

ESTATE PLANNING · LIFE POLICIES · FIRST PRINCIPLES

FISA CONFERENCE

Applying First Principles Thinking to Life Policies and Estate Duty: Avoiding
Economic Double Taxation Where Policy Ownership and Life Assured Do Not
Align

By Errol Gottfried Meyer

ROADMAP

Agenda

- 01 First Principles Thinking
- 02 Estate Planning vs Execution
- 03 Estate Duty
- 04 Life policies
- 05 Deeming provisions and exclusion
- 06 Planning first – tax consequences follow the advice
- 07 Advice – Then and Now

FIRST PRINCIPLES THINKING

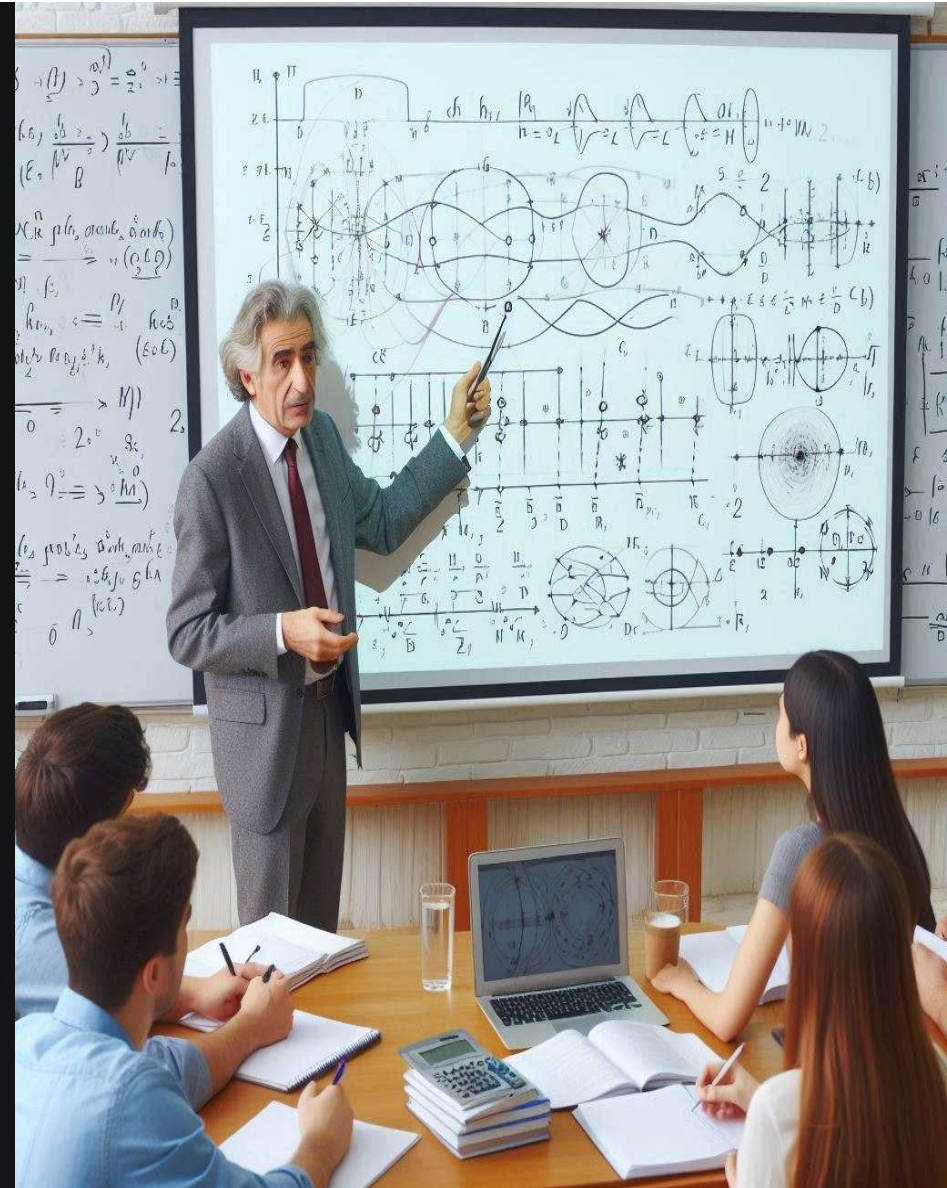
THE TRUTH

First principles thinking is the art of breaking down complex problems into their most fundamental truths.

By reasoning from first principles, we identify root causes, strip away layers of complexity, and focus on the most effective solutions. It allows us to step outside the way things have always been done and, instead, see what is possible.

It's a tool to help break down complicated problems by separating what we know is absolutely true from anything that is an assumption. What remains are the essentials.

While you could take this way of thinking down to an atomic level, a lot of value is gained by simply going a level or two deeper than most people. Solutions are based on what you see. Different answers reveal themselves at different levels.



ESTATE PLANNING VS EXECUTION

Estate planning before and after the death

“A Mismatch?”

BEFORE – PLANNING

Financial planning

Looking forward to future potential conflicts.

AFTER – EXECUTION

Winding up a deceased estate

Can trigger conflicts.

FOUNDATIONS

Estate Duty



Property

Rights that transfer to heirs



Deemed Property

"Fiction"



Anti-avoidance

LIFE POLICIES

Life policies and marital regimes

Community of Property

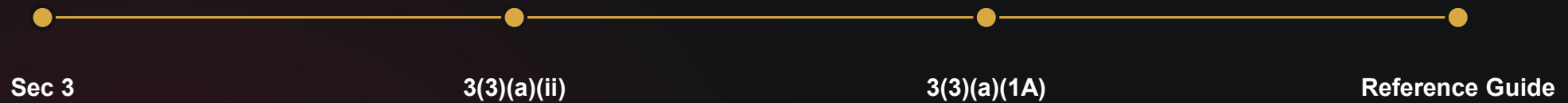
Maqubela v Master

Accrual

Double dipping

SECTION THREE

Deeming provisions and exclusion



LIFE POLICIES – THE ORIGINAL ESTATE DUTY ACT

The history

ESTATE DUTY ACT 45 OF 1955 — SEC. 3

(3) Property which is deemed to be property of the deceased includes— (a) so much of any amount due and recoverable under any policy of insurance which is a “Union policy” as defined in section one of the Insurance Act, 1943 (Act No. 27 of 1943), upon the life of the deceased, other than a policy the amount due under which is recoverable by the surviving spouse or child of the deceased under a duly registered ante-nuptial or postnuptial contract, as exceeds the aggregate amount of any premiums or consideration proved to the satisfaction of the Commissioner to have been paid by any person who is entitled to the amount due under the policy, together with interest at six per cent, per annum calculated upon such premiums or consideration from the date of payment to the date of death;

The current version

CURRENT LAW — SEC. 3(3)(a)

Property which is deemed to be property of the deceased includes—(a) so much of any amount due and recoverable under any policy of insurance which is a "domestic policy", upon the life of the deceased as exceeds the aggregate amount of any premiums or consideration proved to the satisfaction of the Commissioner to have been paid by any person who is entitled to the amount due under the policy, together with interest at six per cent per annum calculated upon such premiums or consideration from the date of payment to the date of death: Provided that the foregoing provisions of this paragraph shall not apply in respect of any amount due and recoverable under a policy of insurance, if—

1983

(ii) except where the provisions of paragraph (i) or (iA) of this proviso apply, the Commissioner is satisfied and remains satisfied that such policy was not effected by or at the instance of the deceased, that no premium on such policy was paid or borne by the deceased, that no amount due or recoverable under such policy has been or will be paid into the estate of the deceased and that no such amount has been or will be paid to, or utilized for the benefit of, any relative of the deceased or any person who was wholly or partly dependent for his maintenance upon the deceased or any company which was at any time a family company in relation to the deceased;

[subparagraph (ii) amended by section 2(1)(b) of Act 92 of 1983, with effect from 1 July 1983]

1985

(iA) the Commissioner is satisfied that the policy was taken out or acquired by a person who on the date of death of the deceased was a partner of the deceased, or held any share or like interest in a company in which the deceased on that date held any share or like interest, for the purpose of enabling that person to acquire the whole or part of—
(aa) the deceased's interest in the partnership concerned; or (bb) the deceased's share or like interest in that company and any claim by the deceased against that company, and that no premium on the policy was paid or borne by the deceased; or

[subparagraph (iA) inserted by section 2(1)(a) of Act 92 of 1983, with effect from 1 July 1983, and substituted by section 4(1)(a) of Act 81 of 1985, with effect from 1 January 1985]

Estate Duty consequences



Section 3(3)(a)(ii) of the Estate Duty Act states the requirements to avoid the inclusion of the life policy as deemed property in an estate as the following:

the Commissioner is satisfied and remains satisfied that such policy was not effected by or **at the instance** of the deceased,

SUBJECTIVE

that no premium on such policy was **paid or borne by the deceased**,

OBJECTIVE

that no amount due or recoverable under such policy has been or will be **paid into the estate of the deceased**

OBJECTIVE

and that no such amount has been or will be paid to, or utilized for **the benefit of, any relative of the deceased** or any person who was wholly or partly dependent for his maintenance upon the deceased or any company which was at **any time a family company in relation to the deceased**.

OBJECTIVE

REFERENCE GUIDE

SARS Reference Guide

For the exclusion in terms of section 3(3)(a)(ii) of the Estate Duty Act to be applicable, the following circumstances must be considered:

- i)** The Commissioner must be 'satisfied' that all the requirements of the section are met before the exclusion will be allowed. To enable SARS (on behalf of the Commissioner) to consider whether the proceeds of a policy fall within the ambit of the exclusion, all the relevant documentation pertaining to the case:
 - Copies of the resolution taken by company to take out such policy.
 - Application made for the policy and any other documentation to prove that the proceeds of the policy were not applied to benefit either the estate, any relative of the deceased or any person who was dependent upon the deceased for his/her maintenance or a family company of the deceased as envisaged in the relevant section of the Estate Duty Act.
- ii)** These documents must be submitted together with the Liquidation and Distribution Account to the estate auditor at SARS who will verify the documentation.

REFERENCE GUIDE

SARS Reference Guide

The words ‘no amount has been’ or ‘will be paid to the estate,’ are capable of meaning that the condition is not fulfilled if there is an actual or future payment of any portion of the proceeds into the estate. The absence of some obligation linking the proceeds with the payment to the estate largely removes the basis for connecting any payment to the estate with the proceeds of the policy, a connection which must be present before it can be said that the condition has not been fulfilled.

EGM — A DARING VIEW

Contractually, to repay a loan account with surplus funds — in my view an obligation with a causal link. What about commixtio?

All or nothing

Some authors are of the opinion that if part of the proceeds is utilised for the benefit of relatives (dependants, estate or family company) of the deceased, and the balance used as set out in the section, a pro rata exclusion would be allowed — the Commissioner accepting an apportionment of the amount due under the policy.

However, the relevant **exclusion does not provide for a pro-rata share** either to be included or excluded for estate duty purposes. The proceeds of the policy, therefore, either qualify for the exclusion or are subject to estate duty. No pro rata share of the proceeds is envisaged by the Estate Duty Act.

(All or nothing — agree with SARS, in line with my anti-avoidance argument.)



REFERENCE GUIDE

I DISAGREE — NON-SENSICAL

When a policy is taken out on someone else's life, the life insurers usually insist that **the insured party agrees to and signs the proposal for insurance on his life**. It is also required that the applicant must have an insurable interest in such a policy.

Buy-and-Sell

(iA) the Commissioner is satisfied that the policy was taken out or acquired by a person who on the date of death of the deceased was a partner of the deceased, or held any share or like interest in a company in which the deceased on that date held any share or like interest, for the **purpose of enabling that person to acquire** the whole or part of—

- (aa) the deceased's interest in the partnership concerned; or
- (bb) the deceased's share or like interest in that company and any claim by the deceased against that company, and that...

no premium on the policy was paid or borne by the deceased; or

BUY-AND-SELL- *“Tax follows the Advice”*

Sell 1% share ‘scheme’

- Estate duty?
- Paid or borne?
- Income Tax – matching principle



Trust and Succession Planning – “Tax follows the advice”



Contractual Certainty: Lessons from the Steenbokpan Trust Case

THE INSURANCE DISPUTE

The Buy and Sell Agreement

Shareholders agreed that disability or death would trigger a “deemed sale” of shares.

R7 Million in Contested Payouts

Steenbokpan received insurance funds but Trout claimed the surplus above the share value.

Referral to Expert Determination

Per Clause 10, the dispute was referred to an expert, not an arbitrator.

THE POLICIES

Nollord Insurance

Disability (Stroke)

R2,000,000.00

Old Mutual

Death

R3,000,000.00

Hollard Policy

Death

R2,019,829.68

R7M

in contested payouts

THE HIGH COURT’S RULING

Privity and Sanctity of Contract

Courts must honour and enforce contracts entered into freely and voluntarily.

No “Gross Irregularity” Found

Choosing not to hear oral evidence is not irregular if the contract allows discretion.

Expert Decisions are Binding

Parties are bound by an expert’s decision unless fraud or bad faith is proven.

The Regulation of Trusts Bill, 2026

A draft published for public comment on 7 August 2026, with comments closing 11 September 2026.

SECTION 24(4)–(6) — REMUNERATION DISPUTES

s24(4)

If a dispute arises about a trustee's remuneration, and the trust instrument doesn't provide its own dispute-resolution process, the parties must resolve it through mediation conducted by a mediator accredited by a recognised South African mediation organisation.

s24(5)

A party may only go to court if: (a) the mediator has issued a report certifying the mediation was unsuccessful, or (b) urgent relief is required.

s24(6)

The cost of the mediation is paid out of the trust's income.

SUCCESSION PLANNING

Beyond the Buy-Out: Solving the Capability Gap in Succession Planning

THE HIDDEN SUCCESSION RISK

Ownership Succession ≠ Business Survival

Buy-and-sell cover protects ownership.

CMP (Complexity of Mental Processing)

Capacity to manage uncertainty and make decisions over long-term horizons.

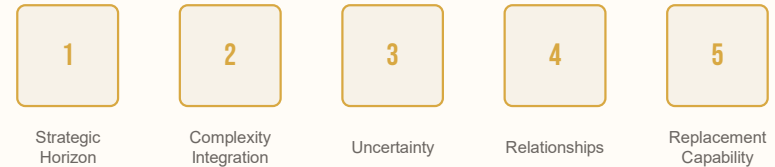
The “Complexity-Transfer” Event

Death triggers a transfer of unresolved decisions, risks, and strategic responsibilities — not just shares.

Capability-continuity cover protects the business’s actual survival.

BRIDGING THE CAPABILITY GAP

The 5-question CMP continuity test



Quantifying the funding need

Required Capital = Mentors + Recruitment + Senior Executive Transition Periods

CMP GAP & PLANNING RESPONSE

0-3 POINTS

Minor gap; mentorship or short-term consulting is usually sufficient.

8-12 POINTS

Material gap; fund a senior manager or executive consultant for 12–24 months.

13+ POINTS

Severe gap; requires senior replacement, business rescue support, and external governance.

SECTION FOUR

IN CONCLUSION - Advice – Then and Now

- 01 KFC

- 02 Executor fees – To be negotiated?

- 03 Trust to save on taxes

- 04 Section 4(b) and s 4(p) - No relief from economic double taxation

ADVICE – THEN AND NOW

A story about the forgotten 'HEIR'





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CONSULTING

A STORY ABOUT THE FORGOTTEN 'HEIR'

**Right obligations and expectations,
and conflict management**



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THE END

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