



TRUST AS AN ESTATE PLANNING INSTRUMENT UNDER SIEGE?

DR STEFAN STRYDOM

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UNIVERSITY
OF
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**Presenter: Dr Stefan Strydom
(WRS Fiduciary and Tax (Pty) Ltd)**



WRS Fiduciary and Tax



ON A LIGHTER NOTE...

A Taxing Day!



INTRODUCTION & AGENDA

1. Timeline – legislative build up to the final product
2. What message was send by the DTC to treasury?
3. In summary - what does section 7C entails?
4. Detail discussion of section 7C
5. What transactions WILL / WILL NOT be impacted by section 7C?
6. Planning
7. Discussions regarding possible solutions
8. Q & A



CAVEAT BY THE PRESENTER

1. When a person considers solutions to the conundrum that section 7C poses, one needs to consider **each case on its own merits**. There's not a solution that fits all.
2. The solutions depicted in this presentation **are not necessarily endorsed** by the presenter. The solutions depicted are found / proposed in the fiduciary market place and are discussed to provide the required practical illustration of the theoretical principles.
3. Any solution proposed must be measured against the **General Anti Avoidance Regulation (GAAR) provision (section 80)** of the Income Tax Act.
4. The **deductibility of interest** is not discussed in this presentation. The normal applicable income tax rules must be considered.

Stefan Strydom
Presenter



1. TIMELINE – LEGISLATIVE BUILD UP TO THE FINAL PRODUCT

Margo Commission

(Margo

Commission

Report of the

Commission of

Inquiry into the Tax

Structure of the

Republic of South

Africa (1987) par

20 56)

Katz Commission

(Katz Commission

Fourth Interim

Report of the

Commission of

Inquiry: Capital

Transfer Tax (1997)

par 7 2) continued

the work of the

Margo Commission.

Davis Tax Committee (1st Report – January 2015 (published June 2015))

The 1st
proposed
amendment
under the
TLAB
(8 July 2016)
Explanatory
Memorandum

Davis Tax
Committee
(2nd Report
September
2016)

It recommended that interest-free or low-interest loans and other means of financing to transfer real wealth for *inadequate consideration should be subject to the capital transfer tax*. Nothing was however done about it at that point.

*“[a]n attempt to follow this precedent can encourage the use of a range of *derivative instruments* designed to circumvent the legislation, hence necessitating complex legislation” (par 7 5).*

It stated further *“[f]or these reasons, the commission has decided *against a recommendation* of specific legislation to remedy the problem of interest-free loans” (par 7 7).*

(p40) *“No attempt should be made to *implement transfer pricing adjustments* in the event of financial assistance or interest-free loans being advanced to trusts”.*

*“... it is proposed that an amount equal to the difference between interest that would arise as determined with reference the official rate of interest (as determined in terms of the Seventh Schedule to the Act) and the applicable actual rate of the loan below market rates made to a trust and will be regarded as *an amount of income* accrued or received by the seller. Such amount imputed as income in the hands of the seller will *not qualify for the section 10(1)(i) exemption* in respect of interest.*

They instead focussed on the loan being the *“trump card of control”* –

*...while the loan remains in place the holder of the loan is *de facto in control of the trust*, irrespective of the content of the trust deed or the actions of the trustees. In short, the holder is in a position to liquidate the trust at any time by simply calling for repayment of the loan...*



1. TIMELINE – LEGISLATIVE BUILD UP TO THE FINAL PRODUCT

The 2nd proposed amendment under the TLAB (15 Dec 2016) Explanatory Memorandum

2017 Budget Speech (22 Febr 2017)

Draft Explanatory Memorandum On The 2017 Draft TLAB-19 July 2017

14 Sept 2017 - Draft Response Document on Taxation Laws Amendment Bill, 2017 (Based on report-back hearings to the SCOF in Parliament)

“Interest foregone in respect of low interest loans or interest free loans that are made to a trust will be treated as an ongoing and annual donation made by the natural person to the trust on the last day of the year of assessment of that trust.

However, some taxpayers have already attempted to circumvent the anti-avoidance measure by making low-interest or interest-free loans to companies owned by a trust.

To counter abuse, it is proposed that the scope of this anti-avoidance measure be extended to cover these avoidance schemes

In order to curb the abovementioned avoidance, it is proposed that interest free or low interest loans, advances or credit that are made by a natural person or a company (at the instance of a natural person) *to a company that is a connected person in relation to a trust* should also fall under the anti-avoidance measure.

1. Interest free or low interest loans made to companies in which a trust holds at *least 20 per cent of the shares or voting rights* will be subject to this anti-avoidance measure ---

2. Exclusions will be extended to interest-free or low interest loans made *to such companies that to cover scenarios* where companies held by trusts are used for purposes other than to indirectly facilitate the tax free transfer of wealth.



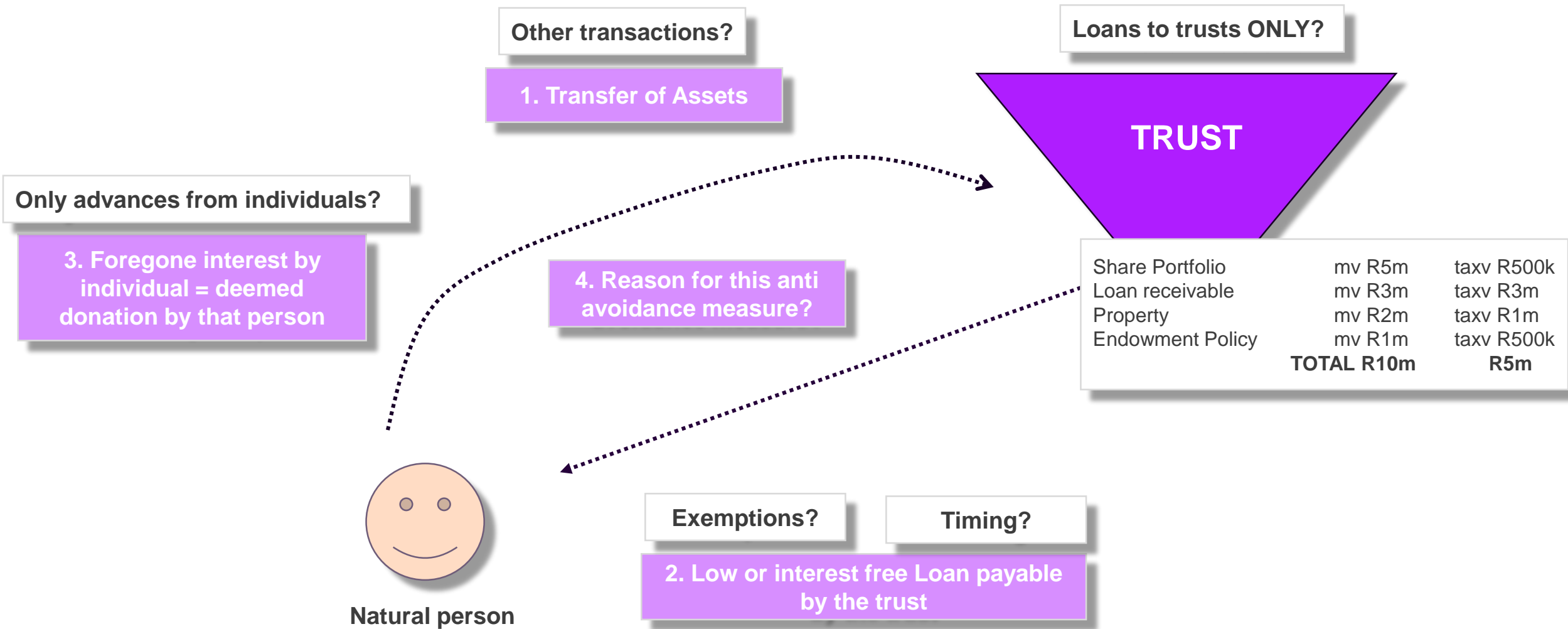
2. WHAT MESSAGE WAS SEND BY THE DTC TO TREASURY?

- 1st DTC report: The Gini coefficient in RSA 0.69 (2030 goal - 0.6)
- 1st DTC report : Pikkety: The main driver of inequality = returns on capital (i.e. r) exceed rate of economic growth (i.e. g)
- 1st DTC report : Wealth Taxes a necessity;
- 2nd DTC report : > 50 000 taxpayers with estates > R15m
- 2nd DTC report : Conservative death rate 1% pa = estates = 500 pa
- 2nd DTC report : Yet the number of estates exceeding R15 million assessed in 2015 is a mere 135.

- 2nd DTC report : This substantial discrepancy may be attributed to the following factors:
 - ❖ The widespread utilisation of trusts.
 - ❖ The inter-spouse and retirement fund abatements.
 - ❖ Bare dominium and usufruct arrangements.
- SARS internal reports as at 31 October 2015 reflect that there are currently 333 465 active trusts registered
- Number of current tax returns received during the period 1 October 2014 - 30 September 2015 was 100 590.
- 49,8 % (50 097 out of 100 590) of prima facie compliant trusts have no specifically identifiable beneficiaries.



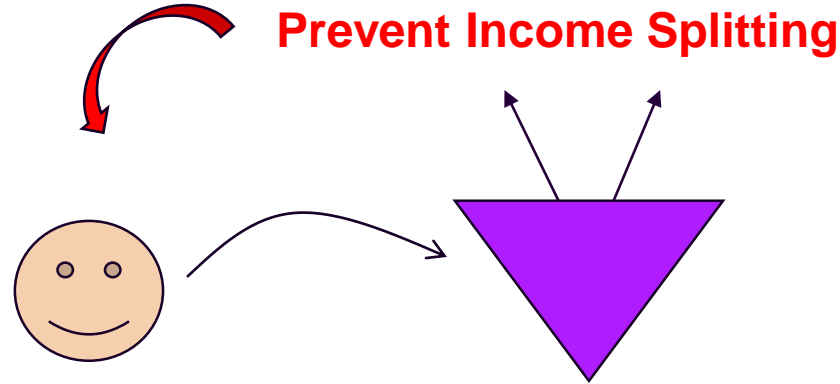
3. IN SUMMARY - WHAT DOES SECTION 7C ENTAIL?



3a. BACKGROUND / PRINCIPLES

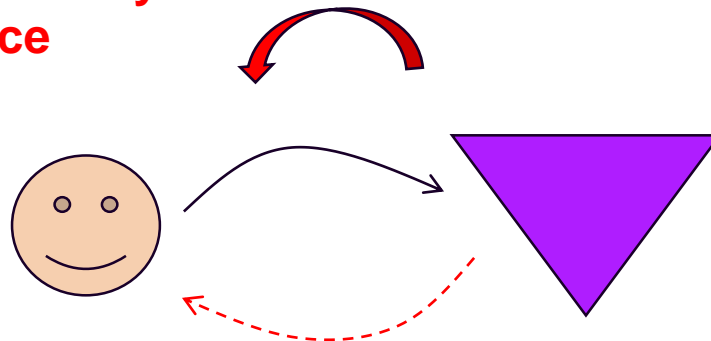
On which aspect does Treasury / SARS focus?

- Income arising from gratuitous loans to trusts should be taxed in the hands of the donor (attribution rules)



- Capital Growth taken place in trust arising from gratuitous loans should bear donations tax in hands of the donor (1.55%)

Prevent Estate Duty avoidance



3b. MY COMMENTARY

The inherent problems I have with S7C

a. Donations tax but no relief to estate duty

- You pay 1,55% to achieve a growth in the trust of 7,75%
- But – the donations tax does not reduce the dutiable estate of the individual.
- Neither the loan account (for estate duty), nor any leeway to CGT if the asset is eventually disposed from the trust, is allowed

b. Against the common law

- Donations tax assumes the disposal of a Right in Property
- To levy interest is in terms of common law not a Proprietary Right
- Section 7C tampers with the common law rights

c. Retrospective legislation

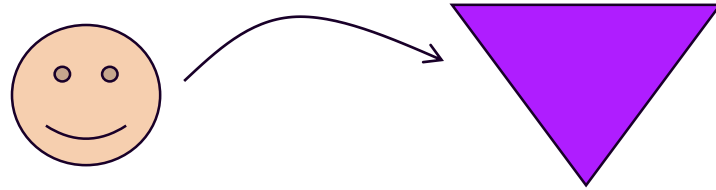
d. In contrast to what DTC advised



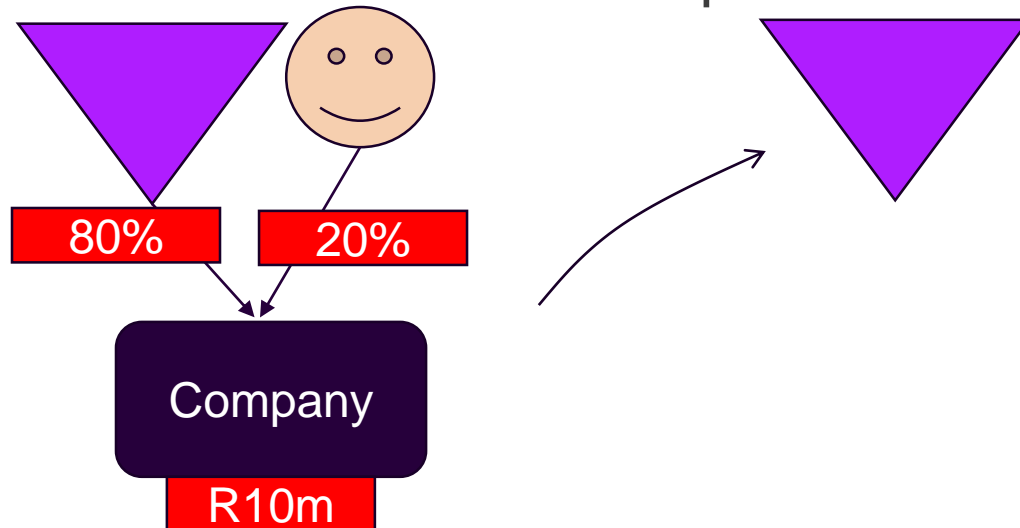
3c. RATIONALE BEHIND SECTION 7C

Rationale

- Transfer Wealth from an Estate Dutiable Estate to a Non Dutiable Estate (trust)



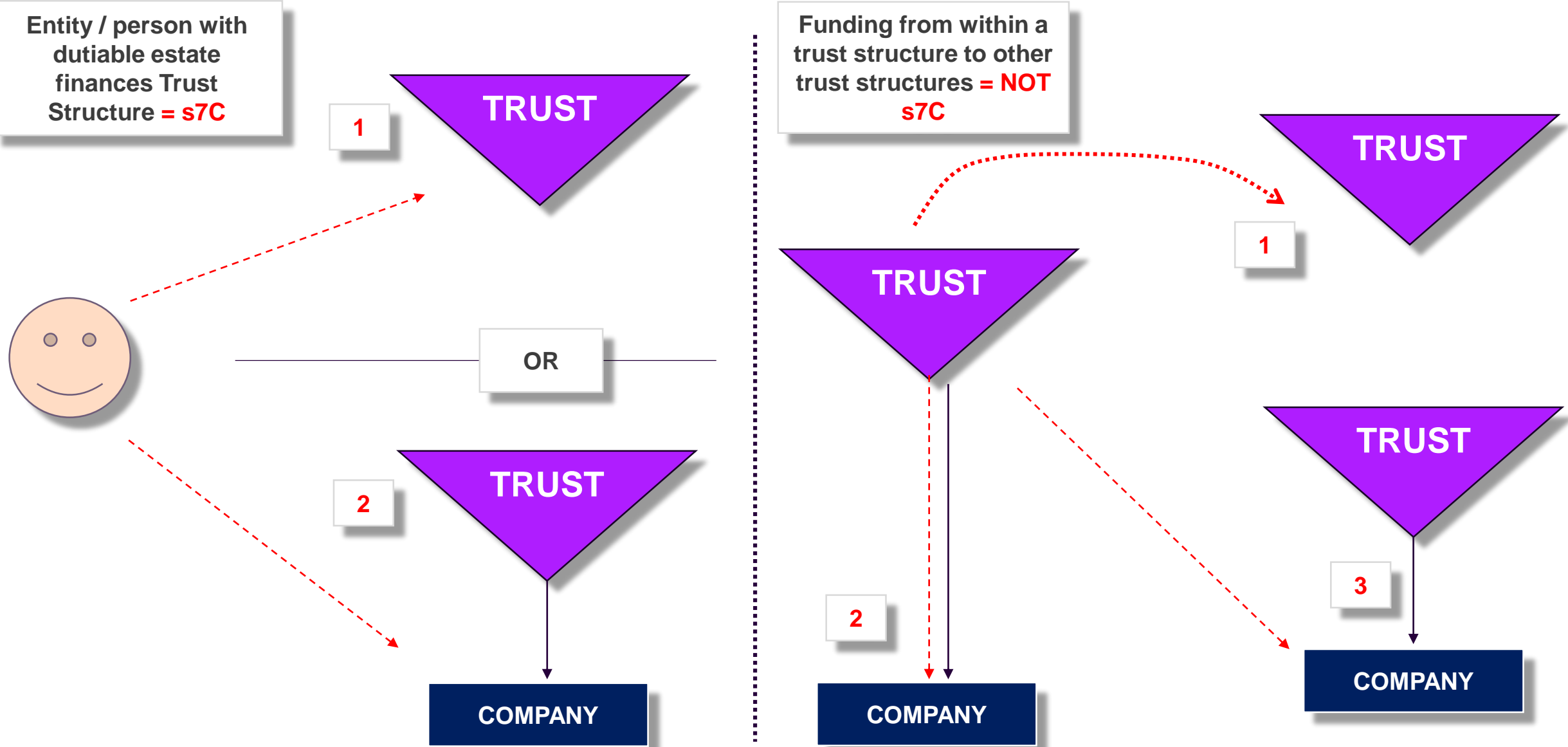
- But Other transactions are also impacted



The “connected person” definition makes this provision very complicated and brings about unintended consequences?



3c. RATIONALE BEHIND SECTION 7C



4. DETAIL DISCUSSION OF SECTION 7C – type of loan

A. LOAN, ADVANCE OR CREDIT - (TYPE OF TRANSACTION)

B. PROVIDED BY WHOM?

C. TO WHOM?

D. CHARACTERISTICS OF SUCH FINANCING?

E. DEEMED DONATION

- Penalty
- When is the interest deemed to be foregone?
- When is the donation deemed to have taken place?
- Who is the donor?
- When must the donations tax be payable?
- Who is liable to pay the donations tax?

F. EXCLUSIONS

- PBO trust
- Special Trust (type A)
- SBF Trust
- Vested trust
- Primary residence
- Sharia Law
- S64(E)4
- Transfer Pricing
- Employee trusts (NEW)

A

(1) This section applies in respect of any loan, advance or credit that —

1. Provide funds to trust to acquire asset

2. Income Generating trust asset acquired with external finances – Person finance the excess

3. Transfer assets to trust against interest free loan account

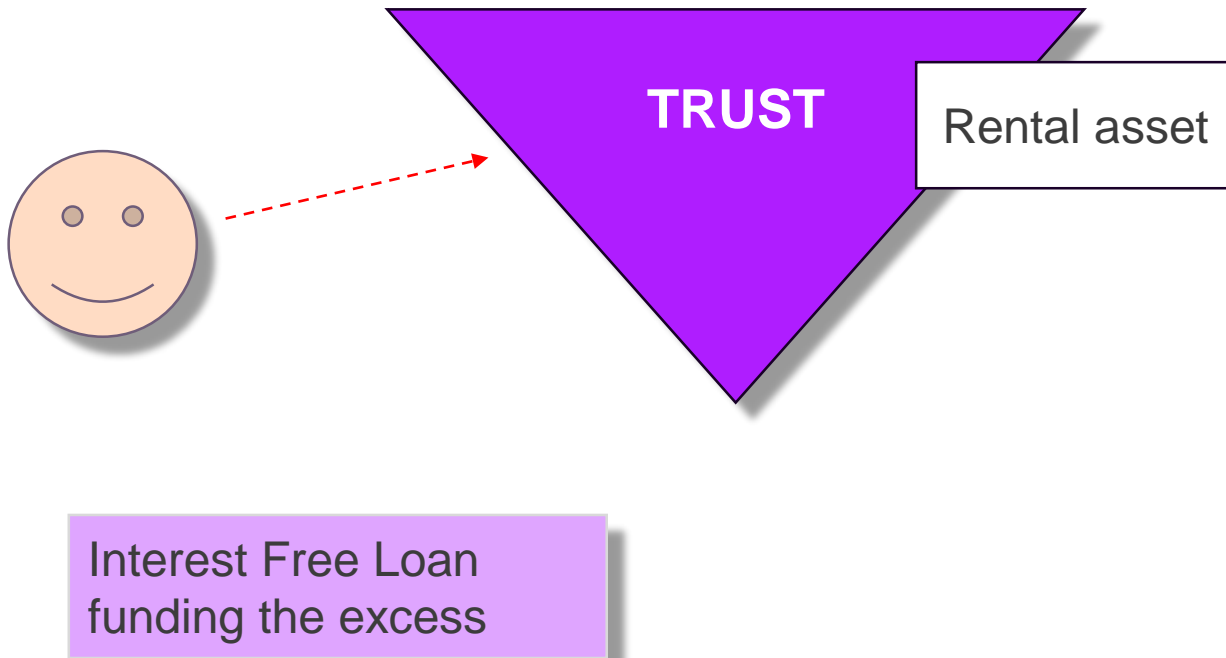
4. Distribute profits without payment – no interest??



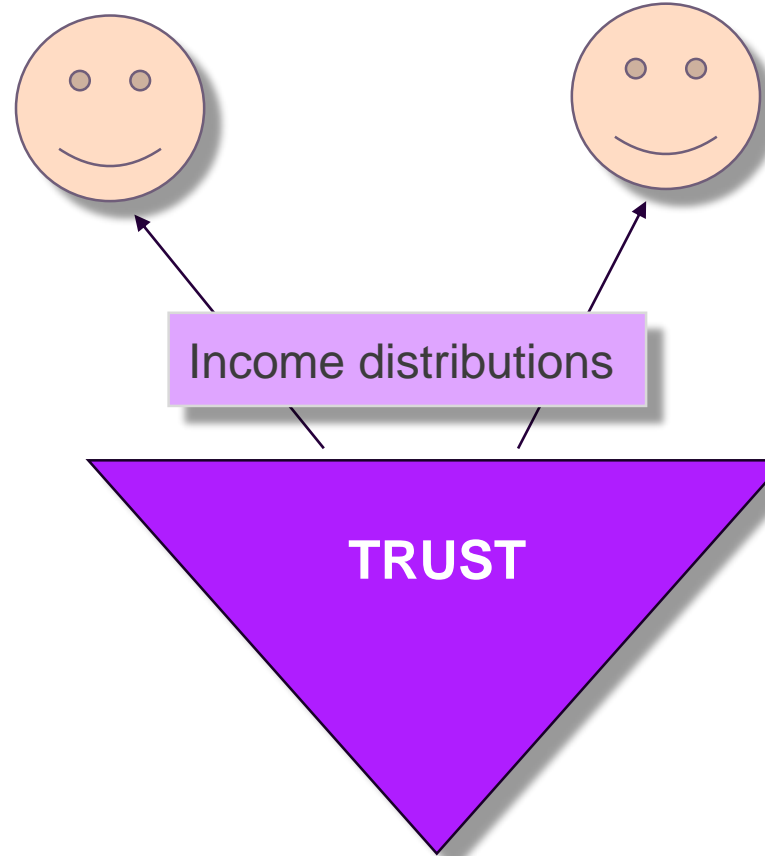
4. DETAIL DISCUSSION OF SECTION 7C – type of loan

A

2. Income Generating trust -
asset acquired with external
finances – Person finance the
excess



4. Distribute profits without payment –
no interest



An amount that is **vested irrevocably by a trustee in a trust beneficiary** and that is used or administered for the benefit of that beneficiary without distributing or paying it to that beneficiary will **not qualify as a loan or credit** provided by that beneficiary to that trust if

□ the vested amount may in terms of the trust deed governing that trust **not be distributed** to that beneficiary, e.g. before that beneficiary reaches a specific age; or

□ that trustee has the **sole discretion in terms of that trust deed regarding the timing** of and the extent of any distribution to that beneficiary of such vested amount.

15 December 2016
Explanatory
Memorandum

But if that non-distribution results from an election exercised by that beneficiary or a request by that beneficiary



4. DETAIL DISCUSSION OF SECTION 7C – Loan provided by whom?

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F. EXCLUSIONS

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- Special Trust (type A)
- SBF Trust
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- Primary residence
- Sharia Law
- S64(E)4
- Transfer Pricing
- Employee trusts (NEW)

B

(1) *This section applies in respect of any loan, advance or credit that—*

(a) a natural person; or

(b) at the instance of that 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,

1. Natural Person or

2. Company

Natural Person must be a connected person in relation to the company

(d) (iv) any person, ..., that individually or jointly with any connected person in relation to that person, holds, directly or indirectly, at least 20 per cent of—

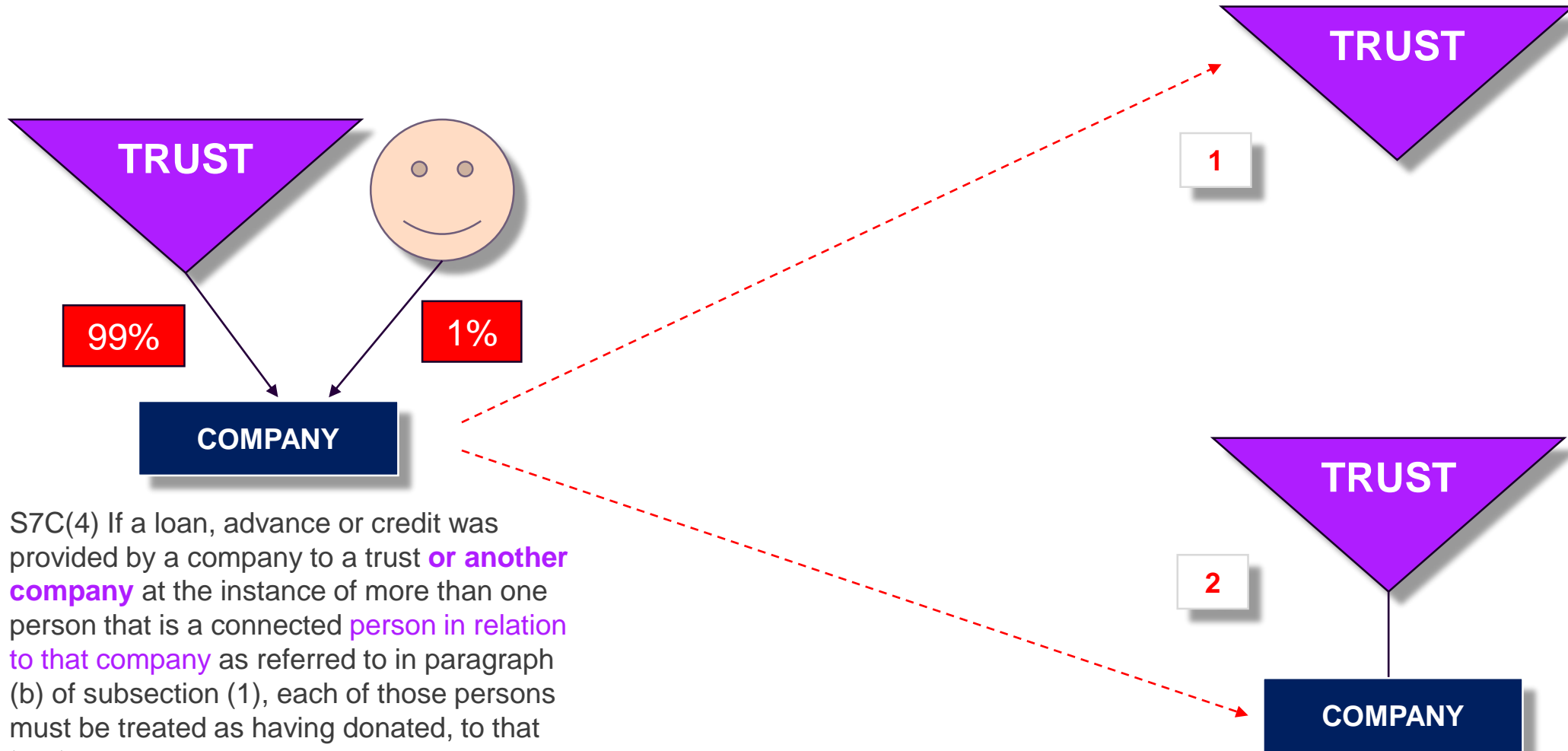
(aa) the equity shares in the company; or

(bb) the voting rights in the company;



4. DETAIL DISCUSSION OF SECTION 7C – Loan provided by whom?

B



S7C(4) If a loan, advance or credit 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,...



4. DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

A. LOAN, ADVANCE OR CREDIT - (TYPE OF TRANSACTION)

B. PROVIDED BY WHOM?

C. TO WHOM?

D. CHARACTERISTICS OF SUCH FINANCING?

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- Employee trusts (NEW)

C

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 that person or company, referred to in (aa) is a connected person; or

(ii) a company that is a connected person in relation to the trust referred to in subparagraph (i);

1. Trust

Natural Person or Company or connected person of any, must be a connected person in relation to the trust (ie beneficiary or connected person irt such beneficiary));

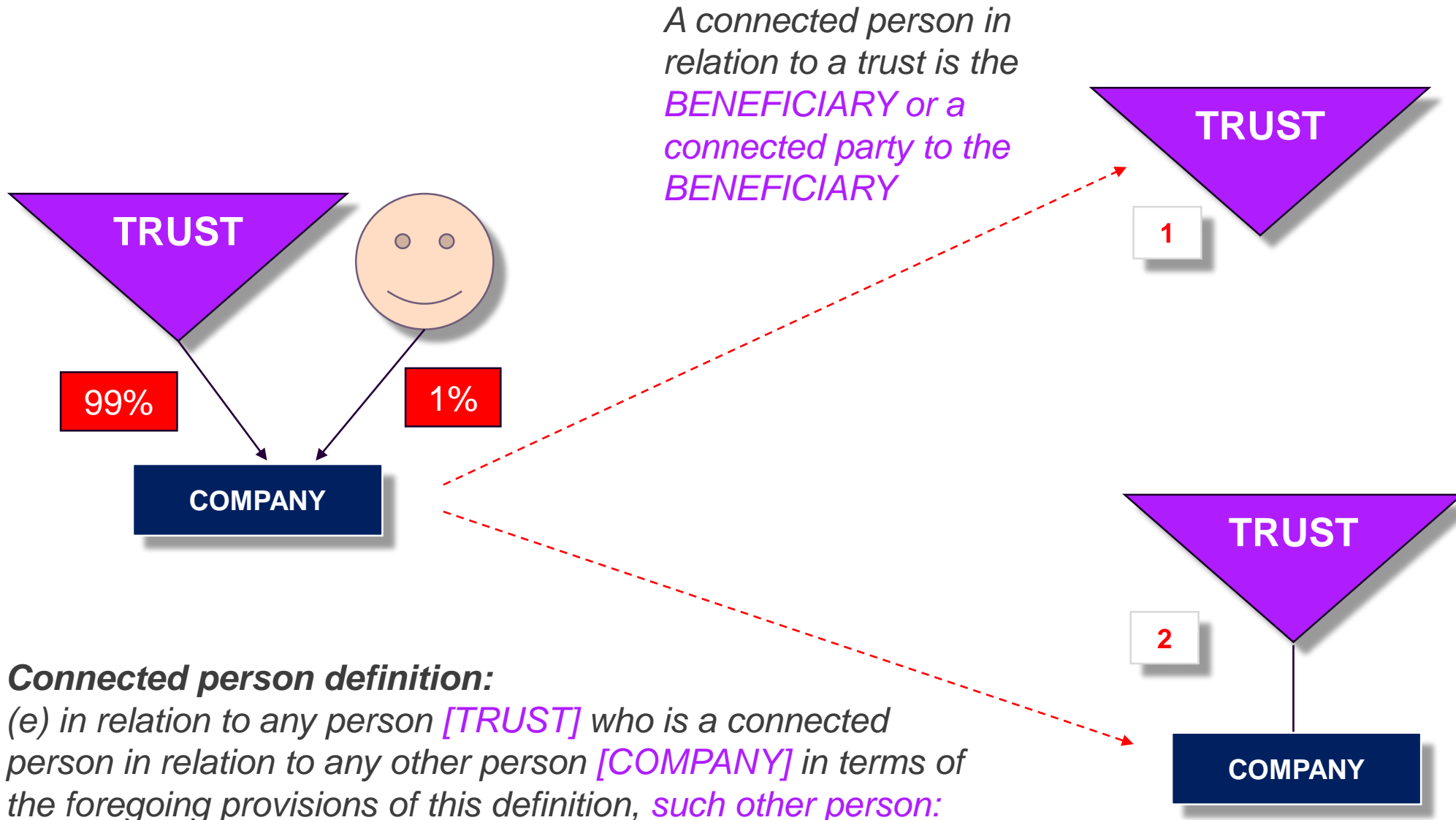
Or

2. Company which is a connected party to trust;



4. DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

C



(i) A trust in relation to which
(aa) **that person** or **company**, or
(bb) any person that is a **connected** person in relation to that person of that company

(ii) a company that is a connected person in relation to the trust referred to in subparagraph (i);

Is the company a connected party in relation to the trust, ie a **BENEFICIARY??**



4. DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

14 September 2017

Draft Response Document on Taxation Laws Amendment Bill, 2017 and Tax Administration Laws Amendment Bill, 2017 (Based on report-back hearings to the Standing Committee on Finance in Parliament)

To companies held by trusts:

Comment: The explanatory memorandum indicates that companies that are held by trusts will be included in the rule. However, the wording in the 2017 Draft TLAB **refers to companies that are connected persons in relation to a trust** and **does not require a shareholding by the trust in that company**. The connected person test for trusts goes much further than what the explanatory memorandum indicates to be the intention of National Treasury.

Response: Accepted. The explanatory memorandum correctly indicates the type of companies envisaged. As such, a shareholding requirement will be included in the 2017 Draft TLAB to indicate that **only companies in which trusts hold shares will be subject to the anti-avoidance measure**. As a result, interest free or low interest loans made to companies in which **a trust holds at least 20 per cent of the shares or voting rights will be subject to this anti-avoidance measure**.



4. DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

14 September 2017

Draft Response Document on Taxation Laws Amendment Bill, 2017 and Tax Administration Laws Amendment Bill, 2017 (Based on report-back hearings to the Standing Committee on Finance in Parliament)

Exclusions to section 7C also extended to companies receiving the loans:

Comment: By including companies held by trusts in the anti-avoidance measure, it is also necessary to ensure that exclusions relating to the acceptable use of trusts **must also be extended** to interest-free or low interest loans made to companies held by trusts that do not result in the tax free transfer of wealth

Response: Where relevant, exclusions will be extended to interest-free or low interest loans made to such companies that to cover scenarios where companies held by trusts are used for purposes other than to indirectly facilitate the tax free transfer of wealth. **In particular exclusions relating to companies held by trusts are envisaged**



4. DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

A. LOAN, ADVANCE OR CREDIT - (TYPE OF TRANSACTION)

B. PROVIDED BY WHOM?

C. TO WHOM?

D. CHARACTERISTICS OF SUCH FINANCING?

E. DEEMED DONATION

- Penalty
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- When must the donations tax be payable?
- Who is liable to pay the donations tax?

F. EXCLUSIONS

- PBO trust
- Special Trust (type A)
- SBF Trust
- Vested trust
- Primary residence
- Sharia Law
- S64(E)4
- Transfer Pricing
- Employee trusts (NEW)

D

(3) *If a trust or a company incurs—*
(a) *no interest in respect of a loan, advance or credit referred to in subsection (1) or subsection (1A); or*
(b) *interest at a rate lower than the official rate of interest as defined in paragraph 1 of the Seventh Schedule,*

Rate was 8% till end of July 2017

Rate is 7,75% from 1 August 2017



4. DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

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E

(3)

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, advance or credit 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 by the person referred to in subsection (1) (a) or subsection (1A); on the last day of that year of assessment of that trust.

Penalty was 8% x 20% = 1,6% till end of July 2017

Penalty is 7,75% x 20% = 1,55% since Aug 2017



4. DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

A. LOAN, ADVANCE OR CREDIT - (TYPE OF TRANSACTION)

B. PROVIDED BY WHOM?

C. TO WHOM?

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F. EXCLUSIONS

- PBO trust
- Special Trust (type A)
- SBF Trust
- **Vested trust** (*see wording opposite*)
- **Primary residence** (*see wording opposite*)
- Sharia Law
- S64(E)4
- Transfer Pricing
- Employee trusts (NEW)

F

(5)

(b) *that loan, advance or credit 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;*

(d) *that trust used that loan, advance or credit wholly or partly for purposes of funding the acquisition of an asset and—*

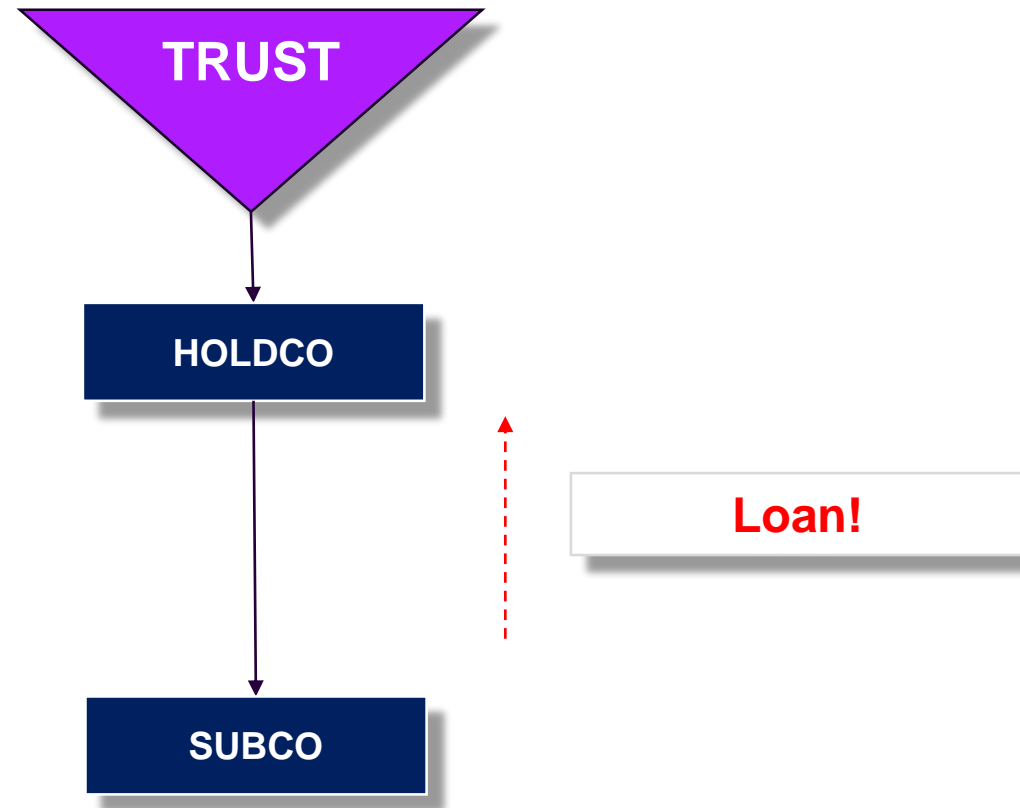
(i) *the person referred to in subsection (1) (a) or the spouse of that person used that asset as a primary residence as contemplated in paragraph (b) of the definition of “primary residence” in paragraph 44 of the Eighth Schedule throughout that year of assessment; and*

(ii) *the amount owed relates to the part of that loan, advance or credit that funded the acquisition of*

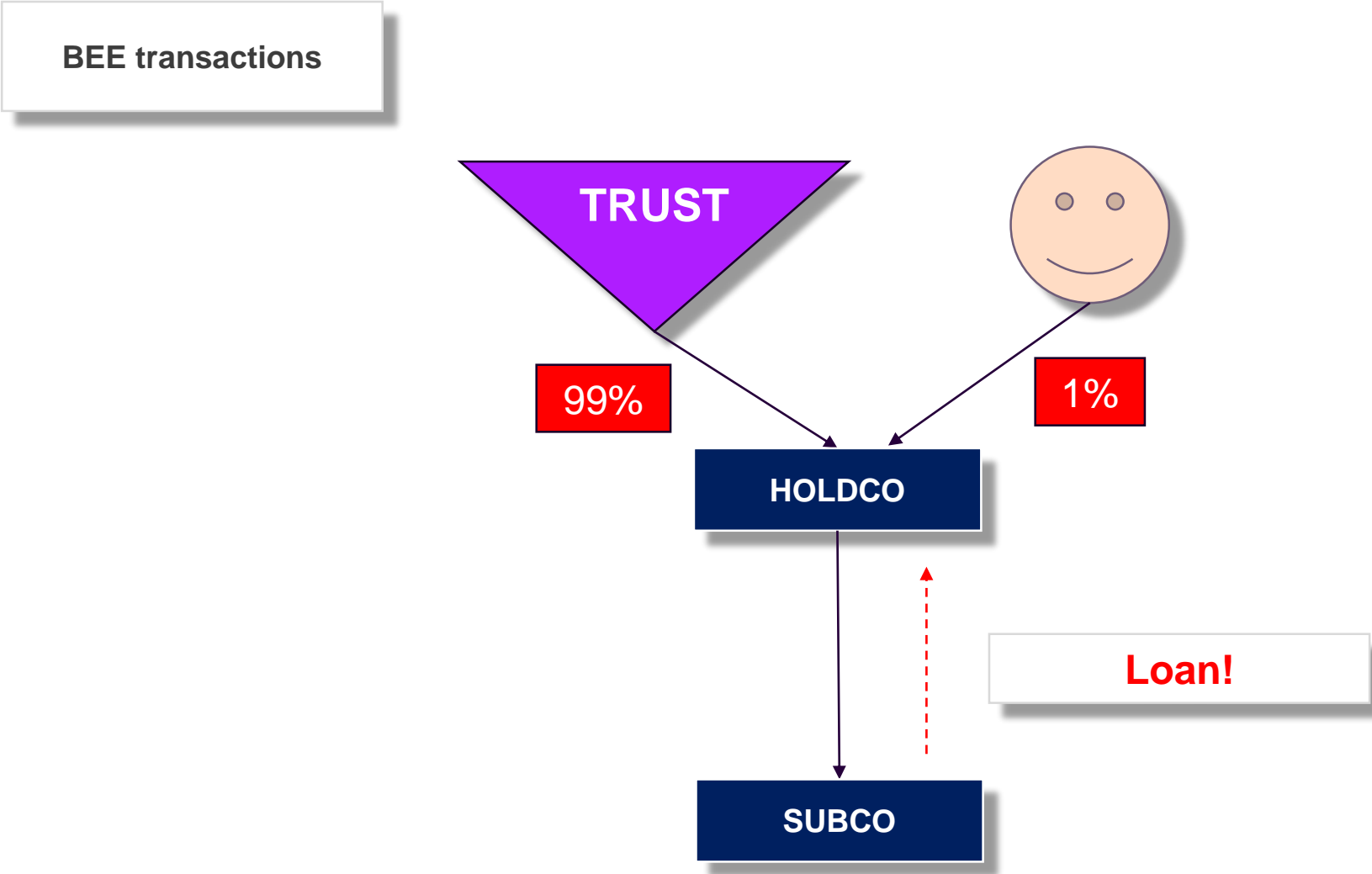


5. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?

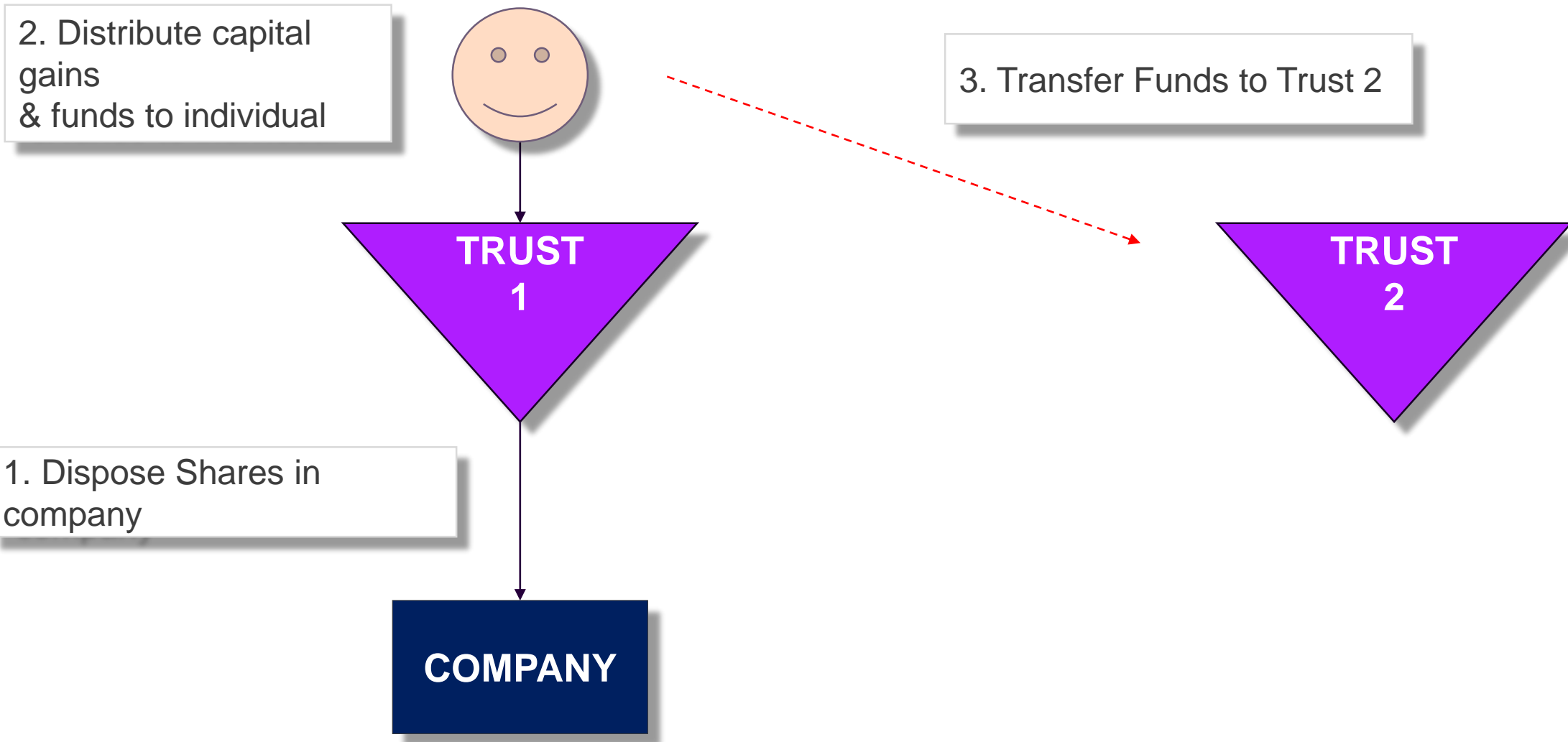
BEE transactions



5. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?



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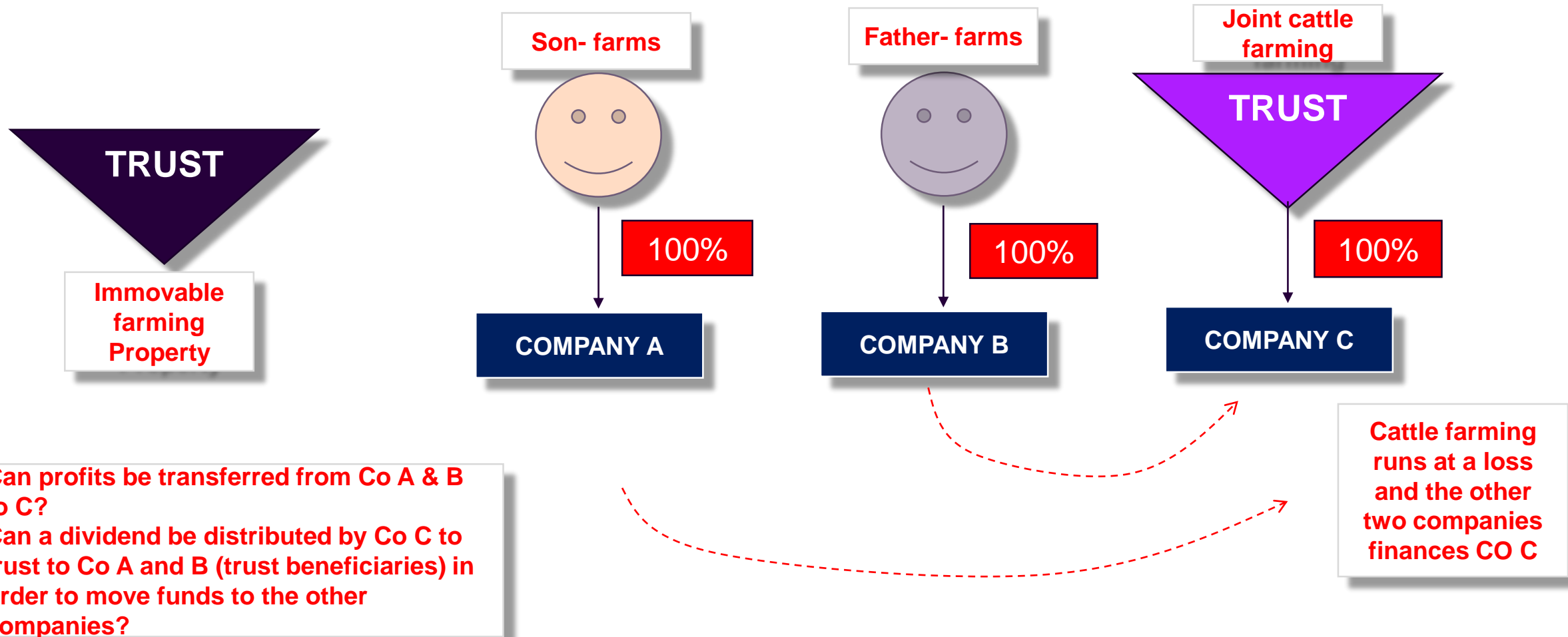
5. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?

Section 7(5) vs Section 7C

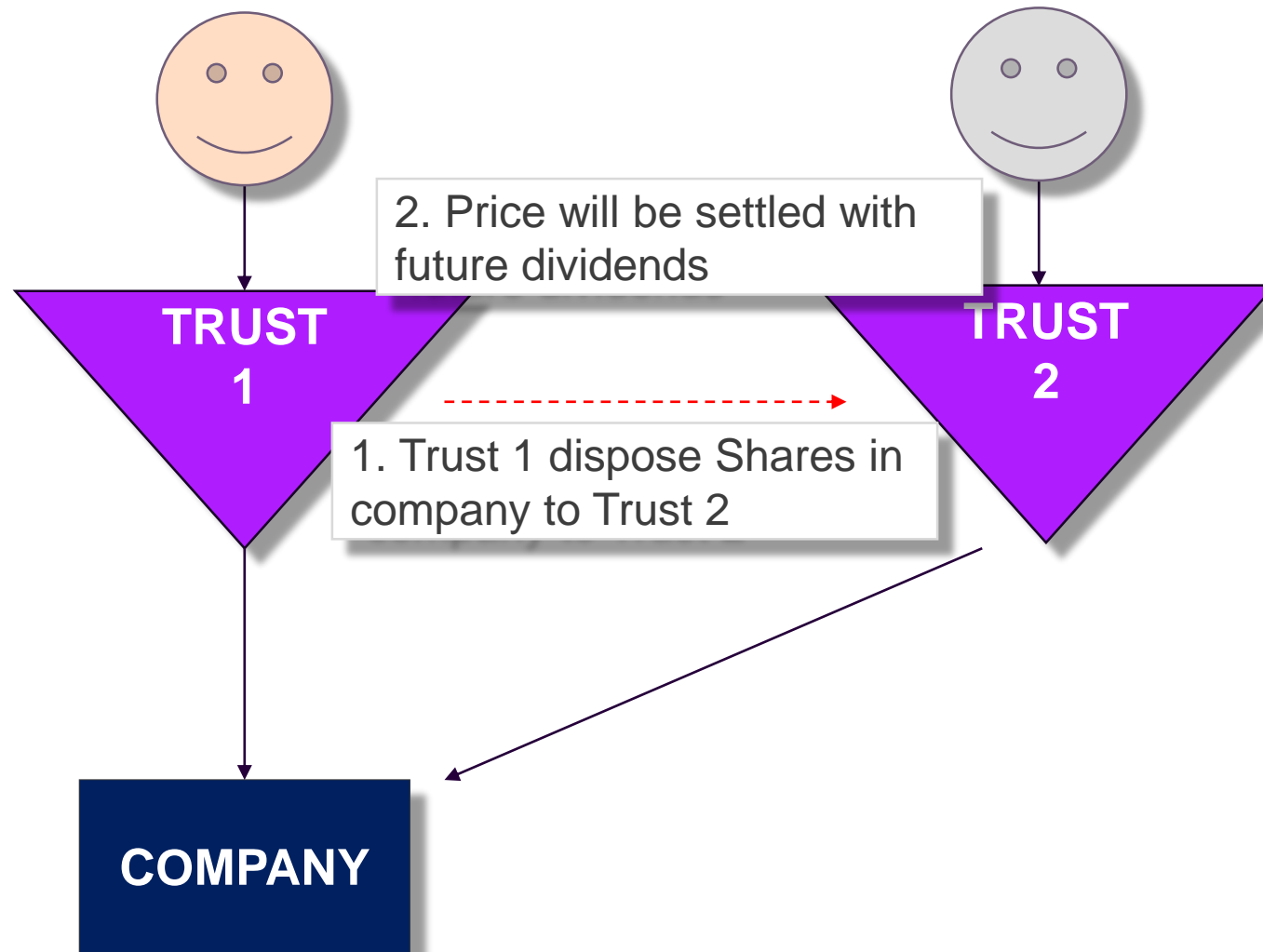


5. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?

Utilising the Small
Business Corporation -
regime



5. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?



3. If trust 1 was an individual which was not a connected person to a beneficiary of Trust 2??

4. If trust 1 was an individual which was a connected person to a beneficiary of Trust 2?



6. PLANNING

FROM A PLANNING PERSPECTIVE –

a. Trust must not be financed with a loan from a connected person (individual) –

- Start with a trust holding shares in a company – dividends will provide finance to a trust (maybe introduce an intermediary company)
- Bequeath assets to trust
- Bequeath loan accounts back to trust
- Services in a trust

b. Inspect wording of Trust Deed – consider unpaid Beneficiary distributions

c. Amend the Financial Statements of the trust – do not reflect Beneficiary Distributions as loans payable

d. Analyse the loan account payable by the trust

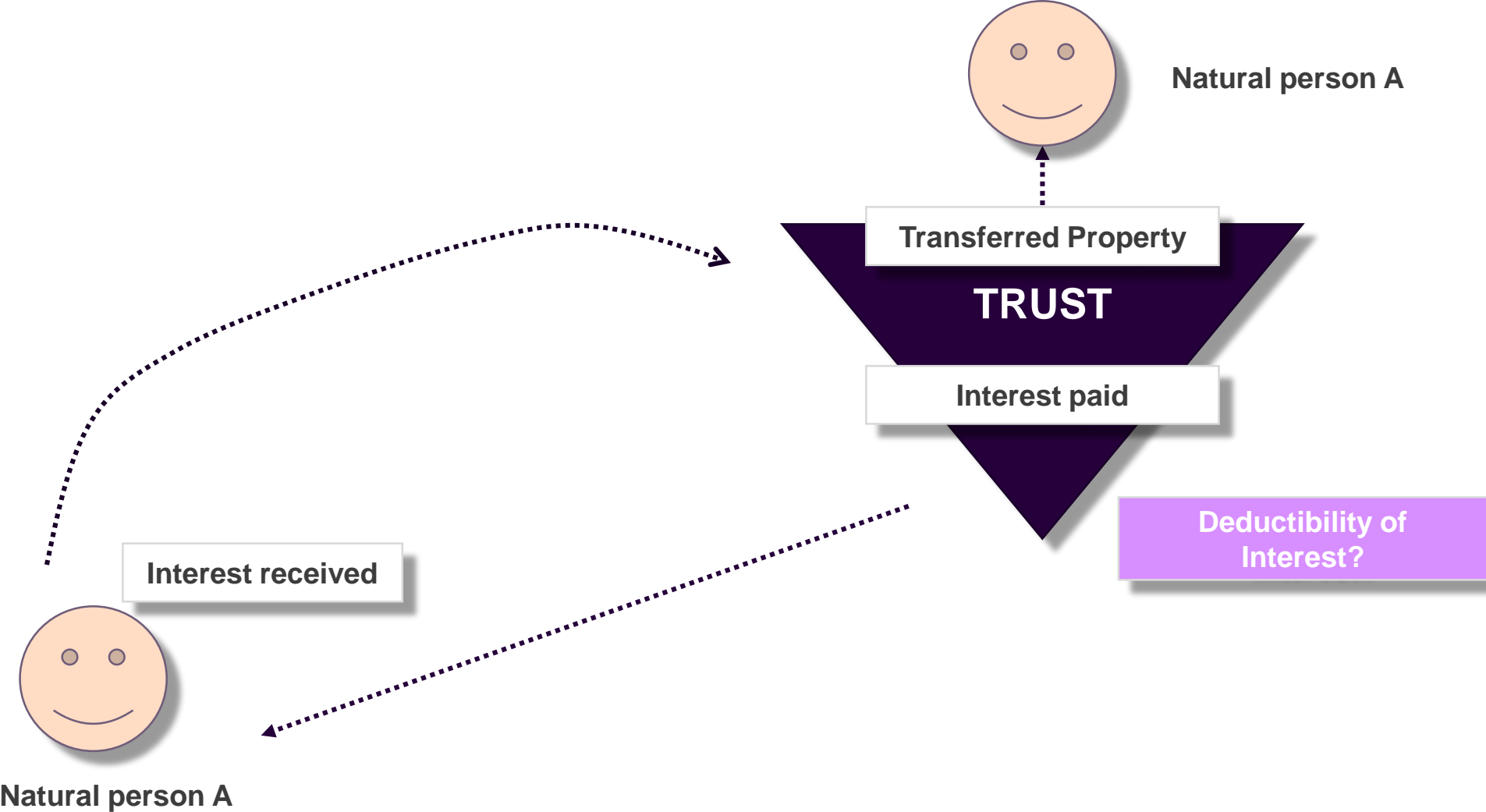
e. Must interest be levied on the interest – free loan OR not?



6. PLANNING

Levying interest

NO Deemed donation



7. POSSIBLE SOLUTIONS

1. Choose to REPAY the Loan

- Consider existing assets of the trust - tax values vs market values

2. Choose to pay the INTEREST (7.75%)

- Consider whether the interest payable by the trust would be deductible in the hands of the trust
- Create Taxable income in trust – trust assets rent out (consider deductibility of rent in individual's hands)
- Create counter loan – levy interest (maybe at a higher rate than the official rate?)

3. Choose NOT to pay the INTEREST (7.75%)

- Consider exceptions – primary residence / S 64(E4) – Dividend tax– 20% / R100 k donations per spouse
- Market advocates conversion to preference shares?
- Market advocates conversion of trust loan to a Company - Section 42(8)?

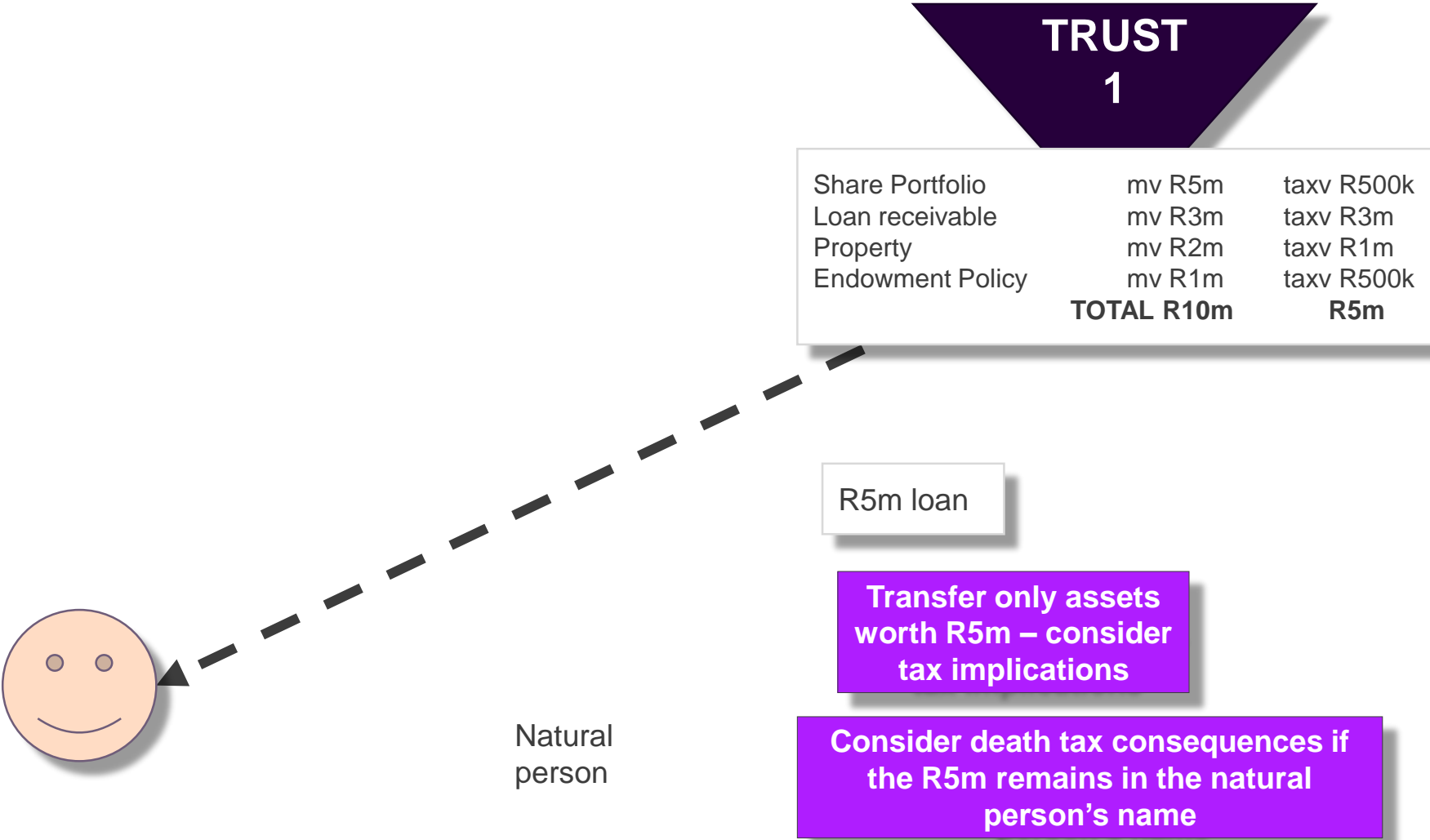
4. Consider to KILL the loan

- Donate the loan
- Waive the loan

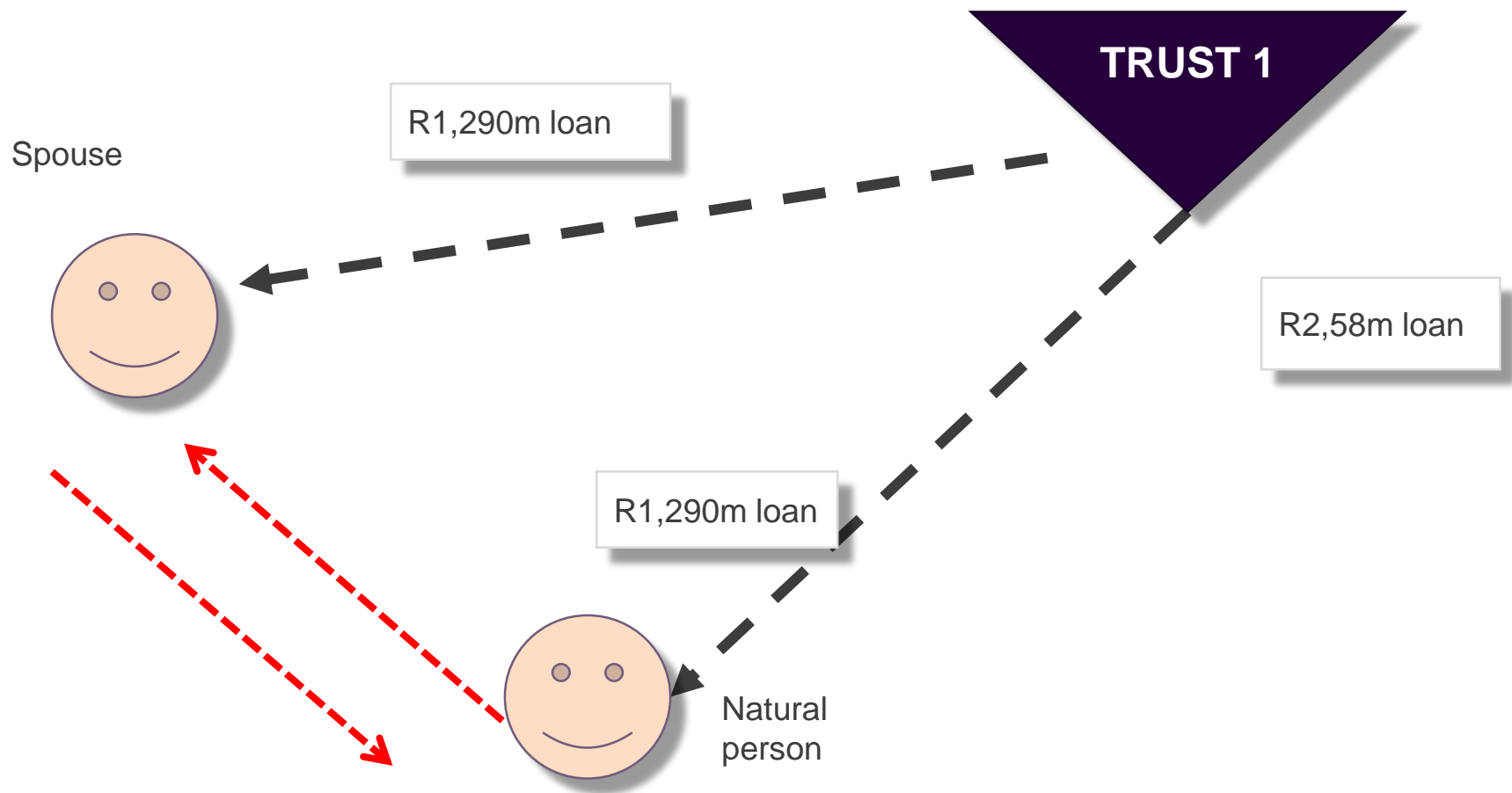


7. POSSIBLE SOLUTIONS

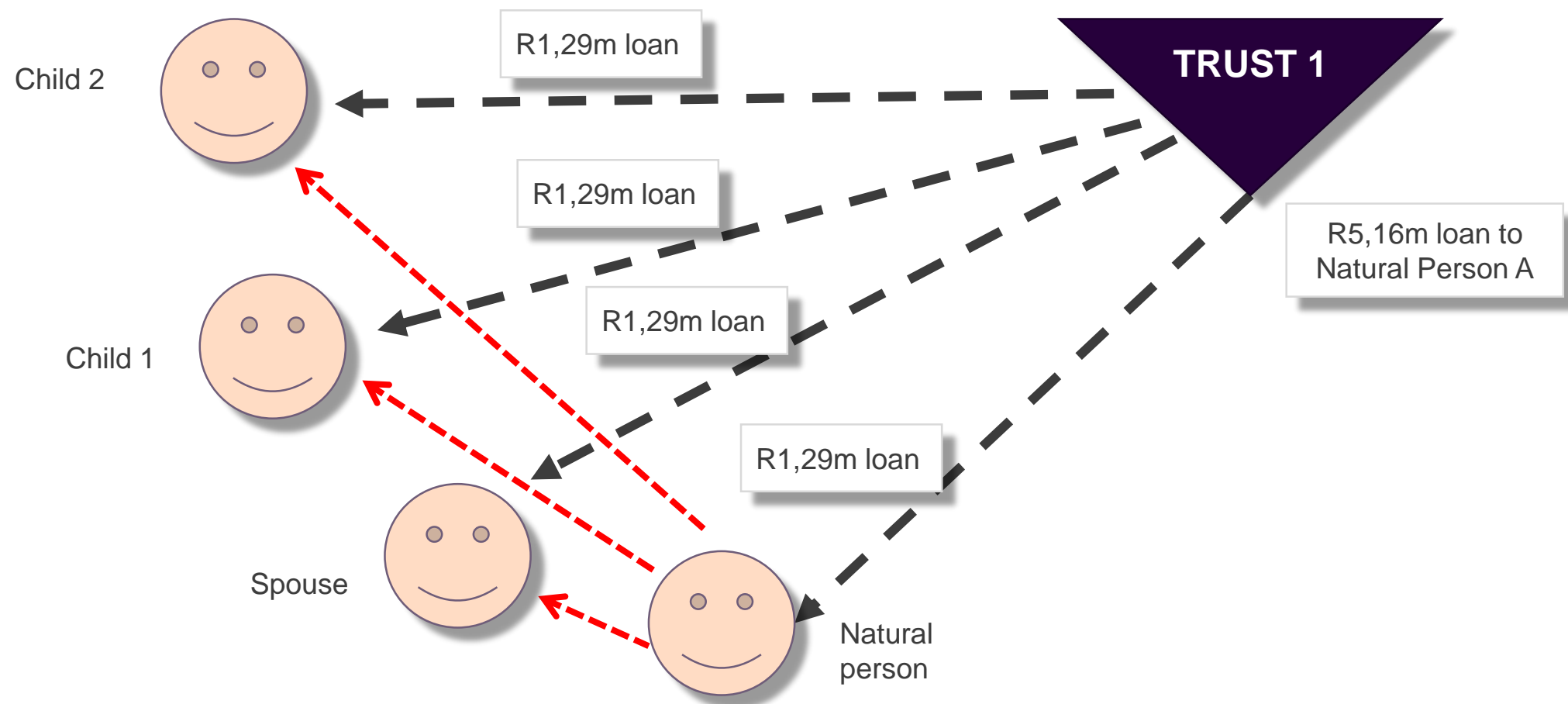
Repayment



7. POSSIBLE SOLUTIONS



7. POSSIBLE SOLUTIONS



Dr. Stefan Strydom: B.Com (Honns), CA(SA), LLB, LLM, LLD (Doctorate on the Law of Trusts), Diploma in Capital Gains Tax

Mobile: 082 786 6107

Landline: 012 - 942 4560

Email: sstrydom@s-bro.co.za

THANK YOU VERY MUCH!



Sec 7C of the ITA – before 19 7 2017

- 7C. Loan or credit advanced to a trust by a connected person.—**(1) This section applies in respect of any loan, advance or credit that—
- (a) a natural person; or
 - (b) at the instance of that 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 a trust in relation to which that person or company, or any person that is a connected person in relation to that person or company, is a connected person.
- (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, advance or credit referred to in subsection (1).
- (3) If a trust incurs—
- (a) no interest in respect of a loan, advance or credit referred to in subsection (1); or
 - (b) interest at a rate lower than the official rate of interest as defined in paragraph 1 of the Seventh Schedule, an amount equal to the difference between the amount incurred by that trust, during a year of assessment as interest in respect of that loan, advance or credit and the amount that would have been incurred by that trust at the official rate of interest must, for purposes of Part V of Chapter II, be treated as a donation made to that trust by the person referred to in subsection (1) (a) on the last day of that year of assessment of that trust.



Sec 7C of the ITA – before 19 7 2017

(4) If a loan, advance or credit was provided by a company to a trust 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, 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 during a year of assessment in respect of a loan, advance or credit referred to in subsection (1) if—

- (a) that trust 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, advance or credit 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;



Sec 7C of the ITA – before 19 7 2017

- (c) that trust is a special trust as defined in paragraph (a) of the definition of a special trust;
- (d) that trust used that loan, advance or credit wholly or partly for purposes of funding the acquisition of an asset and—
 - (i) the person referred to in subsection (1) (a) 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 that year of assessment; and
 - (ii) the amount owed relates to the part of that loan, advance or credit that funded the acquisition of that asset;
- (e) that loan, advance or credit constitutes an affected transaction as defined in section 31 (1) that is subject to the provisions of that section;
- (f) that loan, advance or credit was provided to that trust in terms of an arrangement that would have qualified as a sharia compliant financing arrangement as contemplated in section 24JA, had that trust been a bank as defined in that section; or
- (g) that loan, advance or credit is subject to the provisions of section 64E (4).



Sec 7C of the ITA – after 19 7 2017

7C. Loan or credit advanced to a trust by a connected person

(1) This section applies in respect of any loan, advance or credit that—

(a) a natural person; or

(b) at the instance of that 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 that person or company, referred to in (aa) is a connected person; or

(ii) a company that is a connected person in relation to the trust referred to in subparagraph (i).;



Sec 7C of the ITA – after 19 7 2017

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

Timing: When has the loan be provided??

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.;



Sec 7C of the ITA – after 19 7 2017

- (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, advance or credit referred to in subsection (1) **or subsection (1A).**;

- (3) If a trust **or a company** incurs—
 - (a) no interest in respect of a loan, advance or credit referred to in subsection (1) **or subsection (1A);** or
 - (b) interest at a rate lower than the official rate of interest as defined in paragraph 1 of the Seventh Schedule, 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, advance or credit 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 by the person referred to in subsection (1) (a) **or subsection (1A);** on the last day of that year of assessment of that trust.



Sec 7C of the ITA – after 19 7 2017

(4) If a loan, advance or credit 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, 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, advance or credit referred to in subsection (1) if—

- (a) that trust 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, advance or credit 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;



Sec 7C of the ITA – after 19 7 2017

- (c) that trust is a special trust as defined in paragraph (a) of the definition of a special trust;
- (d) that trust used that loan, advance or credit wholly or partly for purposes of funding the acquisition of an asset and—
 - (i) the person referred to in subsection (1) (a) 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 that year of assessment; and
 - (ii) the amount owed relates to the part of that loan, advance or credit that funded the acquisition of that asset;
- (e) that loan, advance or credit constitutes an affected transaction as defined in section 31 (1) that is subject to the provisions of that section;
- (f) that loan, advance or credit was provided to that trust in terms of an arrangement that would have qualified as a sharia compliant financing arrangement as contemplated in section 24JA, had that trust been a bank as defined in that section;
- (g) that loan, advance or credit is subject to the provisions of section 64E (4); or



Sec 7C of the ITA – after 19 7 2017

- “(h) that trust was created solely for purposes of giving effect to an employee share incentive scheme in terms of which—
- (i) that loan, advance or credit was provided—
 - (aa) by a company to that trust;
 - (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.”.

(2) Paragraphs (a), (b), (c), (d) and (e) of subsection (1) are deemed to have come into operation on **19 July 2017** and apply in respect of any amount owed by a trust or a company in respect of a loan, advance or credit provided to that trust or that company before, on or after that date.



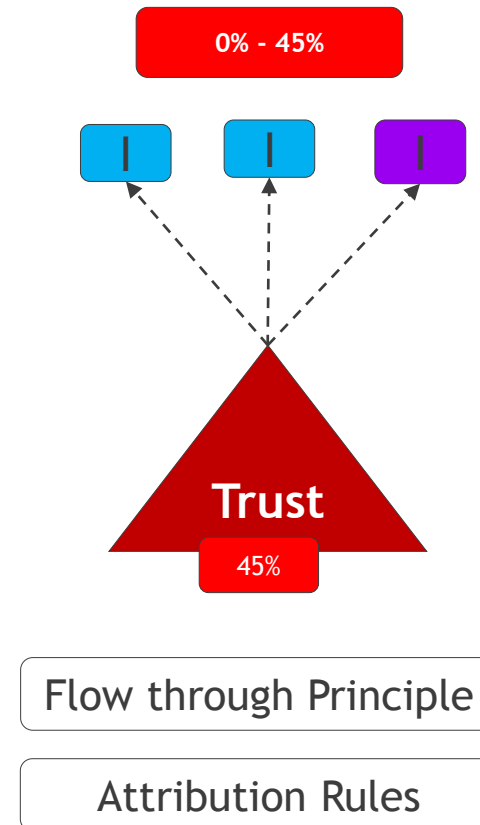
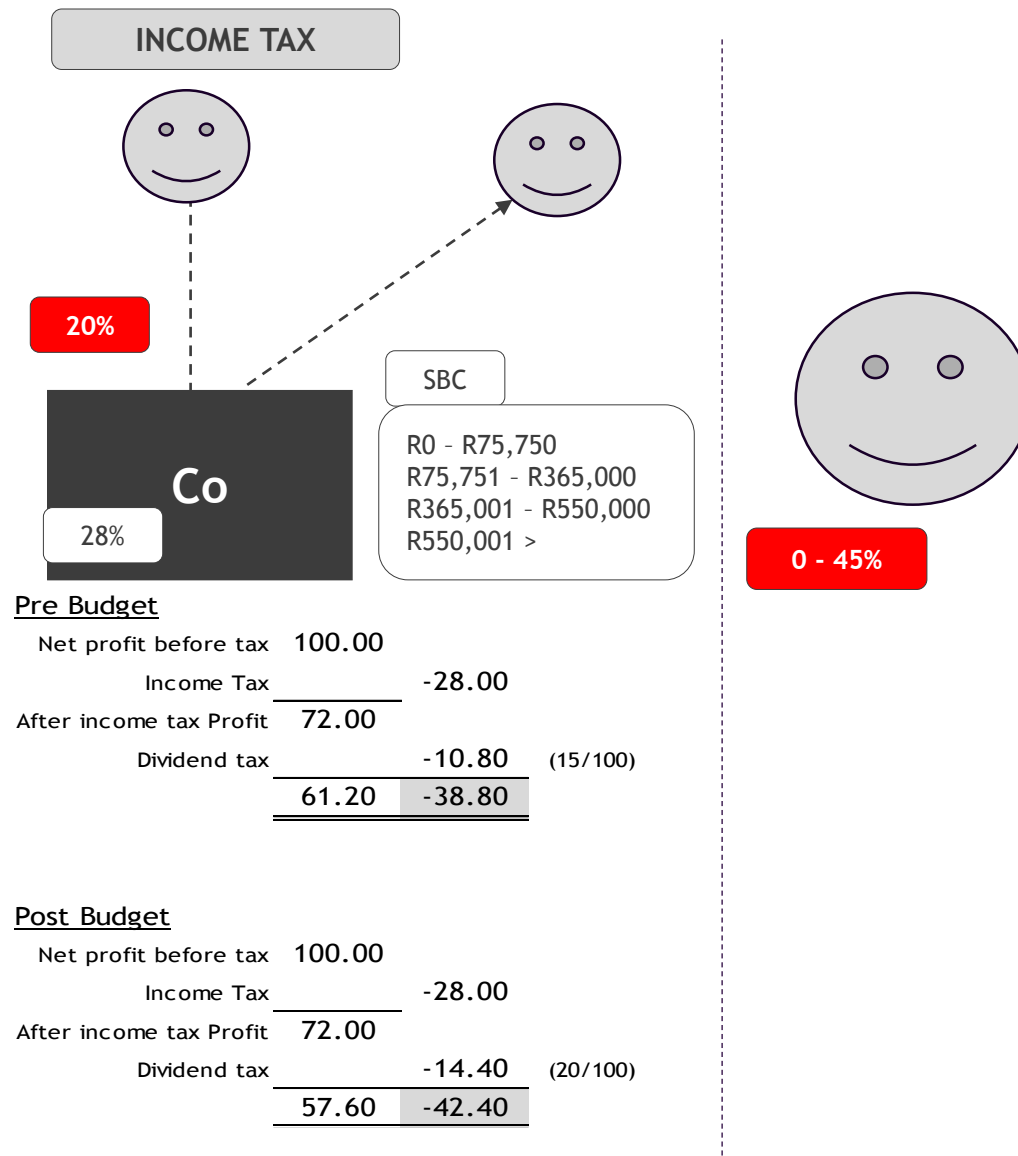
Sec 7D of the ITA – after 01 01 2018

“Calculation of amount of interest at official rate of interest

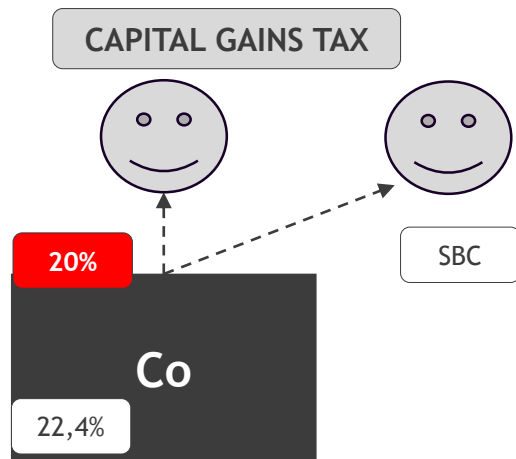
- 7D. Where it must be determined what amount would have been incurred as interest in respect of any loan, debt, advance or amount of credit provided to a person or an amount owed by a person had that interest been incurred at the official rate of interest, that amount must be determined without regard to any rule of the common law or provision of any act in terms of which—
- (a) the amount of any interest, fee or similar finance charge that accrues or is incurred in respect of a debt may not in aggregate exceed the amount of that debt; or
 - (b) no interest may accrue or be incurred in respect of a debt once the amount that has accrued or been incurred as interest is equal to the amount of that debt.”.
- (2) Subsection (1) comes into operation on 1 January 2018 and applies in respect of years of assessment ending on or after that date.



EFFECTIVE TAX RATES - Discussions (post budget)



EFEFFECTIVE TAX RATES - Discussions (post budget)



Pre Budget

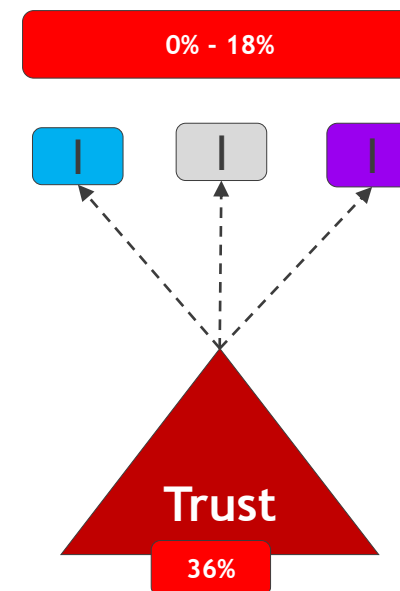
Capital gains	100.00	
Inclusion		80.00
Tax	-22.40	
After income tax Profit	77.60	
Dividend tax	-11.64	(15/100)
	65.96	-34.04

Post Budget

Capital gains	100.00	
Inclusion		80.00
Tax	-22.40	
After income tax Profit	77.60	
Dividend tax	-15.52	(20/100)
	62.08	-37.92



0 - 18%



Flow through Principle

Attribution Rules

SBC - R1m CGAIN = 32.91

SBC - R2m CGAIN = 37.65

