An analysis of wealth taxes applicable to the transfer of capital assets by an individual in South Africa

S Bosman

orcid.org/0000-0001-8426-801X

Mini-dissertation accepted in partial fulfilment of the requirements for the degree Master of Commerce in Taxation at the North-West University

Supervisor: Mrs CE Meiring

Graduation: May 2020

Student number: 31366600

ABSTRACT

The responsibility to contribute towards the economic growth of a country lies with a government and its citizens. One of the ways in which citizens impact the economy is through their creation of wealth and how they use their assets. However, how the individual chooses to deal with their assets depends on factors such as the effects of tax policy. Therefore, fairness in tax policy will have a direct impact on the decision of the individual and how they choose to deal with their assets. This study addresses the research problem relating to the different types of taxes levied on the transfer of capital assets by a natural person in South Africa, and whether these taxes are considered fair or not. The research question investigated is, what are the different taxes applicable in South Africa on the transfer of a capital asset, the effects thereof, and how do they compare with similar taxes in other countries such as Australia, India and Namibia?

The taxes applicable in South Africa are identified to be capital gains tax (CGT) triggered with almost every transfer, donations tax triggered with donations, and estate duty triggered at death. Transfer duty and securities transfer tax are costs associated with the acquisition of the asset, and thus also considered to form part of wealth transfer taxes. The effects of double taxation were evident with the application of CGT and estate duty on the estate of a deceased person, as well as with the application of CGT and donation tax when an asset is donated. Namibia does not have CGT, donations tax or estate duty, and consequently does not tax the capital growth in assets nor the estate of a deceased person. Australia and India both have CGT, however it is generally not applied at the death of the individual. Both countries previously had death and gift taxes which were abolished, which resulted in no tax being currently charged on the donation of capital assets, nor on the estate of a deceased person. The United Kingdom (UK), on the other hand, has both CGT and inheritance tax. The inheritance tax makes provision for tax on certain gifts and tax on the estate of the deceased person. However, CGT is not charged on the estate of a deceased person in the UK, and thus there are no effects of double taxation. It is recommended as potential additional studies, to consider either the abolishment of estate duty or the exemption of CGT on the estate of a deceased person in South Africa to avoid the effects of double taxation. Also, a more detailed analysis on the application of donations tax could be done to determine whether the current exemptions and exclusions provided for by the Income Tax Act are sufficient in the context of double taxation.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ATO	The Australian Taxation Office
ACTSD	Australian Capital Territory Stamp Duty of 1969
Australian ITA	The Australian Income Tax Assessment Act (38 of 1997)
BRICS	Brazil, Russia, India, China, South Africa
CFI	Corporate Finance Institute
CGT	Capital Gains Tax
DTC	The Davis Tax Committee
Estate Duty Act	Estate Duty Act (45 of 1955)
Eighth Schedule	Eighth Schedule to the Income Tax Act (58 of 1962)
Gift Tax Act	Indian Gift Tax Act of 1958
IPPR	Institute for Public Policy Research
ITA	The South African Income Tax Act (58 of 1962)
Indian ITA	The Indian Income Tax Act (43 of 1961)
Indian Stamp Duty Act	Indian Stamp Duty Act of 1899
JSE	Johannesburg Stock Exchange
Namibian ITA	The Namibian Income Tax Act (24 of 1981)
Namibian Stamp Duty Act	Namibian Stamp Duty Act (15 of 1993)
Namibian TDA	Transfer Duty Act (14 of 1993)
PWC	PricewaterhouseCoopers
SARS	South African Revenue Service
STT	Securities Transfer Tax
STT Act	Securities Transfer Act (25 of 2007)
STT Rules	Securities Transaction Tax Rules of 2004
TDA	Transfer Duty Act (40 of 1949)
UK	United Kingdom
Wealth Tax Act	Indian Wealth Tax Act of 1957

KEYWORDS

Capital gains tax
Donations Tax
Estate duty
Securities Transfer Tax
Transfer Duty
Transfer of a capital asset
Trusts
Wealth tax

LIST OF TABLES

CHAPTER 1: INTRODUCTION

1.1 Background of study

The role to grow the economy of a country is not only that of government but also that of the citizens of that country (OECD, 2013). This responsibility is embedded in the human rights declaration on the “right to development” (United Nations,1986). It echoes the right of every person to free, active and meaningful participation in the development, as well as the unbiased sharing of the resulting benefits (Piovesan, 2013). This right has also been embodied in the Bill of Rights in terms of Chapter 2 of the Constitution of the Republic of South Africa (1996).

The trust between the citizens of a country and its government would influence this partnership. The level of trust can be measured through the citizens’ receptiveness and attitudes towards the set policies and the regulatory environment of that country (OECD, 2013). The lack of, or less trust could result in lower compliance with legislation; individuals taking more risk-averse decisions; and participating less than expected in the overall economy (OECD, 2013).

Apart from achieving the communal goals, it is important to realize that individual behaviour is also driven by own needs. In interpreting the Maslow’s hierarchy of needs; own needs would take prevalence over communal needs. The Maslow’s hierarchy of needs is a theory by Abraham Maslow. It is a study method focusing on how humans intrinsically partake in behavioural motivation. In describing the patterns in which human behaviour is motivated and generally move, Maslow concluded on the following motivational levels in order of priority of satisfaction; “physiological," "safety," "belonging and love," or "social needs" "esteem," and "self-actualization”. The study shares the view that the more basic need must first be satisfied before the desire to meet the next one surfaces (Maslow, 1943).

The safety need includes both personal safety and economic safety. Economic safety or financial security is described as a state of having a stable income and other resources to maintain a certain standard of living presently and in the future (Maslow, 1943).

In applying Maslow’s theory to an individual’s financial perspective, Blossom Wealth Management (2016), explains it as follows: There is a *physiological* need for an individual to have the financial capability to pay for their daily living expenses, and to leave a financial or wealth legacy for the generations after him. Then follows the *safety* need to protect the assets already owned through various forms of financial structuring; this would include estate planning, risk management, and business succession. Wealth management involves the *love or belonging* need by monitoring the movement and growth of the persons’ assets and resources; this would include cash flow management, managing of debt and investment, retirement funds and insurance review, as well as taxes*.* As soon as the underlying has been satisfied, then the individual starts focusing on increasing their wealth which would cover the *Esteem* need; this consists of growing their current investments in a tax effective manner and pursuing diversification through ensuring that their risk is fairly spread. Self-actualization is attained when an opportunity exists to redistribute the wealth achieved (Blossom Wealth Management, 2016).

According to Zhang Yu (2007), there is a close relationship between economics and psychology, in that most people will apply their preconceptions about certain issues in making financial decisions (Mullainathan & Thaler, 2000; Yu, 2007). Thus, what a person perceives to know about a certain matter, will greatly influence their attitude towards that matter (Kahneman & Tversky, 1974). Therefore, based on this notion, an individual's perception of a certain set policy could influence how they respond to the regulatory environment.

Therefore, what would align the individual's economic needs to that of the country, would be the perception of the individual that "what government is doing is right and perceived fair" (Easton,1965), and any positive expectations by the individual from the set policies (OECD, 2013). It is important to understand that levying taxes raises the funds needed by the government to fund their responsibilities towards its citizens (Bird-Pollan, 2016). Thus, a country's tax system should reflect what its people believe to be equitable distribution so that every individual can attain their goal or envisioned legacy. According to Kamiru (2005), almost all taxation involves some degree of redistribution, and it is important for the individual to believe that the redistribution is just (Easton,1965).

According to Arendse and Stack (2018), taxes can be categorised into three facets: a tax on income, consumption tax, and wealth tax. The Cambridge dictionary defines wealth tax as "a tax levied on personal property and financial assets above a certain level". Drawing from this definition, wealth from a tax perspective would then be property and financial assets which encompass bank deposits, insurance, retirement plans, ownership of unincorporated businesses and other financial securities (Matobela, 2012; Delport, 1997). The three tax categories are distinguished by the timing when the tax is imposed; for instance, income tax will be potentially imposed when the asset is first received, consumption tax throughout the use of the asset, and wealth tax is directly linked to ownership change throughout the life cycle of the asset (Arendse & Stack, 2018). The two triggers for wealth tax would then be wealth transfer and an increase in the value of an individual's wealth. Wealth tax is typically driven by the government's need to address two fundamental objectives, namely, the need to address wealth inequality and to raise extra income to fund government spending (Arendse & Stack, 2018). The expanded definition of wealth tax includes wealth transfer taxes inclusive of property transfer taxes in South Africa and these are estate duty, donations tax, transfer duty, securities transfer tax (STT) and capital gains tax (CGT) (Basson, 2015).

According to Amand (2011), the effects of wealth-related taxes on economic productivity using individual owned assets, suggests that there are two types of owners of assets, namely credit-constrained individuals who desperately need their assets to grow and are dependent on personal economic activity to grow their wealth, and inactive rich individuals who manage their wealth and have minimal direct participation in economic activity. These two types of individuals will both attract certain taxes at different scales, and one may be subject to certain taxes which the other may not. For example, the low wealth individual may not be subjected to estate tax but higher current taxes, while high wealth individuals could be subject to estate tax and minimal current tax (Amand, 2011).

1.2 Motivation of the study

Individuals have a role to play in the economic growth of a country (OECD, 2013), and one of the ways they participate is through the use their productive assets. Since there is a close relationship between economics and psychology (Yu, 2007), the financial decisions of an individual will be influenced by what they perceive regarding certain policies, such as taxation (Kahneman & Tversky, 1974).

It is important to note that the tax implications would be different dependent on the type of asset being transferred or disposed (Patel, 2002). A capital asset from an individual's perspective is basically anything owned by the natural person either for personal or investment use (Investing in answers, 2019). The capital assets to be considered are fixed property, direct investment in the form of shares held in a private company, and shares held in a listed company by an individual. To minimise the exemption and exclusion effects in the study, the fixed property considered will not be a primary residence, nor will personal use assets be considered. These assets are to a certain extent, expected to fairly represent the different classes of capital assets traditionally owned in an individual's personal capacity. Generally, these are also the assets which are most affected by wealth transfer taxes for a natural person (Patel, 2002).

The different taxes to be considered for the transfer of the selected classes of assets, and will be applicable to all three classes are explained: A CGT rate is applied as per the Eighth Schedule of the Income Tax Act (58 of 1962) (Eighth Schedule) to an individual's net gain or loss on the disposal or transfer of an asset. Donations tax is levied in terms of sections 54 to 64 of the Income Tax Act (58 of 1962) (ITA) on the value of any asset which an individual donates, whether done so directly or indirectly. Estate duty is levied in terms of the Estate Duty Act (45 of 1955) (Estate Duty Act) on the estate of a deceased person. Transfer duty is levied in terms of the Transfer

Duty Act (40 of 1949) (TDA) on any immovable property which is acquired by way of a transaction or otherwise. STT is then levied in terms of Securities Transfer Tax Act (25 of 2007) (STT Act) on the sale in a shares transaction. Trusts are one of the ways in which individuals manage their wealth, and it would, therefore, be important to consider assets held in trusts and their impact in terms of the Acts.

The international tax laws to be considered will include Australia, which is a developed country (Macro Business, 2015). Since there are similarities in some of the taxes applicable to wealth transfer, it is good to see where we as a developing country could possibly be moving in respect of these taxes (ATO, 2019). The taxes applied in Australia include CGT and stamp duty, and could thus be comparable (ATO, 2019). The second country to be considered is India, which is a developing country like South Africa. Both South Africa and India are part of the world's emerging economies known as BRICS (Brazil, Russia, India, China, South Africa) (South Africa, 2019; Arendse & Stack, 2018). The equivalent taxes applied as per the Indian Income Tax Act (43 of 1961) (The Indian ITA) together with any amendments thereafter will be considered to see how the two BRICS countries compare. Thirdly, it will also be insightful to consider equivalent taxes in a country such a Namibia where there is no estate duty, CGT or donations tax. How is the transfer of capital assets taxed in this country or is it then not taxed at all? (PWC, 2019; KPMG, 2019b).

Fairness between persons of similar tax positions and fair wealth distribution are some of the key criteria used in designing tax systems worldwide (Ramson, 2014; Patel, 2002). However, the other key issue which has been a focal point in most countries, has been the issue relating to double taxation, especially at death (Ramson, 2014). The same arguments have found their way to South Africa, especially with the introduction of CGT in 2001, which is tax on the capital appreciation of the asset, charged at disposal but is also levied at death together with estate duty on a natural person's net estate above a certain threshold (Ramson, 2014; Patel 2002).

Therefore, depending on the effects of the above taxes on the transfer of the selected assets, the individual's perception on the fairness thereof and the resulting tax benefits will influence their decision as to how they choose to deal with their productive assets. Even though this would be for the purposes of attaining their own aspirations, it could also result in a lower contribution to the economy of the country.

1.3 Problem statement

There are different types of taxes levied on the transfer of capital assets by a natural person in South Africa. The individual's perception of the fairness of these taxes could influence their decision on how to deal with their assets. What are these different taxes applicable in South Africa on the transfer of a capital asset, what is the effect thereof, and how do they compare with similar taxes in other countries?

1.4 Research objectives

1.4.1 Main objective

The purpose of this study is to identify, outline and compare how the different wealth taxes are applied to the transfer of a capital asset. The selected classes of assets will be applied to three different triggering events of a transfer. The effects of the wealth taxes applicable on the transfer of assets in other countries such as Australia, India, and Namibia will also be analysed to see how the South African wealth transfer taxes compare and thus the fairness of the South African tax policy will be considered.

1.4.2 Secondary objective

In investigating how these wealth transfer taxes compare and are applied, the following secondary objectives will be considered to address the main objective:

i. To provide a brief history of what comprises wealth tax in South Africa and issues surrounding the classification and exclusion of certain taxes as wealth taxes. To also specifically identify and analyse the taxes classified as wealth taxes applicable to the transfer of a capital asset by an individual in South Africa. This will be outlined in case an asset is sold or donated during the lifetime of the individual, or if ownership is transferred to a trust or retained in the individual's personal name until they die, and what the effect thereof would be on the estate of the individual. This research objective will be addressed in chapter 2.

ii. To apply the South African wealth taxes on the transfer of the three selected classes of capital assets. This will be applied in case an asset is either sold or donated during the lifetime of the individual, and if ownership is transferred to a trust or retained in the individual's personal name until they die. This research objective will be addressed in chapter 3.

iii. To identify and analyse the different wealth taxes applicable to the transfer of a capital asset by an individual in Australia, India, and Namibia. This will include a brief background on tax policy, as well as the history of the application or non-application of any of the equivalent taxes in these countries. This research objective will be addressed in chapter 4.

iv. To provide a comparable summary of the wealth transfer taxes applied in South Africa, Australia, India, and Namibia with the transfer of capital assets. The differences and similarities will be highlighted to consider the fairness of the South African tax policy with regards to taxes applicable on the transfer of a capital asset. This research objective will be addressed in chapter 5.

1.5 Limitations of this study

This is a literature study, which will comprise the analysis, application, and comparison of the different wealth taxes on the transfer of selected classes of capital assets. These classes of capital assets comprise fixed property, direct investment in the form of shares held in a private company, and shares held in a listed company. The taxes to be considered include CGT, donations tax, estate duty, transfer duty and STT only. The disposal of income in nature assets are not considered in this study. These South African taxes will also be compared to the equivalent taxes of the selected international tax laws. All other assets such as primary residence, as well as any other taxes, will not be considered in this study.

1.6 Research methodology

This section outlines the strategy, method, tools, and applications used as part of the research methodology for this study. It is important to establish the credibility of the methodology used and its findings. Since an indistinctive method can erode credibility, it is imperative for the researcher to explicitly state the methods used in ensuring credibility (Cutcliffe & McKenna, 1999:374-380). For the purposes of this study, credibility will be ensured by placing a bias dependence on literature review, the application of judicial and legislative frameworks, and academic research.

The research paradigms which will influence the research approach for this study include ontology, epistemology, and methodology. These are known as “paradigms that guide discipline inquiry” (Guba, 1990). Ontology can be defined as the reality or “knowable”, or the facts. Epistemology is the relationship between the request and the “knowable” and could either be objective or subjective. Methodology has to do with how the person goes about acquiring the knowledge or the facts (Crotty, 1998; Guba, 1990).

A qualitative research approach usually incorporates at least one of the philosophical paradigms. In this instance, we consider positivism and interpretivism (Pham, 2018). Positivism carries an objective epistemology view, which implies that the quest to obtain understanding about any matter should be supported by factual data (Crotty, 1998; Pham, 2018). Examples of such would be human senses, actual measurements, sampling, and tests. In interpreting this data, there should also be an independent relationship between the researcher and the sources of information (Pham, 2018). An interpretivism philosophy, on the other hand, is rooted in the understanding that the interpretation of information is directly related to the human’s interest and is thus subjective to the purpose for which it is gathered (Crotty, 1998). Also, there is more than one way to obtain data (Crotty, 1998; Pham, 2018). Interpretivism allows a researcher to obtain a deeper understanding of a certain matter and its intricacy within its own context instead of looking at a generalised view (Pham, 2018). This study will follow the interpretivism philosophy, as the focus will be on analysing the principles regarding specific taxes applicable to the transfer of specific classes of assets. For purposes of illustrating the different trigger events of wealth transfer, a minor case study will also be incorporated into the study.

This is a literature study and qualitative research. The legislative rules and framework of taxes applicable to wealth transfer will be considered as the facts to the study. A comparison will be done between South African tax law and comparable international tax law - specifically of India and Namibia as developing countries, and Australia as a developed country – which will make for a broader insight into the different taxes. These will include taxes equivalent to CGT, donations tax, estate duty, transfer duty and STT (Basson, 2015). Other sources of information will include academic research references such as theses, dissertations, and journals, as well as any other general comments from decision-makers and any other general information that is available and is applicable to this study.

The application of the facts (taxes), will be compared against different triggering events of transfer for three selected classes of assets. The literature review will assist in obtaining a more practical understanding and in-depth knowledge of these taxes. The epistemology that will be used in reaching a conclusion, will be a theoretical perspective. This will embody all the knowledge and facts acquired through the intended methods (Crotty, 1998). And this will be the basis of the comparable summary of the different wealth transfer taxes on the transfer of an asset by an individual in South Africa and the comparable countries.

1.7 Chapter overview

Chapter 1: Introduction

This chapter provides background and motivation to the study. It further outlines the problem statement, the research objectives, as well as the research methodology used for the study.

Chapter 2: Identification and analysis of the different wealth taxes applied to the transfer of capital assets by an individual in South Africa

This chapter will provide a brief history of what comprises wealth tax in South Africa and issues surrounding the classification and exclusion of certain taxes as wealth taxes. It will also identify and analyse the taxes classified as wealth taxes which specifically apply to the transfer of a capital asset by an individual in South Africa. This will be outlined in case a capital asset is either sold or donated during the lifetime of the individual, or if ownership is transferred into a trust or retained in the individual’s personal name until they die, and what the effect thereof would be on the estate of that individual. The tax topics will comprise CGT, donations tax, estate duty, transfer duty, and STT. This chapter will address the secondary research objective as identified in par 1.4.2(i).

Chapter 3: Application of the South African wealth taxes on the transfer of certain assets

This chapter will apply the South African wealth taxes to the transfer of the three selected classes of capital assets. This will be applied in case an asset is sold or donated during the lifetime of the individual, or if ownership is transferred to a trust or retained in the individual's personal name until they die. The tax topics will comprise CGT, donations tax, estate duty, transfer duty, and STT. This chapter will address the secondary research objective as identified in par 1.4.2(ii).

Chapter 4: Identification and analysis of the different wealth taxes applied to the transfer of capital assets in Australia, India and Namibia

This chapter will identify and analyse the different wealth taxes applicable to the transfer of a capital asset by an individual in Australia, India, and Namibia. This will include a brief background on tax policy, as well as the history of the application or non-application of any of the equivalent taxes in these countries. The tax topics will comprise CGT, donations tax, estate duty, transfer duty, and STT. This chapter will address the secondary research objective as identified in par 1.4.2(iii).

Chapter 5: A comparative summary of the wealth taxes applied to the transfer of a capital asset in South Africa, Australia, India, and Namibia

This chapter will provide a comparative summary of the wealth transfer taxes applied in South Africa, Australia, India, and Namibia on the transfer of capital assets. The differences and similarities will be highlighted to consider the fairness of South African tax policy as regards taxes that apply to the transfer of a capital asset. The wealth transfer tax comparative summary will include taxes equivalent to CGT, donations tax, estate duty, transfer duty, and STT. This chapter will address the secondary research objective as identified in par 1.4.2(iv).

Chapter 6: Summary and conclusion

A comparable summary will be presented from the findings of the study.

CHAPTER 2: IDENTIFICATION AND ANALYSIS OF THE DIFFERENT WEALTH TAXES APPLIED TO THE TRANSFER OF CAPITAL ASSETS BY AN INDIVIDUAL IN SOUTH AFRICA

2.1. Introduction

In this chapter the secondary objective in par 1.4.2 (i) will be addressed. The chapter will provide a brief history of wealth tax in South Africa and issues surrounding the classification and exclusion of certain taxes as wealth taxes. This includes identifying and analysing taxes classified as wealth taxes applicable to the transfer of a capital asset by an individual in South Africa. The different triggering events to be incorporated include the sale of the asset, donation thereof, and treatment of the asset at date of death.

2.2. A brief background and history of wealth transfer tax in South Africa

The provisions of wealth tax and wealth transfer taxes on the property of the individual in South Africa, seems to be an ongoing conversation amongst many professionals, (Roeleveld, 2015; Muller, 2010). However, it is impossible to have a conversation regarding wealth tax, without considering also the current wealth inequality in South Africa (DTC, 2018). Wealth inequality is known to be very high in South Africa, and this had led to the Minister of Finance requesting in 2013 that a feasibility study be done by the Davis Tax Committee (DTC) on the potential introduction of a net wealth tax in South Africa (DTC, 2018). The report was also benchmarked against other countries such as France and India, who have had a specific tax called ‘wealth tax’. This prospective wealth tax would be tax on the net wealth of the individual (DTC, 2018).

The current South African taxes considered to be in the ambit of wealth transfer taxes include transfer duty, estate duty, donations tax and STT (DTC, 2018; Roeleveld, 2015). The historical research done by Muller (2010), suggests that wealth transfer tax initially came into existence in South Africa during 1864 in the Cape of Good Hope colony through a recipient-based succession duty (Basson, 2015). The old Zuid-Afrikaanse Republiek introduced a transfer-based duty during 1899, whereas the Natal and the Free State colonies brought a similar succession duty to the Cape of Good Hope in 1905, by way of colonial legislation (Basson, 2015; Muller, 2010). The first national wealth transfer tax was the Death Duty Act (29 of 1922) and, with its declaration, all previous provisional legislation was repealed. This Act was abolished in 1955 when estate duty was introduced by way of the Estate Duty Act (Basson, 2015; Muller, 2010).

Trusts are usually used as a tool for estate planning purposes, and although not considered a wealth tax, tax provisions dealing with assets donated or transferred to or held in a trust act as anti-avoidance mechanisms (Roeleveld, 2015; Hoon, 2013). CGT, on the other hand, has attracted different views, on whether it is a wealth tax or not. According to the DTC (2018), CGT is not a tax on wealth, but rather tax on deferred income. This view is also to a certain extent supported by Muller (2010), in that CGT is a tax on the appreciation of the value of an asset, and not a substitute for wealth transfer tax, and these should be regarded as two different types of taxes. On the other hand, global history indicates that the highest portion of CGT revenue comes from the wealthiest individuals (Roeleveld, 2015), and thus the inclusion of CGT in this study. According to Patel (2002), the fact that there is a deemed disposal of assets when a person immigrates or dies, in itself qualifies CGT as a type of wealth tax.

The South African legislation applicable to the different taxes identified as wealth taxes will now be considered, which will comprise CGT, donations tax, estate duty, transfer duty, and STT.

2.3. Capital Gains Tax

2.3.1 Background

In the 2000 fiscal year budget speech, the government announced their intention to introduce a residence-based income tax, together with CGT (Treasury, 2001). The rationale for these taxes was to address the identified weaknesses in how taxes are structured within the South African tax system (Treasury, 2001). CGT was previously considered in 1995 by the Katz Commission, and one of the counterarguments then, was the lack of administrative capacities in the revenue services department. CGT was then suspended at that time (South Africa, 2000; Patel, 2002). The Minister of Finance at the time, was of the opinion that, the implementation of CGT would discourage individuals and corporations from maliciously converting ordinary income into tax-free capital gains (South Africa, 2000; Patel, 2002). The objective of CGT was, therefore, to promote equity and to ensure fair re-distribution amongst all South Africans (South Africa, 2000). The Minister of Finance furthermore stated that the introduction of CGT would also bring the South African tax dispensation in line with other tax systems around the world, such as that of Australia, Canada, the United Kingdom (UK) and many other developing countries (South Africa, 2000).

CGT was introduced to the ITA with effect from 1 October 2001, and this applies to all asset disposals occurring on or after this date (Marcus, 2007; Basson, 2015). This is not a separate tax but forms part of the ITA as section 26A and an Eighth Schedule to the ITA (Patel, 2002). The insertions were done in accordance with the Taxation Laws Amendments (5 of 2001) (Roeleveld, 2015). Section 26A of the ITA provides for the inclusion of the taxable capital gains in the taxable income of a person, and the Eighth Schedule provides the rules for the calculation (Eighth Schedule). The basic principle of CGT is that it is a tax on capital profits from the disposal of capital assets (Stein, 2019). This tax is triggered when a person disposes of an asset that meets the criteria for disposal or deemed disposal as per the Eighth Schedule (Eighth Schedule; Hoon, 2013). Olivier (2007) refers to the four *building blocks* of CGT, which are ‘disposal’, ‘asset’, ‘proceeds’ and ‘base cost’. Paragraph 1 and paragraph 11 of the Eighth Schedule also refers to deemed disposal and certain exclusions, which should be considered in determining the taxable capital gains (Eighth Schedule).

2.3.2 Resident and Non-resident

Another important aspect of the application of CGT is the distinction between a South African resident and a non-resident. The residence-based income tax, according to which residents are taxed on worldwide income, was introduced on 1 January 2001 (Treasury, 2001). Therefore, all capital gains realised, regardless of where the asset is situated in the world, will attract CGT for South African residents (Stein, 2019). The non-residents, however, are taxed on source-based income, thus capital gains realised from assets situated in South Africa only (Treasury, 2001; Stein, 2019).

2.3.3. Asset

It is important to understand what constitutes an asset, and what is excluded for CGT purposes (Hoon, 2013). Paragraph 1 of the Eighth Schedule defines an *asset* as any moveable or immoveable property of whatever nature, whether corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum, as well as a right or interest of whatever nature to, or in such property. Gains and losses from certain assets are to be disregarded in terms of the Eighth Schedule. These include gains and losses from personal use assets as per paragraph 53, primary residences up to an amount of R2 million as per paragraph 45, and assets donated to public benefit organisations as per paragraph 62. Other exclusions are listed in paragraphs 52 to 63 of the Eighth Schedule (Stein, 2019).

2.3.4. Disposal

A *disposal* is defined as an event, act, forbearance or operation of the law envisaged in paragraph 11 of the Eighth Schedule or an event, act, forbearance or operation of law which the Eighth Schedule specifically treats as a disposal of an asset. A donation is also a disposal as defined by paragraph 11 (Par 11, Eighth Schedule). Paragraph 11(2) of the Eighth Schedule deems certain transfers, such as the subdivision, consolidation, or conversion of shares where shareholder receives replacement shares, and assets transferred as collateral or security to back any form of debt, not to be disposals. A deemed disposal of the assets also occurs when a person dies, as there will no longer be an opportunity for the person to realise the future growth in value of the asset (Sec 9H, ITA; van der Mescht, 2012). Paragraph 12 of the Eighth Schedule further deals with certain other deemed disposals, such as waiving of a debt by the person to whom the monies are owed (Par 12, Eighth Schedule). The time of disposal is also an important element to consider, as it may influence the market value at the time of transfer for transfers deemed to be at market value, the CGT rate at the time, and the possibility of an assessed capital loss to set off against future capital gains (Hoon, 2013). Also, the time of disposal will influence the base cost of the asset (Dempster, 2002). Therefore, the time of disposal for CGT purposes is the point in time at which change in ownership is effected (Par 13, Eighth Schedule; Stein, 2019).

2.3.5. Proceeds

In determining the capital gain or loss on a disposal of an asset, the proceeds and base cost of the asset first needs to be established (Hoon, 2013). The capital gain is the amount by which the proceeds exceed the base cost, whilst the capital loss is the amount by which the base cost exceeds the proceeds (Par 3 & 4, Eighth Schedule). In terms of paragraph 35 of the Eighth Schedule, proceeds from the disposal of an asset are equal to the amount received or accrued to the person disposing of the asset (Stein, 2019), as well as in certain instances, amounts deemed to have accrued or received by a natural person, such as with deemed disposals (Stein, 2019).

2.3.6. Base Cost

The base cost of an asset is very crucial in calculating the capital gain or loss (Dempster, 2002). The base cost for an asset acquired prior to 1 October 2001 (known as “valuation date”) is dealt with differently from assets acquired on or after 1 October 2001 (Dempster, 2002). As per paragraph 20 of the Eighth Schedule, the base cost for assets acquired on or after 1 October 2001 is the expenditure incurred in acquiring or creating the asset (Stein, 2019). The base cost for an asset acquired before the valuation date is the value of the asset on 1 October 2001 and is determined in terms of paragraph 25 of the Eighth Schedule (SARS, 2018b; Stein, 2019).

2.3.7. CGT Calculation

The framework for the calculation of CGT is simply presented as follows. The first step is to determine whether the criteria is met for a CGT event in terms of the Eighth Schedule (Olivier, 2007). The base cost of the asset is determined and deducted from the proceeds to calculate the capital gain or loss from the disposal (Par 3 & 4, Eighth Schedule). Any exclusions, limitations or rollovers are considered and applied to the specific disposal event in terms of the Eighth Schedule (SARS, 2018b). All the capital gains for the year of assessment are aggregated and reduced by the capital losses to calculate the net capital gain for the year (SARS, 2018b). The final step for a natural person or special trust would be to reduce the net capital gain or loss with the R40 000 annual exclusion in terms of paragraph 5 of the Eighth Schedule to determine the taxable capital gain. If there are any assessed capital losses brought forward from the previous year, these will be set off against the current year’s taxable capital gain (Par 9, Eighth Schedule). The amount to be included in the normal taxable income of the individual in terms of paragraph 10 of the Eighth Schedule is the taxable capital gain at the current rate of 40% for natural persons or special trusts. The inclusion rate for legal entities and ordinary trusts is 80% of the net aggregate gains. It is important to note that assessed capital losses cannot be set off against normal taxable income.

Instead, it is carried forward to the next year, and utilised to reduce the taxable capital gain in future (Par 9, Eighth Schedule; Stein 2019).

2.3.8. CGT and donations

As already indicated, a donation of an asset will trigger CGT consequences in terms of paragraph 11 to the Eighth Schedule. Important to note, is that part of the donations tax payable on the transfer of the asset, will be included in the base cost of that asset with subsequent disposal as per paragraph 20(1)(c) of the Eighth Schedule. Paragraph 22 provides guidance on the calculation for the portion of the donation tax to be included in the base of the asset (Par 22, Eighth Schedule).

2.3.9. CGT at death

The annual exclusion for CGT purposes is R300 000 in the year of assessment that the individual dies (Par 5, Eighth Schedule; Loubser, 2016).

There is a deemed disposal by a deceased person in terms of section 9HA of the ITA in the event of that person's death (Patel, 2002). Exceptions included in section 9HA are assets transferred to the surviving spouse, a long-term insurance policy of the deceased of which the capital gain or capital loss would be disregarded in terms of paragraph 55, and an interest in pension, provident or retirement annuity fund in the Republic of the deceased of which the capital gain or loss would have been disregarded in terms of paragraph 54 (Stein, 2019). The deceased estate must be treated as having acquired those assets at a cost equal to that market value, which cost must be treated as an amount of expenditure incurred and paid for the purposes of paragraph 20(1)(a) of the Eighth Schedule.

Section 9HA of the ITA should be read together with section 25 of the ITA dealing with taxation of deceased estates.

Based on the above, it is evident that CGT would apply to the sale of assets, donation of the asset, and at the time of a person's death.

2.4 Donations Tax

2.4.1 Background

The legislation applicable to donations tax is covered under section 54 to 64 of the ITA. Donations tax was introduced as part of the ITA in 1955 by way of an amendment (Basson, 2015). The objective of this tax was an anti-avoidance mechanism against taxes such as income tax and estate duty taxes (Basson, 2015).

2.4.2 Gratuitous act or disposition

Section 55 of the ITA defines the word ‘donation’ as any gratuitous disposal of property or any gratuitous waiver or renunciation of a right. Property is defined in accordance with section 55 as any right in or to property, whether movable or immovable, corporeal or incorporeal and wherever it is situated. Therefore, the act of gratuitous does not necessarily have to be monetary in nature, or in the form of a physical asset, but can also be in the form of an intangible asset or right (van der Mescht, 2012). A gratuitous act was found to be an act motivated by generosity and out of own free will as held in the case *SARS v Welch’s Estate* 65 SATC 137,2003 (1) SA 257 (C) (SARS, 2019). Donations tax will be levied on any act qualifying as a donations transaction in terms of section 55 of the ITA, unless exempt under section 56 of the ITA.

Certain examples of donations tax, where money or a physical asset is not exchanged, include a fiduciary, usufruct or other like interest in a property (Sec 62, ITA; van der Mescht, 2012). A fiduciary interest is when the person to whom the property is donated has full right to the property, however, it is not permitted to dispose of the property (Stuart, 2006; Delport, 1997). In the case of a usufruct, on the other hand, the person to whom the property is donated, only has the right to the use of the property and ownership remains with the donor or the holder of the bare dominium (Stuart, 2006; Delport, 1997). The valuation of these types of donations is dealt with under section 62 of the ITA (van der Mescht, 2012).

2.4.3 Exemptions

Section 56(1) exempts certain donations including donations made between spouses and to approved public benefit organisations. The annual exemption on the aggregate donations in a year of assessment is the first R100 000 donated for natural persons in accordance with section 56(2) (Loubser, 2016). Other exemptions include contributions by a donor towards the maintenance of a person, and this exemption is limited to what the Commissioner considers reasonable in accordance with section 56(2)(c).

2.4.4 Donations Tax Rate

In simple terms, a donation occurs when a donor transfers property as defined in section 55 of the ITA for no consideration or for an amount lesser than the market value of the property as per section 58(1) of the ITA. Donations tax is levied at a flat rate of 20% on the cumulative value of property not exceeding R30 million and 25% on the cumulative value of property exceeding R30 million in accordance with section 64 of the ITA. Section 55(3) of the ITA deems the effective date of a donation to be the date when all the legal formalities of transferring the asset have been met (SARS, 2019).

2.4.5 Donations at death

Sections 56(1)(c) and (d) exempts the donation by a donor because of death. Therefore, no donations tax will be levied on the property transferred by a donor upon their death. This, however, should be read together with section 3 of the Estate Duty Act, which includes all property to be part of the estate for estate duty purposes.

Donations tax is therefore only applicable to the transfer of assets while the person is still alive, with certain exemptions in place (Basson, 2015). This tax ensures that property is not transferred between persons free from tax consequences.

2.5 Estate Duty - *Including Deceased Estates*

2.5.1 Background

The legislation applicable to deceased estates is covered under sections 9HA and 25 of the ITA, while estate duty is covered under the Estate Duty Act (de Koker & Williams, 2019).

2.5.2. Estate Duty

The Estate Duty Act was introduced in 1955 and led to the Death Duty Act being repealed (Basson, 2015; Muller, 2010). This tax is applicable to persons who died on or after 1 April 1955 (Delport, 1997). The Death Duty Act which was introduced in the early 1920s had previously replaced all other provisional legislation relating to wealth transfer taxes at the time (Basson, 2015; Muller, 2010). Estate duty is levied on the net estate of a natural person at the date of their death (Delport, 1997), and is paid by the estate of the deceased person in terms of section 2 of the Estate Duty Act. The rate is levied at 20% on the dutiable amount of the estate not exceeding R30 million, and 25% on the amount exceeding R30 million in terms of the First Schedule of the Estate Duty Act (de Koker & Williams, 2019).

The dutiable amount is determined in terms of sections 3 and 4 of the Estate Duty Act (de Koker & William, 2019). The amount will include all the assets owned by the individual at the time of death, less all liabilities at the time, less any administrative cost in finalising the estate (Papp, 2012). Section 3(2) of the Estate Duty Act provides guidance as to what constitutes property for estate duty purposes, which is any right to a property whether moveable or fixed, as well as corporeal and incorporeal assets (Delport, 1997). There are also certain exclusions that are not deemed to be property for estate duty purposes, such as assets owned by a non-resident that are located outside of the Republic (Sec 3, Estate Duty Act). The Act's reference to 'any right' is quite broad and includes the rights to acquire land or shares, and the right should not be forfeited at the time of death (Delport, 1997). It is very important that ownership of such assets must have been in the hands of, or vested to, the deceased individual at the time of death (Delport, 1997).

The dutiable amount can further be reduced by the value of assets such as those accruing to a surviving spouse, and other assets as listed in section 4 of the Estate Duty Act (Papp, 2012). Section 4A provides for a primary abatement of R3.5 million deductible from the net asset value of the estate. The abatement is deducted prior to applying the 20% and 25% rates. Section 4A of the Estate Duty Act also allows for a rollover of the remaining portion on the R3.5 million abatement to the surviving spouse in instances where the full abatement cannot be utilised.

Therefore, on the date of death, a person may become liable for both CGT and estate duty on the value of assets held on the date of death. The deceased will be liable for CGT on the growth in the value of his capital assets up to the date of death in accordance with section 9HA. The exemptions allowed in both deceased estates and estate duty ensure that the wealthier individuals are taxed on the assets owned at the time of their death (Papp, 2012).

2.5.3 Deceased Estates

When the individual dies, he ceases to be a taxpayer and a new taxpayer is created called the deceased estate in terms of section 25 of the ITA (de Koker & Williams, 2019). A representative taxpayer on behalf of the deceased estate is appointed in the form of an executor or administrator in accordance with section 25 of the ITA. Section 9HA of the ITA deems a person to have disposed of all his assets at the date of death for persons who died on or after 1 March 2016. The deceased estate is, in turn, assumed to have acquired the assets from the deceased person as per section 25 of the ITA. Section 9HA deems the disposals to be at market value on the date of death.

2.5.3.1 Exemptions

Section 9HA applies to all capital and revenue in nature assets. However, there are certain exclusions, where the asset is not deemed to have been disposed of at market value as provided by section 9HA. Such would include assets bequeathed to the surviving spouse who is a South African resident; a long-term insurance policy disregarded in terms of paragraph 55 of the Eighth Schedule; and an interest in a pension, pension preservation, provident, provident preservation or retirement annuity fund in the Republic, which would be disregarded in terms of paragraph 54 of the Eighth Schedule.

2.5.3.2 Value of deemed disposal

The value of the deemed disposal is determined in terms of Sections 9HA(2) of the ITA. In terms of section 9HA(2), the value of any assets acquired by a resident surviving spouse which is trading stock, livestock or produce contemplated in the First Schedule, would be the amount previously allowed as a deduction in respect of that asset for purposes of determining that person’s taxable income, before the inclusion of any taxable capital gain, for the year of assessment ending on the date of that person’s death. For any other assets, the value of the deemed disposal will be the base cost of the asset, as contemplated in the Eighth Schedule, as at the date of that person's death (Stein, 2019). If an asset that is treated as having been disposed of by a deceased person is transferred directly to the heir of that person, that heir or legatee must be treated as having acquired that asset for an amount of expenditure incurred equal to the market value, of that asset as at the date of that deceased person's death in accordance with section 25 (van der Mescht, 2012).

2.6 Trusts

2.6.1 Introduction

Estate planning is a means to reduce any future tax liabilities on the estate of a person should they die. It also makes provision for the transfer of assets or control thereof to the surviving individuals as elected by the deceased individual (Basson, 2015). Estate planning techniques include amongst others, ante-nuptial & postnuptial contracts, inter-spouse donations, related party loans, offshore investments, last wills and testaments, and the use of trusts (Hofmeyr, 2019).

Legislation applicable to trusts is covered under section 25B of the ITA subject to the provisions of section 7 of the ITA (Loubser, 2016). A trust is defined in section 1 of the ITA as any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person. The income tax rate applied to ordinary trust is a flat rate of 45% (SARS, 2019).

2.6.2 Types of trusts

The establishment of trusts can take various forms, and some of the distinctions for tax purposes include the *inter vivos* trust and the testamentary trust (SARS, 2019). An *inter vivos* trust is formed by a living person, and the individual who is the founder can be liable for tax on the taxable income received by the trust if they are still alive (SARS, 2019; Loubser, 2016). A testamentary trust is usually created in terms of a will of a deceased person, and the person, therefore, cannot be liable for any tax on the taxable income received by the trust. Instead, these will be taxed in the hands of the beneficiaries or the trust (Hofmeyr, 2019; Loubser, 2016). In deciding which type of trust to form, the individual usually needs to consider what objective they wish to form the trust for (Hofmeyr, 2019). The *inter vivos* trust is usually formed by individuals who wish to grow and protect their assets, or the interest of beneficiaries while they are still alive (Hofmeyr, 2019). A testamentary trust will usually be formed when the beneficiaries are still minors and the rights to the benefit only vest when they reach a certain age or life stage, or a disabled dependent of the deceased, or if the deceased wishes to benefit a future generation as opposed to the current generation (Hofmeyr, 2019). Some characteristics of a trust include matters such as when the rights to income and assets in the trust vest to the beneficiaries (SARS, 2019; Loubser, 2016). For instance, a vesting trust would be one in which the beneficiaries have a vested right to the income and assets of the trust (SARS, 2019; Loubser, 2016). A discretionary trust, on the other hand, is one where the trustees have the discretion as to how much of the income and assets would vest in the beneficiaries, and when these would vest to the beneficiaries (SARS, 2019; Loubser 2016).

2.6.3 Income Accrual

The basic principles for the taxation of a trust are to determine in whose hands the income received will be taxed (Loubser, 2016). This can either be in the trust, the beneficiaries or the founder in terms of sections 25B and 7 of the ITA (Loubser, 2016). The question would be whether the income vests in the beneficiaries or not. The trustees of an *inter vivos* trust can also be given the power to use the discretion in deciding whether to distribute the income or not, in a case of a discretionary trust (SARS, 2019). In accordance with section 25B of the ITA, where no income is distributed to a beneficiary, the income will be taxable in the trust, whereas should a beneficiary have a vested right in the income, the beneficiary will be liable for tax on that income (de Koker & Williams, 2019). In terms of section 7 of the ITA, certain instances would deem the income accrued to the beneficiary to have accrued to the donor of the asset from which the income arises (Sec 7, ITA). Such instances include distributions to minors, certain distributions to spouses, and certain distributions to non-residents (Sec 7, ITA). Any income not distributed to beneficiaries that cannot be taxed in the hands of the donor, for example in a case where the donor has died, will then be taxable in the trust in accordance with section 25B of the ITA (de Koker & Williams, 2019). It is important to note that in terms of section 25B, tax losses cannot be distributed to beneficiaries, and any deduction claimed by the beneficiary cannot exceed the distributed income (Sec 25B, ITA).

2.6.4. Low-interest loans to a trust

As a form of an anti-avoidance rule, section 7C of the ITA was introduced with effect from 1 March 2017. This section deals with low-interest loans advanced to a trust by a natural person such as the founder or beneficiaries. Low interest refers to an interest rate that is less than the official lending rate. The value of the benefit or tax cost is the official lending rate applied on the capital amount of the loan, less any interest already paid (Sec 7C, ITA). The benefit of a having to pay no interest on a loan amount is considered a gratuitous act, and will, therefore, attract donations tax (van der Mescht, 2012). Therefore, in terms of section 7C of the ITA, the value of the donation will be the difference between the interest payable based on the lower rate and the market lending rate (PWC, 2019). Certain loan transactions are excluded as per section 7C(5), including loans to a non-resident trust and approved public benefit organisations. Important to note is that even though the asset transferred to the trust in exchange for the low-interest loan will not attract donations tax, the outstanding loan amount will, however, form part of the estate of the donor at the time of their death (Loubser, 2016), which could neutralise the tax benefit.

2.6.5 CGT in a Trust

In terms of paragraph 80 of the Eighth Schedule, when a trust disposes of an asset and the right to that asset vests in the beneficiaries, the capital gain on that asset will be included in the aggregate capital gains and losses of the beneficiaries and disregarded from the aggregate capital gain or loss of the trust (Stein, 2019). If any of the instances in section 7 apply, the capital gain will be included in the aggregate capital gains of the donor in terms of paragraphs 68 to 73 of the Eighth Schedule (Stein, 2019; Loubser, 2016).

All capital gains or losses will be determined in accordance with paragraph 3 of the Eighth Schedule. Any exclusions, limitations or rollovers to the specific disposal event in terms of the Eighth Schedule will be considered for any transfer (SARS, 2018b). All the capital gains for the year of assessment will be aggregated and any capital losses deducted in determining the net capital gains. Paragraph 5 of the Eighth Schedule does not allow for an annual exclusion to be reduced from the net capital gains or losses of a trust unless it is a special trust (Stein, 2019). The net gain will be included in the taxable income at the inclusion rate of 80% for all trusts other than special trusts as per paragraph 10 of the Eighth Schedule. Special trusts are allowed an annual exclusion of R40 000 per annum in terms of paragraph 5 and the inclusion rate for CGT is 40. An assessed capital loss for the year is carried forward to the next tax year and utilised to reduce the capital gain in the following year (Par 9, Eighth Schedule; Stein, 2019).

2.6.6 At Death

Once the founder dies, he ceases to be a taxpayer, and any future income and gains will now vest either in the trust or the beneficiaries (Sec 25, ITA). Therefore, the donor or founder can only be liable for tax on income or capital gains for assets he or she donated while he or she was alive (Sec 25, ITA). Based on the above discussions, depending on the income distribution and in whose hands the income vests, there can be a tax benefit for both the trust and the founder as the assets that were transferred to a trust during the life of the deceased, would not be included in the deceased estate for estate duty purposes (Delport, 1997; Hoon, 2013). Therefore, when assets are transferred to the trust, the growth in the value of the asset is similarly transferred and consequently, the estate of the person does not grow with that value (Hoon, 2013).

2.7 Transfer Duty

2.7.1. Background

Transfer duty is one of the oldest taxes to be charged and is still applicable today (Le Grange, 2013). It was previously known as the "*40th penny*" and first introduced in Holland in 1958, and thereafter in other various colonies until it reached the Cape of Good Hope in 1686 (Le Grange, 2013). The legislation applicable in South Africa for transfer duty is contained in the Transfer Duty Act (40 of 1949) (TDA). This act was Gazetted on 28 July 1949 and came into effect on 1 January 1950 (SARS, 2018a). It is an indirect tax payable when a person purchases fixed property acquired after 1 January 1950 (Sec 2, TDA).

2.7.2 What triggers transfer duty

Transfer duty is imposed by section 2 of the TDA, on the value of any fixed property acquired in any form of transaction. To determine if a transaction qualifies for the levying of transfer duty the definitions of 'property', 'transaction' and 'acquire' are key. There are also certain exemptions to be considered as per section 9 of the TDA.

The definition of *property* in terms of section 1 of the TDA includes land, a right to minerals, shares held in property or share blocks, or similar interest, other than leased property or right held in a property under a mortgage bond.

A *transaction* is what triggers transfer duty. Section 1 of the TDA defines a transaction to include events in which one person agrees to dispose of property through a sale transaction, donation, leasing, waiver of a right in a property or any other similar disposal.

There is no definition for the term *acquire* in the TDA, and thus case law can be considered to give guidance. In the case of *CIR vs Freddies Consolidated mines LTD 1957 (1) SA 306 (A),* it was held that the word *acquired* meant acquisition of a right to acquire the ownership of property. It is not the transfer of the property that gives rise to the duty, but the acquisition of the personal right by the purchaser against the seller (SARS, 2018a). In the case *Sir v Hartzenberg 1966 (1) SA 405 (A)*, it was held that transfer duty becomes payable upon the acquisition by a person of a personal right to obtain dominium in immovable property (SARS, 2018a). Therefore, based on these two cases, it can be deduced that *acquired* referred to the acquisition of the right to the property.

2.7.3 Exemptions

There are certain exemptions listed as per section 9 of the TDA where transfer duty will not be payable, which includes, amongst others, if an heir inherits a property, if there is a joint owner of a property, for his share, which is registered in his own name, a surviving or divorced spouse who acquires sole ownership on his or her share of the property, and where there has been an error in the registration and the deeds registry needs to be corrected.

2.7.4. Calculating transfer duty

The value of the property is vital in calculating the duty payable, and this is determined in accordance with section 5 of the TDA. The value of the property for purposes of determining the duty payable is the purchase price. Where there is no purchase price, the fair value as determined by the commissioner. Duty is then levied on the determined value of the property, in accordance with the transfer duty progressive table. For example, based on the below table, acquiring fixed property with a cost price of R5 million will result in a transfer duty liability of R383 000, which would form part of the base cost of the property. This is quite a significant amount to pay for tax purposes.

Table 2.7.4: Transfer Duty Rates 2019

Value of the property (R)	Rate
0 - 900 000	0%
900 001- 1 250 000	3% of the value above 900 000
1 250 001- 1 750 000	R10 500 + 6% of the value above R1 250 000
1 750 001 – 2 250 000	R40 500 + 8% of the value above R1 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

Source: SARS – online 2019

Transfer duty will thus affect individuals who wish to acquire a significant investment in property (Papp, 2012). From the above table, it is noted that transfer duty is applied on a sliding scale with a minimum of 0% on property with a value of less than or equal to R900 000. The maximum rate is 13% on fixed property above R10 million. Therefore, it builds in a higher rate of tax for individuals who are wealthier and can afford to purchase expensive properties.

2.8 Securities Transfer Tax

2.8.1 Background

The legislation applicable to STT is covered by the STT Act, as well as the Securities Transfer Tax Administration Act (26 of 2007). The STT Act came into effect on 01 July 2008 and replaced the Uncertified Securities Tax Act, 1998. The previous Stamp Duty Act (77 of 1968) was also repealed soon thereafter in April 2009 (Sonnenbergs, 2008).

2.8.2 What triggers STT

STT represents the amount payable by the buyer of shares on the transfer of securities held in a South African company or close corporation, as well as a foreign company listed on the South African stock exchange as per section 2(1) of the STT Act. Securities are defined in section 1 of the STT Act as any share or depository receipt in a company, or any members' interest in a close corporation, excluding the debt portion for shares linked to a debenture. The STT rate is applicable to both listed and unlisted shares as per section 5 and 6 of the STT Act.

The transfer of shares in terms of section 1 of the STT Act, includes the transfer, sale, assignment or cession, or disposal in any other manner, of a security or the cancellation or redemption of that security, and excludes the issue of a new security, cancellation of redemption, or any event that does not result in a change of ownership.

2.8.3 Exemptions

Section 8 of the STT Act lists certain exemptions and include amongst others, asset-for-share transactions, share-for-share transaction, amalgamations and liquidations, lender to borrower transfers, pension fund transfers and transfers to public benefit organisations, as well as any transfers of shares due to death.

2.8.4 Calculating STT

The taxable amount for the securities would be the cash consideration given for the transfer or the market value of the security if the consideration is less than the market value, or no consideration is received (Sonnenbergs, 2008). The rate for STT is 0.25% on the value of the beneficial interest being transferred in terms of section 2 (2) of the STT Act. The STT Act will thus affect individuals who wish to acquire a significant interest in both listed and unlisted entities (Papp, 2012)

2.9 A summary of the wealth transfer taxes applicable to an individual

The table below provides a summary of wealth taxes applicable to the transfer of assets by an individual in South Africa and the event in which the taxes would be applicable.

Table 2.9: A summary of the wealth transfer taxes

TAX TYPE	ASSETS APPLICABLE	DISPOSAL EVENT	ANNUAL EXCLUSIONS/ ABATEMENTS	RATE
CGT	All assets with certain exemptions	• Sale • Donations • Transfer of assets held in a trust while still alive	R40 000	40% inclusion rate in the taxable income of the individual
		• Death of an individual	R300 000	
Donations Tax	All assets with certain exemptions	• Donations made by individuals while still alive	R100 000	20% on the value of the donation
Estate Duty	All assets	• Death of an individual	R3.5 million	20% on the dutiable amount not exceeding R30 million 25% on the dutiable amount exceeding R30 million
STT	Private and public shares	• Sale • Donations		0.25% on the value of shares
Transfer Duty	Fixed property	• Sale	R900 000	13% maximum rate
CGT Donations Tax	Assets donated to a trust	• Donation at market value	The donor may be liable for tax	
CGT Donations Tax Estate Duty		• Low- interest loan		

Source: Author's compilation of legislation presented above

2.10 Conclusion

Thus, in summary, based on the above discussions and summary, CGT is applicable throughout the lifetime of the individual regardless of how he wishes to transfer ownership either during his lifetime or if he retains the asset until death. Donations tax, on the other hand, is only applicable during the lifetime of the individual if the transfer of the asset constitutes a donation as defined. Transfer duty is applicable to the transfer of fixed property and forms part of the acquisition costs of the property during the lifetime of the individual. STT is applicable to the transfer of securities held in both private and public companies, including foreign entities listed on the South African JSE. All these taxes will also be applicable to assets held in a trust, and the donor may be liable to pay taxes on the transfer of these assets while he is still alive. Estate duty is charged on the assets held by the individual at the time of his death. The exemptions, as well as the annual exclusions, ensure that only those with significant valued assets will be liable to pay these taxes (Delport, 1997).

The other interesting fact to consider is that, in South Africa, approximately 1.4% of the revenue is accumulatively derived from wealth taxes (DTC, 2018). In addition to this low ratio, collection costs for wealth transfer taxes are generally high due to the administrative burden, the required inspections and valuation methods (DTC, 2018). For the individual, the cost of compliance can also be burdensome, in that, guidance from tax experts is usually sought by the wealthy to avoid these taxes (DTC, 2018). The less financially privileged cannot afford to seek such advice, as it can become very expensive, and they may be forced to pay tax on their small estates (DTC, 2018). However, the wealth transfer taxes are designed in such a way that a significant portion of revenue is recovered from the wealthy and not the less wealthy (Papp, 2012). So, the question then becomes, how efficient and fair are these taxes? According to Papp (2012), the cost of applying wealth taxes may also outweigh the benefit if it is aimed mainly at a small group of people.

The secondary objective for this chapter was therefore successfully addressed in that the key aspects relating to the application of the identified taxes on the transfer of capital assets were appropriately analysed. These include the history of the introduction of each tax, the events in which these taxes would be triggered, the exemptions and exclusions of each tax, as well as the applicable rates for each tax.

These taxes will now be applied to the different triggering events on the transfer of fixed property, direct investment in the form of shares held in a private company, as well shares held in a listed company. Chapter 3 will cover the application of the taxes on these assets.

CHAPTER 3: APPLICATION OF THE SOUTH AFRICAN WEALTH TAXES ON THE TRANSFER OF CERTAIN ASSETS

3.1 Introduction

In Chapter 2, it was established that certain taxes arise with the transfer of capital assets by a natural person. The taxes considered for purposes of this study were CGT, donations tax, estate duty and deceased estates, transfer duty, and STT.

In this chapter the secondary objective in par 1.4.2 (ii) will be addressed by applying these different taxes on the transfer of fixed property, shares held in a private company, and shares held in a listed company. These are assets most affected by wealth transfer taxes for an individual (Patel, 2002). This will be dealt with for the different triggering events which include sale during the lifetime of the natural person, donation during lifetime, and retaining ownership until death, and will illustrate the different tax effects of each triggering event.

3.2 Practical application: facts

For the purpose of illustrating these taxes, we may assume the following scenario: Mr. Wealthy is a South African citizen owning significant investments in fixed properties within the republic, private shares, as well as shares held in certain companies listed on the Johannesburg Stock Exchange (JSE). All private and public shares are held as investments. His fixed properties include Property A which he inherited from his late uncle in the year 2012 and Property B which he bought from a third party in 2014. He holds 50 shares in Company C, a private company, which was donated to him by his best friend in 2015. He holds 400 shares in Company D (*Listed on the JSE*), which he purchased in 2015. He has various financial obligations with financial institutions totalling R1 000 000. It is estimated that if Mr Wealthy dies today, the administrative costs will amount to R100 000. The net asset value of Mr. Wealthy can be assumed to be less than R30 million. Mr. Wealthy falls within the maximum marginal tax scale bracket for income tax, which is 45%. He has an assessed capital loss of R 800 000 brought forward from the previous tax year.

Mr. Wealthy is also a founder of an *inter vivos* trust, the XYZ Family Trust. He established the trust for estate planning purposes, given the significant value of his asset portfolio. He donated fixed property E to the trust with the establishment of the trust in 2018 and earns rental income on the property. Property E was purchased by Mr. Wealthy in 2002 from a third party. The trustees of the trust are Mr. Wealthy, his wife, and one independent person. The beneficiaries of the trust are his son (22 years) and daughter (15 years), and niece who is a resident of the UK. These beneficiaries have an equally proportionate right to the income and assets of the trust. His will instructs that Property A be given to his wife upon his death. For ease of reference, the above facts are summarised in the table below and includes the cost of acquisition and market value of the assets at the time of transfer. It is assumed that the cash amounts received as proceeds are equal to the market value of the asset at the time of transfer.

Table 3.2 A summary of facts for application

Asset Description	**Owner**	**Method of Acquisition**	**Person Acquired From**	**Date Acquired**	**Cost of Acquisition R'000**	**Proceeds / Market Value R'000**
Fixed Property A	Mr. Wealthy	Inherited	Uncle	2012	R 1 500	R 2 900
Fixed Property B	Mr. Wealthy	Purchased	Third-Party	2014	R 5 000	R 6 200
Company C – 50 private shares	Mr. Wealthy	Donation	Friend	2015	R 125	R 150
Company D (JSE Listed) – 400 shares	Mr. Wealthy	Purchased	JSE	2015	R 800	R 600
Fixed Property E (*Mr. Wealthy donated property to XYZ Trust)*	Mr. Wealthy	Purchased	Third-Party	2002	R 500	R 2 000
Fixed Property E	XYZ Trust	Donation	Mr. Wealthy	2018	R 2 000	R 2 400

Source: Author 's own compilation from facts presented above

The application of the identified taxes to the above scenario for each identified triggering event will now be considered.

3.3 Sale of assets during lifetime

It was already established in chapter 2, that the sale of an asset would attract CGT, transfer duty, and STT. This will now be illustrated by applying these taxes to the disposal of Mr. Wealthy's assets during his lifetime.

3.3.1 Capital Gains Tax

The sale of any of the above assets will result in either a capital gain or capital loss in terms of paragraphs 3 and 4 of the Eighth Schedule (Patel, 2002). This will be determined by the base cost and the proceeds of each asset (Par 3 & 4, Eighth Schedule; Patel, 2002).

The base cost of Property B and the 400 shares held on the JSE will be the amount incurred by Mr. Wealthy when he acquired these assets (Par 20, Eighth Schedule; Dempster, 2002). The base cost of Property A and the 50 private company shares will be the market value of these assets at the time Mr. Wealthy inherited Property A and received the shares as a donation (Par 38, Eighth Schedule; Sec 9HA, ITA; Dempster, 2002). The proceeds of the disposal will be the cash consideration received by Mr. Wealthy from the sale transactions (Par 35, Eighth Schedule; Hoon, 2013). However, should Mr. Wealthy decide to sell any of the assets to a connected person at a price less than market value, the proceeds of the specific asset will be deemed to be the market value of that asset (Par 38, Eighth Schedule). The time of disposal will be at the point when the legal ownership of the assets is transferred to the new owner.

All the capital gains and capital losses resulting from the different disposals made by Mr. Wealthy will be aggregated (Par 8, Eighth Schedule). The assessed capital loss of R800 000 carried forward from the previous tax year will be used to reduce the aggregate capital gain or loss of the current year (Par 9, Eighth Schedule; Stein, 2019). The calculated net capital gain of Mr. Wealthy will then be reduced with the R40 000 annual exclusion in accordance with paragraph 5 of the Eighth Schedule. If the cost of acquisition as indicated in table 3.2 above, represents the correct base cost of the asset, inclusive of all relevant costs, then the net capital gain or loss for Mr. Wealthy will be calculated as follows:

Table 3.3.1 Taxable capital gain calculation

	R'000
Capital gain/(loss)	
Property A (2 900 – 1500)	1 400
Property B (6 200 – 5000)	1 200
Company C Shares – Private company (150 -125)	25
Company D Shares – JSE Listed (1000-800)	(200)
Aggregate capital gain/loss	2 425
Less:	
Capital loss carried forward from previous year	(800)
Net capital gain	1 625
Less: Annual exclusion	(40)
Taxable capital gain/ (loss)	1 585

Source: Author 's own compilation from the above - Eighth Schedule, ITA

The taxable capital gain to be added to the taxable income of Mr. Wealthy at an inclusion rate of 40% in terms of paragraph 10 of the Eighth Schedule is R634 000, which will be taxed at the maximum marginal tax rate of 45%. If the net capital gain resulted in an assessed capital loss for the current tax year, it will not be used to reduce the current year’s taxable income, but Mr. Wealthy will carry it forward to the next tax year to set off against future capital gains (Par 9, Eighth Schedule; Patel, 2002).

3.3.2 Transfer duty

Mr Wealthy would have been liable to pay transfer duty on Property B and Property E when he bought the properties (Sec 3, TDA; Le Grange, 2013). Let’s assume that the cost of acquisition above represents the cost price of the properties, and not necessarily the correct base cost. The value of the transfer duty would have been paid in accordance with the progressive table as per table 2.7.4 in chapter 2. The amounts calculated as R383 000 on Property A and nil on Property E as it is below the R900 000 threshold. These amounts would form part of the acquisition cost of the properties (Par 20, Eighth Schedule). He would not be liable for transfer duty on Property A, which was inherited from his uncle, as it would have been exempt from transfer duty in terms of section 9 of the TDA.

3.3.3 Securities Transfer Tax

Mr Wealthy would have been liable to pay STT on the shares in Company C donated to him by his best friend and on the shares purchased in Company D (Sec 7, STT Act; (Papp, 2012). Let’s assume that the cost of acquisition above represents the value of the shares at the time of acquisition, and not necessarily the correct base cost. The STT which Mr Wealthy would have paid is 0.25% on the value of the shares, calculated to be R312.50 on the Company C shares and R2 000 on the Company D shares (Sec 2, STT Act). These amounts would form part of the acquisition cost of the shares (Par 20, Eighth Schedule).

Therefore, from the above scenario, it is evident that the acquisition of fixed property will result in transfer duty payable and the acquisition of shares will attract STT, which would both form part of the base cost of the asset for CGT purposes. The sale of a capital asset by an individual will result in an income tax payable on the taxable capital gains at a maximum rate of 45% (Patel, 2002). From the above illustration, Mr. Wealthy will be liable for CGT of R285 300 (R634 000 x 45%) from the sale of the above assets. Important to note is that, the higher the value of the asset, the higher the tax liability.

3.4 Donation of assets during lifetime

It was established in chapter 2, that the donation of an asset will attract donations tax, CGT and STT. This will now be illustrated by applying these taxes to the donation of Mr. Wealthy’s assets during his lifetime.

3.4.1 Donations Tax

Donations tax will be applicable if the donation does not fall within the ambit of the exemptions listed under section 56 of the ITA. The time of donation for Property A and Property B will be the time when the legal title of the property is transferred to the donee (Hoon, 2013). Similarly, when all the legal ownership transfer of the shares to the donee has been completed (Hoon, 2013). The value of the donation will be the market value of properties and the shares at the time of the donation. The first R100 000 value donated by Mr. Wealthy will be excluded from the total value of the taxable amount for donations tax purposes (Sec 56(2), ITA; van der Mescht, 2012). The calculation will be as follows:

Table 3.4.1 Donations tax - taxable amount calculation

	R'000
Donations made:	
Property A at market value	2 900
Property B at market value	6 200
Company C Shares – Private company at market value	150
Company D Shares – JSE Listed at market value	600
Property E at market value	2 000
Aggregate donations	11 850
Less:	
Annual exclusion	(100)
Taxable amounts	11 750

Source: Author 's own compilation from the above - ITA

The donations tax rate of 20% will be applied to the taxable amount, and Mr. Wealthy will be liable for donations tax of R2 350 000 if he donates all these assets, including the property donated to the trust (Sec 64, ITA).

3.4.2 Capital Gains Tax

If Mr. Wealthy decides to donate any of his assets listed above, it will qualify as disposal in terms of paragraph 1 of the Eighth Schedule if not exempt by paragraphs 52 to 63 of the Eighth Schedule (Stein, 2019). Therefore, the donation will result in either a capital gain or capital loss in terms of paragraphs 3 and 4 of the Eighth Schedule. The base cost of the assets donated by Mr. Wealthy will be the amounts discussed under items 3.3.1. In addition to these amounts, the base cost of the asset will be increased with the portion of the donations tax paid on the donation of any of these assets. The portion of the donations tax will be calculated in terms of paragraph 20A of the Eighth Schedule. The proceeds for CGT purposes will be the market value of the properties and the shares at the time of the donation (Sec 9H, ITA; Olivier, 2007). The time of disposal is the time when the donation takes place as discussed under item 3.4.1. The taxable capital gain or loss for the year will be calculated as per table 3.3.1 above.

3.4.3 Securities Transfer Tax

Mr. Wealthy would have paid STT when he acquired the JSE listed shares and with the transfer of the private company shares in terms of section 7 of the STT Act. Similarly, the donee will be liable to pay STT on the shares donated to them by Mr. Wealthy (Sec 7, STT Act; Papp, 2012). The STT payable by the donee will be 0.25% on the market value of the shares at date of transfer and is calculated as R375 on the Company C shares and R1 500 on the Company D shares (Sec 2, STT Act).

Therefore, from the above scenario, it is evident that the donation of a capital asset by an individual will result in a donation tax liability at 20% and income tax payable on the taxable capital gains at a maximum rate of 45%. From the above illustration, Mr. Wealthy will be liable for CGT of R285 300 (R634 000 x 45%) plus donations tax of R2 350 000. STT will be payable by the person receiving the donation and will form part of their cost of acquiring the shares. The effects of double taxation are noted from this scenario, and the higher the value of the asset donated, the higher the tax liability (Bruwer, 2016).

3.5 Retention of assets until death

It was established in chapter 2, that when a natural person dies, he ceases to be a taxpayer on the day of his death and a new taxpayer called a deceased estate is created (Sec 25, ITA; de Koker & Williams, 2019). The taxes applicable at the time of death of a natural person are CGT and estate duty (Muller, 2010). All items bequeathed to the different heirs will not attract donations tax as donations made due to death are exempt as per section 56 of the ITA (van der Mescht, 2012).

3.5.1 Capital Gains Tax

Mr. Wealthy is deemed to have disposed of all his assets at the date of his death in terms of section 9H of the ITA, and will therefore trigger CGT (Patel, 2002; van der Mescht, 2012). Section 9H deems Mr. Wealthy to have disposed of his assets at market value. The proceeds of the disposal will be the market value of the properties and the shares on the date of Mr. Wealthy's death. The base cost of the assets will be the amounts as discussed under item 3.3.1.

Therefore, assuming the base cost of the assets are the same as in table 3.3.1 above, and that the proceeds are at market value, the aggregate capital gain will be R2 425 000, and the net capital gain R1 625 000. The annual exclusion will now be R300 000 instead of

R40 000, resulting in a taxable capital gain of R1 325 000 for Mr. Wealthy (Par 5, Eighth Schedule). The amount to be included in his taxable income is R530 000, and taxed at a maximum rate of 45% in his final assessment (Stein, 2019). Very important to note is that, should the above deemed disposal have resulted in an assessed capital loss, Mr. Wealthy's estate would not be allowed to use the assessed capital loss to reduce the taxable income his final income tax assessment (Loubser, 2016).

3.5.2 Deceased Estates

On the day that Mr. Wealthy dies, he will cease to be a taxpayer, and his deceased estate will be the new taxpayer in terms of section 25 of the ITA (van der Mescht, 2012). Therefore, any future income and capital gain accrued to Mr. Wealthy after date of death will be taxed in his deceased estate in terms of section 25 of the ITA. Mr. Wealthy will be deemed to have disposed of all his assets at the market value of the properties and shares on the day of his death in terms of section 9H (Patel, 2002). An executor will be appointed as a representative taxpayer of the deceased estate in terms of section 25 of the ITA.

Any income and gains accrued from the deceased estate will be attributable to the heirs of the assets in terms of section 25 of the ITA. Therefore, any future capital gain or loss on Property A and B, and the shares will be taxable in the hands of the beneficiaries or the estate, considering the provisions of section 25 of the ITA.

3.5.3 Estate Duty

All the assets of Mr. Wealthy will be included in his estate at the date of his death in terms of section 3 of the Estate Duty Act. The estate will be reduced by the value of the liabilities owed by Mr. Wealthy at the time of his death, plus any other administrative costs (Papp, 2012). The assets bequeathed to his wife, in this case Property A, will be excluded from the dutiable amount as per section 4(q) of the Estate Duty Act. The dutiable amount will be reduced with a R3 500 000 abatement in accordance with paragraph 4A of the Estate Duty Act. The dutiable amount will therefore, be determined as follows:

Table 3.5.3 Dutiable amount calculation

	R'000
Property A at market value	2 900
Property B at market value	6 200
Share: Company C at market value	150
Shares: Company D at market value	600
Total market value of asset	9 850
Less Property A bequeathed wife	(2 900)
Less Obligations	(1 000)
Less administrative costs	(100)
Dutiable amount	6 900
Less: Abatement	3 500
Net dutiable amount	3 400

Source: Author 's own compilation from the above - Estate Duty Act

The estate of Mr. Wealthy will pay estate duty tax at 20% on the dutiable amount in terms of the First Schedule of the Estate Duty Act. The duty payable will be R680 000.

Therefore, it is evident from the above that a natural person will be liable for income tax on the taxable capital gains at death at a maximum rate of 45%. He will also be liable for estate duty on the net asset value of his assets at 20%. From the above illustration, Mr. Wealthy will be liable for CGT of R238 500 (R530 000 x 45%) plus estate duty of R680 000 at death. This results in double taxation on the person's assets at the time of death, and the higher the value of the estate, the higher the tax liability.(Bruwer, 2016).

3.6 Assets held in the trust

The consequence of transferring Property E to the XYZ Trust by Mr. Wealthy will now be considered. While Mr. Wealthy is still alive, he may be liable for tax on the income or capital gains realised on Property E. The taxable amounts deemed to have accrued or is attributed to him, may include the portion accrued to or distributed to his daughter who is a minor and his niece who is a non-resident (Par 68 to 73, Eighth Schedule; Sec 7, ITA).

3.6.1 Asset Donated to Trust

If the trust sells or donates Property E, the capital gain will therefore be included in the hands of Mr. Wealthy for CGT purposes for the portions accrued or attributable to the minor or non-resident, should the amounts not be taxed in the hands of these beneficiaries. Similarly, Mr. Wealthy will also be liable for donations tax for the deemed donations done by the minor or non-resident, if not taxed in their hands (Loubser, 2016).

The income or CGT would in any event have been included in his personal income if he had not donated the property to the trust. Important to note, is that Property E will not be included in Mr. Wealthy's estate, and will, therefore, not attract estate duty when he dies. All future income and capital gains from Property E after Mr. Wealthy's death would be taxed either in the hands of the beneficiaries or the trust.

Asset sold to trust on an interest-free loan

If Mr. Wealthy chooses to sell Property E to the XYZ Trust, on an interest-free loan, the taxes applicable will be CGT and transfer duty. However, the portion of interest which is the difference between the lower rate given and the market lending rate will be deemed as a donation in terms of section 7C of the ITA and will attract donations tax at 20%. Also, when Mr. Wealthy dies, the outstanding loan portion owed to him by the trust will be included in his estate and will attract estate duty at 20% (Loubser, 2016).

It can be seen from the above that by donating the property to the trust during his lifetime, Mr. Wealthy would have paid donations tax and CGT on the value of the asset at the time of donation, but will not be liable for estate duty at death (Loubser, 2016). However, he may continue to be liable for tax on any gains realised on the asset donated by him, if those gains are not taxed in the hands of the beneficiaries. On the other hand, if the property is transferred through an interest-free loan, the transfer will attract CGT and donations tax, as well as estate duty at death (Loubser, 2016). Therefore, Mr. Wealthy saves on taxes payable on any capital growth of the asset from date of transfer until his death (Hoon, 2013).

The table below summarises the tax implications on the transfer of the selected classes of assets for the different triggering events.

Table 3.6 A summary of the tax implications for the individual on selected assets

TAX TYPE	TYPE OF ASSET	OWNERSHIP IN THE NAME OF INDIVIDUAL TRIGGERING EVENTS		
		SALE DURING LIFETIME	DONATION DURING LIFETIME	AT DEATH
CGT	Fixed Property	✔	✔	✔
	Private Shares	✔	✔	✔
	JSE Shares	✔	✔	✔
Donations Tax	Fixed Property	*Not applicable*	✔	*Not applicable*
	Private Shares	*Not applicable*	✔	*Not applicable*
	JSE Shares	*Not applicable*	✔	*Not applicable*
Estate Duty	Fixed Property	*Not applicable*	*Not applicable*	✔
	Private Shares	*Not applicable*	*Not applicable*	✔
	JSE Shares	*Not applicable*	*Not applicable*	✔
Transfer Duty (Purchaser liable)	Fixed Property	✔	*Not applicable*	*Not applicable*
	Private Shares	*Not applicable*	*Not applicable*	*Not applicable*
	JSE Shares	*Not applicable*	*Not applicable*	*Not applicable*
STT (Purchaser liable)	Fixed Property	*Not applicable*	*Not applicable*	*Not applicable*
	Private Shares	✔	✔	*Not applicable*
	JSE Shares	✔	✔	*Not applicable*
ASSETS DONATED TO A TRUST BY THE INDIVIDUAL				
CGT	All assets	✔	✔	*Not applicable*
Donations Tax	All assets	*Not applicable*	✔	*Not applicable*
Estate Duty	All assets	*Not applicable*	*Not applicable*	*Not applicable*
Donations Tax, Estate Duty	Low-interest loan outstanding	✔	✔	✔

Source: Authors' own compilation from the application of legislation presented above

3.7 Conclusion

Therefore, based on the above applications, it clear that different triggering events may result in different tax implications. It is evident from the above analyses that CGT will be applicable to all means of transfer regardless of how the individual chooses to deal with the asset. Other taxes are unique to a certain type of triggering event. For instance, donations tax will only be applicable in the event that Mr. Wealthy makes a donation or a deemed donation, while estate duty will only apply in the event of Mr. Wealthy's death. Similarly, certain taxes are only applicable to certain assets. For instance, transfer duty applies only to the transfer of fixed property triggered by a sales transaction, and STT to the transfer of private and listed shares, which is payable by the purchaser and forms part of the acquisition costs of an asset.

Another important aspect to note is that, even though an individual may hold some of their assets in a trust, especially for estate planning purposes, they may be liable for tax on any taxable gain realised from those assets. However, this will only be applicable for the period that Mr. Wealthy is alive.

The effect of double taxation would also affect how individuals perceive the fairness of these taxes (Ramson, 2014). For instance, the application of CGT addresses the same objective as that of estate duty and donations tax in that all three tax the transfer of capital assets (Ramson, 2014). From the above illustration, Mr. Wealthy will be liable for donations tax of R2 350 000 plus tax on capital gains of R285 300 when a donation event takes place. Similarly, at death, the estate of Mr. Wealthy will be liable for estate duty of R680 000 plus tax on capital gains of R238 500. According to a thesis done by Loubser (2016), certain base costs will be deemed to be nil for certain assets bequeathed at death or as a donation, and the Eighth Schedule allows for certain reliefs and roll-overs which gives remedies for those that may be affected by the effects of double taxation. Also, those likely to be affected by double taxation effects are the wealthiest (Loubser, 2016). However, regardless of the deemed remedies, the fairness of having to pay different types of taxes on the same asset regardless of your wealth status becomes questionable (Ramson, 2014). The above scenario does illustrate that, the higher the value of the individual’s assets or wealth, the higher the tax liability on the transfer of their assets.

The secondary objective in par 1.4.2 (ii) was successfully addressed in that the tax implications for the different triggering events were successfully highlighted for each class of the assets selected. The following chapter will now identify and analyse the equivalent wealth taxes applicable to the transfer of a capital asset by an individual in Australia, India, and Namibia

CHAPTER 4: IDENTIFICATION AND ANALYSIS OF THE DIFFERENT WEALTH TAXES APPLIED TO THE TRANSFER OF CAPITAL ASSETS IN AUSTRALIA, INDIA AND NAMIBIA

4.1 Introduction

In chapter 2 the different taxes which would arise with the transfer of capital assets by a natural person in South Africa, which included CGT, donations tax, estate duty, transfer duty, and STT, were analysed. In chapter 3 the application of these taxes on the different triggering events were addressed, which were sale and donations during the lifetime of the individual, as well as at the time of death of the individual. For illustration purposes, the three types of assets considered included fixed property, shares held in a private company, and shares held in a listed company.

This chapter will address the secondary research objective 1.4.2(iii). It will identify and analyse the different wealth taxes applicable to the transfer of a capital asset by an individual in Namibia, India, and Australia. Namibia and India are both developing countries like South Africa and it is useful to see how they compare. Australia is a developed country, and it will be good to analyse how different or similar such taxes would be in a developed country. Also, the principles found in the Eighth Schedule are known to have been influenced by international tax laws, such as that of Australia (Ramson, 2014). This will include a brief background on tax policy, as well as the history of the application or non-application of any of the equivalent taxes in these countries.

4.2 Namibia

4.2.1 Tax Policy

Namibia is a developing country like South Africa, however, its tax policy differs from that of South Africa, especially when it comes to wealth transfer (PWC, 2019). Key differences in tax policy regarding the transfer of capital assets is that Namibia does not have CGT, estate duty, nor donations tax (PWC, 2019). It does, however, have transfer duty and stamp duty which are equivalent to transfer duty and STT in South Africa (PWC, 2019; KPMG, 2019b). The transfer duty is legislated by the Namibian Transfer Duty Act (14 of 1993) (Namibian TDA) and covers tax on transfer of property. The stamp duty is legislated by the Stamp Duty Act (15 of 1993) (Namibian Stamp Duty Act) and covers tax on transfer of deeds and certain instruments (PWC, 2019, KPMG, 2019b). The taxation on trusts and deceased estate are covered in the Namibian Income Tax Act 24 of 1981 (Namibian ITA).

The difference in tax policies could be attributed to the difference in the wealth gap statistics of the two countries, and the fact that Namibia has tried to address its wealth inequality through its budget expenditure as opposed to tax revenue as in South Africa (Kostiainen, 2018). As already discussed in chapter 2, there is a direct link between wealth taxes and the wealth inequality of a country (DTC, 2018). Generally, wealth taxes would be introduced to address the two main challenges in a country, which includes unequal wealth distribution and raising tax revenue (Arendse & Stack, 2018). The Gini-coefficient is an index or a statistical measure, which measures the inequality within the population, or rather the distribution of wealth among the citizens in a country (CFI, 2019). The Namibian Gini-coefficient is documented to be slightly better than that of South Africa by the World Bank (World Bank, 2015). A perfect inequality is represented by a number 1, and the Gini-coefficient of Namibia is currently estimated at 0.58 by the World Bank, while South Africa's is estimated at 0.60 (World Bank, 2015). In 2009 the Institute for Public Policy Research (IPPR) performed an investigation into Namibian poverty and inequality since its post-independence (Smicht, 2009). The outcome of the investigation was that the number of people living in poverty had reduced significantly from 1993/1994 to 2003/2004, even though it is still considered to be high (Smicht, 2009). A report by the World Bank in 2017, further analysed the impact of Namibia's fiscal policy on its inequality, and this was concluded to have caused the Gini co-efficient to improve to 0.49 (World Bank, 2017). Parts of the fiscal policy considered were the income disposal of the country, such as in-kind transfers done by government to the education and health sectors (World Bank, 2017), which confirms that Namibia is addressing its wealth gap though social expenditure (Kostiainen, 2018).

4.2.2 Transfer Duty

The Namibian TDA is mostly based on the South African principles of transfer duty (Franzsen & McCluskey, 2017). It is levied on the acquiring of immovable property, including mineral rights as per section 2 of the Namibian TDA. Certain exemptions from transfer duty as provided by section 9 of the Namibian TDA, include, amongst others, property left to an heir, a surviving spouse, joint owner or property transferred to a charitable organisation.

The transfer duty rate is levied based on the value of the property in terms of section 2 of the Namibian TDA. Section 2 also sets out the effective rate chargeable for all property acquisitions as of June 2013 (Franzsen & McCluskey, 2017).

Table 4.2.2 Transfer Duty Rates

Property Value (Excluding Agriculture property)	**Rate**
N$600 000	0%
N$600 000 – N$1000 000	1% on the amount exceeding N$600 000
N$1000 000 – N$2000 000	N$4000 plus 5% on the amount exceeding N$1000 000
Exceeding N$ 2000 000	N$54000 plus 8% on the amount exceeding N$2000
Persons other than a natural person, including trusts	12% on all acquisitions

Source: Section 2 Namibian TDA

4.2.3 Stamp Duty

The Namibian Stamp Duty Act is levied on the transfer of deeds, agreement or contracts, as well as marketable securities and other share transactions in terms of Schedule 1 of the Namibian Stamp Duty Act (Franzsen & McCluskey, 2017). The stamp duty rate is dependent on the nature of the transaction and can be summarised below (PWC, 2019).

Table 4.2.3 Stamp Duty Rates

Transaction	**Stamp duty**
Agreements or contracts (other than those where duty is specifically provided for in the Act)	N$5
Lease agreement or lease	The stamp duty will be based on lease payments, together with additional considerations specified in the lease agreement
Transfer or issue of marketable securities and other share transactions	N$2 for every N$1 000 or part thereof of the value/consideration, depending on the specific transaction
Transfer deed relating to immovable property purchased	N$12 for every N$1 000 or part thereof of the value/consideration, depending on the specific transaction

Source: PWC, 2019

4.2.4 At time of death

Even though Namibia does not have estate duty, the administration of the deceased estate is still governed by the Namibian Administration of Estate Act (66 of 1965) (Cronje, 2019). Section 26 of the Namibian ITA provides guidance on the accrual of income from the deceased estate. It provides the following in terms of beneficiaries and deceased estate; any income which would have been received or accrued to the deceased person had they still been alive, will accrue to the heir to the extent that it can be proven that the income is for the immediate benefit or future benefit of the heir, otherwise all other income will be included in the estate of the deceased person (Sec 26, Namibian ITA). However, it is important to note that the definition of income as per section 1 excludes income which is capital in nature, and thus any income accruing to the deceased estate from the sale of capital assets will not be taxable.

4.2.5 Conclusion

In summary, the Namibian tax principles were adopted from the old South African tax systems, thus, the similarities in the application of Transfer Duty, and to a certain extent deceased estates and trusts (Kostiainen, 2018). However, taxes such as CGT, Donations Tax and Estate Duty were never introduced in Namibia (Kostiainen, 2018). As a consequence of this, no tax is charged on the transfer of capital assets, other than transfer duty on the acquisition of property, and stamp duty on the transfer of shares and other contracts (PWC, 2019; Franzsen & McCluskey, 2017).

4.3 India

4.3.1 A brief history of wealth tax in India

The Kaldor committee in 1956 led to some tax reforms which included the introduction of a net wealth tax, capital gains, and general gift taxes in India (DTC, 2018). These taxes were included to form part of the Indian Wealth Tax Act of 1957 (Wealth Tax Act), and the Gift Tax Act of 1958 (Gift Tax Act) (DTC, 2018). The introduction of these taxes was to address issues regarding tax evasion, an individual's financial capability to settle the tax account, and matters of fair redistribution (DTC, 2018). In 1992, certain recommendations were made as per the tax reforms committee report, to restrict wealth tax to unproductive assets or wealth (DTC, 2018). Unproductive assets would include amongst others, jewellery and luxurious cars (Batra, 2015). The Wealth Tax Act was revised in 1993, however, due to challenges in the classification of productive and unproductive assets, discrepancies in valuation methods used, non-collection of these taxes, and the overall administration thereof, the wealth tax was abolished in 2015 (DTC, 2018, Pandey 2006). An additional 2% surcharge tax was then introduced and charged on the high-income earners which would make up for the lost revenue because of the abolishment of the Wealth Tax Act in India. The Gift Tax Act was abandoned in 1998 (DTC, 2018). CGT now forms part of the Indian ITA and is charged on the capital gain from the transfer to capital assets effective from 1981 (PWC, 2019).

The Estate Duty Act 1953 was also abolished in 1985 (Clear Tax, 2019). The Estate Duty Act was initially introduced in response to closing the wealth gap in India, however it received a lot of criticism in its complexity and valuation methods. This was tax levied on the value of property of the individual at the time of their death (Dutta & Malhotra, 2018). The tax rate at the time had already progressed to up to 85% on the value of property (Dutta & Malhotra, 2018). However, there are speculations, that the Indian government is considering the re-introduction of estate duty in their tax policy (Dutta & Malhotra, 2018).

Therefore, the equivalent taxes applicable to the transfer of capital assets when compared to South Africa are CGT, stamp duty and STT (PWC, 2019).

4.3.2 Capital Gains Tax

Provisions regulating CGT are included in sections 45 to 56 of the Indian ITA. Section 45 of the Indian ITA defines capital gains as gains on the transfer of capital assets, and these gains are included as part of the taxable income of the individual (KPMG, 2019a).

4.3.2.1 Capital assets

The Indian ITA makes a distinction between short term and long-term capital assets, which would also be taxed differently (Clear Tax, 2019). Short term capital assets are capital assets held for a period equal to or less than 36 months as per section 2 of the Indian ITA (KPMG, 2019a). This period was however reduced to 24 months during the 2017/2018 fiscal year for fixed property such as house property, land, and buildings (Clear Tax, 2019). Assets such as equity shares, securities, and bonds, would, on the other hand, be considered long term assets if held for a period longer than 12 months (Clear Tax, 2019; KMPG, 2019). It is important to note that section 2 of the Indian ITA provides that; if the capital asset was acquired by means of a gift or inheritance, the years of ownership by the previous owner would be considered in determining the length of ownership (Sec 2, Indian ITA).

4.3.2.2 Exclusions

Section 2 of the Indian ITA excludes any stock-in-trade, consumable stores or raw materials held for the purposes of business or profession; personal goods such as clothes and furniture held for personal use; agricultural land in rural India; and other certain specified bonds from the definition of capital assets. Capital gains tax will also not be applicable in the case where the transfer of the capital assets constitutes a gift, an inheritance, or is to an irrevocable trust as provided by Section 47 of the Indian ITA.

4.3.2.3 Cost of the asset

The value of the asset will comprise the costs incurred when the asset was acquired, cost to improvements excluding improvements made prior 01 April 1981, plus any costs incurred exclusively for the said transfer (Sec 55, Indian ITA). The cost for the self-occupied property will be nil as per section 54 and exempt as per section 54F of the Indian ITA. Also, important to note, is that section 55 of the Indian ITA provides for STT not to form part of the cost of the capital asset in determining the cost of equity shares and securities.

4.3.2.4 Capital gain

The Indian ITA provides for different taxation of a capital gain on short term and long-term capital assets (Clear Tax, 2019). The timing of the transfer of an asset is the year the transfer took place as per section 45 of the Indian ITA. The consideration received from the transfer will be reduced with the cost of the capital asset, to calculate the gain or loss. Gains on long term capital assets other than equity shares or units of equity-oriented fund will be taxed at 20%, while gains on equity shares or units of equity-oriented fund will be taxed at 10%, but exempt up to Rs1 lakh (Clear Tax , 2019; KPMG, 2019a). Gains on short term capital assets will be fully added to the normal income and taxed per the income tax sliding scale (Sec 45, Indian ITA), except in the case where STT is applicable, in which case the gain will be taxed at 15%. Important to note is that capital losses can be offset against capital gains for the year, and if not, they are carried forward to be set-off against future capital losses, however they should be set-off within eight subsequent tax years (KPMG, 2019a).

4.3.3 Stamp Duty

Stamp duty, which is similar to transfer duty in South Africa, is levied as per section 3 of the Indian Stamp Act of 1899 (Indian Stamp Duty Act) (Paisabazaar, 2019). This tax is levied on the transfer of the property, at the time of ownership change, and forms part of the cost of acquiring the property (Indian Stamp Duty Act). The stamp duty rates vary from state to state and is levied at a rate of between 5% and 8 % of the value of the property (Paisabazaar, 2019).

4.3.4 Securities Transfer Tax

STT is levied on the sale of the securities held in entities listed on the recognised stock exchange of India and is legislated by the Securities Transaction Tax Rules of 2004 (STT rules; KMPG, 2019). The STT rates vary between 0.001% and 0.2% and are payable by either the buyer or the seller, depending on the type of security being sold (STT rules).

4.3.5 Conclusion

In summary, India does not have estate duty and donations tax (PWC, 2019). The taxes applicable to the transfer of capital assets in India are CGT, transfer duty, and STT, and are all applicable during the lifetime of the individual (PWC, 2019). Very important, CGT is not levied on the estate of the person when they die (Sec 47, Indian ITA).

4.4 Australia

4.4.1 Background

Australia is considered a developed country (Macro Business, 2015), and some of its tax policy, such as its CGT principles, is known to have formed the basis for the South African tax policy (Ramson, 2014). In the 1970s, Australia abolished its wealth transfer taxes due to compliance issues, tax avoidance by individuals especially using trusts, as well as the high compliance costs that had to be incurred by smaller estates (Ramson, 2014; Arendse & Stack, 2018). This process ended with the abolishment of both death taxes and gift taxes in all Australian states by 1980 and led to the introduction of CGT in 1985 (Bruwer, 2016). CGT forms part of the Australian Income Tax Assessment Act (38 of 1997) (Australian ITA) (Bruwer, 2016). Consequently, Australia does not have any estate or death taxes, inheritance or gift taxes, but only CGT (Ramson, 2014).

We will now consider the effects of CGT on the transfer of capital assets in Australia.

4.4.2 Capital Gains Tax

Before the introduction of CGT, capital gains were not taxed in Australia, and most gains were also excluded from income tax (Reinhardt & Steel, 2006) Arguments that led to the introduction of CGT included the absence of tax on capital gain which distorted investment towards capital assets, as returns were mainly measured in the form of capital gains and not income generated from the asset, and resulted in less efficient investment decisions (Reinhardt & Steel, 2006). CGT is tax charged on realised capital gains and losses on assets after 19 September 1985 (Ramson, 2014). Since 1985 only real gains were taxable and an indexation system applied, however, from 1999 a capital gains discount was introduced which resulted in 50% of the normal tax rates being applicable to the capital gains realised for assets held for at least one year (Reinhardt & Steel, 2006).

The CGT provisions are legislated by chapter 3 of the Australian ITA (Ramson, 2014). The four building blocks of CGT as mentioned by Olivier (2007) will now be considered, which include disposal, proceeds, asset, base cost.

4.4.2.1 Disposal

A disposal event per section 104-5 of the Australian ITA is when the individual enters a contract for the sale of the capital asset, or when the individual stops being the owner, or when the asset is transferred to a trust (Sec 104, Australian ITA). However, it is important to note that, there is no ownership change if the previous owner continues to be the beneficial owner of the asset (Bruwer, 2016). For CGT purposes, death is not a triggering event as is the case in South Africa. Instead the liability is deferred until such time that the heir disposes of the asset, with certain exceptions (Ramson, 2014).

4.4.2.2 CGT Asset

An asset for purposes of CGT is defined in section 108-5 of the Australian ITA as any kind of property or a legal or equitable right that is not property. These include amongst other land and buildings, as well as shares in a company as per note 1 to section 108-5 of the Australian ITA.

4.4.2.3 Exemptions and Exclusions

Certain exemptions from CGT asset include the Individual's main residence (Sec 118-B, Australian ITA), personal use assets acquired for or less than $10 000 (Sec 100-25 & 118-10, Australian ITA) and collectables acquired for or less than $500 (Sec 100-25 & 118-10, Australian ITA) (Reinhardt & Steel, 2006). Section 128-15 of the Australian ITA also disregards CGT for the transfer of assets as part of a testamentary gift or will, in which the capital gain is deferred to when the beneficiary disposes of the assets in the future (Bruwer, 2016).

4.4.2.4 Base Cost

The base cost of the asset as per section 110-25 includes the actual amount paid or the market value of any other property given in exchange for the acquisition; incidental costs; maintenance costs; interest of borrowed funding in respect of the property; any capital expenditure incurred; and any other title-related costs such as stamp duty (Ramson, 2014).

4.4.2.5 Calculating CGT

The framework to calculate CGT as per section 100-15 of the Australian ITA includes; determining if a CGT event exists and considering if any exemptions apply. If the proceeds exceed the base cost of the asset, then there is a capital gain (Sec 100-15, Australian ITA). If the proceeds are less than the base cost of the asset, then there is a capital loss (Sec 100-15, Australian ITA). The individual will apply the CGT discount and include in their taxable income the capital gain at 50% if the asset is held for longer than 12 months, but the full capital gain amount will be included in taxable income if held for a shorter period (ATO, 2019; Reinhardt & Steel, 2006). The capital losses are offset against capital gains for the current year, and if there are no sufficient gains for the year, the assessed capital loss is carried forward to be offset against future capital gains (KPMG, 2018).

4.4.3 CGT and donations

The disposal of an asset by way of a gift is considered a realization event, however the proceeds and base cost are both considered to be at market value, resulting in a nil capital gain or loss (KPMG, 2018). Therefore, there is no CGT consequences for donations made in Australia.

4.4.4 CGT at death

In the absence of death duties or estate taxes, the Australian tax law makes provision for special rules in respect of CGT on the transfer of assets to a beneficiary from a deceased estate or superannuation entitlements to beneficiaries from a deceased estate (PWC, 2019). Section 128-10 also disregards CGT for the transfer of assets as part of a deceased estate, in which the capital gain is deferred to when the beneficiary disposes of the assets in the future (Bruwer, 2016). However, should the deceased individual bequeath the assets to a tax-advantaged entity, or complying superannuation entity or to a foreign resident at the time of death, then the capital gains and losses will not be disregarded (Sec 104-215, Australian ITA; Ramson, 2014).

4.4.5 Stamp Duty

Stamp duty is applicable to the transfer of property, motor vehicles, insurance policies, shares and other personal or business assets (ATO, 2019). It is legislated by the Australian Capital Territory Stamp Duty of 1969 (ACTSD). The stamp duty payable on the transfer of any applicable asset is calculated based on a sliding scale of up to 5.75% (ATO, 2019). The rate is also applicable to the jurisdiction in which the asset is placed (ATO, 2019). The person acquiring the asset will be liable to pay the stamp duty (ATO, 2019). The Second Schedule of the ACTSD makes provision for certain exemptions.

4.4.6 Conclusion

Therefore, in summary, Australia does not have estate duty and donations tax, but has CGT, and stamp duty which is similar to transfer duty and STT. This means that, the growth of assets is taxed, but no tax is payable on donations made or on the estate of the individual at death.

4.5 Conclusion

The secondary objective in par 1.4.2 (iii) was successfully addressed in that the equivalent wealth taxes in the three countries were analysed. The brief background on tax policy was considered, especially for Namibia, and it was found that the suggested wealth gap was lower than that of South Africa, thus the non-existence of CGT, estate duty and donations tax in Namibia. Consequently, the appreciation in capital value of the assets owned by a natural person in Namibia is not taxed, instead, the wealth is seemingly redistributed through the government social expenditure (Kostiainen, 2018). The introduction and abolishment of certain wealth taxes was also considered, especially relating to wealth taxes and death taxes in India and Australia. The implementation of these taxes was to address the wealth inequality and raise revenue, however, the administrative burden and compliance challenges led to the decision to abolish the death taxes as well as the gifts taxes in these countries (Arendse & Stack, 2018; Ramson, 2014). The growth in the value of the asset is thus taxed through the application of CGT during the lifetime of the individual, however, when the person dies, CGT will generally not apply except when the heirs are tax-advantaged entities in Australia. Other property transfer taxes include transfer duty, STT and stamp duty, and are similar to transfer duty and STT in South Africa.

The following chapter will provide a comparative summary of the wealth transfer taxes applied in South Africa, Australia, India, and Namibia on the transfer of capital assets, to consider the fairness of the South African taxes.

CHAPTER 5: A COMPARATIVE SUMMARY BETWEEN SOUTH AFRICA, AUSTRALIA, INDIA, AND NAMIBIA

5.1 Introduction

The previous chapters analysed and applied the different taxes which would arise with the transfer of capital assets by a natural person in South Africa, and included CGT, donations tax, estate duty, transfer duty, and STT. For illustration purposes, these taxes were applied to three classes of assets and were considered for the different triggering events, namely sale and donations during the lifetime of the individual, and at the time of death of the individual. Chapter 4 addressed the secondary objective which analysed the equivalent wealth taxes in Namibia, India, and Australia. It considered the brief background on tax policy, and the history of the introduction and abolishment of certain wealth taxes applicable to the transfer of capital assets.

This chapter will address the secondary objective in par 1.4.2 (iv) and will provide a comparative summary of the wealth transfer taxes applied in South Africa, Australia, India, and Namibia on the transfer of capital assets. The differences and similarities in these countries will be highlighted to consider the fairness of the wealth transfer taxes in South Africa.

The wealth transfer taxes to be compared are CGT, estate duty, donations tax, transfer duty, and STT.

5.2 Capital Gains Tax

5.2.1 South Africa

CGT was introduced to the ITA with effect from 1 October 2001 and applies to all asset disposals occurring on or after this date (Marcus, 2007; Basson, 2015). The tax is levied in terms of section 26A and the Eighth Schedule to the ITA (Patel, 2002). Any form of disposal of a capital asset will attract CGT in South Africa (Papp, 2012). This includes the sale during the lifetime of the individual, donation of the asset during lifetime and on the estate of the person upon death of their (Patel, 2002). The individual will be liable for income tax on any capital gain at a maximum inclusion rate of 40% (Par 10, Eighth Schedule). Any assessed capital losses will not be used to reduce the taxable income of the individual but will be carried forward to the next tax years and offset against future capital gains (Par 9, Eighth Schedule; Stein, 2019). The Eighth Schedule allows for an annual exclusion of R40 000 per annum during the lifetime of a natural person and R300 000 in their year of death (Par 5, Eighth Schedule; Loubser, 2016). Certain exemptions and roll-over rules apply, including capital gains and losses from certain disposals being disregarded (Eighth Schedule, Stein, 2019).

5.2.2 Australia

In Australia, the CGT provisions are included as part of the Australian ITA. CGT provisions are applicable to the transfer of capital assets on or after 20 September 1985 (Bruwer, 2016). The natural person will be liable for income tax on the capital gains at a maximum inclusion rate of 50% for capital assets held for a period longer than 12 months, and at 100% for capital asset held for a shorter period (ATO, 2019). Any capital losses will be offset against the current year's capital gain, or otherwise carried forward to be offset against future capital gains (KPMG, 2018). The disposal of an asset by way of a gift is considered a realization event, however the proceeds and base cost are both considered to be at market value at the time of disposal, resulting in a nil capital gain or loss for the individual (KPMG, 2018). If the natural person dies, no CGT will not be levied on the estate of the deceased, unless if such assets have been bequeathed to a tax-advantaged entity (Sec 128, Australian ITA). The capital gain will, therefore, be deferred until the beneficiary disposes of the assets in future (Bruwer, 2016).

5.2.3 India

The provisions regulating CGT form part of the Indian ITA and apply to assets transferred on or after September 1981. The natural person will be liable for income tax on the capital gains at an inclusion rate dependent on whether the asset is classified as a long term or short-term asset (Clear tax, 2019; KPMG, 2019a). Capital gains on long term capital assets other than equity shares or units of equity-oriented funds will be included at 20%. Capital gains on equity shares or units of equity-oriented funds will be included at 10% with an exemption of up to Rs1 lakh (Indian ITA). Capital gains on short term capital assets will be included at a rate of 100% in the normal income. In a case where STT is applicable, the capital gain will be included at rate of 15%. Capital gains tax will not be applicable in the case where the transfer of the capital assets constitutes a gift, an inheritance, or is to an irrevocable trust as provided by Section 47 of the Indian ITA. Capital losses are off-set against capital gains of the current year, or otherwise carried forward and set off against future capital gains. The roll-over period is however, limited to eight tax years (KPMG, 2019a).

5.2.4 Namibia

Namibia does not have a tax on capital gains. Thus, no tax is charged on the capital appreciation of the asset during the lifetime of the individual or upon their death (PWC, 2019).

5.3 Donations Tax

5.3.1 South Africa

The legislation applicable to donations tax is covered under section 54 to 64 of the ITA. Donations tax was introduced as part of the ITA in 1955 by way of an amendment (Basson, 2015). A donation occurs when a donor transfers property as defined in section 55 of the ITA for no consideration or for an amount lesser than the market value of the property as per section 58(1) of the ITA (van der Mescht, 2012). Donations tax is levied at a flat rate of 20% on the cumulative value of property not exceeding R30 million and 25% on the cumulative value of property exceeding R30 million in accordance with section 64 of the ITA. Section 55(3) of the ITA deems the effective date of a donation to be the date when all the legal formalities of transferring the asset have been met. Sections 56(1)(c) and (d) exempts the donation by a donor because of death (SARS, 2019). Therefore, no donations tax will be levied on the property transferred by a donor upon their death.

5.3.2 Australia

Australia abolished its gifts taxes in 1985, due to the inefficient administration of the tax, non-compliance and tax avoidance by persons (Arendse & Stack, 2018). Therefore, Australia does not have gifts or donations tax, and thus no tax is charged on donation of capital assets.

5.3.3 India

The Gift Tax Act was introduced in 1956 as part of the tax reforms by the Kaldor committee, however, abolished in 1998 due to challenges relating to the administration of the tax (DTC, 2018). Thus, India does not have gifts or donations tax, and consequently no tax is charged on donation of capital assets.

5.3.4 Namibia

Namibia does not have gifts taxes or donations tax. Consequently, the donation of a capital asset is not taxed (PWC, 2019).

5.4 Estate Duty

5.4.1 South Africa

The Estate Duty Act was introduced in 1955 and is applicable to persons who died on or after 1 April 1955 (Basson, 2015; Muller, 2010). When an individual dies, a new taxpayer called deceased estate is created, and these provisions are covered under sections 9HA and 25 of the ITA, while estate duty represents tax charged on the net estate of the deceased person (Muller, 2010; Delport, 1997). The estate duty rate is levied at 20% on the dutiable amount of the estate not exceeding R30 million and 25% on the amount exceeding R30 million in terms of the First Schedule of the Estate Duty Act (de Koker & Williams, 2019).

5.4.2 Australia

Australia does not have estate duty. The death taxes were abolished in 1980 due to administrative challenges, tax avoidance issues, and the high compliance costs that had to be incurred by smaller estates (Arendse & Stack, 2018). Consequently, no tax is charged on the estate of the individual when they die.

5.4.3 India

The Estate Duty Act 1953 was abolished in 1985 (Clear Tax, 2019) due to its complexity and the taxable amount valuation methods. This was a tax levied on the value of property of the individual at the time of their death (Dutta & Malhotra, 2018). The tax rate at the time when it was abolished had already progressed to up to 85% on the value of property (Dutta & Malhotra, 2018). There are however speculations, that the Indian Government is considering the re-introduction of estate duty in their tax policy (Dutta & Malhotra, 2018). Thus, there is currently no tax being charged on the estate of a natural person whey they die.

5.4.4 Namibia

Namibia does not have estate duty, and therefore no tax is charged on the value of the individual's estate at the time of their death (PWC, 2019).

5.5 Transfer Duty and Stamp Duty

5.5.1 South Africa

Transfer duty is legislated by the TDA, and it is an indirect tax payable when a person purchases fixed property on or after 1 January 1950 (Sec 2, TDA; Le Grange, 2013). The rates applicable are included in table 2.7.4 in Chapter 2. Transfer duty is paid by the purchaser and forms part of the acquisition costs of the asset.

5.5.2 Australia

Instead of transfer duty, Australia has a stamp duty, which is equivalent to transfer duty and STT. It is legislated by the ACTSD and is applicable to the transfer of property, motor vehicles, insurance policies, shares and other personal or business assets (ATO, 2019). The maximum rate is 5.75% on the value of the property (ATO, 2019). Stamp duty is paid with the acquisition of the asset by the person acquiring the asset.

5.5.3 India

Instead of transfer duty India has stamp duty. Stamp duty is legislated by the Indian Stamp Duty Act. This tax is levied on the transfer of fixed property (Indian Stamp Duty Act). Stamp duty is paid with the acquisition of the asset by the purchaser. The stamp duty rates vary between 5% and 8 % of the value of the property, depending in which the state the person resides (Paisabazaar, 2019).

5.5.4 Namibia

The Namibian TDA is mostly based on the South African principles of transfer duty (Franzsen & McCluskey, 2017). The transfer duty rate is levied based on the value of the property. The rates applicable are as included per table 4.1.2 in chapter 4. Transfer duty is payable by the purchaser and forms part of the acquisition cost of the asset.

5.6 Securities Transfer Tax

5.6.1 South Africa

STT is legislated by the STT Act and the Securities Transfer Tax Administration Act. The STT Act came into effect on 01 July 2008 and was replaced the Uncertified Securities Tax Act, 1998. The previous Stamp Duty Act (77 of 1968) was also repealed soon thereafter in April 2009 (Sonnenbergs, 2008). STT is levied on the transfer of securities held in a South African company or close corporation, as well as a foreign company listed on the South African stock exchange at a rate of 0.25% on the value of the shares. The purchaser is liable to pay the STT, and forms part of the acquisition costs of the asset.

5.6.2 Australia

Instead of transfer duty Australia has a stamp duty, which is equivalent to transfer duty and STT. It is legislated by the ACTSD and is applicable to the transfer of property, motor vehicles, insurance policies, shares and other personal or business assets. The maximum rate is 5.75% on the value of the property (ATO, 2019). Stamp duty is payable by the purchaser.

5.6.3 India

STT is legislated by the STT rules. It is levied on the sale of securities held in entities listed on the recognised stock exchange of India (KMPG, 2019). Rates vary between 0.001% and 0.2% on the value of the shares. Depending on the contract of the parties, it is the responsibility of both the seller and buyer to ensure that the STT is recovered and paid over.

5.6.4 Namibia

Namibia does not have STT, but stamp duty which is equivalent to STT. The Namibian Stamp Duty Act is levied on the transfer of deeds, agreement or contracts, as well as marketable securities and other share transactions (Franzsen & McCluskey, 2017). The stamp duty rate is dependent on the nature of the transaction and is summarised in table 4.1.3 in chapter 4. The purchaser will be liable to pay the stamp duty and it forms part of the cost of acquiring the asset.

5.7 Similarities and differences highlighted

5.7.1 Similarities

Therefore, from the above discussions the main similarities noted are the application of transfer duty and STT, which in principle forms part of the Stamp Duty Act in certain instances. Namibia charges transfer duty to its fixed property and stamp duty to transfer of shares which is equivalent to STT in South Africa. India, on the other hand, applies stamp duty on the transfer of fixed property and has STT on the transfer of shares. Australia applies stamp duty to both its fixed property and shares, which would be equivalent to the transfer duty and STT in South Africa. In all four countries, these taxes are generally payable by the person acquiring the asset and forms part of the acquisition costs of the asset.

The other similarity is the application of CGT to the transfer of capital assets in South Africa, India, and Australia. This is tax on the disposal of capital assets which is basically a tax on the growth in the value of the asset during the lifetime of the individual. Though there is a deemed disposal of capital assets at death in South Africa, Australia deems such disposal only if the assets are bequeathed to a tax-advantaged taxpayer and otherwise defers the CGT to when the heir disposes of the asset in future. India, however, exempts the transfer of assets due to death from CGT.

5.7.2 Differences

The identified differences are the absence of estate duty and donations tax in Australia, India, and Namibia. The reason for abolishment of these taxes in Australia and India related to non-compliance by individuals and the administrative burden and challenges in applying these taxes (Arendse & Stack, 2018). Also, in Australia there is the issue of fairness in the cost of compliance that smaller estates must bear to comply with these tax laws (Arendse & Stack, 2018). Also, there has been an ongoing argument regarding double taxation in cases where you have both estate duty and CGT. Interesting to note is that, Australia and India seem to have introduced CGT in the periods when the death and gift taxes were abolished

Namibia's tax policy has always been based on the principles of the South African tax policy, however, it had not evolved as much as the South Africa tax policy in terms of wealth taxes over (PWC, 2019). Namibia seems to address its wealth redistribution through its budget expenditure as opposed to tax revenue as in South Africa (Kostiainen, 2018). Thus, the only transfer taxes are property transfer taxes which include stamp duty and transfer duty, and does not have CGT, estate duty, and donations tax.

The table below summarises the taxes applicable in different countries.

Table 5.7 A summary of the taxes applicable in the different countries

TAX TYPE	DEVELOPING COUNTRIES			DEVELOPED COUNTRY
	SOUTH AFRICA	NAMIBIA	INDIA	AUSTRALIA
CGT	✔	Not applicable	✔	✔
Donations Tax	✔	Not applicable	Not applicable	Not applicable
Estate Duty	✔	Not applicable	Not applicable	Not applicable
Stamp Duty	Not applicable	✔	✔	✔
Transfer Duty	✔	✔	Not applicable	Not applicable
STT	✔	Not applicable	✔	Not applicable

Source: Author's own compilation from above information per legislation

5.8 Conclusion

Therefore, from the above discussions it evident that CGT is the only tax that seems to be common amongst the selected countries, except for Namibia, which does not tax asset growth or capital profits from the transfer of an asset. Transfer charges such as transfer duty, stamp duty, and STT are applied in all four countries. The identified differences include the tax on the estate of the person when they die and donations tax for donated assets, which were previously applied and subsequently cancelled by both India and Australia. Considering the fairness of taxes applied, South Africa applies CGT at the date of death together with estate duty on the estate of the person, while India and Australia generally do not apply CGT upon the death of the person, unless in special circumstances. CGT is deferred and is incurred by the heir when they dispose of the asset in future. Also, important to note is that CGT was introduced in the period that the estate duty and gift taxes were abolished in Australia and India, which could suggest that CGT can be viewed as a type of tax that made provision for lost income with the cancellation of these taxes.

The secondary objective in this chapter was successfully addressed in that a comparative summary of the wealth transfer taxes applied in South Africa, Australia, India, and Namibia was provided, and the key differences and similarities were highlighted. Thus, apart from all other taxes, the fairness of having CGT applied with the donation of a capital asset along with donations tax, as well as at death along with estate duty in South Africa, seems doubtful. This may continue to influence individuals to find ways to safeguard or reduce the tax value of their capital assets for for estate planning purposes.

The following chapter will conclude on the findings of the study and consider whether the study could successfully address the research objectives.

CHAPTER 6: CONCLUSION

6.1 Introduction

It was established in chapter 1 that the effects of wealth taxes on the transfer of capital assets, the individual's perception on the fairness thereof and the resulting tax benefit will influence their decision on how they choose to deal with their productive assets. This choice was indicated to have an impact not just on the personal aspirations of the individual but also the economy of the country.

The research problem to be addressed by this study was the fact that there are different types of taxes levied on the transfer of capital assets by a natural person in South Africa. The individual's perception of the fairness of these taxes will influence their decision on how to deal with their assets. The research question drawn from this was, what are the different taxes applicable in South Africa on the transfer of a capital asset, what is the effect thereof, and how do they compare with similar taxes in other countries?

The main objective in answering the research question was to identify, outline and compare how the different wealth taxes are applied to the transfer of a capital asset in South Africa. For illustrative purposes, three classes of assets were selected, namely fixed property, private company shares and listed company shares. The different triggering events of a transfer were considered for the different taxes. In considering the fairness of the South African tax policy, a comparison was done with other countries, namely Australia, India, and Namibia. An analysis was also done on the taxes applicable in these countries upon transfer of capital assets.

The secondary objectives drawn from the main objective were dealt with as follows in the different chapters:

i. A brief history of what comprises wealth tax in South Africa and issues surrounding the classification and exclusion of certain taxes as wealth taxes was discussed. The different taxes applicable to the transfer of capital assets in South Africa were identified and analysed, considering the different triggering events. These triggering events included an asset sold or donated during the lifetime of the individual, assets transferred to a trust, and ownership retained in the individual's personal name until they die and the effect on their estate. This research objective was addressed in chapter 2.
ii. The taxes identified in chapter 2 were then illustrated by applying these to three selected classes of capital assets. These included fixed property, shares held in a private company, and shares held in a listed company. The triggering events considered included when an asset is sold or donated during the lifetime of the individual, assets transferred to a trust,

and ownership retained in the individual's personal name until they die and the effect on the natural person's estate. This research objective was addressed in chapter 3.

iii. Taxes equivalent to the wealth transfer taxes identified in chapter 2 were identified and analysed for Australia, India, and Namibia. This included a brief background on tax policy, as well as the history on the application or non-application of these taxes. This research objective was addressed in chapter 4.

iv. A comparable summary of the wealth transfer taxes applied in South Africa, Australia, India, and Namibia on the transfer of capital assets was then compiled from the information discussed in the preceding chapters. The differences and similarities were highlighted to consider the fairness of the South African tax policy on the transfer of a capital asset in South Africa. This research objective was addressed in chapter 5.

The findings from the above investigations are now summarised.

6.2 Secondary objective i

The secondary objective for this chapter was successfully addressed in that the key aspects relating to the application of the identified taxes on the transfer of capital assets were appropriately analysed. A brief history of the introduction of each tax, the events in which these taxes would be triggered, the exemptions and exclusions of each tax, as well as the applicable rates to each tax were analysed.

The South African wealth taxes applicable on the transfer of capital assets include, CGT, estate duty, donations tax, transfer duty and STT (Muller 2010; Basson, 2015).

CGT is legislated in accordance with the Eighth Schedule, and is levied on disposals occurring on or after 01 October 2001 (Patel, 2002). CGT is triggered in all forms of transfer both during the lifetime of the individual and when the person dies. The four buildings blocks of CGT that need to be addressed in determining CGT are, 'disposal', 'asset', 'proceeds', and 'base cost' (Olivier, 2007). Certain exclusions and exemptions are applicable to certain disposals. Annual exclusions are applicable to the net capital gain of the individual in terms of paragraph 5 of the Eighth Schedule. A R40 000 annual exclusion if applicable for disposals made during lifetime and R300 000 for the deemed disposals at death. The taxable capital gain is included in the person normal taxable income at a rate of 40% (Sec 26A, ITA).

Donations tax is legislated in accordance with sections 54 to 64 of the ITA, and is levied on all transfers that meet the definition of donation in terms of section 55 of the ITA. Donations tax is only applicable for donations made during the lifetime of the individual. Certain donations are exempt from donations tax in terms of section 56 of the ITA (Loubser, 2016). The first R100 000 value donated a natural person is excluded from donations tax in terms of section 56 of the ITA (Loubser, 2016). Donations tax is levied at 20% on the value of donations made.

Estate duty is legislated in accordance with the Estate Duty Act, and is applicable to persons who died on or after 1 April 1955 (Muller, 2010; Basson, 2015). Estate duty is charged on the net estate value of the individual at the time of his death. The exemptions, as well as the annual exclusions ensure that only those with assets worth significant value will be liable for estate duty (Delport, 1997). The rate is levied at 20% on the dutiable amount of the estate not exceeding R30 million and 25% on the amount exceeding R30 million in terms of the First Schedule of the Estate Duty Act (de Koker & Williams, 2019).

Transfer duty is legislated in accordance with the Transfer Duty Act and has been in effect since 1950. Transfer duty is applicable on the purchase of fixed property and is payable by the buyer. The rates applicable are as per table 2.7.4 in chapter 2.

STT is legislated in terms of the STT Act and has been in effect since 2008. STT is applicable to the transfer of securities held in both private and listed companies, including foreign entities listed on the South African JSE. The STT rate is levied at 0.25% on the value of the shares at the time of transfer.

All these taxes, except for estate duty will also be applicable to assets held in a trust, and the donor may be liable to pay taxes on the transfer of these assets while he is still alive. When assets are transferred to the trust, the growth in the value of the asset is transferred and consequently, the estate of the person does not grow with that value, and thus estate duty is not applicable (Hoon, 2013). Important to note though is that, if there is an outstanding loan between the trust and the donor, especially for assets transferred on a low-interest loan, that debt will form part of the estate of the deceased and attract estate duty (Loubser, 2016).

6.3 Secondary objective ii

The secondary objective in par 1.4.2 (ii) was successfully addressed in that the tax implications for the different triggering events were successfully highlighted for each class of asset held by Mr. Wealthy. These classes of assets included fixed properties, private company shares and listed company shares.

The results of the illustration are summarised in the table below.

Table 3.6 A summary of the tax implications for the individual on selected assets

TAX TYPE	TYPE OF ASSET	OWNERSHIP IN THE NAME OF INDIVIDUAL TRIGGERING EVENTS		
		SALE DURING LIFETIME	**DONATION DURING LIFETIME**	**AT DEATH**
CGT	Fixed Property	✔	✔	✔
	Private Shares	✔	✔	✔
	JSE Shares	✔	✔	✔
Donations Tax	Fixed Property	*Not applicable*	✔	*Not applicable*
	Private Shares	*Not applicable*	✔	*Not applicable*
	JSE Shares	*Not applicable*	✔	*Not applicable*
Estate Duty	Fixed Property	*Not applicable*	*Not applicable*	✔
	Private Shares	*Not applicable*	*Not applicable*	✔
	JSE Shares	*Not applicable*	*Not applicable*	✔
Transfer Duty (Purchaser liable)	Fixed Property	✔	*Not applicable*	*Not applicable*
	Private Shares	*Not applicable*	*Not applicable*	*Not applicable*
	JSE Shares	*Not applicable*	*Not applicable*	*Not applicable*
STT (Purchaser liable)	Fixed Property	*Not applicable*	*Not applicable*	*Not applicable*
	Private Shares	✔	✔	*Not applicable*
	JSE Shares	✔	✔	*Not applicable*
ASSETS DONATED TO A TRUST BY THE INDIVIDUAL				
CGT	All assets	✔	✔	*Not applicable*
Donations Tax	All assets	*Not applicable*	✔	*Not applicable*
Estate Duty	All assets	*Not applicable*	*Not applicable*	*Not applicable*
Donations Tax, Estate Duty	Low-interest loan outstanding	✔	✔	✔

Source: Authors' own compilation from the application of legislation presented above

It is evident that different triggering events will result in different tax implications, while certain taxes are unique to certain types of assets. Also, Mr. Wealthy may still be liable for tax on assets donated by him to the trust during his lifetime. The assets transferred to the trust will not be included in his estate, except for the outstanding loan amount from the interest- free loan given to the trust with the transfer of the property to the trust (Delport, 1997).

Also, a triggering event may attract more than one type of tax for a capital asset, and consequently effect double taxation (Ramson, 2014). For instance, A donation event will attract both donations tax and CGT, while a death event will attract both estate duty and CGT (Ramson, 2014). This may negatively affect the perception of the individual regarding their view on the fairness of these taxes.

6.4 Secondary objective iii

The secondary objective in par 1.4.2 (iii) was successfully addressed in that the equivalent wealth taxes in Australia, India and Namibia were identified and analysed. A brief history on tax policy and the history of these different taxes were considered.

The wealth gap of Namibia was lower than that of South Africa, which could influence the difference in tax policy. Also, Namibia is seemingly addressing its wealth inequality gap and wealth redistribution through its social government expenditure (Kostiainen, 2018). Therefore, Namibia does not have CGT, estate duty and donations tax. Consequently, Namibia does not tax the growth in the value of the individual's assets or value of their estate when they die. It does however have transfer duty for the purchase of property and stamp duty on the transfer of certain deeds, marketable securities, agreements and contracts (PWC, 2019). Transfer duty is legislated in accordance with the Namibian TDA of which its principles were largely based on the South African TDA principles. The stamp duty is legislated in accordance with the Namibian Stamp Duty Act (PWC, 2019).

The Estate Duty Act was abolished in India in 1985. Subsequently the Wealth Tax Act and the Gifts Tax Act were also abolished in India during 2015 and 1998 respectively (DTC, 2018). The reasons for abolishing these taxes are mainly due to the administrative burden and the complex valuation methods used in calculating the taxable amounts (DTC, 2018). Therefore, India does not have estate duty and gift tax (PWC, 2019). The taxes applicable to the transfer of capital assets in India are CGT, transfer duty, and STT (PWC, 2019). CGT is legislated in accordance with sections 45 to 56 of the Indian ITA and is a tax on capital gains. Gains on long term capital assets other than equity shares or units of equity-oriented fund will be taxed at 20%, while gains on equity shares or units of equity-oriented fund will be taxed at 10%, but exempt up to Rs1 lakh (Clear Tax, 2019). Gains on short term capital assets will be fully added to the normal income and taxed per the income tax sliding scale (Sec 45, Indian ITA), except in a case where STT is applicable, in which case the gain will be taxed at 15%. Stamp duty is legislated in accordance with the Indian Stamp Duty Act and is levied on transfer of property. STT is legislated in accordance with the STT rules and is levied on the sale of shares.

Australia does not have estate duty and donations tax (Ramson, 2014). The administrative burden and compliance challenges led to the decision to abolish the death taxes and the gifts taxes in Australia (Arendse & Stack, 2018; Ramson, 2014). However, the growth in the value of the asset is taxed through the application of CGT during the lifetime of the individual. When the person dies, CGT is deferred until the heir disposes of the asset in future, except when the asset is bequeathed to a tax-advantaged entity (Ramson, 2014). The CGT provisions are legislated in accordance with chapter 3 of the Australian ITA. Other property transfer taxes include stamp duty, which is a tax on the transfer of property and shares. Stamp duty is legislated in accordance with the ACTSD.

6.5 Secondary objective iv

The secondary objective was successfully addressed in that the comparative summary of the wealth transfer taxes applied in South Africa, Australia, India, and Namibia was provided, and the key differences and similarities highlighted.

The table below clearly highlights the similarities and differences of the different countries.

Table 5.7 A summary of the taxes applicable in the different countries

TAX TYPE	DEVELOPING COUNTRIES			DEVELOPED COUNTRY
	SOUTH AFRICA	NAMIBIA	INDIA	AUSTRALIA
CGT	✔	Not applicable	✔	✔
Donations Tax	✔	Not applicable	Not applicable	Not applicable
Estate Duty	✔	Not applicable	Not applicable	Not applicable
Stamp Duty	Not applicable	✔	✔	✔
Transfer Duty	✔	✔	Not applicable	Not applicable
STT	✔	Not applicable	✔	Not applicable

Source: Author's own compilation from above information per legislation

6.6 Conclusion

Therefore, the wealth taxes applicable on the transfer of capital assets in South Africa are CGT, donations tax, estate duty, transfer duty and STT. The application of these taxes is summarised as per secondary objectives i and ii. From the application, evidence of double taxation effects is noted, in which CGT, donations tax and estate duty may be triggered on the same asset.

The international analysis indicates that, other than transfer duty and stamp duty, Namibia does not have CGT, estate duty and donations tax. Consequently, the capital growth in assets and the estate of the person are not taxed in Namibia. India does tax its capital appreciation in assets through the application of CGT, as well as the application of stamp duty and STT, however there is no estate duty and donations tax. Australia also has CGT and stamp duty but does not have estate duty and donations tax. Both India and Australia previously had death taxes and gift taxes, but these were abolished (Basson, 2015). Even though CGT is now applicable in these two countries, there is no CGT liability at death in India, while Australia limits its CGT liability to assets bequeathed to tax-advantaged heirs or entities. Interesting to note is that, even though the UK was not part of our study, a quick overview of their wealth transfer taxes shows that they have CGT and inheritance tax (Ramson, 2014). Death, however, is not a trigger event for CGT in the UK like it is in South Africa. Instead the inheritance tax is applied on the value of the estate at death and certain gifts during the lifetime of the individual, with no effects of double taxation as far as CGT is concerned (Ramson, 2014).

When comparing the South African wealth taxes to that of other countries and the effects of double taxation, the South African policy does not seem fair, which may be attributable to the higher unequal wealth distribution when compared to these countries. Also, the value of the individual's wealth significantly diminishes with the application of all these taxes, especially when they either choose to donate the asset or at death. In encouraging individual wealth development and consequently contribution by the individual towards a stable and growing economy, Ramson (2014) recommends that the effects of double taxation be eradicated and wealth previously owned by the deceased be preserved for future generations as opposed to being significantly diminished at death.

Recommendation for additional studies may include the study on either the abolishment of estate duty or exemption of CGT at death to avoid the effects of double taxation on the estate of the deceased. Also, a more detailed analysis on the application of donations tax could be done to determine whether the current exemptions and exclusions provided for by the ITA are sufficient in the context of double taxation.

REFERENCE LIST

Acts ***see*** Australia

Acts ***see*** India

Acts ***see*** Namibia

Acts ***see*** South Africa

Amand, M. 2011. Three Essays in Macroeconomics (Doctoral dissertation). Available from ProQuest Dissertations and Theses Database. (UMI No. 3496797).

Arendse, J. & Stack, L. 2018. Investigating a new wealth tax in South Africa: Lessons from international experience. *Journal of Economic and Financial Sciences 11(1), a175.* https://jefjournal.org.za/index.php/jef/article/view/175/207 Date of access: 25 May. 2019.

Australia. 1997. Income Tax Assessment Act 38 of 1997.

Australia. 1969. Capital Territory Stamp Duty of 1969

The Australian Taxation Office (ATO). 2019. https://www.ato.gov.au/A-Z-index/AZItems.aspx?sorttype=AZIndex&marketsegment=Entire%20website Date of access: 7 May. 2019.

The Australian Income Tax Assessment Act (38 of 1997).

Australian Capital Territory Stamp Duty of 1969.

Basson, CP. 2015. The implications of wealth transfer taxation in the absence of estate duty (Master's thesis). The University of Cape Town. https://open.uct.ac.za/bitstream/item/16569/thesis_com_2015_bsschr009-thesis.pdf?sequence=1 Date of access: 25 May. 2019

Batra, K. 2015. Chartered Club. Wealth Tax in India abolished & removed. Budget 2015. https://www.charteredclub.com/wealth-tax/ Date of access 2 Sept. 2019.

Bird-Pollan, J.E. 2016. Taxation of Wealth Transfers: A Philosophical Analysis (Doctoral dissertation). Available from ProQuest Dissertations and Theses Database. (ProQuest No. 103082232).

Blossom Wealth Management. 2016. Maslow Meets Wealth Management: The Hierarchy of Needs from a Financial Perspective. http://www.blossomwm.com/maslow-meets-wealth-management-the-hierarchy-of-needs-from-a-financial-perspective. Date of access: 2 Apr. 2019.

Bruwer, SA. 2016. The levying of estate duty and capital gains tax as double tax in South Africa (Master's mini-dissertation). North West University. https://repository.nwu.ac.za/bitstream/handle/10394/26285/SA%20BRUWER%2021842264%20FINAL%20-%20edited.pdf?sequence=1&isAllowed=y Date of access: 5 May. 2019.

Clear Tax. 2019. Online Income Tax - India. https://cleartax.in/s/capital-gains-income/ Date of access 5 Sept. 2019.

Constitution ***see*** South Africa.

Corporate Finance Institute (CFI). 2019. Gini Coefficient. https://corporatefinanceinstitute.com/resources/knowledge/economics/gini-coefficient/ Date of access 22 Oct. 2019.

Cronje & Co. 2019. Wills and Estates. http://www.cronjelaw.com/wills Date of access 22 Oct. 2019.

Crotty, M. 1998. Introduction: The research process (The Foundations of Social Research. *Meaning and perspective in the research process*. Sage Publications, p. 5-11).

Cutcliffe, J.R. & McKenna. H.P. 1999. Establishing the credibility of qualitative research findings: the plot thickens. *Journal of Advanced Nursing* 30(2), 374 – 380.

De Koker, AP. & Williams, RC. 2019. Silke on South African Income Tax. Lexis Nexis Library. https://www.mylexisnexis.co.za/Index.aspx#tabs-panel-3 Date of access: 1 Nov. 2019.

Delport, M. 1997. An analysis and exposition of the definition of property for estate duty purposes with reference to a future capital transfer tax (Master's dissertation). The University of Johannesburg. https://core.ac.uk/download/pdf/18219301.pdf Date of access: 7 Nov. 2019.

Dempster, D. 2002. Capital gains tax: a base cost and valuation appraisal (Master 's dissertation). The University of Natal. https://researchspace.ukzn.ac.za/bitstream/handle/10413/2267/Dempster_Darin_2002.pdf?sequence=1&isAllowed=y Date of access: 7 Nov. 2019.

Dutta, D. & Malhotra, H. 2018. India: Estate Duty Act – A Critical Analysis Of The Journey So Far. http://www.mondaq.com/india/x/708128/inheritance+tax/Estate+Duty+Act+A+Critical+Analysis+Of+The+Journey+So+Far Date of access 2 Sept. 2019.

Easton, D. 1965. A Systems Analysis of Political Life, John Wiley, New York. https://onlinelibrary.wiley.com/doi/abs/10.1002/bs.3830130208 Date of access: 13 Apr. 2019.

Guba, E.G. 1990. The alternative paradigm dialog. (The paradigm dialog. Sage publications, p. 18-27).

Hofmeyr, CD. 2019. Cliffe Dekker Hofmeyr. Trust & Estates. https://www.cliffedekkerhofmeyr.com/en/practice-areas/trusts.html Date of access: 15 Sept. 2019.

Hoon, I. 2013. Beware the bogeyman – Capital Gains Tax and loan accounts (Master's dissertation). North West University. https://pdfs.semanticscholar.org/05d9/a4982e72b4232918ecd017b4bb11138de00f.pdf Date of access: 7 Nov. 2019.

India. 2004. Securities Transaction Tax Rules of 2004

India. 1961. The Income Tax Act 43 of 1961.

India. 1899. Stamp Duty Act of 1899.

Investing in answers. 2019. Financial dictionary. Capital asset. https://investinganswers.com/dictionary/c/capital-asset Date of access: 20 May. 2019.

Kahneman, D. & Tversky, A. 1974. Judgment under Uncertainty: Heuristics and Biases, Science. Vol.185. No. 4157. 1124 – 1131.

Kamiru, J.G. 2005. Tax Policy, Corporate Savings, Investment Behaviour, and Economic Growth: The Kenya Experience, 1975-2002 (Doctoral dissertation). Available from ProQuest Dissertations and Theses Database. (UMI No. 3228588).

KPMG. 2019a. India Income Tax. https://home.kpmg/xx/en/home/insights/2011/12/india-income-tax.html Date of access 5 Sept. 2019.

KMPG. 2019b. 2019/2020 Budget Highlights. KPMG Advisory Services (Namibia) (Pty) Ltd. https://home.kpmg/xx/en/home/insights/2019/04/tnf-namibia-budget-2019-2020-tax-proposals.html Date of access 5 Sept. 2019.

KMPG. 2018. Income Tax. Taxation of international executives. https://home.kpmg/xx/en/home/insights/2011/12/income-tax_2014-12-26-10-47-43.html Date of access: 1 Nov. 2019.

Le Grange, AJ. 2013. An Analysis of the Transfer Duty Implications on the 'Sale' of a Trust. (Master's dissertation). Available from ProQuest Dissertations and Theses Database. (UMI No. 1595722).

Loubser, M. 2016. A case study analysis of the impact of the Davis tax committee's first interim report on estate duty on certain trust and estate planning structures used by South African residents (Master's thesis). University of Witwatersrand. http://wiredspace.wits.ac.za/handle/10539/22220 Date of access: 7 Nov. 2019.

Macro Business. 2015. Alpha Beta Strategy and Economics. Is Australia still a developed country? https://www.macrobusiness.com.au/2015/07/is-australia-still-a-developed-country/ Date of access: 20 May. 2019.

Marcus, M. 2007. A qualitative and quantitative analysis of the South African tax system 1995-2005 (Doctoral thesis). University of Cape Town. https://open.uct.ac.za/bitstream/handle/11427/5904/thesis_com_2007_marcus_m.pdf?sequence=1&isAllowed=y Date of access: 7 Nov. 2019.

Maslow, A.H. 1943. A theory of human motivation. *Psychological Review*. 50, 370-396.

Matobela, C. 2012. A comparative study on the benefits and disadvantages of implementing a wealth tax in South Africa (Master's dissertation). University of Pretoria, South Africa. https://repository.up.ac.za/bitstream/handle/2263/24165/dissertation.pdf?sequence=1&isAllowed=y. Date of access: 30 Apr. 2019.

Minister of Finance. 2000. Budget Speech, Republic of South Africa.

Mullainathan, S. & Thaler. R.H. 2000. Behavioral Economics, NBER Working Paper, No.7948.

Muller, E. 2010. A Framework for Wealth transfer taxation in South Africa (Doctoral thesis). The University of Pretoria, South Africa. https://pdfs.semanticscholar.org/bf8a/5b6777744d3486ed11e861f1e132408775f3.pdf Date of access 13 Aug. 2019.

Namibia. 1993. Stamp Duty Act 15 of 1993.

Namibia. 1993. Transfer Duty Act 14 of 1993

Namibian. 1981. Income Tax Act 24 of 1981.

National Treasury. 2001. Medium-Term Budget Policy Statement. The Republic of South Africa. http://www.treasury.gov.za/documents/mtbps/2001/foreword.pdf Date of access 13 Aug. 2019.

OECD. 2013. "Trust in government, policy effectiveness and the governance agenda", in Government at a Glance 2013. *OECD Publishing, Paris*. https://doi.org/10.1787/gov_glance-2013-6-en Date of access: 13 Apr. 2019.

Olivier, L. 2007. "Determining a taxable capital gain or an assessed capital loss: some problems". *Meditari Accountancy Research*. Vol.15 No. 1, pp. 35-50. https://www.sataxguide.co.za/wp-content/uploads/2015/03/dertemining_a_taxable_capita.pdf Date of access: 7 Nov. 2019.

Paisabazaar. 2019. Stamp Duty in India. https://www.paisabazaar.com/tax/stamp-duty/ Date of access: 1 Nov. 2019.

Papp, L. 2012. The Feasibility of the Introduction of Additional Wealth Taxes in South Africa: An African Perspective. (Master's dissertation). Available from ProQuest Dissertations and Theses Database. (UMI No. 1595893).

Patel, MA. 2002. Capital gains taxation and its potential effects on taxpayers, a study in the Gauteng Province, South Africa (Master's thesis). The University of Johannesburg. https://ujcontent.uj.ac.za Date of access: 7 Nov. 2019.

Pham, L.T.M. 2018. Qualitative approach to research - A review of advantages and disadvantages of three paradigms: positivism, interpretivism and critical inquiry (Report). The University of Adelaide. https://www.researchgate.net/publication/324486854 Date of access: 5 May. 2019.

Piovesan, F. 2013. Realizing the Right to Development, Chapter 6. *Essays in commemoration of 25 years of the united nations declarations on the right to development*. 104https://www.ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf Date of access: 13 Apr. 2019.

PricewaterhouseCoopers (PWC). 2019. Namibia, Republic of Individual - Other taxes. http://taxsummaries.pwc.com/ID/Republic-of-Namibia-Individual-Other-taxes Date of access: 7 May. 2019.

Ramson, V. 2014. The interface between capital gains tax and estate duty and the double tax implications thereof (Masters mini-dissertation). The University of KwaZulu Natal. Https://researchspace.ukzn.ac.za/xmlui/bitstream/handle/10413/13198/Ramson_Varshani_2014.pdf?Sequence=1&isallowed=y Date of access: 7 Nov. 2019.

Reinhardt, S & Steel, L. 2006. A brief history of Australia's tax system. https://treasury.gov.au/publication/economic-roundup-winter-2006/a-brief-history-of-australias-tax-system Date of access 1 Nov. 2019.

Roeleveld, JJ. 2015. An argument for either excluding death as a capital gains tax event or abolishing estate duty. *SA Journal of Accounting Research,* Vol. 26, No. 1: 2012. https://www.researchgate.net/publication/279219454 Date of access: 5 May. 2019.

Smicht, M. 2009. Institute of Public Policy Research. Poverty And Inequality in Namibia: An Overview. https://ippr.org.na/wp-ontent/uploads/2010/06/Poverty%20and%20Inequality%20Research.pdf Date of access 5 Sept. 2019.

Sonnenbergs, EN. 2008. Edward Sonnenberg Inc. SAICA. https://www.saica.co.za/integritax/2008/1681_Recovery_of_Securities_Transfer_Tax.htm Date of access 10 Oct. 2019

South African Revenue Service (SARS). 2019. https://www.sars.gov.za/ClientSegments/Businesses/Trusts/Pages/Types-of-Trust.aspx Date of access 15 Sept. 2019.

South African Revenue Service. 2018a. Transfer Duty Guide. https://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-TD-G01%20-%20Transfer%20Duty%20Guide.pdf Date of access 16 Sept. 2019

South African Revenue Service. 2018b. Comprehensive Guide to Capital Gains Tax (Issue 6). https://juta.co.za/media/filestore/2018/03/11._Comprehensive_Guide_to_Capital_Gains_Tax_-_External_Guide.pdf Date of access: 16 Sept. 2019.

South Africa. 2007. Securities Transfer Tax Act 25 of 2007

South Africa. 1996. Constitution of the Republic of South Africa 1996. https://www.westerncape.gov.za/legislation/bill-rights-chapter-2-constitution-republic-south-africa Date of access: 13 Apr. 2019.

South Africa. 1962. South African Income Tax Act 58 of 1962.

South Africa. 1955. Estate Duty Act 45 of 1955.

South Africa. 1949. Transfer Duty Act 40 of 1949.

Stein, M. 2019. Stein on Capital Gains Tax. Lexis Nexis Library. https://www.mylexisnexis.co.za/Index.aspx Date of access 1 Nov. 2019.

Stuart, G. 2006. South African Property Investor**.** Fiduciary, usufructuary or other like interests in property. http://www.sapropertyinvestor.co.za/newsletters/featurearticles/index_article_061020.htm?Link=1 Date of access 13 Sept. 2019.

The Cambridge Dictionary. 2019. Wealth tax. https://dictionary.cambridge.org/ Date of access: 5 May. 2019.

The Davis Tax Committee (DTC). 2018. Feasibility of wealth tax in South Africa. http://www.sataxguide.co.za/wp-content/uploads/2018/05/20180329-Final-DTC, 2018-Wealth-Tax-Report-To-Minister.pdf Date of access 13 Aug. 2019.

The Republic of South Africa. 2019. Fifth BRICS summit background. https://www.gov.za/events/fifth-brics-summit-general-background Date accessed: 5 May. 2019.

The World Bank. 2015. Gini Index (World Bank estimate). https://data.worldbank.org/indicator/si.pov.gini Date of access 5 Sept. 2019.

The World Bank. 2017. Does Fiscal Policy Benefit the Poor and Reduce Inequality in Namibia. https://d3rp5jatom3eyn.cloudfront.net/cms/assets/documents/Namibia_CEQ_Report.pdf Date of access 22 Oct. 2019.

United Nations Human Rights Office of the High Commission. 1986. Declaration on the Right to Development. https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightToDevelopment.aspx Date of access: 13 Apr. 2019.

Van der Mescht, E. 2012. Limited interests in property – an overview of limited interests in property with particular reference to the taxation of usufructs and more specifically the capital gains tax effects on disposal for individuals and for trusts (Master’s thesis). The University of Cape Town. https://open.uct.ac.za/bitstream/handle/11427/12202/thesis_com_2012_van_der_mescht_e.pdf?sequence=1&isAllowed=y Date of access: 7 Nov. 2019.

Yu, Z. 2007. Behavioural economic analysis of decision making: a case of marketing. Dalhousie University. Halifax. (Master’s thesis). 10,43-55.