PROFESSIONAL

# TAXTALK

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# WOMEN IN TAXATION

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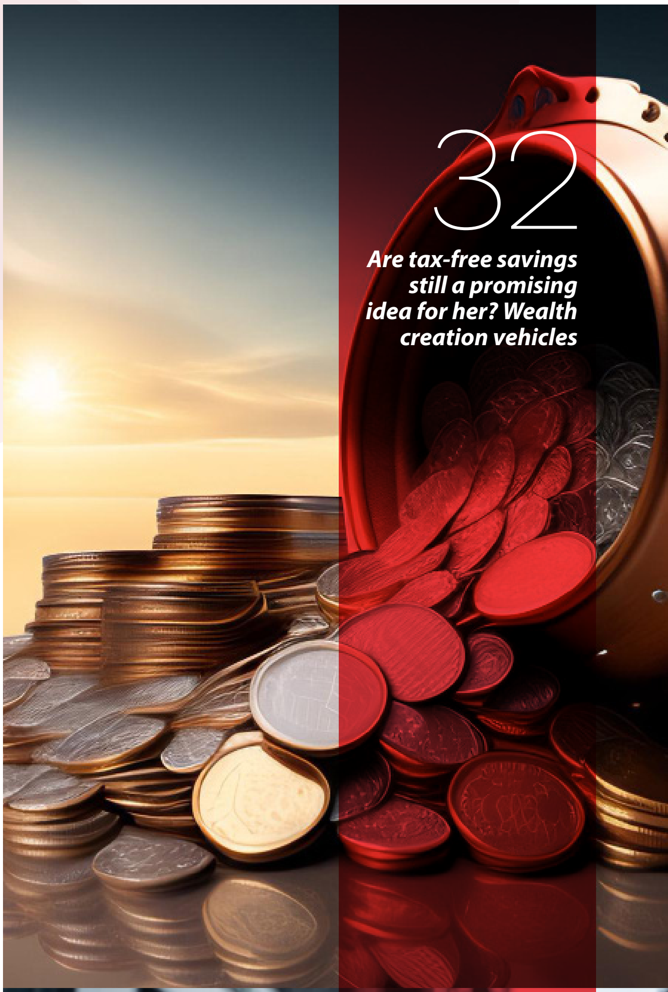
# CONTENTS

JULY/AUGUST 2023* ISSUE 101

## WOMEN IN TAXATION







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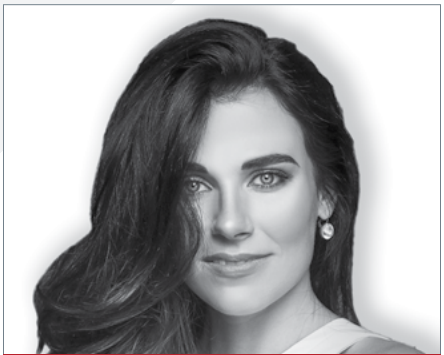

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# UNVEILING THE HIDDEN UNPAID CARE ECONOMY: Envisioning a better tax landscape for women

15 minutes CPD

**SUMARIE SWANEPOEL,** Senior Lecturer at the University of Pretoria

It is the eve of South African Women's Day 2023. My phone chimes, signalling the commencement of the customary Women's Day platitudes. "*Treat the special women in your life to a service for a sparkling home. Shower her with love and more 'her' time.*"

Encouragement of this nature from a well-known cleaning service, innocent as it seems, contains the inherent assumption that it is incumbent upon women to clean the house. This reinforces the notion that adults who co-inhabit a space need not assume co-responsibility for that space. Calls to gift a clean house to a woman in order to create leisure time (something which should not be seen as discretionary) is the type of gender stereotyping that exacerbates the difficulties women face.

Such is the systemic nature of our assumptions about gender that we cannot escape them either in everyday life or in the field of tax. This deep-rooted societal approach to gender roles impacts tax in the same way that tax impacts each and every one of us. It is therefore important that even or rather especially in the field of tax, due consideration be given to issues of gender and gender equality.

To this end, the term 'gender' must be used carefully at the macro-economic levels in which tax policy operates. Gender, when considered alongside tax, can lead to a binary use of the term which means erasure of genders and the reduction of women to one monolithic entity. Nevertheless, it remains useful to see gender as a social construct that leads to certain roles and expectations in order to meaningfully engage with tax policy and legislation. These expectations include that women generally bear the brunt of the unpaid care economy. Women are often expected to keep the home fires burning, which either makes participating in the labour market challenging or downright impossible.

Studies around the world have shown that women (and sometimes even young girls, who happened to be the oldest women in the household) spent significantly more time than men (or boys) on childcare during the pandemic. In fact, the pandemic seems to have left something of a gender equality recession in its wake. We are going backwards; urgent redress is needed.

In this regard, section 9 of our Constitution tells us the following:

(1) *Everyone is equal before the law and has the right to equal protection and benefit of the law.*

(2) *Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.*

(3) *The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*

(4) *No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.*

(5) *Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.*

There are scholars who argue that section 9(2), read with section 9(5), empowers us to explore and enforce a far more transformative brand of equality than we necessarily have to date. It is mostly true that overt discrimination has been removed from the South African tax legislation. For example, the married person definition and higher marginal taxation of married women has been abolished. Yet, the language of the acts often still uses 'he' to indicate any gender. Despite progress in eradicating overt discrimination, a more insidious inequality lingers just beneath the surface of the tax legislation. We have not yet formally considered gender equality at any stage in the creation and reinvention of our tax policy. Tax legislation in South Africa operates under the ingrained assumptions about gender roles that serve to eradicate women's voices, wants and needs. Our Constitution arguably allows us to turn this on its head and uproot these systemic biases.
However, when the seminal literature on tax equality is explored, it reveals income as the driver of what is equal and what is not, forgetting class, race and gender. Anthony Infanti refers to this as the 'sanitizing effect' of tax equity (See Infanti, A. C. (2007). Tax Equity. Buffalo Law Review, 55(4), 1191–1260 *https://heinonline.org/HOL/P?h=hein.journals/buflr55&i=1199)*. Yet, gender informs roles, rights and access to resources; therefore, it also informs the ways in which seemingly neutral tax policy impacts a specific gender.

*"Women are often expected to keep the home fires burning, which either makes participating in the labour market challenging or downright impossible"*


The practical fact remains that women generally need to source a safe place to leave their children before they can move freely into focusing on their careers and entering the labour market. This is a clear hurdle which women generally need to face more often than men. It only makes sense, then, both logically and constitutionally, that tax policy intervenes here and offers childcare assistance in the form of a deduction, a credit or free childcare centres. This would not be unprecedented—either worldwide or in South Africa. Several countries offer some form of childcare deductions or credits and South Africa boasts an Employment Tax Incentive designed to subsidise and encourage employment of the youth. Why not similarly advance the employment of women? Aside from being the right thing to do, research shows that encouraging women to enter the workplace makes every one of every gender happier and more productive at work.

I forward the message about 'treating' the special woman in your life to a clean house and some relaxation time to a friend. "*Did you see this? It's 2023!*" I ask indignantly before deciding that this is about as much as I can tolerate today. Acutely aware of how privileged I am to be able to do this, I call the local pizza place. "*Toy for a boy or a girl?*", they earnestly ask when I order a kiddie's pizza. "*How about you describe the toys to me and I tell you which suits the child's personality better?*", I counter.

15 minutes CPD

# Exploring South African female emigration patterns: FACTORS AND TRENDS

▶ **ROXANNA NAIDOO,** Admitted attorney for Financial Emigration and Head of Professional Partner Network

Migration is a global phenomenon driven by a complex interplay of factors, including economic opportunities, social stability, historical ties and personal aspirations. South Africa, with its rich cultural diversity and unique history, has seen significant patterns of both immigration and emigration.

Therefore, it is imperative to understand the factors driving the emigration of South African women from neighbouring African countries, countries with historical ties, and nations with better economic opportunities, as well as the emigration trends of South African females to various countries around the world.

## Emigration patterns and factors

Emigration patterns between South Africa and its neighbouring African countries are largely influenced by proximity and shared cultural ties. The borders that connect South Africa with several African nations have established it as a natural destination for individuals in search of improved opportunities, better living conditions, and opportunities to reunite with family members who have already settled there.

## Economic, political and social stability

The historical and political connections forged during the anti-apartheid struggle have left a lasting impact on migration trends. For instance, countries such as Zimbabwe have played a pivotal role in hosting refugees during that tumultuous period. This historical bond has continued to shape migration dynamics, with Zimbabweans now seeking economic prospects and a more stable environment in South Africa.

Economic considerations also play a significant role in migration patterns.

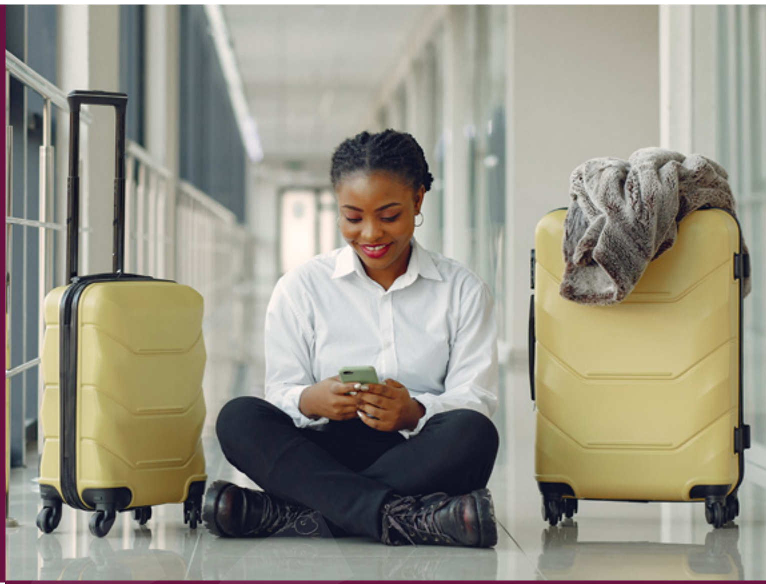
Countries such as the United Kingdom, Australia, Canada and New Zealand are renowned for their robust economies and higher standards of living. These nations often attract South African female emigrants who are enticed by the promise of better job opportunities and improved economic conditions. Political and social stability are key factors that draw migrants to certain destinations as well. Similarly, countries such as Botswana and Namibia, characterised by their stability, become attractive options for those seeking safety and security.

## Better education and healthcare

The availability of quality education and healthcare systems in countries such as Australia, Canada and New Zealand contributes to their popularity as emigration destinations. South African families often make the decision to migrate in order to provide their children with access to these resources, further enhancing the allure of these nations. Language and cultural familiarity also drive migration decisions. English-speaking countries offer a linguistic advantage to South African emigrants who are already proficient in English due to the colonial history of the nation.

## South African females seeking greener pastures

The emigration trends among South African women reflect a complex interplay of factors ranging from economic aspirations and educational pursuits to a search for a better quality of life and a sense of belonging. Whether it is the allure of renowned educational institutions in the United Kingdom, the promise of inclusivity in Canada or the desire to explore new frontiers in Australia and New Zealand, South African women are making deliberate choices to shape their destinies on foreign shores. As they embark on these journeys, they contribute to the diversity and dynamism of their chosen destinations while forging new paths for themselves and future generations.



The emigration trends among South African women carry significant economic and fiscal implications for the nation, resonating across multiple sectors and the overall health of the economy. Whereas the pursuit of opportunities abroad is an individual's prerogative, it is imperative to delve into the repercussions of their absence on South Africa's economic fabric.

### Fiscal and economic consequences of emigrating females

The emigration of highly educated women, particularly those engaged in advanced academic pursuits, fuels the phenomenon known as 'brain drain'. This results in the outflow of intellectual capital that could otherwise have been channelled into research, development and innovation in South Africa. As a result, the country's competitive stance in the global knowledge economy takes a hit.

The emigration of skilled professionals and potential high earners triggers a decrease in tax revenue for South Africa. This has a cascading effect, impairing the government's capacity to allocate funds for public services such as education, healthcare and infrastructure development. The diminished number of tax contributors strains fiscal resources and impedes endeavours to tackle prevailing socioeconomic challenges. Entrepreneurial drive and investment capital also find their way abroad with emigrating individuals.

As South African women explore opportunities overseas, the nation misses out on potential entrepreneurial ventures, start-ups and investments that could invigorate economic expansion and catalyse job generation.

### The silver lining

On a positive note, certain emigrating South African women contribute through remittances, offering financial support to their families and fostering local economic growth. Nonetheless, this positive contribution does not completely offset the broader economic impacts associated with their emigration.

South African women who emigrate often possess diverse skills and qualifications. As they move to other countries, they have the opportunity to share their expertise and knowledge in various sectors, contributing to the growth and development of the host nations. This transfer of skills can enhance global collaboration and innovation.

*"The emigration trends among South African women reflect a complex interplay of factors ranging from economic aspirations and educational pursuits to a search for a better quality of life and a sense of belonging"*

Many South African women emigrate in pursuit of higher education opportunities. Studying abroad allows them to access top-tier institutions, innovative research and diverse academic environments, enriching their intellectual and personal growth. Living and working in different countries allow South African women to establish a global network of contacts and connections. These relationships can be beneficial to future collaborations, business ventures and even opportunities to contribute to initiatives that bridge South Africa and their host nations.

### Conclusion

The decision of South African women to move abroad is driven by a desire for personal and professional growth, new experiences and better opportunities. Whereas these departures have economic implications for South Africa, the benefits that these women bring to their host countries and to themselves are numerous. The migration of women fosters global connections, knowledge exchange and personal development that can ultimately contribute to the enrichment of both individual lives and international communities.

# MARRIED IN COMMUNITY OF PROPERTY?

## UNDERSTAND YOUR TAX IMPLICATIONS BEFORE YOU TIE THE KNOT

15 minutes CPD

▶ **YOLISA DYASI,** Tax Technical Consultant at SAIT

For most people, getting married is one of the most significant events in their lifetime.day filled with love and promises of nothing but happiness for all the days to come. And whilst most couples think about the venue, the dress and the cake, the tax implications of getting married are usually the last thing on their minds.

This article delves deeper into the tax implications of getting married, particularly in community of property.

**Types of marriages in South Africa**

South African law recognises three types of marriages which may be registered with the Department of Home Affairs.

***1. Civil Marriage***

A civil marriage can be classified as a legal union between a man and a woman. Currently, civil marriages in South Africa can only be entered into by heterosexual couples. Civil marriage may be classified and registered under three specific regimes:

- Marriage in Community of Property;
- Marriage Out of Community of property with the Accrual System; and
- Marriage Out of Community of Property without the Accrual System.

***2. Civil Union***

Couples married under the Civil Union Act, No. 17 of 2006, enjoy the same rights, responsibilities and legal consequences as couples married in a civil marriage. However, the Civil Union Act does recognise and allow the union of same-sex couples.

***3. Customary Marriage***

Customary marriages are also known as traditional marriages, regulated by African traditions and customs. Unless an antenuptial contract was concluded prior to the customary marriage, these marriages are classified as a marriage in community of property and would bear the full legal, financial and tax implications of such a marriage.

**Tax implications of a marriage in community of property**

The Income Tax Act, No. 58 of 1962, defines a spouse as

*"a person who is the partner of such person—*

*a) in a marriage or customary union recognised in terms of the laws of the Republic;*

*b) in a union recognised as a marriage in accordance with the tenets of any religion; or*

▶

*c) in a same-sex or heterosexual union which is intended to be permanent, and 'married', 'husband' or 'wife' shall be construed accordingly: Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union out of community of property."*

By definition, unless a spouse has documentary evidence to prove otherwise, their union is classified as 'out of community of property' by default. Should a taxpayer want to benefit from the personal income tax benefits discussed below, they may need to provide the documentation to prove to SARS that they are indeed married 'in community of property'.

**Personal Income Tax implication (including Capital Gains Tax)**

Taxpayers who are married in community of property are typically taxed on a 50/50 basis of all the passive income received by both spouses. This passive income includes, amongst others:

- Local and foreign interest;
- Local and foreign dividends subject to SA normal tax;
- Distributions from a Real Estate Investment Trusts (REIT);
- Capital Gain/Loss; and
- Local rental income.

Practically speaking, this would mean that all the income listed above would be included, in full, on both spouses' income tax returns and be taxed 50/50 for each spouse upon assessment on an annual basis. For example:

| | Spouse A | Spouse B | Total income | For each spouse |
|---|---|---|---|---|
| Local interest | R10 000 | R50 000 | R60 000 | R30 000 |
| Local rental | R50 000 | R0 | R50 000 | R25 000 |
| Capital gain | R55 000 | R5 000 | R60 000 | R30 000 |

*"By definition, unless a spouse has documentary evidence to prove otherwise, their union is classified as 'out of community of property' by default"*

This 50/50 split comes with some advantages, including the 'double' benefit of the exemptions or exclusions in terms of the Income Tax Act. For example, because both spouses are eligible for the R23 800 exemption (R34 500 if over the age of 65) of local interest, this would result in spouse A's exemption indirectly being used to lower the taxable income for spouse B.

That stated, spouses married in community of property or out of community of property with the accrual system may still opt to exclude certain income from their communal estate. This would have a 'what's yours is yours, and what's mine is mine' effect; each spouse would only need to declare the income they received in their personal capacity during the year of assessment.

Similar to the interest exemption, both spouses qualify for the R40 000 annual exclusion for Capital Gains Tax purposes. From the example above, where spouse A would have previously included R15 000 (R55 000 – R40 000) in their taxable income, now no capital gains are included in their taxable income because the net capital gain is less than R40 000.

Additionally, when a spouse 'disposes' of an asset to another spouse, the transaction is exempt from Capital Gains Tax. Where there is a transfer of assets between spouses, the spouse disposing of the asset disregards any capital gain or capital loss and the spouse acquiring it takes over the history of the asset for purposes of determining that spouse's base cost.

### *Donations Tax Implications*

Section 56(1) of the Income Tax Act explicitly excludes donations between spouses from Donations Tax. This means that spouses can donate a limitless number of assets to each other without paying the 20% Donations Tax on the value of those assets.

### *Estate Duty Implications*

Sometimes 'til death do us part' lasts just a little longer than that with the consideration of Estate Duty in the event of a spouse passing away and the surviving spouse inheriting all the assets, no estate duty is payable whatsoever. Additionally, no capital gains tax is applicable. However, the estate duty and Capital Gains Tax may be due and payable upon the death of the surviving spouse.

### Conclusion

In essence, although tax is the last thing on a couple's mind before tying the knot, it is important to have a discussion about this as the marriage will have an implication on both spouses' finances and taxes on a year-to-year basis until death do you part.

30 minutes CPD

# VAT on sanitary products: Have we made progress?

▶ **ANNELIE GILES,** Tax Manager at ENSafrica

Value-added tax (VAT) is a tax on the consumption of goods and services in South Africa, which means the purchaser bears the cost thereof.

As a tax, it is apathetic and gender-neutral. It does not target any particular gender, race or religion because all purchasers of the same items equally bear the VAT cost on those items at the point of sale. Being broad-based, VAT is also non-selective about the type of product that is taxed. But gender-neutral is not always gender-equal.

## Zero rating as a tax exception

VAT is imposed at the standard rate of 15% on the taxable supply of goods and services in South Africa, unless a product qualifies to be zero rated (i.e. taxed at a VAT rate of 0%). Zero rating is the most beneficial form of VAT treatment. It allows a purchaser to acquire a particular item without VAT while still allowing the seller to claim a VAT deduction on its expenses related to the making of those zero-rated sales. This makes the item truly VAT free.

Where the final consumption in a supply chain is zero rated, government generally does not receive any revenue from that chain. Therefore, zero rating is a very important policy consideration as it has a direct impact on the fiscal budget.

## Design of a VAT system

VAT is a simple and efficient way for the government to collect a large amount of revenue on a broad range of expenses. By its very design, the VAT system in South Africa is based on sound fiscal principles of neutrality, equity and efficiency. It aims to be neutral as regards a consumer's choice of production and distribution channels and it is simple in its administration.

It is not desirable for a VAT system to contain multiple VAT rates for different product types or a host of exceptions and exemptions, as this erodes the VAT base and increases the cost and complexity of compliance. Where concessions are made, such as the zero rating of certain products, these are carefully considered and intentionally limited to achieve particular policy objectives.

From an equity perspective, VAT is regressive as the poor spend a greater proportion of their income on tax compared to higher-income earners. This is particularly relevant in a South African context where income inequality is extremely high. In addition to the issue of a 'missing middle class', a recent World Bank report on *Inequality in Southern Africa: An Assessment of the Southern African Customs Union*, released in March 2022, found that the gender pay gap in South Africa is sizeable. At the time, women earned on average 38 per cent less than their male counterparts in the same employment positions.

To limit the impact of VAT on the cost of basic items, Schedule 2 to the Value-Added Tax Act No. 89 of 1991 (the VAT Act) contains a list of zero-rated products, predominantly comprised of various foodstuff. However, even with a basket of zero-rated items, VAT is a very blunt instrument to achieve equity in the system and, furthermore, does very little, if anything, to address gender-related challenges on a day-to-day basis.

*"By having excluded certain sanitary products from the zero-rated list, it would appear that South Africa inadvertently introduced a 'luxury tax' on these items as only higher income earners could afford to forgo VAT-free products in favour of more expensive ones"*

## A case for zero-rated sanitary products

Because VAT targets consumption, it can indirectly and inadvertently create gender bias. VAT on sanitary products have long been seen as discriminatory against women and is colloquially referred to as a 'pink tax'. Considering that women would require some form of menstrual hygiene product each month from around the age of 13 until 55, except when pregnant, they bear a substantial additional tax burden compared to men simply based on biology. Women have no choice in the matter and to tax such a predisposition seems inherently unfair.

Due to the increase in the VAT rate from 14% to 15% on 1 April 2018, the Minister of Finance, through the Davis Tax Committee, appointed a panel of independent experts (the Panel) to consider and review the list of zero-rated food items to limit the regressive impact of the tax on poor households. The Panel received over 2,000 submissions and a total of 66 expense items were considered, which included a number of non-food merit goods (being goods for which an increased consumption would benefit, or at least not harm, economic and social development and which should be incentivised to address specific needs). Out of this, the Panel identified eight expense items for further consideration, including sanitary products.

According to its report, *Recommendations on Zero Ratings in the Value-Added Tax System to the Minister of Finance by the Independent Panel of Experts for the Review of Zero Rating in South Africa*, published on 6 August 2018 (the Report), sanitary products were undoubtedly the most suggested addition to the list of items already zero-rated. The Panel acknowledged that women face a host of unfair obstacles to advancement in education and work; measures to improve their living conditions and reduce barriers to engagement in society must be given substantial weight. At the conclusion of its work, the Panel recommended that sanitary towels and tampons be zero rated, combined with the free provision of sanitary products to women and girls through hospitals and clinics.

Therefore, with effect from 1 April 2019, the supply of sanitary towels (pads) is zero rated in terms of section 11(1)(w) of the VAT Act. Part C of Schedule 2 to the VAT Act lists the particular sanitary products that qualify for zero rating, summarised as follows:

- Sanitary towels (pads) and pantyliners, of wadding of textile material;
- Sanitary towels (pads) and pantyliners, of paper pulp, paper, cellulose wadding or webs of cellulose fibres;
- Sanitary towels (pads) and pantyliners, made up from knitted or crocheted textile material;
- Sanitary towels (pads) of certain other materials; and
- Other, sanitary towels (pads) and pantyliners.

In addition, the same products henceforth qualify for VAT exemption upon importation into South Africa in terms of section 13(3), read with paragraph 7(d) of Schedule 1 to the VAT Act.

## An inadvertent residual 'luxury tax'?

Notwithstanding the recommendations of the Panel, the list of zero-rated sanitary products is notably limited to sanitary towels (pads) and pantyliners made from various materials. No mention is made of other commonly used products such as tampons, menstrual cups or even period underwear. In order to acquire any of the excluded items, a purchaser would have to pay 15% more as a result of VAT. This goes against the neutrality principle of a VAT system which requires consumer choices to be unaffected by VAT.

By having excluded certain sanitary products from the zero-rated list, it would appear that South Africa inadvertently introduced a 'luxury tax' on these items as only higher income earners could afford to forgo VAT-free products in favour of more expensive ones.

Every woman will tell you that menstrual hygiene products are not a luxury. These products are critical for reproductive health and essential for human dignity, which includes the right to choose. Women should be free to select a menstrual management product that is both comfortable and affordable without an added tax burden.

It is equally essential to preserve the simplicity of the South African VAT system by avoiding the complex task of having to accurately classify each product of the same hygiene category in order to be taxed according to a particular VAT rate.

## Regressivity vs gender-equality

Although the Panel recommended in its report that the externalities of promoting women's advancement should be taken into account in weighing the costs and benefits of zero rating, it also stated that consideration of sanitary products for zero rating was included for further consideration based on goods consumed by vulnerable groups. The zero rating of certain sanitary products was therefore aimed at women whose consumption of the products was largely dependent on the cost thereof. However, the removal of VAT does not always mean lower prices; it is not clear to what extent the benefit of zero rating on sanitary products has truly been passed on to the consumer by the retailers.

Further, it seems that when South Africa added sanitary products to the zero-rated list, it prioritised the regressivity of VAT (by attempting to make it more affordable for lower-income earners to have access to some sanitary products) and not necessarily to improve gender inequality in the system. While reducing the regressivity of VAT is an important policy consideration and bearing in mind that the terms of reference of the Panel were to do just that, it does mean that there is still a lot of work to be done to achieve equal rights for all women in society regardless of their income level.

## Missed opportunity

More and more women are making up a bigger component of the economy and they provide a significant contribution to society on various fronts, be it at home or in the workplace. Given that VAT is a consumption-based tax and that women's menstrual needs are here to stay, it seems to be a missed opportunity for South Africa to have achieved much more in terms of gender equality had it zero rated all sanitary products.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# Meet South Africa's first female Tax Ombud

▶ **KEITUMETSE SESANA,** Tax Technical Specialist at SAIT

As a champion for woman empowerment and a stern advocate for technical excellence and quality, Ms Mputa—South Africa's first female Tax Ombud—is well on her way to elevating the Office of the Tax Ombud (OTO) to greater heights.


Hailing from humble beginnings in the rural Eastern Cape, Ms Mputa was one of the first female pioneers who completed a postgraduate diploma in tax law. She took the 'road less travelled' and ventured into a career in taxation that spans more than two decades. During this time, Ms Mputa has honed and fine-tuned her tax technical and engagement skills to aptly poise herself in becoming South Africa's first female Tax Ombud.

Stakeholders are most familiar with Ms Mputa as the Chief Director: Legal Tax Design at National Treasury—a position for which she was headhunted and which she held for close to a decade. However, her depth of tax experience results from a rich history and a wide variety of positions that she has held in both the private and public sectors.

Upon completion of her articles of clerkship and her admission as a full-fledged attorney of the High Court of South Africa, Ms Mputa's career in taxation started out at the Tax Exemption Unit, SARS Head Office in 1999. She then joined Arthur Andersen, one of the pre-eminent audit firms of its time. It was at Arthur Andersen that she learnt the value of paying attention to detail and producing good quality work; the values for which she is well known in today's tax circles.

As one of the few females who has held and continues to hold positions of authority in the tax industry, Ms Mputa has been able to stay the course as a result of her dedication and hard work. "*As women, we must work twice as hard. That is something I do a lot. I always say that your quality of work should speak for you.*", she says.

Being a woman in taxation is not easy and although Ms Mputa has faced a measure of resistance in her positions, she has been able to overcome this resistance as a result of the public and transparent manner in which she has engaged with stakeholders over the past years.

*"Ms Mputa recognizes that one of the biggest challenges that is now facing her office lies in creating awareness of her office in underserved communities"*

Ms Mputa enters every room knowing that she must do her best; it is her ability to work hard that has resulted in her being identified as a person who can take on more responsibility. This, she believes, is one of the reasons that she was appointed as the first female Tax Ombud.

She encourages others to follow in her footsteps as she has always advised those who reported to her that their contribution to National Treasury is a way in which one can "*give back to our country [South Africa]*". Ms Mputa firmly believes that "*this is our democracy; if we do not add value, who will?*"

In her role as Chief Director, she championed female empowerment and favoured female progression. During her tenure at National Treasury, Ms Mputa also continued to enact and enhance gender-based policy items that were favourable to females and that assisted in improving the lives of many females in South Africa. This includes, but not limited to, refining legislation such as medical tax credits; "*Our government is aware of and mandates each department to have legislation that is gender-based and gender-favourable*", says Ms Mputa.

Thus, Ms Mputa maintained a high standard and ensured that effective reporting on female gender-based policy items was submitted to the Department of Planning, Monitoring and Evaluation on an annual basis.

In reflecting on her appointment as the first female Tax Ombud, she aptly acknowledged that "*women are still underrepresented even though they form over half of the global population*". She continues, "*being appointed as South Africa's first female Ombud was not only an achievement for me, but it also felt like my appointment was a win for the country*". Following on from the gender-centric nature of her predecessor, Ms Mputa intends to continue empowering and mentoring females in the profession, particularly those who work for the OTO. Ms Mputa is of the view that her appointment is in line with the principles that were outlined at the "*Women in Power Call for Action*" event that was hosted by the President of the United Nations General Assembly on 12 March 2019. She further believes that her appointment is proof that South Africa is moving progressively in appointing women into positions of power.

Ms Mputa intends to position the OTO as a "*beacon of hope*", where taxpayers will be treated with empathy and integrity. She vows that her office will achieve all this while upholding and pursuing technical and service excellence. She also intends to "*enhance their relationship with SARS*". In so doing, this will ensure that SARS will implement the OTO's recommendations which will have a direct correlation to taxpayers receiving assistance in their tax matters. Her office shall continue to act as a 'beacon of hope' for taxpayers who view the OTO as their "*last resort*" whenever they are frustrated in their respective dealings with SARS.

The biggest challenges that are now facing her office lies in creating awareness of t the OTO in underserved communities. She intends to roll out numerous local outreach programmes in underserved provinces, such as doing trade fairs in malls and the like. In creating this awareness, Ms Mputa and her office are dedicated to "*reaching the hearts*" of taxpayers and improving the language comprehension of tax by connecting with taxpayers in the spoken language of the local outreach areas.

Although the OTO is structurally dependent on SARS, Ms Mputa assures taxpayers that her office is not an arm of SARS. The OTO is and will continue to remain functionally independent from SARS. This entails that her vision for her office will not be overshadowed by the objectives of SARS but that her vision will aid in continuing to serve taxpayers and in remaining a 'beacon of hope'.

"*Of the 98 recommendations that were made by the Tax Ombud to SARS in the past year, 80 per cent of those recommendations were accepted and in favour of the taxpayer*", says Ms Mputa. She further reiterates that her office is not 'toothless'. While taking into consideration budgetary and regulatory

requirements such as those set out in the Public Finance Management Act as a medium to long-term goal, Ms Mputa intends to implement measures to ensure that the OTO will eventually obtain structural independence from the SARS, but in a cost-effective manner.

Although it remains SARS' duty to shoulder the responsibility of taxpayer education, her office launched thee firsteducational campaign entitled 'Making Taxpayers' Rights Matter' during her first 100 days in office. This campaign places taxpayer rights at its very centre. "*When taxpayers are aware of their rights, they will also equally be aware of their obligations to comply. Making taxpayers aware of their rights will increase taxpayer compliance*", says Ms Mputa.

Furthermore, when taxpayers are aware of their rights, this will also increase awareness of services rendered by the Office of the Tax Ombud. "*Increased awareness will result in improved compliance, improved tax administration and, in turn, increased revenue collection, which will contribute to the national revenue fund that is allocated by the Finance Minister in his Budget*", says Ms Mputa.

She has pledged that the whole team at the OTO is committed to making her vision and the campaign a success.

Speaking about her transition from being "*on the other side*", where she spearheaded legislative drafting that may at times be perceived as being against the taxpayer, to now being in a position where she essentially fights for the taxpayer, Ms Mputa assures taxpayers that she will continue to abide by the principles of equity, transparency, simplicity and fairness.

In her role as Chief Director at National Treasury, she always held those principles as cornerstones of her work and will continue to do so. In designing tax legislation, Ms Mputa has always been aware of and has kept the taxpayer in mind. Even in cases where National Treasury implemented anti-avoidance provisions, Ms Mputa advised that these would be revised in the name of fairness to the extent that it was evident that these anti-avoidance measures disadvantaged compliant taxpayers. She has assured taxpayers that as the new Tax Ombud, she will continue to adhere to the fundamental pillars of taxation.

As a trailblazer in the tax community, Ms Mputa encourages women who wish to mirror her success to develop a keen attitude towards learning and to be "*curious*" about tax developments. "*Do not restrict your education solely to your qualification; take up education in other forums as well*", says Ms Mputa.

Although this may involve late nights, early mornings and a magnitude of hard work, Ms Mputa advises females in the tax industry never to compromise the quality of their work.

"*Your work should speak for you*" and, so it has for Ms Mputa.

# FORTUNES SECURED:

## How family offices ensure long-term financial success

15 minutes CPD

**MADELEINE SCHUBERT,** Independent International and Domestic Tax Attorney at Boshoff Incorprated Attorneys

The impending wealth transfer from the 'baby boomer generation' to the next is one of our time's most significant economic and social phenomena.

With such a phenomenon, concerns are raised by such individuals about how to retain their wealth for future generations and protect them against all risks, including but not limited, to the treasury and revenue authorities of governments that have started making rumbling noises about imposing wealth taxes over and above those currently known to most of us, such as capital gains tax and inheritance taxes.

In addition, intergovernmental organisations, such as the Financial Action Task Force, combat money laundering, terrorist financing and other threats to the integrity of the international financial system; this has resulted in most governmental legislators imposing more and more disclosure legislation on its subjects to establish and disclose who the beneficial owners behind structures are. Although this approach benefits all of us, it has made the confidentiality of personal wealth going forward more difficult for a wealthy family.

Suppose it is apparent that interpersonal family relationships are strained at the commencement of the process; it is advisable to cease the process. Rather, first allow for a process where open and honest family discussion can be facilitated, allowing for any underlying issues to be cleared first, as unresolved issues will ultimately affect the longevity of the family office structure.

From my experience, because the spouses of one's descendants will always impact family dynamics and relationships, one should include them in the initial family office concept phase to make them feel part of the process and also to have them participate in the process. The initial phases relate to concept design and the identification and formulation of vision and values.

Usually, the father, mother or both, who made or accumulated the initial wealth, are the drivers behind the formation, establishment and implementation of a future strategy for the family wealth and would start the process with an introductory family meeting.

At this meeting, the family's long-term vision, with or without the assistance of a qualified person, must be determined. Determining one's vision is more challenging than it may seem; honest and open communication must be core rules of engagement in this process. From practice, it helps to determine the family's core values first and then formulate a family vision that tends to fall into place.

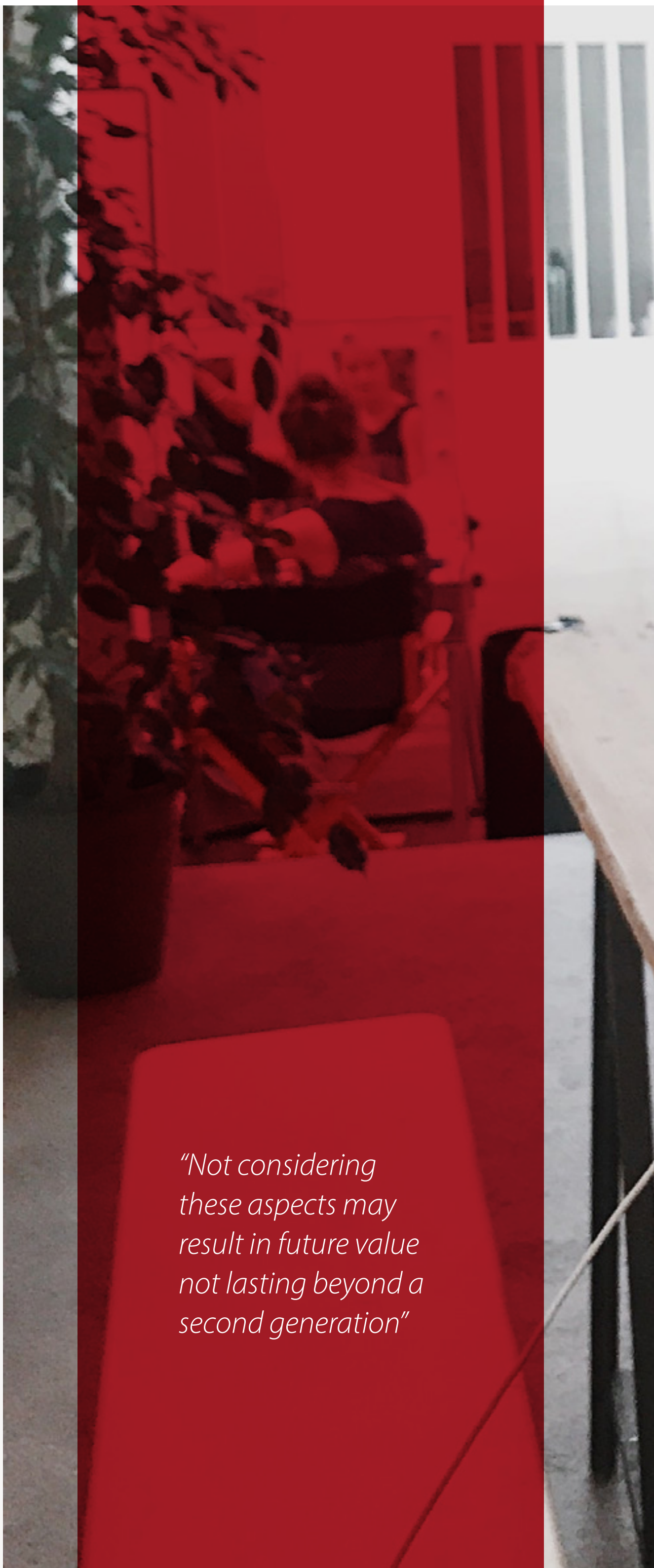
Determining the family's core values requires open, honest and frank discussions. List extraction and initial values identified must be tested until such time that it resonates with everyone.

Then, once the shared vision has been identified and there is a genuine buy-in from all the family members, the more technical and strategic process can commence. Other processes require some or all of the following sub-processes, namely:

- Creating a Family Charter, also known as the Family Constitution. This document is the cornerstone of the family offices. It establishes a Family Governance Committee, comprising family members and key stakeholders responsible for its development. The Charter must state the family values, vision, objectives, governance structure, decision-making processes, succession planning, conflict resolution mechanisms and regular review and revision procedures.

- A clear and well-formulated governance structure is paramount for a family office to flourish. Weak governance can result in asset mismanagement and conflicts among family members. Therefore, a definition of roles, responsibilities and decision-making processes is essential to maintain the family office's efficiency and stability.

- An equally important aspect is the implementation of robust risk management strategies. Creditors, divorces, death and volatile markets all have an impact on these. Families must develop plans to protect their wealth from potential downturns or unforeseen events.



*"Not considering these aspects may result in future value not lasting beyond a second generation"*

- Technology and embracing new ways are often critical drivers in family offices which normally learn toward new and innovative strategies.

- Education strategies support the longevity of the office and it is important for family members to have a basic understanding of financial planning, international trends and political developments, as well as a general understanding of investment philosophy and risks.

- Effective communication plays a critical role in making a family office successful. Open and collaborative communication helps avoid and manage conflicts and misunderstandings that can arise, thereby preventing destabilisation within the office.

- Legacy planning is another critical fiduciary aspect for families. Establishing a combination of various legal structures such as foundations, trusts, companies and a well-crafted Family Charter, ensures comprehensive legacy planning. Owing to different legal jurisdictions and taxation systems, these processes may be complex, necessitating expertise in cross-border legal and fiduciary matters, as wealthy families all have global citizens these days.

- Strategic philanthropic structures are designed to make a lasting impact on society. Strategic planning is vital to ensure the success of these initiatives, as well as their alignment with the family's core values; it is not driven by pure emotion.

Lastly, from an international structuring perspective, the various legal entities in different jurisdictions and the tax residency of family members or the ownership and control that family members may have in these structures are key considerations that must be constantly reviewed and considered. All of these elements could result in entities being migrated between jurisdictions via controlling directorship or creating permanent establishments by residing in a specific jurisdiction and working remotely for a family company. The latter has been under the radar of many countries' tax authorities and the Organisation for Economic Co-operation and Development (OECD) has released a report on this issue called, "Implications of remote working adoption on place-based policies", dated 22 June 2021.

In summary, establishing a family office is pivotal in achieving long-term financial success and legacy preservation for affluent families. Considering the complexities in the current society, it is essential to have the correct professional team supporting you. Not considering these aspects may result in future value not lasting beyond a second generation. Planning in the event of wealth preservation should be a key driver for the wealthy family with adequate resources.

# FUNDING OPPORTUNITIES AVAILABLE TO BLACK WOMEN

▶ **ZAHRA RAWJEE,** Director, Uzenzele Holdings (Pty) Ltd

When looking at the South African business landscape, it is evident that entities owned and run by women, particularly by black women, make up a very small percentage of the whole.

The 2021 Mastercard Index of Women Entrepreneurs (MIWE) report showed that only 21% of businesses in SA are owned by women (See https://www.mastercard.com/news/media/phwevxcc/the-mastercard-index-of-women-entrepreneurs.pdf*)*. Most of these are very small or informal businesses that therefore tend to be left out of funding and investment opportunities.

However, there is an avenue that is open to, and looking for, projects and businesses that are owned and managed by black women—Developmental Funding Institutions (DFIs).

Institutions such as the Department of Trade, Industry and Competition (dtic), the Industrial Development Corporation (IDC) and the National Empowerment Fund (NEF), to name but a few, have incentives and preferential funding that can benefit businesses owned by black women.

## 'Black' as defined by the B-BBEE Codes

A question that I am often asked is: "What does 'black' mean?"

Understanding the definition of 'black' is important because many black individuals in South Africa, both men and women, exclude themselves from opportunities because they do not realise that they fall into this category.

In terms of the B-BBEE Code of Good Practice, section 1 defines 'black people' as:

Africans, Coloureds and Indians –

a. who are citizens of the Republic of South Africa by birth or descent; or
b. who became citizens of the Republic of South Africa by naturalisation –
   i. before 27 April 1994; or
   ii. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

The courts have confirmed that Chinese people who fall under the classifications above are also considered 'black' for purposes of the Act.

So, for the purposes of this article, 'black' means African, Coloured, Indian and Chinese individuals.

## Funding available to black women

***Grants:***

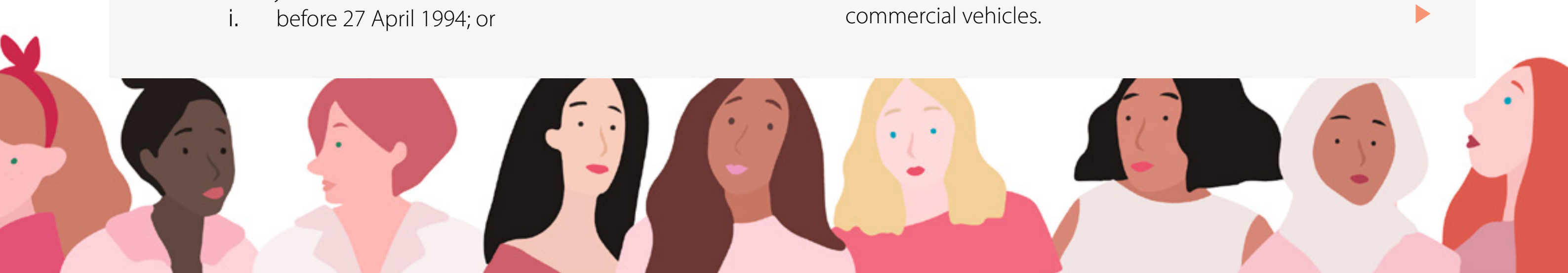
When it comes to DFIs and grant funding, the dtic is the main institution that offers several incentive programmes to South African businesses.

While none of these grant incentives is specifically geared towards women only, there is support for women-owned businesses that apply for these incentives.

The Black Industrialist Scheme (BIS) is an example of an incentive that has supported a number of businesses owned and run by black women; these projects have seen good growth and sustainability over the years.

The BIS is a cost-sharing grant available to manufacturing entities that are majority black owned, managed and operated. This incentive will contribute between 30% and 50% towards qualifying capital expenditure (capex) costs, to a maximum grant contribution of R50 million. This grant is not repayable and it is tax exempt.

Qualifying capex includes: machinery, tools and equipment, building and building improvements, and commercial vehicles.



**Example:**
A 100% black women-owned entity that manufactures chemicals for the mining industry needs R80 million in order to set up a factory to supply her clients with these products.
The cost of the factory is:

1. Machinery, tools and equipment—R55 million
2. Building of the factory—R10 million
3. Commercial vehicles—R5 million
4. Working capital—R10 million

Items 1 to 3 above are 'qualifying costs'.

The business scores full points and is approved for 50% of the qualifying costs.

The BIS will contribute R35 million towards the project as a non-repayable and tax-exempt grant.

The BIS targets industrial-sized manufacturing projects that require an investment of at least R30 million and offers black women the opportunity to establish significant businesses and be meaningfully included in the economy.

The APSS (Agro-Possessing Support Scheme) is another cash incentive in the form of a grant from the dtic. This grant focuses specifically on the agro-processing sector and offers a cost-sharing grant of between 20% to 30% of qualifying costs to a maximum contribution of R20 million.

Qualifying costs for this incentive are the same as for the BIS but the minimum investment is R1 million, making this incentive an option for smaller projects.

While black ownership is not a prerequisite for this incentive, applicants with majority black ownership will benefit from the higher contribution percentage.

Other grants from the dtic include the Automotive Investment Scheme, the Critical Infrastructure Programme, the Film and Television Incentive and Global Business Outsourcing.

Information on the various dtic grants can be found on their website: *http://www.thedtic.gov.za/*

***Loans***

While loan funding does not provide the same boost that cash grants offer, it is a vital source of capital for businesses looking to establish themselves or to expand. Many women are scared of loans because they do not have much experience with credit; they fear what will happen if they default. However, studies around the world have shown that women-owned businesses tend to be better borrowers with lower default rates than those owned by men.

Loans also become critical when applying for cost-sharing grants because there is a funding gap which needs to be raised before the full investment requirement can be reached. In the BIS example above, the grant would contribute R35 million towards an R80 million project leaving a funding gap of R45 million which would need to be raised. The most likely type of funding in this situation is a loan.

Both the IDC and NEF offer loans to black women-owned businesses, often at preferential rates, which can be as low as 2.5% in some cases. These institutions also provide payment moratoriums or 'holidays' before repayments are expected to commence. These benefits, along with others, make them sound options for funding.

These institutions make a concerted effort to support women-owned businesses and projects; whereas the process is not necessarily easier for women, their applications are welcomed.

## The importance of a quality application

While the above and other funding is available to Black women-owned businesses, it is extremely important that applications made to funding institutions are of high quality.

The fact that funders are looking for women-owned businesses to support does not mean that they should forgo their duty to make sound investments. It is important to spend time on the business fundamentals to show the viability of the project and to reassure these funders that the proposed project will be viable and sustainable.

The financial model and forecast are vital; these must have enough detail backed by reliable evidence to demonstrate that the business will be well run. In addition, the team leading the company must be qualified to implement the project successfully.

*"Understanding the definition of 'black' is important because many Black individuals in South Africa, both men and women, exclude themselves from opportunities because they do not realise that they fall into this category"*

## In summary

Black women have the opportunity to leverage funding available in the market to establish significant businesses. The key to unlocking this funding is a strong application with a strong team to make the project a reality.

30 minutes CPD

# ARE YOU A SOCIAL INFLUENCER OR DO YOU OWN AN ONLINE BUSINESS?

## The dos and don'ts of paying your taxes and claiming deductions

**MAYA NIKOLOVA,** Founder of TaxAdvise

Over the last decade, the rise of social media influencers has become a remarkable phenomenon in our digital era. Along with this came the trend to professionalise this field; social media influencers started approaching their work as a full-time career. They began to bestow time, determination and resources to create high-quality content and grow their followers

As the number of influencers' followers increased, so did their effect on consumer behaviour amplify. They entered into partnerships with various brands to promote and endorse products, services and experiences. In turn, these brands became leading marketing tools in the hands of businesses to reach their target markets in a more integrated personal way, as influencers could effectively weave brand messaging into their content, thereby leveraging their authenticity and trust with their followers.

Conversely, online business platforms already started evolving at the turn of the century. Nowadays, these platforms represent a substantial part of our lives, especially during the recent pandemic. Virtual reality is a product and a part of our society.

Social influencers often have their own online businesses where they endorse and sell the products and services advertised and promoted in their posts.

Of course, challenges and controversies have also increased with the growth and development of this industry. One such is the question whether local social influencers are subject to income tax in South Africa, even if their income was earned from foreign sources.

### The South African tax realm

The turn of the century has also celebrated the transition of the South African income tax system to a residence-based one since the years of assessment that commenced on or after 1 January 2001. Persons who are tax residents in the Republic, are taxed on their worldwide income, subject to certain exclusions. Persons who are not residents for tax purposes, are only taxed on their income from a source within the Republic.

'Resident' is defined in our Income Tax Act as "*any natural person who is ordinarily resident in the Republic*" or complying with all the requirements of the physical presence test. As the term 'ordinarily resident' is not defined in the legislation, there are various tests to determine whether a natural person is ordinarily resident in the Republic.

## Obligation to register for income tax

Why is this important to a social media influencer who is based in South Africa and who is earning income from foreign companies and brands? Because a social influencer who is a resident in the Republic for income tax purposes, is liable to declare all their worldwide income in their income tax return. Notably, the social influencers are conducting a trade as defined in the Income Tax Act: " *'trade' includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or any other property which is of a similar nature*".

Thus, natural persons earning income from trade, and residents for tax purposes in the Republic, are chargeable with income tax (or any other tax as relevant), leviable under the Income Tax Act, and are defined as taxpayers in this act.

Many young people, some of whom may still be at school, become social media influencers and start earning income from their trade activities. They do not realise that they must register for income tax. There is no minimum age for a taxpayer. " *'Taxpayer' means any person chargeable with any tax leviable*" under the Income Tax Act *of South Africa.* In addition, tax is chargeable on taxable income, which is the product of gross income less exemptions and less allowable tax deductions.

## Requirement to register for provisional tax

A taxpayer who earns income from trade, is also defined as a 'provisional taxpayer' according to the definition in paragraph 1 of the Fourth Schedule to the Income Tax Act; it means that "*any person who derives income by way of any amount which does not constitute remuneration or an allowance or advance contemplated in section 8 (1)*". Any person who earns income from trade is thus included in the provisional taxpayer definition and must, therefore, also register for provisional tax in addition to their income tax type registration. Provisional tax for a year of assessment of an individual taxpayer is declared and paid at the end of August and February every year; it is a method of paying the income tax liability in advance. Provisional tax is calculated on the taxpayer's *estimated taxable income.*

## What is gross income, income and taxable income

All taxpayers must be cognisant of the concepts 'gross income', 'income' and 'taxable income' in order to understand how to compile their income tax returns effectively.

'Gross income' means "*in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident . . . , excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder . . .* ". Gross income is significant as the basis upon which income tax liability is determined. The tax legislation allows for certain exemptions from normal tax to be excluded from gross income to arrive at a taxpayer's income. After having deducted amounts allowed under the Income Tax Act, the taxable income of a taxpayer on which income tax liability is calculated, is established.

Gross income, which is assigned under different categories such as remuneration income, income from trade, etc., must be declared in the income tax return of a taxpayer.

Persons, including social media influencers and online business owners who earn income from trade, must include all their earnings under gross income. Usually, the electronic income tax return form ITR12 on eFiling requires taxpayers to declare different incomes from trade separately if they have more than one trade. This is illustrated in the following example: You earn income from sources related to your activities on social media platforms such as YouTube, Instagram, TikTok, etc. Additionally, you may receive gross income from online business trading, such as selling fashion clothing and accessories or high-end cosmetics. These two streams of income may be considered two separate trades and may be distinguished respectively in your income tax return.

## Allowable tax deductions

The *Income Tax Act* allows certain expenses to be deducted for tax purposes. The general deductions formula contained in section 11(a) of the *Income Tax Act* states that "*expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature*" are allowed as deductions from the income of taxpayers carrying on a trade.

*"Just remember that becoming a compliant taxpayer is another way of confidently influencing your followers to do the right thing!"*

Taxpayers may deduct all expenses that they have incurred in the production of their income from trade as long as the expenses are not capital in nature. Let us first start with the 'capital in nature' part of the general deduction formula. The 'tree and fruit' principle in tax was established in the *Visser case* (*Visser v CIR* SATC 271), where it was held that "*'Income' is what 'capital' produces, or is something in the nature of interest or fruit as opposed to principal or tree*". The principle clearly distinguishes that the capital is represented by the 'tree', and income, or revenue, is the 'fruit' of the tree. If an influencer uses their motor vehicle to travel in the country because they post videos on YouTube about the beauty of nature in South Africa, the car is their tree. A fancy specialised camera and all the equipment necessary to shoot, edit and produce the videos, would also be considered part of the tree. The 'fruit of the tree' is the video published on social media platforms. So, if a taxpayer acquires a new upgraded motor vehicle or new equipment, these expenses would not be allowed as a tax deduction because they are 'capital in nature'.

However, expenses associated with maintaining the 'capital', such as servicing the motor vehicle or repairing the specialised professional equipment, would be allowed under the general deduction formula. Additionally, the taxpayer is permitted to deductions under section 11(e), "*representing the amount by which the value of any machinery, plant, implements, utensils and articles owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement and used by the taxpayer for the purpose of his or her trade* [emphasis added] *has been diminished by reason of wear and tear or depreciation during the year of assessment*". These deductions relate to assets owned by the taxpayer or acquired under instalment sale agreements and used in the taxpayer's trade.

Typically, tax-deductible expenses include rental of premises, salaries and wages, telephone and internet expenses, stationery and printing, etc.

It is of great importance to emphasise that section 11(a) must be read together with section 23, which deals with deductions not allowed in determining taxable income. Influencers and online business owners would mostly trade as sole proprietors, that is, as individual taxpayers and they will be subject to personal income tax (PIT). Section 23 of the Income Tax Act prohibits certain deductions in the determination of the taxable income, such as domestic and private expenses incurred in the cost of the maintenance of any taxpayer, his family or establishment, trade of the taxpayer. Nonetheless, a taxpayer who has part of their residence occupied for the purposes of the trade, may claim deductions associated, but not limited to, the rental, water and electricity, municipal expenses and other expenses, which are prorated according to the space of the occupied premises for the purposes of the trade.

A taxpayer who earns income from their social media platforms may also be entitled to deduct specific expenses related to a particular project, for instance, special clothes or special products purchased to create content, which ultimately produces revenue.

It is prudent to have your tax return always prepared and submitted by a registered tax practitioner, especially if you have complex tax-deductible expenses and if you are not quite sure how to deal with these.

## Conclusion

### Dos:

- Do register for income tax;
- Do register for provisional tax;
- Do timeously submit your provisional tax returns twice per tax year;
- Do submit your income tax returns every year;
- Do pay your income tax and provisional tax on time to avoid imposition of late payment penalties and interest;
- Do consult with a registered tax practitioner regarding your income and provisional tax returns; and
- Do claim your tax deductions sensibly and reasonably.

### Don'ts:

- Don't assume that you don't have to pay income tax;
- Don't under-declare your gross income;
- Don't overstate your tax-deductible expenses;
- Don't rely on unprofessional attitudes towards your taxpayer's obligations; and
- Don't hesitate to use the services of a registered tax practitioner, who will guide you in your journey to become a tax influencer too!

Just remember that becoming a compliant taxpayer is another way of confidently influencing your followers to do the right thing! Partnering with a qualified tax professional for relevant content creation is a powerful tool to achieve your objective and attract even more likes.

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# ARE TAX-FREE SAVINGS

## STILL A PROMISING IDEA FOR HER? WEALTH CREATION VEHICLES


**ELKE BRINK,** Wealth Advisor at PSG Wealth

There is something I find extra special in August when we get to celebrate women and wealth. Ibelieve every woman needs to ensure that she is financially independent and protected.

There are a few realities we need to keep in mind when we are planning our financial futures as women.

- Longevity—we live longer than men. The average woman's life expectancy is four to six years longer than that of men in South Africa. Therefore, we need not only plan for a longer retirement term, but we also need to keep in mind that we will take over the family wealth; we need to be able to manage it when the time comes. Consequently, it becomes much more imperative to ensure that we are informed and involved with the household's financial portfolio.
- We tend to spend less time in the workforce due to raising a family.
- In many occupations, we still earn less than our male counterparts.

Taking all of the above into account, we have a few additional challenges when we are securing our own financial futures, as we have to reach the same outcome with different inputs in many scenarios.

What I am quite passionate about is that women are actually quite good at investing!

Women currently make up 50% of the Fortune 500 workforce but only hold 4% of the chief executive officer (CEO) spots (26 out of 500). In 2005, Alex Haslam and Michelle Ryan completed a study entitled 'The Glass Cliff'. They surveyed the top 100 companies on the United Kingdom's (UK's) Financial Times Stock Exchange. They found that companies that had experienced volatility or poor performance in the previous five months were more likely to appoint a woman as CEO. This study was supported in 2013 when Allison Cook and Christy Glass analysed all the Fortune 500 CEO transitions over a 15-year period and found that women were more likely to be named CEO when companies were underperforming.

There is plenty of research that supports the view that having women around the table makes a significant difference.

- Mixed-gender boards outperform all-male boards (*Credit Suisse, The CS Gender 3000: women in senior management*).
- Women-led hedge funds perform in line with or exceed those managed by men (*KPMG, Women in Alternative Investments: A marathon not a sprint, 2014*).
- The Fortune 500 companies with the highest proportion of women performed better than those with the lowest (Catalyst Information Centre, 2013).

One of the most intriguing studies of 21 980 firms across 91 countries found that those that went from having no female senior executives to having 30% female representation increased their net revenue by 15%.

When it comes to saving and investing, the success stories are very much the same. Being a financial adviser, one of the most fascinating things is that for the majority of my client base, the women have become the decision makers about the family's investment portfolio and, in many cases, they earn more than their partners. Women may be more conservative with regard to taking the plunge and investing in the stock market. However, multiple studies have shown that when they do invest, women not only outperform the market but in many cases, also their male counterparts.

Warwick Business School completed a study including 2 800 UK men and women, tracking their performance over a three-year period. The men outperformed the index by 0.14%, whereas the women outperformed the index by 1.94%—a 1.8% outperformance compared to the men. The same Warwick study concluded that women also trade less frequently than men. On average, women traded nine times as opposed to 13 times for men over the three-year period. In my experience, women are better at sitting on their hands and resisting the urge to act when needed.

Therefore, it can be argued that building a resilient portfolio comes quite naturally for us. As the readers of this publication know very well, it is essential to avoid paying unnecessary taxes.

Why not ensure that you are optimising your annual tax benefits when it comes to investment too?

Here is a three-step plan to optimise a tax-friendly portfolio:

## STEP 1

Let us start with retirement planning which is probably the most under-utilised benefit. Contributions to a retirement fund are tax deductible. This can consist of a combination of a retirement annuity, as well as a pension or provident fund with your company. These contributions can be deducted from your taxable income up to a maximum of 27.5% of your total remuneration or taxable income, capped at R350 000 p.a. If you exceed these contributions, you start building up a 'pool' of contributions, which is referred to as your disallowed contributions. At retirement, you will be allowed to withdraw R550 000 tax-free, provided that you have not previously made withdrawals. Because you can deduct these previously disallowed deductions from the cash lump sum you are able to withdraw at retirement, you can effectively increase the tax-free amount indefinitely when tax is calculated. If you can build up a substantial disallowed contribution 'pool', you can increase this to a few million over your working life.

Once retired, the portion of your retirement portfolio that you did not take as a cash lump sum, gets converted to a guaranteed life annuity and or living annuity. The income you earn from this investment is taxed on the income tax scale. But here, the benefit of section 10C of the Income Tax Act becomes applicable. Whatever portion of your disallowed contribution 'pool' is still available can be offset against this income. Essentially, you can earn a tax-free income for years by utilising your disallowed contributions.

## STEP 2

Optimise your tax-free investment. You are allowed to invest R36 000 p.a. and R500 000 in your lifetime into a tax-free product. It will take you approximately 14 years to reach the allowed limit on this investment – if you contribute at the annual maximum rate. You can still leave this portfolio to benefit from compound interest after the limit has been reached.

If you only remained invested for 14 years and made the maximum monthly contributions over this time, assuming an average return of the consumer price index (CPI) + 6% p.a. at today's inflation rate, then you would already have a fund value of R1 228 959. Let us assume that these funds are left another 15 years to benefit from time in the market, growing at the same rate. Now your fund value has grown to R6 726 7878. This can be accessed 100% tax-free, thereby supplementing your tax-free income earned from your living annuity with income from your tax-free investment.

*"we have a few additional challenges when we are securing our own financial futures, as we have to reach the same outcome with different inputs in many scenarios"*

## STEP 3

Structuring a voluntary investment for short-term needs or emergency funds (capped fund value—you want to keep the fund value low enough to ensure you will stay within your annual exclusions on all tax benefits).

With a voluntary or flexible investment, there are two main tax implications that need to be considered. An annual exemption or exclusion applies to each.

For any interest-bearing asset class (cash and bond exposure), this also applies to cash in the bank; an annual interest exemption applies. This is currently R23 800 p.a. and if you are over the age of 65, this becomes R34 800 p.a. Any interest earned over and above your exemptions will be taxed at your marginal rate.

Funds allocated to growth assets (equity exposure) can trigger capital gains tax (CGT). This is where you are essentially taxed on your growth earned. CGT is triggered on the disposal of an asset, e.g. the sale of a house. In the investment vehicle, it will be triggered by withdrawing or switching equities—perhaps because of a change in strategy. This is something that can be calculated and therefore known and planned for. Each individual gets an annual capital gain exclusion of R40 000. (To determine the CGT, there is a formula that applies using the net capital gain, the inclusion rate of 40% and your marginal rate).

By maximising your tax benefits in a disciplined manner, you can give your investment portfolio a welcome boost and help to ensure that you remain on target to reach your goals.

30 minutes CPD

# A COMPREHENSIVE GUIDE TO INCOME TAX AND VAT FOR SMALL TO MEDIUM BUSINESSES

**NATASHA LORDE,** Founder: Lorde Business Solutions

In the complex world of taxation, small to medium businesses often find themselves navigating a labyrinth of regulations and requirements. Understanding the intricacies of tax laws and their implications for your business is crucial to ensure compliance and avoid penalties. This guide aims to provide a comprehensive overview of tax and VAT for small to medium businesses, particularly for those who are technical tax practitioners.

Often when it comes to business tax, we only know of a one-size-fits-all approach. One might only think of the 28% (now 27%) tax rate but there are different tax options that businesses can choose to align with their tax plan and strategy.

One tax system is not a silver bullet and businesses should not spend their time aiming to take up one tax system over another, rather, they should run their numbers and do their tax calculations taking into account all of the qualifying systems and then choosing the one where they are most tax optimized.

Before getting into the options, it is worth noting that the tax rates change annually, albeit incrementally. However, for the most accurate calculations, whether calculating in hindsight or foresight, it is best to refer to the SARS tax tables.

Here are a few income tax options that businesses can choose from:

## Corporate Income Tax

Corporate Income Tax (CIT) is the default tax rate and it is a tax imposed on companies resident in the Republic of South Africa, which are incorporated under the laws of or which are effectively managed in the Republic and which derive income from within or outside the Republic. A company does not need to register for this tax type, opt into it or qualify for it—as long as the company is registered, it will be taxed on its profit, i.e. income qualifying section 11 deductions at the applicable rate in the year of assessment. Non-resident companies which operate through a branch or which have a permanent establishment in the Republic are subject to tax on all income from a source in the Republic. For the years of assessment ending on 31 March 2023 and later, the rate of CIT payable is 27% (previously 28%).

## Turnover Tax

Turnover Tax is a simplified tax system designed specifically for microbusinesses with an annual turnover of less than R1 million. This system is intended to ease the tax obligations of smaller businesses, making it more manageable and less time-consuming.

To qualify for Turnover Tax, a business must generate sales through its activities that total less than R1 million for the year of assessment. This total excludes all capital-related receipts, including proceeds from the sale of significant business items and certain government grants, as per the Income Tax Act.

Micro businesses with an annual turnover of R 1 million or less who are eligible are individuals (sole proprietors), partnerships, close corporations, companies, co-operatives and those who meet the requirements set out in the Turnover Tax application form (TT01).

The documents required for Turnover Tax compliance include proof of annual turnover, business registration documents and tax clearance certificates. It is essential to keep these documents up-to-date and readily available to avoid any potential issues with the South African Revenue Service (SARS).

Non-compliance with Turnover Tax regulations can result in penalties. According to section 210 of the Tax Administration Act, these penalties can be up to 10% of the amount of tax payable. Therefore, it is in the best interest of businesses to ensure they meet all the requirements of this tax system.

## Small Business Corporation (SBC) tax rates

Small businesses may qualify for Small Business Corporation (SBC) tax rates, a progressive tax system designed to benefit small businesses. To qualify, a company must meet several criteria, including being a close corporation, private company or co-operative, all shareholders or members must be natural persons and the gross income of the company must not exceed R20 million for the year of assessment. They should also not be personal service providers as set out in the Fourth Schedule of the Income Tax Act. The tax rates for this tax scheme are from 0%–27% (the exact percentages can be found here).

This tax type is an option that must be opted into on the tax return when submitting the ITR12 on the anniversary of the tax year end of the corporation. Unlike turnover tax, you do not need to register or deregister for it, nor do you need to have a specific year end to participate. If the corporation qualifies for the tax benefits within the SBC Tax regime, they can make use of the applicable deductions and sliding scale tax rates.

### Provisional Tax

Provisional Tax is not a separate tax from income tax. It is a method of paying the income tax liability in advance, ensuring that businesses do not accrue a large tax debt on assessment. This system allows the tax liability to be spread over the relevant year of assessment, making it more manageable for businesses. This tax type is applicable regardless of the annual income tax system opted into.

All businesses are automatically registered for Provisional Tax. Payments are based on forecasts, highlighting the importance of accurate financial planning. Overpaying or underpaying SARS can lead to complications, so it is crucial to ensure that these forecasts are as accurate as possible.

The requisite documents for Provisional Tax compliance include proof of income, business registration documents and tax clearance certificates. Keeping these documents accurate and up-to-date is essential for smooth tax operations.

Non-compliance with the Provisional Tax regulations can result in penalties. As per section 213 of the Tax Administration Act, these penalties can be up to 20% of the unpaid tax. Therefore, ensuring compliance with these regulations is of utmost importance.

### Employee Tax (PAYE)

Pay-As-You-Earn (PAYE) is a withholding tax on employees' income. This tax is considered an advance payment of income tax due by the employee. Upon assessment, any excess tax paid above what is owed will be refunded to the taxpayer.

As a business owner and employer, it is mandatory to deduct the Unemployment Insurance Fund (UIF) and PAYE tax from staff salaries every month. Failure to submit the monthly declaration of PAYE, UIF and Skills Development Levy (SDL) on time can result in fines from SARS.

The necessary documents for PAYE compliance include employee salary records, UIF contribution records, SDL contribution records and EMP201 forms. Keeping these records accurate and up-to-date is crucial for smooth tax operations.

*"Understanding and complying with tax regulations is a crucial aspect of running a small to medium business"*

Non-compliance with the PAYE regulations can result in penalties. According to section 210 of the Tax Administration Act, these penalties can be up to 10% of the amount of PAYE not deducted. Therefore, ensuring compliance with these regulations is of utmost importance.

### Value-added Tax (VAT)

Value-added Tax (VAT) is a type of consumption tax placed on a product whenever value is added at each stage of the supply chain, from production to the point of sale. It essentially aids businesses in their cash flow operations by allowing them to pay 15% less on all VAT qualifying expenditures. The Act also states that businesses collect 15% of all their VAT qualifying income by levying it on the purchase their consumer makes. The difference between the 15% allowable VAT deduction on their business purchases and the 15% collected from their clients is paid over to SARS or received as a refund in the case where the business has spent more in VAT than it has collected.

A business only has to register for VAT if its taxable funds exceed R1 million in value within a 12-month period. A business can opt into a voluntary registration if its revenue is at least R50 00 within a 12-month period.

The necessary documents for VAT compliance include VAT schedules, proof of taxable funds, business registration documents, tax invoices, credit notes, debit notes and the VAT registration certificate. Keeping these documents accurate and up-to-date is crucial for smooth tax operations.

Non-compliance with the VAT regulations can result in penalties. According to section 33 of the Value-added Tax Act, these penalties can be up to 10% of the amount of VAT not accounted for. Therefore, ensuring compliance with these regulations is of utmost importance.

## Dos and Don'ts

- Do ensure your business is registered for the correct taxes.
- Don't ignore your tax obligations. Non-compliance can lead to penalties and interest charges.
- Do keep accurate and up-to-date records of all business transactions.
- Don't mix personal and business expenses. Always keep them separate.
- Do consult with a tax professional if you are unsure about your tax obligations.

## Potential Consequences

Non-compliance with tax obligations can lead to various consequences, including penalties, interest charges and legal action. Penalties can range from 10% to 200% of the amount of tax owed, depending on the nature of the non-compliance. Interest is charged at the prescribed rate, which changes periodically.

Understanding and complying with tax regulations is a crucial aspect of running a small to medium business. It is always better to be proactive about tax obligations. It is much easier and less costly to establish the right foundations now than to rectify issues down the line.

60 minutes CPD

# RECEIVING GIFTS

## From your partner? Should you be declaring this? Spousal transfers—benefits and burdens

LIEZEL TREDOUX, Head of Tax Law and Senior Lecturer at Unisa

It has been said that one should not look a gift horse in the mouth. However, if the gift bears a tax liability, one might reconsider the giving and acceptance thereof.

If the gift is made between spouses, unintended tax consequences could expose a partner or spouse to an unexpected tax burden in specific circumstances. Tax legislation regulating gifts between partners and spouses sometimes offers beneficial tax treatment to spouses or partners by exempting the transfer from tax. The application of this potential benefit, however, depends on several requirements that should be met and does not apply to all types of partners or spouses, all transfers or all types of property. This contribution briefly analyses the main burdens and benefits of domestic transfers between spouses or partners in their lifetime during the relationship (excluding death or divorce) while they are tax resident in South Africa.

### Parties involved and meaning of the term 'spouse' in tax legislation

It is important to determine who is considered a partner or spouse for tax purposes prior to engaging in tax planning or determining the tax consequences of a gift or transfer. The understanding of the term partner or spouse has evolved to such an extent in society that many variations of romantic relationships exist.

Section 9(2), read with section 9(3) of the Constitution of the Republic of South Africa, 1996, (hereafter the Constitution), provides that the state and no other person may directly or indirectly discriminate unfairly against a person on the grounds of marital status, sex, sexual orientation, religion, belief, culture, gender or conscience (amongst other grounds). As the Constitution is the supreme law of the land, all conduct or legislative provisions in conflict with it is invalid (s2 of the Constitution). The development of a constitutional dispensation in South Africa, specifically the right to equality as enshrined in section 9 of the Bill of Rights in the Constitution, has led to the recognition of a wider group of persons as partners or spouses and to the amendment of many parts of tax legislation.

The concept 'spouse' is defined widely in tax legislation to include the partner of a person in a recognised marriage or customary union, a marriage recognised in terms of any religion and a "*same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent*" (s1 of the *Income Tax Act* 58 of 1962 [ITA], section 1 of the Estate Duty Act 45 of 1955 [EDA] and s1 of the Transfer Duty Act 40 of 1949 [TDA]; definition of 'spouse'). The EDA definition adds that the person must be a spouse at the time of death. Marriages or unions referred to in these definitions are deemed out of community of property unless the contrary is proved (Proviso to section 1 definition of 'spouse' in ss1 of the ITA and TDA). It is not clear whether this deeming of the relationship as out of community of property includes or excludes the accrual system. Section 2 of the Matrimonial Property Act 88 of 1984)(MPA) regards every marriage entered into after commencement of the MPA (1 November 1984) that is out of community of property in terms of an antenuptial contract (ANC) as automatically subject to the accrual system, unless the accrual is specifically excluded in that ANC. As the definition of the term 'spouse' in tax legislation does not constitute an ANC, one could argue that this section does not apply to relationships that are not marriages. Many tax provisions do still apply to the traditional forms of marriages, which are either in community of property or out of community of property (with or without the accrual system). Although the ITA definition goes slightly further and states that the terms 'married', 'husband' or 'wife' shall be construed in accordance with this definition (s1 of the ITA), this does not go far enough to address the intricacies that may arise when one considers the inclusion of marriages in terms of different religions that have different matrimonial property regimes.

The persons that are considered spouses for purposes of the application of tax legislation are wider than the traditional concept of marriage and, therefore, many tax provisions that apply to a spouse will also apply to same-sex and heterosexual partners in a permanent relationship.

*"The possible tax burdens and/or benefits of transfers between spouses or partners depend on the nature of the relationship, gift and transaction, as well as the specific tax act that regulates the situation"*

Tax legislation does not clarify when a relationship is considered sufficiently permanent. The Commissioner has the discretion to determine whether a relationship is "*intended to be permanent*" (ss1 of the TDA, ITA and EDA, definition of 'spouse'). To classify persons in permanent unions as connected persons, SARS views the term 'permanent' in Interpretation Note 67 (Issue 3 – Connected Persons December 2017 at 5) as "*intended to last for an indefinite period*", which should be determined after a "*review of all of the facts and circumstances applicable to the particular case*." These criteria remain relatively vague and do not elaborate on the specific facts, circumstances or time that should be considered.

## The courts' interpretation of the concept spouse and permanence

The courts have not recently analysed the meaning of 'spouse' for tax purposes but have considered it in other matters. Several decisions indicate an evolution of the concept in line with constitutional values and the condemnation of unfair discrimination against same-sex couples (*National Coalition for Gay and Lesbian Equality v Minister of Home Affairs and Others* 2000 1 BCLR 39 CC pars 1, 9 and 17; *Satchwell v President of the Republic of South Africa* 2001 12 BCLR 1284 T pars 3 and 33; *Du Toit and Another v Minister of Welfare and Population Development* 2002 10 BCLR 1006 CC pars 8 and 44; *Gory v Kolver* N.O. 2007 (4) SA 97 (CC) pars 3 and 5-7).

The interpretation of the permanence that is required to qualify as a spouse differed in each instance and divergent views were expressed. It seems as if the courts attach more weight to the intention of the parties, level of commitment, family recognition of the relationship, shared expenses, joint financial planning and cohabitation than to a specific time period (see *Gory case* where the parties cohabited for only two years compared to the S*atchwell case* where the parties were together for fourteen years).

In contrast, heterosexual couples that are not married have not consistently received the same recognition. In *Volks v Robinson* (2005 5 BCLR 446 CC), the majority of the Constitutional Court found that heterosexual permanent life partners should not be afforded the same legal status as a marriage (*Volks v Robinson* pars 60 & 62). This differs from the approach in *Jacobs v Road Accident Fund* (2019 2 SA 275 GP), where the court recognised a duty of support to a heterosexual partner of a deceased, described cohabitation as an accepted norm in society (even though the deceased was still married to another party with whom he was not living) and granted the claim for loss of support and maintenance of Ms Jacobs due to the death of her partner in a car accident (*Jacobs case* pars 1, 5 and 15 and 19). In *Bwanya v Master of the High Court, Cape Town and others* (2021 ZACC 51), the majority decision of the Constitutional court confirmed that the exclusion of a permanent life partnership from the application of the *Maintenance of Surviving Spouses Act* and certain sections of the *Intestate Succession Act* was unconstitutional (*Bwanya case* pars 1-8).

Although the definition of the term 'spouse' in tax context relies on an intention of permanence, advisors should beware that the discretion of the Commissioner might differ from their client's perception of a specific relationship and that the detailed facts, factors considered and reasoning of the courts could be instructive in this regard.

## The nature of the gift and transfer

The tax consequences of a gift to a partner depend not only on the question whether the parties are, in fact, classified as spouses but also on the nature of the gift itself and the nature of each specific transaction. Specific provisions in each tax act regulate the type of property that is transferred, as well as the specific transaction in terms of which it is transferred.

## Tax treatment of gifts or transfers between spouses—burdens and benefits

Certain sections in tax legislation benefit spouses by granting specific exemptions, whereas other provisions guard against the misuse of the close relationship between partners or spouses. Partners or spouses are usually also classified as 'connected persons' in terms of the definition of this phrase in section 1 of the ITA. As a result, many provisions that apply to connected persons can catch unaware spouses with an unexpected tax liability.

Income Tax on the cession of income to a spouse or partner
If a spouse transfers income to their spouse, section 7(2) of the ITA provides that such an amount is deemed to have accrued to the transferring spouse if it was transferred as a donation, settlement or other disposition; the sole purpose thereof was to reduce, postpone or avoid tax that would have been payable by such a donor. These anti-avoidance provisions ensure that the person to whom the income accrued, remains taxable.

## Transfer Duty on the transfer of immovable property to a spouse or partner

Transfers that consist of immovable property or any real right to immovable property could trigger a liability for transfer duty (s2(1) of the TDA). If the fair value of the property exceeds R1 100 000, transfer duty is levied on a sliding scale according to rates that are published from time to time (s2(2) of the TDA). The spouse acquiring the property or the person in whose favour the right is renounced is liable for this duty (S2(1) and 3(1) of the TDA). This should be declared and paid within six months from the date of the transaction (s3(1) of the TDA). The immovable property or right thereto is usually not transferred prior to the payment of transfer duty and the lodging of a transfer duty declaration on eFiling or through a conveyancer, as part of the transfer documents that are lodged in the deeds office and that are integrated with the eFiling system. An exemption from transfer duty is available when parties get married in community of property and acquire an undivided half share of property due to the operation of law when the marriage is concluded (s9(1)(k) of the TDA). Besides this, spouses or partners do not receive any preferential treatment or exemption from transfer duty. Similarly, transfers that are made in terms of antenuptial or postnuptial contracts do not receive preferential treatment; the full transfer duty must be paid in respect of such a transfer to a future spouse.

## Securities transfer tax on the transfer of securities to a spouse or partner

If the transfer to a partner or spouse consists of a security as defined in section 1 of the Securities Transfer Act 25 of 2007 (STA), securities transfer tax (STT) is payable at a rate of 0.25% of the taxable amount determined in terms of the STA (s2(1) of the STA). The person receiving the security is liable for this tax, although it is usually paid by the agent holding the security on behalf of the owner or the company that has issued the security if it is a listed security (s5(2) and 5(3) STA). A security is defined to include a share or depository receipt in a company or a member's interest in a close corporation but excludes the debt part of a share that is linked to a debenture (s1 of the STA, definition of security). The term 'transfer' is defined widely and includes transfers, sales, assignments, cessions, disposals and cancellations or redemptions of a security, but excludes transactions that do not change the beneficial ownership of the security, the issue of securities if liquidation transfers (s1 of the STA definition of transfer). Similar to the transfer duty exemption, partners who enter into a marriage in community of property and obtain an undivided half share of a security as a result of the marriage, will not be subject to STT (s8(1)(i).

## Donations tax on gifts to a spouse or partner

Generally, transfers or gifts may attract donations tax which is levied on a donor of property in terms of section 54 of the ITA when a resident makes a disposal of property or gratuitously renounces or waives a right to property (*Welch's Estate v CSARS* 2005 4 SA 173 SCA). This is levied at a rate of 20% for property under R30 million and 25% on the aggregate value of property exceeding R30 million (s64(1) of the ITA). The person liable for donations tax is usually the donor, but s59 of the ITA provides that if the donor does not pay, the donor and donee are both jointly and severally liable for the payment of donations tax. All exemptions are subtracted prior to determining the aggregated value of R30 million (s56 of the ITA). If a spouse is married in community of property, a donation is deemed to be made by both spouses in equal shares, unless it is donated from the property which is part of the separate estate of the specific spouse making the donation (s57A of the ITA). If spouses are married in community of property, written permission is required for spouses to donate, transact or alienate specific types of property joint estate (see s15(2) of the MPA).

Donations should be reported to SARS by the end of the month following the month in which the donation was made in a declaration on form IT144 (s 60(1) of the ITA). This form contains a part for exempt amounts which should be completed.

A great benefit of this tax is that donations between spouses are exempt from donations tax if the parties are not separated under a judicial order or notarial deed of separation (s56(1)(b) of the ITA). In addition, donations made in an antenuptial contract or postnuptial contract are also exempt (s56(1)(a) of the ITA). This applies in addition to the annual exemption of R100 000 from donations tax.

## The Davis Tax Committee suggestions to remove certain spousal tax benefits

Due to concerns of manipulation and discrimination based on marital status, the Davis Tax Committee (DTC) suggested the removal of the donations tax interspousal exemptions in the ITA, except for a reasonable amount that provides for the maintenance of a spouse (*DTC Final Report on Estate Duty* 28 April 2016 at 21). The detailed suggestion further included the possible adoption of the 'enduring benefit' principle which would cause a donation between spouses to be subject to donations tax if it would exist for more than one year and/or the donations of cash would lead to an accumulation of wealth for the recipient spouse (*DTC Report 22*). The imposition of a monetary threshold to prevent excessive transfers of wealth in the form of cars, jewellery, cash, personal use items and collectables that fall outside the capital gains tax framework was mentioned but replaced by the enduring benefit principle (*DTC Report 22*). The suggestions have not been enacted yet.

## Conclusion

The possible tax burdens and/or benefits of transfers between spouses or partners depend on the nature of the relationship, gift and transaction, as well as the specific tax act that regulates the situation. The question whether gifts or transfers received from a spouse or partner should be declared is a double-edged sword. While exempt amounts need not always be declared, the question is not one that only requires answering from an isolated tax perspective. For example, a donation, which accrues to a spouse or is made between spouses during a marriage out of community of property subject to the accrual system, is excluded from the accrual calculation (s5(1) and 5(2) of the MPA). For estate planning purposes, it is thus wise to declare donations so that the assessments may be formally aligned upon dissolution of the marriage by either death or divorce and to ensure that the later exclusion of such transfers or donations are not questioned by SARS. SARS is obliged to make an assessment if a taxpayer submits a return, even when such return does not include a determination of the amount of a tax liability (s91 of the *Tax Administration Act* 28 of 2011) [TAA]). A taxpayer has the onus of proving that an amount, transaction, event, or item is exempt or not subject to tax (s102 of the TAA). Without declaring transfers received from spouses, this onus is difficult to discharge. There is also the risk of differing interpretations of tax provisions and that SARS may detect and question the taxability of such gifts or transfers in the declarations made by the other spouse or using third-party information. This could place a non-declaring partner in a rather precarious position or lead to unnecessary and undesirable audits and/or investigations by SARS. It seems that sometimes a gift horse can indeed be looked in the mouth.

# Blunt tool or sharp scalpel? Taxation as a means to achieve justice on gender equality

▶ **SUMARIE SWANEPOEL,** Senior Lecturer University of Pretoria **& LISA MARRIOTT,** Professor of Taxation at Victoria University of Wellington

On 2 and 3 August 2023, the University of Pretoria organised and hosted an international taxation conference with the theme: 'Distributive Tax Justice in the Global Economy'. On the first day, there was a panel session titled: 'Taxation as a Means to Achieving Justice on Gender Equality'. This brief article provides a synopsis of some of the information shared in that panel.

The panel was chaired by Yvette Lind, Professor of Tax Law at the Norwegian Business School. The panellists were: Professor Margaret Chitiga-Mabugu, the Dean of the Faculty of Economic and Management Sciences at the University of Pretoria who holds a PhD in Economics from the University of Gothenburg in Sweden; Professor Lisa Marriott, Professor of Taxation at the School of Accounting and Commercial Law Victoria University of Wellington; Professor Attiya Waris, affiliated with the law school of the University of Nairobi; and Ms Sumarie Swanepoel, senior lecturer at the University of Pretoria.

The panel commenced with a discussion about the panel members' research on gender, taxation and inequality. The point was made that tax laws generally do not explicitly discriminate according to gender. However, in practice, they often impact differently on women and men. There are multiple factors that result in different types of impact on women, including: gender pay gaps; the greater time spent on average by women to undertake caring responsibilities; time out of the workforce due to parental responsibilities; working part- or full-time; and even the types of paid work that are undertaken by women.

*"The point was made that tax laws generally do not explicitly discriminate according to gender. However, in practice, they often impact differently on women and men"*

The specific example of New Zealand was discussed. New Zealand taxes income and consumption very well. However, it does not tax wealth in any meaningful manner. There are no comprehensive capital gains taxes, inheritance or estate taxes. Most land sales also do not attract tax on gains. Wealth is a particular area in New Zealand where women are disadvantaged. Men hold more wealth than women but, as wealth has preferential tax treatment, this disadvantages women. As inequality grows in New Zealand (average wealth holdings by the top household quintile are approximately 200 times than that of the lowest household quintile), there is a strong argument to be made that some form of wealth tax is needed.

Retirement savings is a key issue. On average, women live longer than men. Women are also more likely to have time away from paid employment as they engage in caring activity. Furthermore, the gender pay gap remains (globally, women in 2022 earned on average 17% less than men). These factors combine to result on average in lower savings balances for women. However, tax systems tend to amplify these problems, as men have a greater ability to take advantage of, often generous, tax concessions, deductions and incentives in relation to retirement savings. This results in large gaps in savings by the time of retirement—with more tax benefits accruing to men.

The panel agreed that one of the biggest hurdles in achieving greater gender equality was access to gender-disaggregated data. At present, it is difficult to get good data to quantify the problem and, therefore, to effectively advocate for change. For example, while it is generally accepted that men, on average, have higher incomes than women, in some countries, tax reforms have focused on lowering the tax rates for top-income earners. However, it is well established that increasing the progressivity of the income tax rates is an effective tool to help address gender inequality. Usually, these reforms are not accompanied by a gender analysis that would facilitate transparency regarding the impact of these reforms on women.

When it came to possible ways in which the tax system could be utilised to improve gender equality for women, one suggestion was assistance with childcare. The costs of childcare are high; deducting tax, crediting or ringfencing tax money in order to provide childcare centres are ways in which tax can be very specifically used as a 'sharp scalpel' to address a specific area of gender inequality. This may allow some women to enter or re-enter the workforce, which would then further improve their financial position, autonomy and access to resources.

The VAT system was also discussed, with general agreement that consumption taxes are regressive and can be discriminatory when levied on essential items that comprise a greater share of the income from the poor (often female-headed households). The example of sanitary products was raised. While most VAT systems have zero ratings for some essential or basic items, some do not zero-rate sanitary products. This is an example of indirect discrimination.

The issue of positive discrimination was debated. Most panellists were in favour of discriminating in favour of women in order to address systemic inequality. Although perhaps contentious, this stance can also be constitutionally justified in South Africa in particular and it is one way to uproot and eradicate systemic discrimination.

The panel discussion revealed that the incipient field of gender equality and taxation holds a great deal more intellectually stimulating deliberations in store and that taxation could most definitely be a means to achieve justice on gender equality.

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