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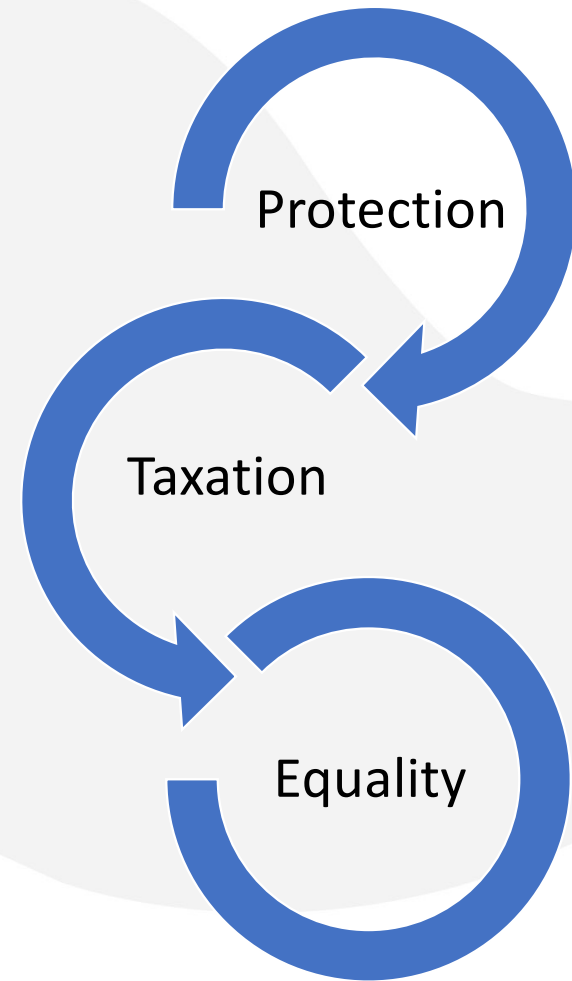
Family Wealth Protection and Taxation: The South African Case

Seminar: 3 October 2025
Palazzo Trotti-Mosti, University of Ferrara

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Introduction

- Introduction
- Tax Framework in RSA
- Customary Law - Constitutional Reform
- Common Law Tools
- Compliance
- Case Studies: *Mabuza* case
- Conclusion



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Introduction: South Africa's Mixed Legal System

01

Roman-Dutch
Common Law –
trusts, contracts,
property

02

Statutory Law –
tax, wills, pension
funds

03

Customary Law –
succession,
marriages, lineage
property

04

Challenge: balance
protection, tax,
and constitutional
equality

Statutory Regulation

Estate Duty Act 45 of 1955

Imposes estate duty on the estates of deceased persons; governs how estates are taxed at death.

The Income Tax Act, 1962

Governs the **donations tax**. Wealth transfers during life via donations are taxed. Donor liable. Also covers certain trust provisions

- **CGT** is not a separate tax, but part of Income Tax. It applies when you dispose of an asset (sell, donate, exchange, or on death).
- - The gain (or loss) is included in taxable income. (First R40,000 capital gain or loss per individual per year is exempt. In the year of death, the exclusion rises to R300,000.)
- - First R2 million of capital gain (on sale of a primary residence) is excluded.

Wealth Transfer Tax: Estate Duty

Primary abatement: R3.5m (171,500EUR (approx.) per estate – Sec 4A of EDA

Spousal deduction: unlimited exemption - Sec (s4(q)) EDA

Rates:	20%	up to R30m (1.470 000 Euro approx.)
	25%	above R30 MIL

Key strategy: defer or reduce liability with exemptions

Wealth Transfer Tax: Donations Tax

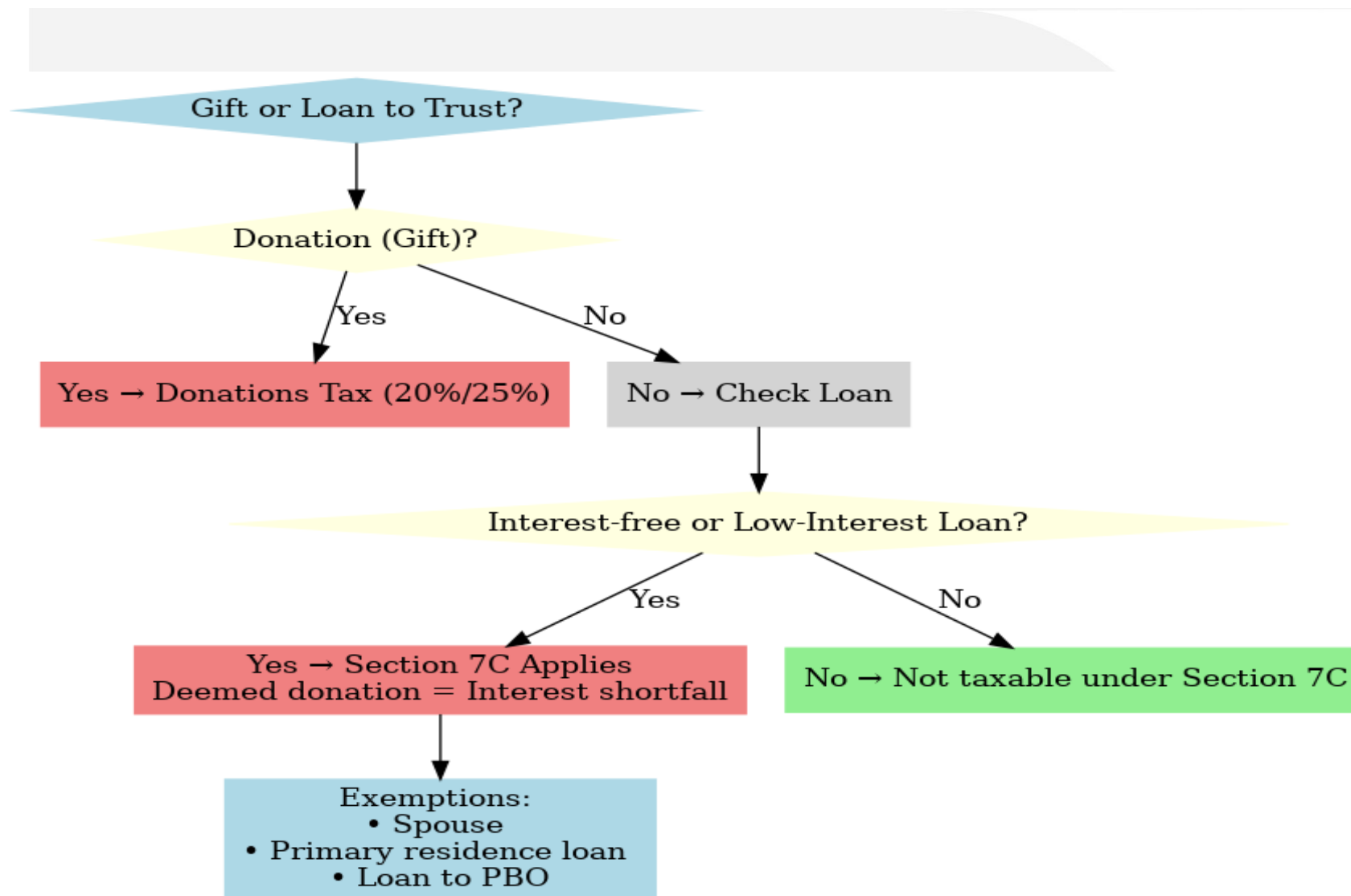
Annual exemption: R100k (4,900EUR (approx.))per person -Section 56(1)(c) ITA

Spousal transfers exempt -Section 56(1)(a) ITA

Include polygamous marriages, customary marriages, life partnerships, but not cohabitation

Rates:	20%	up to R30m (1.470 000 Euro approx.)
	25%	above R30 MIL

Used to prevent estate duty avoidance via lifetime transfers



Wealth Transfer Tax: Capital Gains Tax

Deemed disposal at death -Sections 26A & 26B ITA

Exclusion: R300k- Sec 26A(1)(b) ITA

Inclusion rate: - Sec 9 ITA

Individuals & special trusts:40%

Companies & other trusts: 80%

Spousal rollover: Sec 45(1) ITA: no immediate CGT

Impact: can create a liquidity crunch in estates



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Step 1: Capital Gains Tax (CGT)

Assumptions (2025 rates):

- Inclusion rate for individuals: **40%**
- Marginal tax rate: **45%**

1.1 Calculate taxable capital gain: Taxable *Gain* = $R5,000,000 \times 40\% = R2,000,000$

1.2 Calculate CGT payable:

$$\text{CGT} = R2,000,000 \times 45\% = R900,000$$

CGT payable = R900,000

Step 2: Estate Duty

Assumptions:

Estate value includes the home **at market value**: assume R5 million

R3.5 million **abatement per person**

Estate Duty rates: **20% up to R30 million**, 25% above

2.1 Calculate dutiable estate (simplified): Dutiable *Estate* = $R5,000,000 - R3,500,000 = R1,500,000$

2.2 Calculate Estate Duty:

$$\text{Estate Duty} = R1,500,000 \times 20\% = R300,000$$

ED payable = R300 000

Total

R1,200,000



Indigenous Succession & Constitutional Reform

Old law: Male primogeniture –
exclusion of women and
extramarital children

Constitutional challenge: *Bhe v
Magistrate Khayelitsha* (2005)

Reform Act 2009 –
intestate estates
governed by the
Intestate
Succession Act

Customary values:
-communal
wealth
-duty of support
-lineage
continuity

1927

2005

2009



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Common Law Tools:

1. Trusts



Inter vivos and testamentary trusts

Protection from creditors/divorce

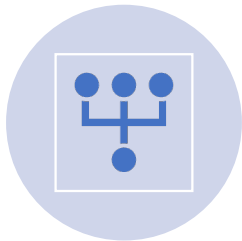
Continuity across generations

Section 7C ITA – loans to trusts treated as donations

Recent cases: *Thistle Trust v SARS* (2024); Trustee decision-making (2025)



Case Law Update: Thistle Trust (2024)



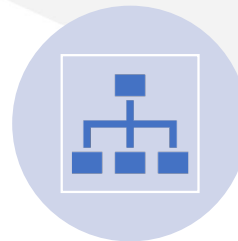
ConCourt limited use of the conduit principle in multi-tier trusts



Capital gains cannot simply flow through layers



Impact: **potential double taxation** risks in trust structures



Planning implication: review multi-tier models

Case Law Update: Trustee Decision-Making (2025)



ConCourt clarified
majority vs
unanimity in
trustee resolutions

Where deed allows
majority +
quorum/notice:
binding

Otherwise,
unanimity is
required

Lesson: trust deeds
must be clear on
decision-making



Common Law Tools:

2. Wills and Freedom of Testation

Wills Act 1953: full testamentary freedom

The only way to override intestate succession

Can integrate customary duties (e.g., duty of support)

Testamentary trusts safeguard minors/vulnerable heirs

3. Life Insurance & Retirement Funds

Life insurance: bypass estate, but included in estate duty (s3(3))

Retirement funds: s37C Pension Funds Act – trustees allocate to dependants

Nominations not binding

Ensures family maintenance priority



Case Study: David Mabuza Dispute (2025)

- R44.7m pension/annuity contested
- Competing claims: widow vs alleged customary wife vs children
- Fund interdicted from paying
- Lesson: beneficiary nominations, documentation, liquidity planning
- Illustrates the interaction of pension law, customary law, and taxation

Compliance, Risks & Trends

Sham trust risk – separation of control required

Independent trustee requirement

FICA & beneficial ownership registers

SARS IT3(t) reporting

Section 25B amendment (2023/24): non-resident beneficiaries



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Future Debate: Wealth Tax

Proposed net wealth tax debated

Challenges: valuation, capital flight, constitutional equality

Would reshape wealth planning radically

Families must maintain flexibility in structures

Summary & Conclusion

SA wealth planning = balance tax, common law, customary law, and Constitution

Trusts & wills essential but must follow governance

Retirement funds: trustees' discretion overrides

Compliance rising; SARS more aggressive

Future risks: wealth tax, litigation, disputes like Mabuza



Comparative Overview

category	RSA	ITALY
Inheritance law	Intestate Succession Act (1987), Wills Act (1953), Customary Law of Succession Act (2009)	Italian Civil Code (Book II: Succession); Testamentary freedom limited
Estate / Inheritance Tax	Estate duty: 20% up to R30m; 25% above; R3.5m abatement; unlimited spousal deduction	Inheritance/gift tax: 4% for spouse/children; 6–8% for other relatives; allowances (~€1m per spouse/child)
Donations / Gifts	20–25%; R100k annual exemption; spousal transfers unlimited; Section 7C applies to loans to trusts	Taxed similarly to inheritance: 4–8% depending on relationship; specific exemptions for close relatives

category	RSA	ITALY
Capital Gains Tax (on death)	Deemed disposal at market value; exclusion R300k; spousal rollover delays CGT	No separate CGT at death;
Indigenous / Customary Law	Recognised; polygynous & communal property	No indigenous law; legal system is uniform & codified
Wealth Protection Tools	Trusts, testamentary trusts, life insurance, retirement funds (S37C); high flexibility	Foundations, life insurance, family patrimony, and less flexible trusts are less formal
Benefits	Flexibility, integration of customary law, protection for widows/children, intergenerational wealth transfer possible	Legal protection for heirs via reserved portions, simpler taxation for low-value estates, guarantees minimum inheritance for spouse/children

Trusts

Protect assets, manage intergenerational wealth, reduce exposure to estate duty via proper planning. Use discretionary trusts for flexibility; comply with Section 7C to avoid unintended tax.

Testamentary Trusts

Protect minors, vulnerable heirs, or children from multiple marriages; delay distribution until beneficiaries are mature.

Spousal Rollovers

Unlimited spousal deduction allows assets to transfer tax-free between spouses at death.

Life Insurance

Provides liquidity to pay estate duty; ensures heirs don't need to sell illiquid assets like farms or businesses.

Retirement Fund Planning (S37C)

Allocate funds with proper consideration of dependents; avoid disputes among spouses/children.

Customary Law Integration

Recognise customary succession rules but plan using trusts and wills to ensure constitutional equality for widows and children.

Foundations (Fondazioni)

Legal entities to hold and manage assets for family benefit; can emulate some functions of trusts

Life Insurance

Effective tool to transfer wealth while reducing inheritance/gift tax; it can be structured to benefit heirs directly

Family Patrimony Agreements (Patrimonio Familiare)

Protect core family assets from creditors; maintain intergenerational continuity

Wills Within Civil Code Limits

Plan inheritance carefully, respecting reserved portions; use testamentary allocations to balance flexibility with legal requirements.

Offshore Planning & Gifts
comply

Limited is used for cross-border wealth but must with tax reporting.

Charitable Donations / Foundations

Reduce estate exposure to inheritance tax and create family legacies.

Overall: In Italy, the best approach is to leverage foundations, life insurance, and careful testamentary planning within civil code constraints to protect wealth while ensuring heirs receive their legal share.



Thank You
Grazie



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