

*20 March 2019*

*Fiduciary and tax matters  
practically portrayed*

*Presented by:  
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*WRS Fiduciary and Tax (Pty) Ltd*



# ENEMY NO 1...



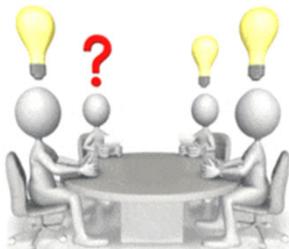
*Potential  
litigants!!*



# OUR OBJECTIVES...



*Aim: to shed some light on topical problems*



*Share information and practical solutions*



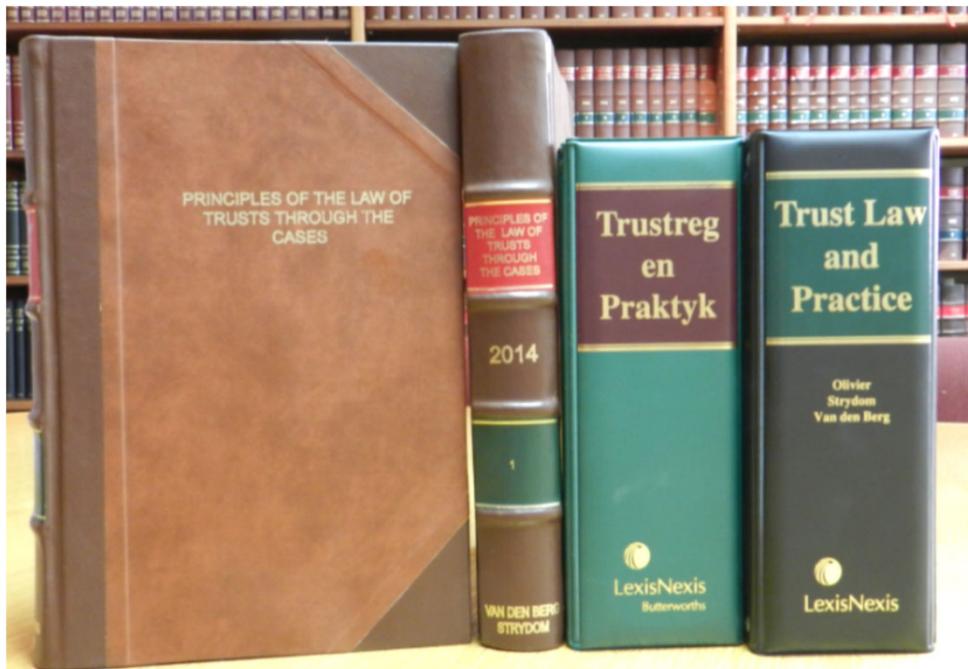
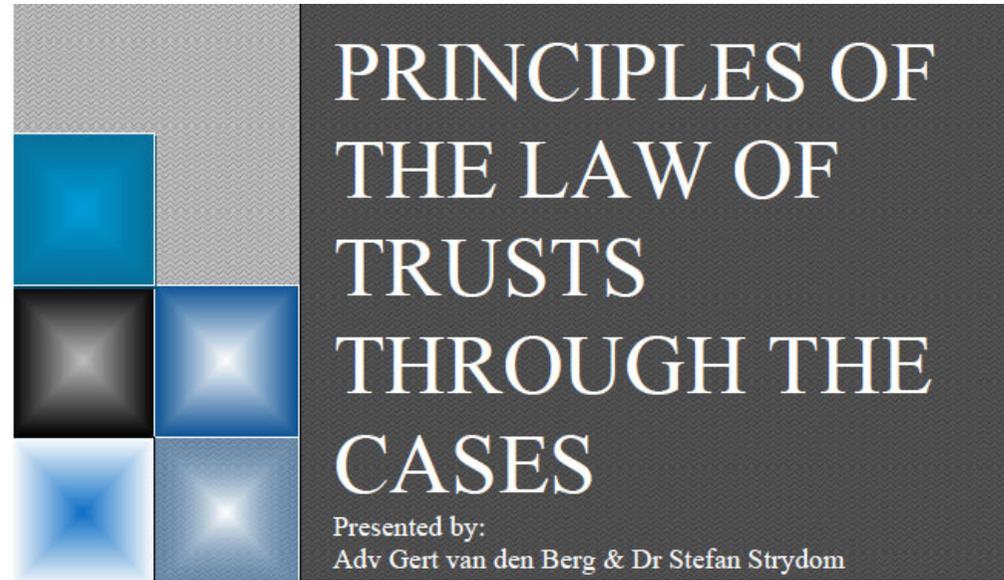
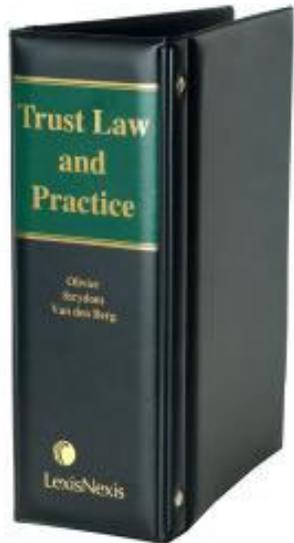
*Stay out of jail: Walk the straight and narrow*

## CAVEAT BY THE PRESENTER

1. When a person considers solutions to the conundrums posed by legislation, 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. **Tax advice should** be independently sought.

**Stefan Strydom**  
**Presenter**

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## A. Latest Court Cases



# A. LATEST COURT CASES – (wills)

## QUESTIONS:



Can the majority trustee rely on a provision in the trust deed that one of the trustees can be removed by a majority decision?



Can trust decisions still be taken if a specific person is required to be part of the majority decision and that person is not a trustee anymore?



Amount transferred to a trust: is it a Loan or a Donation?



What is the value of a Preference Share for CGT purposes at the time of death?



Six wills were submitted to the Master. Compliance with the Wills Act.

# A. LATEST COURT CASES – (trust)

## 1. *DU PLESSIS NO v VAN NIEKERK (836/2018)* *[2018] ZAFSHC 120 (26 JUNE 2018) (Free State High Court Bloemfontein)*



### *Can trustee be removed as trustee by majority vote?*

- *The three applicants, two auditors and an attorney, were 3 of the trustees of the **Ritom Trust**. There were 4 trustees*
- *A thirty-year-old female was the single income and capital beneficiary.*
- *The beneficiary was cited as the 2nd respondent. The 1st respondent was the mother of the beneficiary and was also a trustee, whilst the Master of the High Court was the 3rd respondent.*
- *The trust property consisted of valuable agricultural **land in the Knysna area**.*
- *A trustee meeting was held on 18 January 2018 where the three applicants were together in one room and the 1st respondent and her attorney was linked by telephone. A serious difference of opinion between the first respondent and the three applicants ensued.*
- *The three applicants later, after the meeting, invoked a clause in the trust deed that afforded the majority trustees the power to request another trustee to resign. They were of the opinion that no reasons needed to be supplied for their decision.*

### **The clause in the trust deed –**

*“...5.7 The office of a TRUSTEE shall be vacated if –  
5.7.4 the majority of TRUSTEES request a TRUSTEE to resign.”*

# A. LATEST COURT CASES – (trust)



## *1. DU PLESSIS NO v VAN NIEKERK (836/2018) [2018] ZAFSHC 120 (26 JUNE 2018) (Free State High Court Bloemfontein)*



### Finding:

1. The court found that the removal of the first respondent as trustee **WAS INVALID:**

### Reason:

1. The applicants was found *not to have taken a proper decision at the trustee meeting* as there was no proper notice of their intention given to the 1st respondent. The *applicants' resolution* should have been taken on a *properly constituted trustee meeting and upon proper notice of their intention*. They failed to act accordingly, but elected to take a decision behind first respondent's back;
2. Although the words used in clause 5.7 was of a peremptory nature (“**SHALL BE VACATED**”), the word “REQUEST” implies that *the requestee had a choice*. The peremptory word was thus negated by the choice afforded to the person, which result in an ambiguity in the clause. The Court emphasised that such request can never in itself mean that the office of trustee being vacated. The Court also mentioned that it could never have been the intention of the parties that either one of the trustees, *and the mother of the only beneficiary especially*, could one day be requested to resign and vacate office without any good reason.
3. *Good cause for the removal of the trustee must be taken as an implied* term of clause 5.7.4. In this case none such good cause was advanced by the applicants.
4. The decision to request a trustee to resign must be one by *“a good person acting reasonably”*, and the applicants advanced no evidence or argument to show this. It was found that the trustees could not be heard to say that they had not have to give reasons, or much worse, that they could have taken a decision without any reason or even for a mala fide reason.

PS TRUST

# A. LATEST COURT CASES – (trust)

## 2. *VAN WYK v DABERAS ADVENTURES CC [2018] ZANHC 31* (Northern Cape High Court Kimberley)



### *Trustee's lack of locus standi overturned:*

Judgement by a full bench of the Northern Cape High Court in Kimberley **AGAINST** a decision by a single judge **in motion proceedings that a trustee lacked locus standi** to enter into litigation because all the trustees did not take part in the decision to institute the litigation was set aside.

The appellant (Marianne Van Wyk) in her capacity as trustee of the **Chris Van Wyk Trust (the Trust)** brought an application against the respondent to obtain an order that the **respondent vacates the property of the Trust and remove certain structures put up by the respondents employees.**

### **The point upheld in the motion court –**

- “...that the resolution to authorise the appellant to bring the application was invalid because the decision had been taken **without the vote of Mr B C Van Wyk**, which was found to have been a requirement in terms of clause 8.3 of the trust deed;”
- 1. The trust deed provided that BC van Wyk had to be part of any majority decision to validate such a majority decision, and had to be present for the trustees to be quorate in the event that all trustees are not present at a meeting.
- 2. BC van Wyk ceased to be a trustee at the time when the decision to bring the application, because his estate was insolvent.

### **The full bench held that:**

1. The requirement that BC van Wyk be part of a majority applied only to majority decisions and not to unanimous decisions.
2. To demand that no decisions can be made while BC van Wyk is still alive, because he cannot take part in the decision because of his insolvency is an absurd interpretation of the trust deed which would lead to absurd results;

**ACCORDINGLY, THE DECISION BY THE MOTION COURT WAS SET ASIDE**

# A. LATEST COURT CASES – (trust)

## 3. *VAN STADEN v NEL (11114/2015) [2017] (High court of SA Gauteng division, Pretoria)*

### *Donation v Loan to Trust*

*“a present incarnation of a long-standing and bitterly unfortunate family feud”*



- *This was an application for the sequestration of the MC Botha Trust ("the trust").*
- *The applicant, Mrs Moleine van Staden was the duly appointed executrix in the estate of the late Mrs MC Botha ("the deceased").*
- *The deceased was the mother of Van Staden.*
- *The trust was represented by the first and second respondents (Bouwer – accountant) in their capacities as trustees of the trust. The 1<sup>st</sup> respondent was Mrs Helen Nel. Van Staden and Nel were siblings.*
- *The trust was formed in 2006 by the deceased with the express purpose of providing for her personal maintenance and medical care during her lifetime.*
- *In July 2007 the deceased made a once-off payment in the amount of R 500 000.00 to the trust. This amount was paid over to the trust from the deceased's personal funds. As already pointed out, the (undisputed) understanding was that the amount will be utilized for the on-going maintenance and medical expenses of the deceased.*
- *She was the sole income and capital beneficiary of the trust.*
- *The deceased passed away on 2 July 2008. After her death a letter was addressed to the various beneficiaries of the trust informing them that an amount of R 241 127.00 was available.*

***QUESTION: whether the R500 000 was a loan or a debt?***

# A. LATEST COURT CASES – (trust)



## 3. *VAN STADEN v NEL (11114/2015) [2017] (High court of SA Gauteng division, Pretoria)*

### *Donation v Loan to Trust*

- *If it was concluded that the estate is entitled to claim repayment of a loan, it then falls to be decided whether the trust is able to repay the loan and if not whether the trust is insolvent.*
- *In support of Van Staden's allegation that it was a "loan" and not a "donation", reference was made to the fact that **the initial financial statements prepared by the trust indicated that the loan was repayable within two years. In later financial statements it is recorded that the loan is only repayable when the trustees so decide.** According to Van Staden the financial statements are at odds with what is now contended namely that the R 500 000.00 was a "donation" as opposed to a "loan".*
- *Nel, on the other hand, disputed Van Staden's claim and submitted that no such loan existed and that the R 500 000.00 clearly was intended to be a "donation" to the trust for the following reasons:*
  - *Firstly, the deceased caused the amount to be paid to the trust knowing fully well that the moneys were to be utilised for her maintenance and medical care and that the amount would therefore reduce over time. The deceased therefore knew that by the time of her death, the amount would be less than R 500 000.00.*
  - *Secondly, the deceased knew full well that the trust did not have any other income and that the trust would therefore never be able to repay a loan upon her death.*
  - *Thirdly, the deceased expressly made provision in the trust deed that, in the event of her death, her children would be the beneficiaries of her trust.*



***FINDING: No loan. Costs award against Van Staden in her Personal Capacity***

# A. LATEST COURT CASES – (trust)

## 4. CSARS v EXECUTORS, ESTATE ELLERINE 2019 (1) SA 111 (SCA)

*An appeal from the Gauteng Tax Court, Johannesburg*

*Valuation of preference shares for the purposes of CGT*



- *The issued preference shares were held by the late Sidney Ellerin (the deceased).*
- *They formed part of the share capital of Sidney Ellerin Trust (Pty) Ltd (the company) which, in total, consisted of **600 ordinary shares of R1 each** and **112 000 7% redeemable non-cumulative preference** shares of R1 each.*
- *The deceased held all of the redeemable preference shares issued by the company (SINCE 1969).*
- *The registered and beneficial owners of the **600 ordinary shares** were as follows:*
  - *200 owned by the trustees of The Kevin Murray Ellerin Trust;*
  - *200 owned by the trustees of The Bradley Charles Ellerin Trust;*
  - *100 owned by the trustees of The Linda Caron Ellerin Trust; and*
  - *100 owned by the trustees of The Maxine Tamar Ellerin Trust.*
- *The **preference and ordinary shares enjoyed one vote for each share in general meetings of shareholders**, so that the deceased held the overwhelming majority of the voting rights in the company.*

# A. LATEST COURT CASES (estate)

## 4. CSARS v EXECUTORS, ESTATE ELLERINE 2019 (1) SA 111 (SCA)

*Valuation of preference shares for the purposes of CGT*



### **APPELLANT (SARS) SUBMISSION:**

- SARS assessed respondent's liability for capital gain, determining that the deceased was entitled, by using his voting power, *to convert these preference shares to ordinary shares*. Appellant assessed the value of the preference shares in the amount of R563 376 418, on the basis that the shares represented 99,47% of the share capital of the company and thus should be valued at 99,47% of the value of the company.

### **RESPONDENT SUBMISSION:**

- Respondent submitted that the terms of special condition 5.8 of the memorandum, read together with arts 4.2 and 34 of the articles of association of the company, *precluded the deceased from converting these preference shares to ordinary shares without the voting support of at least 75% of the ordinary shareholders*; hence the preference shares should be valued at their fair value of R1 per share.

# A. LATEST COURT CASES – (estate)

## 4. CSARS v EXECUTORS, ESTATE ELLERINE 2019 (1) SA 111 (SCA)

*An appeal from the Gauteng Tax Court, Johannesburg*

*Valuation of preference shares for the purposes of CGT*



### **FINDING – TAX COURT:**

*The Tax Court concluded that, on the date of his death, the deceased **WAS NOT ENTITLED** to convert the preference shares to ordinary shares, in that, at least 75% of the holders of each class of shares had to agree to the conversion.*

### **FINDING – SCA:**

- 1. The appeal was upheld with costs, including the costs of two counsel.*
- 2. The order of the Tax Court of 11 October 2016 **was** set aside and replaced with the following order:*

*'The deceased was entitled, on the date of his death, to convert the preference shares to ordinary shares and the preference shares must be valued, for the purposes of para 40 read with para 31(3) of the eighth schedule to the Income Tax Act, on this basis.'*

# A. LATEST COURT CASES – (will)



## 5. *PATRICIA SHELLY HOSTE N.O. v KAREN LOTTER N.O (3710/2015) [2018] ZAECGHC 77 (10 May 2018) (High Court of SA (Eastern Cape Division, Grahamstown)*



### *Six Wills submitted to the Master*

- **Mr. Stuart Helps ("the deceased") passed away during 2014 at the age of approximately 90 years.**
- The most valuable asset in **the** deceased's estate was **an immovable property situated in Gonubie, East London.**
- Deceased was married three times. After his marriage to his last wife, Maureen (in community of Property), he moved to East London, more specifically to Gonubie, where he resided with her.
- Maureen died July 2007.
- Deceased then stayed with Mrs. Hoste and her mother in Johannesburg for some three months. At that time he told Mrs. Hoste that he wanted her to inherit the Kalinka Garden property. His intention in this regard was duly reflected in Will 1 signed on 24 December 2007.
- **He had no children from any of his marriages.** Maureen, however, had four children, including second defendant, he accordingly being deceased's stepson. **2<sup>nd</sup> Defendant was married to the Mrs Lesley Stoffberg who was employed by Sanlam Trust in East London,** tasked with preparing wills on behalf of testators and submitting them to the head office of Sanlam Trust in Cape Town.
- After his death the Master of the High Court received, in total, six wills purporting to have been validly executed at various times by the deceased (between 24/12/2007 and 25/03/2012).

# A. LATEST COURT CASES – (will)



## 5. *PATRICIA SHELLY HOSTE N.O. v KAREN LOTTER N.O (3710/2015) [2018] ZAECGHC 7. (Eastern Cape Division, Grahamstown)*



### *Six Wills submitted to the Master*

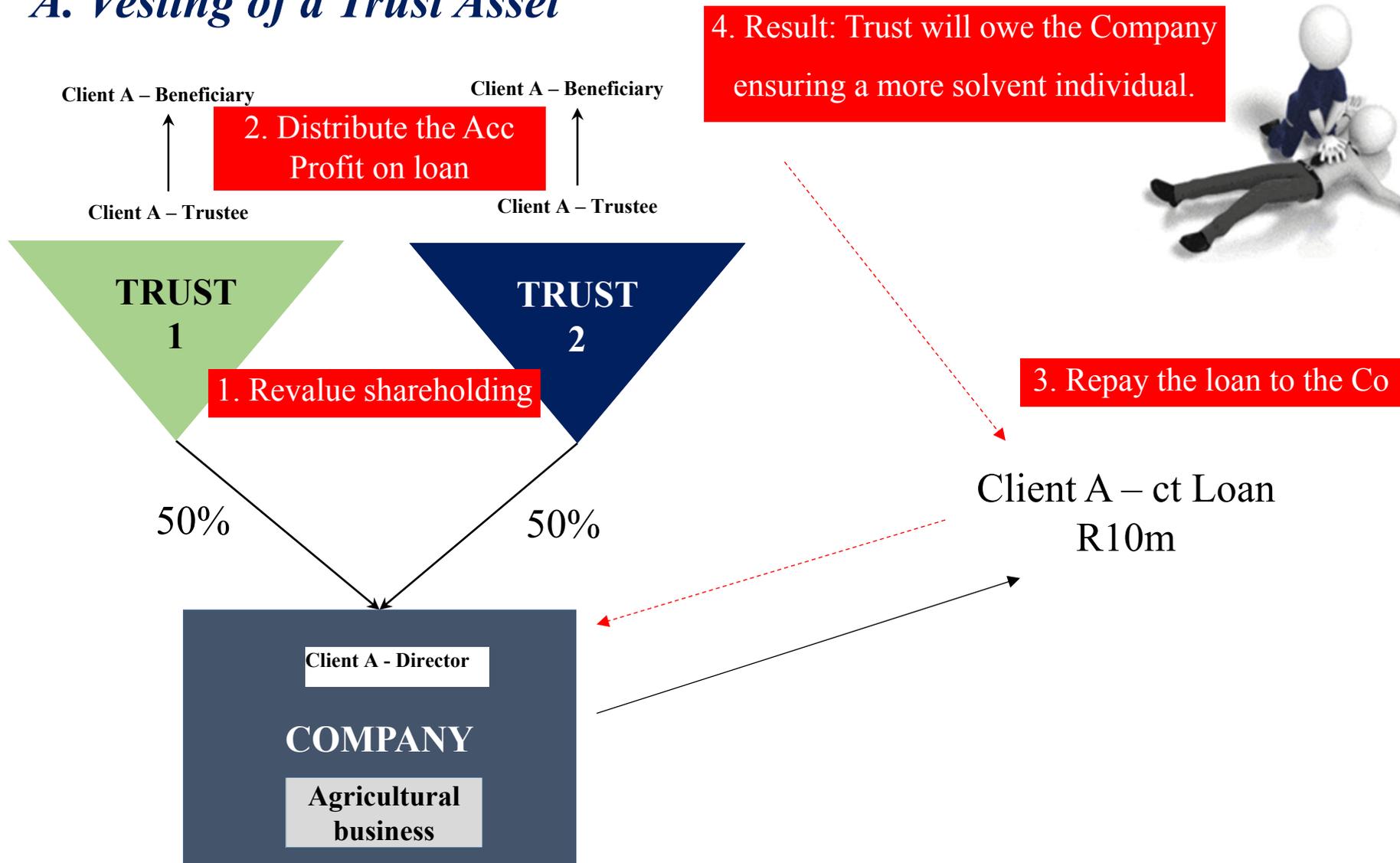
- *The sixth and last such will (Will 6) dated 25 March 2012 was accepted by the Master.*
- *Thereafter, during 2015, 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs as trustees of the Jordana Beth Trust instituted the present action in which they sought, inter alia, an order that **Will 6 be declared to be invalid** and that a will signed by the deceased on **3 December 2010 (Will 2)** be declared to be deceased's Last Will and Testament.*
- *Mrs. Stoffberg acted fraudulently with regard to the execution of Wills 3, 4 and 5, because-*
  - *Mrs. Stoffberg had photocopied deceased's signature on Will 3, transposed it to Will 4, and then arranged for the witnesses to sign and attest to that signature in the absence of deceased.*
- *Deceased, was not present when the witnesses signed the will;*
- *With the 6th Will the requirements of the Wills Act was adhered to (**it was read out loudly by the testator**).*
- ***“It is disturbing that employees thereof could have acted in the manner they did. Something is very wrong, if not rotten, in the Vincent Office of Sanlam Trust. I intend requesting the Registrar of this Court to forward a copy of this judgment to the Head Office of Sanlam Trust for their attention and action.”***
- ***Finding: The plaintiff has failed to discharge the onus of establishing the invalidity of Will 6. The action accordingly felt to be dismissed.***

## A. Practical Scenarios



# A. PRACTICAL SCENARIOS

## A. Vesting of a Trust Asset



# A. PRACTICAL SCENARIOS



## *A. Vesting of a Trust Asset*

### Questions of law are –

- (i) whether you can distribute accounting capital profits emanating from the revaluation of the trust asset, without any associated realised tax profits; and
- (ii) If so, what would the tax implications be when that revalued asset is eventually sold.



### Opinion –

- Normally a vesting (distribution) of capital profits (accounting concept) coincides with a vesting (distribution) of capital gains (tax concept) but that assumes that an asset was realised.
- The quantum of the capital profit (accounting) and the capital gains (tax) need not be the same;
- SARS is of the opinion that the capital profits (accounting) can be more or less than the realised capital gains (tax);
- SARS has also mentioned that the vesting of a capital gain (tax) should as far as possible follow the vesting of accounting capital profits (accounting);
- SARS also stated that a vesting of the capital gain (tax) in a beneficiary will be possible only to the extent that a capital profit is available for vesting;
- But – in this instance the client wishes to distribute a capital profit (accounting) without the realisation of an asset, hence no realisation of a capital gain (tax) will occur.

# A. PRACTICAL SCENARIOS



## *A. Vesting of a Trust Asset*

- Any capital profit (accounting) can be distributed as long as the trust remains solvent, i.e. it is possible to distribute capital profits to the extent that the trust remains solvent. The journal entries would be Dt Capital profits distribution Ct Loan Beneficiary.
- The danger underlying such a distribution of a capital profit (as a result of the revaluation) is that SARS can argue that a portion of the revalued assets have been vested in the Beneficiaries, i.e. that the journal entries are in actual fact Dt Capital profits distribution Ct portion of the asset vested. If this is the case the tax implications would be as follows:
  - ✓ Revalue the asset (let's say cost is R10 and Revalued at R100) and vest R50 (50%) of the asset in the Beneficiary.
  - ✓ You can vest an asset or a portion of an asset in a beneficiary. Then such vesting must take place at market value.
  - ✓ Such a vesting will be a disposal event and will trigger CGT.
  - ✓ The beneficiary will be liable for the CGT, i.e. Proceeds R50 less base cost R5 = R45 x 40% x marginal rate.
  - ✓ When the asset is eventually sold by the trust for. Let's say R150, then the beneficiary would be the deemed to be the disposer of the vested 50% and his CGT liability would be – R75 less R50 = R25 x 40% x marginal rate.
  - ✓ The trust would be liable for CGT on the half that was not previously vested, but this CGT could also be distributed to the beneficiary, i.e. R75 less R5 = R70 x 40% x marginal rate.



# A. PRACTICAL SCENARIOS

## B. Will creating a testamentary trust

### AFDELING B

### AANWYSING VAN ERFGENAME

### BEMAKINGS

Ek bemaak my boedel as volg:

Aan die trustees van die **XX Testamentere Trust** , volgende om ingevolge die bepalings van die trustakte in ontvangs te neem en te administreer:

- My totale boedel as enigste erfgenaam.

### VOORWAARDES

Die bemakings hiervoor is aan die volgende voorwaardes onderhewig:

- Indien die **XX Testamentere** nog nie by my afsterwe geregistreer is nie, magtig ek, my eksekuteurs om 'n geskikte diskresionêre trust tot voordeel van my voormelde kind op te rig en te registreer.
- By beëindiging van die bedoelde trust, bepaal ek dat:
  - die trustbates en enige opgeloopte inkomste aan my gemelde kind uitbetaal moet word.
- Dat bates te geide gemaak kan word, met dien verstande dat ons eksekuteurs die bates in spesie kan toeken en in trust behou indien nuwe van mening is dat dat nie ekonomies regverdigbaar is om te verkoop nie.
- Dat daar vir **stiefdogter** , synde my vorige eggenote se dogter, voorsiening gemaak word vir haar na-skoolse opleiding met 'n maksimum van vyf jaar, welke ~~voorsiening~~ van studiegelede in die algemene diskresie van die trustees van die bedoelde trust sal wees.



Who are the beneficiaries?

Testamentary trust valid heir?

Discretionary trust established?

Bewind trust?

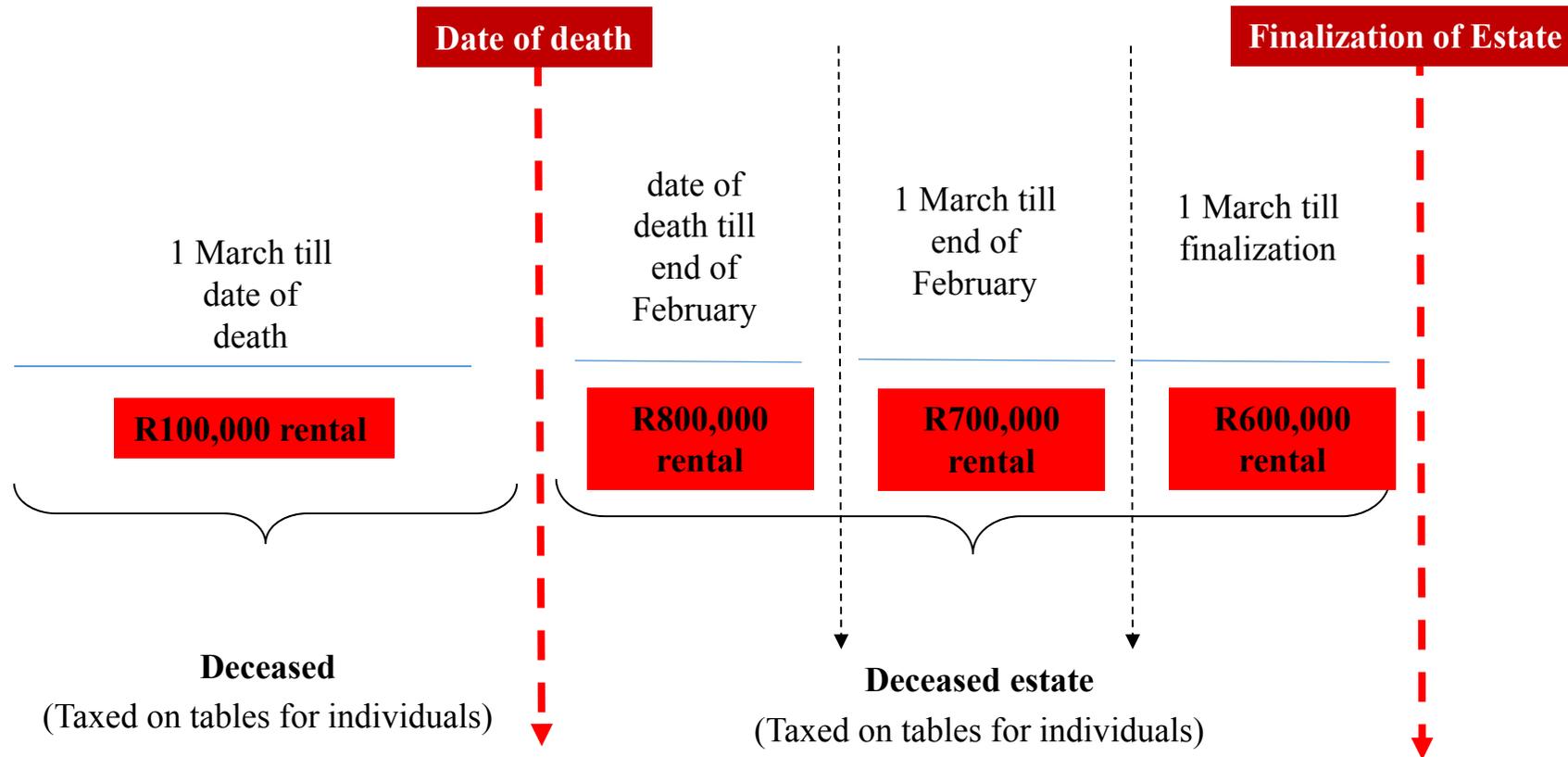
Payment to Stepdaughter – obligatory?

# A. PRACTICAL SCENARIOS



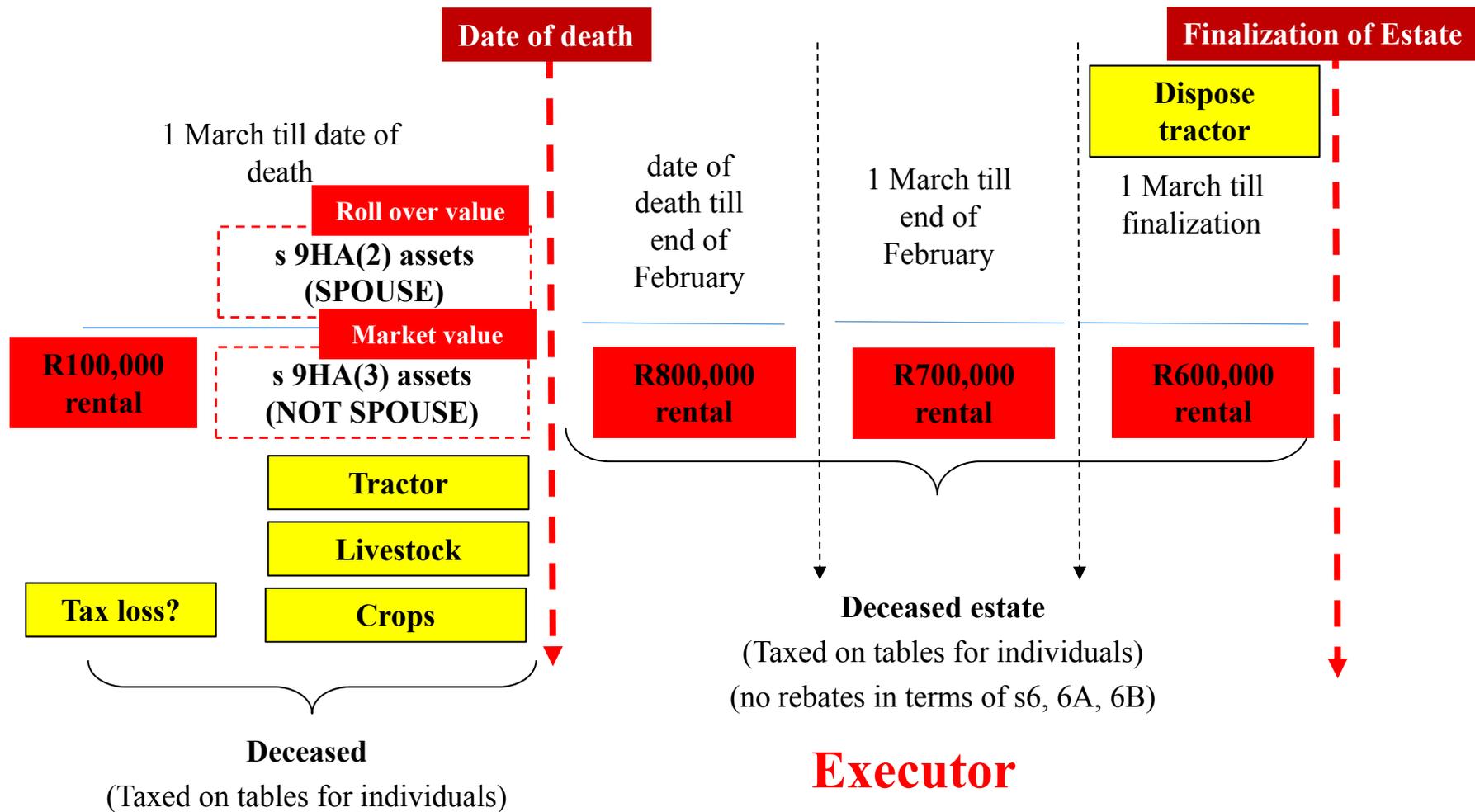
**PREVIOUS  
DISPENSATION**

**– INCOME TAX – SECT 25:**



# A. PRACTICAL SCENARIOS

## NEW DISPENSATION – INCOME TAX – SECT 9HA & 25:



# A. PRACTICAL SCENARIOS



**1. Who are entitled to the rental earned after death?**

**2. Who are responsible for the income tax on the rental earned after death?**

**3. What happens if an asset was bequeathed to Spouse and it subsequently sold after death? Tax implications?**

**4. Liability to pay Estate Duty - Endowment global Wrapper?**

**5. What if the deceased conducted business in own name? Executor duties? Income tax implications – no rebates?**

**6. Tax loss before death? How can it be utilized if all assets are bequeathed to spouse?**

**7. Taxes up to date of death – estate liable to pay - residue heirs. Not necessarily the legatee of the assets which caused the CGT to date of death.**

# B. BUDGET SPEECH – 20 FEBR 2019



# B. BUDGET SPEECH – 20 FEBR 2019



## Summary of revenue

	2015/16	2016/17	2017/18	2018/19		2019/20			2020/21		
	Actual collections			Revised estimates	% change on actual 2017/18	Budget estimates Before tax proposals	After	% change on revised 2018/19	% of total budget revenue	Estimates	% change after tax proposals 2019/20
<b>R million</b>											
<b>Taxes on income and profits</b>	<b>606 820.5</b>	<b>664 526.4</b>	<b>711 703.0</b>	<b>751 845.7</b>	<b>5.6%</b>	<b>806 541.6</b>	<b>820 341.6</b>	<b>9.1%</b>	<b>58.5%</b>	<b>885 501.9</b>	<b>7.9%</b>
Personal income tax	388 102.4	424 545.2	460 952.8	497 451.3	7.9%	539 076.9	552 876.9	11.1%	39.4%	602 692.7	9.0%
Corporate income tax	191 151.6	204 431.8	217 412.0	218 435.8	0.5%	229 608.2	229 608.2	5.1%	16.4%	242 439.5	5.6%
Secondary tax on companies/dividend and interest withholding tax	24 152.8	31 575.7	28 559.6	31 008.9	8.6%	32 594.9	32 594.9	5.1%	2.3%	34 422.7	5.6%
Tax on retirement funds	–	–	–	–	0.0%	–	–	–	–	–	–
Other	3 413.7	3 973.8	4 778.6	4 949.7	3.6%	5 261.6	5 261.6	6.3%	0.4%	5 947.0	13.0%
<b>Taxes on payroll and workforce</b>	<b>15 220.2</b>	<b>15 314.8</b>	<b>16 012.4</b>	<b>17 312.2</b>	<b>8.1%</b>	<b>18 758.5</b>	<b>18 758.5</b>	<b>8.4%</b>	<b>1.3%</b>	<b>20 437.4</b>	<b>9.0%</b>
Skills development levy	15 220.2	15 314.8	16 012.4	17 312.2	8.1%	18 758.5	18 758.5	8.4%	1.3%	20 437.4	9.0%
<b>Taxes on property</b>	<b>15 044.1</b>	<b>15 661.2</b>	<b>16 584.6</b>	<b>16 034.8</b>	<b>-3.3%</b>	<b>17 158.9</b>	<b>17 158.9</b>	<b>7.0%</b>	<b>1.2%</b>	<b>19 052.2</b>	<b>11.0%</b>
Donations tax	134.8	280.3	732.1	539.0	-26.4%	576.8	576.8	7.0%	0.0%	729.1	26.4%
Estate duty	1 982.2	1 619.5	2 292.0	1 895.8	-17.3%	2 028.7	2 028.7	7.0%	0.1%	2 318.8	14.3%
Securities transfer tax	5 530.7	5 553.2	5 837.5	6 060.3	3.8%	6 485.1	6 485.1	7.0%	0.5%	7 342.0	13.2%
Transfer duties	7 396.3	8 208.3	7 723.0	7 539.7	-2.4%	8 068.2	8 068.2	7.0%	0.6%	8 662.4	7.4%
Demutualisation charge	–	–	–	–	0.0%	–	–	–	–	–	–
<b>Domestic taxes on goods and services</b>	<b>385 955.9</b>	<b>402 463.9</b>	<b>422 248.3</b>	<b>460 287.3</b>	<b>9.0%</b>	<b>503 449.0</b>	<b>504 649.0</b>	<b>9.6%</b>	<b>36.0%</b>	<b>543 698.5</b>	<b>7.7%</b>
Value-added tax	281 111.4	289 166.7	297 997.6	325 917.5	9.4%	361 571.3	360 471.3	10.6%	25.7%	389 889.2	8.2%
Specific excise duties	35 076.7	35 773.8	37 355.9	40 276.4	7.8%	41 353.9	42 353.9	5.2%	3.0%	44 674.4	5.5%
Ad valorem excise duties	3 014.1	3 396.2	3 780.9	4 162.7	10.1%	4 454.5	4 454.5	7.0%	0.3%	4 782.5	7.4%
General fuel levy	55 607.3	62 778.8	70 948.6	75 373.6	6.2%	81 657.6	82 957.6	10.1%	5.9%	89 066.6	7.4%
Air departure tax	941.2	1 003.9	1 086.0	1 102.4	1.5%	1 159.2	1 159.2	5.2%	0.1%	1 296.8	11.9%
Electricity levy	8 471.8	8 457.7	8 501.0	8 434.5	-0.8%	8 562.5	8 562.5	1.5%	0.6%	8 722.1	1.9%
Other	1 733.5	1 886.8	2 578.3	2 624.5	1.8%	2 703.9	2 703.9	3.0%	0.2%	3 016.0	11.5%
<b>Taxes on international trade and transactions</b>	<b>46 942.3</b>	<b>46 102.5</b>	<b>49 939.4</b>	<b>56 721.8</b>	<b>13.6%</b>	<b>61 300.4</b>	<b>61 300.4</b>	<b>8.1%</b>	<b>4.4%</b>	<b>66 178.7</b>	<b>8.0%</b>
Customs duties	46 250.1	45 579.1	49 151.7	55 638.3	13.2%	60 029.5	60 029.5	11.0%	11.0%	0.1	11.0%
Import surcharges	–	–	–	–	0.0%	–	–	–	–	–	–
Other	692.2	523.4	787.7	1 005.3	27.6%	1 025.6	1 025.6	2.0%	0.1%	1 275.5	24.4%
<b>Stamp duties and fees</b>	<b>0.4</b>	<b>-0.1</b>	<b>-0.3</b>	<b>-0.3</b>	<b>0.7%</b>	<b>-0.3</b>	<b>-0.3</b>	<b>–</b>	<b>-0.0%</b>	<b>-0.4</b>	<b>1.9%</b>
<b>State miscellaneous revenue</b>	<b>-0.8</b>	<b>12.2</b>	<b>-23.5</b>	<b>–</b>	<b>0.0%</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>–</b>
<b>Revenue measures in 2020 Budget</b>										<b>10 000.0</b>	
<b>TOTAL TAX REVENUE (gross)</b>	<b>1 069 982.6</b>	<b>1 144 081.0</b>	<b>1 216 463.9</b>	<b>1 302 201.3</b>	<b>7.0%</b>	<b>1 407 208.0</b>	<b>1 422 208.0</b>	<b>9.2%</b>	<b>101.3%</b>	<b>1 544 868.4</b>	<b>8.6%</b>

# B. BUDGET SPEECH – 20 FEBR 2019



## Summary of revenue

R million	2019/20				2020/21		2021/22	
	Budget estimates Before tax proposals R million	After R million	% change on revised 2018/19	% of total budget revenue	Estimates	% change after tax proposals 2019/20	Estimates	% change on 2020/21
<b>Taxes on income and profits</b>	<b>806 541.6</b>	<b>820 341.6</b>	<b>9.1%</b>	<b>58.5%</b>	<b>885 501.9</b>	<b>7.9%</b>	<b>958 242.2</b>	<b>8.2%</b>
Personal income tax	539 076.9	552 876.9	11.1%	39.4%	602 692.7	9.0%	658 917.2	9.3%
Corporate income tax	229 608.2	229 608.2	5.1%	16.4%	242 439.5	5.6%	256 335.5	5.7%
Secondary tax on companies/dividend and interest withholding tax	32 594.9	32 594.9	5.1%	2.3%	34 422.7	5.6%	36 399.5	5.7%
Tax on retirement funds	–	–	–	–	–	–	–	–
Other	5 261.6	5 261.6	6.3%	0.4%	5 947.0	13.0%	6 589.9	10.8%
<b>Taxes on payroll and workforce</b>	<b>18 758.5</b>	<b>18 758.5</b>	<b>8.4%</b>	<b>1.3%</b>	<b>20 437.4</b>	<b>9.0%</b>	<b>22 307.3</b>	<b>9.1%</b>
Skills development levy	18 758.5	18 758.5	8.4%	1.3%	20 437.4	9.0%	22 307.3	9.1%
<b>Taxes on property</b>	<b>17 158.9</b>	<b>17 158.9</b>	<b>7.0%</b>	<b>1.2%</b>	<b>19 052.2</b>	<b>11.0%</b>	<b>20 862.6</b>	<b>9.5%</b>
Donations tax	576.8	576.8	7.0%	0.0%	729.1	26.4%	816.6	12.0%
Estate duty	2 028.7	2 028.7	7.0%	0.1%	2 318.8	14.3%	2 577.1	11.1%
Securities transfer tax	6 485.1	6 485.1	7.0%	0.5%	7 342.0	13.2%	8 155.6	11.1%
Transfer duties	8 068.2	8 068.2	7.0%	0.6%	8 662.4	7.4%	9 313.2	7.5%
Demutualisation charge	–	–	–	–	–	–	–	–
<b>TOTAL TAX REVENUE (gross)</b>	<b>1 407 208.0</b>	<b>1 422 208.0</b>	<b>9.2%</b>	<b>101.3%</b>	<b>1 544 868.4</b>	<b>8.6%</b>	<b>1 670 408.1</b>	<b>8.1%</b>

2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Collected (m)	Rev estimate (m)	Estimate (m)							

<b>Taxes on property</b>	<b>R 9 102.30</b>	<b>R 7 817.50</b>	<b>R 8 645.21</b>	<b>R 10 487.06</b>	<b>R 12 471.53</b>	<b>R 15 044.07</b>	<b>R 15 661.25</b>	<b>R 16 584.61</b>	<b>R 16 034.77</b>	<b>R 17 158.87</b>	<b>R 17 158 872 108.90</b>	1.21%
Donations tax	R 64.58	R 52.66	R 82.10	R 112.75	R 166.96	R 134.82	R 280.26	R 732.09	R 539.01	R 576.79	R 576 793 275.59	0.04%
Estate duty	R 782.33	R 1 045.16	R 1 012.98	R 1 101.51	R 1 488.63	R 1 982.21	R 1 619.49	R 2 292.01	R 1 895.83	R 2 028.74	R 2 028 737 284.97	0.14%
Securities transfer tax	R 2 932.91	R 2 886.11	R 3 271.85	R 3 784.26	R 4 150.12	R 5 530.74	R 5 553.23	R 5 837.51	R 6 060.27	R 6 485.12	R 6 485 122 330.24	0.46%
Transfer duties	R 5 322.49	R 3 833.56	R 4 278.28	R 5 488.54	R 6 665.82	R 7 396.31	R 8 208.26	R 7 723.00	R 7 539.66	R 8 068.22	R 8 068 219 218.10	0.57%

Total tax revenue	<b>R 674 183.15</b>	<b>R 742 649.71</b>	<b>R 813 825.81</b>	<b>R 900 014.72</b>	<b>R 986 295.02</b>	<b>R 1 069 982.62</b>	<b>R 1 144 080.99</b>	<b>R 1 216 463.87</b>	<b>R 1 302 201.32</b>	<b>R 1 422 208.00</b>	<b>R 1 422 207 998 042.84</b>
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# B. BUDGET SPEECH – 20 FEBR 2019



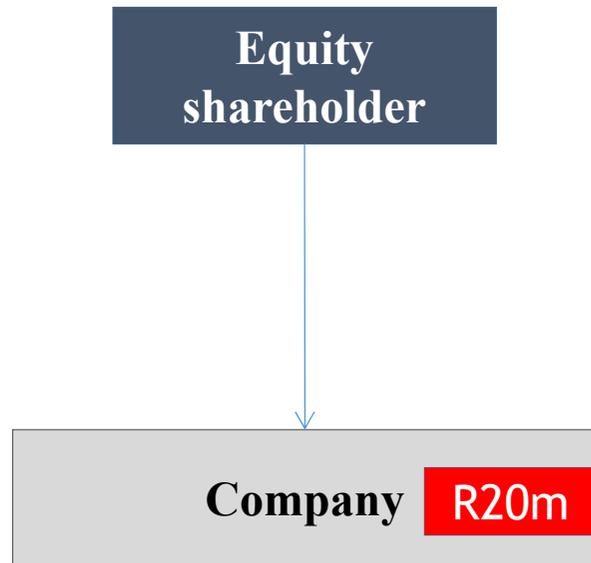
<b>BUDGET REVENUE 2019/20</b>	
<b>R billion</b>	
<b>TAX REVENUE</b>	<b>1 422.2</b>
of which:	
Personal income tax	552.9
Corporate income tax	229.6
Value-added tax	360.5
Taxes on international trade and transactions	61.3
<b>Non- tax revenue</b>	<b>31.5</b>
Less: SACU payments	-50.3
<b>Main budget revenue</b>	<b>1 403.5</b>
Provinces, social security funds and public entities	180.3
<b>Consolidated budget revenue</b>	<b>1 583.8</b>
As percentage of GDP	
Tax revenue	26.3%
Main budget revenue	25.9%

# B. BUDGET SPEECH – 20 FEBR 2019

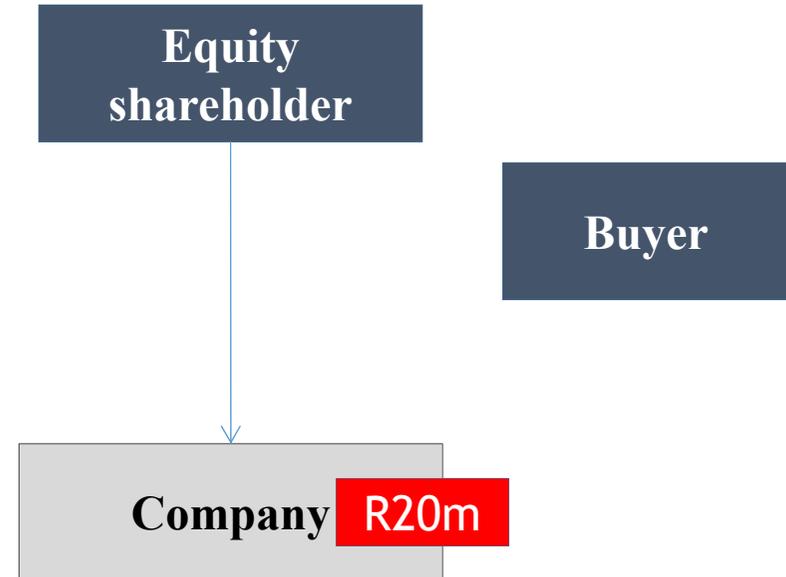


<b>CONSOLIDATED FISCAL FRAMEWORK</b>							
R billion/percentage of GDP	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
	Outcome			Estimate	Medium term estimates		
<b>Revenue</b>	<b>1 215.3</b>	<b>1 285.9</b>	<b>1 353.5</b>	<b>1 455.2</b>	<b>1 583.8</b>	<b>1 696.4</b>	<b>1 836.6</b>
	29.4%	29.1%	28.7%	28.8%	29.3%	29.2%	29.4%
<b>Expenditure</b>	<b>1 366.3</b>	<b>1 443.0</b>	<b>1 543.8</b>	<b>1 665.4</b>	<b>1 826.6</b>	<b>1 948.9</b>	<b>2 089.0</b>
	33.1%	32.7%	32.7%	32.9%	33.7%	33.5%	33.4%
<b>Budget balance</b>	<b>-151.0</b>	<b>-157.0</b>	<b>-190.3</b>	<b>-210.2</b>	<b>-242.7</b>	<b>-252.6</b>	<b>-252.4</b>
	-3.7%	-3.6%	-4.0%	-4.2%	-4.5%	-4.3%	-4.0%
<b>Gross domestic product</b>				<b>5 059.1</b>	<b>5 413.8</b>	<b>5 812.4</b>	<b>6 249.1</b>

## Existing Position



## Potential buyer



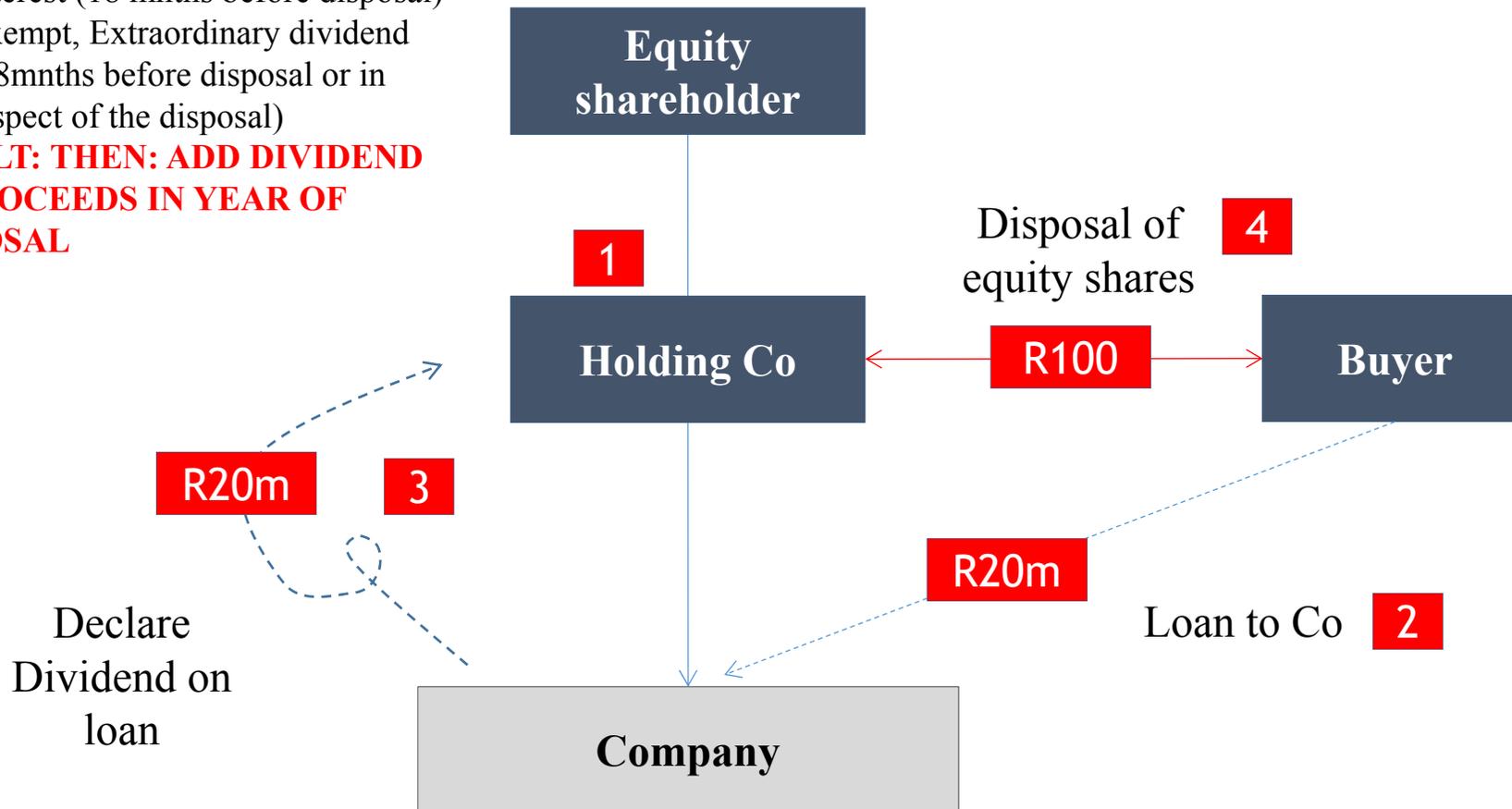
# B. BUDGET SPEECH – 20 FEBR 2019

A.



1. Co disposes shares in another Co
2. Shares were held as capital assets
3. Disposing Co held a qualifying interest (18 mnths before disposal)
4. Exempt, Extraordinary dividend (18mnths before disposal or in respect of the disposal)

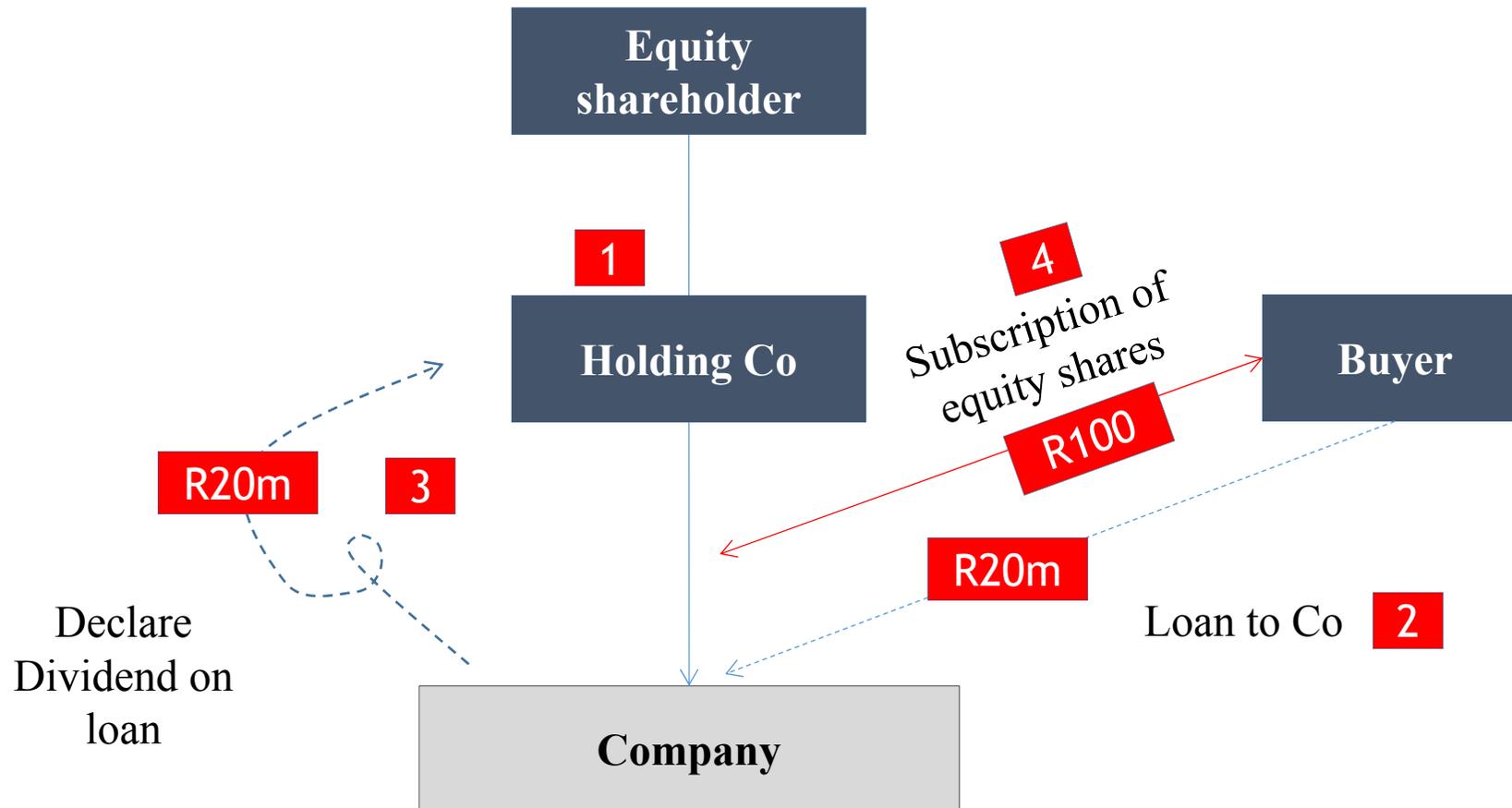
**RESULT: THEN: ADD DIVIDEND AS PROCEEDS IN YEAR OF DISPOSAL**



### Business (general)

#### *Addressing abusive arrangements aimed at avoiding the anti-dividend stripping provisions*

In 2017, the rules governing share buy-backs and dividend stripping were changed to prevent taxpayers from avoiding taxation of share disposals by companies. In 2018, these rules were again adjusted to prevent harm to legitimate corporate reorganisations. However, some taxpayers are now undermining the adjusted rules. These arrangements involve the target company distributing a substantial dividend to its current company shareholder and subsequently issuing shares to a third party. As a result, the value of the current company shareholder's holding in the shares of the target company is diluted and these shares are not immediately disposed of. This differs from the previous avoidance arrangements that involved disposing of the same shares in return for a tax-exempt dividend. To curb this new form of abuse, it is proposed that the rules governing share buy-backs and dividend stripping be amended. These amendments will take effect on 20 February 2019.



*Correcting anomalies arising from applying value-shifting rules*

Clarifying the effect of deferred tax liability on the market value of issued shares:

Current anti-avoidance provisions target value shifting through asset-for-share transactions that apply when the market value of the assets acquired differs from the market value of the shares issued in exchange. However, the current provisions do not include the effect of a deferred tax liability (related to the acquired asset) on the market value of the shares. It is proposed that the Income Tax Act be amended to clarify that any difference in value due to the deferred tax liability should not be subject to the relevant provisions.

Clarifying the effect of a capital gain from the operation of the anti-avoidance rules on the base cost of shares acquired in exchange for assets:

In 2012, rules were introduced to prevent the transfer of high-value assets to a company in return for shares issued by the company with a different value. These rules trigger a capital gain or a deemed *in specie* dividend event for one of the parties. Other rules state that a company issuing shares in exchange for assets is deemed to have acquired the assets for expenditure equal to the market value of the shares. However, this deemed acquisition value does not include any capital gains previously triggered by the anti-value shifting rules, thereby resulting in possible double taxation when the company disposes of the assets later. It is proposed that the rules be amended to prevent this.

# B. BUDGET SPEECH – 20 FEBR 2019

C.



WRS Fiduciary and Tax

*Clarifying the interaction between corporate reorganisation rules and other provisions of the Income Tax Act*

## INCOME TAX

Clarifying corporate reorganisation rules relating to exchange items and interest-bearing instruments:

The current corporate reorganisation rules allow the tax-neutral transfer of assets between companies that are part of the same group. However, the provisions do not specify how exchange items and interest-bearing assets should be treated during corporate restructuring. It is proposed that the legislation clarify that the transfer of these items and assets is excluded from the rules. This is because unrealised values on the date of transfer should be triggered in the transferor companies.

Refining the interaction between the anti-avoidance provisions for intra-group transactions:

The corporate rollover provisions regarding intra-group transactions contain multiple anti-avoidance measures. However, it is not always clear how these measures interact with each other. In particular, separate measures often cause punitive tax consequences that are not taken into account should another measure subsequently apply, which results in potential double taxation. It is proposed that these provisions be refined by clarifying how the measures interact.

*Refining the VAT corporate reorganisation rules*

## VAT

In line with the Income Tax Act, the VAT Act provides relief for companies in the same group by treating the supplier and the recipient of goods or services as the same person during corporate reorganisation transactions. If these transactions take place in terms of sections 42 or 45 of the Income Tax Act, VAT relief is only permitted if the transfer relates to a going concern. However, transfers of fixed property under these sections may not always involve a going concern, especially in sale and lease-back situations. It is proposed that the VAT Act be amended to clarify treatment in these instances.

## *Amending rules to allow company deregistration by operation of law*

In some corporate reorganisation rules, to qualify for the tax-neutral transfer of assets, one or more of the companies involved should cease to exist after the transaction. The legislation lists steps that show a taxpayer meeting this requirement. However, the steps do not take into account deregistration by operation of law. It is proposed that the rules be amended to include this option.

## *Reviewing the venture capital company tax regime*

In 2018, changes were made to the venture capital company tax regime to prevent abuse of various aspects of the system. It has come to government's attention that some taxpayers are attempting to undermine other aspects of the regime to benefit from excessive tax deductions. It is proposed that these rules be reviewed to prevent this abuse.

### *Refining the foreign employment income tax exemption for South African residents*

From 1 March 2020, South African residents who spend more than 183 days in employment outside the country will be subject to South African taxation on any foreign employment income that exceeds R1 million. To prevent monthly withholding of income tax both in South Africa and the host country, it is proposed that South African employers be allowed to reduce their monthly local pay-as-you-earn (PAYE) withholding by the amount of foreign taxes withheld on the employment income. Before implementation, a workshop will be held to consult taxpayers on their administrative concerns. Any resulting amendments will be processed during the 2019 legislative cycle.

- (ii) received by or accrued to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any amount referred to in paragraph (i) of the definition of gross income in [section 1](#) or an amount referred to in [section 8](#), [8B](#) or [8C](#) in respect of services rendered outside the Republic by that employee for or on behalf of any employer, if that employee was outside the Republic—

- (ii) to the extent to which that remuneration does not exceed one million Rand in respect of a year of assessment and is received by or accrues to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any amount referred to in paragraph (i) of the definition of gross income in [section 1](#) or an amount referred to in [section 8](#), [8B](#) or [8C](#), in respect of services rendered outside the Republic by that employee for or on behalf of any employer, if that employee was outside the Republic—

(Pending amendment: [Sub-para \(ii\)](#) to be amended for the words preceding [item \(aa\)](#) by [s. 16 \(1\) \(g\)](#) of [Act No. 17 of 2017](#) with effect from 1 March, 2020 and applicable in respect of years of assessment commencing on or after that date.]

(Date of commencement: 1 March, 2020.)

- (aa) for a period or periods exceeding 183 full days in aggregate during any period of 12 months; and  
[[Item \(aa\)](#) substituted by [s. 16 \(j\)](#) of [Act No. 35 of 2007](#).]

#### Wording of Sections

- (bb) for a continuous period exceeding 60 full days during that period of 12 months,

### *Extending the scope of amounts constituting variable remuneration*

In 2013, section 7B was introduced in the Income Tax Act (1962) to match the timing between the accrual and payment dates of some forms of variable cash remuneration. Section 7B deems certain amounts to accrue when they are actually paid. However, because the scope of this section is limited, it is proposed that it be extended to include certain qualifying payments.

Reviewing the tax treatment of surviving spouse pensions:

Members of a pension fund can deduct contributions to their retirement funds from their taxable income when determining their monthly employees' tax and annual income tax payable. Upon the death of a member, the surviving spouse may be entitled to receive a monthly spousal pension from the retirement fund. These spousal pension payments are subject to PAYE by the retirement fund.

If the surviving spouse also receives a salary or other income, it is added to the spousal pension to determine his or her correct tax liability on assessment. The result of the assessment is often that the surviving spouse has a tax liability that exceeds the employees' tax withheld by the employer and retirement funds during the year of assessment, since the aggregation of income pushes them into a higher tax bracket. In most cases, the surviving spouse does not foresee the additional tax liability and does not save money to settle the liability. This creates a cash flow burden and a tax debt for the surviving spouse. It is proposed that:

- Surviving spouses are provided with effective communication relating to tax and financial issues
- The monthly spousal pension be subject to PAYE withholding at a specified flat rate
- Tax rebates should not be taken into account in the calculation of spousal pensions.

Any PAYE excessively withheld as a result of this proposal will be refunded upon assessment.



## DTC – FIRST REPORT (JANUARY 2015) [ESTATE DUTY: A DISCUSSION DOCUMENT] GENERAL REMARKS

In real terms the contribution of estate duty collections **has declined** over the past 20 years. Today this represents a mere **0,1% of total tax collections**.

There is no prospect of capital taxes, in whatever form, being a “silver bullet”, BUT there is scope to increase performance in this regard. The Katz Commission suggested that a targeted tax contribution for such taxes, of **1 to 1.5% of tax revenues**.

Given the huge disparity of wealth in South Africa, it is **hard to justify a repeal** of these taxes without any replacement.

The South African estate duty system contains generous allowances that allow most estates to be subject to both CGT and estate duty only on the **death of all spouses**. This defers estate duty collection for many years.

Enforcement of the existing Estate Duty Act **could not be** substantially improved through the employment and training of expert SARS estate duty assessors.

# C. DAVIS TAX COMMITTEE



## DTC – FIRST REPORT (JANUARY 2015) PROPOSALS

YES /  
NO

1. With some modification, the estate duty system could achieve many of the objectives outlined <b>without implementing Capital Transfer Tax</b> .	<b>YES</b>
2. The DTC is of the opinion that section <b>80 of the Income Tax Act do not</b> currently act as an effective deterrent against the wide range of estate duty saving mechanisms that exist today.	NO
3. The DTC’s further opinion is that the pursuit of further <b>GAAR provisions</b> to be included in the estate duty act has little prospect of success.	<b>YES</b>
4. The flat rate of tax for trusts should <b>be maintained</b> at its existing levels.	NO, increased
5. The deeming provisions <b>of section 7 and 25B should be repealed</b> , insofar as they apply to RSA resident trust arrangements.	NO
6. The deeming provisions of <b>section 7 and 25B should be retained</b> , insofar as they apply to non-resident trust arrangements.	<b>YES</b>
7. Trusts should be taxed as <b>separate taxpayers</b> (except for Special Trusts).	NO

# C. DAVIS TAX COMMITTEE



DTC – FIRST REPORT (JANUARY 2015) PROPOSALS	YES / NO
8. No attempt should be made to <b>implement transfer pricing adjustments</b> in the event of financial assistance or interest-free loans being advanced to trusts.	NO (S7C)
9. <b>CTT implementation should be postponed</b> , at least until such time as more substantial research justifying its implementation is conducted.	<b>YES</b>
10. The DTC is of the opinion that by addressing the income tax regime for trusts (as outlined above) a substantial deterrent against estate planning will have been created without the necessity of devoting substantial resources towards the <b>implementation of CTT or NWT</b> .	<b>YES</b>
11. The DTC is of the view that there is <b>no need to consider a further offshore</b> amnesty programme. Indeed, such a programme would undermine the effectiveness of the voluntary disclosure programme.	NO
12. Owing to the difficulties of identifying the components of income distributed to a beneficiary it is recommended that all distributions of <b>foreign trusts be taxed as income</b> .	NO
13. The principle of <b>inter-spouse exemptions and roll-overs should be either withdrawn completely, or subjected to a specified limit</b> .	NO

# C. DAVIS TAX COMMITTEE



DTC – FIRST REPORT (JANUARY 2015) PROPOSALS	YES / NO
14. The inter-spouse donations tax exemptions contained in section 56(1)(a) & (b) be retained, subject to the section 56(1)(b) exemption being amended to exclude all interests in either fixed property or companies.	NO
15. The extent of the “reasonable maintenance” exemption contained in section 56(2)(c) should accordingly be refined by making it subject to various categories of expenditure.	NO
16. The DTC recommends that the Section 3(2)(i) estate duty exemption be retained.	YES
17. Thus the practice should be stopped by simply deeming all retirement fund contributions, made on or after 1 March 2015 and disallowed in the determination of taxable income, to be included in the estate duty computation.	YES
18. The primary abatement be increased to R6 million per taxpayer.	NO
19. The DTC favours a single universally applied abatement followed by a progressive estate duty rate.	YES

# C. DAVIS TAX COMMITTEE



## DTC – FIRST REPORT (JANUARY 2015) PROPOSALS

YES /  
NO

20. The DTC recommends that the current flat rate of **20% should not be increased**, particularly in the light of the retention of both CGT and estate duty/donations tax being levied on capital transfers.

NO

# C. DAVIS TAX COMMITTEE



## DTC – SECOND REPORT (28 APRIL 2016) PROPOSALS

1. Following the “capping” of retirement fund contributions the <b>retirement fund abatement</b> should be retained.	<b>YES</b>
2. The maximum threshold for tax-deductible retirement fund <b>contributions (R350 000)</b> should be <b>increased</b> to take account of inflation.	NO
3. <b>The inter-spouse abatement should be withdrawn</b> and replaced with a substantially enhanced primary abatement, thus ensuring the consistent equitable treatment of all taxpayers.	NO
4. The problems inherent in the <b>section 4(q) abatement</b> should not be ignored on pragmatic grounds alone as this result in the inconsistent treatment of married and single parent families.	NO
5. The DTC recommends that the primary abatement should be substantially increased to <b>R15 million for all taxpayers</b> , irrespective of marital status.	NO
6. The estate duty rate be increased from <b>20 per cent to 25 per cent</b> of the dutiable value of an estate exceeding R30 million.	<b>YES</b>

# C. DAVIS TAX COMMITTEE



## DTC – SECOND REPORT (28 APRIL 2016) PROPOSALS

7. The CGT rollover provisions of the Eighth Schedule to the Income Tax Act, 1962 (ITA) relating to <b>inter-spouse bequests should be repealed</b> and replaced with a generous exemption death exemption of <b>R1 million</b> .	NO
8. If the inter-spouse abatements and allowances are to be removed for estate duty and capital gains tax (CGT) purposes it stands to reason that the <b>inter-spouse exemption within the donations tax system</b> should also be removed, save for providing an exemption for the reasonable maintenance of the taxpayer and family.	NO
9. SARS should establish comprehensive records of all <b>bare dominium and trust arrangements</b> .	?
10. The fact that 87,8 per cent (88 344 out of 100 590) of <i>prima facie</i> compliant trusts are apparently <i>inter vivos</i> trust arrangements reflects the need for a <b>comprehensive analysis of each trust</b> to ensure that the trust is compliant with the ITA and Estate Duty Act, 1955 (EDA).	?

# C. DAVIS TAX COMMITTEE



## DTC – SECOND REPORT (28 APRIL 2016) PROPOSALS

11. Further investigation be conducted into the implementation of <b>wealth taxes in SA</b> . This will be addressed in a separate report during <b>2016</b> .	NO
12. Donors and beneficiaries of all <b>vested trust arrangements</b> should be subject to stricter disclosure requirements and enforcement measures.	NO
13. Estate duty assessment procedures of SARS should concentrate on the examination of any trusts in which the deceased may have enjoyed a <b>vested interest</b> .	NO
14. Only where a trust deed confers upon its beneficiaries an indisputable and irrevocable vested right to both the capital and income of a trust, should the income, both capital and revenue, <b>be taxed in the hands of the beneficiary</b> .	NO
15. The flat rate of tax applied to trusts should be retained at its current level and be subject to <b>adjustment in line with changes in the maximum personal income tax rate</b> .	<b>YES</b>

# C. DAVIS TAX COMMITTEE



## DTC – SECOND REPORT (28 APRIL 2016) PROPOSALS

16. SARS should establish a separate investigations unit to thoroughly and comprehensively examine **foreign trust arrangements**.

**YES**

17. **Offshore Retirement Funds** should be further investigated by SARS.

**YES**

## DTC – REPORT (MARCH 2018) (90 PAGES) FEASIBILITY OF A WEALTH TAX IN SOUTH AFRICA

### Position in RSA

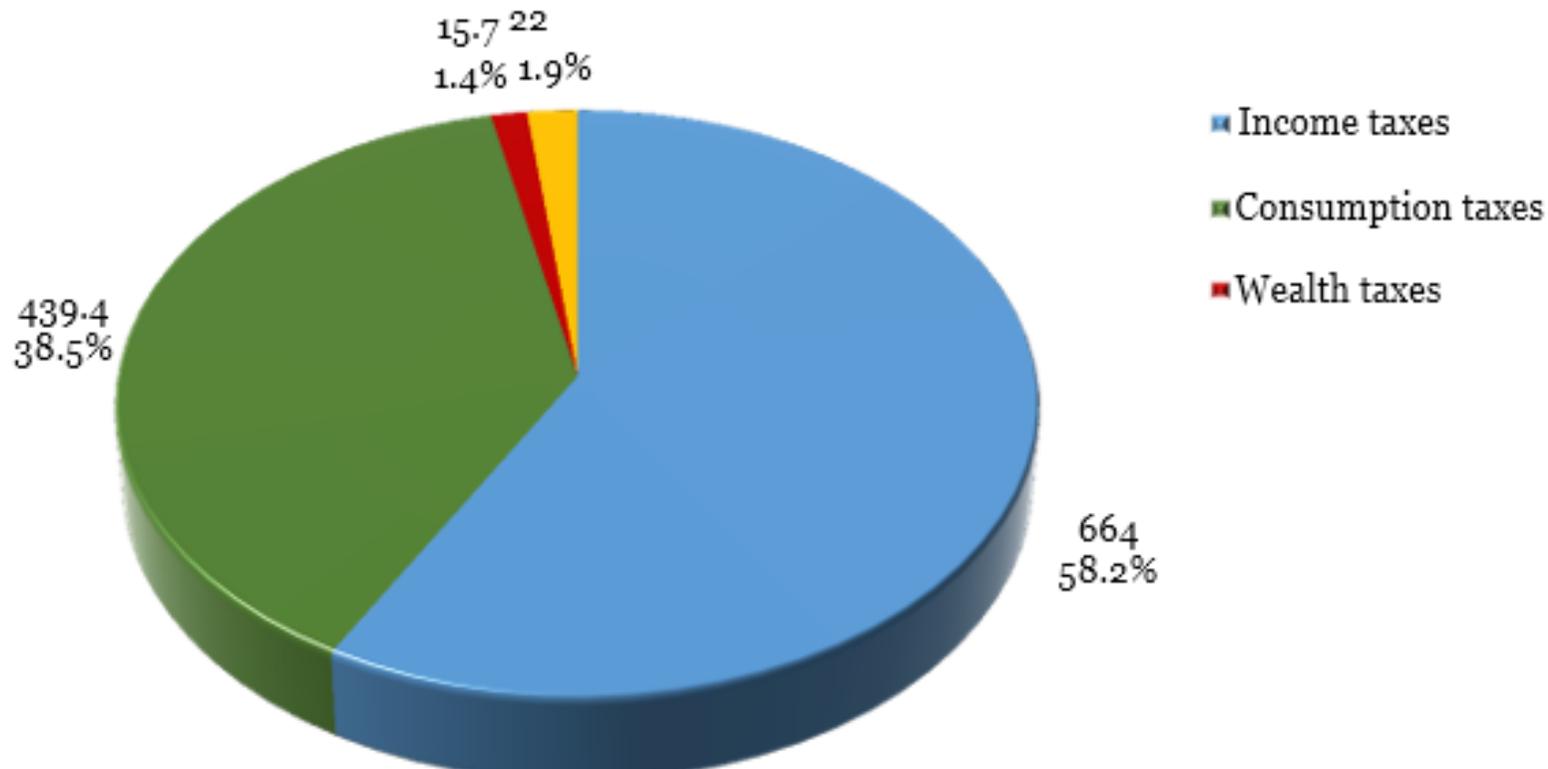
1. South Africa has existing wealth taxes = **Transfer Duty, Estate Duty and Donations Tax.**
2. These currently raise very small amounts of tax revenue **(R10,6 bn).**
3. Wealth inequality in South Africa is extremely high and poses a **threat to social stability and inclusive growth.**
4. The wealth inequality is high in South Africa **with a wealth Gini coefficient of 0.95**, in comparison to an income Gini coefficient of 0.67. South Africa is much higher than the global estimate.
5. **The top 10 per cent owns more than 90 per cent of total wealth** in the country and more than 80 per cent of the population holds no wealth;
6. There remains a massive gap between the average wealth of an African household and that of a White household.
7. **A wealth tax is not, however, the only available instrument to address the inequities of income and wealth.**
8. In previous reports, the Davis Tax Committee has suggested a variety of reforms that would enhance fairness and increase revenue.
9. Not only do wealth taxes already exist but there are also tremendous difficulties and unintended consequences that would need to be addressed prior to implementing further wealth taxes.

## DTC – REPORT (MARCH 2018) (90 PAGES) FEASIBILITY OF A WEALTH TAX IN SOUTH AFRICA

### Capital in the Twenty-First Century, Thomas Piketty (2014) – visited SA in 2015

1. Distribution of income and wealth has become more unequal over the past two decades.
2. It is a product of **patrimonial capitalism**.
3. This is a reference to the elite who have largely **inherited their wealth** rather than created wealth through **innovation or entrepreneurship**.
4. This can only be reversed through **government intervention**.
5. His theory is based upon the relationship between the **rate of return on capital (r) and the rate of economic growth (g)**.
6. He argues that, in the long run there is a tendency for the rate of return on capital (r) to significantly exceed the rate of economic growth which suggests that **inherited wealth is likely to grow much faster than output and income**.
7. Therefore the argument that the obvious way to reduce inequality is to encourage economic growth is **not necessarily correct**.
8. As such, a core focus rests on the argument that current wealth tax systems **place too little emphasis on the role of inheritance inequality**.
9. In light of such high global wealth inequality, Piketty recommends that the world's governments should cooperate and **introduce a global wealth tax**.
10. Piketty recommended that **South Africa** should create **an annual net wealth tax** initially at a low rate to establish some level of transparency **and identify what people own and, more importantly, who owns what**.

## DTC – REPORT (MARCH 2018) (90 PAGES) FEASIBILITY OF A WEALTH TAX IN SOUTH AFRICA



Estate duty and donations tax collections = 0.17% of all revenue collected. Collections from Transfer Duty have increased steadily over time and now represent 0.6% of total tax collections.

## DTC – REPORT (MARCH 2018) (90 PAGES) FEASIBILITY OF A WEALTH TAX IN SOUTH AFRICA

### What is a Wealth Tax?

1. Wealth is the difference between gross wealth and total debt.
2. A net wealth tax is a tax imposed on the difference between the **sum of all gross assets** (gross wealth) and the sum of all **liabilities at a particular point in time**.
3. There is a difference between: tax on **wealth vs a tax on the wealthy**.
4. The income stream generated by wealth is taxed through the income tax system.
5. Wealth bestows certain benefits over and above the rate of return that it generates; as such, wealth is a **tax base in its own right**.

### 3 Big constraints of implementing a Wealth Tax?

1. **Tax efficiency:** achieving tax efficiency becomes difficult when the extent to which an introduction of a wealth tax not only creates distortions on people's willingness to work but also distorts the decisions associated with wealth accumulation and disposal.
2. **Costs:** As opposed to taxes on wealth transfer, the administrative costs involved in administering a net wealth tax can be substantial especially as some forms of wealth are hard to measure and/or easy to conceal.
3. **Tax regime:** tax reform or implementation inevitably produces winners and losers. The introduction or abolition of a new tax provides opportunities for some individuals to exploit the changes in the tax regime.

## DTC – REPORT (MARCH 2018) (90 PAGES) FEASIBILITY OF A WEALTH TAX IN SOUTH AFRICA

### Internationally:

1. Internationally, the interest in wealth taxes has waxed and **waned over time**.
2. There are **in 2017 only four OECD countries** that have net wealth taxes, down from 12 in 1990 (OECD, 2017), with the decisions to repeal net wealth taxes having been motivated by efficiency and administrative concerns as well as by the observation that net wealth taxes often failed to meet their redistributive goals.
3. Currently, **France, Norway, Switzerland and Spain** are the only OECD countries that still levy net wealth taxes.
4. Wealth taxes in these four countries raise very little revenue, with the exception of Switzerland where 3.6% of tax revenue came from wealth taxes in 2015. In the other three countries wealth taxation accounted **for less than 1% of total taxation in 2015** (OECD, 2017).
5. The report focused on 4 countries' position re Wealth Taxes. 1) **France** has a well-established wealth tax, 2) **Germany** is debating the creation of a net wealth tax, 3) the **Netherlands** replaced its wealth tax with a presumptive capital tax and 4) **India** recently abolished their net wealth tax.
6. Conclusion: In the last 20 years, several countries have abandoned the taxation of net wealth. In most cases, **the rising costs of classifying and measuring net assets, structuring the tax collection system**, and above all, **accounting for global assets** have been causes for concern.

## DTC – REPORT (MARCH 2018) (90 PAGES) FEASIBILITY OF A WEALTH TAX IN SOUTH AFRICA

### What about SA?

1. The current pattern of wealth ownership in South Africa reflects our history of colonialism and apartheid policies and cannot be undone **without the intervention of the state.**
2. Although progressive income taxes have aimed at achieving redistribution objectives, the income gap between the rich and the poor has continued to widen. New evidence has highlighted that the **wealth inequality is even wider than income inequality.**
3. A most **important consequence** of a highly unequal distribution of wealth in society is the undermining of social, political and economic stability;
4. However, a wealth tax is not the **only available nor necessarily the best instrument** to address the inequities of income and wealth. Other methods of redress include land reform and programmes on the expenditure side of the fiscal budget such as increased access to quality health and education and the provision of infrastructure as well as effective government leading to growth and employment.
5. Warning: However, reservations exist with regard to the **feasibility of implementing even the simplest forms** of additional or alternative wealth taxation. Above all, the legislative and administrative processes required for both SARS and the taxpayer will be significant and must not be underestimated..
6. Warning: The **adverse consequences of wealth taxation** such as capital migration, disincentives to save, the effect on entrepreneurship and employment must be thoroughly considered.
7. What has been done? **Income streams arising from wealth are today taxed on a far wider base than 20 years ago.**

## DTC – REPORT (MARCH 2018) (90 PAGES) FEASIBILITY OF A WEALTH TAX IN SOUTH AFRICA

### **Feed back received**

1. Of the 132 submissions received, fewer than five were in support of a recurrent net wealth tax.
2. COSATU and SACTWU made a joint submission in which they supported the idea of a recurrent tax on net wealth and tentatively suggested that the rate could lie in the range 0,5%-2,5%.
3. In their submission they proposed that the tax should be progressive and should not apply to those with less than, say, R1m in net wealth.

### **Various Taxes on asset classes investigated:**

#### Property Tax:

1. There are still good reasons to favour a national recurrent property tax as an alternative to the existing system of Transfer Duty.
2. Conclusion: Given the current state of South Africa's tax collections it is unrealistic to propose the unilateral or immediate withdrawal of transfer duty. Equally, it would be unwise to propose further taxation of residential property through a wealth tax, at least until such time as the adverse impact of the transfer duty rate can be reduced.

## DTC – REPORT (MARCH 2018) (90 PAGES) FEASIBILITY OF A WEALTH TAX IN SOUTH AFRICA

### Suggestion re a wealth tax in SA

1. Given the disturbing levels of wealth inequality in South Africa, a taxation system that would ignore such disparities of wealth will **lack the important requirement of legitimacy** in the tax system.
2. The process of creating a wealth tax in South Africa as a means to redress South Africa's levels of inequality would need to start with the **consideration of a very simple form of an annual net wealth tax.**

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### **The decision on whether to implement an annual net wealth tax cannot be made without the following:**

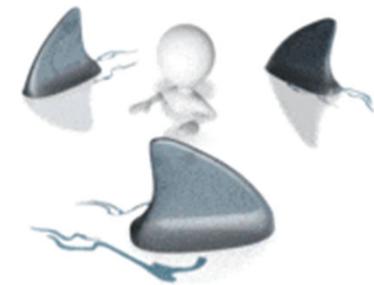
1. **Further consideration as to the appropriate tax base** (i.e. which forms of wealth to include within the scope of the tax)  
Most important question: whether retirement funds should fall within the scope of the tax?
2. **Comprehensive data on the pattern of wealth ownership;**
  - To this end, the DTC recommends that all taxpayers and beneficial owners of wealth (which includes control of trusts as well as beneficiaries thereof) that are required to submit an income tax return must be required to include the market value of all readily ascertainable wealth in a revised tax return for the 2020 year of assessment.
  - Suggest: non-disclosure penalty provisions in Tax Administration Act be revised to provide for the implementation of substantial penalties where taxpayers fail to disclose the existence of their wealth.
3. **An evaluation as to whether the revenue generated would exceed the administrative and economic burden on taxpayers and the revenue authorities.**

## DTC – REPORT (MARCH 2018) (90 PAGES) FEASIBILITY OF A WEALTH TAX IN SOUTH AFRICA

### Conclusion:

1. It is apparent from these recommendations that the introduction of a wealth tax **cannot be implemented in the short term.**
2. In particular, we refer again to the First and Second estate duty reports of the DTC which, save for the introduction of section 7C of the Income Tax Act and the increase in the rate of estate duty in the 2018 Budget for estates in excess of R30 million, **have not been implemented.**
3. For this reason, the DTC recommends that the focus should initially be on **increasing estate duty collections** given that the necessary administrative capacity already exists.
4. Although government expenditure is not a part of the brief of the DTC, the Committee emphasises that the enhancement of existing wealth taxes, coupled with a **decrease in unauthorised and wasteful expenditure and enhanced tax morality** will go some way towards reducing South Africa's unsustainable levels of inequality.

# D. TRUSTS



# D. TRUSTS



Amend-  
ment of  
Trust  
Deeds -  
Latest



Section 4q  
trusts



Section 7C



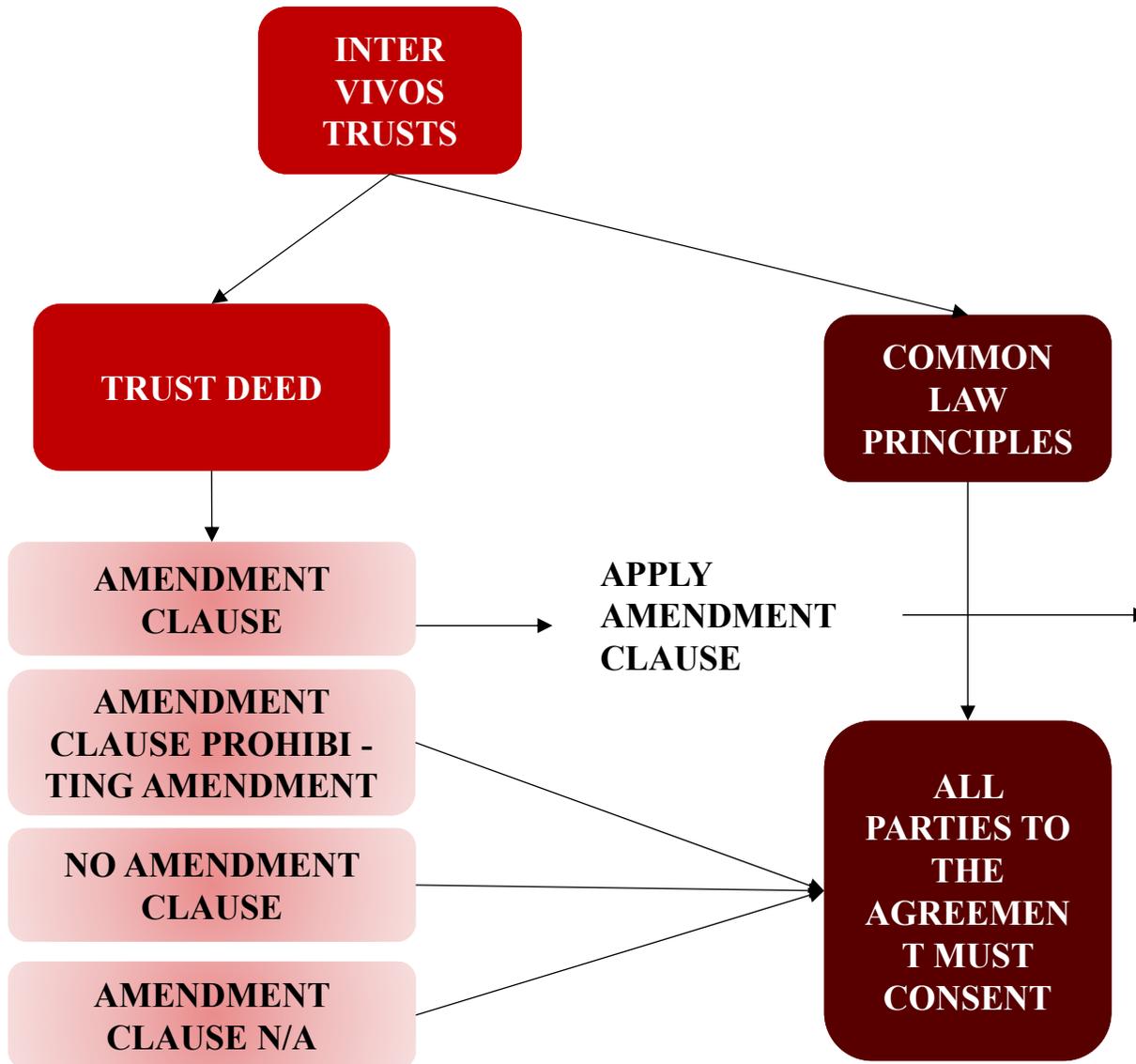
Section  
30C trusts



Testamen  
- tary  
trusts v  
Inter  
Vivos  
Trusts

# D. TRUSTS – (1) Amendment of Trust deeds

## Amendment of trust deeds



**WHAT IF AMENDMENT CLAUSE STIPULATE ONLY TRUSTEES HAVE TO CONSENT TO AMENDMENTS, NOTWITHSTANDING THE ACCEPTANCE OF BENEFITS OF THE BENEFICIARIES?**

**LLD: RIKA VAN ZYL: ACCEPTANCE OF BENEFITS – VESTED TIGHTS TO THE SPECIFIC ASSET DISTRIBUTED**

# D. TRUSTS – (1) Amendment of Trust deeds



## MASTER'S DIRECTIVE 2 OF 2017

The question arises as to whether the provisions of an *inter vivos* trust deed with regard to the amendment of the deed can overrule the above common law rule by expressly permitting amendments of the trust deed by the trustees without the consent of beneficiaries with vested rights in the trust and who have accepted their benefit under the trust deed.

The rule regarding the amendment of contracts in **common law** is as follows (Christie Law of Contract 2006; 447):

a) Parties to a contract are free to vary (or amend) their agreement. This means that all the parties to the original contract may amend the original agreement as they please, provided that, if a statute prescribes formalities for the amendment of a contract, those formalities must be complied with.

b) Where the original agreement contains a **clause prohibiting the amendment of the contract**, the **parties** may still amend the contract, but it must now take place in two stages, first the prohibition clause needs to be amended, after which the contract may be amended. The two-stage approach can be contained in the same document, but the first stage is a pre-requisite for the second stage.

The current position can be distinguished as follows:

a) If the trust deed **expressly permits** the amendment of the deed by the trustees without the involvement of the beneficiaries, the consent of the beneficiaries who have vested rights **will not be required**, provided the amendment which is made **falls within any condition which is set for amendment by the trustees in the trust deed**. This appears to have been one of the issues in the Potgieter decision where the amendments made by the trustees did not fall within those permitted in the trust deed.

b) If the trust deed is silent on the involvement of beneficiaries in the amendment of the deed, then the **common law rules will apply and the consent of the beneficiaries with vested rights will be required**, provided they have already accepted the benefit.

## 20. WYSIGING VAN TRUSTAKTE

Die Skenker en Trustees en na afsterwe van die Skenker, die Trustees gesamentlik, sal geregtig wees om die magte van die Trust te verander, aan te vul en te wysig soos wat hulle mag besluit, onderworpe aan die voorwaarde dat dit skriftelik gedoen word en dat dit slegs daarop gemik is om die administratiewe pligte van die Trustees te verbeter en te vergemaklik. Geen wysiging van die klas van Trust Begunstigdes mag ooit aangebring word nie.

## D. TRUSTS –(2) Section 4(q) trusts



If I want to bequeath an asset to a trust and still wants to acquire the section 4(q) deduction, how should the trust be structured?

### Section 4q of the Estate Duty Act

so much of the value of any property included in the estate which has not been allowed as a deduction under the foregoing provisions of this section, as accrues to the surviving spouse of the deceased: Provided that—

(i) the deduction allowable under the provisions of this paragraph shall be reduced by so much of any amount as the surviving spouse is required in terms of the will of the deceased to dispose of to any other person or trust;

Eg Bequest Price

(ii) no deduction shall be allowed under the provisions of this paragraph in respect of any **property which accrues to a trust established by the deceased for the benefit of the surviving spouse**, if the trustee of such trust has a **discretion** to allocate **such property** or **any income therefrom** to any person other than the surviving spouse.

## D. TRUSTS –(2) Section 4(q) trusts



If I want to bequeath an asset to a trust and still wants to acquire the section 4(q) deduction, how should the trust be structured?

### Section 4q of the Estate Duty Act

1. Only applicable to Testamentary trusts? No
2. Must it only apply to property that was bequeathed to spouse, testate / intestate? No
3. What does “For the benefit of the surviving spouse” mean?
4. What discretion will cause the disallowance of the deduction?
5. What about a bequest to a trust with a obligatory bequest price to the surviving spouse?

**Nb: Whenever the surviving spouse’s right to income (in whole or part) from the trust cannot be defeated by the exercise of the trustee’s discretion, including his discretion to the allocation of capital, then section 4(q) should be allowable.**

## D. TRUSTS –(2) Section 4(q) trusts



If I want to bequeath an asset to a trust and still wants to acquire the section 4(q) deduction, how should the trust be structured?

### Capital Gains Tax Consequences?

1. Before 1 March 2016 – par 67 / After 1 March 2016 – Sect 25 and 9HA(2)(a)
2. Any transfers to a surviving spouse as a result of
  - testamentary succession or ab intestate (also Sect 2C of the Wills Act);
  - as a result of a redistribution agreement between the heirs and legatees of that person in the course of liquidation or distribution of the deceased estate of that person; or
  - in settlement of a claim arising under s 3 of the Matrimonial Property Act 88 of 1984.
3. Not asset transferred as maintenance in terms of the Maintenance of the Surviving Spouse's Act
4. Not to a Non Resident Spouse
5. Assets to a Bewind trust or to a trust where the spouse acquired a vested right in the asset.  
Not vesting trusts in general.

## D. TRUSTS –(2) Section 4(q) trusts



If I want to bequeath an asset to a trust and still wants to acquire the section 4(q) deduction, how should the trust be structured?

### **Vat Consequences? – section 10(4) of the VAT ACT**

#### **For the Bare Dominium Holder (Trust)**

- The bare dominium heir will NOT be entitled to claim input tax in respect of inherited property.
- As a usufruct entitles the usufructuary to use the bare dominium holder's asset and to earn income thereon for the duration of the usufruct, the bare dominium holder would not be able to use his bare dominium to make taxable supplies.
- Therefore the deceased estate would have to pay VAT on the market value of the bare dominium.
- Only on termination of the usufruct, would the bare dominium holder obtain full ownership of his property and be able to use his earlier bare dominium in the course of making taxable supplies.
- In terms of s 18(4)(b) of the Vat Act, the bare dominium holder then becomes entitled to an input tax claim in respect of the acquisition of the bare dominium, calculated on the open-market value of the bare dominium at the time of acquisition thereof.

## D. TRUSTS –(2) Section 4(q) trusts



If I want to bequeath an asset to a trust and still wants to acquire the section 4(q) deduction, how should the trust be structured?

### **Vat Consequences? – section 10(4) of the VAT ACT**

#### **For the Usufructuary (Spouse)**

- The bequest of the usufructuary interest in an asset can qualify as the supply of a going concern if the same enterprise can be carried on by the usufructuary after the bequest, provided the usufructuary is registered as a vendor for VAT purposes at the time of the supply.
- In the case where the usufructuary and deceased were connected persons and the usufructuary will not be using the usufruct to make taxable supplies, the estate will have to account for output tax on the open market value<sup>66</sup> of the usufruct.

# D. TRUSTS – (3) Section 7C



## 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 (1<sup>st</sup>  
Report –  
January 2015  
(published June  
2015))**

**The 1<sup>st</sup>  
proposed  
amendment  
under the  
TLAB  
(8 July 2016)  
Explanatory  
Memorandum**

**Davis Tax  
Committee  
(2<sup>nd</sup> 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.*

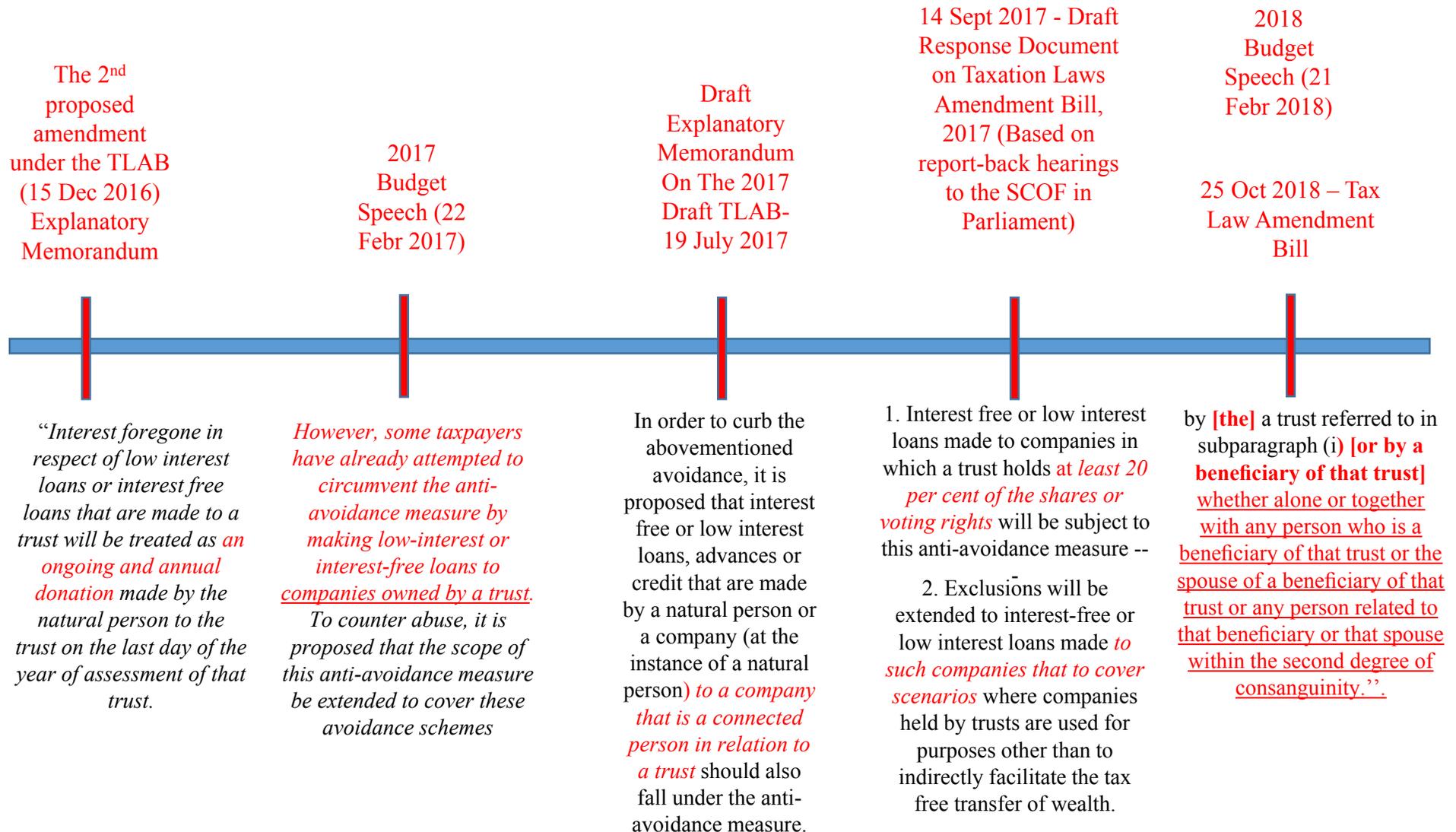
They instead focussed on the loan being the *“trump card of control”* –

*...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...*

# D. TRUSTS – (3) Section 7C



## 1. TIMELINE – LEGISLATIVE BUILD UP TO THE FINAL PRODUCT



# D. TRUSTS – (3) Section 7C



## 2. FINAL VERSION OF SECTION 7C

**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— **1 What**

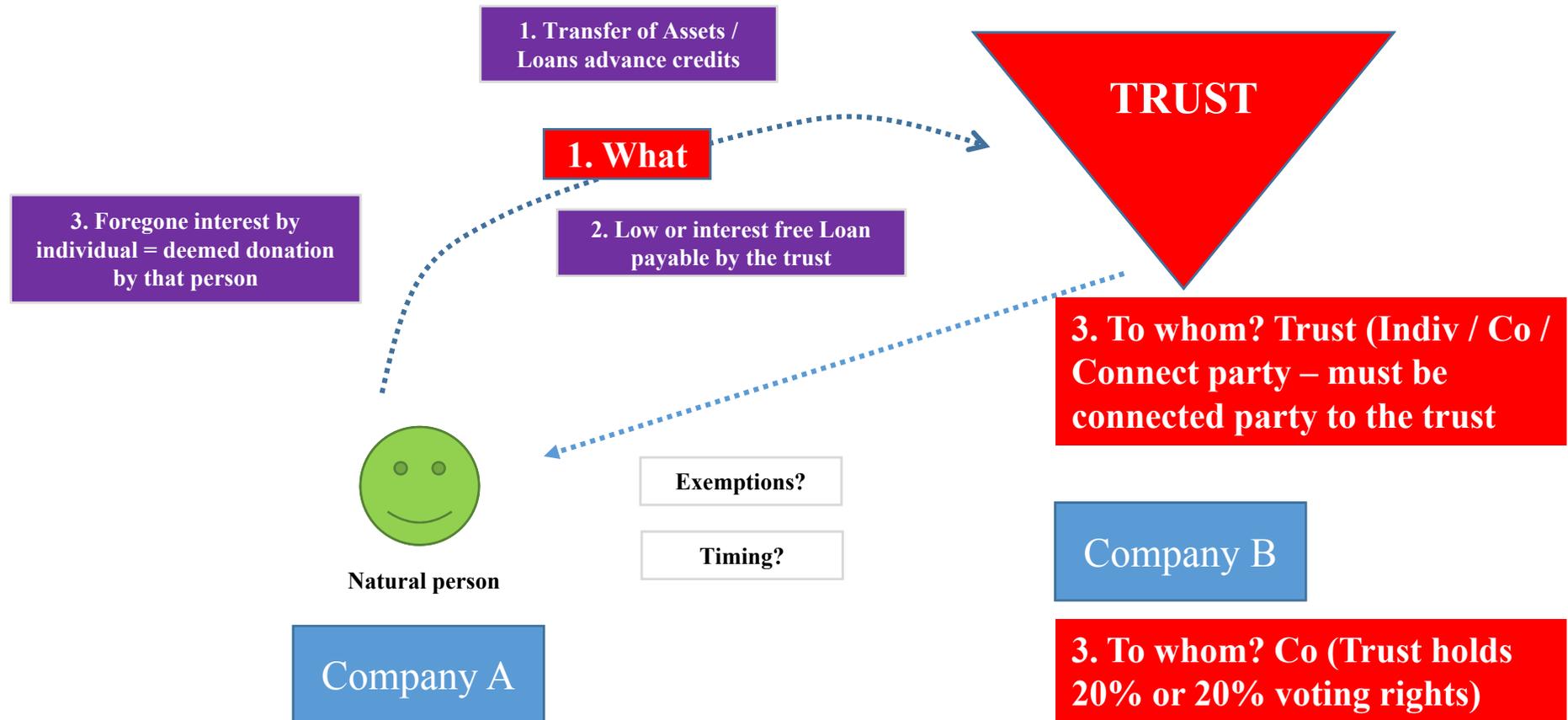
(a) a natural person; or **2. By whom – individual or company (individual must be connected to the Co**  
(b) at the instance of that person, a company in relation to which that person is a connected person in terms of paragraph (d) (iv) of the definition of connected person, directly or indirectly provides to—

(i) a trust in relation to which— **3a. To Trust – Indiv / Co / Connect party must be related to the trust**  
(aa) that person or company; or  
(bb) any person that is a connected person in relation to the person or company referred to in [item \(aa\)](#), is a connected person; or

(ii) a company if at least 20 per cent of— **3b. To Co – 20% shares held by trust / voting rights held by trust**  
(aa) the equity shares in that company are held, directly or indirectly; or  
(bb) the voting rights in that company can be exercised, **by a trust** referred to in [paragraph \(i\)](#) **whether alone or together with any person who is a beneficiary of that trust or the spouse of a beneficiary of that trust or any person related to that beneficiary or that spouse within the second degree of consanguinity.**

# D. TRUSTS – (3) Section 7C

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



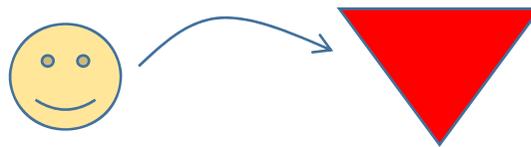
**2. By whom? Individual or Company - paragraph (d) (iv) of the definition of connected person,**

# D. TRUSTS – (3) Section 7C

## 4. ESTATE PEGGING THROUGH TRUSTS

Before 1 October 2001 (CGT)

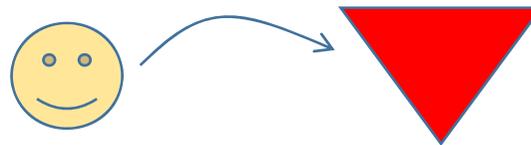
No CGT



Greatest Consideration:  
Control

After 1 October 2001 (CGT) before 1 March 2017

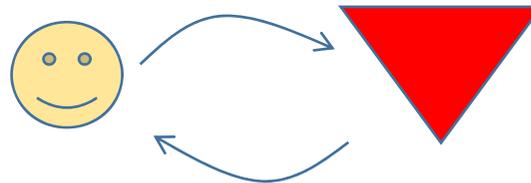
CGT



Greatest Consideration:  
Value of transferred  
asset

After 1 October 2001 (CGT) before 1 March 2017

CGT



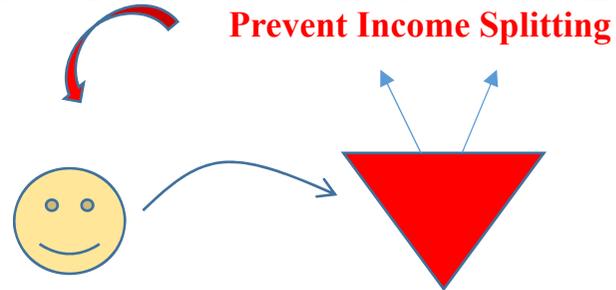
SECTION 7C

Greatest Consideration:  
Deductibility of Interest

## 5. BACKGROUND / PRINCIPLES

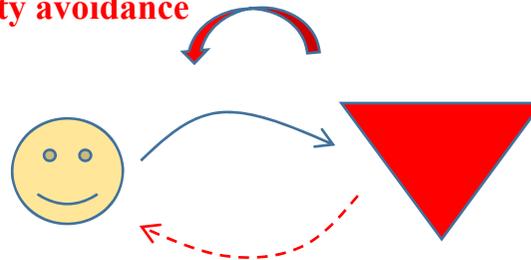
### On which aspect does Treasury / SARS focus?

- 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

### Prevent Estate Duty avoidance



# D. TRUSTS – (3) Section 7C



## 6. OFFICIAL RATE OF INTEREST

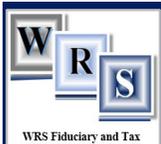
### Official rate of interest

The so-called “*official rate of interest*” is used by SARS to quantify the **fringe benefits** of low-interest loans provided by employers to employees as well as the amount of a deemed donation in terms of **Section 7C of the Act**.

At present the rate is calculated by **increasing the official repurchase (repo) rate by a 100 basis points**.

**The prime rate is, on average, 2.5% above the official rate of interest**. It is proposed to increase the “*official rate of interest*” to a level closer to the prime rate (SUGGESTED – BUDGET 2018)

**This might mean an increase of approximately 2% - 2.5%, which will have an effect on the deemed Donations Tax payable on interest free or low-interest loans in terms of Section 7C of the Act.**



# D. TRUSTS – (3) Section 7C



## 6. OFFICIAL RATE OF INTEREST

DATE FROM	DATE TO	RATE
01.02.2016	31.03.2016	7.75%
01.04.2016	31.07.2017	8.00%
01.08.2017	31.03.2018	7.75%
01.04.2018	30.11.2018	7.50%
01.12.2018	Until change in Repo rate	7.75%

\* Repurchase rate as announced by the Reserve Bank

**Note:** The “official rate” as defined in section 1(1) of the Act is linked to the repurchase rate plus one per cent. The official rate is adjusted at the beginning of the month following the month during which the Reserve Bank changes the repurchase rate.

**The South African Reserve Bank changed the "repo rate" on 23 November 2018**



## 7. 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 into 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**

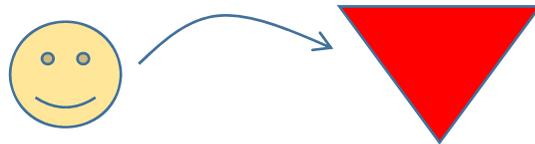
#### **d. In contrast to what DTC advised**

# D. TRUSTS – (3) Section 7C

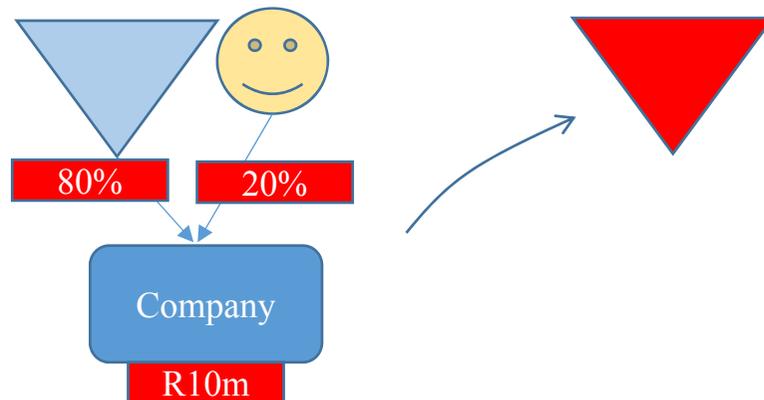
## 8a. RATIONALE BEHIND SECTION 7C

### Rationale

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



- But Other transactions are also impacted



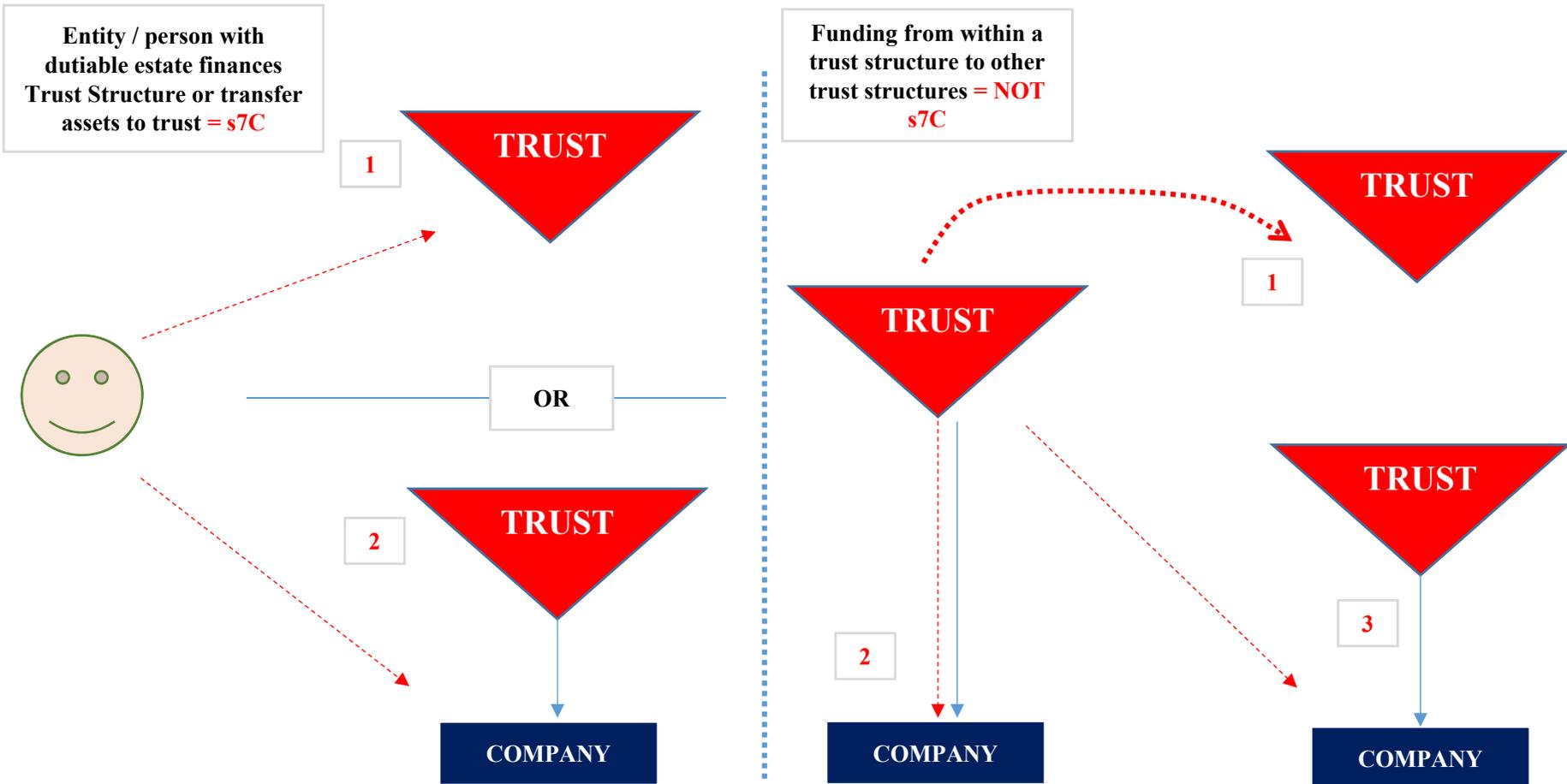
The “connected person” definition makes this provision very complicated and brings about unintended consequences

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 or company, the part of that amount that bears to that amount the same ratio as the equity shares or voting rights in that company that were held by that person during that year of assessment bears to the equity shares or voting rights in that company held in aggregate by those persons during that year of assessment.

Focused only in shareholding or also on directorship??

# D. TRUSTS – (3) Section 7C

## 8b. RATIONALE BEHIND SECTION 7C



# D. TRUSTS – (3) Section 7C



## 9a. 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**

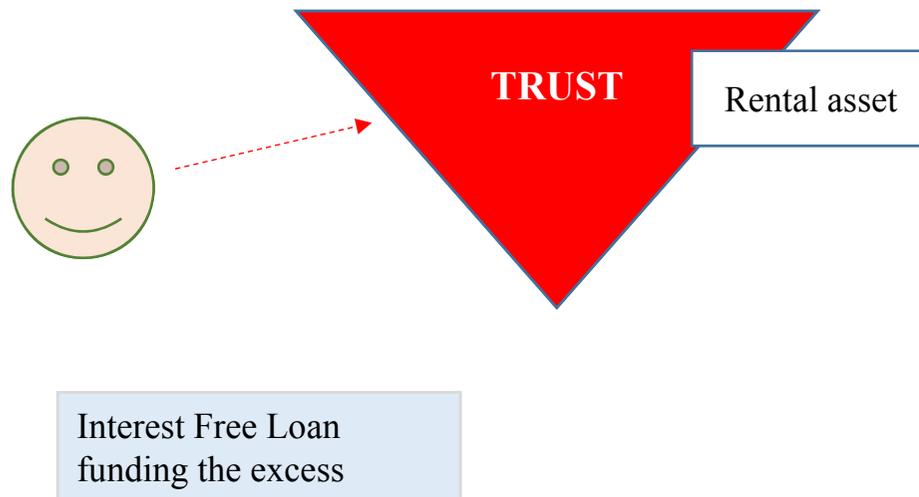
**4. Distribute profits without payment – no interest??**

# D. TRUSTS – (3) Section 7C

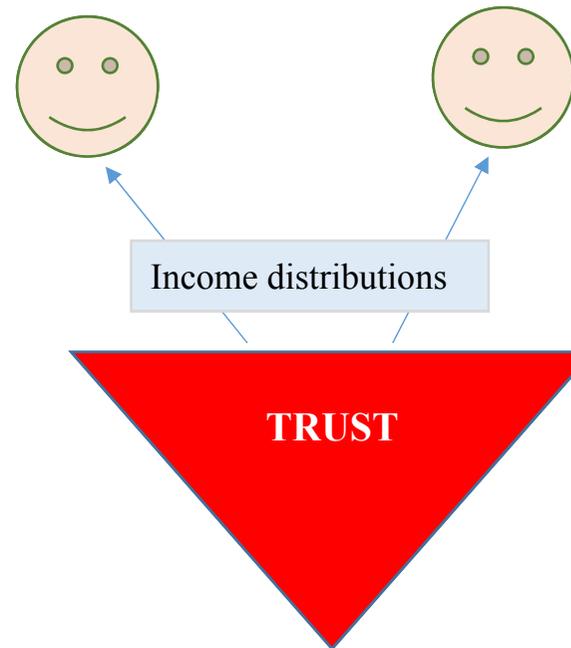
## 9a. DETAIL DISCUSSION OF SECTION 7C – type of loan



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

Costa Divaris - viewpoint

# D. TRUSTS – (3) Section 7C



## 9b. DETAIL DISCUSSION OF SECTION 7C – Loan provided **by 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
- 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)

## **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**

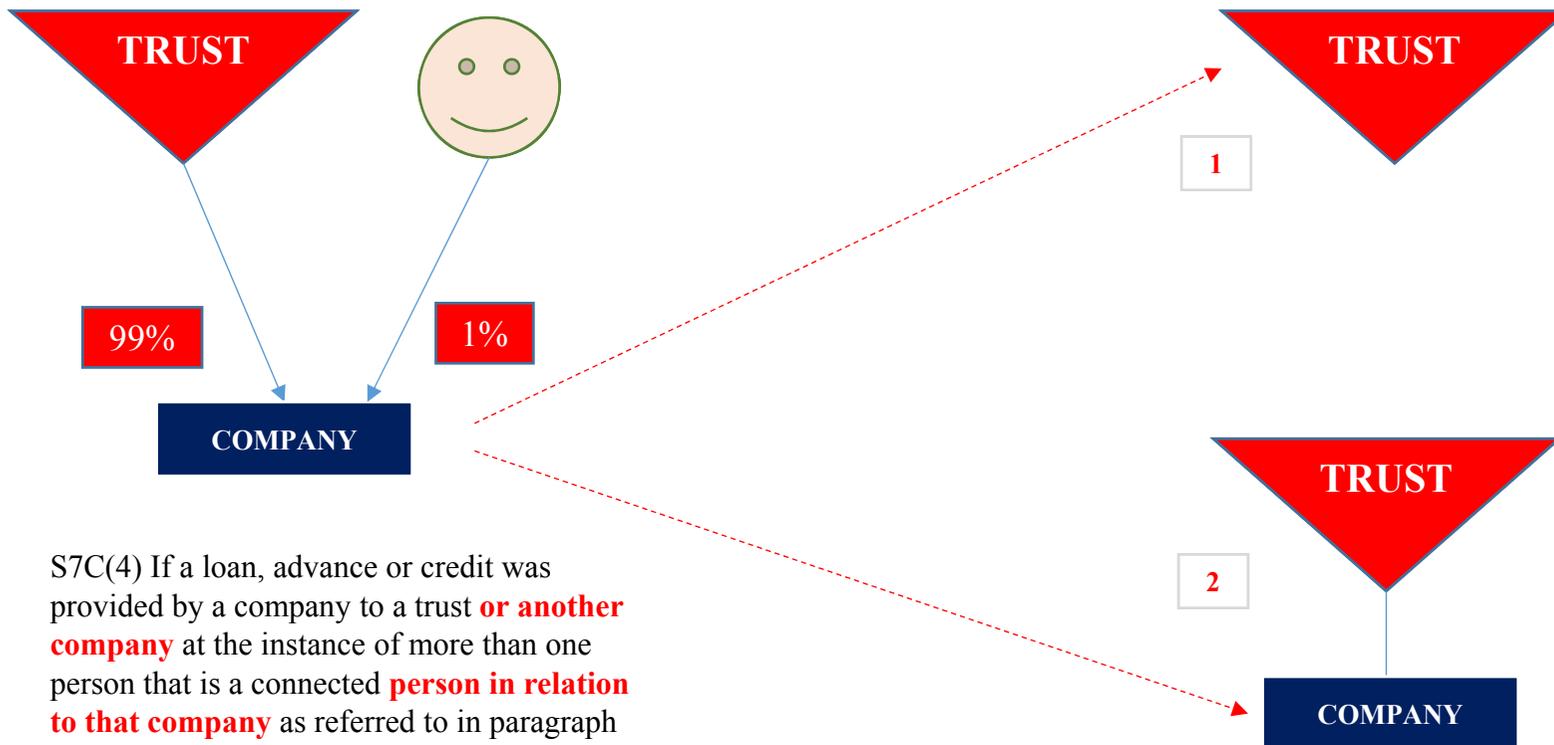
### **Natural Person must be a connected person in relation to the company**

- (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;*

# D. TRUSTS – (3) Section 7C

## 9b. 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,...

# D. TRUSTS – (3) Section 7C



## 9c. 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
- 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)

**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 if at least 20 per cent of—*

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

*(bb) the voting rights in that company can be exercised, by a trust referred to in paragraph (i) whether alone or together with any person who is a beneficiary of that trust or the spouse of a beneficiary of that trust or any person related to that beneficiary or that spouse within the second degree of consanguinity.*

### **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);*

*See par e of the definition of connected person*

**Or**

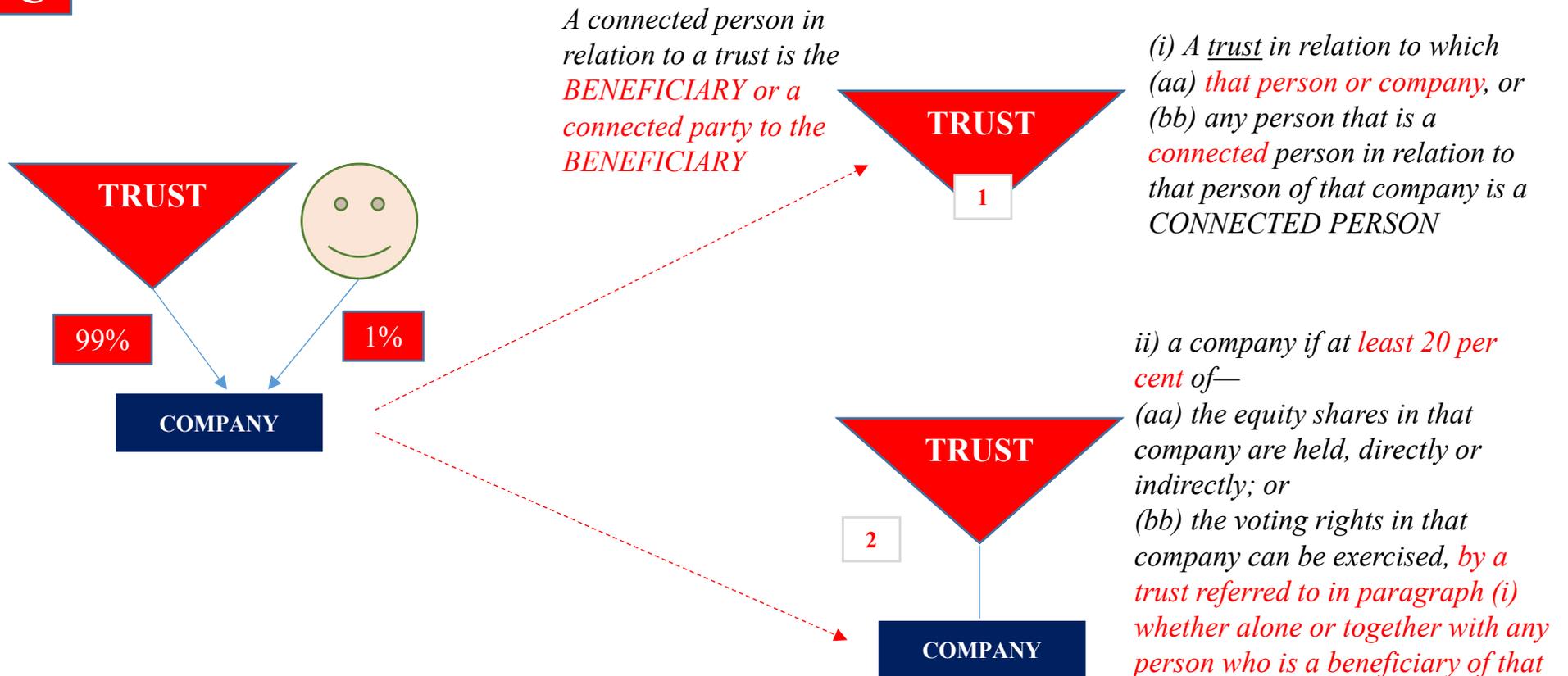
### **2. Company – 20% held by trust**

Wednesday, March 20 2019

# D. TRUSTS – (3) Section 7C

## 9c. DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

**C**



**Connected person definition:**

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

# D. TRUSTS – (3) Section 7C



## 9c. DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

**C**

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.**

# D. TRUSTS – (3) Section 7C



## 9c DETAIL DISCUSSION OF SECTION 7C – Loan provided to whom?

C

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**

# D. TRUSTS – (3) Section 7C



## 9d. 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
- 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)

**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 7,75% from 1 August 2017**

**Rate 7,50% from 1 April 2018**

**Rate 7,75% from 1 December 2018**

# D. TRUSTS – (3) Section 7C



## 9e. 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
- 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)

### **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  $8\% \times 20\% = 1,6\%$  till end of July 2017**

**Penalty was  $7,75\% \times 20\% = 1,55\%$  since Aug. 2017**

**Penalty was  $7,5\% \times 20\% = 1,50\%$  since Apr. 2018**

**Penalty is  $7,75\% \times 20\% = 1,55\%$  since Dec. 2018**

# D. TRUSTS – (3) Section 7C



## 9f. 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
- When is the interest deemed to be foregone?
- When is the donation deemed to take 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 (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

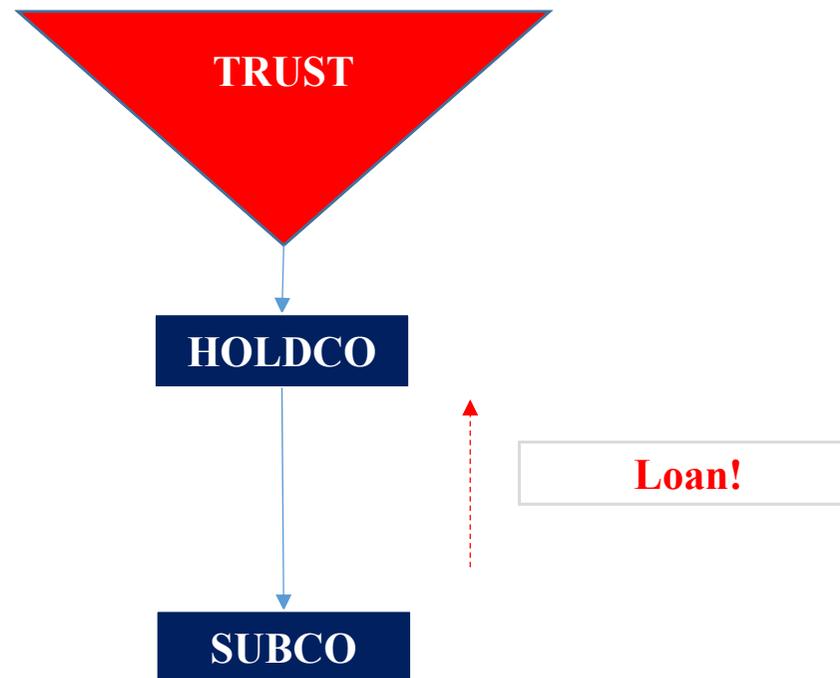
(ii) the amount owed relates to the part of that loan, advance or credit that funded the acquisition of that asset;

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

# D. TRUSTS – (3) Section 7C

## 10a. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?

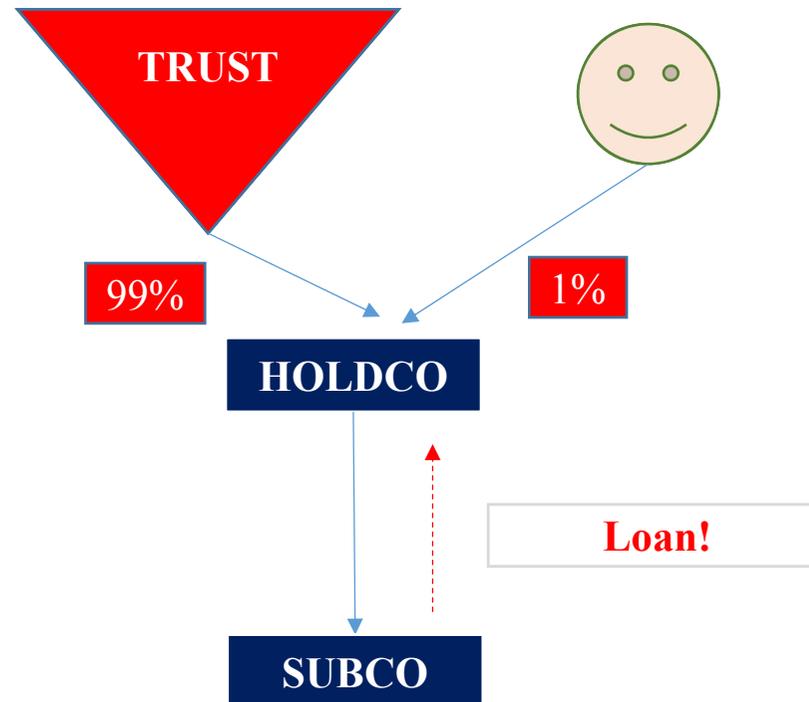
BEE transactions



# D. TRUSTS – (3) Section 7C

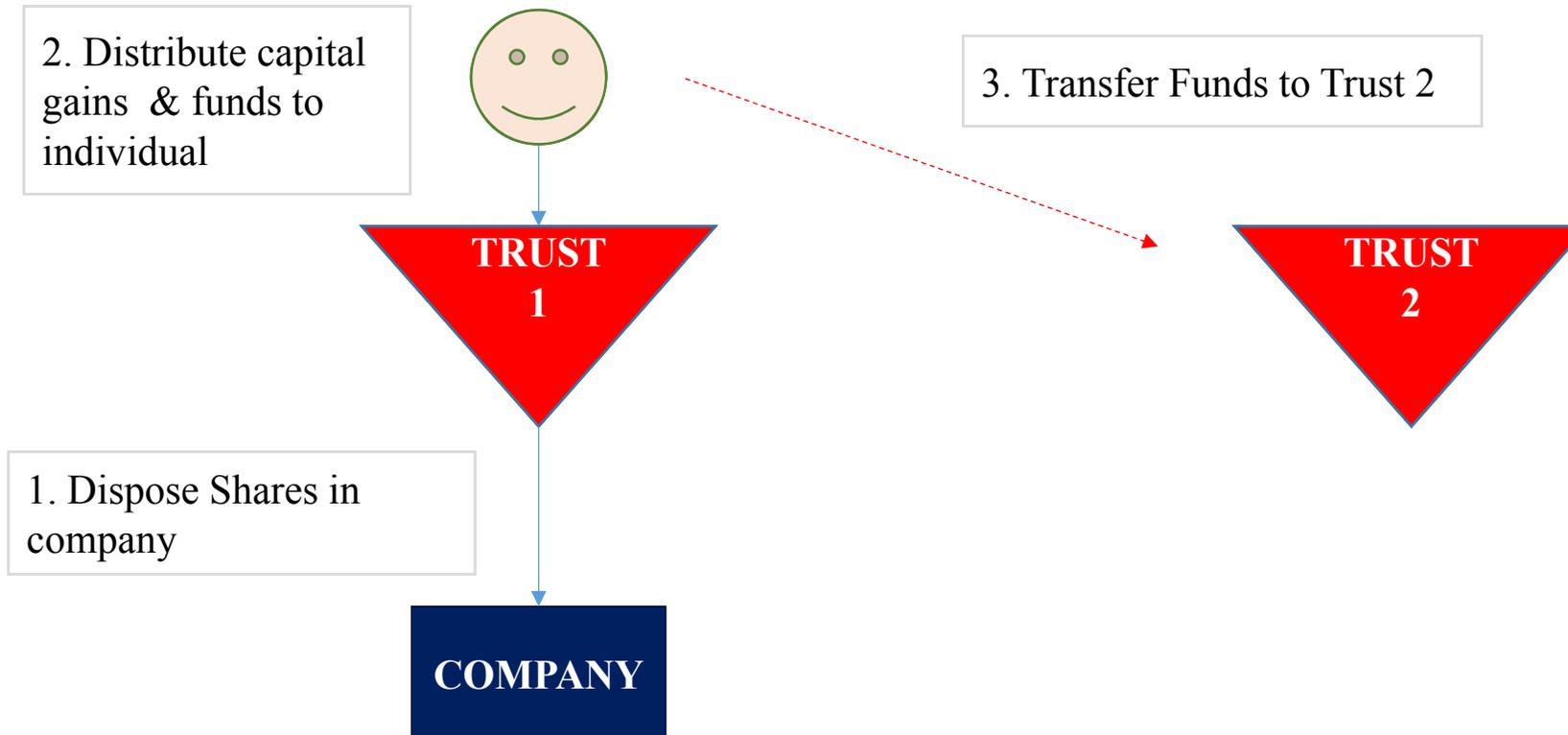
## 10b. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?

**BEE**  
transactions



# D. TRUSTS – (3) Section 7C

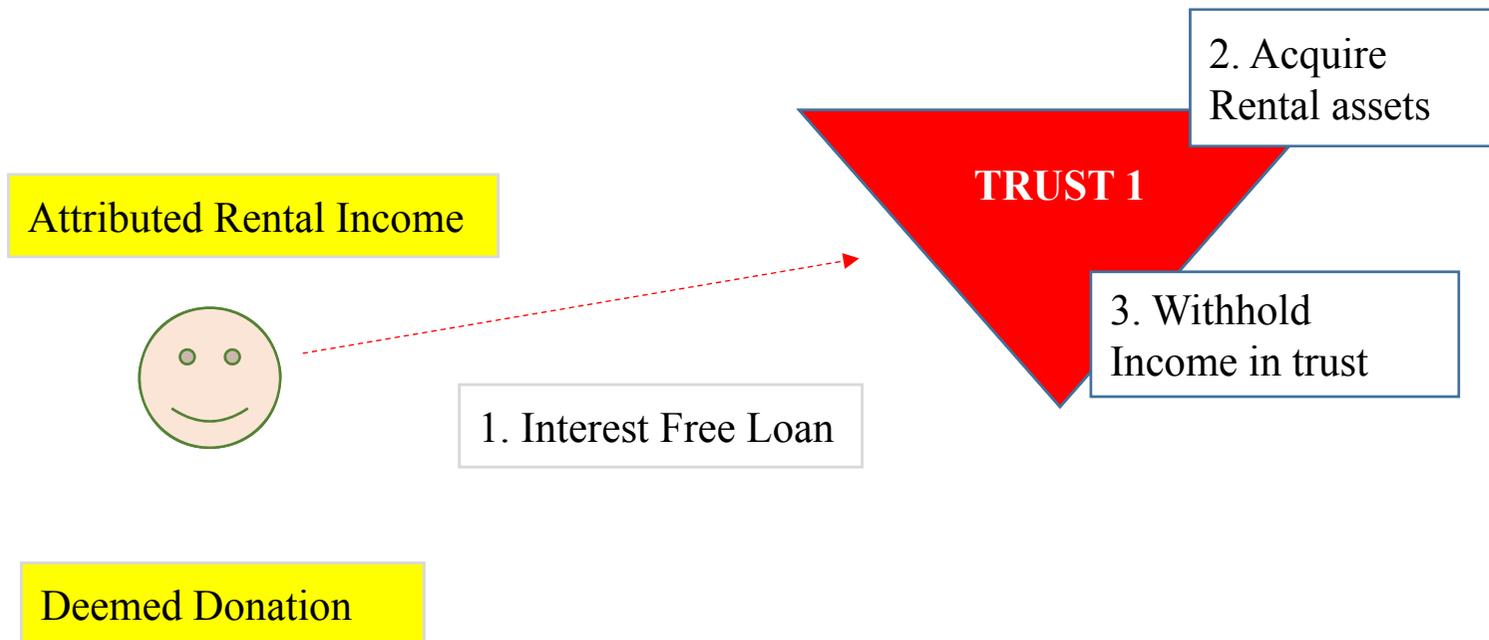
## 10c. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?



# D. TRUSTS – (3) Section 7C

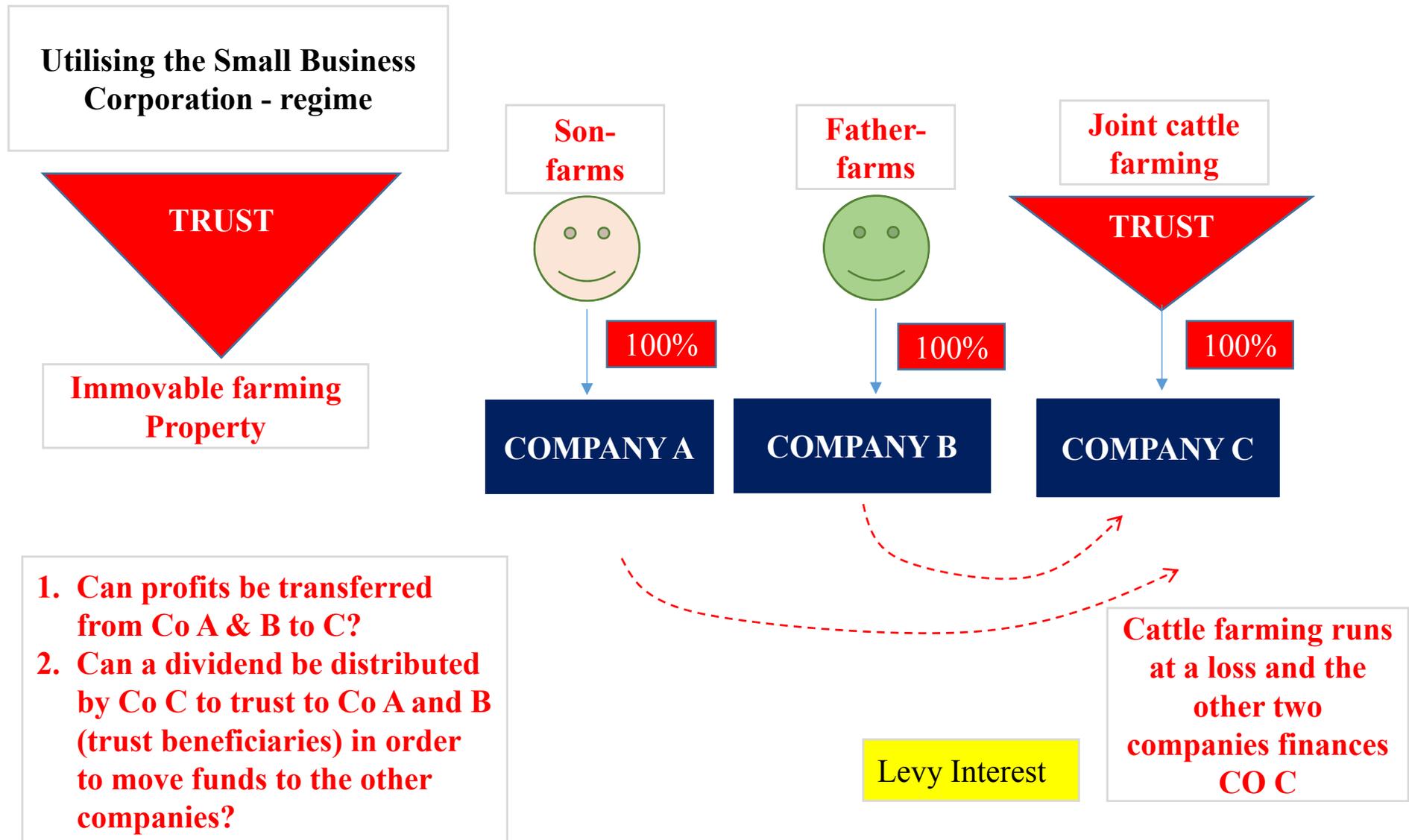
## 10d. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?

Section 7(5) vs Section 7C



# D. TRUSTS – (3) Section 7C

## 10e. WHAT TRANSACTIONS WILL BE IMPACTED BY SECTION 7C?



# D. TRUSTS – (3) Section 7C



## 11. PLANNING

**a. Must interest be levied on the interest – free loan OR not? Production of Income in Trust?**

**b. 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

**c. Inspect wording of Trust Deed – consider unpaid Beneficiary distributions**

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

**e. Analyse the loan account payable by the trust**

**f. Choose to REPAY the Loan**

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

**g. Consider to KILL the loan**

- Donate the loan
- Waive the loan and distribute to beneficiaries

**h. Consider exception**

**i. Market advocates conversion to preference shares?**

**j. Capitalise the loan**

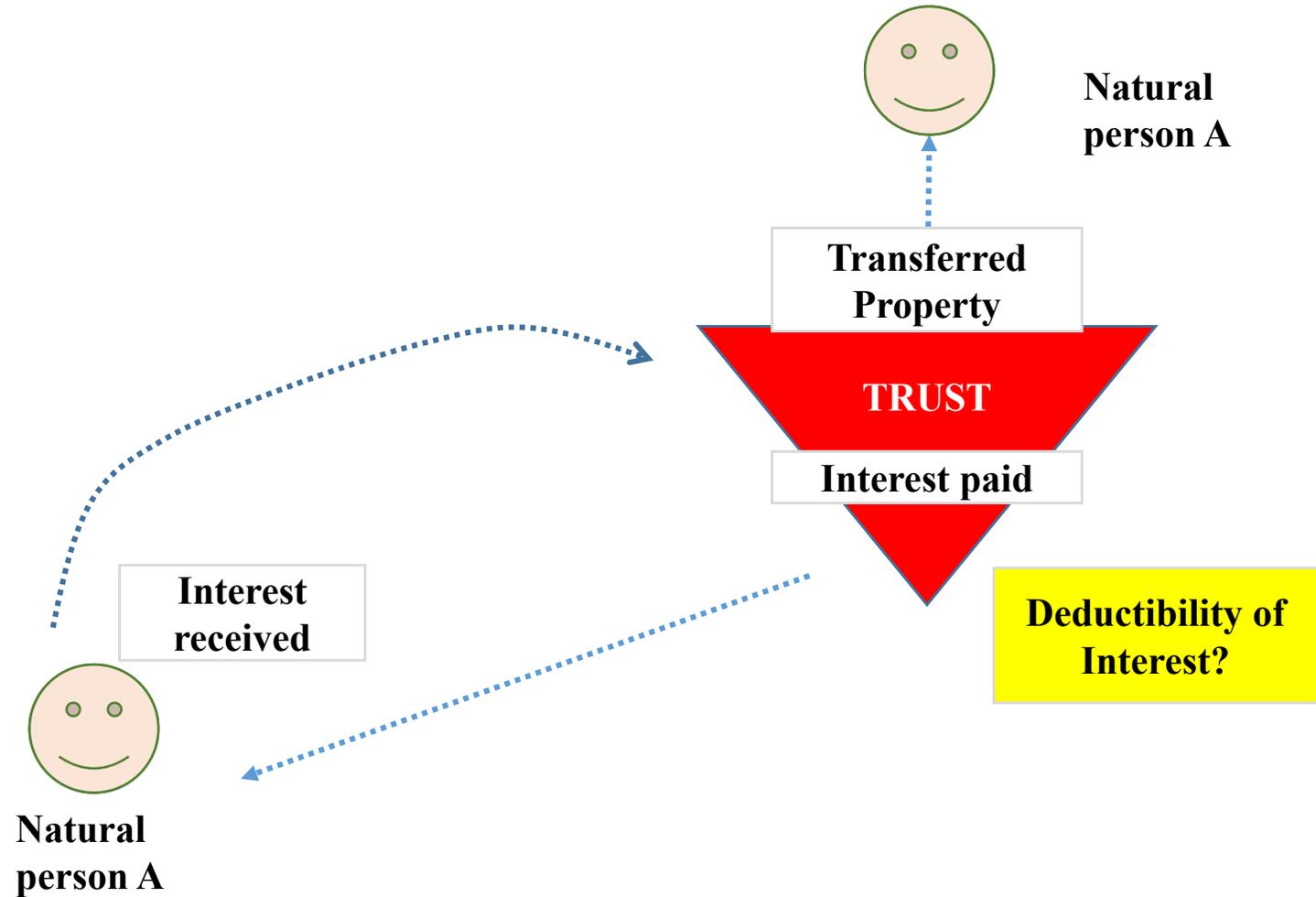
**k. Market advocates conversion of trust loan to a Company - Section 42(8) and then convert to preference shares OR capitalise?**

# D. TRUSTS – (3) Section 7C

## 11. PLANNING

**Levying interest**

**NO Deemed donation**



# D. TRUSTS – (3) Section 7C



## 12. PRACTICALITIES

- ❖ First donations tax payments due by end of March.
- ❖ The loan balance is not necessarily determinable on February 28.
  - Loan balances of such interest free loans do not necessarily stay the same during the full tax year.
  - February 28 is many a time the date on which trustees would make decisions regarding distributions to beneficiaries of the trust which may influence the loan balance.
  - Other information relating to the taxable income can only be determined later, eg foreign exchange gains, this will influence the distributions
- ❖ Differing official interest rates during the year, eg 7,5% to 7.75% and that happened on the **December 1 2018**
- ❖ Is the amount owing a loan or not (eg distributions to beneficiaries vs loans by beneficiaries )
- ❖ Systems development at SARS?

## 13. PRACTICALITIES

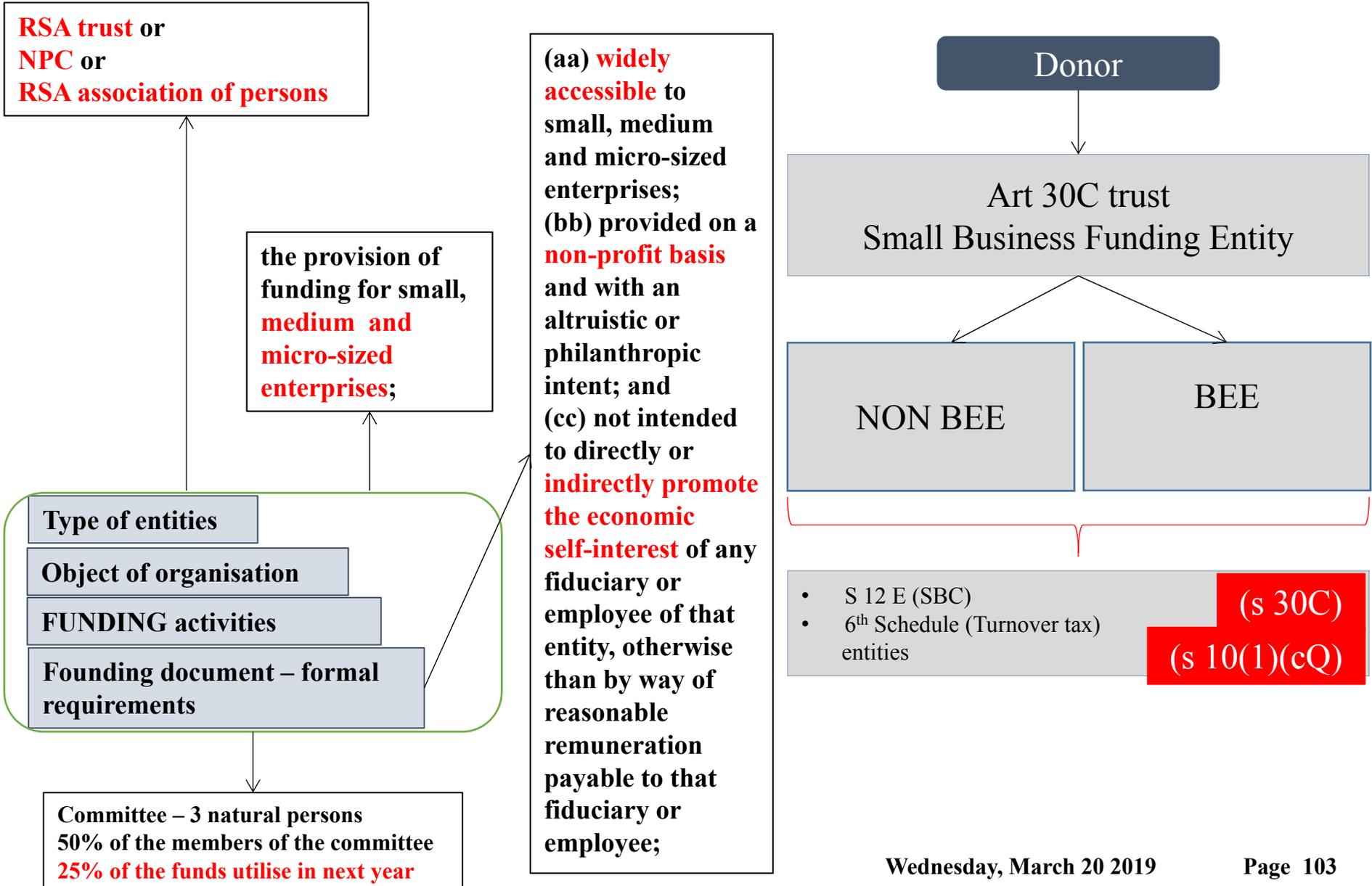
- ❖ Systems development at SARS will not be ready by the end of March 2018 when the donations tax payments are due under Section 7C.
  - The additional payment of this donations tax needs to be loaded onto eFiling and processed via what is called a “credit push” authorisation.
  - That in itself creates a problem because that amount that is paid will then stand to the credit of that particular taxpayer and will in the normal run of events be regarded as an overpayment of income tax.
  - To prevent that, an IT144 form needs to be manually completed and submitted to Sars along with proof of payment.
  - Only then can Sars allocate the donations tax payment to donations tax and not see it as a credit on income tax payable for that taxpayer.
  - There seems to be insufficient capacity within the Sars offices to process these IT144 forms within this short timeframe of 31 days to get the payment done.

## 13. PRACTICALITIES

- ❖ SARS was approached about extension and other manners of payments:
  - Sars says it is not considering the introduction of a process similar to the one applicable to estates, where taxpayers make an interim payment within six months and apply for an extension to submit a final return, thereby offering sufficient time to determine and pay the correct amount once all the information is available.
  - Sars is of the view that the declaration process “is not that difficult”, but says it may consider an extension on a case-by-case basis.
  - In practice, Sars does not generally give a blanket extension and therefore taxpayers would have to apply in respect of each donation made.

*SAIT website: According to the Donations Tax page on SARS website under the heading: “what steps must I take” SARS advises as follows: After making a donation you should fill in form IT 144 and send it to SARS with your payment”. Whether this implies that you must submit form IT 144 when there is no payment to be made is a moot point. I notice that Silke on South African Income Tax(electronic Version) at paragraph 23.18 writes as follows: : SARS requires a declaration(IT 144) by the donor for every donation ,whether or not it is exempt from tax”. Incidentally the Tax Administration Act (Act 28 of 2011)under section 1 defines a return as follows: “Return means: a form,declaration...or other manner of submitting information to SARS... required under section25 ,26 of 27 or a provision under a tax act...”*

# D. TRUSTS – (4) Section 30C trusts



## D. TRUSTS –(5) Testamentary trusts v Inter Vivos



Is an inter vivos trust or a Testamentary trust better served to provide for minor children of Single Parents?

- A big problem faced by the life insurance industry is the many life policies with minors as beneficiaries;
- The Administration of Estates Act restricts the payment of monies and the transfer of movable assets to a minor from a deceased estate only;
- The act's restrictions do not apply to the proceeds of a policy that is not paid into a deceased estate, and may be paid directly to the minor;
- Some insurers make such payments, but others pay the money to the natural guardian;

**TRUST SHOULD BE CONSIDERED – WHICH TRUST?**

## D. TRUSTS –(5) Testamentary trusts v Inter Vivos



Is an inter vivos trust or a Testamentary trust better served to provide for minor children of Single Parents?

### **INTER VIVOS TRUST:**

- Inter vivos trust to own the policy;
- Set up to own the policy while the single parent is alive;
- It will ensure that the proceeds are paid directly to the trust on the death of the parent, without any delay;
- If the trust is the owner, premium payer and beneficiary of the policy, then on the death of the parent, even though the policy will still be a deemed asset in the deceased estate and subject to estate duty, the premiums paid for the policy, compounded at 6% a year, will be exempt from duty. This estate duty saving should be more than the cost of setting up the trust;
- A parent with a minor child should in any case set up a trust to look after all the other assets in the estate on behalf of the minor child.

## D. TRUSTS –(5) Testamentary trusts v Inter Vivos



Is an inter vivos trust or a Testamentary trust better served to provide for minor children of Single Parents?

### **TESTAMENTARY TRUST:**

- Name the testamentary trust as the beneficiary of the policy (cannot be the owner);
- No estate duty benefit as the trust cannot be the payer. With the trust only being set up on death of the testator, there can be no estate duty deduction for the premiums plus 6%. This may not be an issue if the estate and policy proceeds together are below the estate duty threshold of R3.5-million;
- The trust cannot be set up until the executor is appointed. This delays the whole process by at least a few months, and means the payout on the policy will be delayed until the trust is set up. The family won't be able to utilise the proceeds immediately;
- A testamentary trust is less flexible than an inter vivos trust. It is very difficult to amend such a trust without recourse to a court application.
- If the will has not been validly signed, or cannot be found, then the testamentary trust, which is created via the will, cannot be set up.
- Who is nominated as the beneficiary on the policy, if it is a testamentary trust? The correct wording to use would be "The testamentary trust created in terms of my will." Not "in terms of my will", then the proceeds will pay into the estate.



**WRS Fiduciary and Tax**

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**Pres. Boshoff Str. •**

**Bethlehem • Tel: 058 303  
0450**

# ADDENDUMS / GENERAL SLIDES



## FORMALITIES - WILLS:

1. Testator must sign at the end of the will;

2. The will must be signed in the presence of at least two competent witnesses, who are present at the same time;

### 3. Witnesses:

- a) Two or more competent (>14 & witness in court) persons;
- b) Must both be present when the testator signs;
- c) Both must sign the will in the presence of the testator and each other;
- d) They must sign after the testator;
- e) They acknowledge the signature of the testator, not the content;
- f) Only need to sign the last page of the will;
- g) Need not sign the last page at the bottom;

### If the will has more than 1 page:

- a) Testator needs to sign each page;
- b) Each page apart from the last not necessarily at the end;
- c) Witnesses need to sign only the last page

Or somebody on his behalf;

“Sign” = also initial or a mark;

If a mark is used or someone else is requested to sign the will on his behalf in his presence, then the signing and witnessing of the will must take place before a Commissioner of Oaths.

## Section 7C

**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 the person or company referred to in [item \(aa\)](#), is a connected person; or

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

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

(bb) the voting rights in that company can be exercised, by a trust referred to in [paragraph \(i\)](#) whether alone or together with any person who is a beneficiary of that trust or the spouse of a beneficiary of that trust or any person related to that beneficiary or that spouse within the second degree of consanguinity.

## Section 7C

(1A) If a 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.

(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 or 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, 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.

## Section 7C

(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 or company, the part of that amount that bears to that amount the same ratio as the equity shares or voting rights in that company that were held by that person during that year of assessment bears to the equity shares or voting rights in that company held in aggregate by those persons during that year of assessment.

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

(a) that trust or company is a public benefit organisation approved by the Commissioner in terms of section 30 (3) or a small business funding entity approved by the Commissioner in terms of section 30C;

(b) that loan, 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;

(c) that trust is a special trust as defined in [paragraph \(a\)](#) of the definition of a special trust;

## Section 7C

- (d) that trust or company 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 the period during that year of assessment during which that trust or company held that asset; 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 or company in terms of an arrangement that would have qualified as a sharia compliant financing arrangement as contemplated in section 24JA, had that trust or company been a bank as defined in that section;
- (g) that loan, advance or credit is subject to the provisions of section 64E (4); or

## Section 7C

- (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; or
    - (bb) for purposes of funding the acquisition, by that trust, of shares in that company or in any other company forming part of the same group of companies as that company (hereinafter referred to as a “scheme company”);
  - (ii) equity instruments, as defined in section 8C, that relate to or derive their value from shares in a scheme company may be offered by that trust to a person solely by virtue of that person—
    - (aa) being in employment on a full-time basis with; or
    - (bb) holding the office of director of, a scheme company; and
  - (iii) a person that is a connected person in terms of paragraph (d) (iv) of the definition of connected person in relation to any scheme company is not entitled to participate in that scheme.

## Art 30C trust

**30C. Small business funding entities.**—(1) The Commissioner must approve a small business funding entity for the purposes of section 10 (1) (cQ) if—

(a) that entity is a **trust, an association of persons or a non-profit company** as defined in section 1 of the Companies Act that has been incorporated, formed or established in the Republic;

(b) (i) the sole or principal object of that entity is the **provision of funding for small, medium and micro-sized enterprises**; and

(ii) the funding contemplated in [subparagraph \(i\)](#) is—

(aa) provided by that small business funding entity for the benefit of, or is **widely accessible to small, medium and micro-sized enterprises**;

(bb) provided on a **non-profit basis and with an altruistic or philanthropic intent**; and

(cc) not intended to **directly or indirectly promote the economic self-interest of any fiduciary or employee of that entity**, otherwise than by way of reasonable remuneration payable to that fiduciary or employee;

(c) that small business funding entity has submitted to the Commissioner a **copy of the constitution** or written instrument under which that small business funding entity has been established;

(d) the constitution or written instrument contemplated in [paragraph \(c\)](#) provides that—

(i) (aa) the small business funding entity must have a **committee, a board of management or similar governing body** consisting of at **least three natural persons who are not connected persons in relation to each other** to accept the fiduciary responsibility of that small business funding entity;

(bb) not more than **fifty per cent of the members of the committee or a board of management contemplated in item (aa)** **may be employees or directors of any entity providing funding** to that small business funding entity or persons who are connected persons in relation to any such employee or director;

(ii) any single person may not **directly or indirectly control** the decision-making powers relating to that small business funding entity;

## Art 30C trust

### 30C. Small business funding entities

(iii) the small business funding entity may not directly or indirectly distribute any of its funds or assets to any person **other than in the course of furthering its sole or principal object;**

(iv) the small business funding entity may not directly or indirectly distribute any of its funds or assets to any employee in relation to that entity or a person **that is a connected person in relation to any such employee** or to a person contemplated in subparagraph (i);

(v) the small business funding **entity is required to utilise substantially the whole of its funds** for its sole or principal object for which it has been established;

**(vi) the small business funding entity must within 12 months after the end of the relevant year of assessment distribute or incur the obligation to distribute at least 25 per cent of all amounts received or accrued in respect of assets held, other than any amount received or accrued in respect of the disposal of any of those assets, during that year of assessment;**

(vii) a member of a committee, a board of management or similar governing body of the small business funding entity may not directly or **indirectly have any personal or private interest** in that small business funding entity;

(viii) substantially the whole of the activities of the small business funding entity must be directed to the furtherance of the sole or **principal object of that small business funding entity;**

(ix) the small business funding entity may not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, **which is excessive, having** regard to what is generally considered reasonable in the sector and in relation to the service rendered;

## Art 30C trust

### 30C. Small business funding entities

- (x) the small business funding entity must **as part of its dissolution transfer its assets** to—
- (aa) another small business funding entity approved by the Commissioner in terms of this section;
  - (bb) a public benefit organisation contemplated in paragraph (a) (i) of the definition of public benefit organisation in section 30 (1) that is approved by the Commissioner as a public benefit organisation in terms of that section;
  - (cc) an institution, board or body which is exempt from tax under section 10 (1) (cA) (i); or
  - (dd) the government of the Republic in the national, provincial or local sphere;
- (xi) the persons contemplated in paragraph (d) (i) will submit any amendment of the constitution or written instrument of the small business funding entity to **the Commissioner within 30 days of its amendment**;
- (xii) the small business funding entity will comply with such reporting requirements as may be determined by the Commissioner from time to time; and
- (xiii) the small business funding entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103 (5).
- (2) Where the Commissioner is—
- (a) satisfied that any small business funding entity approved in terms of [subsection \(1\)](#) has during any year of assessment in any material respect; or

## Art 30C trust

### 30C. Small business funding entities

(b) during any year of assessment satisfied that any small business funding entity approved in terms of [subsection \(1\)](#) has on a continuous or repetitive basis, failed to comply with this section, or the constitution or written instrument under which that small business funding entity was established to the extent that it relates to this section, the Commissioner must notify the small business funding entity that the Commissioner intends to withdraw approval of the small business funding entity if corrective steps are not taken by the small business funding entity within the period stated in the notice.

(3) If no corrective steps are taken by the small business funding entity as contemplated in [subsection \(2\)](#), the Commissioner must withdraw approval of that small business funding entity with effect from the commencement of the year of assessment contemplated in [subsection \(2\)](#).

(4) If the Commissioner has withdrawn the approval of a small business funding entity as contemplated in [subsection \(3\)](#) the small business funding entity must within six months after the date of the withdrawal of approval (or such longer period as the Commissioner may allow) transfer, or take reasonable steps to transfer, its remaining assets to any small business funding entity, public benefit organisation, institution, board or body or the government of the Republic, as contemplated in [subsection \(1\) \(d\) \(x\)](#).

(5) If a small business funding entity is wound up or liquidated, the small business funding entity must, as part of the winding-up or liquidation, transfer its assets remaining after the satisfaction of its liabilities to any small business funding entity, public benefit organisation, institution, board or body or the government of the Republic, as contemplated in [subsection \(1\) \(d\) \(x\)](#).

## Art 30C trust

### 30C. Small business funding entities

(6) If a small business funding entity fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in [subsection \(4\)](#) or [\(5\)](#), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that small business funding entity must for the purposes of this Act be deemed to be an amount of taxable income which accrued to that small business funding entity during the year of assessment in which the withdrawal of approval in terms of [subsection \(4\)](#) or the winding-up or liquidation contemplated in [subsection \(5\)](#) took place.

(7) Any person who is in a fiduciary capacity responsible for the management of any small business funding entity and who intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which that small business funding entity is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

## BUDGET Unchanged

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### B. Capital Gains Tax

#### Individuals/Special Trusts:

- Inclusion rate:
  - 40%
- Maximum effective rate:
  - 18%

#### Trusts:

- Inclusion rate:
  - 80%
- Effective rate:
  - 36%

#### Companies:

- Inclusion rate:
  - 80%
- Effective rate:
  - 22.4%

#### Annual exclusion and exclusion in the year of death:

- Annual exclusion:
  - R 40 000
- Exclusion in year of death:
  - R 300 000

BUDGET Unchanged

3

C. Transfer Duty

## Acquisition of property by all persons:

Value of property (R)	Rate
0 – 900 000	0%
900 001 – 1 250 000	3% of the value above R900 000
1 250 001 – 1 750 000	R10 500 + 6% of the value above R 1 250 000
1 750 001 – 2 250 000	R40 500 + 8% of the value above R 1 750 000
2 250 001 – 10 000 000	R80 500 + 11% of the value above R2 250 000
10 000 001 and above	R933 000 + 13% of the value exceeding R10 000 000

## BUDGET Unchanged

4

### D. Estate Duty

#### Estate Duty

The Estate Duty rate was adjusted upwardly by 5% to 25% applicable to estates where the dutiable amount of the estate exceeds R 30 000 000.

The dutiable amount of an estate is determined by deducting the following from the assets and deemed assets in the estate:

- Administration costs;
- Liabilities;
- All deductions allowed in the Estate Duty Act.

The result of the amendment will be as follows:

- Dutiable amount up to R 30 000 000: Rate 20%;
- Dutiable amount over and above R 30 000 000: Rate 20% on the first R 30 000 000 and 25% on the amount above R 30 000 000.

We seriously doubt whether this amendment will have much impact on the amount collected in respect of Estate Duty as statistics, relied upon by the DTC, reflected that a minute percentage (4%) of estates exceed R 30 000 000.

The introduction of a 5% increase in the rate applicable to these estates will most definitely result in more aggressive tax and estate planning by taxpayers who can afford the best advisors. I will not be surprised to see a decrease in the 4% mentioned above.

BUDGET Unchanged

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## E. Donations Tax

### Donations Tax

In order to bring the rate in line with the Estate Duty rate, the Donations Tax rate has been amended as follows:

- Donations up to R 30 000 000: **Rate 20%**;
- Donations exceeding R 30 000 000: **Rate 25%** on the amount above R 30 000 000.

It is hard to imagine why anybody would want to make donations exceeding R 30 000 000.

But it more tax effective to donate an asset than to have it subjected to estate duty