, also like the FCDA, these Regulations do not explicitly reference food donation or offer clear guidance to food donors or food recovery organizations on applicable food safety standards.

Understanding which food safety requirements apply to donated food is important for minimizing potential harm to donation recipients and ensuring food that is safe for consumption is donated rather than discarded. However, attempting to discern which food safety rules under the FCDA apply to food donation is a burdensome and challenging task. As a result, food donors may avoid donating surplus food, and food recovery organizations may refuse to accept food donations that may otherwise be safe.

Recommended Policy Actions

- 1. AMEND SOUTH AFRICA’S FOODSTUFFS, COSMETICS, AND DISINFECTANTS ACT (FCDA) TO FEATURE A DONATION-SPECIFIC CHAPTER.**

To eliminate uncertainty regarding which FCDA provisions apply to the safety of donated food, the FCDA should be amended to include a donation-specific chapter that clarifies which provisions are necessary to ensure the safety of donated food and which are not necessary for donation (i.e., provisions that relate to the ability to market something for sale but do not contribute to its safety). Creating donation-specific sections would significantly ease the burden on food donors and food recovery organizations seeking to ensure compliance with relevant food safety provisions and may increase food donation.

2. DRAFT REGULATIONS RELATED TO THE FCDA THAT ELABORATE ON FOOD SAFETY FOR DONATIONS.

South Africa's DOH should draft regulations related to the FCDA that elaborate on food safety for donations. Under the FCDA, DOH is authorized to enforce FCDA provisions. In particular, the Food Control Division at DOH is responsible for drafting regulations for food safety and developing technical guidelines where necessary. Such regulations will enable food donors and food recovery organizations to meet established food safety standards.

3. PRODUCE AND DISSEMINATE CLARIFYING GUIDANCE ON FOOD SAFETY REQUIREMENTS RELEVANT TO DONATION.

Differentiating which food safety regulations apply specifically to donated food can be confusing and burdensome for food donors and other stakeholders. Clear guidance from DOH on what FCDA provisions or other requirements apply to donated food would ease concerns of food donors and food recovery organizations and likely lead to increased and safer donation. Guidance can generally be more informal and detailed than legislation, which often makes it more useful to a broader audience. Ideally, donors and food recovery organizations would have both the FCDA and guidance from DOH to help them understand their food safety obligations with respect to donated food.

Date Labeling

Issue Overview

A major driver of food waste and an obstacle to food donation is the general misconception about date labels such as “sell by,” “use by,” or “best by” on food products. Many donors and consumers interpret these date labels as indicators of food safety. Yet for the vast majority of foods, date labels indicate freshness or quality rather than food safety, and few foods become more likely to carry foodborne illnesses over time. Cautious donors and food recovery organizations, however, may discard food after the date even if the food is perfectly safe to donate and consume.

In other countries that have measured the impact of date labels, research shows that consumers generally confuse date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discard about 22% of food that they could have eaten due to confusion over date labeling.²⁵ Similarly, 84% of Americans report throwing away food after the expiration date due to safety concerns even if there is minimal risk of a foodborne illness at that time.²⁶ This confusion occurs in the home but also impacts food businesses' willingness to donate and creates a stigma against past-date food among food donation recipients.

This cycle of confusion and waste reportedly occurs in South Africa despite the country's efforts to standardize labels under the Regulations Relating to the Labelling and Advertising of Foodstuffs (No. R.146) (hereinafter “Labeling Regulation”) to the FCDA.²⁷ South Africa is one of the few countries to clearly state that the controlling date labeling scheme applies to food that is donated.²⁸ Yet the Labelling Regulation fails to advance a labeling scheme that differentiates between safety-based and quality-based labels—a shortcoming that several food donors and food recovery organizations cite as a source of unnecessary food waste.²⁹ Instead, the Labelling Regulation permits manufacturers to affix a “date of minimum durability,” expressed as “best before,” and/or a “sell by” date, and/or a “use by” date,³⁰ all of which are defined as quality-based labels rather than safety-based labels. With overlapping definitions and the option to affix multiple dates to a single product, distinguishing between these quality-based date labels may be difficult for manufacturers and consumers alike.

Many donors and food recovery organizations look to the *Codex Alimentarius* for clarification, which the Labelling Regulation recognizes as relevant.³¹ However, the Labelling Regulation does not align with the 2018

update to the *Codex Alimentarius* General Standard for the Labelling of Prepackaged Foods, which introduces a dual date labelling scheme. Under this dual date model, food will either feature a “best before” label to indicate quality—consistent with the South African scheme—or a “use by” label to indicate safety. The designation of a “use by” date as a safety-based label³² is not clearly followed under the South African labelling scheme. As a result, manufacturers may select the “use by” date to reflect quality rather than safety, contrary to the 2018 update to the *Codex Alimentarius* standard.

The importance of these dates in the context of food donation is also unclear as the Labeling Regulation fails to offer explicit guidance on whether food may be donated after the affixed dates have passed. As a result, cautious food donors and food recovery organizations may presume that food is no longer safe for consumption or donation once the affixed date has passed, even if the date refers to quality rather than safety. Determining whether such food is in fact safe to eat and thus safe to donate may therefore present a significant barrier to donation. As a result, providing guidance may remove this barrier.

Recommended Policy Actions

1. AMEND THE REGULATIONS RELATING TO THE LABELING AND ADVERTISING OF FOODSTUFFS TO PROVIDE FOR A QUALITY-BASED AND SAFETY-BASED FOOD LABEL ONLY, CONSISTENT WITH A DUAL LABELING SCHEME.

South Africa’s DOH should amend the Labeling Regulation to better align with the dual date labeling scheme set forth in the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods. DOH should issue updated regulations imposing a proper dual date labeling scheme under which food manufacturers are instructed to choose only one date label (i.e., either the quality-based label or safety-based label). Many other countries and the food industry are moving toward this dual date labeling scheme that allows manufacturers to choose between a safety-based label and a quality-based label, aligned with the *Codex Alimentarius* standard. For example, the European Union requires manufacturers to select only one of two standard labels. “Best before” is required for foods where the label indicates quality, while “use by” or “expiration date” is required if the food safety risk increases after the date.³³ The Consumer Goods Forum, a global network of 400 consumer goods companies across 70 countries, has also called for a standardized dual date labeling system with separate quality and safety date label phrases.³⁴

Moreover, DOH should amend and update the regulatory definition to clarify that the “use by” date is a safety-based label (i.e., the last date on which the product should not be sold or consumed due to *safety and* quality reasons)³⁵ and to be used *only* for foods that are likely to pose an increased safety risk over time. DOH should specifically designate “use by” as a term to convey the last date on which the food is safe to consume, consistent with the *Codex Alimentarius*. This will help ensure that manufacturers apply “use by” only to convey safety and better enable consumers to accurately interpret the affixed labels.

Finally, if DOH cannot amend the language in the Labelling Regulation to better align with the dual date labeling scheme set forth in the *Codex Alimentarius*, it should amend the Labelling Regulations to indicate that, at the very least, the “best before end” and “sell by (or display until)” labels are dates after which food is allowed to be donated.

2. AMEND THE REGULATIONS RELATING TO LABELING AND ADVERTISING OF FOODSTUFFS TO EXPLICITLY PERMIT FOOD DONATION AFTER THE QUALITY-BASED DATE (I.E., THE “DATE OF MINIMUM DURABILITY”).

DOH should amend the Labelling Regulation to explicitly permit food donation after the “date of minimum durability,” also known as the “best before” date. Despite stating that food beyond the date of minimum durability may be “perfectly satisfactory,”³⁶ it is not clear to food donors and food recovery organizations whether such

food may be donated after the affixed date has passed.

Cautious food donors and food recovery organizations may interpret the date label requirement from a food safety perspective, and err on the side of caution, and not donate such food after the affixed date has passed. The South African government should amend the Labelling Regulation to explicitly permit food donation after the affixed date of minimum durability. This will be clearer if the first recommendation in this section is adopted. Implementing this amendment may be bolstered by providing technical support to retailers, manufacturers, and other potential donors.

3. PROMOTE CONSUMER EDUCATION AND AWARENESS ON THE MEANING OF DATE LABELS.

Given that potential food donors erroneously perceive “best before” dates, “sell by” dates, and any other voluntary dates included on food products as indicators of safety, increasing the sale, consumption, or donation of foods with a quality-based label after the date will require a change in behavior. National consumer education is critical to inform donors, food recovery organizations, and consumers that these dates are not regulated to convey safety but to indicate quality. Joint public- and private-sector initiatives may help stakeholders understand that date labels should not stand as barriers to donation. Consumer education is also required to increase awareness among donors, food recovery organizations, and consumers about the current definitions and interpretations.

Liability Protection for Food Donations

Issue Overview

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. This fear is particularly heightened when the applicable law provides for “strict liability” (i.e., a donor or food recovery organization that did not act maliciously or intend to inflict harm may still be held legally and financially responsible for any resulting damage). Other countries, including Argentina and the United States, have established comprehensive liability protections for both food donors and food recovery organizations. These protections limit the likelihood that these actors will be held legally or financially responsible for resulting harm, provided that they act in good faith and in accordance with relevant laws.³⁷

In South Africa most claims of harm arising from food or other goods are often brought under the Consumer Protection Act (CPA).³⁸ When applied, the CPA establishes a strict liability scheme, holding all supply chain actors legally responsible for damage, regardless of whether they were negligent.³⁹ To succeed in such a strict liability claim, the harmed consumer must prove that the injury or illness was caused by the supply of an unsafe product; a failure, defect, or hazard in the product; or inadequate instructions or warnings.⁴⁰ If the harmed consumer can meet that burden, then any entity in the supply chain may be held jointly and severally liable.

Food donors and food recovery organizations may nevertheless avoid liability under this scheme, as food donation does not clearly fall within the scope of the CPA. The CPA applies to every “transaction” that occurs in South Africa.⁴¹ However, it defines a transaction as an “agreement for the supply of goods for consideration in the ordinary course of business,” and “consideration” requires exchanging goods for value.⁴² Most donated food in South Africa is offered free of charge to beneficiaries and thus does not qualify as a “transaction” under the CPA.⁴³ Even if food donors and food recovery organizations do face threat of liability under the CPA, the Act enumerates relevant defenses that may help shield them from liability.⁴⁴

Nevertheless, without national legislation providing clear liability limits and protections for food donation, potential donors may prefer to discard rather than donate food. Food recovery organizations may also perceive heightened risk when receiving, recovering, and distributing food to beneficiaries.

Recommended Policy Actions

1. ENACT NATIONAL LEGISLATION THAT ESTABLISHES CLEAR AND COMPREHENSIVE LIABILITY PROTECTION FOR FOOD DONORS AND FOOD RECOVERY ORGANIZATIONS.

South Africa should enact new legislation that enumerates robust liability protections for food donors and food recovery organizations. In Argentina, for example, comprehensive liability protections apply as long as donations are made in accordance with conditions set forth in the country's Food Donation Law (i.e., donations are made free of charge to a qualified intermediary and benefit populations in need).⁴⁵ Argentina affords donors and food recovery organizations a presumption of good faith absent any willful misconduct or negligence resulting in harm to a beneficiary.⁴⁶ South Africa should adopt similar protections for food donors with a broad and clear grant of protection. This protection should not be absolute; the law could maintain that food donors are not shielded from protection if they demonstrate gross negligence or willful misconduct when handling the donated food prior to distribution. The expanded protections should also cover food recovery organizations that comply with the same requirements imposed on food donors.

South Africa could also expand protections to exceed those currently offered in Argentina and permit intermediaries to charge a small fee for donated food. Often, countries will impose a "no charge" requirement (i.e., food donors and food donation intermediaries lose liability protection if they charge final recipients even a small or nominal fee for the donated food). This "no charge" restriction ultimately hinders food recovery efforts, as it eliminates a potential funding source for food recovery organizations that could be used to support operations or develop innovative models of food recovery and donation. Finally, consistent with recommendations above, South Africa should extend liability protection to food donated after the quality-based "minimum duration date," provided the food is still safe for human consumption.

2. PRODUCE AND DISSEMINATE CLARIFYING GUIDANCE ON WHETHER THE CONSUMER PROTECTION ACT APPLIES TO FREE FOOD DONATIONS.

To eliminate uncertainty regarding the CPA and whether it applies to donated food, South Africa should issue clarifying guidance on whether the CPA applies to free food donations. The uncertainty may make food donors and food recovery organizations wary of food donation.

Tax Incentives and Barriers

Issue Overview

Food donation helps mitigate the costs of hunger and stimulate the economy, but it can also be expensive, as food donors must allocate time and money to recover, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax laws can either help offset these expenses and incentivize donation, or they can create an additional barrier, contributing to greater food loss and waste. Corporate donors may be more likely to donate surplus food to food banks if they receive a charitable deduction or credit to offset the cost of transportation and logistics.

Under South Africa's Income Tax Act of 1962, corporate and individual donors are eligible to claim an annual deduction for the total value of charitable donations made to qualifying organizations (monetary and in-kind),⁴⁷ up to 10% of their annual taxable income.⁴⁸ Donors may only claim the deduction for donations made to registered public benefit organizations (PBOs) that are approved under Section 18A of the Income Tax Act.⁴⁹ PBOs include not-for-profit organizations that have received tax-exempt status from the South African Revenue Service (SARS).⁵⁰ FFSA, for example, is an approved Section 18A PBO. Other PBOs that help facilitate food donation qualify for this tax-exempt status.⁵¹ Donations made to and by the PBOs are also exempt from a separate donations tax set forth in Section 56 of the Income Tax Act.⁵² The Income Tax Act also permits

businesses to claim a deduction for discarding surplus or otherwise unmarketable food by citing a business loss.⁵³ Accordingly, some donors may prefer to throw away food, particularly if donating it requires additional financial and personnel resources.

In South Africa, for most commercial transactions, including the sale of food, vendors must incorporate the value-added tax (VAT), which is levied at a standard 15% rate.⁵⁴ Taxes are levied on goods at each stage of the supply chain. An output VAT is the amount that a VAT-registered business or vendor will charge on its own sale of the good, whereas the input VAT is the amount invoiced to the vendor upon the good's purchase. The VAT Act and the Tax Administration Act also permit vendors to claim a refund from SARS, recognizing, for example, that some vendors may acquire more goods than they are able to supply. However, the VAT scheme is far from uniform, featuring several exemptions and variations in tax rates—many of which impact food donation.⁵⁵ The VAT Act provides varying benefits and exemptions for “associations not for gain”⁵⁶ and “welfare organizations.”⁵⁷ Further, the exemptions to the VAT may actually be of little relevance to most donations, as South Africa applies a zero VAT rate to several types of food. Goods that are “zero rated” under the South African VAT are essentially exempt from the taxation scheme. As there is no VAT attached to “basic” foods items, taxpayers may offer this food for donation without the need to transfer and reclaim the VAT on the donated food.⁵⁸ Despite some opportunities to avoid the VAT on food donation, the complex VAT exemption scheme may ultimately stand as a barrier to greater donation.

Recommended Policy Actions

1. EXEMPT FREE FOOD DONATIONS FROM THE ACTIVITIES FOR WHICH THE VALUE ADDED TAX MUST BE REIMBURSED.

The requirement to reimburse a VAT credit under The VAT Act 89 of 1991 for food that was purchased and subsequently donated for free stands as an incentive to discard, rather than donate, food that would otherwise be safe for donation.⁵⁹ South Africa should amend the VAT Act to explicitly exclude the free donation of food made to South African food banks or other registered public beneficiary organizations receiving food donations, as well as direct donation from the reimbursement requirement.

2. PROVIDE AN ENHANCED BENEFIT FOR FOOD DONATION OR TIERED TAX BENEFITS CONSISTENT WITH THE FOOD UTILIZATION HIERARCHY IN THE SOUTH AFRICA FOOD LOSS AND WASTE VOLUNTARY AGREEMENT.

The South African Revenue Service (SARS) should recommend the adoption of a tax regulatory framework⁶⁰ that effectively promotes food recovery based on the food utilization hierarchy in the South Africa Food Loss And Waste Voluntary Agreement.⁶¹ Specifically, the government should ensure that donors are eligible for an enhanced tax benefit for food donations as opposed waste. Currently, the Income Tax Act also permits businesses to claim a deduction for disposing surplus or otherwise unmarketable food, citing a business loss.⁶² Alternatively, SARS should recommend that a deduction for discarded food should only be allowed if the claimant shows that it first offered the food for donation.

South Africa can amend the Income Tax Act to introduce a tiered benefit scheme based on the food utilization hierarchy in the South Africa Food Loss and Waste Voluntary Agreement.⁶³ For example, South Africa can offer the highest deduction to those that make monetary and in-kind donations to FFSA or other registered food assistance organizations. In addition to or in lieu of these amendments, SARS should issue guidance encouraging taxpayers to prioritize food donation when seeking to claim a charitable tax benefit. Regulations should also remind taxpayers that deductions are available for in-kind and monetary donations made to FFSA and other registered food recovery organizations.

3. OFFER TAX CREDITS FOR FOOD DONATIONS MADE TO SOUTH AFRICAN FOOD BANKS AND OTHER INTERMEDIARIES RECEIVING FOOD DONATIONS.

While an increased tax deduction may incentivize food donation among certain corporate donors, offering a tax credit for food donation is more likely to encourage donation among farmers and smaller donors that may not generate much income during the year. Compared with a tax deduction, which reduces a taxpayer's taxable income and is then used to determine the amount of taxes that must be paid, a tax credit is a direct dollar-for-dollar subtraction from the taxes owed.⁶⁴ Tax credits are also applied evenly across tax brackets and would therefore have a greater impact for small, low-revenue businesses than a tax deduction. In addition, the SARS should establish an accreditation system for food banks and food recovery organizations with guidelines to ensure uniform compliance.

A tax credit could be offered at the national level and vary in design. For example, the South African government may elect to limit the total credit in a given tax year by setting a percentage of the value of donated food that can be claimed or by setting a cap on the total dollar amount or percentage of income of the credit that can be claimed by a business. Before adopting such limits, the government should balance the benefit with the potential deterrent effect that the limits may have on food donation.

4. PROVIDE AN INCREASED TAX DEDUCTION FOR ACTIVITIES ASSOCIATED WITH THE STORAGE, TRANSPORTATION, AND DELIVERY OF DONATED FOOD.

In light of the potentially high costs associated with donating food, South Africa should amend its Income Tax Act 58 to offer an increased tax deduction for food donors. This would increase the financial benefit companies receive when donating food and dissuade food waste.

Government Grants and Incentives

Issue Overview

National or local grant and incentive programs can be important resources for food donation initiatives, especially as alternatives or supplements to tax incentives. Government-assisted funding is particularly important in South Africa, where a lack of infrastructure and capital frequently limits food recovery efforts. For example, government grants can help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. Government funding can also support new technological innovations to make food donation more efficient and sustainable. Further, government recognition programs can function as a significant incentive for food donors, recognizing that positive public relations may play a significant role in consumer behavior. At the time of this writing, South Africa did not offer national grants for food donation and the government had not created any recognition programs.

However, South Africa has taken steps to address food loss and waste and encourage food donation among businesses. The Department of Trade, Industry, and Competition (DTIC), the Department of Environment, Forestry and Fisheries (DEFF), and the Consumer Goods Council of South Africa developed a Food Loss And Waste Voluntary Agreement that commits businesses to reducing their food waste.⁶⁵ By creating a public-private initiative, the Voluntary Agreement encourages more efficient and effective reduction in food waste.⁶⁶ Overall this Voluntary Agreement accomplishes many goals that overlap with a grant incentive program. However, this initiative can be expanded.

Recommended Policy Actions

1. FURTHER DEVELOP GOVERNMENT GRANT OPPORTUNITIES FOR FOOD DONATION INFRASTRUCTURE.

Grants and incentive programs funded at the national or state levels offer an important resource for food donation initiatives, as cost is one of the main barriers preventing food businesses from donating. More specifically, transportation and storage costs are often cited as the main expenses that manufacturers, retailers, and restaurants need to overcome to donate food.⁶⁷ This is particularly true in countries like South Africa, where there are minimal tax incentives to offset the costs of donation. Accordingly, the South African government, in particular DTIC or DEFF, could further establish grant programs targeted at implementing and expanding the scope of the Food Loss and Waste Voluntary Agreement.

A number of countries have grant programs to encourage food recovery. For example, in 2019 Argentina's Ministry of Agribusiness launched a contest to grant non-reimbursable financing for innovative food waste solutions in Argentina's horticultural sector.⁶⁸ The grant is administered under the government's National Food Loss and Waste Reduction Program and in partnership with the Inter-American Development Bank. The South African government could create similar grant programs to help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. The government could also provide grants to support new innovations and emerging technologies that will make food donation more efficient and sustainable.

CONCLUSION

While these policy recommendations are intended to help strengthen food donation in South Africa, they are not exhaustive. Those committed to reducing food loss and waste and promoting food recovery should seek the advice of legal experts, policymakers, and other stakeholders to identify the most effective and feasible policy interventions.

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