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THE TEAM

Editoral Specialist
Dinah Ramonyai

Supporting Editor
Dr Annamarie Mostert

Editorial Advisors
Muzikayise Mike Maseko
Keith Engel

Design, layout and cover illustration
Neo Wilma Makaleng

FIND US

Postal address
PO Box 712
Menlyn Retail Park
0063

Editorial head office
Summit Place Business Park
Building 3, Ground Floor
221 Garsfontein Road, Menlyn
Pretoria
South Africa
0081

Advertising sales
Muzikayise Mike Maseko
mmaseko@thesait.org.za

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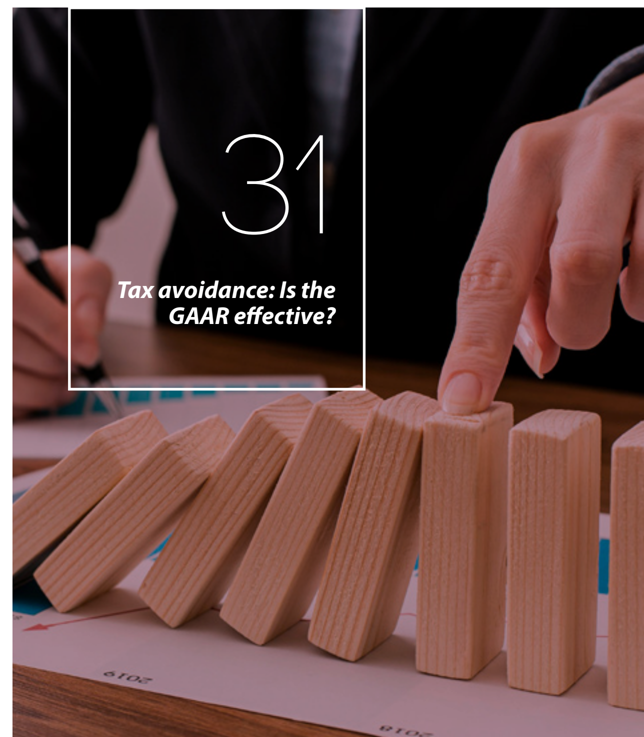

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GUEST CONTRIBUTORS

Dr Annelize Oosthuizen
oosthuizena@ufs.ac.za/
+27 51 401 3841

Dr Oosthuizen is a Senior lecturer and Head of Taxation at the School of Accountancy at the University of the Free State. She holds a Doctor of Philosophy in Accounting Sciences (PhD)

Prof Asheer Ram
Asheer.Ram@wits.ac.za/
27 11 717 8027

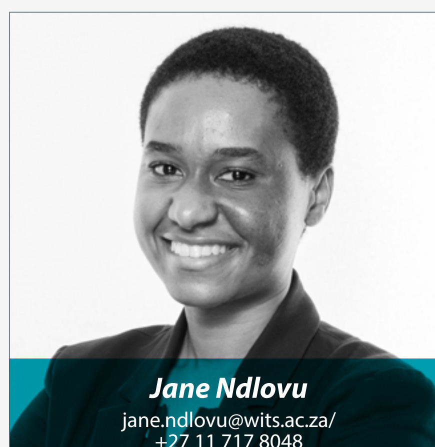
Prof Asheer is an Associate Professor at University of the Witwatersrand he has published research on a variety of topics including taxation, integrated reporting and crypto assets. He has published articles in various journals.

Cecileen Greeff
cgreeff@sun.ac.za/
+27 21 808 3426

Cecileen is a senior lecturer in the School of Accountancy at Stellenbosch University. Her focus is the taxation of companies. Her research interests include the determinants of companies' effective tax rates, as well as current, practical tax issues.

Prof Deborah Tickle
deborah@tickleontax.co.za/
+27 82 492 0375

Prof Tickle CA(SA) is currently an adjunct associate professor at the University of Cape Town where she lectures tax Masters students. Previously, as managing partner of the Tax department at KPMG (Cape Town), she led the team for ten of the 31 years she spent consulting to large, listed and global clients of the firm. She now provides technical support to a number of smaller and boutique tax firms.



Jane Ndlovu
jane.ndlovu@wits.ac.za/
+27 11 717 8048

Jane CA(SA) is a dedicated researcher with extensive expertise in South African taxation and policy analysis. As a qualified Chartered Accountant, Jane brings a unique blend of academic rigour and practical insight to her work. She holds a Master of Commerce degree with a specialisation in Accountancy and a Bachelor of Accountancy Honours with a focus on taxation from the University of the Witwatersrand

Michelle Kirsten
mkirsten@varsitycollege.co.za/
+27 72 800 5386

Michelle is a CA(SA) with an undeniable passion for academics and education. As the Head of Finance and Accounting at the IIE's Varsity College Sandton, each day presents an opportunity to integrate her passion for academics with an interest in the accountancy field and its related subjects.

Prof Bernadene de Clercq
dclerb@unisa.ac.za/
+27 83 442 4659

Prof de Clercq is a NRF rated researcher in the College of Accounting Sciences at Unisa. Her research interest regarding personal finance provides the platform for local and international networks. Her personal research interest is embedded in a model which allows for collaboration between government, academics, business and society focusing on financial and taxpayer education.

Prof Herman Viviers
herman.viviers@nwu.ac.za/
+27 82 856 2990

Prof Viviers is an Associate Professor, North-West University (Potchefstroom campus). He specialises in VAT, personal tax and corporate tax. He holds a PhD Accountancy and MCom Taxation and is a CA (SA).

Prof Liezel Gaynor Tredoux
classlg@unisa.ac.za/
+27 83 525 2524

Prof Tredoux is a South African legal academic with more than 20 years teaching experience in tax law at several South African tertiary institutions. She regularly presents at national and international conferences, is a regular guest lecturer at the University of Johannesburg, has published in several academic journals and is a former Deputy Editor of the South African Mercantile Law Journal.

Prof Rudie Nel
rnel@sun.ac.za/
+27 21 808 9079

Prof Nel has been a tax academic since 2009 lecturing corporate tax topics predominantly at the post-graduate level. He is the Divisional head: Taxation at the School of Accountancy since 2022. He holds a PhD in Business Management and Administration (with specialisation in taxation).

BIG IDEAS
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FROM LOCKS TO LOGINS: TAXPAYERS' ARMOUR AGAINST THE DIGITAL BRIGANDS

JANE NDLOVU, Senior Lecturer, Department of Taxation, University of the Witwatersrand

In the annals of history, safeguarding one's treasure meant heavy chests, intricate locks and guarded vaults. But, as we have transitioned from gold coins to digital currency and paper filings to online submissions, the battleground has shifted dramatically. Now, in the age of bytes and bits, taxpayers face a new breed of pirates: Digital brigands who lurk in the shadows of the internet.

These cybercriminals, armed with codes and algorithms, aim to breach our modern-day vaults. As we step away from traditional locks and embrace logins, it is imperative for every taxpayer to armour themselves against these relentless digital threats. Dive in as we chart the course to fortify your e-filing defences.

SARS' journey to become a SMART modern tax administration

In the vibrant city of Cape Town, on 5 September 2023, many had the opportunity to hear Mr Edward Kieswetter, the esteemed Commissioner for SARS and vice-chairperson of the African Tax Administration Forum (ATAF). He took centre stage at the 2nd Network of Tax Organisations (NTO) technical conference, illuminating the room with insights on 'Digitalisation of Tax Administrations and Contemporary Issues.'[1]

Now, for those of us who have been busy navigating our Netflix queues or attempting sourdough starters, you might wonder, "What is the big fuss about digital tax, anyway?" Well, Mr Kieswetter painted a vivid picture. Picture this: Our world, in many ways, had its digital evolution turbocharged by none other than the COVID-19 pandemic. This was not just about turning board games into virtual game nights; it meant our entire tax structure needed a modern makeover— and fast.

Mr Kieswetter passionately spoke of SARS' journey, likening it to a phoenix rising with a renewed mission to become a trusted and admired SMART modern tax administration. Rebuilding trust and institutional integrity was not just a SARS special. According to the Organisation for Economic Cooperation and Development's (OECD's) Tax Administration 2022 publication,[2] a seismic shift happened globally. The pandemic catalysed a whopping 30% surge in digital taxpayer contacts in 2020. Remember the days of sipping coffee in a tax office and waiting for your number to be called? Now, billions of people have swapped that for online interactions with chatbots handling tens of millions of queries. It is like going from snail mail to instant messaging overnight.

But there is more to this digital turn than convenience. The heart of the matter is enhancing tax compliance and unmasking the sneaky tax evaders. With money moving digitally and more data being shared, our tax structures are now operating like the smartest detective agencies, using data science and artificial intelligence as their magnifying glass.

[1] See https://www.sars.gov.za/latest-news/digitalisation-of-tax-administrations-and-contemporary-issues/
[2] See https://doi.org/10.1787/1e797131-en

Mr Kieswetter also touched on the magic happening behind our screens. Imagine, with today's technology at SARS, 94% of assessments are issued in the blink of an eye—just 5 seconds.[3] It is like unlocking your smartphone with your face but for your taxes! And the world of data? It is ballooning. As an example, the Automatic Exchange of Information has seen assets skyrocket from EUR 5 trillion to EUR 11 trillion in just a few years.[4]

One fascinating tidbit? Digital transformation is not just about gadgets and gizmos; it is about investment. Since 2018, tax administrations have doubled their stakes in information and communications technology (ICT), growing from 2% to 4% of their budgets.

But here is the cherry on top: Mr Kieswetter posed an important question: "What if our digital identities could be as unique as our fingerprints, used uniformly across government services?" According to Mr Kieswetter, countries like Chile and Sweden are paving the way, using a single digital identity for everything from bank transactions to public services. This is more than just convenience. It is a game-changer in fighting economic crimes and boosting social cohesion. Whereas achieving this might seem like a lofty dream, Mr Kieswetter believes that with the right leadership and the global Network of Tax Organisations (NTO), it is a dream within reach.

So, the next time you are navigating your online tax forms or using a digital service, remember—it is more than just technology. It is the future of trust, integrity and cohesion in a world that is rapidly changing.

Navigating the digital tax world safely: A personal guide to eFiling and beyond

We have all felt the buzz of modern life— from ordering food at the tap of an app to hosting virtual family reunions. In this digital age, even tax has gone tech-savvy with platforms like SARS eFiling. But as we embrace this convenience, it is vital we remain vigilant. After all, where there is treasure, there will be pirates!

For those knee-deep in tax season using eFiling, there is good news. You can tweak your banking and registered details directly on the platform. But what if there is a hiccup with validating your banking details? No worries. SARS branches are there to help, but you will need to validate them face-to-face. Why? Because guarding your gold (in this case, your personal tax details) is a priority.

Back to basics, what is eFiling?

For those of you (if any) still yearning for the golden days of paperwork, let us shed light on an era of convenience and efficiency in tax administration: eFiling.

In essence, SARS eFiling is like having a virtual tax office at your fingertips. SARS eFiling is an online powerhouse where you can submit returns, make payments and interact with SARS, all while sipping your morning coffee. The beauty is that it is entirely free and secure. In fact, the eFiling services page offers an abundance of resources to the curious mind.

The digital age has allowed taxpayers to avoid the hustle and bustle of branch visits. Instead, they can enquire about outstanding debts, check tax compliance status, update personal details, lodge complaints and even reset passwords—all from the comfort of their homes.

"The digital age has allowed taxpayers to avoid the hustle and bustle of branch visits. Instead, they can enquire about outstanding debts, check tax compliance status, update personal details, lodge complaints and even reset passwords—all from the comfort of their homes"

But here is the kicker: *Safety First!* SARS has gone above and beyond to ensure the privacy of eFilers.[5] Thanks to advanced browser security and encryption, your personal and business information remain confidential. Always remember to look for that trusty 's' in https at the beginning of the eFiling web address and the golden lock symbol (a beacon of security) in your browser's address bar.

Stepping up the game, SARS introduced Two Factor and Passwordless Authentication. Think of it as a virtual bodyguard for your tax information. With the SARS Mobile Application, eFilers can use push notifications for an extra layer of security. This is not just a simple login; it is a robust protective measure, ensuring only you access your data.

And for those wrangling with Tax Type Transfers, SARS has fine-tuned the process, putting the power directly in the hands of taxpayers and registered representatives. The new system streamlines transfers, offering real-time notifications and instant approvals. No more waiting!

With Mr Kieswetter's insights, it is clear that while a universal digital identity might still be on the horizon, tools like eFiling are already revolutionising the way we handle taxes. The future is digital and it seems that for taxpayers, the future is now.

Stepping up the guard: Verification in the digital age

We have all (presumably) heard of identity theft—a modern-day spectre that can wreak havoc. To combat this and keep your sensitive information under lock and key, SARS has upped the game. At every branch, they have unfurled a shiny new shield: the online Taxpayer Verification System.[6] In addition to the standard checks, this system takes your security up a notch. Wondering

[3]See https://www.sars.gov.za/latest-news/digitalisation-of-tax-administrations-and-contemporary-issues/
[4]See https://www.sars.gov.za/latest-news/digitalisation-of-tax-administrations-and-contemporary-issues/
[5]See https://www.sarsefiling.co.za/
[6]See https://www.sars.gov.za/targeting-tax-crime/edna-identity-security/

what this entails?

What is Needed:

- Your valid RSA identity document or ID card.
- The process:
  - o A quick snapshot (smile!);
  - o A fingerprint scan; and
  - o A cross-reference with the Department of Home Affairs' records.

When would you need this extra security blanket?

Primarily when there are changes to your personal or registered details. This could range from updating your banking details, marital status, contact information and more. Even tasks like legal entity deactivation or requesting dispute resolutions will come under this security umbrella.

And for those representing others (tax practitioners and representatives), you are not excluded. This added layer of protection ensures that when you act on a taxpayer's behalf, your identity is also confirmed.

In the name of privacy and utmost security, even SARS officials are not exempt. They, too, undergo eDNA verification when undertaking certain duties.

From tax files to firewall: Navigating the murky waters of cybercrime during tax season

Let us face it—we have all had that unnerving sensation during tax season. A sudden email or call, and your heart does that little skip, wondering, "Is this legit?" And in this new age of working from our cosy couches with our beloved pets nearby, the waters get even murkier. Many of us are accessing various devices through networks that might as well have a welcome sign for cyber mischief-makers.

Now, while these 'tech bandits' have a whole arsenal of tools, they seem to love the good old-fashioned 'con job'. During tax season, it is prime time for social engineering scams. But here is the thing: We are not powerless. We all have a bit of detective in us and it is time to sharpen those skills.

Beware of the digital pirate's tricks

These cyber pirates are crafty. They will dress their emails and calls in the familiar garb of the SARS cloak; it is not just the usual spray of emails, hoping one sticks. Some are going the extra mile with spear-phishing—these are tailored and look so genuine because they are designed just for you. Powered by advanced technology like machine learning and artificial intelligence, they have become eerily good at their game.

Your profile on SARS' eFiling is no less than a fortress guarded by robust security systems. From unique usernames and passwords to the protective embrace of one-time passwords (OTPs), SARS goes the extra mile. But the pirates of the digital world (fraudsters) have become craftier. They are on the prowl, trying every trick to coax out your details, often painting themselves as SARS saviours, promising tax returns or making urgent pleas.

The pirate's ploys

They are not holding back on tactics:

- The Direct Approach: Calling you, sometimes even mimicking the names of real SARS employees.
- The Digital Whisper: Messages on platforms like WhatsApp, SMS or even direct emails enticing you with links. Beware! Some of these links may carry trojans—digital stowaways that invade your device.
- The Impersonation: Emails cunningly designed with the SARS logo or other identifiers, sometimes prodding you with alarms like 'Outstanding Debt' or 'Final Demand'.
- The Siren's Song: Attractive ads on platforms like Facebook, promising lucrative tax services at shockingly low rates or a percentage-based cut.

And their ultimate treasure? Your personal data. Everything from your identity number, contact details, tax numbers, banking details, even copies of your identity document. With this information, their nefarious possibilities are endless, from accessing your eFiling profile and redirecting refunds to altering your tax status or using your details for various scams outside the SARS realm.

Who is in their crosshairs?

So, who are these cyber buccaneers after? Small business owners, tax newbies under 25 and our wise older folks over 60. Why? They are betting on catching them off-guard, making them feel rushed and coaxing out those precious details. But now that we are onto them, we are ready.

Defending your digital treasure and fortifying your fortress[7]

Here is the blueprint for shielding yourself:

- *Grammar Guard:* Spelling mistakes and weird sentences? Red flag!
- *Healthy Scepticism:* Surprise emails or calls from 'SARS'? Take a pause, and maybe even give SARS a ring yourself.
- *Mum's the Word:* Never spill your personal beans over the phone or in an email. Scammers love pressure tactics. Just hang up or hit delete.
- *Spread the Word:* Got friends or family who might be easy prey? Give them a heads-up. Knowledge is power.
- *Safe Surfing:* Public Wi-Fi is like a public pool. Dive in with caution. Use a Virtual Private Network (VPN); it is like your own private swimming lane.

[7] See https://www.sars.gov.za/wp-content/uploads/Docs/AdHoc/Protect-Your-Tax-Profile.pdf

- *Fortress Tech:* Think of firewalls and endpoint protection as your digital moats and drawbridges. They inspect everything coming in and going out, ensuring no unwelcome guests.
- *Strengthen Your Password:* Make it robust and change it often. Never share it or save it on your browser.
- *Activate OTP:* This is an added layer of security for your eFiling.
- *Trust Your Gut:* If a call, email, or message feels off, it probably is.
- *Question the Caller:* If someone claims they are from SARS, get their full name, email and office number. Cross-check this by reaching out to SARS directly through official channels.
- *Stay Aware:* Regularly check your eFiling profile, ensure your security features are active and always log off when you are done.
- *Be Discerning with Links:* Never open suspicious links or download attachments unless certain of the source.

Stumbled upon a suspicious SARS-related scam? Report to the knights at phishing@sars.gov.za or sound the alarm at 0800 00 2870.

Guard your eFortress

Diving into the world of eFiling, tax returns and the countless messages received during tax season can feel like navigating a vast, sometimes treacherous sea. We all treasure our personal information, especially when it is intertwined with our financial well-being. So, how do you ensure this treasure stays safe?

A word of advice? Be your own knight in shining armour. Protect your eFiling login, banking details and other sensitive info as if they were crown jewels. If you ever get an alert about unauthorised changes on eFiling, do not dilly-dally. Head to your nearest SARS branch pronto (remember to book an appointment).

Make sure you are armed with:

- A valid ID or temporary ID.
- An original stamped bank statement or an original letter from the bank if it's a new account.
- Proof of residential address or a completed CRA01 if the address is in another person's name.
- Tax practitioners or reps, remember to bring a Power of Attorney.

In doubt? Call the cavalry! For those head-scratch moments or burning questions, simply dial the SARS Contact Centre at 0800 00 7277. They are your trusted squires in this tax journey.

As we embrace the convenience of the digital age, staying informed and proactive is our best defence. Let us navigate all tax seasons with both ease and caution, ensuring our treasure remains exactly where it should be—safe and sound.

Be your own hero during tax season

Yes, tax season can be a maze. But knowing the nature of a trap and the true path can save you from a world of headaches. Let us be alert, educate ourselves and make sure our hard-earned treasures stay right where they belong.

In the transition from 'locks to logins', our journey has shifted from tangible vaults to virtual verifications. Our treasures, once counted in coins, now reside in codes and clicks. As we migrate from safes to cyberspace and from paperwork to passwords, the responsibility amplifies. It is not merely about guarding our assets, but also fortifying our digital essence. And as we sail through this vast digital expanse, our true value lies not just in what we amass, but in the strength of our digital defences. It is not just about the bytes we build, but the shields we secure. It is not just about the gold we gather, but the firewalls we fashion. In this realm of ones and zeros, let us be the hero, not the statistic. Stay updated and stay secure.

PERSONAL FINANCE WITH A SPECIAL FOCUS ON TAX LITERACY

PROF BERNADENE DE CLERCQ, M&D Coordinator, Department of Taxation, College of Accounting Sciences at Unisa

With the current national budget still freshly in our minds, there are mixed feelings about the budget and how it will ultimately impact South Africans. Many South Africans had a sigh of relief as there were no direct tax increases, but a person not knowledgeable in time value of money would not necessarily understand the impact of bracket creep due to inflation.

This means that actually, there was an increased tax cost through not adjusting tax rates to take inflation into account. Over and above the lack of understanding the increased cost of taxation due to no adjustment, the introduction of auto-assessment, the simplification of submitting returns via eFiling and the seamless integration of the financial and fiscal systems into the financial lives of taxpayers, the tax compliance burden has shifted from tax practitioners to taxpayers—many of them ill-prepared for the new responsibilities of being tax compliant. With this increased prominence, there is an increasing need for citizens to become more tax literate; they should understand not only their own rights and responsibilities, but also that of their government. This new concept of tax literacy is one of the focus areas of my research within the broader domain of personal finance. This stream of research is focused on gaining a better understanding of the concept of tax literacy and what it means in a developing country such as South Africa.

This journey started with a collaborative research project with colleagues from Unisa. During this project, we unpacked the retirement tax literacy awareness of South Africans via the Tax Tim blogs (De Clercq, Williamson, Pretorius, Stedall & Wentzel, 2021). Given the high level of interest in ensuring that South Africans have enough wealth to retire on, the retirement tax regime has been the focus for many years—both from the government as well as the retirement industry. The efforts of National Treasury over the past few years to simplify the retirement tax regime initiated our interest in gaining an understanding of how knowledgeable taxpayers are on the retirement tax implications. Unfortunately, from the analysis, it became clear that taxpayers have a huge knowledge deficit when it comes to the tax implications of retirement funds. What is concerning is that many taxpayers only asked the very important question, "Why was there such a large tax burden on their funds?" after they had retired and received a reduced lump sum. They clearly did not understand how much tax might be payable on their retirement lump sum and, as a result, might not have planned enough funds to last up to their death. Given the long-term impact on both taxpayers and potentially the fiscus, one would have expected that taxpayers moving into the retirement phase would have consulted with a tax practitioner or financial advisor before making such decisions; unfortunately, this does not seem to be the case. Or, more worrisome, if they did, they clearly did not understand the implications of the advice that their advisors provided.

While conducting the analysis on retirement tax literacy, it became clear that there is no internationally accepted definition of tax literacy. The lack of consensus on a definition also has an impact on the development of taxpayer education initiatives as it is not possible to compare programmes or utilise resources when the intended outcome is not defined or consistent. The paucity of research on tax literacy has led me to some conceptual studies and research to obtain a better understanding of the delineation of tax literacy and what it encompasses. Informed by a literature review, I interviewed financial advisors and tax educators at various higher institutions. The purpose of this exercise was to determine whether there is consensus on what tax literacy means. However, it became evident from the participants' responses that the underlying discipline of the academics (for example, accountants versus financial advisors or public finance experts) strongly influenced their perceptions of what tax literacy could entail. For example, accountants were more focused on the number crunching component, i.e. how much tax is payable in contrast to the public finance experts who were more focused on why taxes were necessary.

"Fourthly, they need to have transformative competencies as taxation creates many rights but also responsibilities for both the government and its citizens, which should be transformative to the bigger society—taxation is a mechanism to reconcile some tension and dilemmas through redistribution and other fiscal policy initiatives"

By combining the insights from the literature review and the interviews, a draft competency framework on tax literacy was developed (see Figure 1):

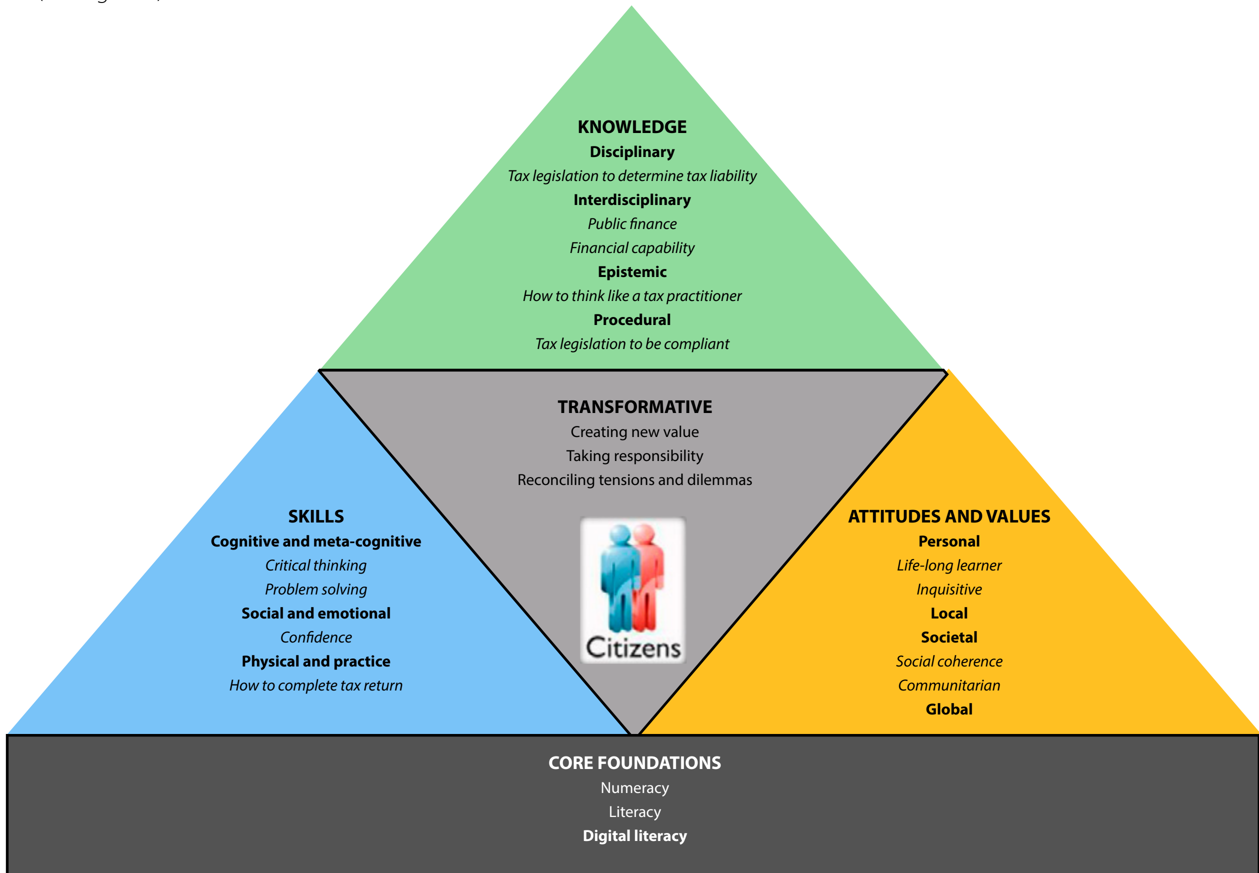

Figure 1. A draft competency framework for tax literacy (Source: De Clercq [2023:517]).

It is clear from this competency framework that tax literacy is a multidimensional construct across different domains. Firstly, the taxpayer will require knowledge ranging from disciplinary (taxation), interdisciplinary (public finance implications e.g. as per the recent budget speech during which the distributive nature of the budget was re-emphasised, although under severe fiscal constraints), epistemic (due to auto-assessment, the taxpayer is now becoming their own tax practitioner) as well as procedural knowledge (understanding the tax legislation to be tax compliant). Secondly, taxpayers should have a set of attitudes and values that ensure they remain lifelong learners to remain up to date with the latest tax legislation and also understand the local, societal, and global implications of the interconnectedness of taxation. Thirdly, taxpayers require cognitive and meta-cognitive skills such as critical thinking and problem-solving skills to understand the tax implications of their actions and to feel confident in managing their tax affairs. Fourthly, they need to have transformative competencies as taxation creates many rights but also responsibilities for both the government and its citizens, which should be transformative to the bigger society—taxation is a mechanism to reconcile some tension and dilemmas through redistribution and other fiscal policy initiatives. It is important for all to understand the broader purpose as just an income-generating tool. Lastly, all these competencies need to be underpinned by the necessary numeracy, literacy and, more recently, digital literacy skills. Thus, not only is tax literacy multidimensional, but it also requires various foundational competencies to be in place before it can be achieved.

Following the literature review and interviews, it became clear that a more coherent definition of tax literacy was required. Reviewing the latest research on tax literacy, a colleague from Germany and I (De Clercq and Aprea (2023) identified three prominent content areas relating to the conceptualisation of the construct 'tax literacy' that need to be considered to enhance the competency framework as previously indicated in Figure 1, namely: (i) Tax literacy from an individual's perspective, that is, an individual as their own tax professional; (ii) Tax literacy from a relational perspective, that is, citizens are required to be responsible in relation to all tax-related issues and (iii) Tax literacy from a systemic perspective, that is, a sense of responsibility towards the objectives of the social contract, which requires the active participation of the citizenry and a high degree of tax morality. The tax literacy content domains are illustrated in Figure 2:

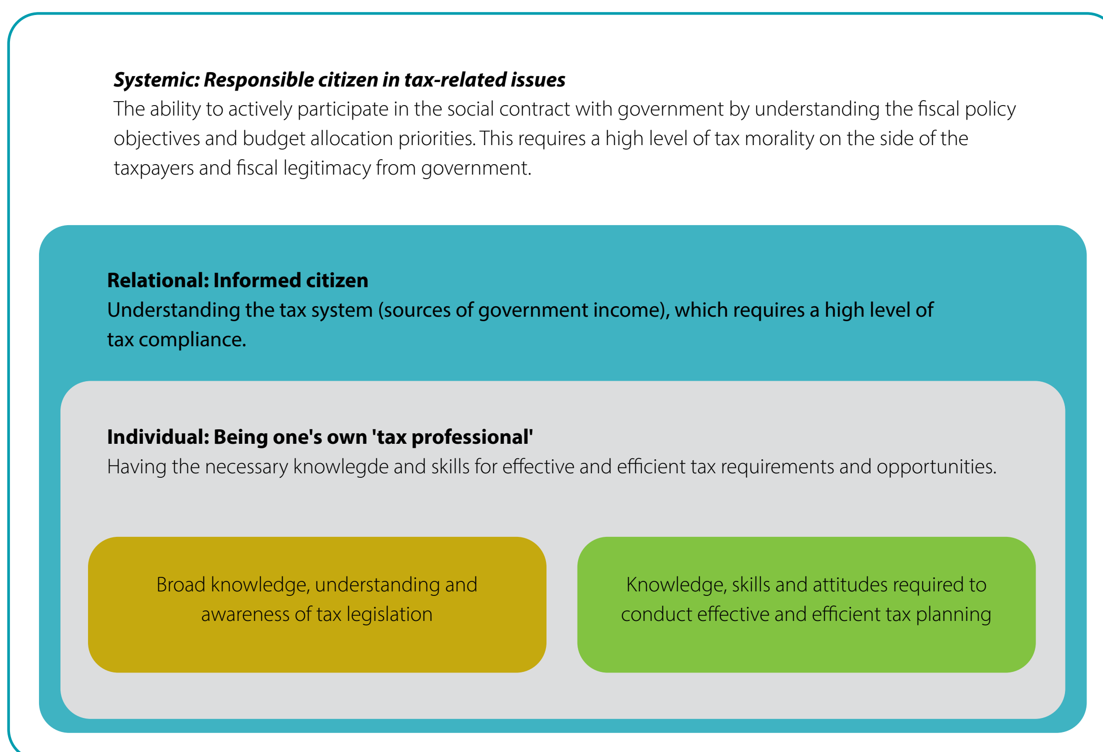

Figure 2. Tax literacy content domains (Source: De Clercq & Aprea [2023:141]).

In future research, the three content domains will be further developed to reflect the set of competencies as presented in Figure 1. For example, it will be important to understand the scope of knowledge, skills and attitudes required to become one's own tax professional—how much should an individual be able to do without the help of a professional and when will the services of a professional be required? The same holds true for the other two content domains.

Furthermore, to address the lack of a definition of tax literacy, we proposed the following definition:

> *Tax literacy is a combination of the knowledge, the skills and the attitudes that individuals require to gather the necessary information to determine their tax liability, to be tax compliant and to conduct effective tax planning. It furthermore includes a sense of responsibility towards the objectives of the social contract, which requires active participation by the citizenry and a high degree of tax morality.* De Clercq & Aprea (2023:143)

From the research that I have completed, the understanding of the concept of tax literacy has improved; however, much more research is required. My research has found that conceptually as well as in practice, tax literacy requires attention. Taxpayers must be assisted in developing the necessary tax literacy to become active and responsible taxpayers. However, they should also develop the necessary acumen to demand the same from all the stakeholders in the tax ecosystem to ensure a fair and reputable tax environment, a collective goal that needs collaboration across all stakeholders.

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CONCERNING CRYPTO: A RESEARCH PERSPECTIVE

PROF ASHEER RAM, Associate Professor at the University of the Witwatersrand

Crypto assets (also known as cryptocurrencies) have experienced increasing adoption and popularity in the mainstream consciousness. In 2008, the first crypto asset—Bitcoin— was revealed in a white paper published by Satoshi Nakamoto (considered a pseudonym as they are not known).

Crypto assets are so named because they make use of cryptographic protocols for security and function. Many consider crypto assets to have been invented as a neoliberal financial mechanism to escape government scrutiny. However, the initial creation was aimed at solving the double spending problem in an electronic environment while still being decentralised.

Describing crypto assets

Crypto assets are unique assets that do not have a physical form and have no intrinsic value. In most cases, crypto assets are not treated like a currency, that is, a fiat currency (like Rands, US Dollars or Rupees) backed by government support. Hence, the move to the term 'crypto assets' is commonly used instead of 'cryptocurrencies'. The treatment of crypto assets as legal tender by the government in El Salvador is an exception to this. Crypto assets can be easily transferred between addresses, but transactions are irreversible and are publicly recorded on the blockchain. They are decentralised, meaning that no single government or body controls the use of crypto assets. On a related note, as transactions are completed without identifying information (aside from wallet addresses), these transactions can be seen to be pseudonymous.

Crypto assets are generally seen as volatile, with Bitcoin, in particular, having experienced wild swings in price over the years. At the time of writing, a single Bitcoin trades for around R1 million. The last time the price was close to this amount was in 2021. Another unique characteristic is that crypto assets trade at different prices across different exchanges, which could lead to arbitrage (risk free profits by trading on the marginal differences). Crypto assets could also have engineered artificial scarcity, like Bitcoin, which is set to cap once 21 million Bitcoins exist.

Bitcoins can be acquired through peer-to-peer transactions or through acquisition from an exchange (for example, Luno). Bitcoins can also be obtained through mining (solving the cryptographic hash functions) but this is usually undertaken by corporations, as the equipment and electricity needs are staggering.

Relevance of the crypto industry

With a trading value of around two trillion USD at the time of writing, it is clear that this is an important industry, both in an economic and regulatory sense. Many retailers and bodies have become involved in the crypto space by accepting crypto assets as payment for goods and services. Notable examples include Takealot and the pilot run by Pick 'n Pay. As adoption grows and crypto assets become more mainstream, there is greater participation by individuals, also called retail investors. In light of this, however, a lack of education and scepticism means they can fall foul of ill-intentioned schemes.

Fraud and regulation

Like in any 'new' industry, scams and schemes have, unfortunately, been all too commonplace in the crypto sphere. There have been many international incidents such as Mt Gox, the collapse of the Terra Luna stablecoin, the FTX saga with Alameda Research and Sam Bankman-Fried. On the home front, the notable incident is that of Mirror Trading International. In most of these cases, individuals and natural persons are the ones who have been prejudiced and lost their investments. This highlights the need for consumer protection as the industry grows.

"We are witnessing a maturation of the crypto industry as regulation becomes increasingly commonplace. This is a positive move that signals the intention of governments and regulators to safeguard the interests of citizens and ensure proper compliance by crypto providers and dealers in the face of the need discussed above"

We are witnessing a maturation of the crypto industry as regulation becomes increasingly commonplace. This is a positive move that signals the intention of governments and regulators to safeguard the interests of citizens and ensure proper compliance by crypto providers and dealers in the face of the need discussed above. Some key points are discussed below.

The European Union has released the Markets in Crypto-Assets Regulation (MiCA). MiCA seeks to create a comprehensive regulatory framework for crypto assets in the European Union (EU). It aims to establish rules for the issuance, trading, and custody of crypto assets, including stablecoins and asset-referenced tokens. MiCA also includes provisions for investor protection, market integrity and regulatory oversight.

In South Africa, the Financial Sector Conduct Authority (FSCA) declared crypto assets as a financial product under the Financial Advisory and Intermediary Services (FAIS) Act and has begun issuing licences to crypto providers, promoting compliance. In the UK, the His Majesty's (HM) Treasury is exploring the future of the regulatory regime for crypto assets through consultation and has published a paper on regulating fiat-backed stablecoins. In the USA, the Securities and Exchange Commission (SEC) has granted approval for Bitcoin exchange-traded funds, demonstrating the evolution of the industry.

Crypto asset research by the author

The author's research has dealt with various areas of crypto assets focusing on the Bitcoin. In addition to considering the development of an accounting policy for the Bitcoin (Ram et al., 2016) and the asset class implications of the Bitcoin (Ram, 2019), the author has considered various tax aspects detailed below.

Developing a tax policy for the Bitcoin (Ram, 2018)

This paper is entitled '*Taxation of the Bitcoin: Initial insights through a correspondence analysis*'. Notably, before any tax rules were published in South Africa regarding crypto assets, this paper attempted to provide a grounded basis for the development of a tax policy in South Africa for crypto assets. The paper used the characteristics of the Bitcoin (some of which are detailed above) and the bespoke treatment in various jurisdictions at the time (USA, UK and the EU, Japan, China, Russia and South Korea) to understand which policies best informed the taxing of Bitcoin.

A research instrument known as a correspondence table was generated and the views of tax experts were solicited. Following this, a quantitative statistical technique known as correspondence analysis was applied to create a visual map of the associations between the Bitcoin characteristics and the taxation themes from the jurisdictions. The visual map was then interpreted and conclusions drawn.

The study revealed that the Bitcoin is considered to be distinct from currencies and that transactions involving the Bitcoin should be considered barter transactions and taxed accordingly. The taxation should reflect the economic reality and the manner of the acquisition as opposed to the intention of the acquisition. There was a need for regulation, with the responses showing that regulating the Bitcoin like a currency, despite it not being one, was necessary to reflect its use.

Challenges of taxing crypto assets (Donnelly and Ram, 2022)

This study is entitled 'Analysis of the challenges arising from the current taxation regime regarding cryptocurrencies in South Africa'. With limited tax rules being introduced into the South African tax legislation, it is important to consider the functioning of such rules. The purpose of the research paper was to analyse the challenges arising from the current normal tax provisions regarding cryptocurrencies in South Africa and provide recommendations to address the identified challenges.

The main challenges identified stem from the pseudonymous nature of crypto asset transactions and ownership. Any person who is supposed to be taxed on Bitcoin transactions (for example, South African residents who are taxed on worldwide receipts and accrual) can avoid being taxed if no disclosure to SARS is made. This is possible due to the decentralised nature of the Bitcoin, especially if no exchanges are used that need to follow Know Your Client (KYC) processes.

Related challenges include identifying the nature of the receipt or accrual of crypto asset transactions, identifying the source of receipts or accruals, especially for non-resident taxpayers and the use of arbitrage among different jurisdiction pricing to manipulate crypto values.

In addressing these challenges, various recommendations were made, including the use of third-party returns with all crypto providers, like the Australian Taxation Office data matching programme, the possible implementation of withholding tax in relation to crypto asset transactions and the expansion of section 9C of the Income Tax Act to account for the nature of crypto transactions.

VAT on crypto assets (Mntambo and Ram, 2023)

This study is entitled 'Cryptocurrencies and VAT in South Africa: Recommendations based on a comparative study'. In South Africa, " . . . *the issue, acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency*" is a financial service and, therefore, an exempt supply for VAT (section 2(1)(o) and section 12(a) of the VAT Act). The fact that cryptocurrency transactions are an exempt supply means there can be no output tax that is collected.

This paper performed a comparative analysis to understand if crypto asset transactions could be classified differently and thereby generate an output tax on their supply. The countries of Bahrain, Colombia and Thailand were explored as these are developmentally similar countries that have VAT crypto asset legislation.

It was revealed that Bahrain and Thailand have VAT levied on certain crypto asset transactions, with Bahrain specifically considering the nature of the crypto asset to determine the VAT implications. This is distinct from the South African tax treatment and can offer lessons in developing a VAT treatment other than exempting such transactions.

Technological advancements and areas for further research

To conclude, it is also noted that the Bitcoin and crypto assets have brought into stark relief the technological advancement of the blockchain. Blockchain technology is also known as distributed ledger technology. Further technological advancements include the exploration by central banks of digital currencies, that can give rise, to, for example, a digital Rand or a digital US Dollar. Stablecoins also bear mentioning, as these are designed as crypto assets that maintain their value with reference to an external input, like the US Dollar or gold, for example. Crypto assets and related policy, technology and regulatory areas remain an area in need of much needed exploration.

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EMBRACING ALTERNATIVE SOURCES OF FUNDING

▶ **DR ANNELIZE OOSTHUIZEN,** Senior lecturer and Head of Taxation at the School of Accountancy at the University of the Free State

South Africa's high unemployment rate is a major concern, not only for the government but also for the public. Small and medium-sized businesses are being recognised as playing a vital role in addressing the problem. However, many small businesses fail because of insufficient access to capital. This is due to, among others, information asymmetry and a lack of collateral that upcoming businesses can provide. With financial institutions' reluctance to fund such businesses, alternative methods of raising capital should be explored.

In my PhD thesis, *A tax framework for crowdfunding in South Africa*, I focused on crowdfunding as an alternative access to capital option for small businesses. It was performed at a time when there were global concerns regarding the uncertainty of the tax implications of crowdfunding. An in-depth study of the regulatory implications of crowdfunding from a South African viewpoint, with a focus on taxation, was needed to be proactive and remain competitive in the global market.

What is crowdfunding?

With crowdfunding, small amounts of funding are obtained from many individual investors. It is a method of raising funds by using the internet, social media and social networks. There are different models of crowdfunding, depending on what is offered in exchange for the contributions made. The four core models are: Donation-based (where a donation is made out of pure generosity without expecting something in return), reward-based (the funder expects a product or service in return for the contribution made), debt-based (where funding is made available for a certain period and interest is expected in return) and equity-based crowdfunding model (where funding is provided through purchasing equity in a company with the expectation of receiving dividends in return). The risks and complexities of the crowdfunding transaction increase in the same order, with the donation-based model having the least amount of risk and return.

Donation-based crowdfunding is the most commonly known. 'BackaBuddy' is one of the well-known crowdfunding platforms in South Africa, where more than R500 million has already been raised for various projects such as paying for medical procedures, sporting events or supporting an individual's studies. However, the benefits of crowdfunding extend beyond merely financial benefits. Crowdfunding is a means of democratising investment opportunities in South Africa since it is an open call to any member of the public and is not bound to certain sophisticated and experienced investors only. With crowdfunding, you bypass the middleman, such as venture capital firms and traditional banks, and make a contribution or invest directly in the business of your choice. Since funding can be provided by anyone to any business listed on the online platform, it is also used by upcoming businesses for market testing and validation of products and services, brainstorming a business idea and developing an early start-up market.

Summary of research findings

An exploratory mixed-method approach was followed by conducting a literature study, conducting interviews and also obtaining results from a survey instrument. In particular, I studied the current income tax implications of the four core models of crowdfunding. The workings of South African-based crowdfunding platforms were compared to some of the well-known international platforms such as 'Kickstarter'; it was determined that the workings of the platforms are similar.

▶

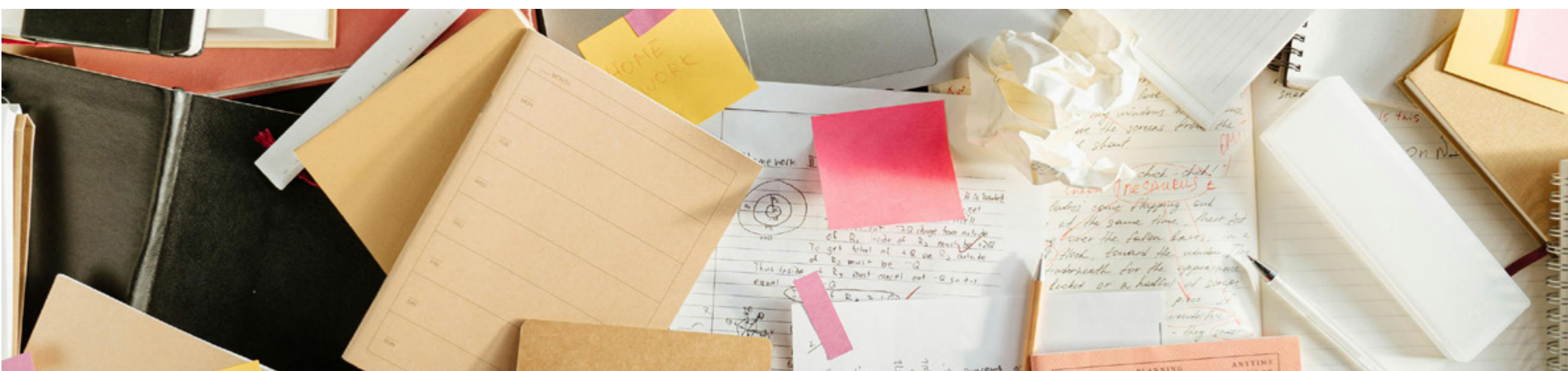
- It was found that globally, governments acknowledge the importance of such alternative sources of funding and even introduced incentives to encourage crowdfunding. Some countries also amended their securities regulation to allow for equity crowdfunding. It was determined that in terms of current income tax legislation, funding received from the crowd might be adversely taxed in the hands of the recipient (refer to my article *Tax: The Pac-man of funding received from the crowd*). Also, there is no tax incentive to encourage funders to provide funding through crowdfunding in South Africa (refer to T*ax incentives for funders of small businesses: A fit for crowdfunding?* [in editing]).

Crowdfunding will continue to exist and expand, whether regulated or unregulated, as evident from the growth in various fundraising platforms locally and abroad. The table below indicates the growth in the amount of funding raised by three South African platforms from 21 April 2020 until 28 February 2024.

BackaBuddy	**Thundafund**	**Jumpstarter**
Donation-based platform	Reward-based platform	Reward-based platform
R	**USD**	**R**
162 002 743	3 240 657	581 420
507 015 292	5 624 653	1 292 409
213%	74%	122%

Figure 1. The table above indicates growth in the amount of funding raised by three South African platforms from 21 April 2020 until 28 February 2024.

If left unregulated, tax evasion, tax avoidance and fraud can occur. Since crowdfunding is an open call to any member of the public (regardless of their demographics or level of financial literacy), transparent, specific guidance and regulations must be promulgated for crowdfunding transactions. The regulations should aim to prevent complex and hybrid structures and models, especially with equity and debt-based crowdfunding. Furthermore, regulations and incentives should strike a balance between inclusivity and efficiency.



PAYOUT POLICIES AND INVESTOR-LEVEL TAX REFORM IN SOUTH AFRICA

PROF RUDIE NEL, Associate Professor in Taxation at Stellenbosch University

Payout policy is central to corporate finance as it dictates the amount and method elected for distribution and could affect valuation, investment decisions and the taxes investors would pay (Farre-Mensa et al., 2014). The management of a company should therefore consider the sustainability of cash flows, the predictability of investment needs and the tax preferences of shareholders when deciding whether to declare dividends or repurchase shares (Correia et al., 2015). Although the tax preferences of shareholders ought to be considered, existing South African literature does not provide conclusive evidence on the role of taxes and focuses mainly on the target period before the introduction of dividends tax during 2012.

The lack of consensus on the motivations for paying dividends, described as the dividend puzzle, remains unresolved despite much research and extensive debate (Al-Najjar & Kilincarslan, 2019). Empirical evidence in respect of taxes and tax clientele theory as an explanation for dividend relevance provides mixed support and is characterised by sparse research from emerging markets (Baker & Jabbouri, 2016). South Africa, an emerging market and developing country, provided a unique setting for research due to extensive tax reform. The amended definition of 'dividend' in the Income Tax Act during 2011 represents the first signifcant tax reform. As payout methods other than dividends could result in capital gains tax (if shares are held with a capital intent), a payout method could be subjected to dividends tax, capital gains tax or a combination of both. An overview of the dividend definition and tax consequences is illustrated in Figure I.

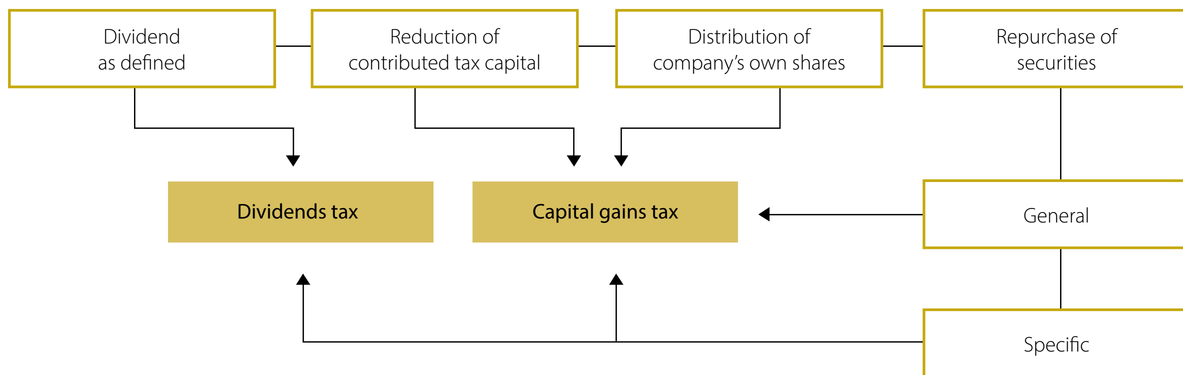


Figure 1. Dividend definition and tax consequences (Own doctoral study).

In addition to amendments to the dividend definition, only certain investors would be exempt from dividends tax since 2012, which could result in conflicting tax preferences. The change in tax regime during 2012 resulted in the possibility of dividend tax arbitrage arising for the first time in South Africa, as only certain investors are exempt from dividends tax (Marcus & Toerien, 2014). An individual investor (natural person) is only afforded an exemption from dividends tax if dividends are from tax-free investments contemplated in section 12T of the Income Tax Act or if the individual investor is a non-resident in terms of which a double tax agreement provides relief. An individual investor would be subjected to dividends tax, if section 12T or DTA relief is not applied, whereas other types of investors are afforded exemption. A corporate investor (or company) or a fund investor (main institutional investor based on holdings in JSE-listed equities) would be exempt from dividends tax in terms of section 64F(1)(f) of the Income Tax Act. The conflicting tax preferences are further enunciated due to increases in the applicable tax rates on dividends as well as the effective rate of capital gains tax since 2012. The tax rates at which dividends are taxed (under the STC-regime prior to 1 April 2012 and dividends tax regime on/after 1 April 2012) as well as the effective CGT rate increased notably from years of assessments ending at the end of February 2013. Conflicting tax preferences of investors for different payout methods are further pronounced in South Africa as a result of the differential tax rate on dividends and capital gains tax (Nel & Wesson, 2021).

My doctoral dissertation investigated whether investor-level tax reform (the introduction of dividends tax during 2012 and subsequent changes in tax rates) had an effect on the payout policies of companies as a central research question. The central research question related to the taxes and tax clienteles theory which centres around the notion that the after-tax return of distributions shapes investors' preference for specific payout methods and, in turn, investors would select a specific company based on their tax treatment and the company's payout policy (Baker et al., 2018). The central question of my doctoral study was addressed by the pursuit of four research objectives:

i. To calculate the after-tax values of different payout methods for different categories of investors;
ii. To investigate the timing of dividend declarations before and after the introduction of dividends tax;
iii. To investigate the trend and composition of total payout before and after the introduction of dividends tax; and
iv. To investigate the relationship between changes in payout methods and changes in investor tax preference parameters since the introduction of dividends tax.

Based on changes in tax legislation and calculated after-tax values, propositions in respect of the effect of tax reform on payout policies were submitted (first research objective). Support for these propositions was considered based on the empirical results of the three other research objectives (second, third and fourth research objectives) as evidence of whether payout policies were adjusted based on investor-level tax reform. The overall conclusion and contribution of my doctoral study was that the payout policies of selected companies were adjusted based on investor-level tax reform (thus suggesting an effect of investor-level tax reform on payout policies). The main findings of research objectives (i) to (iii) are presented in this article (and previously published in three separate academic articles). The data collection of these objectives related to the financial data of 116 selected companies listed on the JSE. Data analyses were performed using various statistical analysis techniques.

After-tax values of payout methods

Research objective (i) was pursued by calculating the after-tax values of payout methods for individuals, corporates and institutions (represented by funds). The years of assessment of investors which relate to the 2006 to 2020 financial years of companies were considered. These periods included three years under the STC-regime (Period A to Period C); the year in which dividends tax was introduced (Period D); and four years under the dividends tax regime (Period E to Period H). The after-tax values of payout methods serve as a theoretical argument for the increased role of taxes due to tax reform and as basis for theoretical propositions on the effect of taxes on payout policies.

In order to quantify the magnitude of changes in after-tax values over the different periods, a tax differential was calculated. The tax differential depicts, in percentages, the difference between the option with the highest after-tax value and the option with the lowest after-tax value. The calculated tax differentials indicate the tax preference of one payout method over another and enable a graphical representation of changes over a period as the basis to argue the increased or decreased role of taxes. General share repurchases and additional shares were separately considered as possible substitute payout methods for dividends. The tax rates at which dividends are taxed and capital gains tax were applied in the calculation of after-tax values. For purposes of the calculation of the after-tax values, the years of assessment of investors were assumed to end at the end of February each year for meaningful comparison between the categories of investors.

The tax differentials of share repurchases and dividends for the respective periods are provided in Figure II.

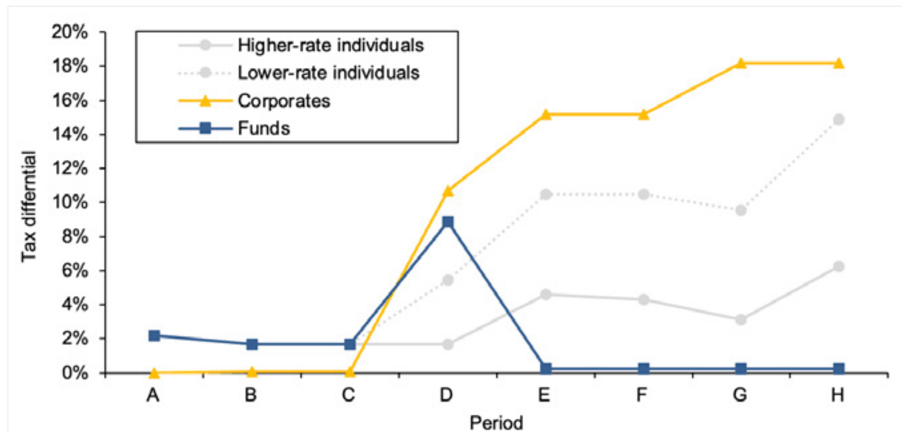


Figure II. Tax differentials: General share repurchases vs. dividends (from Nel, 2018

General repurchase (or open-market repurchase) of shares would since 2011 not constitute a dividend resulting in no dividends tax exemption being available to corporate or fund investors. As a result, the tax preference of corporate and fund investors for dividends could have discouraged the use of general repurchases as a payout method since the introduction of dividends tax in 2012. In particular, the high tax differentials observed in respect of corporate investors (Figure II) reflect the preference for dividends above general repurchases, which is further enunciated as a result of increases in applicable tax rates. The expectation was that general share repurchases post-2012 would be lower than general repurchases pre-2012. Specific share repurchases would still constitute dividends to the extent that a reduction of CTC is exceeded. The popularity of specific share repurchases could increase since the introduction of dividends tax because of an exemption afforded to corporate and fund investors. Based on the after-tax values the expectation was that specific share repurchases (including specific repurchases from subsidiaries) post-2012 would be higher than specific repurchases pre-2012.

The tax differentials of additional shares and dividends for the respective periods are provided in Figure III.

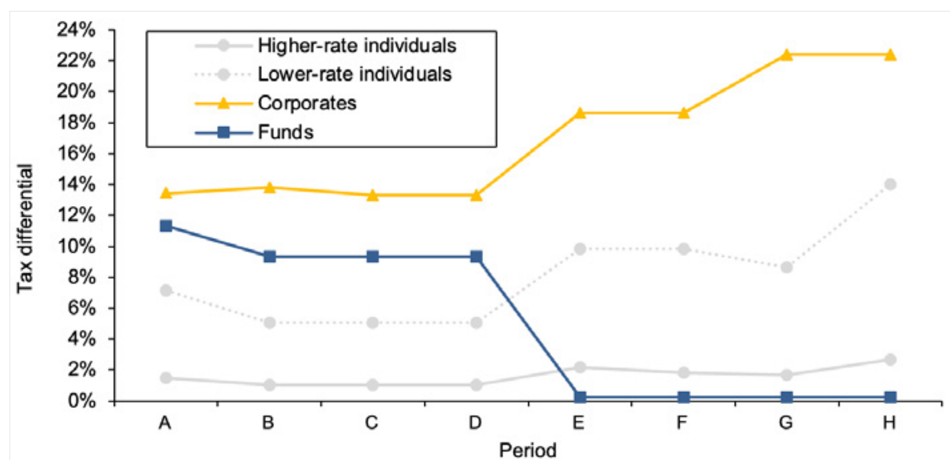


Figure III. Tax differentials: Additional shares vs. dividends (Own doctoral study)

- Additional shares as a payout method Additional shares as a payout method could be issued as capitalisation shares or scrip dividends. Scrip dividends empower investors to decide between a cash dividend (subject to dividends tax) or additional shares (subject to capital gains tax if held with capital intent). The introduction of dividends tax, levied at investor level, enunciates the conflicting tax preferences of investors and the opportunity to provide investors with the option to decide between dividends tax or capital gains tax. The expectation was that additional shares issued in terms of scrip dividends post-2012 would be higher than pre-2012.

In conclusion, after-tax values highlight the significance of tax reform since 2012 and the conflicting tax preferences of investors since 2012 (Nel, 2018).

Timing of dividend declarations

The aim of research objective (ii) was to investigate whether dividend declarations were accelerated or postponed during 2012. The conflicting tax preferences of investors are enunciated by the fact that dividends tax is assessed at investor level and only affords exemption to certain investors. The dividends tax exemption would be beneficial to corporate investors (companies) and foreign investors are also likely to benefit from the introduction of dividends tax because of the possible application of relief in terms of a double tax agreement (Venter, 2014). The dividends tax exemption afforded could have encouraged the use of dividends as a payout method since the introduction of dividends tax. In anticipation of the introduction of dividends tax, during April 2012, dividends could thus have been postponed or accelerated in order to subject a dividend to dividends tax or not. The expectation was that the timing of dividend declarations during 2012 would differ from immediately preceding and subsequent years.

The data collection commenced with the collection of dividend declaration dates and year-ends employed in calculating days-to-declarations. Results announcement dates and corporate profitability were then collected to investigate explanations, other than tax, for the timing of dividend declarations. For final dividends, findings do not suggest an acceleration or postponement during the 2012 financial years of the companies selected—which could possibly be attributed to the signalling effect of final dividends. For interim dividends, a significant increase in the days-to-declaration during 2012 was noted (indicative of a postponement during 2012) (Nel & Wesson, 2019).

An investigation at individual company level of interim dividend declarations before and after 1 April 2012 furthermore supports a tax explanation for the postponement noted during 2012 (Nel & Wesson, 2019). If the interim dividend declaration dates are compared to interim results announcement dates it is evident that certain companies postponed interim dividend declaration dates after results announcement dates during the period as illustrated in Figure IV.

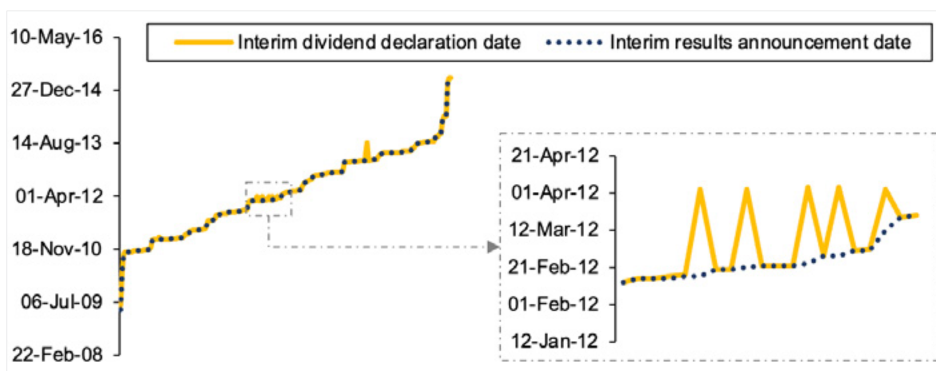
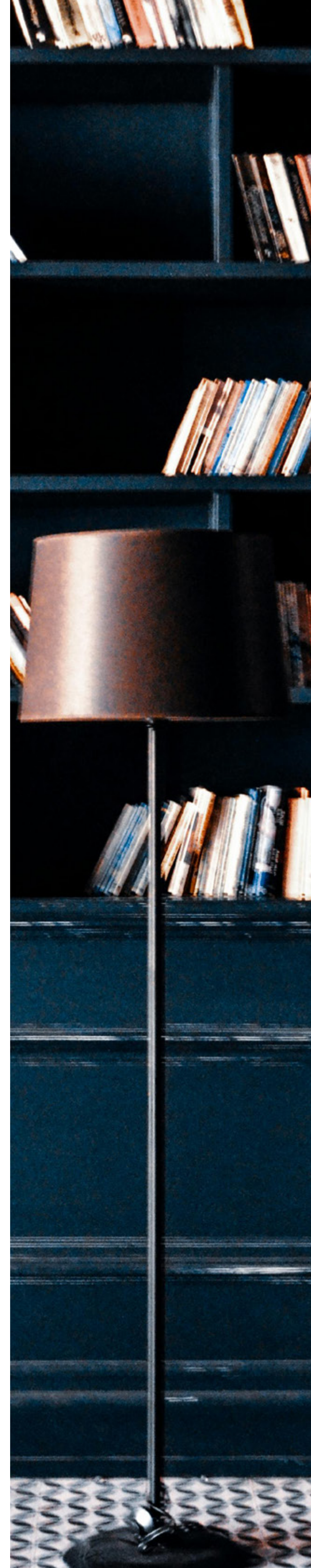


Figure IV. Interim dividend declaration dates and interim results announcement dates (Nel & Wesson, 2019).



In respect of interim dividends, a postponement during 2012 is suggested based on the highest days-to-declaration observed during 2012. Delays in financial reporting, audit report lags and changes in year-ends are also not submitted as explanations for the postponement of interim dividends during 2012 (Nel & Wesson, 2019). Therefore the timing of dividend declarations during 2012 were found to differ from immediately preceding and subsequent years and the postponement is supported by a tax explanation (Nel & Wesson, 2019). This finding suggests an effect of investor-level taxes on payout policies.

Trend and composition of total payout

Research objective (iii) investigated the trend and composition of total payout distributed by companies listed on the JSE over a period of tax reform (Nel & Wesson, 2021). The aim was to investigate whether the payout methods post-2012, after the introduction of dividends tax, differed from pre-2012. Payout methods (dividends, capital distributions, additional shares and share repurchases) in rand value and frequency of election were considered. Share repurchases could serve as a substitute payout method for cash dividends in order to maximise the after-tax return of shareholders (Alzahrani & Lasfer, 2012). Additional shares could also serve as a substitute for cash dividends in cash-strapped companies or financially constrained companies that wish to preserve cash (Feito-Ruiz et al., 2018). South African literature has shown increases in dividends from 2012 to 2014 (Nyere & Wesson, 2019), however, does not consider the effect of increased dividends in relation to other payout methods. Investigating whether the increased dividends are accompanied by a decrease in other payout methods could provide insight into how companies have responded when faced with conflicting tax preferences since the introduction of dividends tax.

Overall, it was found that ordinary dividends increased post-2012 as a statistically significant increase in value and an increase in the frequency of election was observed during the post- 2012 period in support of a theoretical proposition (Nel & Wesson, 2021). Whereas other payout, except for additional shares, decreased post-2012. If payout methods other than ordinary dividends pre-2012 and post-2012 are compared, the increase or decrease in payout methods between these two periods is observable in Figure V.

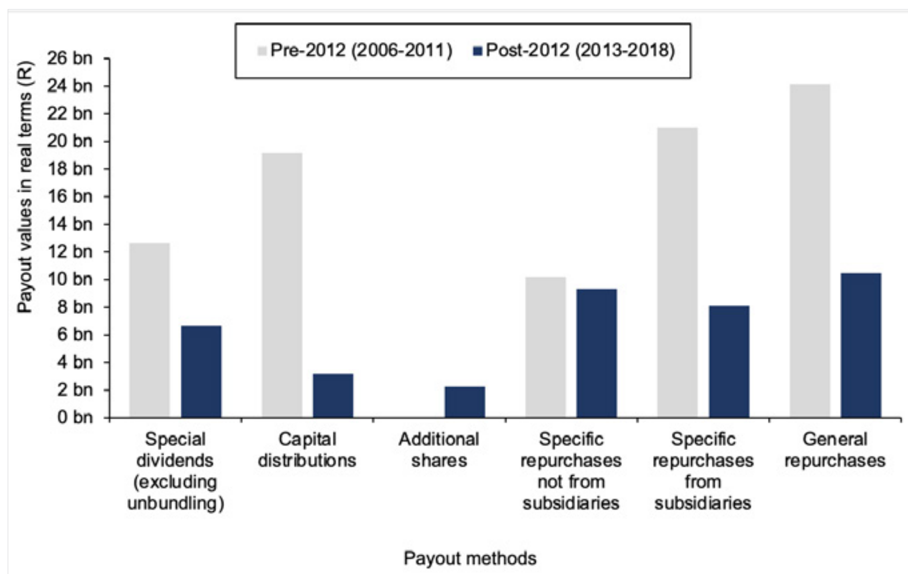


Figure V. Payout methods other than ordinary dividends pre-2012 and post-2012 (Nel & Wesson, 2021).

In respect of capital distributions, a statistically significant decrease in value and a decrease in the frequency of electing capital distributions were observed during the post-2012 period. Capital distributions, indicated as a reduction in contributed tax capital, would not constitute dividends resulting in CGT for the shareholder if shares were held with capital intent. The decrease in capital distributions noted was submitted as evidence of the payout policies of companies adjusted as a result of the differential tax of dividends and capital gains.

In respect of additional shares issued as scrip dividends, a statistically significant increase in value and an increase in the frequency of election was observed during the post-2012 period. This increase post-2012 confers flexibility to shareholders to manage their own financial needs, including tax considerations. The increased value and frequency of electing scrip dividends during the post-2012 could suggest an initiative by companies to empower shareholders with the choice since the introduction of dividends tax.

"The introduction of dividends tax, levied at investor level, enunciates the conflicting tax preferences of investors and the opportunity to provide investors with the option to decide between dividends tax or capital gains tax"

In respect of specific repurchases from subsidiaries, the value and frequency electing decreased during the post-2012 period, contrary to an expected increase. The findings of this study support the argument that specific repurchases from subsidiaries did not increase despite the dividends tax exemption afforded, which could suggest motivations other than tax for entering into specific repurchases from subsidiaries (in line with findings of Wesson and Hamman, 2012). One reason, other than tax, could be the flexibility afforded by treasury shares in the management of the capital structure of companies (Cassim, 2010).

In respect of general repurchases, no statistically significant decrease in value during the post-2012 period was observed. The decrease in the value of general repurchases post-2012 evident based on descriptive statistics (Figure V) was not found to be statistically significant and the frequency of electing general repurchases increased post-2012. The increase in frequency of general repurchases post-2012 could also explain the decrease in frequency of electing special dividends to distribute transitory earnings during the post-2012 period.

Conclusion

The findings highlighted in this article represent three research objectives from my doctoral study which are published in three academic articles (Nel, 2018; Nel & Wesson, 2019; Nel & Wesson, 2021). The findings suggest that investor-level tax reform affected the payout policies of the selected JSE companies. These findings were also further elaborated on by an explanatory study in which investor tax preference parameters were calculated (based on shareholding and tax rates) and analysed using regression analysis techniques (Nel et al., 2022). The limitations and recommendations of my doctoral study provide for further areas of research into tax as motivation for payout methods to add more pieces to the complex dividend puzzle.

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TAX SIMPLICITY AND HOW COMPLEX SOUTH AFRICAN TAX LEGISLATION MAKES A CLAIM WIDELY USED BY TAXPAYERS FOR MEDICAL AID SCHEME CREDITS

PROF DEBORAH TICKLE, Adjunct Associate Professor at the University of Cape Town

As early as the 1700's, the great economist and philosopher said in his famous book, known as *The Wealth of Nations*,[1] that "[t]he tax which each individual is bound to pay, ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, *ought all to be clear and plain to the contributor, and to every other person." (my emphasis)*.

One would thus think that the South African tax legislation that sets out how medical aid scheme credits may be claimed would be constructed in a particularly simple manner. This is because individual taxpayers so widely use it, many of whom do not speak English or Afrikaans as their first languages (the legislation is written in these languages) and/or have no experience in reading legislation.

And yet, in a research study that Professor Sharon Smulders, Professor Karen Stark and I undertook, we established that one needs a university degree to understand the medical scheme credit provisions. The study was undertaken in order to produce a research paper for presentation at a symposium and publication in a book entitled: *Tax Simplification: An African Perspective*,[2] along with a number of other papers dealing with other aspects of tax simplification.

The objective of the research paper was to examine the statutory (legislative) and effective (administrative) complexity of South Africa's income tax legislation for individuals. Sections 6A and 6B medical scheme credits (which have not changed since the study was completed) were selected because of their universal use by individual taxpayers regardless of their earnings or education level.

Statutory complexity: Readability

The statutory complexity was largely dealt with by examining the legislation itself and, in addition to examining general literacy in South Africa, by applying the Gunning Fog Index. This index establishes readability; it was selected as it provides a scientific method for determining comprehension and fluency, which our research on other sources indicated are important outcomes of readability. The Gunning Fog Index ('Fog Index') assesses paragraph, sentence and word length in order to determine the level of education required to understand a piece of writing.

Universal readability is reflected in a Fog Index of less than eight. Where the index is greater than 12, a high school education equivalent to South Africa's matric is needed. Above 20, one needs a post-doctoral degree. The outcome was a Fog Index for section 6A, which was 17.44[3] and for section 6B, which was 23.67,[4] with an overall index of 21.67 when the two are looked at together. The Fog Index for the Guide issued by SARS (Issue 9),[5] which is designed to explain what the sections mean in a simpler manner to assist with their application, was 15.63.[6] Clearly, one needs to be well educated to understand the sections and even the Guide.

[1] Inquiry into the Nature and Causes of The Wealth of Nations by Adam Smith L.L.D F.R S Book V Chapter II Part II.

[2] ISBN: 978-1-920538-96-5 Published by Pretoria Press University 2019 (see chapter 9).

[3] based on 285 words, 9 punctuation marks and 34 words with more than three syllables

[4] based on 1 039 words, 24 punctuation marks and 152 words with more than three syllables

[5] SARS 'Legal counsel, income tax: Guide on the determination of medical tax credits (issue 9)' (23 March 2018).

[6] Calculated from the background (part 1) to the claiming of the credit (part 4), but excluding footnotes and examples (6 068 words, 310 punctuation marks and 1 183words with more than three syllables.

So as to ensure that the application of the Fog Index had provided an accurate reflection the position, these overall results were later confirmed using the Flesch Readability Index.

Tax Disputes

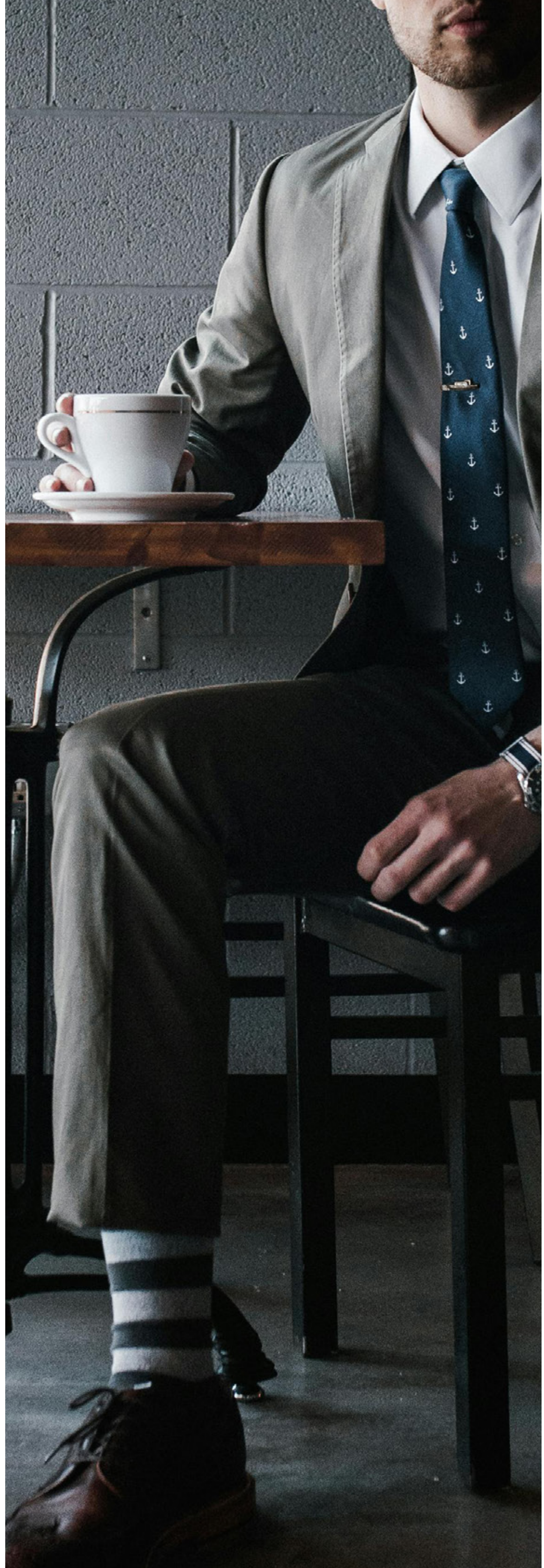
A further indicator of statutory complexity is tax disputes, which are also linked to effective complexity. During our research, we had to acknowledge that the statistics for tax disputes regarding the medical scheme credits were not available. Nevertheless, we were able to establish from the relevant (2016 and 2017) annual Tax Statistics documents issued jointly by SARS and Treasury that the overall number of tax disputes (for all taxpayers) and the tax debt for individuals demonstrated a positive trend in that they were reducing over the period 2015 to 2016. However, little store was placed on this trend because of the lack of detailed information and the fact that a lack of simplicity is likely to render taxpayers (especially individuals) unable to determine whether they are in a position to dispute their assessed taxes.

Effective complexity: SARS administrative costs

The first port of call in looking at effective (administrative) efficiency was the level of administrative costs incurred by SARS to collect taxes. It was observed that the cost of maintaining SARS as the administrative arm of government given the task of collecting taxes, was in line with the international benchmark for such a ratio, being 1%, over the preceding five years. This was clearly a positive outcome but its relevance to the study was not considered significant; we simply noted that administrative costs had to be monitored on an ongoing basis.

Compliance costs for individuals

Our literature research established that the cost of compliance is an indicator of complexity.[7] Thus, a survey initiated by the South African Institute of Chartered Accounts (SAICA) and conducted by the University of South Africa in 2018 (based on the 2017 tax year) provided us with some valuable insights. A total number of 885 people responded to the survey and the responses were weighted in terms of employment status. The survey was considered to be representative of the South African individual taxpayer population as a whole. Nevertheless, it was supplemented by information on a further 300 taxpayers, derived by Professor Smulders and Professor Stark for



[7] R Krever & P Mellor, 'Where's the complexity in tax law?' paper presented at the Centre for Business Taxation summer symposium, Saïd Business School, Oxford,22-25 June 2015, 2.
[8] K Stark & S Smulders 'Compliance costs matter – the case of South African individual taxpayers' (2019) 16(3) eJournal of Tax Research 801.

another piece of research.[8]
The surveys addressed the costs of tax compliance and the perception of its complexity in the minds of the individuals surveyed. Questions that were addressed by the survey included the extent to which professionals were used and why (for example, stress in completing the return, tax practitioners' help to save money, complexity, wanting to do the return correctly, tax return/tax legislation too difficult to understand, tax planning, among others).

A detailed analysis of the overall data outcomes determined that the individual cost of tax compliance for the 2016/2017 tax year up to the date of submission of the tax return totalled an amount of R36.55bnn or 8.58% of tax revenue or 0.83% of the gross domestic product for the same year. When compared to international norms (1%–7%), this was considered high. It could thus be broadly concluded that the income tax system for individuals in South Africa is complex. In addition, it has established that taxpayers tend to view the tax legislation and their tax compliance requirements as being complex.

Overall conclusions and recommendations

Having furthermore determined from our literature search that complexity tends to lead to reduced compliance,[9] we concluded that an improvement in the simplicity and clarity of both language (legislation and guides) and tax compliance processes could decrease costs of compliance for individuals and improve voluntary tax compliance.

Finally, we suggested recommendations for improvements. Firstly, although it was acknowledged that legislation could not immediately be rewritten, a much-simplified Guide for Individuals was recommended in the short term and simpler language for the legislation in the long term. We also suggested a medical tax credit calculator.

We presented our research paper, along with the other papers prepared for the topic of 'Tax Simplification: An African Perspective' at a Symposium hosted by the South Institute of Chartered Accountants in conjunction with the University of New South Wales (Australia) in 2018. The delegates included representatives from Treasury and SARS.

Unfortunately, the tax legislation for individuals is still complex. As an indication, sections 6A and 6B have changed little since we conducted our study (only the credit amounts have been changed). However, a visit to SARS' website will now provide an individual with an improved short explanation of what the medical scheme tax credit is and the frequently asked questions are of some assistance. The Guide has been updated regularly (the latest in June 2023), although only an updated, detailed study would reveal whether this is written in a manner that can be more easily understood.

Acknowledgements

I would like to thank Professors Smulders and Stark. It was an honour to work with them on this research paper. One never stops learning and I have learnt so much from these two incredible women while working on the paper. Although I participated, they definitely did the bulk of the detailed analysis, especially regarding the surveys and literature searches. Nevertheless, it was a great team effort.

"Having furthermore determined from our literature search that complexity tends to lead to reduced compliance,9 we concluded that an improvement in the simplicity and clarity of both language (legislation and guides) and tax compliance processes could decrease costs of compliance for individuals and improve voluntary tax compliance"

[9] N Faridy 'Complexity, compliance costs and non-compliance with VAT by small and medium enterprises (SMEs) in Bangladesh: Is there a relationship?' unpublished PhD thesis, Griffith University, September 2015.

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TAX AVOIDANCE:
IS THE GAAR EFFECTIVE?

▶ **MICHELLE KIRSTEN,** Head of Finance and Accounting at IIE's Varsity College

This article provides insight in a summary format of the mini-dissertation of limited scope for the MCom (Taxation) completed at the University of Pretoria under the supervision of Prof Teresa Pidduck. The mini-dissertation also won the 2022 SAIPA Accountancy Top Achiever Award.

Tax avoidance can be classified as 'permissible' or 'impermissible'. One of the methods employed by South Africa to combat impermissible tax avoidance schemes, is the general anti-avoidance rules (GAAR). The GAAR is contained in section 80A to 80L of the Income Tax Act, No. 58 of 1962 ('The Act').

Since its amendment in 2006, it has been subject to limited judicial consideration in the ABSA and Another v Commissioner for SARS ('ABSA case') in 2021. However, only two of the four requirements were considered and not the GAAR in its entirety; thus, its efficacy remains unknown.

The GAAR consists of four requirements that must be present for an 'impermissible avoidance arrangement' to exist. This includes:

- There must be an *arrangement*;
- Which results in a *tax benefit*;
- The *sole or main purpose* of the arrangement must be to have obtained the tax benefit; and
- One of the *tainted elements* must be present.

Why this topic?

Considering the importance of tax revenue in South Africa, which contributes to over 90% of the government's consolidated budget revenue (The Commissioner, 2024), impermissible tax avoidance schemes threaten to negatively impact revenue collections. As the efficacy of the GAAR remains unknown, further research would be required to determine its effectiveness (Pidduck, 2017). This was assessed through comparison to New Zealand, which has a similar GAAR in concept to that of South Africa. The study aimed to determine whether further amendments could be made to the GAAR to address its weaknesses, as well as to determine whether any lessons could be learnt from its New Zealand counterpart to improve its efficacy (Kirsten, 2021).

How was the study conducted?

The study employed a qualitative methodology, combining doctrinal and reform-oriented approaches (Pidduck, 2019; Pidduck, 2020) which suggests a 'structured pre-emptive analysis'. This methodology was specifically designed for qualitative research where judicial inquiry for the legislation in question is absent (Pidduck, 2019). Using New Zealand case law, this 'structured pre-emptive analysis' renders it possible to identify amendments to the South African GAAR to improve its efficacy based on the lessons learnt from its counterpart in New Zealand.

The research objectives

- To identify weaknesses in the GAAR;
- To compare the theoretical principles of the South African GAAR to the New Zealand GAAR;

▶

> "The qualitative analysis between the two GAARs highlighted that the South African GAAR, despite the 2006 amendments, still contains various weaknesses which may result in it being an ineffective deterrent to impermissible tax avoidance arrangements"

- To apply the South African GAAR to the facts of a case from New Zealand where the New Zealand GAAR was successful, to determine whether the South African GAAR would have been successful and thereby identify elements of the South African GAAR that need improvement; and
- To suggest improvements to the South African GAAR to address identified weaknesses.

Findings of the research

The qualitative analysis between the two GAARs highlighted that the South African GAAR, despite the 2006 amendments, still contains various weaknesses which may result in it being an ineffective deterrent to impermissible tax avoidance arrangements.

While various similarities between the two GAARs were noted (such as the arrangement requirement, tax benefit requirement and the purpose requirement), significant differences were also noted. The most distinguishable difference highlighted that the New Zealand GAAR contains three requirements, whereas the South African GAAR contains four, making it more onerous to apply from the onset. Additionally, the South African GAAR is more prescriptive and detailed than the New Zealand GAAR, which was considered to be simpler, shorter and less complex with more flexibility provided to the courts when determining whether the provisions of the GAAR would apply. This results in the South African courts having less flexibility when interpreting the GAAR.

Proposed recommendations to simultaneously address the identified weaknesses and improve the efficacy of the GAAR, are summarised for each requirement below. These recommendations have been made in accordance with the lessons learned from the analysis of the New Zealand GAAR.

Arrangement – this should be amended so that the taxpayer need not have prior knowledge, or act with volition, to be considered a 'party to the arrangement'.

Tax benefit – in relation to evaluating a liability to pay tax, the words 'anticipated', 'potential' and 'prospective' should be included in the GAAR to reduce the reliance on court interpretations. Additionally, the 'misuse or abuse' consideration should be included in the determination of a 'tax benefit' to allow the purpose/manners of the taxpayer to be considered when determining the presence of a 'tax benefit'.

Sole or main purpose – firstly, a purely objective test should be implemented to remove the reduced objectivity introduced in the ABSA case whereby the taxpayer is required to be a 'party' to an arrangement. Secondly, the South African GAAR should incorporate the 'not merely incidental' consideration into the 'sole or main purpose' requirement in order to establish whether the tax benefit is linked to any other purposes of the arrangement and not just whether the tax benefit it is the sole or main purpose of the arrangement. Lastly, consideration should be given to whether the intended scope of the provision was adhered to by the taxpayer or not.

Tainted elements – no such indicators exist in the New Zealand GAAR. It is recommended that, similarly to New Zealand, this is left to the courts to interpret and apply due to the uncertainty regarding some of these elements and terms.

Application to the New Zealand case: Would the GAAR have been effective?
When the current South African GAAR was applied to the New Zealand case it was found that the arrangement in question would constitute an impermissible avoidance arrangement. Therefore, the provisions of the South African GAAR would have been applicable and, therefore, successful in curbing the tax avoidance in relation to the applicable arrangement, despite the identified weaknesses.

Conclusion

Despite the amendments to the South African GAAR, it still contains weaknesses in its current format. To improve its efficacy, lessons can be learned from its New Zealand counterpart. Even though the South African GAAR would have been successful in curbing the tax avoidance in the abovementioned case, it is submitted that further amendments are still required.

30 minutes CPD

THE INTERACTION BETWEEN FRINGE BENEFIT VALUES AND VAT

▶ **PROF HERMAN VIVIERS,** Associate Professor in Taxation at the North-West University

As part of the annual tax legislative process, National Treasury makes various amendments and updates to South African tax legislation. These introductions of new provisions into the tax acts as well as amendments made to the wording of existing provisions sometimes result in unintended anomalies to arise in respect of the interaction between various legislative provisions.

Simply put, an anomaly occurs where a mismatch is identified between the outcome that could be derived from the interpretation of a specific legislative provision(s) based on different approaches of interpretation. Where the outcome of a specific provision based on a literal approach of interpretation deviates from the outcome or intent motivated by the policy objective(s) set behind the introduction or amendment of such specific provision (referred to as the 'purposive approach of interpretation'), an anomaly exists.

The purpose of this article is to provide a high-level overview and insights into an identified anomaly which was under scrutiny in one of my recent collaborative research publications about the interaction between fringe benefit values and VAT. This will be achieved by firstly providing background to the research problem and by highlighting the main purpose and relevance of the research. This will be followed by a snapshot overview of the research analysis conducted, together with the main research findings. Finally, this article will conclude by stating the current legislative standing on the matter as well as a recommendation, based on the research, on how the identified anomaly could possibly be addressed.

Background to the research problem

During the tax legislative cycle of 2019 a minor amendment was made to the opening words of section 23C(1) of the Income Tax Act (58 of 1962) (hereafter referred to as 'the Act'). Section 23C of the Act aims in linking the VAT consequences of a fringe benefit to that of determining its taxable value for income tax purposes. However, based on a literal approach of interpretation of the amended wording of this provision (which still currently stands and has remained unchanged since the 2019 amendment), it seems as if the outcome of such interpretation is in contradiction with the policy objective set by National Treasury in support of the 2019 amendment made. This anomaly results in an unintended change in policy that negatively impacts the taxable value of taxable fringe benefits and that creates tax treatment uncertainty of fringe benefits amongst taxpayers.

Main purpose and relevance of the research

The main purpose of this research was to seek certainty regarding the interaction between the VAT implications of fringe benefits and their impact on the taxable values of such taxable fringe benefits for income tax purposes. In essence, the research investigated whether VAT should be included or excluded from the taxable value of fringe benefits for income tax purposes.

Snapshot overview of the research analysis conducted

Where an employer grants a non-cash benefit or an advantage to its employee, such a supply could trigger income tax implications in the hands of the employee who receives such benefit if such benefit qualifies as a 'taxable benefit' as defined in paragraph 1 of the Seventh Schedule to the Act. The value of any taxable benefit (namely its 'cash equivalent') needs to be included in the gross income of the employee who is entitled to such benefit in terms of special inclusion paragraph (i) under 'gross income' in section 1(1) of the Act.

Apart from the income tax consequences that could be triggered in the hands of an employee who receives a taxable fringe benefit granted by its employer, such a supply of a taxable fringe benefit could also trigger VAT implications in the hands of the employer if such employer is a registered VAT vendor. Since section 23C of the Act plays a crucial role in linking the VAT consequences of a fringe benefit to that of determining its taxable value to be applied for income tax purposes, this has necessitated an in-depth research analysis to be conducted to seek clarity in interpreting the meaning, and to determine the outcome of applying the current opening words of section 23C(1) of the Act.

This research analysis followed a qualitative research approach through the employment of doctrinal research as the main research method. In addition, this analysis was based on two different approaches of interpretation, namely the literal approach of interpretation (also known as the 'black-letter law' approach) and the purposive approach of interpretation.

Section 23C of the Act aims to prevent a double deduction for an income taxpayer who is also a VAT vendor. Hence, section 23C ensures that the VAT (input tax) that has already been allowed to be claimed under section 16(3) of the VAT Act (89 of 1991) cannot be claimed again as a deduction for income tax purposes.

Before 1 October 2001, section 23C of the Act only referred to the 'cost' of an asset or 'expenditure incurred' by a taxpayer, being silent on the scenario where, for example, a deduction in respect of an asset is not based on cost, but rather on market value. Uncertainty prevailed on whether VAT would be included or excluded from the market value if such market value is to be applied as the value of such asset for income tax purposes. To remove the latter uncertainty, section 23C of the Act was amended, effective from 1 October 2001, to extend its application by the inclusion of the term 'market value' within the ambit of this provision. The Explanatory Memorandum that supported the latter amendment also clarified that if VAT (input tax) was allowed to be claimed upon the acquisition of such asset, the claimed VAT needs to be excluded from the market value of such asset.

"Simply put, an anomaly occurs where a mismatch is identified between the outcome that could be derived from the interpretation of a specific legislative provision(s) based on different approaches of interpretation"

After the former amendment, section 23C of the Act had been amended once more during 2019. The initial opening words of section 23C(1) of the Act read as follows:

> "***Where for the purposes of applying any provision of this Act***, regard is to be had to the cost to the taxpayer or the market value of any asset acquired by him . . .". (own emphasis added).

However, during the 2019 tax legislative cycle, these opening words of section 23C(1) of the Act were replaced with the following phrase initiated in terms of the Taxation Laws Amendment Bill (TLAB) of 2019:

> "***Notwithstanding the Seventh Schedule***, where regard is to be had to the cost to the taxpayer or the market value of any asset acquired by him or her . . .". (own emphasis added).

Although the term 'notwithstanding' is not formally defined in the Act, synonyms used for this term in ordinary English language include 'despite' or 'in spite of'; it is described to mean 'not considering, or not being influenced by'. In a legal context, this term is commonly used in statutes and regulations to indicate that a specific provision or rule is not limited or affected by any other provision or rule that might be contained in that same section or Act.

The policy objective in support of motivating why the 2019 amendments were required to be made to the opening words of section 23C(1), was motivated under clause 26 of National Treasury's 2019 Explanatory Memorandum in support of the 2019 TLAB and was described as follows:

> In 2015, *Regulations dealing with 'determined value' in paragraph 7(1) of the Seventh Schedule on retail value in respect of right of use of motor vehicle* came into effect. The proposed amendment in subsection (1) seeks to *align the policy intention as outlined in the Regulation* and clarify that VAT is to be included in the '*determined value*' used to calculate the fringe benefit arising in the employee's hands". (own emphasis added).

The phrase: "*To align the policy intention as outlined in the Regulation*" used in the former motivation in support of the reason why the proposed amendment to the opening words of section 23C(1) was required, effectively refers to the regulations as contained in Government Regulation 362. This regulation was issued and became effective on 1 March 2015, to clarify what value needs to be applied as the 'determined value' in determining the 'right of use of a motor vehicle' fringe benefit in different scenarios. Regulation 362 (National Treasury, 2015) clarifies that where any motor vehicle is manufactured, obtained or acquired or the right of use of any motor vehicle is obtained by the employer, the retail market value thereof for the purposes of items (a) and (c) of the definition of 'determined value' in paragraph 7(1) of the Seventh Schedule to the Act will constitute, in respect of any year of assessment commencing on or after 1 March 2018, an amount equal to the 'dealer billing price', which will represent an amount inclusive of VAT.

Since National Treasury's formulated policy objective as motivation why there was a need to amend the opening words of section 23C(1) referred to the term "*determined value*" and used the phrase: "*To align the policy intention as outlined in the Government Regulation*", it seems that the legislator's intention behind this amendment was to only supersede the 'right of use of a motor vehicle' fringe benefit above that of the provisions of section 23C. Hence, based on a purposive approach of interpretation, it seems as if the provisions of section 23C should only be subject to that of the taxable benefit regulated under paragraph 7 of the Seventh Schedule to the Act and not to the rest of the taxable benefits as contained under the Seventh Schedule to the Act.

However, based on a literal approach of interpreting the phrase: "*Notwithstanding the Seventh Schedule*", it seems as if the entire Seventh Schedule (i.e. all taxable fringe benefits) need to include VAT for income tax purposes and not only the 'right of use of a vehicle' fringe benefit as deduced from the former analysis of National Treasury's policy objective behind amending the opening words of section 23C(1). This effectively means that the 'cost' or 'market value' of all assets, or the right to use such assets, granted by an employer (vendor) to its employee as a taxable fringe benefit will always include VAT, irrespective of what the actual VAT consequences of such assets were in the hands of the employer who granted such fringe benefit.

Current standing and recommendation

A literal approach of interpretation of the current wording of section 23C(1) results in inflated values (i.e. values inclusive of VAT) for taxable fringe benefits making it taxable at a higher value in employees' hands.

When measured against the motivation provided by National Treasury for amending the opening words of section 23C(1), this negative impact could not have been the intention of the legislator. Therefore, the research suggested that the South African legislator should revisit the opening words of section 23C(1) and it is recommended that these words could be replaced with the following (or a similar) phrase: "*Notwithstanding the regulations under paragraph 2(b) and paragraph 7 of the Seventh Schedule to this Act*". Such a replacement of wording could ensure that the interpretation of this section (based on a literal approach of interpretation) will be aligned to the policy objective (based on a purposive approach of interpretation) to only allow the taxable value of the 'right of use of a vehicle' fringe benefit to be a value inclusive of VAT for income tax purposes, irrespective of whether the vehicle is a 'motor car' as defined for VAT purposes or not. This will also aid in providing certainty to taxpayers regarding the interaction between fringe benefit values and VAT.

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THE VAT TWIST: IMPORTED SERVICE OR HIRING A SECONDED EMPLOYEE?

JANE NDLOVU, Senior Lecturer, Department of Taxation, University of the Witwatersrand

Citibank, N.A. South African Branch and Another vs. Commissioner for SARS

An international secondment involves a company dispatching an employee to work in a foreign country, either within the same organisation's global network or with another company. Unlike expatriates, seconded employees remain under the employment of their home country, eliminating the need to change their residency or tax status.

The intricacies of international business taxation frequently present challenges, particularly in determining whether such a move constitutes an imported service or simply hiring an employee. Shedding light on this ambiguity, the Gauteng High Court's ruling on 20 September 2023 in the case of *Citibank, N.A. South African Branch and Another vs. Commissioner for SARS (2022/043103) [2023] ZAGPPHC 1209* was pivotal. The outcome? The court deemed the services from the seconded employee as 'imported services', thereby subjecting Citibank to a 15% value-added tax (VAT) reverse charge. It is worth noting that the High Court's decision is binding only within the jurisdiction of its respective Division.

Statement of facts

Citibank SA, commissioned in the USA, operates its banking business in South Africa through a branch and is a member of Citigroup Inc—a global conglomerate with worldwide fiscal branches. Registered for VAT in South Africa, Citibank SA is not the only entity of Citigroup in the region. Citigroup Global Markets (Pty) Ltd, a wholly owned subsidiary of Citigroup Financial Products Incorporated (USA) and a member of the Johannesburg Stock Exchange, is also VAT-registered in South Africa. Both Citibank SA and Citigroup Global Markets (Pty) Ltd (the applicants) argued that their payments to Citigroup's home entities, concerning seconded employees' salary reimbursements, should be excluded from VAT under sections 7(1)(c) and 14(5)(d) of the Value-Added Tax Act No 89 of 1991 (VAT Act).

Contrarily, the Commissioner for SARS emphasised Citigroup's global stature and its intricate staffing processes. Within Citigroup, employees can be seconded from one Home Country Entity (the Sending Home Entity) to another in a different Home Country Entity (the Receiving Home Entity). Both entities sign an 'Intra-City Service Agreement' regarding this employee secondment. Notably, another Citigroup affiliate (Citigroup, N.A.), plays a part in these arrangements.

Key to understanding the dispute are the terms of the assignment agreement. The agreement highlights that seconded employees remain under the Sending Home Entity's employment and are merely 'loaned' to the Receiving Home Entity. Despite being on an 'expatriate assignment', a seconded individual is not considered an employee of either the Receiving Home Entity or Citigroup, N.A. However, it is Citigroup, N.A. that manages the 'expatriate salary and benefits' for these seconded staff, acting as the agent of the Sending Home Entity. This complex web of relationships and agreements forms the core of the relief that the applicants were seeking.

Substantive issue

Citibank SA and Citigroup Global Markets (Pty) Ltd (the applicants) firmly asserted that seconded employees function effectively as their own employees. They presented this argument on the grounds that these employees, during their tenure, extend their productive capabilities to benefit and further the enterprises of the applicants.

Additionally, the applicants maintain the right to supervise and control these employees throughout the secondment duration. In terms of remuneration, the applicants channel payments to the Sending Home Entity specifically for the services rendered by the seconded employees. These payments are subsequently passed on to the employees, precisely matching the due amounts without any additional mark-ups. Furthermore, these employees, while receiving compensation from the applicants for their services, also have employees' tax deducted and withheld by the applicants, solidifying their role as employers. Despite this, it is noteworthy that the seconded employees concurrently hold employment status with the Sending Home Entity. Given these circumstances, the applicants challenge the imposition of VAT on the services provided by the seconded individuals. They argue that such services are not deemed 'imported services', and even if classified as such, certain provisions of the VAT Act, specifically sections 7(1)(c) and 14(5)(d), would exclude these services from VAT when provided by the employees in their professional capacity with the applicants.

SARS, acting as the respondent, took a divergent view on the matter. Their core contention was not the employment status of the seconded personnel as per South African labour law. Instead, SARS was focused on ascertaining the VAT obligations of the applicants concerning these imported services. This, among other factors, involved clarifying whether the applicants fit the definition of 'employers' for the seconded employees according to the relevant tax statutes.

SARS argued that the definitions of 'employee' within labour law and tax contexts might differ significantly. Specifically, they questioned the assertion that the seconded individuals are employees of the applicants. They pointed to the 'Intra-Citi agreements', which suggest that the seconded staff are provided by the Sending Home Entity to Citibank SA as a service, not as direct employees. Payments made by Citibank SA under these agreements are perceived as compensation for services rather than salaries. Moreover, SARS noted that evidence does not demonstrate that these seconded individuals report directly to the applicants or that they fall under the oversight of the 'South African operations'.

The crux of SARS' argument is that the very concept of 'employee' as described in tax legislation does not mirror the conventional understanding in labour law. Under the purview of the VAT Act and the Fourth Schedule to the Income Tax Act, the seconded personnel do not qualify as employees. Payments made by the applicants to the Citigroup Home country entities do not transform these entities into 'employees' as described in the Fourth Schedule to the Income Tax Act.

Furthermore, SARS challenged the claim about the purported supervision and control that the applicants exert over the seconded employees. They found the applicants' argument lacking in specifics, such as clear guidelines on leave policies or other standard employment restrictions that typically characterise the 'supervision and control' dynamic inherent in an employer-employee relationship.

Judgement

The application was dismissed on the grounds of two key deficiencies. First and foremost, the applicants failed to establish themselves as the 'employers' of the seconded employees. Secondly, they did not sufficiently demonstrate that the payments made by the applicants to the Sending Home Entity can be categorised as 'remuneration' within the scope envisioned by proviso (iii)(aa) to the definition of 'enterprise'.

Rule of law

Section 7(1)(c) of the VAT Act establishes that, subject to specific exemptions and provisions within the Act, a value-added tax (VAT) is imposed on the supply of imported services by any person after the commencement date, contributing to the National Revenue Fund.

In Section 1, 'imported services' are defined as services supplied by a provider residing or conducting business outside South Africa to a recipient within South Africa, when these services are consumed in South Africa but not for the purpose of making taxable supplies.

Section 14(5)(d) of the VAT Act further elaborates, specifying that the tax stated in Section 7(1)(c) is not applicable to services supplied in accordance with proviso (iii)(aa) to the 'enterprise' definition found in Section 1.

Proviso (iii)(aa) clarifies that services rendered by an employee to their employer during employment or by an office holder in executing their office duties do not constitute carrying on an enterprise, particularly in cases where remuneration as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, is disbursed or is payable to the employee or office holder.

An 'employee', according to paragraph 1 of the Fourth Schedule, encompasses individuals who receive or accrue remuneration, labour brokers, personal service providers and other classifications declared as employees by the Minister of Finance. 'Employer', as defined in the same paragraph, pertains to entities or individuals responsible for paying remuneration or acting under statutory or public fund provisions to disburse remuneration, signifying applicability to natural persons.

Moreover, 'remuneration' encompasses various forms of income such as salaries, bonuses, commissions, fees, pensions, gratuities, stipends and other related forms of compensation, distinguishing the exclusion of amounts paid to those who trade independently, i.e. individuals not under their employer's control and supervision.

The terms 'employer' and 'remuneration' imply a framework applicable to natural persons. This interpretation is consistent with the context and the specificities of remuneration components, which are typically associated with natural persons rather than corporate entities.

Reasoning

Citibank SA and Citigroup Global Markets (Pty) Ltd have overlooked the crucial definitions of 'employer' and 'employee' as laid out in paragraph 1 of the Fourth Schedule to the Income Tax Act when discussing the dynamics of their relationship with the seconded employees. One would anticipate that these definitions would be central to the applicants' argumentation to elucidate the nature of their relationship with the seconded employees. It was expected of the applicants to delineate why the court should focus solely on the definitions of 'employer' and 'employee' under labour law when determining this relationship. However, this aspect was neglected. To strengthen their position, the applicants ought to:

- Establish that they function as 'employers' in alignment with the definitions provided in the proviso (ii)(aa).
- Assert that the seconded employees operate as 'employees of the applicants', in accordance with the same proviso.
- Verify that the services by the seconded employees are rendered during their employment with the applicants.
- Affirm that the applicants provide 'remuneration' to the seconded employees.

It is noteworthy that the applicants' reference to 'supervision and control' over the seconded employees simply echoes statutory language. By invoking 'supervision and control' as a pivotal element in defining an employment bond, they merely parrot the terminology embedded in paragraph (ii) of the 'remuneration' definition in paragraph 1 of the Fourth Schedule to the Income Tax Act.

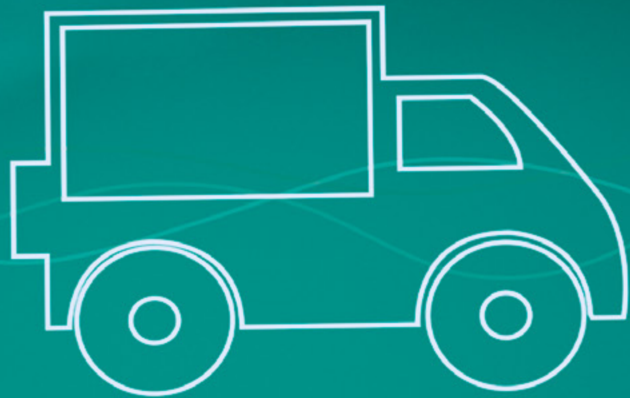
Personal impressions: Analysis of secondment agreements and their tax implications

The arrangement between the Sending Home Entities and the Receiving Home Entities strongly resembles a provision of services within the Republic by a non-resident. Merely extending certain benefits to a seconded employee, akin to those given to regular employees, does not classify them as an employee for tax objectives.

The Constitutional Court's ruling in the case of *Minister of Defence and Military Veterans vs. Thomas (CCT168/14) [2015] ZACC 26; 2016 (1) SA 103 (CC); (2015) 36 ILJ 2751 (CC); 2015 (10) BCLR 1172 (CC) (25 August 2015)* emphasises caution. It suggests that the meaning of words in one statute should not be leveraged as determinative in interpreting another. When Parliament defines a term within a statute, it often indicates a tailored meaning for that specific statute, distinct from its commonplace understanding.

Though not directly applicable to the Income Tax Act or the VAT Act, gleaning insights from the Employee Tax Incentive Act's interpretation of 'employee' can offer valuable perspectives. According to SARS' draft interpretation of Section 1(1) from the Employment Tax Incentive Act 26 of 2013, there are certain foundational elements to ascertain an employment contract. These include the genuine intent behind the contract, the existence of an authoritative relationship, employee remuneration, personal services provided by the employee, and the employee's role within the employer's organisational structure.

"In summation, the key takeaway is that the secondment of non-resident employees does not equate to hiring in the realm of tax. It is more accurately described as the provision of imported services, thereby invoking the reverse charge mechanism"



Service

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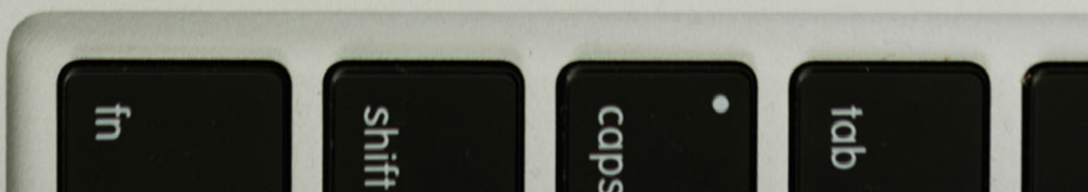


Furthermore, the Labour Appeal Court's stance in the *State Information Technology Agency (SITA) (Pty) Ltd vs. Commission for Conciliation, Mediation and Arbitration and Others (JA 16/2006) [2008] ZALAC 1; [2008] 7 BLLR 611 (LAC); (2008) 29 ILJ 2234 (LAC) (20 March 2008)* case underscores a shift from concentrating solely on employment contracts to emphasising the authentic employment relationship. The interpretation suggests that a mere contract is not definitive of an employer-employee relationship. Instead, the actual employment dynamics play a significant role.

SARS' draft note further elucidates this by emphasizing the authentic work relationship, employer supervision, remuneration and adherence to the Basic Conditions of Employment Act. The Explanatory Memorandum on the Employment Tax Incentive Bill, 2013, accentuates that the identified 'employee' within the legislation must not only serve the qualifying employer but also receive compensation from the same entity.

In summation, the key takeaway is that the secondment of non-resident employees does not equate to hiring in the realm of tax. It is more accurately described as the provision of imported services, thereby invoking the reverse charge mechanism.

Understanding reverse charge VAT

Traditionally, businesses charge VAT on their supplies and claim credits on VAT for their purchases. However, the reverse charge mechanism offers an alternative approach. In this setup, the supplier does not include VAT in the invoice. Instead, the customer is responsible for both accounting for and deducting the VAT simultaneously when filing their VAT return. This mechanism is often applicable when services are imported by a resident from a non-resident, leading some jurisdictions to label it as the 'VAT on imported services'.

In practice, the client pays only the net invoice amount to the supplier. During the VAT return process, the client computes the VAT related to the reverse charge and reports it as both input and output VAT. This approach neutralises any cash flow impact for both the client and the supplier. However, it is essential to note that reverse charge VAT is specific to situations where the client is not eligible for full input tax credit, such as when dealing with exempt entities or private individuals. This means only those not entitled to claim input VAT—because the imported service is not used for taxable transactions—need to declare output tax.

The rationale behind incorporating such provisions in VAT legislation is to ensure equitable treatment. Specifically, it ensures that residents importing services from non-residents face the same VAT implications as they would if purchasing from a local VAT-registered supplier.

Considering an appeal to the Supreme Court of Appeal?

The presiding judge has highlighted specific areas where the applicants must bolster their argument. Primarily, they must establish that they act as the employers of the seconded employees, who should simultaneously be recognised as their direct employees. Additionally, they must demonstrate that the amounts disbursed to these seconded employees qualify as remuneration. Given the fact that payments were made directly to other entities and not to the employees themselves, the applicants face a substantial challenge.

Their position is further weakened by the probability that the agent might not be categorised as either a labour broker or a personal service provider. Considering these factors, it would be advisable for the applicants to refrain from pursuing an appeal.

Considerations for companies in similar secondment arrangements

Companies venturing into arrangements akin to secondment should exercise meticulous care to avoid VAT liabilities. Essential to this is the drafting of contracts which unambiguously establish an employer-employee relationship in line with tax legislation. Clearly delineating the responsibilities, rights and expectations can solidify this relationship from a legal standpoint. Additionally, companies should thoroughly understand the nuances distinguishing secondment from expatriation as each carries distinct tax and legal implications. By being proactive and informed in crafting these contracts, companies can better safeguard themselves from potential tax pitfalls.

Understanding secondment and its differences from expatriation

A foreign secondment is distinct from merely working overseas as a regular job component. Individuals in roles like international development or those who embark on business trips might find themselves working in foreign lands as part of their routine job responsibilities. However, secondment fundamentally alters the nature of one's employment. This often means signing a new contract or accepting sub-contractual terms that redefine one's job role and primary workplace. While an expatriate typically relinquishes their tax residency status in their home country, a seconded individual retains it.

Being an expatriate employee refers to individuals working outside their native country on extended assignments. This designation, meant for long-term stints abroad, essentially detaches the individual from their original employer, often suspending the original employment contract. It is paramount for such contracts to outline the reintegration process post-assignment. In stark contrast to international secondment, expatriates typically resign from their home country's position and are then employed by a new entity in the host nation. This entity might be affiliated with their original employer or a distinct third party.

On the other hand, secondment delineates a set duration, predetermined and typically ranging from a few months to a maximum of three years, though this can vary based on the host country's regulations. Payment modalities for seconded employees can vary, with either the home or host entity managing salaries. In some instances, the host country might employ a 'shadow payroll' mechanism, ensuring compliance with local legalities by reporting the expatriate's income. The primary distinction remains that any employee can be seconded, provided they remain under the auspices of the company initiating the secondment.

South African tax implications illustrated through practical examples

Tables 1 and 2 highlight the contrasting South African tax ramifications for seconded employees, the resident company, and the non-resident company in scenarios where an employer-employee relationship exists versus when it does not. For these illustrations, the contracted professional services are pegged at R2 million.

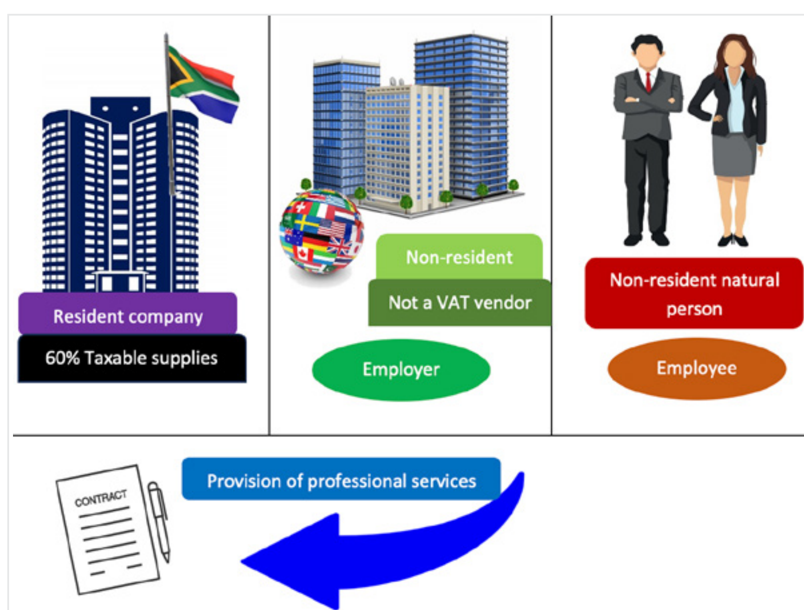
In scenarios devoid of an employer-employee relationship, the resident company becomes liable for a 15% VAT, specifically when the services are utilised within South Africa for non-taxable supply objectives. An important precedent in this context is the *Commissioner for SARS vs. De Beers Consolidated Mines Ltd (503/11) [2012] ZASCA 103; 2012 (5) SA 344 (SCA); [2012] 3 All SA 367 (SCA) (1 June 2012)*. Here, De Beers sought advice from a London-based non-resident financial advisor about a restructuring transaction. The court determined that these services were not acquired for enhancing De Beers' mining enterprise, leading to the entire invoiced amount being classified as 'imported service', incurring VAT under section 7(1)(c).

Another significant case is *CONSOL Glass (Pty) Ltd vs. Commissioner for SARS (1010/2019) [2020] ZASCA 175 (18 December 2020)*, which revolved around the company's debt restructuring. In this situation, CONSOL Glass' actions, which were aimed at limiting foreign currency exposure and reducing Eurobond debt service costs, were scrutinised. The Supreme Court of Appeal deduced that there was not any functional link between the 2007 Eurobonds' issue and the taxable supply asset acquisition. The refinancing was not undertaken with the intention of creating taxable supplies. As such, the Commissioner's decision to disallow the input tax on the service fees charged by local vendors and to levy output tax on the 'imported services' sourced from international suppliers, was justified.

For non-residents, the standard tax implication involves including received amounts in their gross income, given they are rooted in South African sources. However, there is not a concrete legislated source rule for private sector employment, necessitating a consultation of case laws for clarity. One such instance, *Commissioner for Inland Revenue vs. Lever Brothers and Unilever Ltd*, posited that income source is not determined by its origin or reception place. Instead, it is about the efforts made to earn it. In an employment context, the source is the service performance location. Thus, the non-resident will be taxed in South Africa as the sources are performed in South Africa. Non-residents, facing any double taxation issues, should consult their home country for relief.

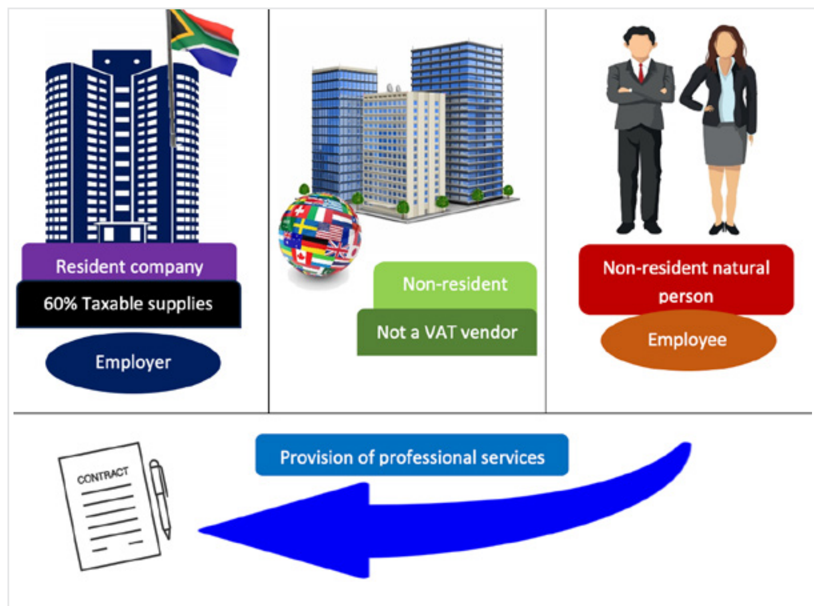
Conversely, if an employer-employee relationship is established between the non-resident seconded employee and the resident company, VAT implications are negated due to the application of sections 7(1)(c) and 14(5)(d) of the VAT Act. Additionally, the resident company in South Africa would then bear the responsibility to withhold employees' tax, as stipulated by the Fourth Schedule of the Income Tax Act. The normal tax implications remain consistent.

Table 1: Absence of an employer-employee relationship between a resident company and non-resident seconded employee



South African Employees' Tax Consequences		
None	None	None
South African VAT Consequences		
Reverse charge VAT of R120 000. Net VAT effect: +R120 000	None	None
South African Normal Tax Consequences		
Claim a section 11(a) deduction of R2 120 000 (R2 000 000 + R120 000). Net tax effect: (572 400) i.e. (R2 120 000) x 27%	Include R2 000 000 in gross income. Claim a section 11(a) deduction for R2 000 000. Net tax effect: Nil	Include R2 000 000 in their gross income. Not eligible for a section 6quat rebate/deduction. Net tax effect: R709 604 i.e. R644 489 + 45% x (R2 000 000 - R1 817 000) less primary rebate of R17 235

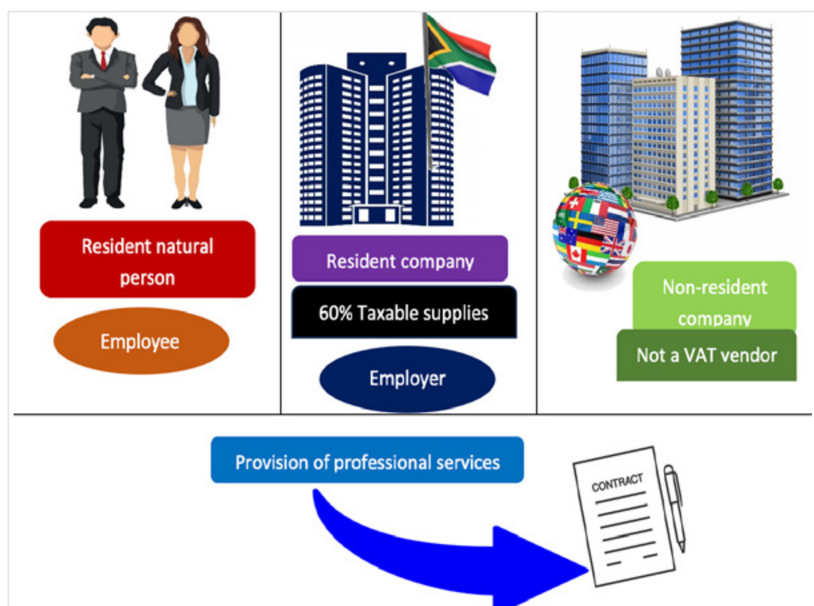
Table 2: Establishing an employer-employee relationship between a resident company and non-resident seconded employee



South African Employees' Tax Consequences		
Obligation to withhold employees' tax and pay within 7 days.	None	Liability of R709 604
South African VAT Consequences		
None	None	None
South African Normal Tax Consequences		
Claim a section 11(a) deduction of R2 000 000. Net tax effect: (R540 000) i.e. R2 000 000 x27%	None	Include R2 000 000 in gross income. Not eligible for a section 6quat rebate/deduction. Net tax effect: R709 604 This is reduced by the employees' tax paid.

Should a scenario arise where a resident is seconded to a non-resident company, one would have to evaluate the tax implications meticulously. Tables 3 and 4 delineate the distinctions in South African tax ramifications for the seconded employee, the resident company and the non-resident company, based on whether or not an employer-employee relationship is present. For illustrative purposes, the services procured by the non-resident are valued at R2 million.

Table 3: Absence of an Employer-Employee Relationship between a non-resident company and resident seconded employee



South African Employees' Tax Consequences		
Liability of R709 604 i.e. R644 489 + 45% x (R2 000 000 - R1 817 000) less primary rebate of R17 235.	Obligation to withhold employees' tax and pay within 7 days.	None
South African VAT Consequences		
None	Exported services are zero rated. Net VAT effect: R0	None
South African Normal Tax Consequences		
Include R2 000 000 in gross income. May be eligible for a section 10(1)(o) exemption of R750 000 (i.e. R2 000 000 – R1 250 000). May be eligible for a section 6quat rebate/deduction if non-recoverable foreign taxes are paid. Net tax effect: R709 604 This is reduced by the employees' tax paid.	Include R2 000 000 in gross income. Claim a section 11(a) deduction for R2 000 000. Net tax effect: Nil	None No section 11(a) deduction as it is unlikely that the income generated is South African source.

From a VAT perspective, there will not be any implications since it pertains to the provision of exported services. According to section 11(2)(k), a service is zero-rated when executed outside South Africa. Consequently, the location where the service is provided becomes vital for this zero-rating provision, making the recipient's residency immaterial.

Regarding the South African resident who is seconded, they are liable for tax on global earnings. If both the 183-day criterion and the consecutive 60-day condition are fulfilled, the resident could be eligible for the exemption under section 10(1)(o)(ii) for the first R1.25 million of their qualifying foreign remuneration.

Conversely, when an employer-employee relationship exists between the seconded resident and the non-resident company, no VAT implications arise due to the provisio in the definition of 'enterprise'. While the standard tax implications persist, an important consideration is whether the non-resident company has an obligation to withhold employee's tax.

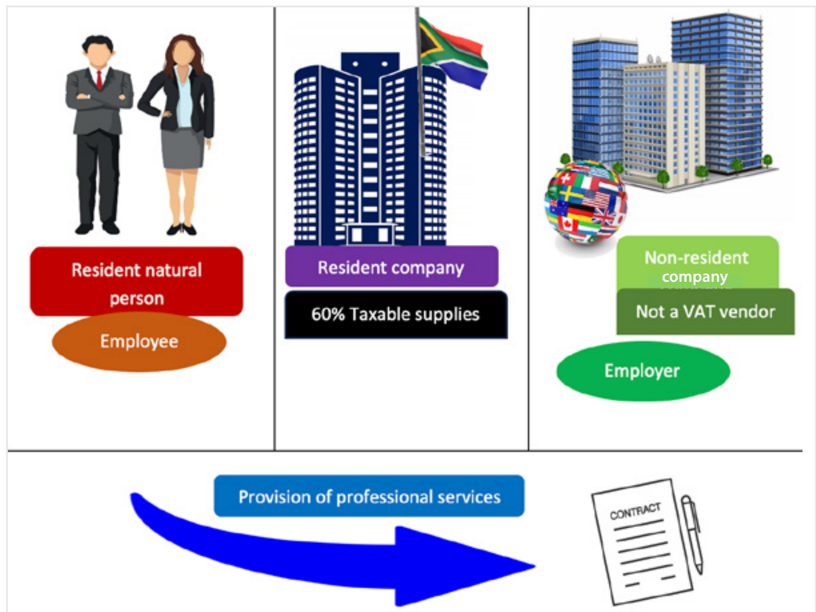
Impending tax reforms for non-resident employers

The recent Draft Tax Administration Laws Amendment Bill, 2023, unveiled by the National Treasury on 31 July 2023 for public consultation, is poised to alter the landscape of Employees' Tax (PAYE) for non-resident employers. The core of this proposal aims to level the playing field by eliminating distinctions between resident and non-resident employers. This shift is not merely cosmetic; it strives for consistency in obligations related to Skills Development Levies (SDL) and contributions to the Unemployment Insurance Fund (UIF), which represent critical components of South Africa's social security system.

Should this amendment come to pass, non-resident employers with staff stationed in South Africa—or those hiring South African tax residents for overseas assignments—will find themselves navigating a revised set of payroll compliance mandates.

As of now, the PAYE withholding responsibility for non-resident employers is triggered only when there is a designated 'representative employer' based in South Africa. Defined more specifically, a representative employer is an agent, residing within South African borders, endowed with the authority to disburse remuneration. Consequently, the existence of such a representative employer is contingent upon the presence of an individual in South Africa, who, acting on behalf of the non-resident employer, possesses the requisite authority to remunerate the employee.

Table 4: Establishing an employer-employee relationship between a non-resident company and a resident seconded employee



South African Employees' Tax Consequences		
Before amendment: None After amendment*: Liability of R709 604	None	Before amendment: None After amendment*: Obligation to withhold employees' tax.
South African VAT Consequences		
None	None	None
South African Normal Tax Consequences		
Include R2 000 000 in gross income. May be eligible for a section 6quat rebate/deduction if non-recoverable foreign taxes are paid. Net tax effect: R709 604 This is reduced by the employees' tax (if any) paid.	None	None. No section 11(a) deduction as it is unlikely that the income generated is South African source.

Closing remarks

Considering the complexities surrounding the tax implications of secondment arrangements in South Africa, it is evident that careful consideration and astute interpretation of the law is required. The distinctions between the relationships, specifically in terms of employer and employee dynamics, carry significant VAT and other tax consequences. This stresses the necessity for companies to meticulously structure their secondment agreements and understand the nuances of the VAT Act and Income Tax Act. Furthermore, the evolving nature of tax legislation, as illustrated by proposed amendments, emphasises the importance of continuous monitoring and adaptation to ensure compliance. Companies entering into secondment arrangements, whether as senders or receivers, should seek expert tax advice to navigate this intricate terrain, ensuring both fiscal prudence and adherence to South African tax obligations.

Teaching to touch the future of tax

PROF LIEZEL GAYNOR TREDOUX, Associate Professor at Unisa

A career in tax law education is akin to lighting many fires yet ensuring that both student and teacher do not get too close to the flames, burn or burn out! The constant policy and legislative changes in response to budgetary needs create a transformative field which is not always level.

This article guides those seeking to move offshore through the maze of exiting South Africa with a specific focus on tax considerations in order to be proactive instead of facing a myriad of questions after the fact.
ld be regarded as an entry into the maze. Several tax risks and considerations hinge on this aspect, including placement of tax residency on record with SARS, declaration of income to SARS going forward (including foreign employment income), as well as deemed sales rules, pension withdrawals and more. These are discussed in more detail below.

The skill required to navigate annual changes to legislation leaves many an adviser/consultant at the tail end of a constant game of catch-up. A proper understanding of tax law is crucial for any tax practitioner. I have dedicated my career to teaching, learning and research to enable the furtherance of such an understanding and to encourage innovative teaching, training, learning and research.

Tuition, academic citizenship and community engagement

At pre-graduate level, the LLB curriculum requires the teaching of Income Tax Law at fourth year level. The content includes basic legal principles and case law with a specific focus on gross income, exempt income, deductions, rates and rebates, capital gains tax, tax avoidance and tax administration.

Teaching tax law at postgraduate level inevitably leads to sub-specialisation. At LLM level, I teach two subjects as module leader, namely tax effective estate planning (including the use of trusts) and estate duty, transfer duty and donations tax; and international tax law, which includes jurisdiction to tax, source-based tax rules, withholding taxes, exemptions, tax treaty distributive rules, transfer pricing, thin capitalisation, controlled foreign companies, the OECD BEPS action plan (including pillar one and two from developing country perspective); exchange control regulations, electronic transactions and cross border tax avoidance. In addition, I am a secondary lecturer of VAT and Income Tax Law II (which includes corporate tax, capital gains tax, tax administration and constitutional aspects of income tax). I also supervise several LLM and LLD students in these subject areas.

In addition, we assist other universities as academics in moderating examination papers and external examinations of LLM and LLD theses on several topics in the tax law field. This leads to much cross-pollination of ideas and benchmarking to ensure that the tax law curriculum is aligned to the requirements of the National Qualifications Framework (NQF).

Community projects in which I have been involved include tax training for entrepreneurs as part of the E-Hub Project (including a basic overview of the SARS website, income tax, VAT, Turnover Tax), the Learnership Research Summit that trains disabled learners in research skills at a local township school, student debate training and moot court training.

Research

Foundational principles of tax law and illegal income

My earlier work analyses the foundational principles of tax law. In my first publication in 2007, I investigated the theoretical basis of the taxation of illegal income as considered by the courts in several cases (Classen LG 'Legality and Income Tax: Is SARS 'entitled to' Levy Income Tax on Illegal Amounts 'received by' a Taxpayer?' (2007) 19 (4) SA Mercantile Law Journal 534-553). The interest in this topic was sparked by the case of MP Finance Group CC (in liquidation) v Commissioner for SARS 2007 (5) SA 521 (SCA), which served before the Supreme Court of Appeal in that year. The theoretical basis of the law that was applied in courts is explained. I then concluded that although amounts should be received for the taxpayers' own benefit in terms of case law that considered the meaning of the phrase "received by" and its interaction with the phrase "accrued to", the phrase "accrued to" has a further often overlooked part which allows the inclusion of amounts that "accrue . . . in favour of" a taxpayer. This renders the theoretical basis of the inclusion of illegal income in gross income wider in scope than anticipated and provides an alternative basis which facilitates the collection of illegal income.

In Cyberlaw@SA III Papadopoulos & Snail (Eds) published in June 2012 by Van Schaiks Publishers ISBN 9780627028076), (under Classen LG), I contributed two chapters, namely Chapter 7: E-commerce and Value Added Tax (pp 111–122) and Chapter 6: Income Tax and e-commerce (pp 95–108) which considers the basic principles of Income Tax and VAT in electronic transactions. This publication has since been updated by another author; the updated edition was published in 2022.

Sport and taxation

In 2010, the eyes of the world were on South Africa as the country hosted the FIFA Soccer World Cup. As part of the bidding process, host nations are required to provide specific financial guarantees to FIFA; this often leads to the waiver of their right to levy income tax. In addition, the taxation of the competitors and their support staff, who earn income in states without having a dominant resident jurisdiction, remains controversial.

The withholding tax which is normally levied on sportspersons and entertainers, is often also given up as part of the financial guarantees provided by host nations in such a bid. In 'The Income Tax Implications for Individuals Involved in the 2010 FIFA Soccer World Cup in South Africa compared to the 2012 Olympic Games– Lessons from London?' (International Journal of Private Law Vol 7 No 4 2014 Inderscience Publishers), (under Classen LG), I explore the ambit of the temporary tax relief provided to certain individuals who participated in these events and the waivers granted.

Emigration exit tax and financial emigration

Emigration and tax remain one of the most interesting areas of tax law, which requires an analysis of domestic legislation as well as tax treaty provisions. In 'The exit tax consequences of the migration of companies from South Africa: Commissioner for SARS v Tradehold Ltd' (2013) 25(3) SA Mercantile Law Journal 387–403 (under Classen LG), the ceasing of the tax residence of a company is explored with specific reference to this decision by the Supreme Court of Appeal and the timing rules that the parties before court ought to have considered. Similarly, in "Shifting the 'place of effective management' offshore: A comparison of the exit tax provisions applicable to companies migrating from South Africa, Canada and member states of the EU." International Journal of Public Law and Policy ((Inderscience) www.inderscience.com/ijplap Volume 3 Number 4 January 2013) the exit tax provisions as they apply to companies that change their place of effective management and, as a result, their tax residence, is analysed.

The increased trend in emigration from South Africa and the resultant 'brain drain' gave rise to a trend amongst advisers and their clients to claim that financial emigration could end tax residency which, although relevant when applying the tie-breaker rules, is not the only requirement to officially end tax residency in terms of South African tax law. (Tredoux LG, 'The taxation of South African expatriate employees: Dispelling the myth of financial emigration.' Annual Banking Law Update 2019: Recent Legal Developments of Special Interest to Banks Editors: Prof Sarel du Toit and Charl Hugo ISBN:9781485135524 Juta and Company (Ltd) (2019) pages 147–170) The application of the classic dictum of the court in Cohen v CIR 1946 AD 174 which was confirmed in CIR v Kuttel 1992 (3) SA 242 (AD) is also questioned as I do not consider it realistic to base ordinary residence of individuals on an 'intention to return after their wanderings'. Financial emigration is contextualised in this contribution and clarified as one of many factors that are considered when a tie-breaker test is applied to determine the residence of an individual taxpayer. Quite a few developments have taken place since 2019 in this field, which remains to be further interrogated.

The taxation of company distributions in South Africa

In my LLD thesis titled Aspects of the Taxation of Company distributions in South African Law (https://ujcontent.uj.ac.za/esploro/outputs/9913265707691), I compared different corporate tax structures and the relief provided against economic double taxation occurring upon a company making a distribution to its shareholders. After analysis of the Australian imputation system and Canadian hybrid integration model, I concluded that the current South African hybrid dual-rate corporate tax system provides adequate relief and should be retained. I find, however, that certain significant differences in the taxation rules for returns of an income nature (dividends and income) and returns of a capital nature (returns of capital, distribution of assets in specie) are inequitable, erode the tax base and conflict with the South African government's policy of taxing all net accretions of wealth. I propose improvements to protect the tax base against erosion and profit shifting, promote equity and certainty, as well as align South African tax law with international trends.

From the LLD thesis, three articles were published in amended form with Prof KE van der Linde as co-author. First, in 'The taxation of company distributions in respect of hybrid instruments in South Africa: Lessons from Australia, and Canada' (Publication date 2021.01/12 Potchefstroom Electronic Law Journal Volume 24 pages 1–36), the taxation of distributions paid instead of South African investment instruments that contain both an element of debt and equity is critically compared to similar rules in Australia and Canada. Suggestions are made for reforming specific rules that govern returns on hybrid debt instruments, hybrid equity instruments and third-party-backed shares to improve the South African income tax legislation. Second, in 'The taxation of dividend stripping transactions: A comparison between South Africa, Australia and Canada.' (January 2021, Tydskrif vir die Suid-Afrikaanse Reg 2021(1):1–28), specific anti-avoidance rules that apply to dividend stripping rules are analysed in similar fashion. Third, in 'The corporate tax structure in South Africa: An overview of alternative design options' Tydskrif vir die Suid Afrikaanse Reg 2021 (4): 656-687 the different models of corporate taxation are explained and evaluated. Notional calculations are included to indicate the after-tax income of a taxpayer and the amount of tax that is collected under each system. The South African model is found to strike a good balance and be in line with many alternative systems that are applied in other jurisdictions.

The court's interpretation of the taxation of a specific company distribution which was made from a share premium account, as well as the retrospective amendment of tax legislation, was also scrutinised in a contribution with co-author SP Van Zyl titled 'Some drastic measures to close a loophole: The case of Pienaar Brothers (PTY) LTD v Commissioner for SARS (87760/2014) [2017] ZAGPPHC 231 (29 May 2017) and the Targeted Retroactive Amendment of section 44 of the Income Tax Act 1962' [(2018) 21 PER/PELJ 1–36].

> *"A career in tax law education is akin to lighting many fires yet ensuring that both student and teacher do not get too close to the flames, burn or burn out! The constant policy and legislative changes in response to budgetary needs create a transformative field which is not always level"*

Taxpayer confidentiality and the public interest in tax information

The judgment of the Gauteng Division, Pretoria in Arena Holdings Pty Ltd t/a Financial Mail & Another v SARS & Others 2022 (2)SA 485 (GP) sparked many controversial debates in the media and among tax advisers concerning taxpayer confidentiality and the circumstances under which exceptions to privacy should be allowed. "Taxpayer confidentiality versus access to information and the public interest in alleged tax evasion by a former state president: Arena Holdings Pty Ltd t/a Financial Mail & Another v SARS & Others – 'A giant leap for mankind' or the opening of another 'Pandora's Box'?" (Journal for Juridical Science Vol Issue 17–53, Publication date: 29 December 2023) explores the judgements of both the Gauteng Division, Pretoria and the Constitutional Court and considers the application of tax legislation, access to information the public interest override and civil procedure in this context. The proposed re-writing of the sections that were found to be unconstitutional is considered and suggestions are made for the amendment of the Tax Administration Act to encourage tax transparency in a constitutional democracy based on accountability. It is argued that public policy, upon which previous court decisions that protected the privacy of taxpayer information are based, is a changing concept and that legislation should evolve to match societal developments. This is particularly significant in light of the recent announcement in the 2024 Budget Speech that these amendments as ordered by the courts will be made during 2024.

Conclusion

In addition to the above, I have also contributed to a few unaccredited publications which, among others, include two previous contributions to TAXTalk, namely 'Tax Education: Tax in law' (TAXtalk vol 2020 Issue 81 pages 34–36) and "Receiving gifts from your partner? Should you be declaring this? Spousal transfers—benefits and burdens."(TAXTALK Issue 101 (Jul/Aug) 2023 pages 40–43).

Current research projects focus on the areas of cross-border investments, estate planning, tax and emigration and corporate tax with an emphasis on policy and legal developments. The ever-evolving nature of tax law as a discipline requires constant research to keep abreast with new developments. It remains an exciting field; it is both a privilege and challenge to contribute to this body of knowledge. It is very fulfilling to lead students as they explore new topics and complete projects that further enhance their careers. To me, a career in research, teaching and learning is a calling that leads to endless rewards in non-monetary terms. As one gives of yourself, so you also receive in abundance. May the light of all those I have assisted in igniting a fire shine brightly!

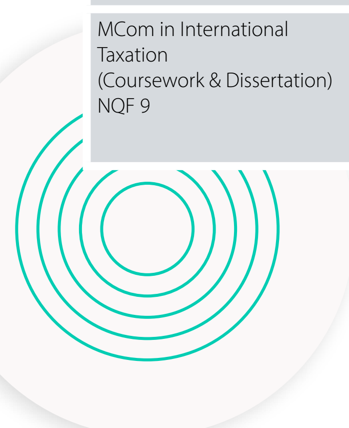
PART B:

THE UNIVERSITIES COURSE INFORMATION

UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

QUALIFICATION NAME	DURATION	MODE OF DELIVERY	TAX MODULES	ESTIMATED COST
		COLLEGE OF ACCOUNTING		
BCom in Financial Accounting: Chartered Accountant Stream NQF 7	3 years	Full-time	Core module in years 2 and 3	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*
BCom in Financial Accounting: General Accounting Stream NQF 7	3 years	Full-time	Core module in years 2 and 3	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*
Postgraduate Diploma in Accounting NQF 8	1 year	Full-time	1 Core module	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*
BCom Hons in Accounting NQF 8	1 year	Full-time	1 Core module	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*

QUALIFICATION NAME	DURATION	MODE OF DELIVERY	TAX MODULES	ESTIMATED COST
		DEPARTMENT OF FINANCE AND TAX		
BBuSc specialising in Finance with Accounting NQF 8	4-years	Full-time	Core module in years 3 and 4	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*
BCom Hons in Taxation NQF 8	1-year (full time) or 2-years (part-time)	Full-time	2 Core modules	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*
MCom in South African Taxation (Coursework & Dissertation) NQF 9	2-years	Part-time	1 Core module	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*
MCom in International Taxation (Coursework & Dissertation) NQF 9	2-years	Part-time	2 Core modules	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*



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QUALIFICATION NAME	DURATION	MODE OF DELIVERY	TAX MODULES	ESTIMATED COST
LAW FACULTY				
LLB NQF 8	4-years	Full-time	2 tax modules in year 4	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*
LLM in Tax Law (Coursework & Minor Dissertation) and (Professional Master's) NQF 9	2 years For LLM by Coursework and Dissertation 1 year for LLM (Professional Master's)	Full-time	4 Core modules	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*
LLM in International Taxation (Coursework & Dissertation) NQF 9	2-years	Part-time	2 Core modules	Fees handbook 2024: *https://uct.ac.za/sites/default/files/media/documents/uct_ac_za/49/2024%20Fees%20Booklet_Final.pdf*

UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

QUALIFICATION NAME	DURATION	MODE OF DELIVERY	TAX MODULES
BCom Accounting Sciences NQF 7	3 years	Full-time	Core module in years 2 and 3
BCom (Law) NQF 7	3 years	Full-time	Elective module in years 2 and 3
BCom NQF 7	3 years	Full-time	Elective module in years 2 and 3
BComHons (Taxation) NQF 8	1 year	Full-time	All
LLB NQF8	4 years	Full-time	Core module in year 3 and elective in year 4
MCom (Taxation) (Coursework) NQF9	1 year	Part-time (Contact)	Three tax coursework modules plus research methodology module plus mini-dissertation module
MCom (Taxation) NQF 9	2 years	Part-time	Dissertation only
LLM (Tax Law) (Coursework) NQF 9	1 year		Three tax modules plus mini-dissertation
Mphil (International Taxation) NQF 9	1 year	Part-time	Three tax coursework modules plus research methodology module plus mini-dissertation module

QUALIFICATION NAME	DURATION	MODE OF DELIVERY	TAX MODULES
Diploma in Accountancy NQF 6	3 years	Full-time	Core module in year 3
BCA Accounting CA NQF 7	3 years	Full-time	Core module in year 2 and 3
BCom Accounting NQF 7	3 years	Full-time	Core module in year 2 and 3
BCom Acc Course Structure NQF 7	3 years	Full-time	Core module in years 2 and 3
BCom Accounting (Extended Programme)	4 years	Full-time	Core module in years 2 and 3
BComHons (Taxation)	1 year	Full-time	3 core modules
PGDip in Accounting Science NQF 8 (Coursework)	1 year	Full-time	All, year modules
LLB NQF 8	4 years	Full-time	Core module in year 3 and elective in year 4
MCom (Taxation) NQF 9	1 year	Part-time	1 tax modules including coursework and dissertation
LLM (Taxation) (Coursework or Dissertation) NQF 9	1 year	Part-time	1 tax modules including coursework and dissertation
LLM (Tax Law) MCom (Taxation) NQF 9	1-3 years	Full-time or part-time	All with minor dissertation

HIGHLIGHT

The Department of Commercial Acounting has 40 dynamic staff who have a passion for teaching and learning and the students they teach. They are also members of various professional bodies, including SAIT, SAICA, ACCA, CIMA, SAIPA etc.

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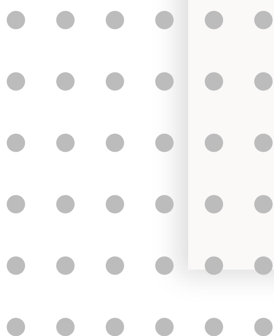
Cape Peninsula University of Technology

QUALIFICATION NAME	DURATION	MODE OF DELIVERY	TAX MODULES
Diploma in Accountancy NQF 6	3-years	Full-time	Compulsory Modules in 2nd and 3RD year
Diploma in Accountancy NQF 6	4-years	Part-time	Compulsory Modules in 2nd and 3RD year
Diploma in Accountancy (Extended programme) NQF 6	4-years	Full-time	Compulsory Modules in year 3 and 4
Advanced Diploma in Accountancy NQF 7	1-year	Full-time/Part time	Elective module in year 4
PGDip in Applied Taxation NQF 8	2 years	Full-time - block release	ALL
Master of BMS: Taxation NQF 9	3 years	Full-time	ALL
Master of BMS: Taxation NQF 9	4 years	Part-time	ALL
Doctor of BMS: Taxation NQF 10	2 years	Full-time	ALL
Doctor of BMS: Taxation NQF 10	4 years	Part-time	ALL



DUT DURBAN UNIVERSITY OF TECHNOLOGY

QUALIFICATION NAME	DURATION	MODE OF DELIVERY	TAX MODULES
Accounting Bridging Course	1 year	Full-time	1 introductory Taxation module
Diploma in Accounting NQF 6	3 years	Full-time	Compulsory modules in year 2 and 3
Diploma in Taxation NQF 6			Compulsory modules in year 2 and 3
Diploma in Taxation Extended Programme NQF 6			All
Advanced Diploma in Taxation NQF 7	1 year		All
PGDip in Taxation NQF 8	1 year	Full-time	
Master of Accounting NQF 9	1 year	Full-time	Compulsory modules in year 2 and 4

AKADEMIA
AD FUTURUM PER FONTES

QUALIFICATION NAME	DURATION	MODE OF DELIVERY	TAX MODULES
BCom (Financial Planning) NQF-level 7	Minimum 3 years / maximum 7 years	After hours distance learning model	Taxation compulsory module in year 2 and in year 3
BCom (Financial and Management Accounting) NQF-level 7	Minimum 3 years / maximum 7 years	Full-time campus model	Taxation compulsory module in year 2 and elective module in year 3.
Postgraduate Diploma in Taxation NQF-level8	Minimum 1 year / maximum 3 years	After hours distance learning model	Four taxation modules with research methodology module

KWALIFIKASIE NAAM	DUUR	LEER METODE	BELASTING MODULES
BCom (Finansiële Beplanning) NKR vlak 7	Minimum 3-jaar / maksimum 7-jaar	Nauurse afstandsmodel	Belasting verpligte moduele in jaar 2 en jaar 3
BCom (Finansiële en Bestuursrekeningkunde) NKR-vlak7	Minimum 3-jaar / maksimum 7-jaar	Voltydse kampus model	Belasting verpligte module in jaar 2 en keusemodule in jaar 3
Nagraadse Diploma in Belasting NKR-vlak8	minimum 1-jaar / maksimum 3-jaar	Nauurse afstandsmodel	Vier belasting modules met navorsingsmetodologie module

QUALIFICATION NAME	DURATION	MODE OF DELIVERY	TAX MODULES	ENTRY CRITERIA	RESEARCH COMPONENT
BComm Accounting (General) NQF 7	3 year	Full-time	Elective modules in year 2 and 3	NSC Mathematics level 4 English level 4 APS score of 40+	None
BComm Accounting (CA) NQF 7	3 year	Full-time	Compulsory modules in year 3	NSC Mathematics level 4 English level 4 APS score of 40+	None
PGDip in Accountancy NQF 8	1 year	Full-time	ALL	A SAICA accredited undergraduate degree with a minimum of 60% in each of the SAICA accredited third-year courses. All subjects at the third-year level must be taken in the year prior to entry into the programme. Supplementary/re-examination results will not be considered in reviewing the application.	None
PGDip in Taxation NQF 8	1 year	Full-time	ALL	BCom Degree including a minimum of 65% for Taxation at third year level (please note students may be asked to write the Rhodes University Taxation 3 supplementary examination)	Research Report
LLB NQF 8	4 years	Full-time	Elective in final year	• English 60% • Mathematics 50% • Mathematics Literacy 60% • APS 45+	Research/Mini dissertation
MCom Taxation NQF 9	2/3 years	Part-time (not in attendance)	All	Honours degree or the equivalent of a Postgraduate Diploma in Accountancy with a CA(SA) qualification, with a good academic record.	Research/Mini dissertation
LLM (Tax Law) NQF 9	1 year	Full-time	Three tax modules plus mini-dissertation	• LLB degree • at least 65% at final-year level	Research/Mini dissertation

QUALIFICATION NAME	DURATION	MODE OF DE-LIVERY	TAX MODULES	ESTIMATED COST	RESEARCH COMPONENT
Bachelor of Accounting NQF 7	3 years	Full-time	Compulsory Module in 2nd and third year	*https://www.ufs.ac.za/kovsielife/student-finance*	None
BCom in Accounting NQF 7	3 years	Full-time	Compulsory Module in 2nd and third year	*https://www.ufs.ac.za/kovsielife/student-finance*	None
BCom in Accounting (extended programme) NQF 7	4 years	Full-time	Compulsory modules in year 3 and 4	*https://www.ufs.ac.za/kovsielife/student-finance*	None
BComHons (Taxation) NQF 8	1 year	Full-time	A full-year tax module as well as five 12-credit modules	*https://www.ufs.ac.za/kovsielife/student-finance*	Mini dissertation
MCom (Taxation) NQF 9	2 years	Full-time or Part-time	Dissertation or two interrelated, publishable manuscripts/published articles in Taxation	*https://www.ufs.ac.za/kovsielife/student-finance*	Dissertation or two interrelated, publishable manuscripts/published articles in Taxation
LLB NQF 8	4 years	In person on Bloemfontein campus	Elective module in year 4	N/A	Research Report
LLM (Tax Law) NQF 9	1 year	In person on Bloemfontein campus	Two tax modules plus coursework and mini-dissertation	N/A	Coursework/Mini dissertation

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