

**13 September  
2017**



# **TRUSTS @ ESTATE PLANNING**

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(WRS Fiduciary and Tax (Pty) Ltd)**



**WRS Fiduciary and Tax**

13/09/2017

# Tongue in cheek!!





# Agenda



## A. SECTION 7C

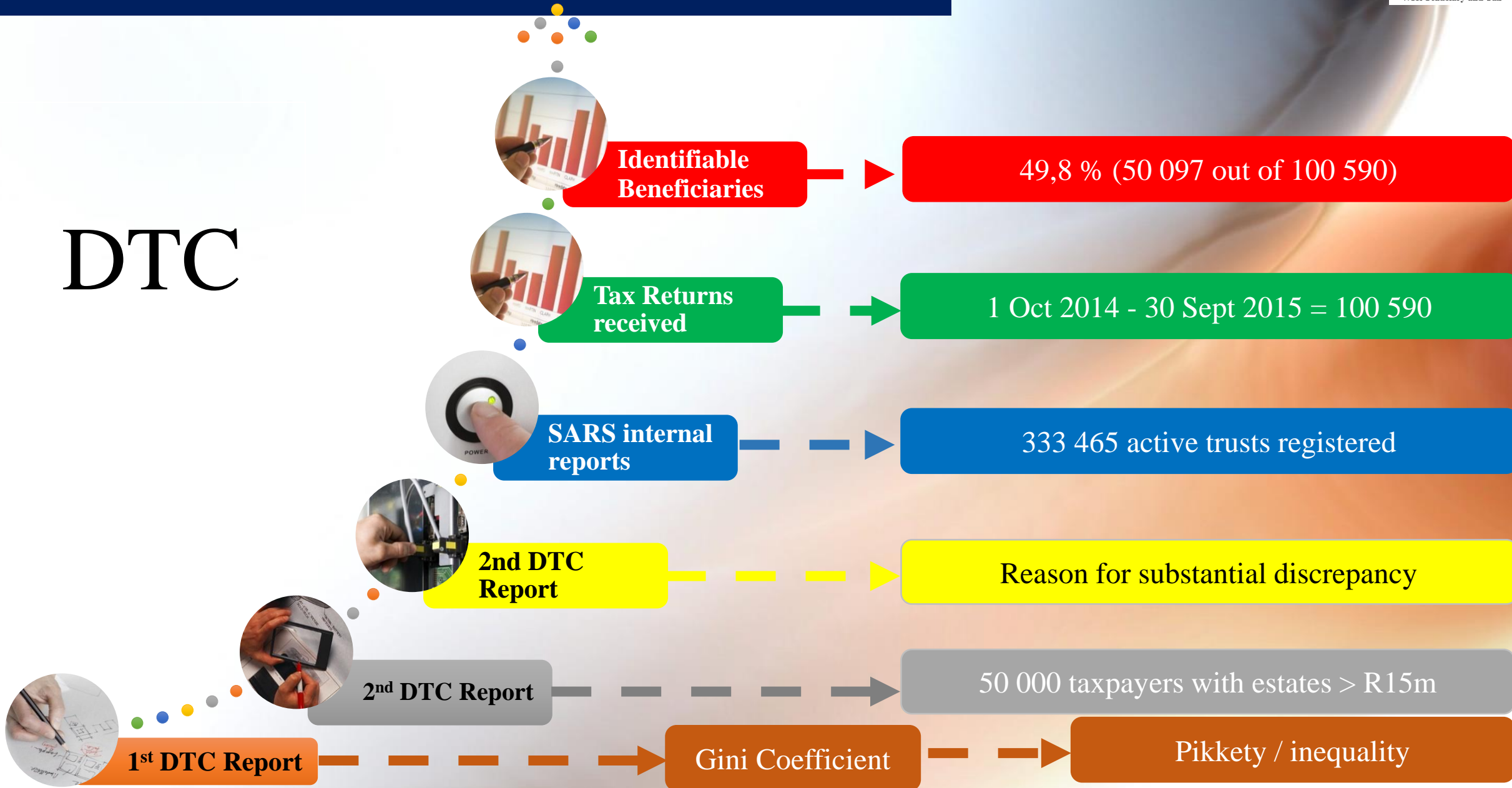
- i) Why this attack on trusts?
- ii) General Explanation
- iii) Background / Principles
- iv) Wording of section 7C
- v) Specific transactions considered
- vi) Planning
- vii) Possible solutions

## B. SECTION 42 OF THE ITA AND ESTATE PLANNING

- i) What can one achieve by implementing s 42
- ii) Typical scenario's where it would be applicable
- iii) What does s42 entail? Depiction
- iv) What does s42 entail? Taxes
- v) Business entities – compared

# A. i) Why this attack on trusts?

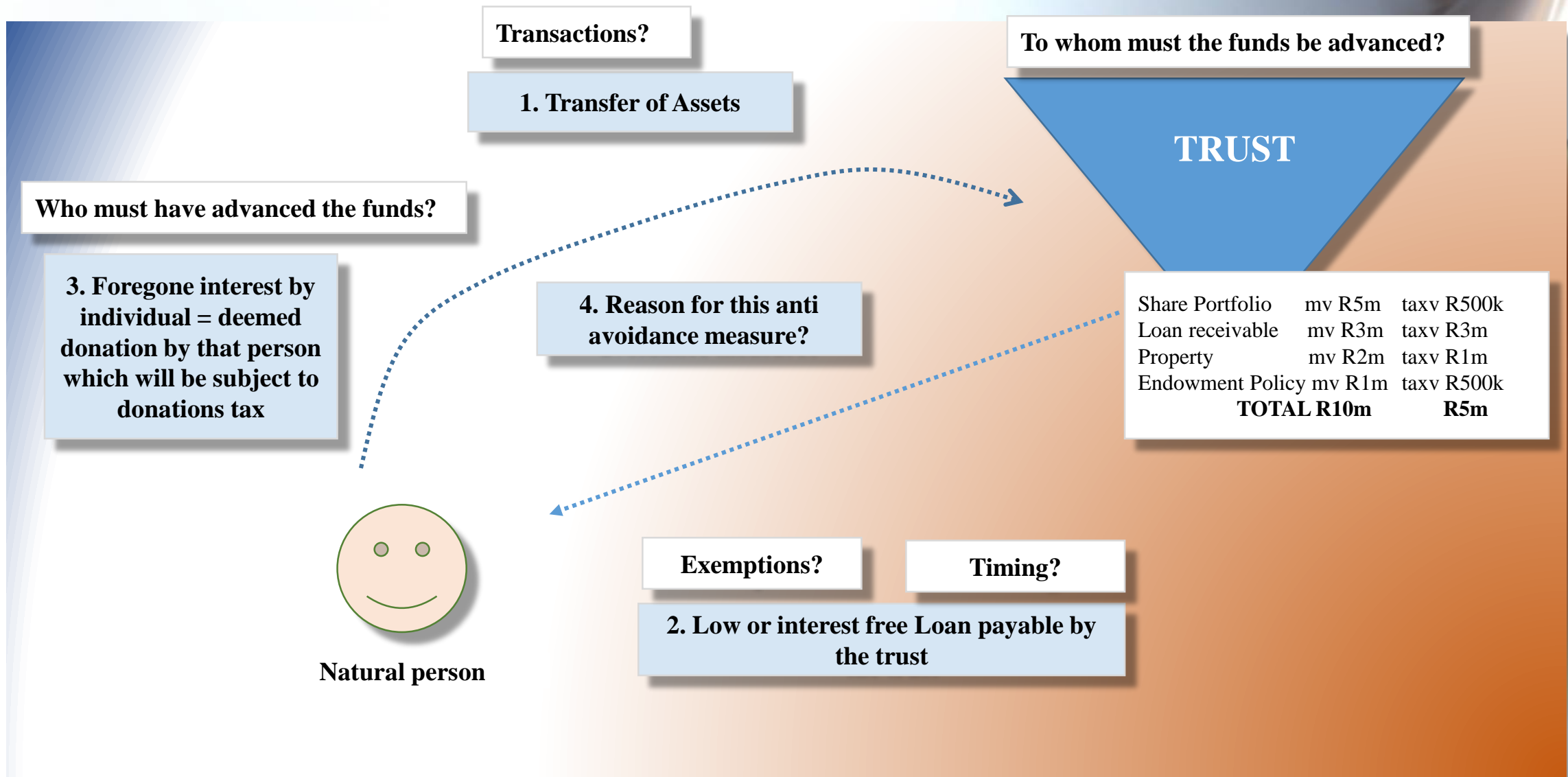
DTC



# A. i) Why this attack on trusts?

- 1<sup>st</sup> DTC report: The Gini coefficient in RSA 0.69 (2030 goal - 0.6)
- 1<sup>st</sup> DTC report : Pikkety: The main driver of inequality = returns on capital (i.e.  $r$ ) exceed rate of economic growth (i.e.  $g$ )
- 1<sup>st</sup> DTC report : Wealth Taxes a necessity;
- 2<sup>nd</sup> DTC report : > 50 000 taxpayers with estates > R15m
- 2<sup>nd</sup> DTC report : Conservative death rate 1% pa = estates = 500 pa
- 2<sup>nd</sup> 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.

# A. ii) General Explanation

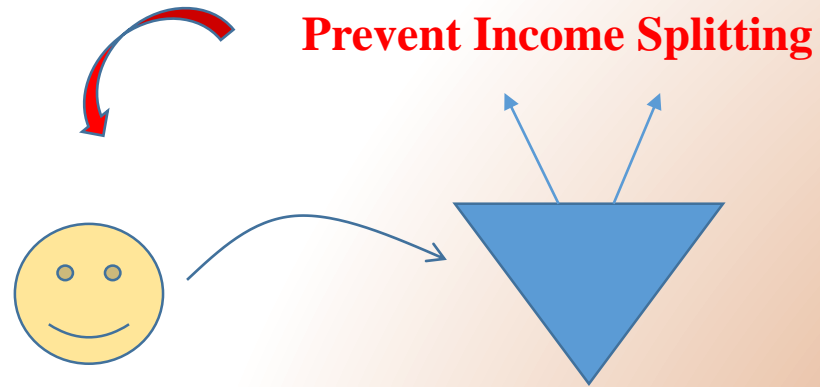




# A. iii) Background / Principles

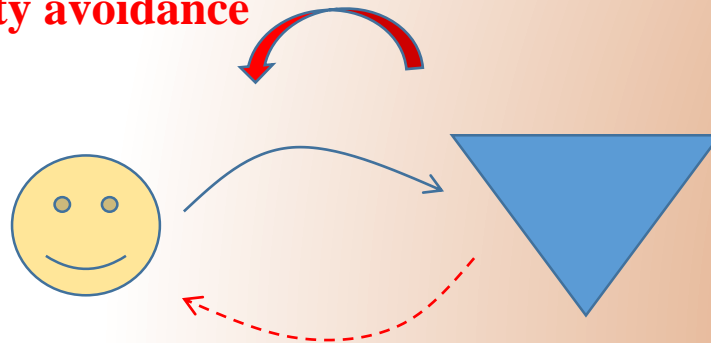
## 1. On which aspects does Treasury focus?

- 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**



# A. iii) Background / Principles

## 2. My inherent problems 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 for CGT if the asset is eventually disposed from the trust, as 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

- Donations tax assumes the disposal of a Right in property

### d. In contrast to what DTC advised



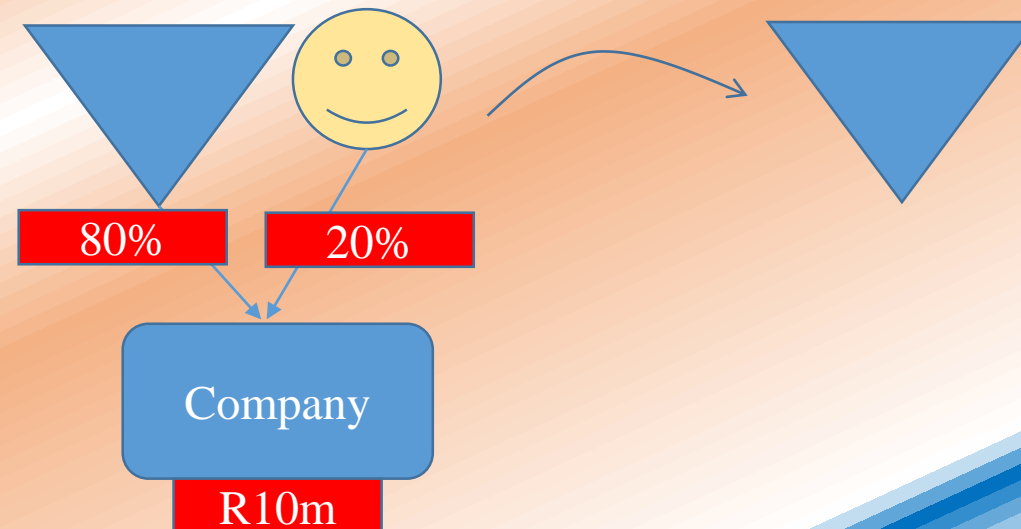
# A. iii) Background / Principles

## 3. Rationale

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



- But Other transactions are also impacted



# A. iii) Background / Principles

**4. The connected party definition makes this provision very complicated and brings about unintended consequences?**

# A. iv) Wording of s 7C

## 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 – A finance the excess**
- 3. Transfer assets to trust against interest free loan account**
- 4. Distribute profits without payment – no interest**



# A. iv) Wording of s 7C

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

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- PBO trust
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- SBF Trust
- Vested trust
- 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;*

# A. iv) Wording of s 7C

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

## B. PROVIDED BY WHOM?

## C. TO WHOM?

## D. CHARACTERISTICS OF SUCH FINANCING?

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## F. EXCLUSIONS

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

## **2. Company which is a connected party to trust;**

*(e) in relation to any person who is a connected person in relation to any other person in terms of the foregoing provisions of this definition, such other person:*

# A. iv) Wording of s 7C

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

## B. PROVIDED BY WHOM?

## C. TO WHOM?

## D. CHARACTERISTICS OF SUCH FINANCING?

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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**



# A. iv) Wording of s 7C

## 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?
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## F. EXCLUSIONS

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

## **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**

# A. iv) Wording of s 7C

## 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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## 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—*

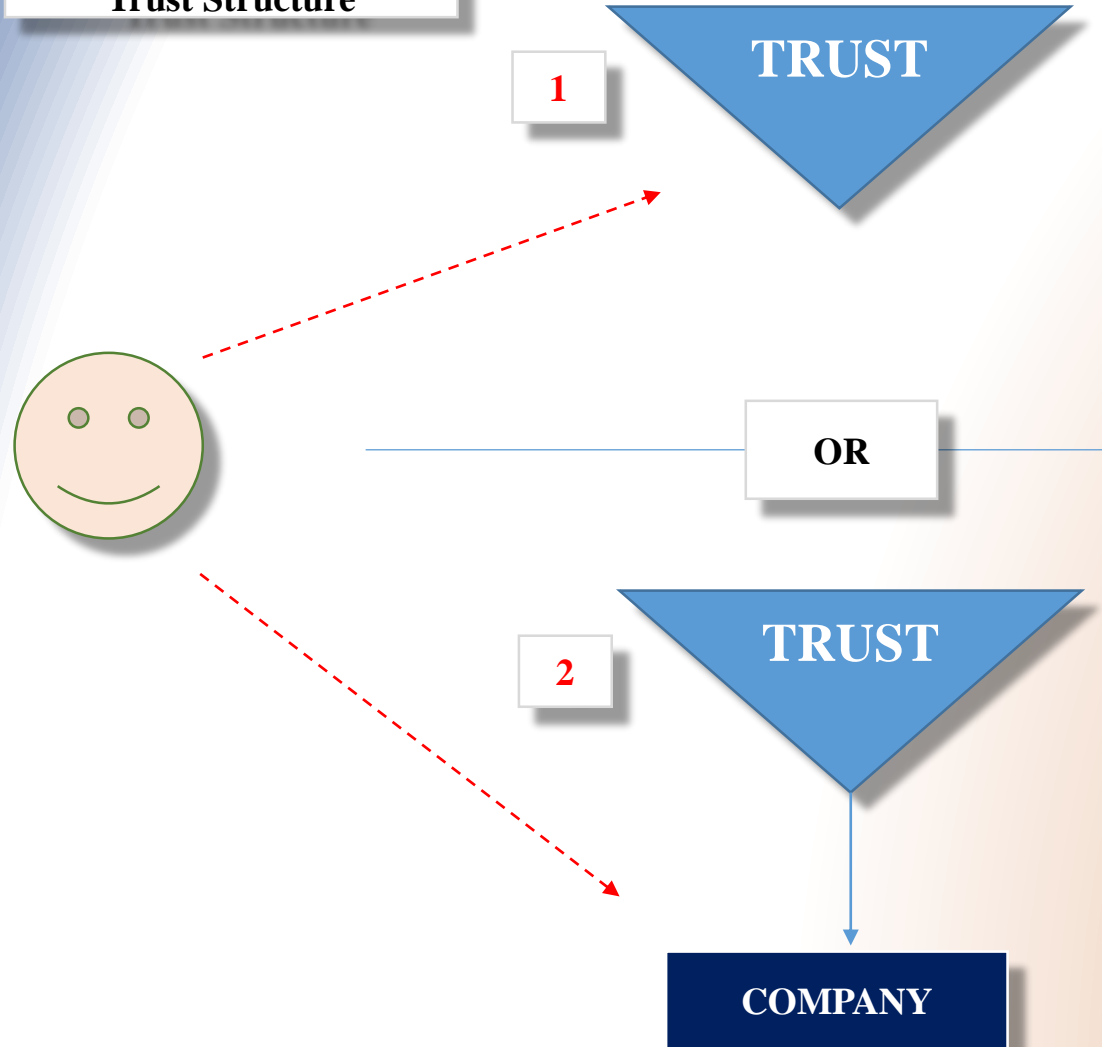
*(i) the person referred to in subsection (1) (a) or the spouse of that person used that asset as a primary residence as contemplated in paragraph (b) of the definition of “primary residence” in paragraph 44 of the Eighth Schedule throughout that year of assessment; and*

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

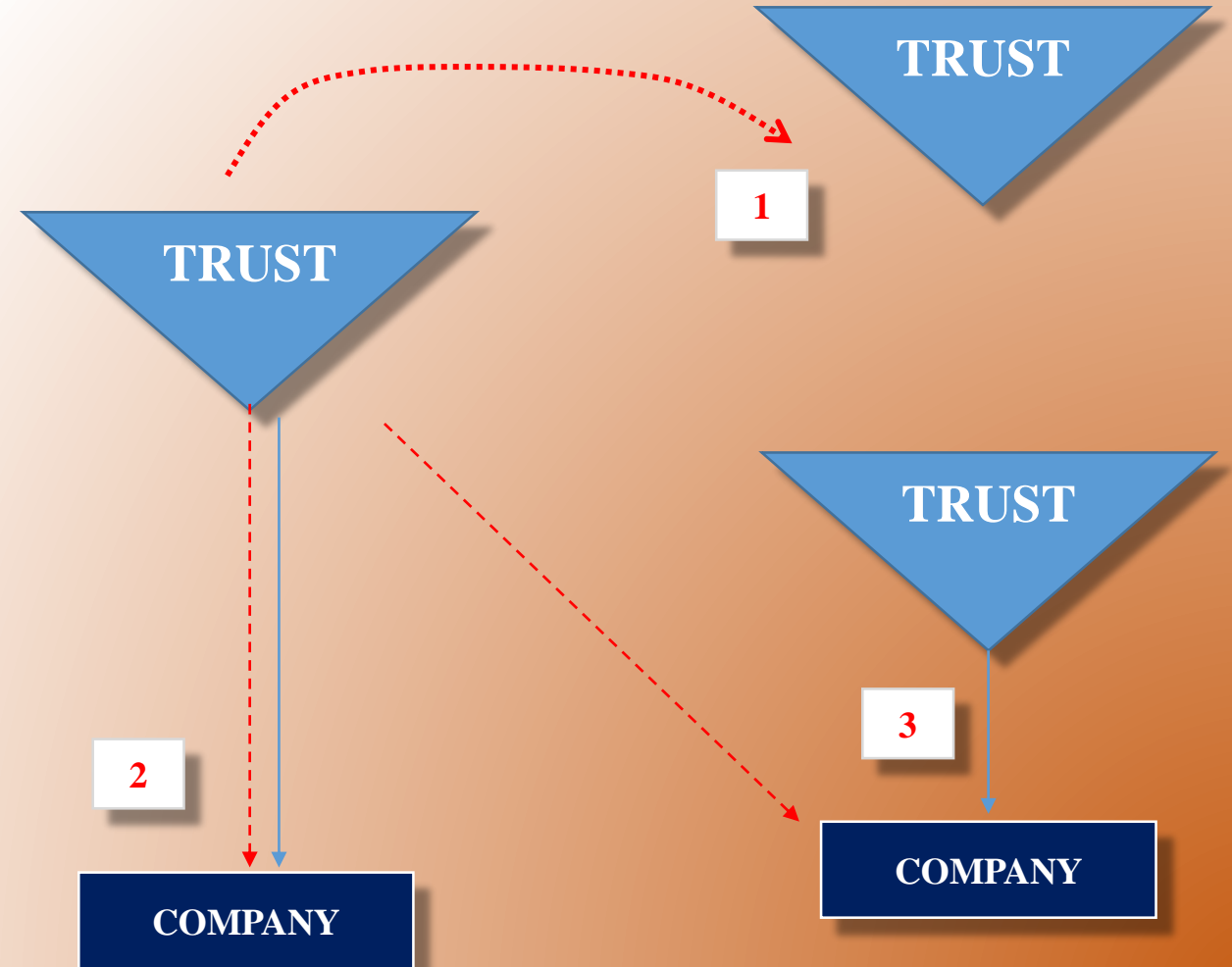
**Why exempt from donations tax, but not from CGT??**

# A. v) Specific transactions considered?

Entity / person with  
dutiable estate finances  
Trust Structure



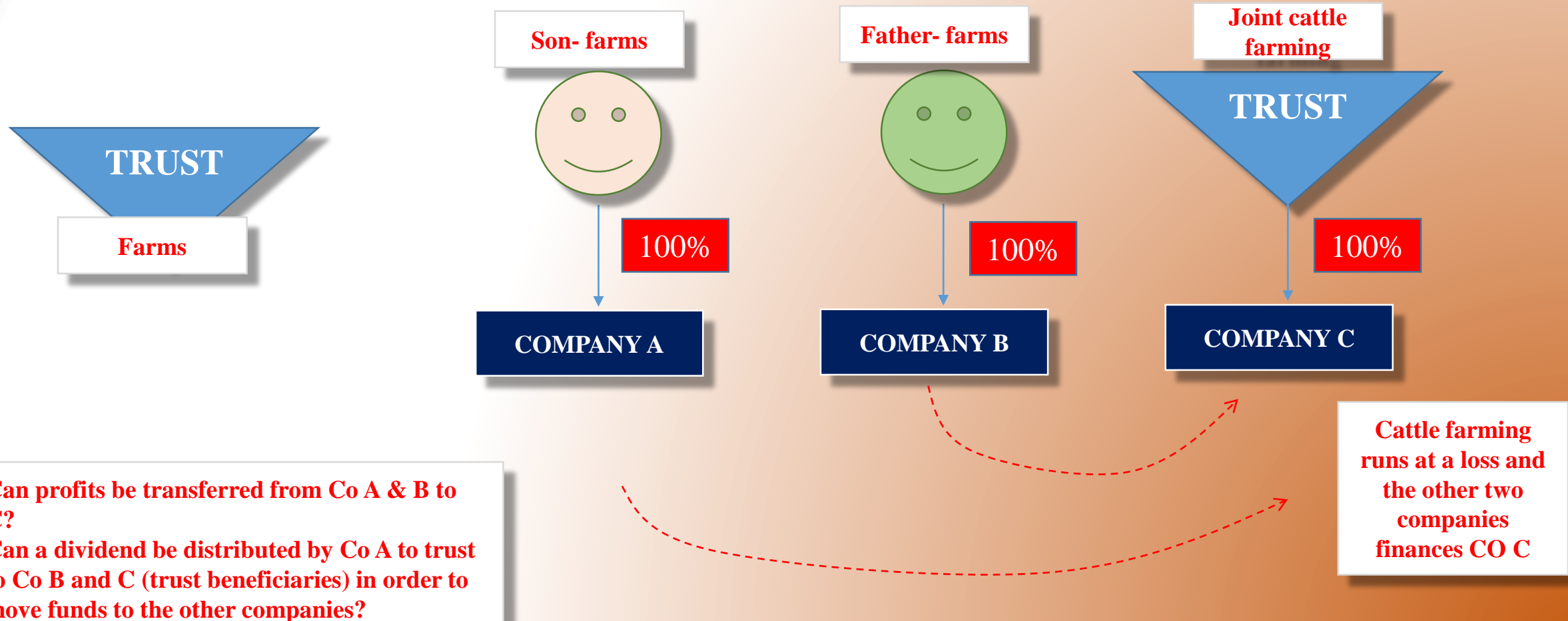
Funding from within a  
trust structure to other  
trust structures





# A. v) Specific transactions considered?

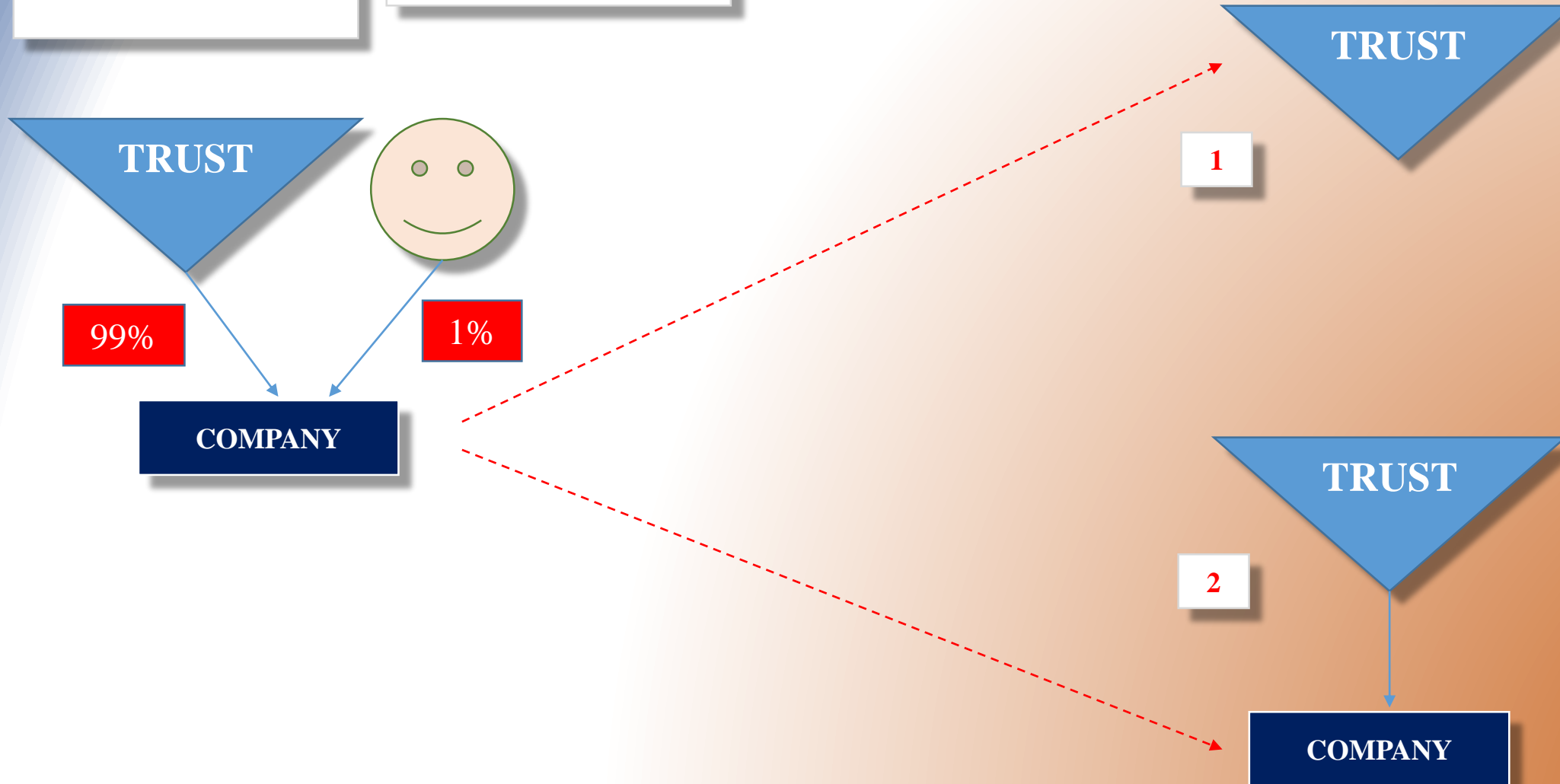
Utilising the Small  
Business Corporation -  
regime



# A. v) Specific transactions considered?

Trust Structure

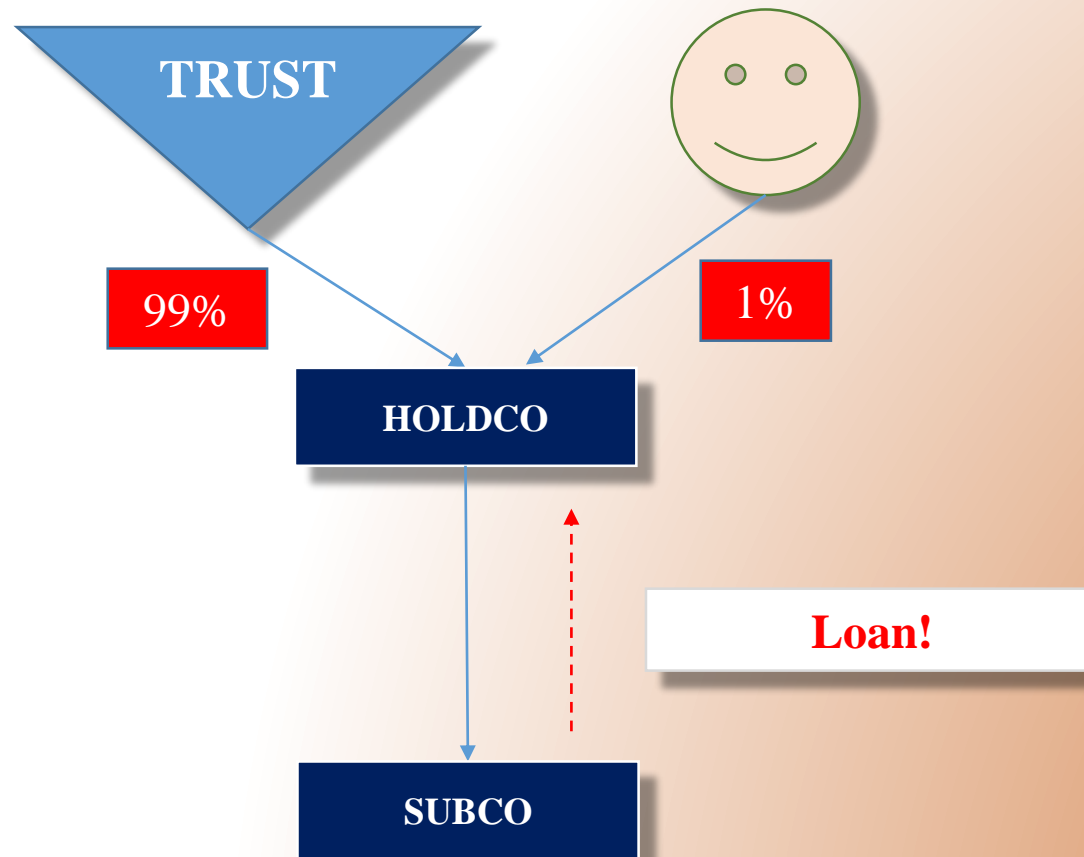
**Contentious!**



# A. v) Specific transactions considered?

BEE transactions

**Contentious!**



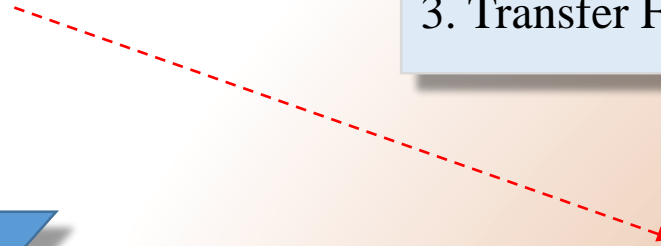
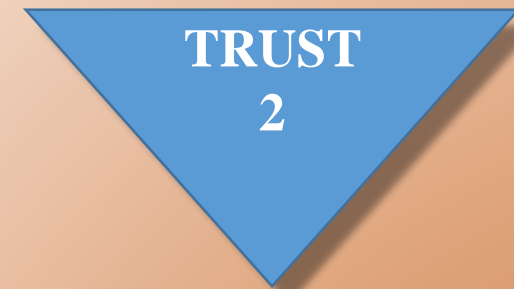


# A. v) Specific transactions considered?

2. Distribute capital gains & funds to individual



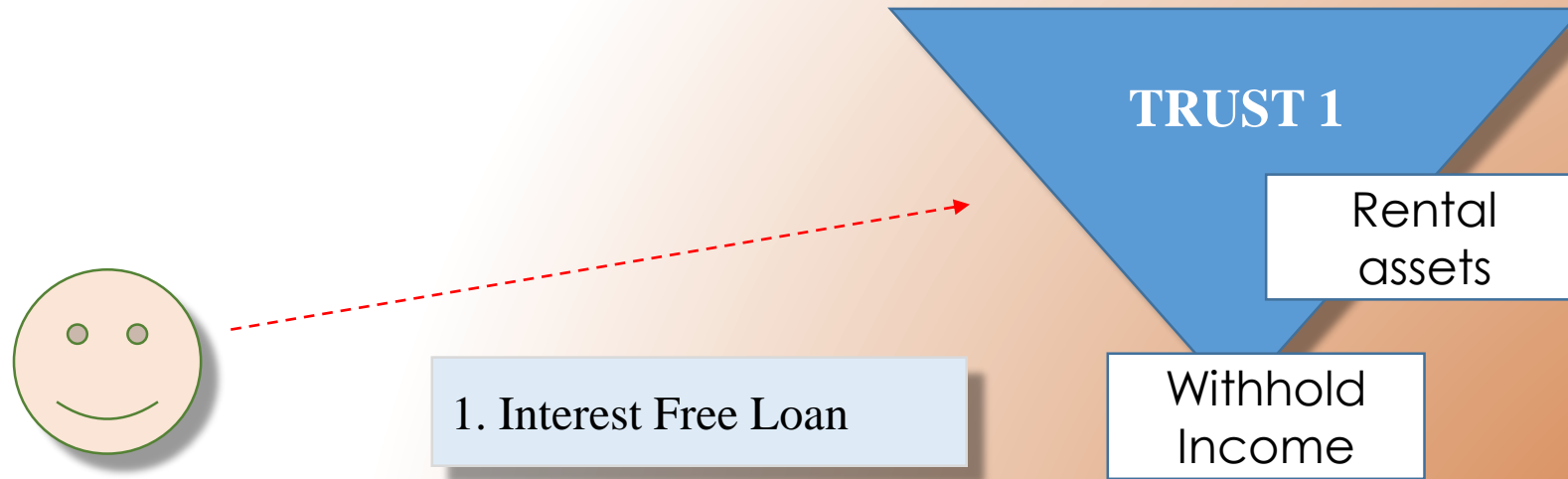
3. Transfer Funds to Trust 2



COMPANY

1. Dispose Shares in company

# A. v) Section 7(5) vs Section 7C



## **FROM A PLANNING PERSPECTIVE –**

### **a. Trust must not be financed with a loan from a natural person connected person (with a dutiable estate )–**

- Start with a trust holding shares in Opco – dividends will provide finance to a trust (42,4 % tax to extract)
- Start with a trust holding shares in a Holdco which holds shares in Opco – dividends will provide finance to a Holdco (28% tax to Holdco)
- Services from a trust – be careful for Personal Services Provider
- Bequeath assets to trust
- Bequeath loan accounts back to 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**

# A. vii) Possible Solutions

## 1. CHOOSE TO REPAY THE LOAN

- Consider existing assets of the trust - tax values vs market values (see next slide)

## 2. CHOOSE TO PAY THE INTEREST (8%)

- 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) (see next slide)
- Create counter loan – levy interest (maybe at a higher rate than the official rate?)

## 3. CHOOSE NOT TO PAY THE INTEREST (8%)

- Consider exceptions – primary residence / S 64(E)(4) – Dividend tax– 20% / R100 k donations per spouse (see next slides)
- Market advocates conversion to preference shares?
- Market advocates conversion of trust loan to a Company - Section 42(8)?

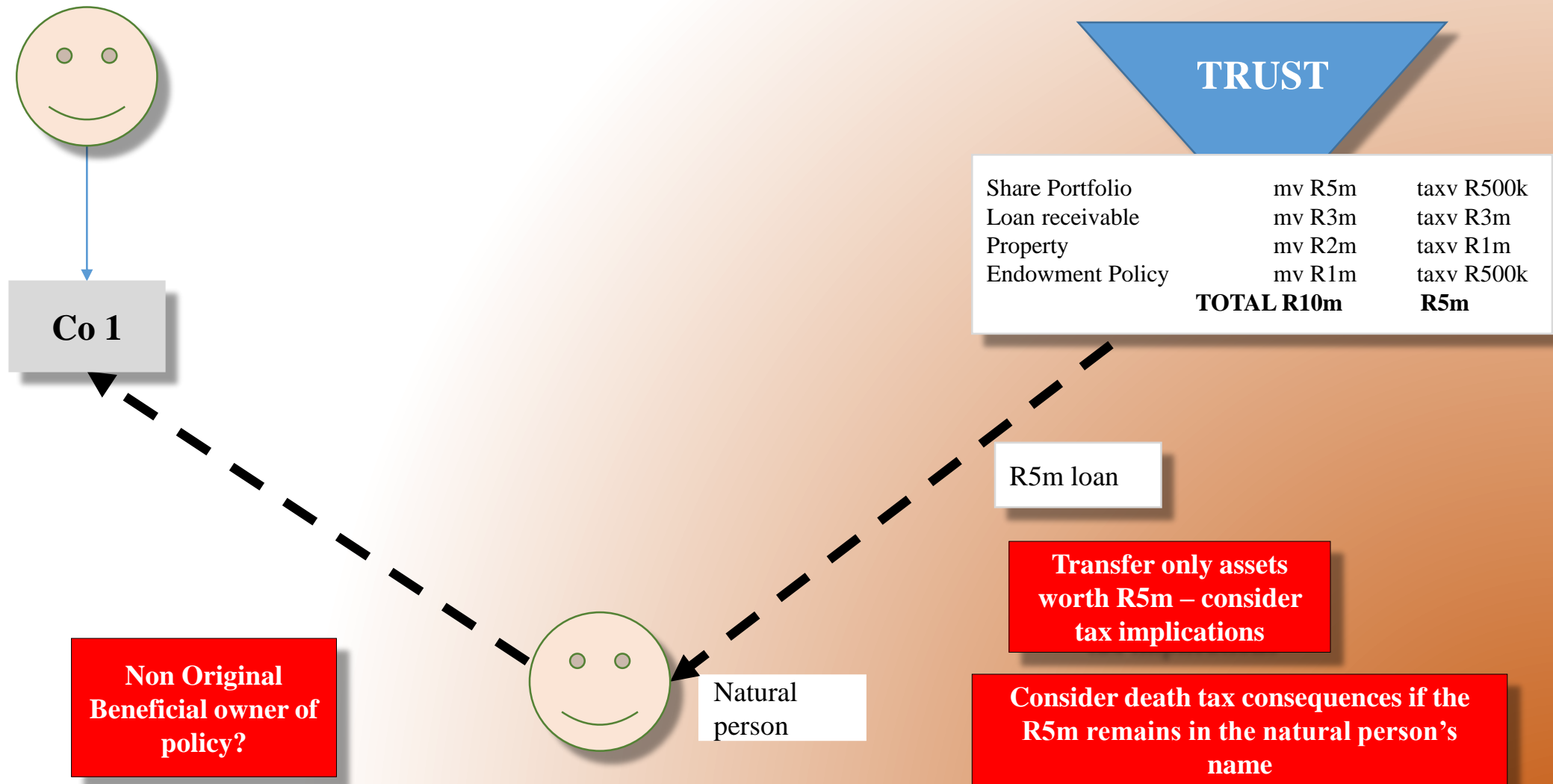
## 4. CONSIDER TO KILL THE LOAN

- Donate the loan
- Waive the loan

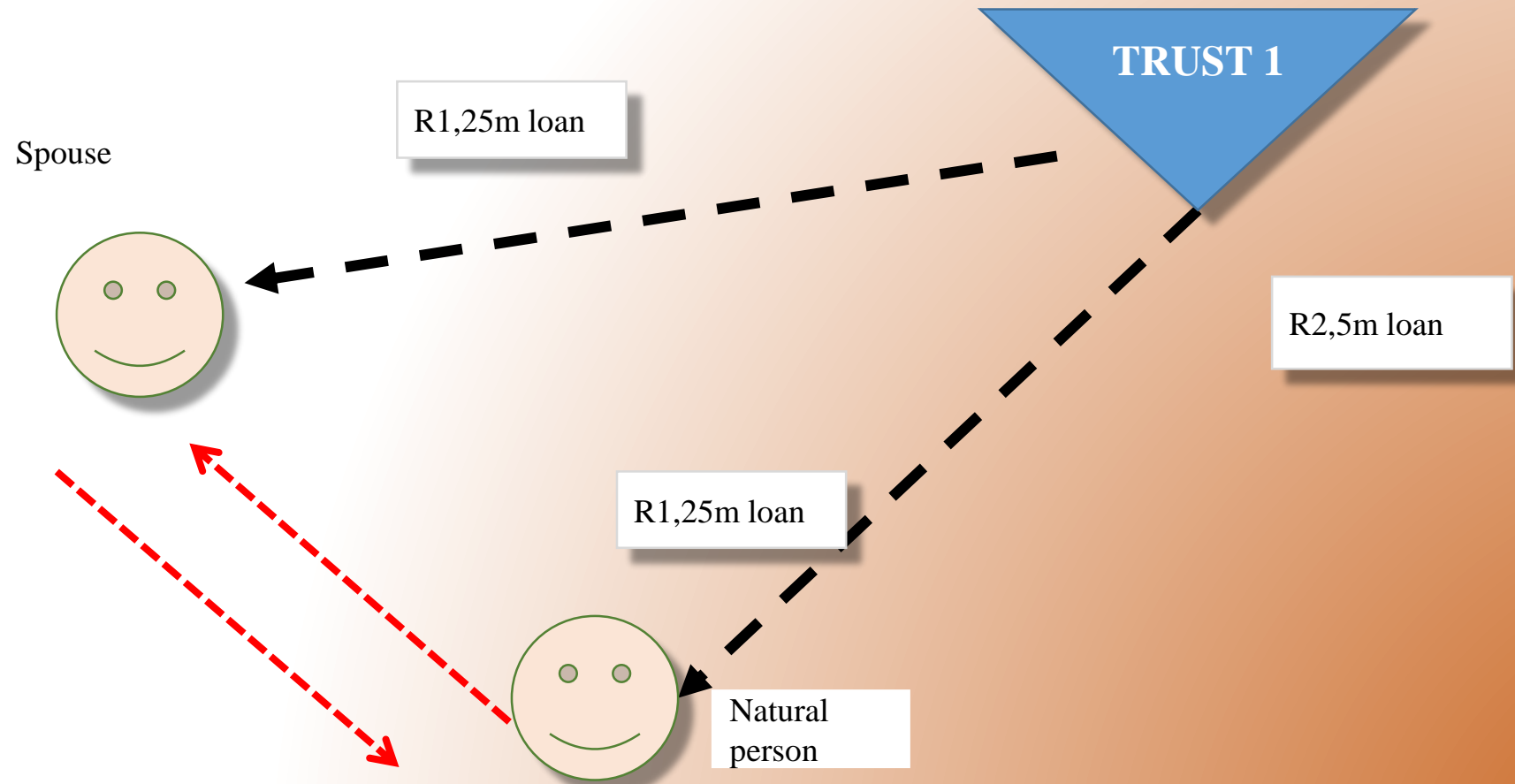


# A. vii) Possible Solutions – Repay the loan

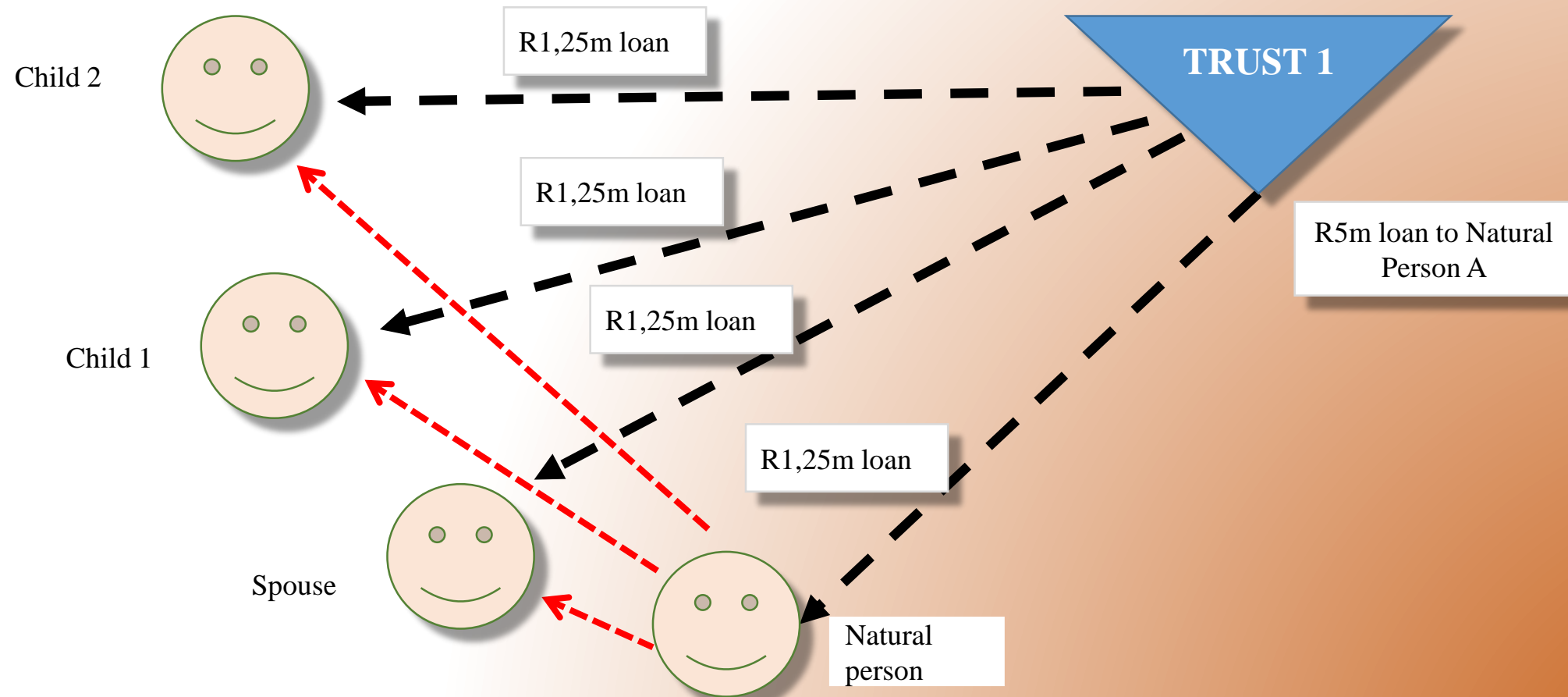
## Repayment



# A. vii) Possible Solutions - spouse

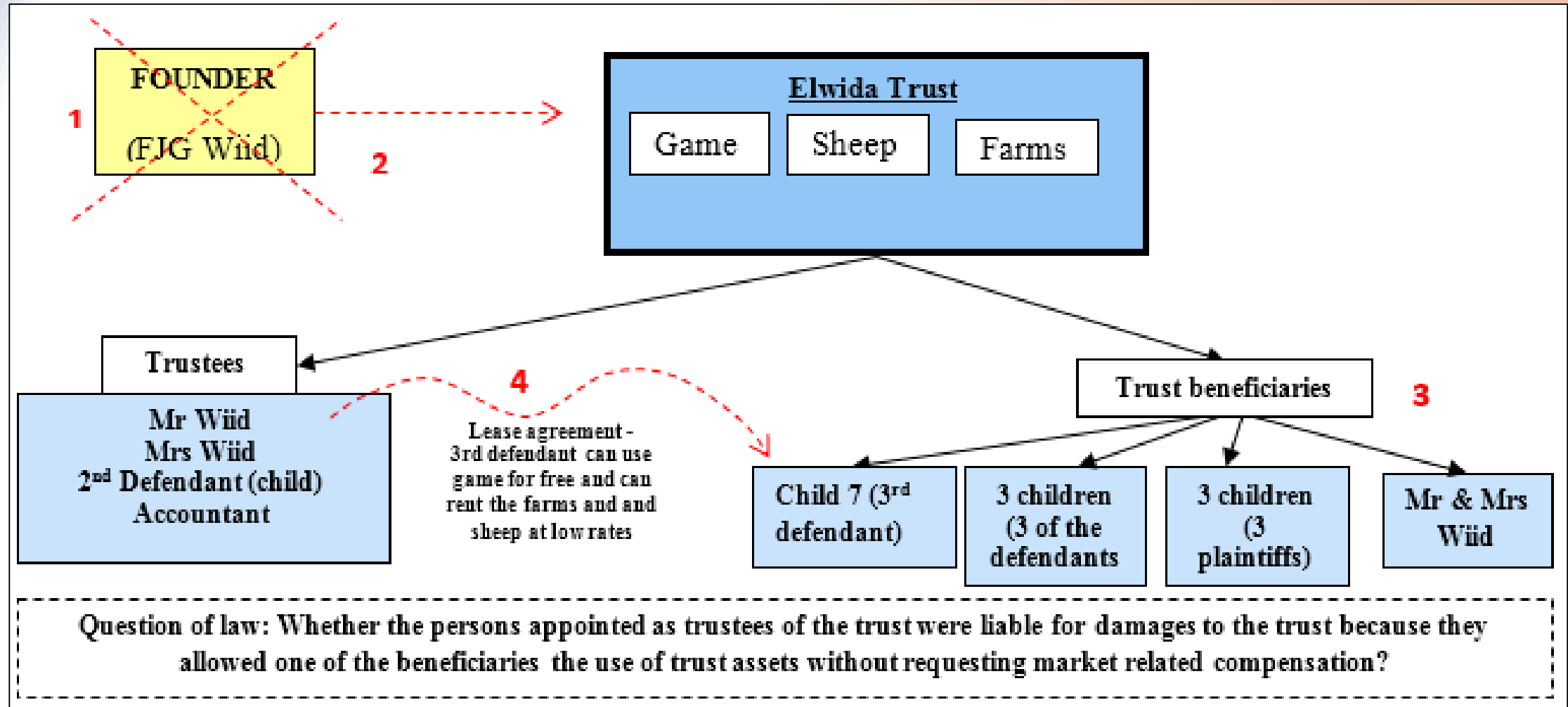


# A. vii) Possible Solutions – on loan



# A. vii) Possible Solutions – rent assets

WÜID FISCHER & RABIE v WÜID AND OTHERS (1571/2006) [2012] NC (13 JANUARY 2012)





# B. SECTION 42 OF THE ITA AND ESTATE PLANNING

(i) What can one achieve by implementing s 42?

(ii) Typical scenario's where it can be applied

iii) What does s42 entail? Depiction

(iv) Business entities – compared

(iv) Estate Planning

# B. i) What can one achieve by implementing s 42

1. You can transfer assets from a sole proprietor, or a trust, or another company TO A COMPANY
2. Without incurring any ADVERSE TAXES
3. In exchange for shares in that COMPANY

# B. i) What can one achieve by implementing s 42

## WHY?

- a. To restructure
- b. To create a tax group of Companies
- c. To ring fence assets from a risks in an existing entity
- d. Tax implications at death
- e. Dividend tax implications

# B. ii) Typical scenario's

## DEATH TAXES?

### Sole Proprietor:

Mr A passes away:  
assets bequeathed to  
his son (@ market  
value)

In the hands of  
the heir:

1. Tractors
2. Livestock
3. Farms
4. Vehicles

Income tax  
Income tax

CGT

Income tax

Depreciation  
To Std value

Base Cost

Depreciation

45% vs 18%  
scenario

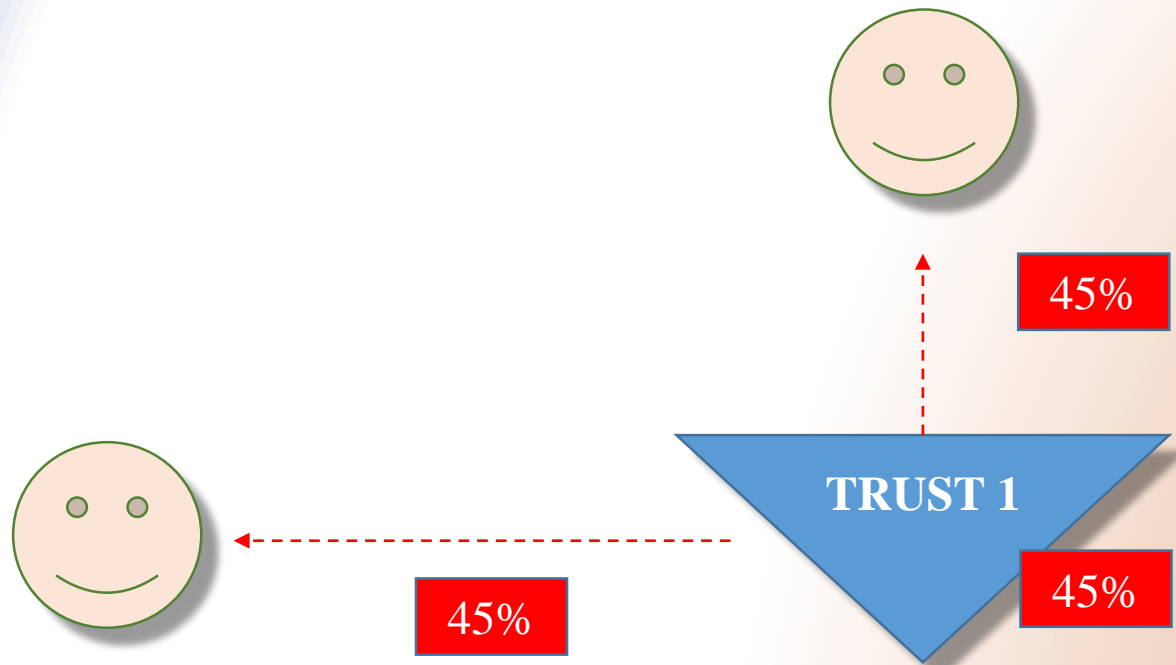


# B. ii) Typical scenario's

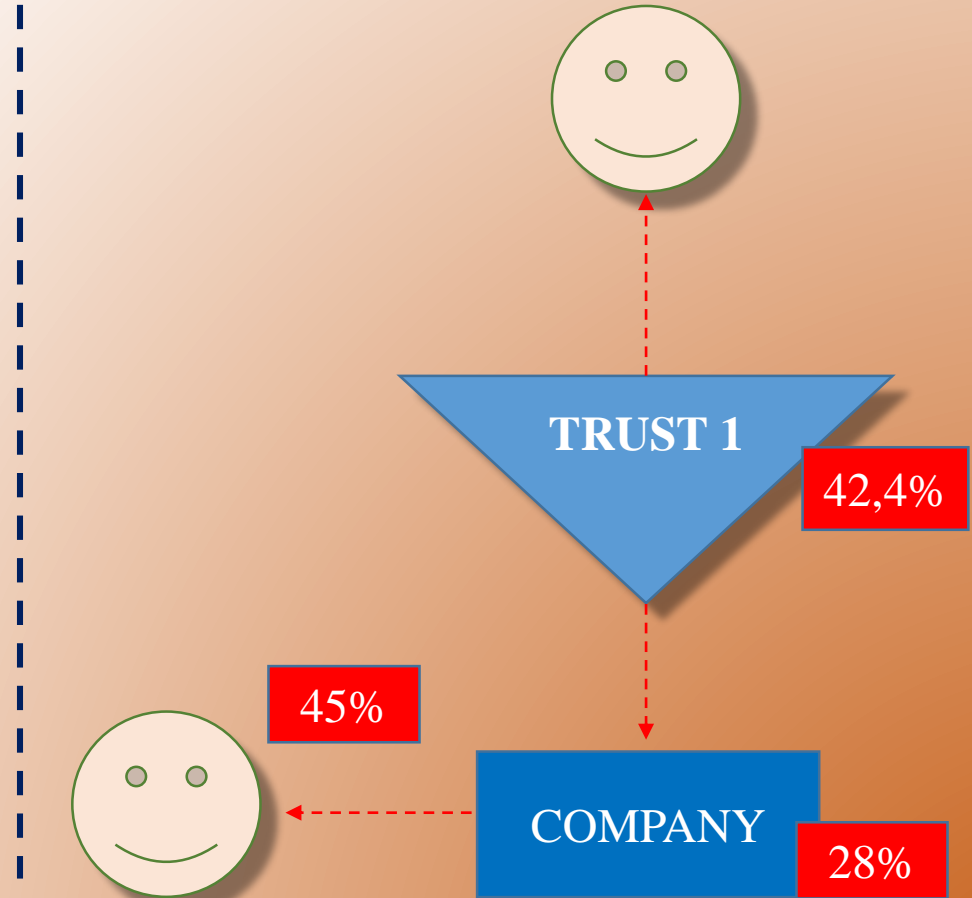
## RETIREMENT?

Trust:

Mr A has rental apartments  
in trust for his retirement



R3m taxable income,  
but only uses R1,2m

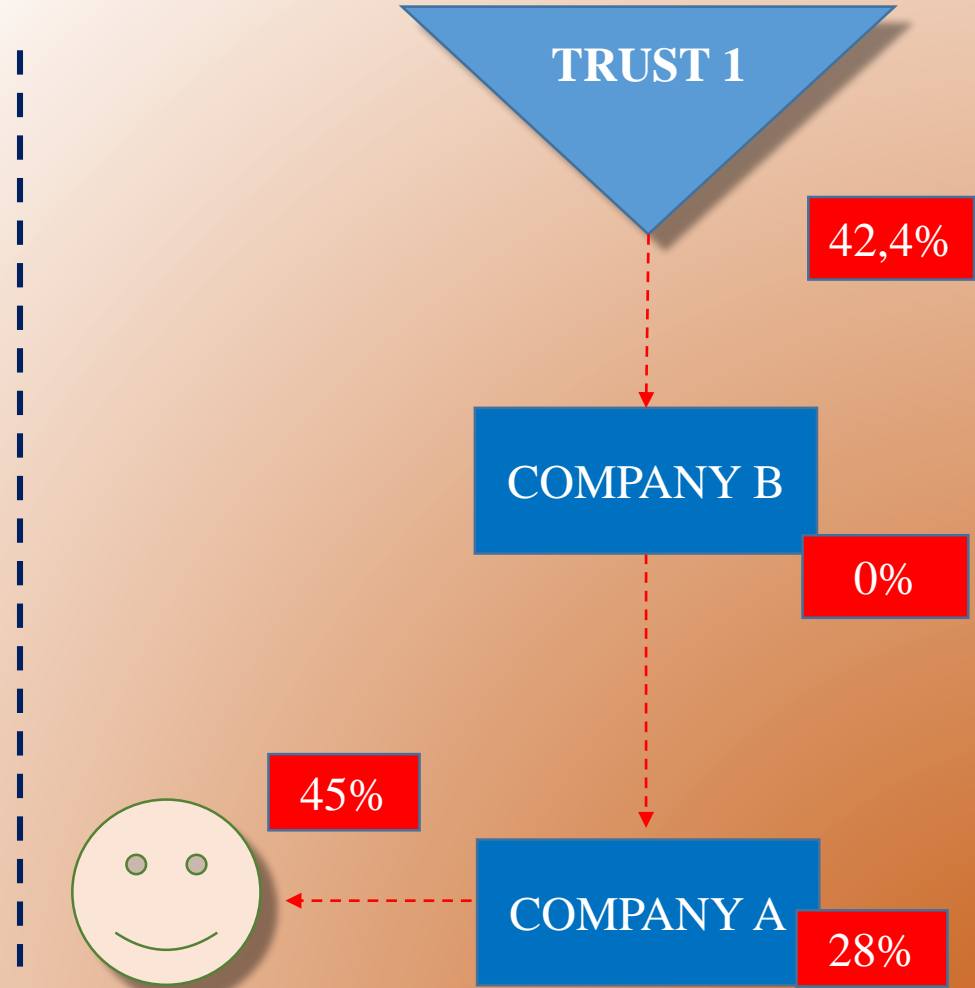
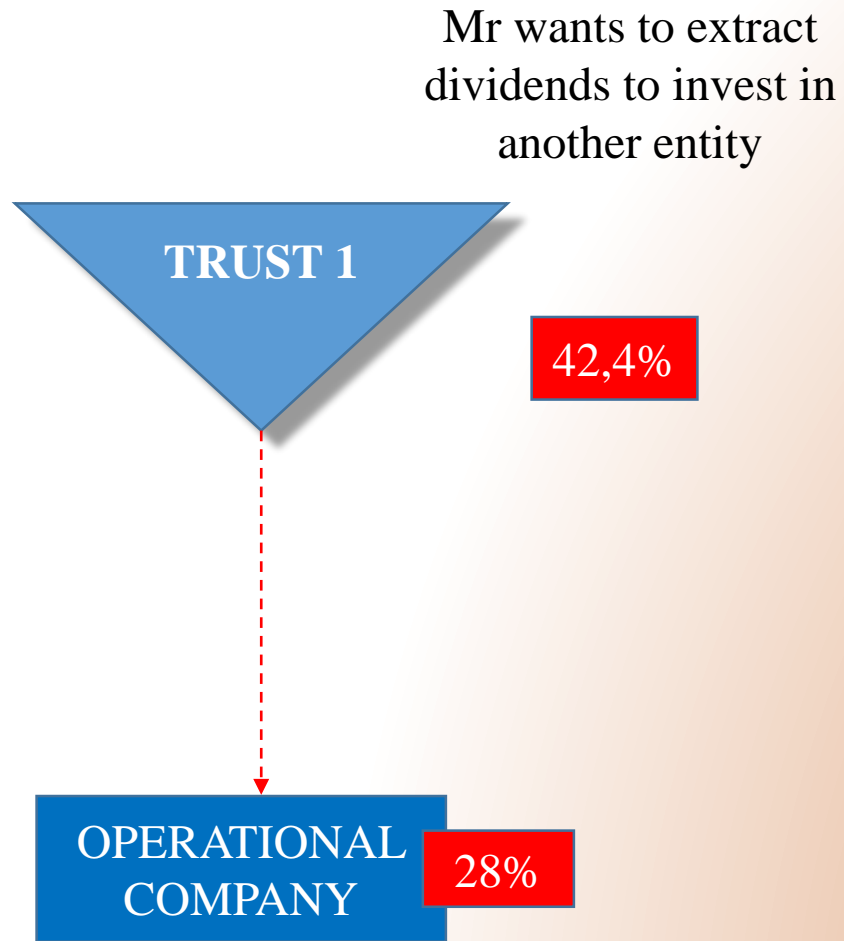


R3m taxable income,  
but only uses R1,2m

# B. ii) Typical scenario's

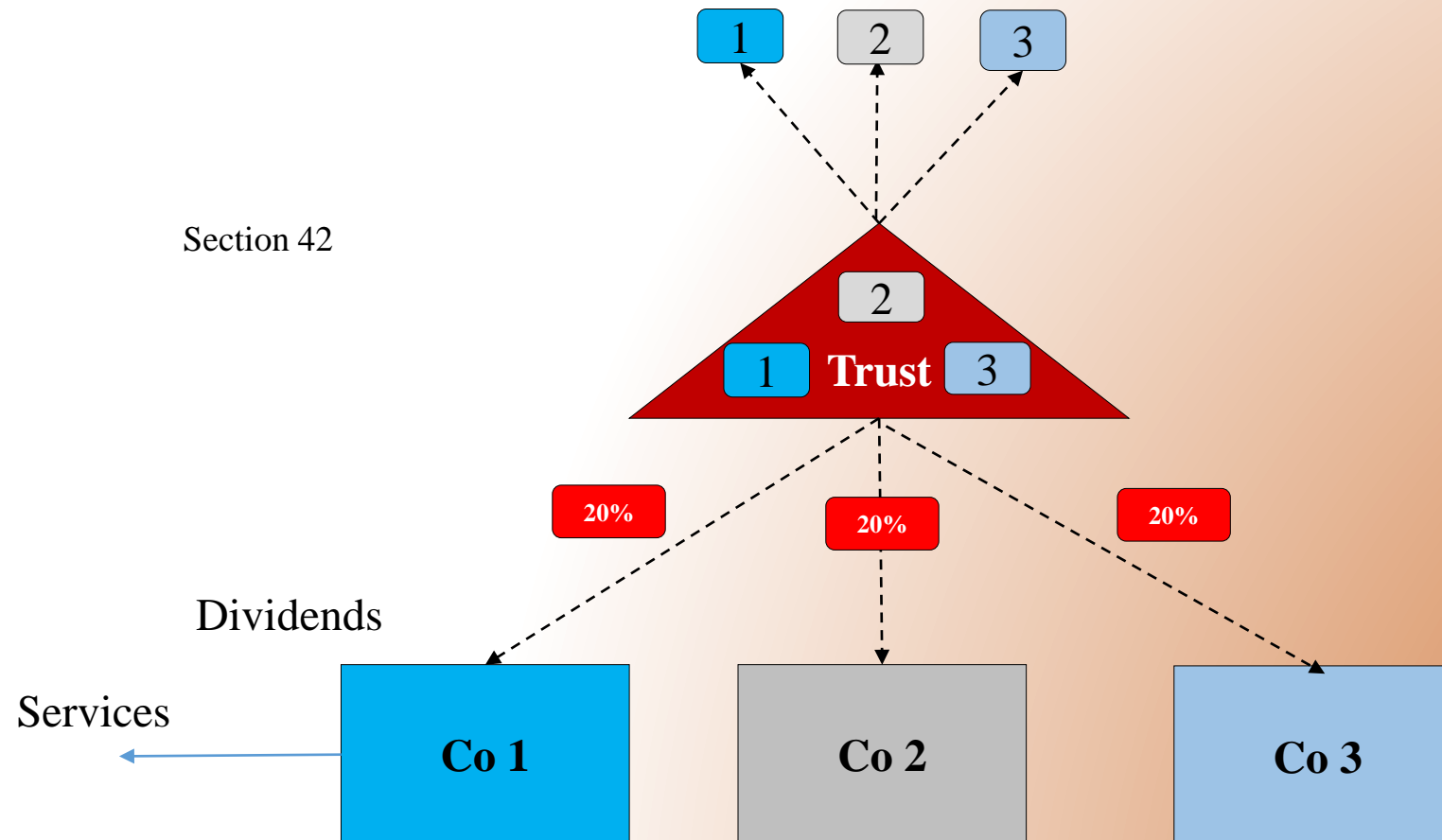
## INVESTMENTS?

Company:

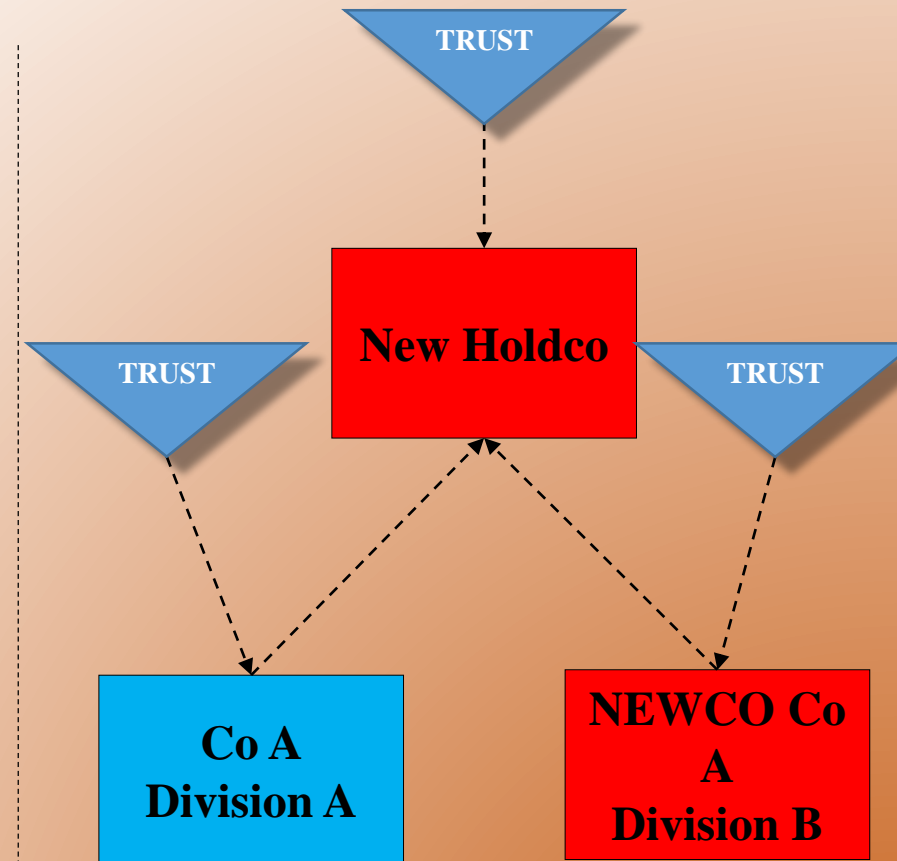
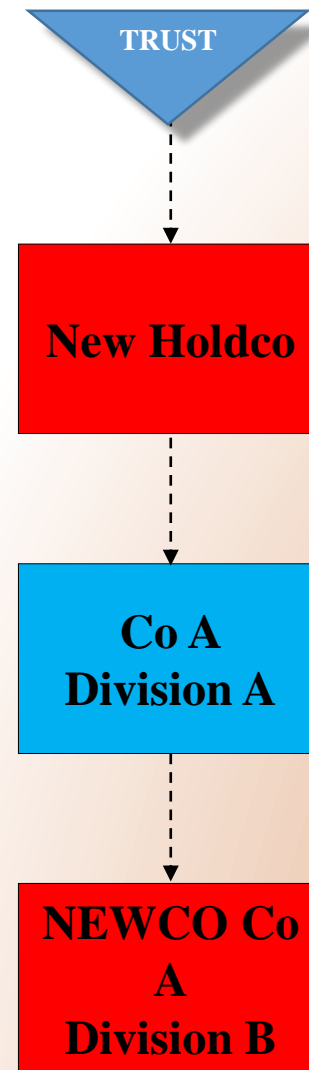
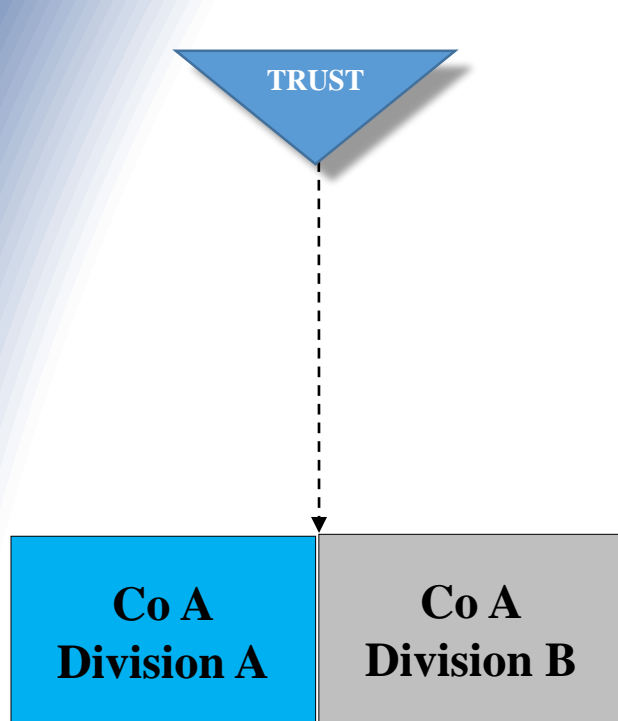


# B. ii) Typical scenario's

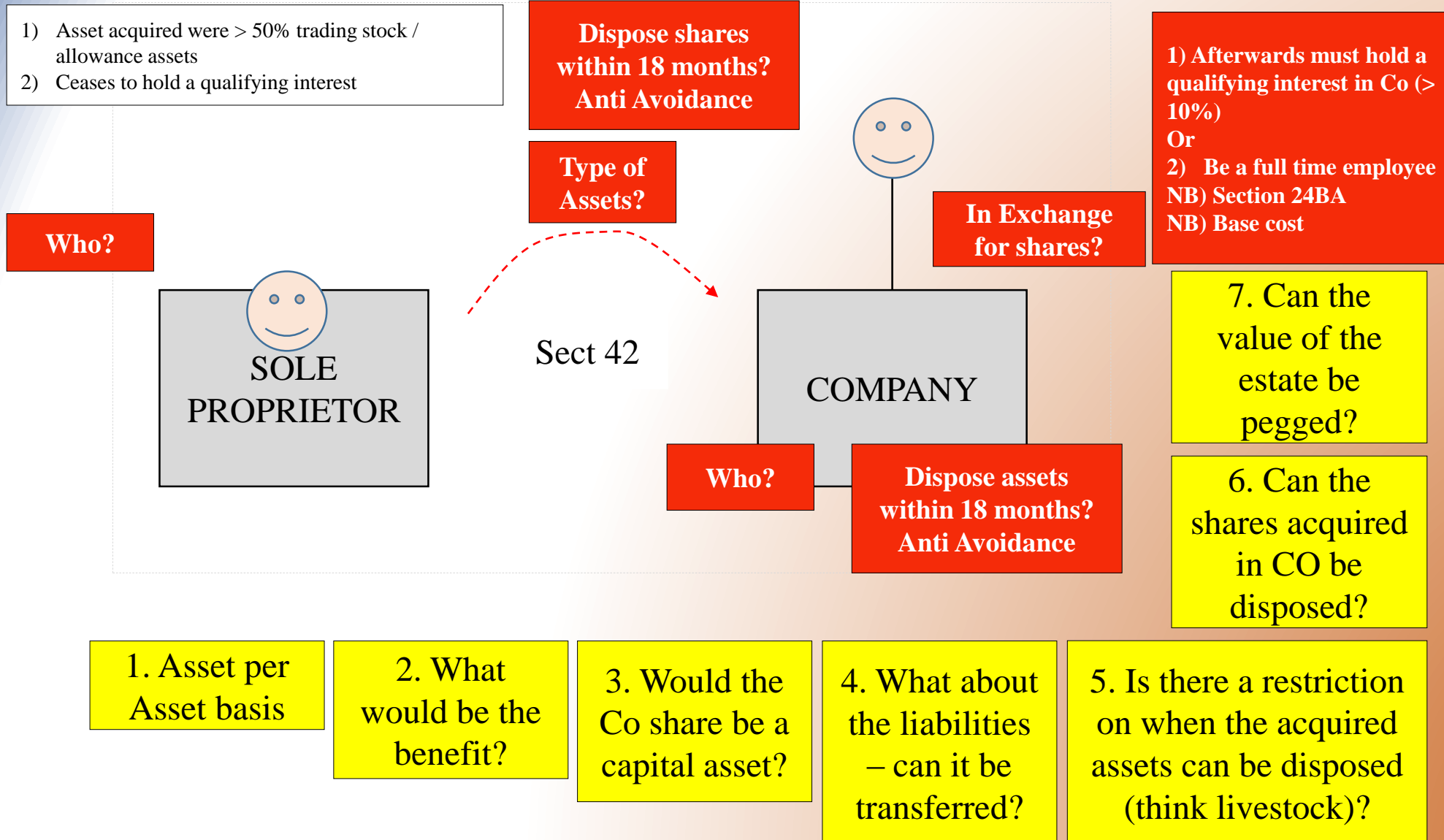
## SUCCESSION PLANNING



## B. ii) Typical scenario's

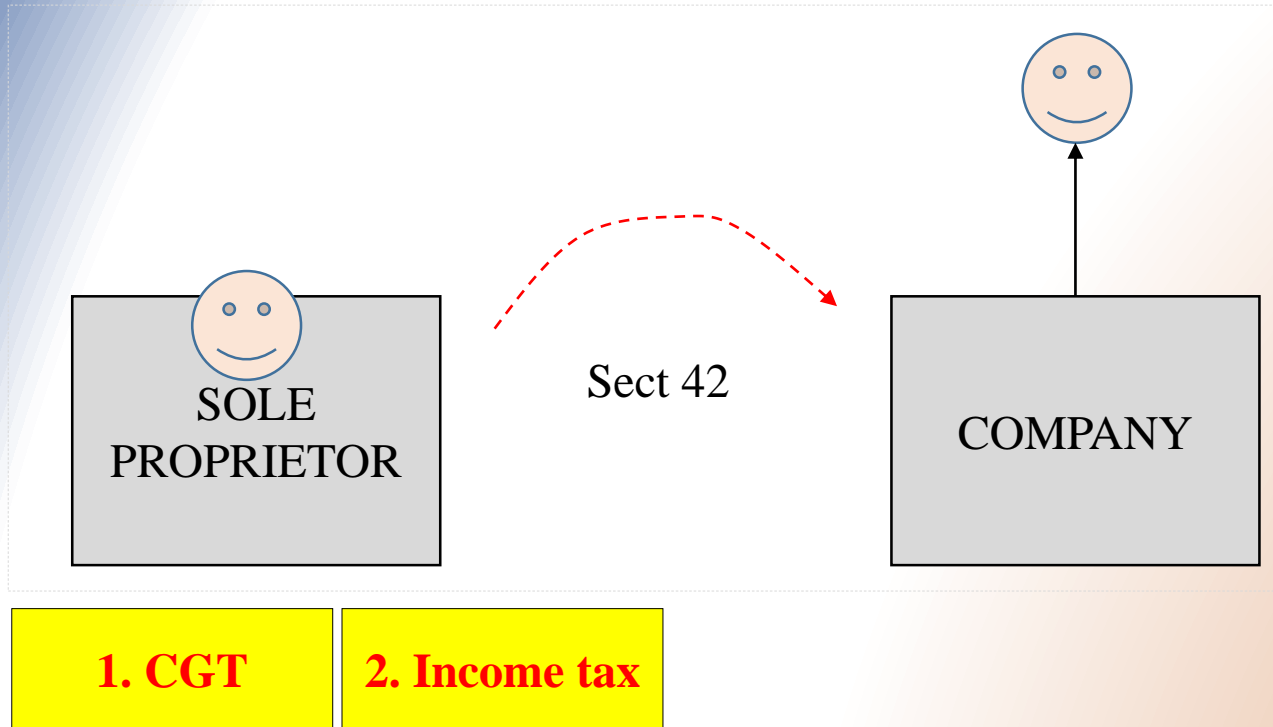


# B. iii) What does s42 entail? Depiction





# B. iv) What does s42 entail? Taxes



## Section 42 (2) of the ITA:

Where a person disposes of an asset to a company in terms of an asset-for-share transaction—

(a) that person must be deemed to have—

(i) disposed of that asset—

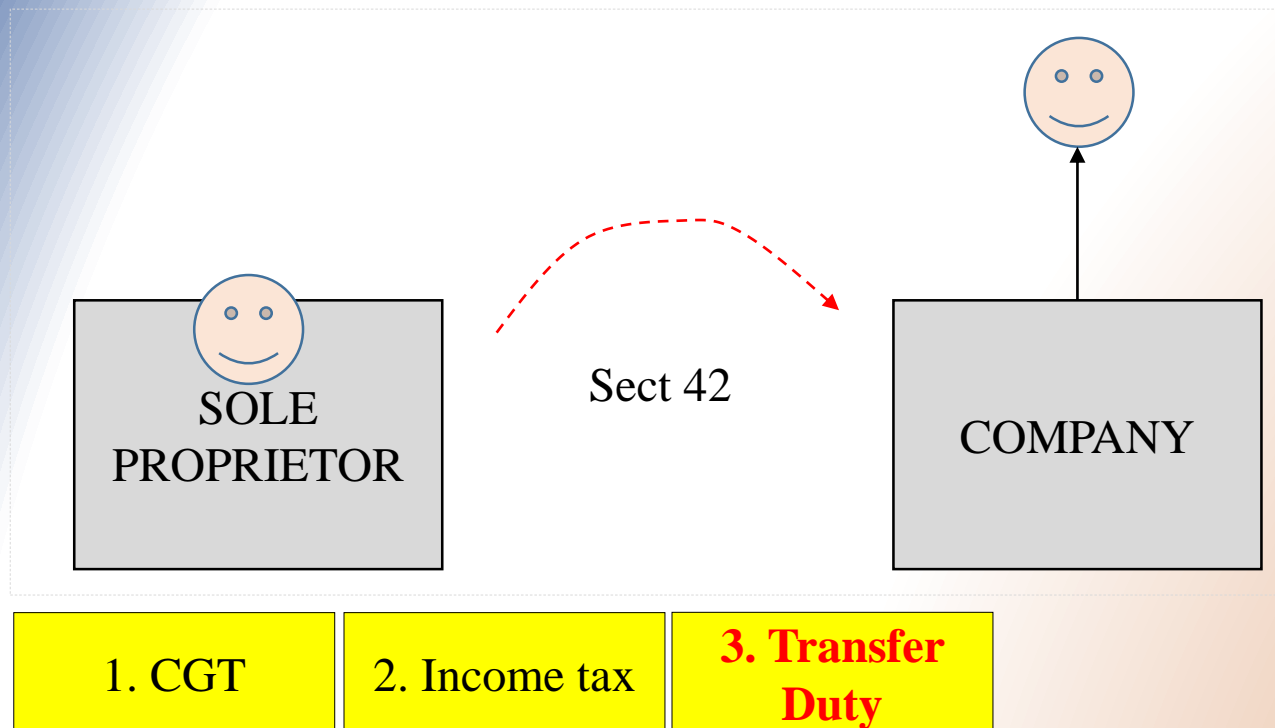
(aa) in the case of an asset-for-share transaction for an amount equal to the amount contemplated in [item \(aa\)](#) (Capital asset, the base cost) or [\(bb\)](#) (trading stock, the tax value)

(ii) acquired the equity shares in that company on the date that such person acquired that asset and for a cost equal to—

(aa) where that asset is so disposed of as a capital asset, any expenditure in respect of that asset incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that person of such expenditure; or

(bb) where that asset is so disposed of as trading stock, the amount taken into account in respect of that asset in terms of section 11 (a) or 22 (1) or (2),

# B. iv) What does s42 entail? Taxes



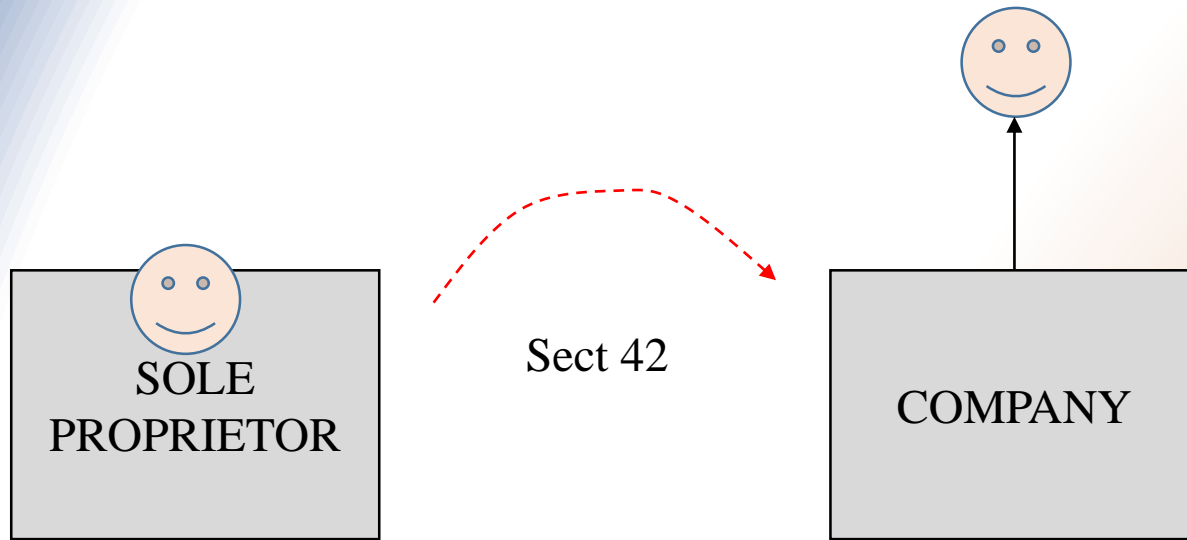
## Section 9 (1) (l) of the Transfer Duty Act:

9) Exemptions from duty.—(1) No duty shall be payable in respect of the acquisition of property by—

- (l) any company in terms of—
- (i) an asset for share transaction as defined in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);

where the public officer of that company has made a sworn affidavit or solemn declaration that such acquisition of property complies with the provisions of this paragraph;

# B. iv) What does s42 entail? Taxes



## Section 56 (1) (r) of the ITA:

(1) Donations tax shall not be payable in respect of the value of any property which is disposed of under a donation—

(r) by a company to any other company that is a resident and is a member of the same group of companies as the company making that donation.

1. CGT

2. Income tax

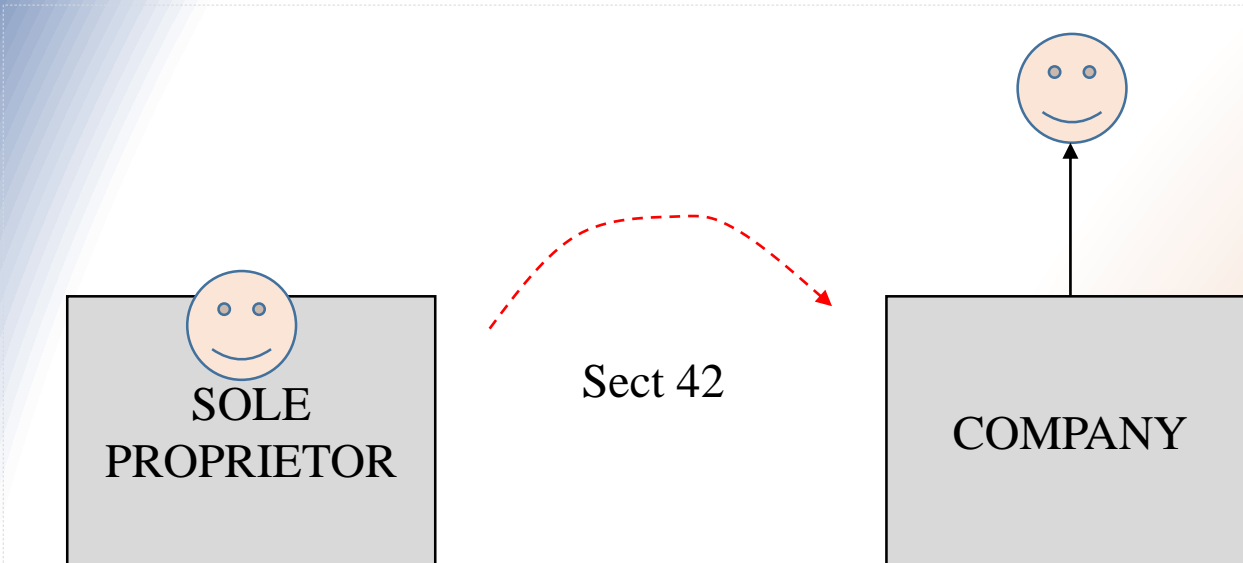
3. Transfer  
Duty

**4. Donations  
Tax**

5. VAT

6. STT

# B. iv) What does s42 entail? Taxes



## Section 8 (1)(a)(i) of the VAT Act:

8. Exemptions.—(1) The tax is not payable in respect of a transfer of a security—  
(a) if the security is transferred to a person—

(i) in terms of an asset for share transaction referred to in section 42 of the Income Tax Act;

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the acquisition of that security complies with the provisions of this paragraph;

1. CGT

2. Income tax

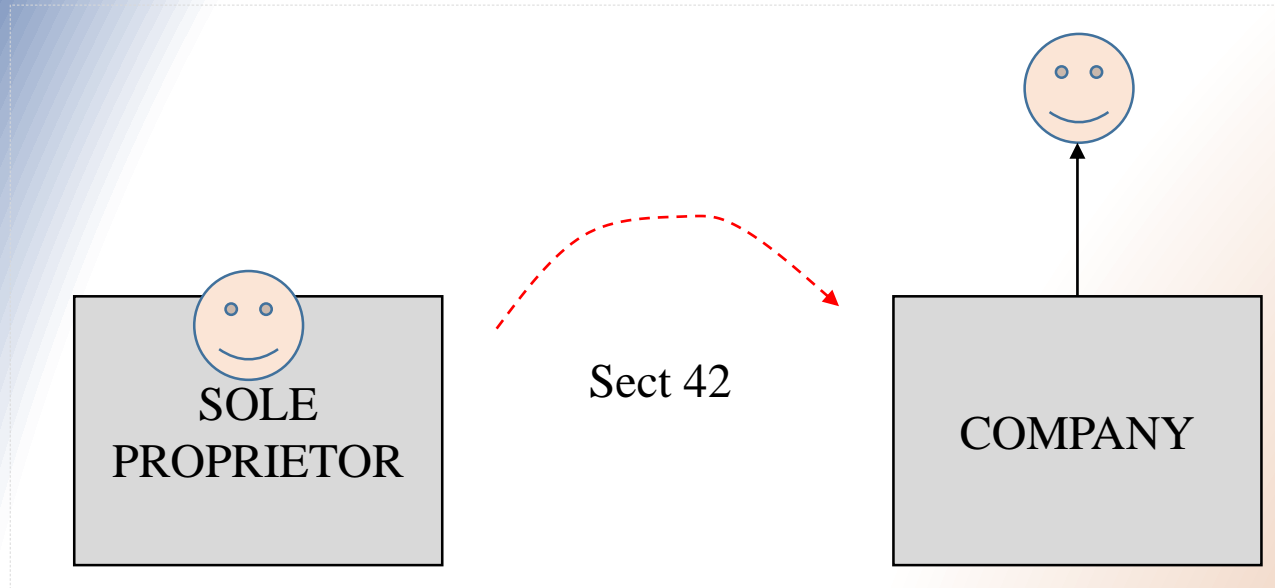
3. Transfer  
Duty

4. Donations  
Tax

**5. VAT**

6. STT

# B. iv) What does s42 entail? Taxes



## Section 8 (1)(a)(i) of the STT Act:

8. Exemptions.—(1) The tax is not payable in respect of a transfer of a security—

(a) if the security is transferred to a person—

(i) in terms of an asset for share transaction referred to in section 42 of the Income Tax Act;

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the acquisition of that security complies with the provisions of this paragraph;

1. CGT

2. Income tax

3. Transfer  
Duty

4. Donations  
Tax

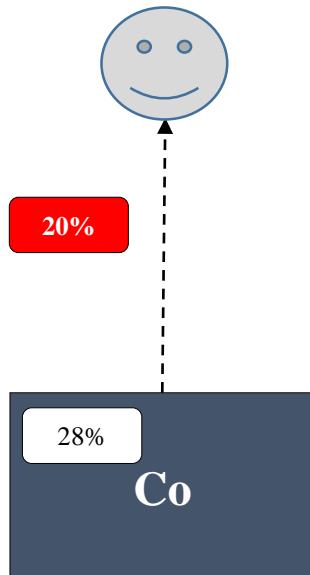
5. VAT

**6. STT**



# B. v) Business Entities

## INCOME TAX

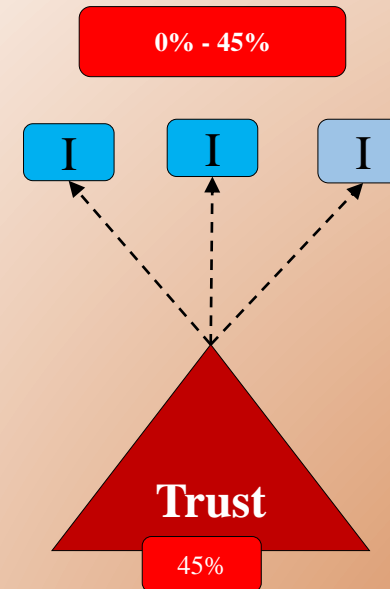
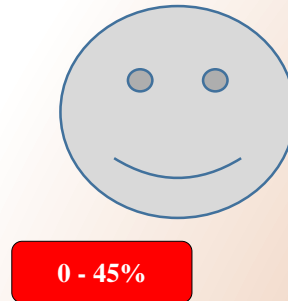


### Pre Budget

Net profit before tax	100.00	
Income Tax	-28.00	
After income tax Profit	72.00	
Dividend tax	-10.80	(15/100)
	61.20	-38.80

### Post Budget

Net profit before tax	100.00	
Income Tax	-28.00	
After income tax Profit	72.00	
Dividend tax	-14.40	(20/100)
	57.60	-42.40

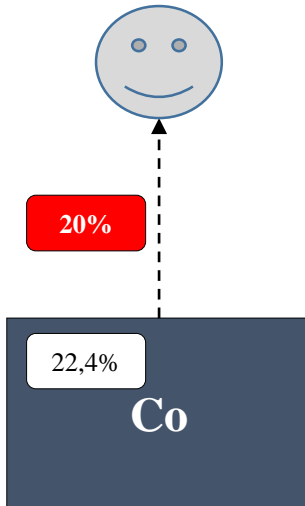


Flow through Principle

Attribution Rules

# B. v) Business Entities

## CAPITAL GAINS TAX



### Pre Budget

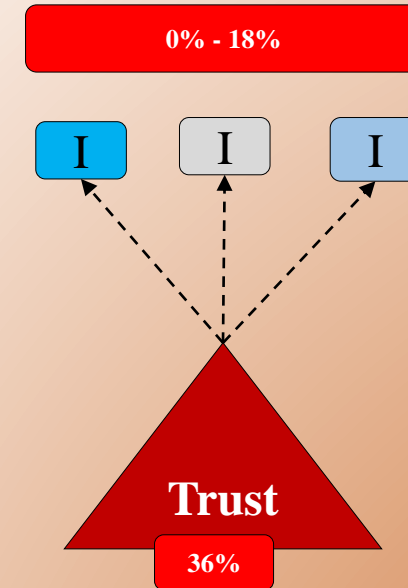
Capital gains	100.00	
Inclusion		80.00
Tax	-22.40	
After income tax Profit	77.60	
Dividend tax	-11.64	(15/100)
	65.96	-34.04

### 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



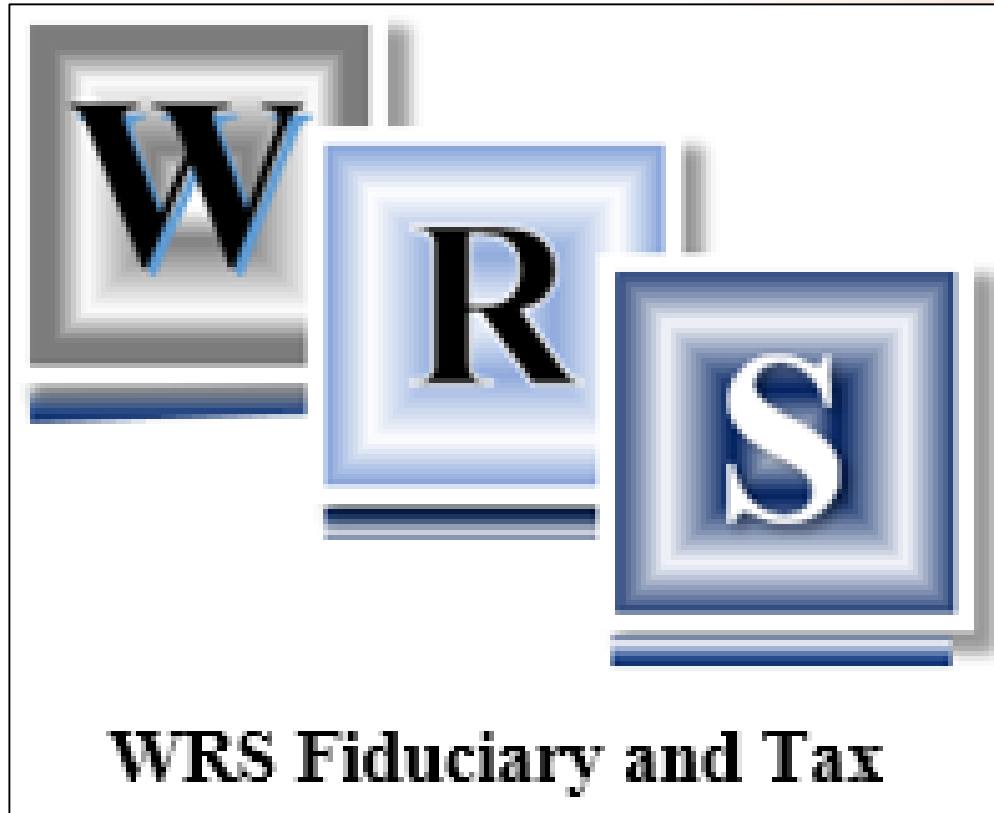
0 - 18%



Flow through Principle

Attribution Rules

# THANK YOU VERY MUCH



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# 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,

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.;

Timing: When has the  
loan be provided??

# 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.